

# LAW OFFICES OF ANNE FRASSETTO OLSEN

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February 25, 2014

To: Board of Directors, Marina Coast Water District

From:   
Anne Frassetto Olsen, Esq., Investigator

Subject: Final Report on Investigation of Employee Complaints against Director Peter Le

On or about January 20, 2014, I was retained to complete a fact investigation on allegations made by employees of the Marina Coast Water District against Director Peter Le. I met with multiple staff members, Board President Tom Moore and Director Peter Le.

The complaints can be summarized as follows:

1. During the open session of the Board meeting on December 2, 2013, Director Le inappropriately and unprofessionally accused Interim General Manager Brian Lee of interfering with the audit process performed by Kenneth Pun, an Independent Auditor retained by the District. In addition, Director Le inappropriately and unprofessionally accused the District's staff of interfering with his role as a member of the ad hoc audit committee by not providing required information during the audit process and not providing the draft audit to him as a member of the ad hoc audit committee.
2. During the open session of the Board meeting on December 16, 2013, Director Le inappropriately and unprofessionally accused Interim General Manager Brian Lee of having no authority to present the District budget to the FORA Water/Wastewater Oversight Committee without including a proposed rate increase.
3. Director Le often requests information relating to matters on the agenda without giving sufficient time for the staff to compile the requested information and then complains in open session about the failure of the staff to provide needed information.

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4. These actions by Director Le form a pattern of conduct that has been evident within a few months of his election onto the Board and these behaviors have continued to the present time. His negative comments are having a negative impact on staff morale. His comments during open session are being taken by the staff as a lack of respect for their competence and work ethic.

Pertinent Board Policies and Government Code Sections:

Marina Coast Water District has implemented a Board Procedures Manual, recently amended on December 2, 2013. Pertinent provisions (italicized) are as follows:

**1. Purpose of Board Procedures Manual.**

*The purpose of this Board Procedures Manual is to provide a composite of information on procedures approved by the Board of Directors to be used in the conduct of Board business to provide for the fair and efficient consideration of said matters, to ensure that the public is informed of the matters coming before the Board and has an opportunity to witness the deliberations of the members thereof in the conduct of the Board's business, and to encourage proper public involvement in the deliberations of the Board. Each Director, upon assuming office, shall be given a copy of this Board Procedures Manual, shall be asked to acknowledge receipt of the copy in writing and shall be asked to affirm in writing the Director's intent to comply with the policies and procedures in this Board Procedures Manual.*

**5. Harassment-Free Work Environment.**

*The Board is committed to providing a work environment free of harassment, disrespectful or other unprofessional conduct.*

**7. Duties of the Directors Acting as Members of the District Board of Directors.**

The duties of the directors include:

G. *assuring that each employee of the District and each constituent of the District is treated courteously and fairly by the District, and that privacy rights of District employees and constituents are safeguarded in accordance with law;*

**13. Communications.**

*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.*

#### **15. Comments by Directors Concerning Staff Members.**

*Board members shall refrain from publicly censuring or criticizing members of the District staff, but shall instead relay any criticism or problems relating to staff members or the General Manager to the General Manager through private discussions.*

In addition to Board Policies, California Government Code Section 54957 provides that the legislative body of a local agency may hold during closed sessions the consideration of the evaluation of performance, discipline or dismissal of a public employee or hear complaints or charges brought against the employee unless the employee requests a public session.

#### **Results of Investigation**

##### **Complaint No. 1: December 2, 2013 Board Meeting**

It is clear from the video tape of the December 2, 2013 meeting that Director Le accused Interim General Manager Brian Lee of interfering with the audit process and made a general criticism of staff that they had not provided requested information during the audit process. These are serious allegations. Furthermore, the inquiry should have been made to the auditor as it would have been the duty of Kenneth Pun, the auditor, to report to the Board if staff had not properly cooperated in his task as an independent auditor. Therefore, the staff complaint was valid and Director Le violated the Board policies that require the Board directors to treat the District staff courteously and respectfully and to refrain from publicly censuring or criticizing staff. His actions further violated the Interim General Manager's privacy rights as any evaluation of his job performance or complaint is required to be held in closed session per Government Code Section 54957.

