

February 1, 2009

AskDOJ@usdoj.gov

Hon. Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave.
Washington, D.C., 20530-0001

Re: Criminal Complaint and Request for Investigation for Violation of the Implied Right of Honest Services and Other Appropriate Charges of:

- (1) All Los Angeles Superior Court Judges;
- (2) Los Angeles Superior Court Judge David P. Yaffe;
- (3) Los Angeles Superior Court Judge Soussan G. Bruguera;
- (4) Los Angeles Superior Court Commissioner Bruce E. Mitchell;
- (5) Calif. State Bar Court Hearing Department Judge Richard A. Honn;
- (6) Los Angeles County Supervisor Michael Antonovich;
- (7) Los Angeles County Supervisor Don Knabe; and
- (8) Los Angeles County Supervisor Gloria Molina

Dear Attorney General Holder:

DisclosureWatch is a national citizens' organization devoted to achieving accountability from our elected public officials and those who serve the public at all levels of government. .

This letter is a formal criminal complaint for violation of the "implied right to honest services", (28 U.S.C. § 1346) and other appropriate statutes against, and a request that the Department of Justice open and investigation of:

- (1) All Los Angeles Superior Court Judges;
- (2) Los Angeles Superior Court Judge David P. Yaffe;
- (3) Los Angeles Superior Court Judge Soussan G. Bruguera;
- (4) Los Angeles Superior Court Commissioner Bruce E. Mitchell;
- (5) California State Bar Court Hearing Department Judge Richard A. Honn;
- (6) Los Angeles County Supervisor Michael Antonovich;
- (7) Los Angeles County Supervisor Donald Knabe; and
- (8) Los Angeles County Supervisor Gloria Molina.

The reason for the criminal complaint and request is that the aforementioned judicial officers and the county supervisors have violated the "implied right of honest services" and possibly other federal laws.

The LA Superior Court Judges have taken "unconstitutional" payments from LA County, not disclosed such and decided cases in favor of LA County.

LA Superior Court Judge David P. Yaffe, and LA Superior Court Judge Soussan G. Bruguera, particularly, have taken “unconstitutional” payments from LA County who was a party before them, not disclosed such and decided the cases or made rulings in favor of LA County.

LA Superior Court Commissioner Bruce E. Mitchell has taken payments from LA County, not disclosed such, while acting as a “temporary judge” in the Eminent Domain Department of the LA Superior Court and has “approved and ordered” the taking of approximately \$2 million from the *Di Flores* Class Settlement Fund in violation of the Stipulation of Settlement and Final Judgment for his own benefit and the benefit of “other judicial officers”.

California State Bar Court Hearing Department Judge Richard A. Honn was on the board of a charity which received \$30,000.00 from LA County while he presided over a case involving LA County and decided in their favor. Judge Honn was a member of the Board of Governors of the Special Olympics Southern California. Another member of the board was Gerald Hime, a LA County representative. Special Olympics Southern California received \$30,000.00 from LA County during the time Judge Honn heard the case against the lawyer who filed federal civil rights cases alleging that the LA County payments to past and present LA Superior Court judicial officers were “unconstitutional” and violated the First and Fourteenth Amendments to the U.S. Constitution. During this time of contributions, Judge Honn held that such lawyer was guilty of “moral turpitude” for filing such cases.

LA County Supervisors Antonovich, Knabe and Molina received contributions from a developer who advocated a project before the Board, did not disclose such, did not recuse themselves, and voted for the developer’s project, when such project came before them within twelve (12) months of the dates of the contributions in violation of the California Political Reform Act.

These acts and violations are a microcosm of the myriad of violations of the “implied right of honest services” occurring daily in the LA Superior Court.

I. History and Background of Payments and Violations Resulting in California’s Current “Judicial Crisis”.

Since the late 1980s, the Los Angeles County Board of Supervisors has paid the Los Angeles Superior Court Judges “unconstitutional” payments known as “local judicial benefits” in violation of Article VI, § 19 of the California Constitution. As of the present time, the amount of these payments is estimated to be over \$300 million based upon figures taken from LA County Annual Budgets where such payments are under the heading of “Trial Court Funding”.

The Los Angeles (LA) Superior Court judges are state elected public officials under Article VI, § 16 of the California Constitution and not allowed to have additional

employment other than part time teaching, under Article VI, § 17 of the California Constitution.

Since 1974, California has had a Political Reform Act requiring elected public officials, including judges, and public employees to disclose sources of income and refrain from conflicts of interest. The judiciary is also subject to a Code of Judicial Ethics.

Unfortunately, these laws have been blatantly violated in California resulting in violations of 18 U.S.C. 1346, the federal law enforcing the “implied right to honest services”.

“Responsible” state bodies such as the state prosecutorial agencies, the state Appellate courts, the Judicial Council, and the Commission on Judicial Performance have refused to face and resolve the problem. Even worse, the State Bar has prosecuted Richard I. Fine (“Fine”) and the State Bar Court has recommended disbarment for “moral turpitude” for his bringing federal civil rights cases showing such “unconstitutional” payments and the resulting violations of the First and Fourteenth Amendments, against LA County who made such payments and past and present LA Superior Court judges and court commissioners who were receiving the LA County payments.

