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September 2, 2014

To: Board of Directors, Marina Coast Water District
From: Jeanine DeBacker, Special Legal Counsel
Subject: Director Communications

Special Legal Counsel received several complaints within the past 60 days regarding unprofessional, disrespectful, and potentially harassing emails and verbal comments among Directors and towards District Staff.

When an employee or Director of the District has a complaint about another employee, a supervisor or a director, one preferred procedure is for Special Legal Counsel to find out what happened and to resolve the matter informally with direction to the offending party to stop the offending behavior. However, the events of the past 60 days concerns behavior involving multiple directors in multiple forms of communication:

- July 24, 2014 – 6:35 AM Director Le sent an email regarding scheduling of interviews for GM candidates. Email was sent to all board members and the search consultant.
- July 24, 2014 – 8:05 AM – Director Gustafson responded to all on the email (including all Directors):

The problem with Peter Le is he always uses E-mail to submit his stupid ideas instead of doing it in public so we can respond on the expenses Le keeps racking up for the rate payers to pay. You were supposed to come to the job with some understanding of something but you do not understand anything by judging your comments and mannerisms. I can remember all the crap you fed the electoric. Keep everything the same or hold another meeting so I can explain to the public what a reject Peter Le is. Quit hiding behind your e-mails, Le.
Regards, Howard Gustafson

- July 24, 2014 – 3:38 PM – Director Le sent an email to President Moore. The email is addressed to President Moore, but the content is addressed to all Directors; it is unclear if the “bcc” address was used:

Dear Directors:

Re: Complaint against Director Gustafson

I would like to submit and file a complaint against Director Gustafson for violations of Section 5, Harassment-Free Work Environment, Section 14, Code of Ethics, and Section 27, Orderly Discussion, of the Board Procedures Manual.

For over a year and a half, Director Gustafson has called me names on several occasions, and showed disrespects to my values and opinions and unprofessional conduct during Board open and closed meetings.

You may recall that Director Gustafson called President Moore a moron and me President Moore’s “sidekick” previously. Director Gustafson also stated that I was ignorant and did not understand grading and improvement plants. In his email to all the Directors and the District consultant this morning, attached with this complaint, Director Gustafson called my ideas stupid and made other accusations against me. There were other occasions Director Gustafson showed disrespect and unprofessional conduct to me that I could not recall at this time.

During board meetings, Director Gustafson stated that he did not trust me and on several occasions he cut me off during my speaking time. He also cut other Directors’ off during their speaking time.

I realize that in submitting and filing this claim I will cause distraction to the District, in addition to hurting the District’s reputation and credibility. However, by not submitting this complaint, I and the entire Board enable Director Gustafson to continue to show disrespect to other Directors and unprofessional conduct, thus violates the Board Procedures Manual, without any consequences. I am very surprised that the current and previous Boards had not addressed the unprofessional conduct and behavior of Director Gustafson.

I hope the Board will investigate my complaint seriously. Let me know if you have any questions on the complaint.

Sincerely,
Peter Le

- July 31, 2014 4:01 PM – Special Legal Counsel sent an email to Director Le:

Director Le –

I wanted to let you know the status of your complaint against Dir. Gustafson based, at least in part, on Director Gustafson's July 24, 2014 email to the Board.

I received copies of the chain of emails. I am initiating the process of bringing the proposed censure of Dir. Gustafson before the Board, but wanted to let you know that due to the fact that we are aware that Director Gustafson will not be present at the next Board meeting and that Dir. Moore will not be at the meeting after that, I will not be bringing it to the full Board until the September 2 meeting.

In the past, the Board has affirmatively directed me to come back to the Board in such situations when all members are expected to be present. Further, Director Gustafson is permitted to sit at the dais, participate in the discussion, submit responsive information and vote on any proposed resolution (and any discussion on setting such a vote).

Thus, while the matter is extremely important, I will be slightly delayed in bringing it before the full Board. In the interim, if there are any additional communications or documents you want to be included in the proposed censure materials and background, please forward them to me (copying Brian Lee).

Thank you for your patience.