Director Le explained his actions by stating that it was his belief that the ad hoc audit committee was to participate in the review of the draft audit and to determine the scope of work for a forensic audit on two district projects and on cost allocation between cost centers. It was his belief that once authorized by the Board, the auditor would perform all of these tasks and the results of his investigation would be contained in one audit report. He was therefore upset that the audit had been submitted for board approval before he had the opportunity to review it and before the forensic audits had been completed. It was not within the purview of my engagement to determine whether or not Director Le's understanding of his role in the ad hoc audit committee was accurate. It is irrelevant to my inquiry as to whether or not it was appropriate for Director Le to make the accusation that he did against Interim General Manager Brian Lee and the District Staff.

As noted above, if the staff acted inappropriately, the discipline for those actions must remain confidential. The Board is to evaluate the performance of the Interim General Manager in closed session unless and only if the Interim General Manager requests that any such evaluation be handled in open session. It is inappropriate and a violation of board policy and Government Code Section 54947 for a board member to complain or criticize District staff and, specifically, the Interim General Manager, in open session. As to issues of performance of any employee other than the Interim General Manager position, any complaints by a board member should be directed to the Interim General Manager for action.

### **Complaint No. 2 – December 16, 2013 Board Meeting**

Similarly, the video tape of the December 16, 2013 board meeting clearly demonstrates that Director Le accused Interim Director Brian Lee of conduct unauthorized by the Board in his presentation of his report to the FORA Water/Wastewater Oversight Committee. As noted above, it is not within my purview to determine the accuracy of Director Le's statement but, rather, whether or not he made the statement in the appropriate venue. He clearly did not. As discussed above, any complaint on the performance of a district employee must be handled confidentially or during closed session. Director Le did not handle this complaint confidentially or during closed session. He therefore violated the district's policies and the provisions of Government Code Section 54957.

### **Complaint No. 3 – Information Requests**

I reviewed numerous emails from Director Le addressed to Interim General Manager Brian Lee asking for additional information for upcoming Board meetings. Some, but not all, were sent within 24 – 48 hours of the actual board meeting. District staff complained that they had insufficient time in which to respond. They further complained that Director Le would generally criticize staff during open session of the board meetings about the staff's inability to timely provide the required information. This was a general complaint and the complainants did not direct me to a specific request or board meeting. Therefore, there is insufficient information for me to conclude that any violation occurred.

Director Le informed me that he had not been made aware of this issue. Interim General Manager Brian Lee had emailed Director Le in July, 2013 and asked Director Le to meet with him on a regular basis to discuss issues and solutions to any problems that Director Le had. Director Le has admittedly not met with the interim general manager as he works full-time and he does not have the time to do so. Director Le did express frustration that staff did not provide responses to his inquiries on many occasions. It is suggested that Director Le take the opportunity to meet with Interim General Manager Brian Lee to discuss how best the staff can meet Director Le's requests and for Director Le to learn how the staff operates and the limitations they have in meeting requests in the timeframe requested.

#### **Complaint No. 4 - Pattern of Negative Comments**

The staff generally complained that Director Le made negative comments about staff and that it has caused a negative downturn on staff morale. It was quite evident that staff do feel demoralized and are upset that none of the other board members have interceded. The staff interviewed are upset about Director Le's treatment of the interim general manager. It should be noted that the Interim General Manager is not one of the complainants. The staff members interviewed do acknowledge that, as an elected official, Director Le has the duty to represent his constituents, but they feel that his negative comments are inappropriate and unnecessary to fulfill his duties as an elected official. I did review the video tapes of the two board meetings on December 2, 2013 and December 16, 2013 and several times Director Le would criticize staff and be dismissive of their comments. Board policies require that the directors be courteous, professional and respectful and Director Le should modify the tone of his statements in order to comply with Board policies.

#### **Conclusion**

As discussed above, the staff brought forth valid complaints against Director Le. When I met with Director Le, he did acknowledge that public employees have rights of privacy and he has learned about the provisions of Government Code Section 54597. He did request to know the names of the complainants. Pursuant to Board policies provided in the employee handbook, which require that the confidentiality of an employee who has reported an incident be protected against unnecessary disclosure, I declined Director Le's request to disclose the names of the complainants as that information was not necessary for Director Le to respond to the issues brought forward. He has been made aware and fully acknowledges that there can be no retaliation against any employee who brings a complaint or cooperates in any investigation.