California is now in a “Judicial Crises”. The LA Superior Court has become “dysfunctional” due to the \$21 million per year of “unconstitutional” payments from LA County to the LA Superior Court Judges. LA County Counsel documents show that in the years 2005 and 2006-2007, not one person won a case against LA County when the decision was made by a LA Superior Court judge.

The LA County payments have been held to violate Article VI, § 19, of the California Constitution in the recent case of *Sturgeon v. County of Los Angeles, et al.*, October 10, 2008 modified November 7, 2008, Court of Appeal, Fourth App. Dist., Div. One, Certified for Publication, Review Denied, December 23, 2008, remittitur issued 1/2/09, LASC Case No. BC 351286; Appeal No. D050832; Supreme Ct. Case No. S168408. Yet, the LA County payments continue.

The problem exists in other California counties. The same payments are being given from other California counties to the judges, but not in the same amount as LA County. Some counties have now discontinued the payments after the enactment of the 1997 Lockyer-Isenberg Trial Court Funding Act ([Cal. Govt. Code §77000 et seq.](#)) which declared that the State was solely responsible for trial court funding to remove the disparities in compensation received by judges in different counties.

Additionally, over \$2 million was taken from a class settlement fund and used to purchase the claims against a LA Superior Court commissioner and other judicial officers, and then defend such decision.

These violations have precluded any meaningful access to justice for over ten (10) million LA County residents for years. Unless, these violations are prosecuted and stopped, the residents of LA County will continue to be deprived of their basic constitutional rights to an unbiased judicial system, a county government free of influence and public servants who render “honest services”.

Only federal intervention and convictions will restore meaningful access to justice in the LA Superior Court system and re institute the First Amendment right to petition the government to redress grievances and the Fourteenth Amendment right to due process.

II. The Violations Have Precluded the Meaningful Access to Justice, Cost the Taxpayers over \$1 Billion and Denied Over 10 Million People Their First and Fourteenth Amendment Rights.

These violations have directly cost LA County homeowners, taxpayers, and residents over \$1 billion and violated their First Amendment right to petition the government to redress grievances and Fourteenth Amendment right to due process. These violations have affected every case where LA County, its agencies or employees are a party including but not limited to, homeowner and property cases, the children’s courts, the probate courts, LA County contracts, the leases in Marina del Rey and other LA County “public land” and public facilities, and LA County negligence, amongst others. All facets of life in LA County are affected..

These violations have directly cost LA County homeowners, taxpayers, and residents over \$300 million of “unconstitutional” LA County payments to LA Superior Court judges in the last twenty years and are continuing at the rate of approximately \$21 million per year. This is happening despite the case of *Sturgeon v. County of Los Angeles, et al.*, which held at pages 1-2:

Section 19 article VI of the California Constitution requires that the Legislature “prescribe compensation for judges of courts of record. The duty to prescribe judicial compensation is not delegable. Thus the practice of the County of Los Angeles of providing Los Angeles County superior court judges with employment benefits, in addition to the compensation prescribed by the legislature, is not permissible.

From the time the LA County payments began in the late 1980s through the present, LA County has paid the LA Superior Court judges over \$300 million as shown by LA County Annual Budget documents. LA County has been paying LA Superior Court judges “local judicial benefits” in addition to their State compensation since the late 1980s.

As of the present time California Court judges receive a base salary and benefits of \$192,386.00 (Salary-\$178,789.00). LA Superior Court judges receive \$249,413.00 (LA County payments of up to \$46,386.00 per year per judge). LA County payments total approximately \$21 million per year to LA Superior Court judges in addition to their

current State of California salaries, giving them higher annual “compensation” than U.S. Supreme Court Associate justices who receive approximately \$217,000.00 and the U.S. Supreme Court Chief Justice who receives approximately \$218,000.00.

Decisions of LA Superior Court judges in a few cases affecting income from LA County leased “public land” to “developers” in Marina del Rey show that taxpayers have “lost” at least \$700 million in income from the value of LA County leased land in Marina del Rey as of 2005, and at least \$70 million in fees for “lease renewals”.

Four taxpayer class action lawsuits filed were filed in 2004-2005. Such lawsuits alleged a gift of public funds to private individuals in violation of Article XVI, § 6 of the California Constitution by the LA County Supervisors’ leases to “developers” in Marina del Rey. The lawsuits were filed against LA County, Archstone Smith Operating Trust, Kingswood Village- Marina, Villa Venetia, Neptune Marina and the Oakwood and consolidated under *Coalition to Save the Marina and Marina Tenants Association, et al. v. County of Los Angeles et al.*, LASC Case No. BS 085898.

The taxpayers lost approximately \$700 million of income from the developers in Marina del Rey, when LA Superior Court Judge Soussan G. Bruguera dismissed the consolidated cases before trial. Judge Bruguera first did not disclose that she was receiving LA County payments, but admitted in response to a “disqualification” which she unlawfully “struck”, that she was receiving payments from LA County, who was the lead defendant in the cases. The loss is continuing at approximately \$70 million per year. At the present time, the loss over the past thirteen (13) years is approximately \$910 million and growing.