Jeanine DeBacker

- July 31, 2014 – 10:17 PM - Director Le sent email to Special Legal Counsel:

Dear Ms. DeBacker:

I was surprised in receiving your email. As I understand it and was told previously by District Counsel, Section 16 of the Board Procedures Manual states that only the Board can direct any attorney and no Director, including President and/or Vice President, could direct you to handle this type of complaint. Additionally, the job description of the GM does not include his involvement in this type of complaint.

I was not aware of any written procedure that requires the presence of the full Board in considering the complaint because it may delay the process of prompt investigation especially where harassment and discrimination are involved.

If I am not correct on the above points, please let me know the relevant documents that address this type of complaint.

After I filed the complaint, I was persuaded to drop the complaint, harassed and threatened. It seems that the Board was not aware of my complaint and the Board and you did not take the matter seriously enough. I am sure, as an HR attorney, you are aware that not only the District will be liable for allowing pervasive harassment and racial and sex discrimination but individual Director may also liable for any harassment.

When I first attended Board meetings early last year, I was shocked when Director Gustafson called Director Shriner stupid during an open Board meeting. There were several other occasions where Director Gustafson violates several sections of the BPM as I described in the complaint. As I understand it, his behavior has occurred previously for several years and no one has ever filed a complaint for, I guessed, being afraid of causing distraction, bad reputation and retaliation. I am sure some District employees witnessed some of these events and did not file any complaint or report to their supervisors.

If I have time, I could search and provide details of numerous violations of the BPM by Director Gustafson. You can also obtain the violations by watching the video recordings of previous Board meetings and listening to the recordings of the Board meetings.

Peter Le

- August 9, 2014 -- 9:44 AM – Email from Director Le to Special Legal Counsel and President Moore:

August 9, 2014

At the Board meeting yesterday, Director Gustafson called Director Shriner a liar during the discussion.

The Board and the District has received my complaint filed on July 30, 2014 and failed to investigate it promptly and take appropriate steps to stop the pervasive harassment in accordance with the District policies on harassment.

Peter Le

- August 9, 2014 -- Special Legal Counsel spoke with Director Shriner regarding Board discussion. Director Shriner said she did not recall anyone using rude language (that is, calling her a liar) during that discussion, but did confirm that during both Closed and Open Session during the meeting, she was repeatedly not allowed to hold the floor to comment and otherwise prevented from performing her Director duties.

Rules Governing the Directors

Section 5 of the Board Procedures Manual provides that “The Board is committed to providing a work environment free of harassment, disrespectful or other unprofessional conduct.”

Section 13 of the Board Procedures Manual provides that “The Board and the individual board members will be committed to establishing and maintaining an environment that encourages the open exchange of ideas and information among Board members, the staff and the public, that is positive, honest, respectful, concise, understandable, responsive and cost-efficient.

Section 27 of the Board Procedures Manual provides: “In order to promote discussion of the issues before the Board, each member shall be recognized by the President before speaking. Notwithstanding any provision of this procedures manual, however, each member of the Board shall have the right to be heard within reason on any issue before the Board.”

Potential Board Actions in Response

The Board may elect to take any, all, or none of the following options: additional training for all or some Directors; public censure of a Director; removal of a Director from committees and positions for a period of time; preventing a Director from placing items on the agenda without authorization for a period of time.

The Board may elect to publicly censure a Director for his conduct, as well as removing him from committees and positions for a limited period of time and/or limiting his ability to place items on the meeting agenda for a limited period of time.

The Board Procedures Manual provides that “If a Director breaches any of the policies contained in Sections 5 [Harassment-Free Work Environment] . . . 13 [Communications]. . . [and] 15 [Comments by Directors Concerning Staff Members]. . . the Board may, in addition to any other consequences provided by law, publicly censure the offending Director and may as part of the censure take any or all of the following other actions, to be effective for a time determined by the Board: (a) remove the offending Director from committees and representative positions to which the Director has been appointed or designated by the Board, and/or (b) prevent the offending Director from placing items on the agenda without the specific, advance authorization of the Board. (Section 43)

Conclusion

When considering the options above, please recall past presentations regarding the obligation of the District, under both its Board Procedures Manual and, where appropriate, the law, to undertake reasonable care to prevent and promptly correct harassment as well as the obligation of all Directors to act with professionalism and respect.

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