III. The Legal Basis of the “Implied Right to Honest Services” Is Well Established Against Judges and Elected Officials.

The “implied right to honest services” is set forth in the case of *United States v. Holzer*, 81 F. 2d 304, 308 (7th Cir. 1987) vacated 484 U.S. 807 (ordering reconsideration in light of *McNally v. United States*, 483 U.S. 350, 359 1987), reinstated under 18 USC section 1346 overturning *McNally* and reinstating pre *McNally* case law. See *United States v. Grandmaison*, 77 F.3d 555, 565-566 (1st Cir. 1996) and *United States v. Sawyer*, 85 F.3d 713, 723-725 (1st Cir. 1996). In *Holzer*, supra, the court stated at 81 F.2d at 311:

"In this circuit it is extortion if the official knows that the bribe, gift, or other favor is motivated by a hope that it will influence him in the exercise of his office and if, knowing this, he accepts the bribe." (Emphasis added.)

This activity of receiving money from a party was considered "fraud" and violated 18 USC §§ 1341 and 1343, the federal mail and wire fraud statute in *Holzer*, supra, in which the court stated at 81 F.2d at 308:

A system in which judges are paid by the parties rather than by the state does not inherently distort judgment; it is, indeed, the system used in arbitration, which is a type of adjudication, and it was also used in the judicial system of England until well into the nineteenth century. **But the State of Illinois has decided that judges shall not be compensated out of fees paid by the litigants, and a judge who disregards this decision deprives the state of whatever benefits (what the cases call the public's "intangible rights") it hoped to obtain from the system of compensation that it did adopt. He also makes litigants pay double for judicial services--once in their taxes (which pay the judges' salaries), and the second time in fees paid directly to the judge. When, in addition, the judge conceals what he is doing, he commits fraud; for what he is concealing is clearly material information to his employer, the state.**" (Emphasis added.)

In the case of *U.S. v. Blumeyer*, 114 F.3d 758 (8th Cir. 1997) the court stated a brief history of the right to honest services as follows at 765:

.....Congress responded to McNally in 1988 by enacting § 1346, which provides that "the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." 18 U.S.C. § 1346 (1988). **We have previously recognized that "[s]ection 1346 was enacted ... to overrule the Supreme Court's decision in McNally " and that it restored the "vitality" of our pre-McNally cases involving official corruption.** [United States v. Jain, 93 F.3d 436, 441-42 \(8th Cir.1996\)](#), petition for cert. filed, 65 U.S.L.W. 3531 (U.S. Jan. 17, 1997) (No. 96-1167). (Emphasis added.)

Judge Posner recently stated in *U.S. v. Black*, 530 F.3d 596 (7th Cir. 2008) at 600:

Section 1346 of the federal criminal code, added in 1988 in order to overrule [McNally v. United States, 483 U.S. 350, 107 S.Ct. 2875, 97 L.Ed.2d 292 \(1987\)](#), defines "scheme or artifice to defraud" in section 1341 to include a scheme or artifice to "deprive another of the intangible right of honest services."

He continued at 530 F.3d at 601:

As explained in *United States v. Orsburn, supra*, 525 F.3d at 546, section 1346 was added "to deal with people who took cash from third parties (via bribes or kickbacks). [United States v. Holzer, 816 F.2d 304 \(7th Cir.1987\)](#), supplies a good example. Judge Holzer accepted bribes from litigants. **What he took from his employer, the state's judicial system, was the honest adjudication service that the public thought it was purchasing in exchange for his salary.**" [United States v. Sorich, 523 F.3d 702, 707-08 \(7th Cir.2008\)](#); [United States v. Thompson, 484 F.3d 877, 884 \(7th Cir. 2007\)](#); [Man-Seok Choe v. Torres, 525 F.3d 733, 737 \(9th Cir.2008\)](#); [United States v. Kemp, 500 F.3d 257, 279-80 \(3d Cir.2007\)](#); [United States v. Rybicki, supra](#), 354 F.3d at 139-42.

Judges who accept bribes invariably argue that they didn't allow the bribes to influence their decisions. But a judge who accepts bribes deprives the judiciary of his honest services even if, as contended by Francis Bacon, the most famous of corrupt judges, he does nothing for the person who bribed him. Such a case does not differ materially from that of the "honest" recipient of a bribe — the recipient who, committed to honor among thieves, performs his side of the illegal bargain. (Emphasis added.)

The violations of state laws have also been a basis for the violation of the “implied right to honest services”. In California, the Code of Judicial Ethics, Cannons 2A, 2 B (1) and (2), 3B(5), 3E (1) and (2) and 4D (1), (4) and (5) state as follows in relevant part:

Cannon 2A

A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Cannon 2B

(1) A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

(2) A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others.....

Cannon 3B

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (2) sexual harassment.

Cannon 3E

(1) A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.

(2) In all trial court proceedings, a judge shall disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.

Cannon 4D

(1) A judge shall not engage in financial and business dealings that (a) may reasonably be perceived to exploit the judge's judicial position,

or

(b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.

(4) A judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification. As soon as reasonably possible, a judge shall divest himself or herself of investments and other financial interests that would require frequent disqualification.

(5) Under no circumstance shall a judge accept a gift, bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge. A judge shall discourage members of the judge's family residing in the judge's household* from accepting similar benefits from parties who have come or are reasonably likely to come before the judge.

Further, the judges, court commissioners, state bar court judges and county supervisors are all subject to the California Political Reform Act, which has both disclosure requirements for judicial officers (Government Code § 87200 and § 82030(b)(2) as interpreted by Regulations of the Fair Political Practices Commission, Title 2, Division 6 California Code of Regulations, Regulation 18232(a)) and recusal requirements for elected officials (Cal. Govt. Code §§ 81000 et seq., 87100 and 87103 (requires disclosure of receipt of political contributions of \$500.00 or more within the previous twelve months of voting on the contributor's project and prohibits voting on the project, See *BreakZone Billards v. City of Torrance*, 81 Cal.App.4th 1205, 1227-1229 (Second App. Dist., Div. 2, 2000))).

IV. The Specific Charges and Supporting Documents.

A. Charges Against the LA Superior Court Judges.

The Los Angeles (LA) Superior Court Judges, Los Angeles Superior Court Judge David P. Yaffe and Los Angeles Superior Court Judge Soussan G. Bruguera have all received "unconstitutional" payments from LA County, (See *Sturgeon* decision), and did not disclose such on their Form 700 Statement of Economic Interest (See Form 700 at County Registrar) as required under the California Political Reform Act, Government Code § 87200 and § 82030(b)(2) as interpreted by Regulations of the Fair Political Practices Commission, Title 2, Division 6 California Code of Regulations, Regulation 18232(a), which required judges and court commissioners to disclose all income except salary, reimbursement for expenses and per diem allowances from a federal, state or local government agency, if they provided services to such government agency.

(1) From the Outset, the Judges Knew that the Payments Were Illegal.

A November 10, 1988 Memorandum from LA County Counsel to Frank S. Zolin, County Clerk/Executive Officer, Superior Court, showed that LA County decided to pay

LA Superior Court judges “local judicial benefits” consisting of “MegaFlex cafeteria benefits” [of income equal to 19% of the judge’s salary], a “professional development allowance” and a 401(k) match “to attract and retain quality judges to serve in this [LA] county”.

At the outset LA County and the LA Superior Court knew that LA County could not legally “attract and retain quality judges”.

LA County could not “attract and retain quality judges” as judges are elected officials under Article VI, section 16 of the California Constitution. To “attract and retain quality judges” LA County would have to spend taxpayer money on campaign contributions for particular politicians. This would be an unconstitutional gift of public funds to private individuals prohibited by Article XVI, section 6 of the California Constitution.

LA County also could not independently “compensate” LA Superior Court judges. LA County and the LA Superior Court both knew from the 1988 Memorandum, that Article VI, section 19 of the California Constitution stated that only the State Legislature could “prescribe” the compensation of the judges, that the case law held that when a statute read only the State Legislature could “prescribe” something, this duty could not be delegated and that the California Attorney General had issued two opinions stating that counties could not treat judges as county employees for purposes of providing benefits beyond those provided statewide to all judges. The 1988 Memorandum also acknowledged that the judges were state constitutional elected officials.

LA County and the LA Superior Court judges also knew that LA County was a “political subdivision” of the State of California whose property taxes were already being used to pay the compensation of the judges as determined by the State Legislature. They further knew that any additional payment by LA County would “double charge” the LA County taxpayers for the same State “judicial services” received by other counties.

Despite this knowledge, the program was instituted. In 1997, the Lockyer-Isenberg Trial Court Funding Act ([Cal. Govt. Code §77000 et seq.](#)) declared that the State was solely responsible for trial court funding to remove the disparities in compensation received by judges in different counties.

(2) LA Superior Court Judges Decided Literally All Cases for LA County in the Last Few Years.

LA Superior Court judges have decided cases and made orders in favor of LA County to the exclusion of the opposing parties in cases before them as shown by the [June 9, 2005, October 3, 2007 and October 1, 2008 County Counsel Annual Litigation Cost Reports to the LA Board of Supervisors](#). The 2005 Report shows that 404 lawsuits were dismissed in the first three quarters of 2004-2005 as compared to 163 in the first three quarters of 2003-2004, no decision in favor of a party by a judge in 2004-2005 and that 213 new lawsuits were filed in the third quarter of FY 2004-2005. (Pages 1 and 2)

The October 3, 2007 Report shows no decision in favor of a party by a judge in 2006-2007, (Page 3) and 261 dismissals in 2007 which was 12% less than 2006 (page 4). There were 670 new cases filed in 2007, which was 21% less than 2006 and 5% less than 2005 (page 4).

The October 1, 2008 Report shows the County tried 25 cases, prevailed in 16, received adverse verdicts or decisions in 7 and 2 cases resulted in “hung juries”. The October 1, 2008 Report did not show that any adverse “decision” was rendered by a LA County Superior Court judge. (Page 3) Unlike previous years, the October 1, 2008 Report did not report “new cases filed” or “dismissals”.

The receiving of “unconstitutional” payments by a judge from a party to a case, not disclosing such, and violating a state law violates the implied right to honest services. LA Superior Court judges knew that the taking of the payments from LA County by the LA Superior Court judges also violated Code of Judicial Ethics Cannons 2A, 2B(1), 3B(5), 3E(1) and (2), and 4D(1) (4) and (5) and that not disclosing such violated the Political Reform Act.

B. Charges Against LA Superior Court Judge David P. Yaffe.

Judge David P. Yaffe presides in the “Writs and Receivers” Department of the LA Superior Court where many of the cases involving LA County are heard. As such, he is in a “unique” situation due to the nature of his “department” of having a greater affect on the rights of those litigating with LA County than a judge who may have the “intermittent” case.

Judge Yaffe’s violations are especially egregious as he not only violated the “implied right to honest services”, but further violated the Fourteenth Amendment right to due process by issuing an order to pay sanctions, attorneys fees and costs without notice or hearing and without jurisdiction over the person, then violated state law by refusing to remove himself from the case after being disqualified under law, and again violated the Fourteenth Amendment right to due process by acting as the judge in a contempt proceeding to enforce his unconstitutional order and judge the person who criticized his actions.

On June 14, 2007, “Fine” filed a petition for writ of mandate in the case of *Marina Strand Colony II Homeowners Association v. County of Los Angeles*, LASC Case No. BS 109420 (*Marina Strand* case) as the attorney for the Marina Strand Colony II Homeowners Association. The petition sought to overturn the approval of the LA County Board of Supervisors of an Environmental Impact Report (EIR) in favor of the re development of the Del Rey Shores apartment complex in Marina del Rey, California.

The petition alleged that the EIR violated the California Environmental Quality Act (CEQA). Amongst the numerous allegations, was the allegation that LA County did not receive any positive financial benefit from the project as required by CEQA. LA

County was the Respondent. Its co applicant, Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North [Jerry B. Epstein, the Epstein Family Trust, Pat T. Epstein and David O. Levine] were the “Real Parties in Interest”. David P. Yaffe was the judge. Previously, “Fine” had represented the Marina Strand Colony II Homeowners Association in the proceedings before the LA County Regional Planning Commission and the LA County Board of Supervisors in opposing the approval of the EIR.

From the outset of the lawsuit, and at all times prior thereto, Judge Yaffe was receiving LA County payments and did not disclose such.

Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North, the Epstein Family Trust, Jerry B. Epstein, Pat T. Epstein, David O. Levine (the “Chief of Staff” to Jerry B. Epstein according to court documents) and LA County, each had an interest in removing “Fine” from the case. A California State Bar case entitled *In the Matter of Richard Isaac Fine*, State Bar Court Case No. 04-O-14366, had commenced on February 6, 2006 while “Fine” was opposing LA County and Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North, the Epstein Family Trust, Jerry B. Epstein, Pat T. Epstein, David O. Levine before the LA County Regional Planning Commission.

At that time, and during “Fine’s” participation in the *Marina Strand* case, LA County had a “financial relationship” with California State Bar Hearing Court Judge Richard A. Honn to influence the removal of “Fine” from the *Marina Strand* case through \$30,000.00 of payments to the Special Olympics Southern California, a charity where Judge Honn sat on the Board of Governors with Gerald Hime, a representative of LA County.

During this same period of time, Jerry B. Epstein, the Epstein Family Trust, Pat T. Epstein and David O. Levine had a relationship with the California State Bar through Sheldon H. Sloan, a Member of the Board of Governors and then President of the California State Bar who was their attorney in another case where they and LA County were opposing “Fine’s” clients over LA County “lease” issues in Marina del Rey.

“Fine” left the *Marina Strand* case on October 12, 2007, as a result of the actions of California State Bar Court Hearing Department Judge Honn who ordered “Fine” “inactive”.

“Fine” filed a petition for writ of review with the California Supreme Court in the case of *Fine v. State Bar of California*, Supreme Court Case No. S158326. On November 19, 2007, the California Supreme Court denied the petition, but did not enter an order affirming Judge Honn’s order, or enter its own order, making “Fine” inactive as it was required to do under Cal. Bus. & Prof. Code § 6084(a) when a timely petition for writ of review was filed.

The California Supreme Court is the only court that can declare a person “inactive”. See *In re Rose*, 22 Cal. 4th 430 (2000) which at Fn. 7 stated:

A State Bar decision ordering the involuntary inactive enrollment of an attorney in exigent circumstances (§ 6007, subd. ©)) may become effective before we consider the matter, but only because the order is subject to our immediate, independent review. (*Conway v. State Bar* 47 Cal.3d 1107 (1989), 1120-1123.)

In re Rose also holds that the denial of a petition for review is not a decision of a "cause" under the California Constitution and states "only this court renders decisions or orders imposing discipline) (22 Cal. 4th at 442) and "our denial of review does not render the State Bar Court's decision "final," because such a decision simply constitutes a recommendation regarding the ultimate discipline to be imposed by this court, and no disbarment or suspension may occur until this court's entry of its own order.⁷".(22 Cal. 4th at 442)

“Fine” did not return to the *Marina Strand* case.

On January 8, 2008, Judge Yaffe ordered that “Fine”, who at that time was no longer the attorney for the Marina Strand Colony II Homeowners Association, pay sanctions of \$1,000.00 and attorneys fees and costs to LA County and “Real Parties in Interest”, without having given “Fine” notice of the hearing and without “Fine” being present at the hearing. Fine was sent notice by mail on January, 23, 2008.

Shortly thereafter, “Fine” made a “Special Appearance” in the *Marina Strand* case, moved to dismiss the January 8, 2008 order. Judge Yaffe took the motion “off calendar”. On March 25, 2008, “Fine” served Judge Yaffe with a CCP § 170.3 “Objection” based upon Judge Yaffe’s admitting in a hearing on March 20, 2008 that he received payments from LA County. Judge Yaffe did not make any “response” to the “Objection” and was “disqualified” on April 8, 2008 by operation of law under CCP § 170.3©)(4). Judge Yaffe refused to leave that part of the case relating to “Fine” in violation of Cal. Code of Civ. Proc. § 170.3©)(4).

Subsequently, in the *Marina Strand* case, Judge Yaffe both presided as the judge, and appeared as an adverse witness in the contempt proceedings against “Fine” commencing November 3, 2008 with an order to show cause containing sixteen (16) counts. The contempt proceeding was based upon allegations of actions occurring after Judge Yaffe entered the January 8, 2008 order in the *Marina Strand* case. The counts included, but were, not limited to, refusing to respond to questions at a judgment enforcement hearing, making false statements in pleadings, making motions for reconsideration of the court’s January 8, 2008 order, directly and indirectly attacking the integrity of the LA Superior Court and the court [Judge Yaffe], attacking the integrity of the State Bar Court, attacking the integrity of the Real Parties in Interest’s counsel and holding yourself out to practice law in violation of B&P Code §§ 6126 and 6127 despite the fact that you have been placed on involuntary inactive status by the State Bar of California.

On the first day of trial Judge Yaffe testified, as an adverse witness called by “Fine”, that he had received the LA County payments, that he knew that LA County had cases before him, that he did not disclose the payments on his Form 700 Statement of Economic Interests required to be filed with the State of California under the Political Reform Act, that he was a State of California employee and an elected state judge under the California Constitution, that he did not have any employment contract with LA County or agreement or arrangement to provide services to LA County, that he reported the LA County payments as “income” on his tax returns, that he did not put the LA County payments into his “campaign contributions account” for his judicial elections, and that other than making a decision regarding the re circulation of the EIR in the *Marina Strand* case, he could not name any case in the last three (3) years where he decided the case against LA County.

The contempt trial concluded after seven (7) days of trial. Judge Yaffe held “Fine” not guilty on fourteen (14) counts and guilty on two (2) counts, one of which was refusing to answer questions at a judgment enforcement examination regarding the unlawful order to pay attorneys fees and the second of holding himself out to practice law. Judge Yaffe made these rulings despite the unconstitutionality and illegality of the January 8, 2008 order, the testimony at trial of counsel for Real Parties in Interest Joshua L. Rosen, that they were not relying on the January 8, 2008 order to enforce the judgment and that there was no other order for Fine to pay fees or costs in evidence, and the fact that the California Supreme Court had not ordered Fine “inactive” and neither statute relied upon “State Bar orders”. A motion to set aside the judgment and enter a judgment of “not guilty” was subsequently filed and is set for hearing on February 24, 2009.

Additionally, in the underlying *Marina Strand* case, in June, 2008, Judge Yaffe, ruled against the Marina Strand Colony II Homeowners Association on the issue of whether the new lease with Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North which was part of the project would be of a financial benefit to LA County. At the contempt trial, it was shown that no evidence was presented in the “record” that a positive financial benefit to LA County would occur. R. J. Comer, counsel for Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North testified that he did not review the new lease and could not cite to any evidence showing a benefit to the county.

The “Draft Amended and Restated Lease Agreement” showed at section 4.4.1 that LA County was giving Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North an \$11,050, 000.00 Lessee Credit plus accrued interest for the dedication of fifty four (54) low and moderate income apartments in the project. Under the Mello Act, Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North was required to dedicate these apartments without any lessee credit.

The receiving of “unconstitutional” payments by a judge from a party to a case, not disclosing such, and violating a state law violates the “implied right to honest services”. Judge Yaffe knew that he had violated the “implied right to honest services”.

Judge Yaffe knew that the taking of the payments from LA County by him also violated Code of Judicial Ethics Cannons 2A, 2B(1), 3B(5), 3E(1) and (2), and 4D(1) (4) and (5) and that not disclosing such violated the Political Reform Act. He further knew that the entering of the January 8, 2008 order without notice to “Fine” or “Fine” being present at the hearing and without jurisdiction over “Fine” violated the Fourteenth Amendment right to due process, that not recusing himself after he was disqualified violated state law and the Fourteenth Amendment right to due process and that presiding over the contempt proceeding where he was judging “Fine” for criticizing his [Yaffe’s] actions and deciding such, also violated the Fourteenth Amendment right to due process. (See *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971)- criticized judge cannot preside at contempt hearing of critic.)

C. Charges Against LA Superior Court Judge Soussan G. Bruguera.

Judge Soussan G. Bruguera is another “unique case”. She did not disclose that she was receiving LA County payments. She unlawfully “struck” the CCP § 170.3 “Objection” to her based upon her receiving such payments, by admitting such payments and arguing the legality of such in the “Strike Order”. This act violated CCP § 170.3©(5) which precludes a judge from passing “upon his or her own disqualification or upon the sufficiency in law, fact or otherwise, of the statement of disqualification filed by a party.”

Judge Bruguera then remained on four (4) consolidated cases and dismissed them prior to trial despite the knowledge that the plaintiffs had shown violations of law and the California Constitution which would cause them to prevail. This action has cost LA taxpayers approximately \$910 million in lost income from LA County’s leases of “public land” to private developers in Marina del Rey as of the present time.

In 2004-2005, “Fine” filed four (4) taxpayer class action lawsuits, each alleging a gift of public funds to private individuals in violation of Article XVI, § 6 of the California Constitution by the LA County Supervisors leases to “developers” in Marina del Rey. The lawsuits were filed against LA County, Archstone Smith Operating Trust, Kingswood Village- Marina, Villa Venetia, Neptune Marina and the Oakwood consolidated under *Coalition to Save the Marina and Marina Tenants Association, et al. v. County of Los Angeles et al.*, LASC Case No. BS 085898.

Judge Bruguera admitted in response to a CCP § 170.3 “Objection” which she unlawfully struck, that she was receiving payments from LA County, the lead defendant in the cases. Judge Bruguera then dismissed the consolidated cases before trial.

At the time that she dismissed the consolidated cases, Judge Bruguera knew that on June 29, 2005, her fellow LA Superior Court Judge Elihu M. Berle had issued an oral Order on denying a preliminary injunction holding that the **County of Los Angeles does not control prices of apartments and boat leases of a year or less under its “restated lease”** with Marina Pacific Associates in Marina del Rey; amongst other grounds stating at pages 61 ln. 26, to page 62, ln. 15, and page 64, ln. 3 to 26 that **the “restated lease”**

submitted as evidence by plaintiffs does not show any “control or system of control on the price at which accommodations may be offered for rent or lease” which is the basis to require the lessee, Marina Pacific Associates to offer any re developed accommodation [boat slip] first to the then existing tenant [Dr. Stuart Hoffman, a legal livaboard] under Government Code § 7060.2(B)(3). The failure to control prices meant that the lease was a gift of public funds to private individuals in violation of Article XVI, § 6 of the California Constitution, under well established California case law. The case was *Coalition to Save the Marina, Inc., et al., v. County of Los Angeles, Marina Pacific Associates, a California Limited Partnership, and Bellport Group, et al.*, LASC Case No. BS 092794 filed in 2005 alleging violations of the California Constitution and particularly the lease between LA County and the developer lessees.

In the same *Marina Pacific* case, LA County argued that it did not control the actions of the lessee under the lease. This was also brought to the attention of Judge Bruguera.

Judge Berle later dismissed the *Marina Pacific* case prior to trial. The lease documents with LA County show that one of the managers of the “general partner” of Marina Pacific Associates is the Epstein Family Trust, of which Jerry B. Epstein and Pat T. Epstein are the “Trustees” executing documents on behalf of Marina Pacific Associates.

One of the lawyers in the case for Marina Pacific Associates is Sheldon H. Sloan, who was also a member of the Board of Governors and then President of the State Bar of California, when the State Bar of California initiated and pursued its suit to “disbar” Fine. Marina Pacific Associates, the Epstein Family Trust, Jerry B. Epstein, Pat T. Epstein, Sheldon H. Sloan and LA County each had an interest in removing Fine from the *Marina Pacific* case through State Bar action.

LA County had an interest and a “financial relationship” with State Bar Hearing Court Judge Honn through the \$30,000.00 payments to the Special Olympics Southern California to influence the removal of “Fine” from the *Marina Pacific* case. “Fine” left the *Marina Pacific* case prior to trial due to actions by State Bar Court Hearing Department Judge Honn of ordering “Fine” inactive on October 12, 2007. Fine did not return to the *Marina Pacific* case after the California Supreme Court did not affirm Judge Honn’s October 12, 2007 order.

The receiving of “unconstitutional” payments by a judge from a party to a case, not disclosing such, and violating a state law violates the “implied right to honest services”. Judge Bruguera knew that she had violated the “implied right to honest services”.

Judge Bruguera knew that the taking of the payments from LA County by her also violated Code of Judicial Ethics Cannons 2A, 2B(1) and (2), 3B(5), 3E(1) and (2), and 4D(1) (4) and (5) and that not disclosing such violated the Political Reform Act. Judge Bruguera also knew that she had violated CCP § 170.3©(5).

D. Charges Against LA Superior Court Commissioner Bruce E. Mitchell.

Los Angeles Superior Court Commissioner Bruce E. Mitchell is an employee of the State of California pursuant to the 1997 Lockyer-Isenberg Trial Court Funding Act. LA County pays LA Superior Court Commissioners “MegaFlex” benefits, a professional development allowance and contributions to their 401(k) retirement plan in addition to the State set compensation.

Commissioner Mitchell was, and is, assigned to the Eminent Domain Department of the LA Superior Court and presides as a “temporary judge” upon the stipulation of the parties. Commissioner Bruce E. Mitchell does not disclose the LA County payments on his Form 700 Statement of Economic Interests as required under the California Political Reform Act.

The Eminent Domain department decides cases involving LA County and its agencies. The receiving of “unconstitutional” payments by a judge from a party to a case, not disclosing such, and violating a state law violates the “implied right to honest services”. Commissioner Mitchell knew that the taking of the payments from LA County violated Code of Judicial Ethics Cannons 2A, 2B (1) and (2), 3B(5), 3E(1) and (2), and 4D(1) (4) and (5) and that not disclosing such violated the Political Reform Act.

Commissioner Mitchell also unlawfully on April 1, 2005 approved the expenditure of \$80,000.00 to purchase all claims of “Fine” against “Bruce E. Mitchell, other judicial officers and others” from the *Di Flores* Class Settlement Fund in violation of the Stipulation of Settlement and Final Judgment in the case of *Di Flores et al. v. EHG et al.*, LASC Case No. BC 150607 (*Di Flores* case), and subsequent thereto paid approximately \$270,000.00 from the same Fund to defend his April 1, 2005 action. On July 27, 2006, Commissioner Mitchell approved and ordered the payment of approximately \$1.6 million to attorneys from the *Di Flores* Class Settlement Fund and the Attorneys Fee Fund in violation of the Stipulation of Settlement and Final Judgment on the condition that they would withhold 35% or approximately \$566,684.65.00 to defend his April 1, 2005 action. Such actions violated various State laws.

The unlawful taking of monies from the *Di Flores* Class Settlement Fund and the Attorneys Fee Fund is “Theft” which is defined in Cal. Penal Code § 484 as “fraudulently appropriate money which has been entrusted to him or her” amongst other things. The actions are also “larceny” in violation of Cal. Penal Code § 490a and may also be obtaining money by false pretenses in violation of Cal. Penal Code § 532, of monies entrusted to the Superior Court and its judicial officers, Bruce E. Mitchell, Byron Moldo-the Disbursing Agent, Bank of America-the holder of the funds and the attorneys for the class members who received and consented to such payments.

The Court file in the *DiFlores* case shows that the Settlement and Mutual Release under which \$80,000.00 was paid from the *Di Flores* Class Settlement Fund to the Trustee to purchase the claims of “Fine” against “Bruce E. Mitchell, other judicial

officers and others”, manifests an “obstruction of justice”. Penal Code § 96.5 (Obstruction of Justice) makes any act that the “judicial officer” or “court commissioner” knows to pervert or obstruct justice to be punishable by up to one year in County Jail. Here Commissioner Mitchell knew that his actions of accepting the “release” specific to him in exchange for his approval of the Settlement and Mutual Release was obstructing justice and within the definition of a “bribe”. Cal. Penal Code §§ 7, 92 and 93

Commissioner Mitchell further knew that he was accepting a gift in violation of California Code of Civil Procedure § 170.9 and violating Code of Judicial Ethics Cannon 4D (1) by engaging in financial dealings with a person who appears before him. Commissioner Mitchell, John Moe, II, and Peter Leeson, IV (the lawyers who he appointed as “bankruptcy counsel for the Di Flores class members and who negotiated the acquisition of the claims against “Bruce E. Mitchell, other judicial officers and others”), engaged in bribery and soliciting a bribe by their actions as shown by the Court file in the *Di Flores* case and the Settlement and Mutual Release under which the \$80,000.00 was approved and transferred from the *Di Flores* Class Settlement Fund.

The violating of a state law violates the “implied right to honest services”.

E. Charges Against California State Bar Court Hearing Department Judge Richard A. Honn.

California State Bar Court Hearing Department Judge Richard A. Honn was the hearing judge in the case of *In the Matter of Richard Isaac Fine* State Bar Case No. 04-O-14366 RAH. Commissioner Bruce E. Mitchell was the “Complaining Party”.

The charges included amongst others, the filing of the cases of *LACAOEHS v County of Los Angeles and Lewin* , USDC Case No. CV-02-02190 AHM filed in March, 2002 (*LACAOEHS* case), a federal civil rights lawsuit alleging that the LA County payments to Los Angeles Superior Court judges violated Article VI, § 19 of the California Constitution, amongst also violating the First and Fourteenth Amendments to the U.S. Constitution and *John Silva v. County of Los Angeles, James C. Chalfant, Kathryn Doi Todd, Bruce E. Mitchell, Roger W. Boren, and Michael G. Nott*, USDC Case No. CV-02-04645 filed in June, 2002 (*Silva* case), a federal taxpayer class action civil rights lawsuit alleging that the LA County payments to Los Angeles Superior Court judges violated Article VI, § 19 of the California Constitution, amongst also violating the First and Fourteenth Amendments to the U.S. Constitution.

The remainder of the charges related to actions of Commissioner Bruce E. Mitchell and included the filing of one federal civil rights suit also related to the “unconstitutional” LA County payments, one appeal, one petition for writ of mandate, one petition for writ of supersedeas, and “disqualifications” against Commissioner Mitchell which he unlawfully “struck” under CCP § 170.3©)(5) and unlawfully simultaneously “answered”.

Judge Honn did not disclose that he was a member of the Board of Governors of the Special Olympics Southern California with Gerald Hime of LA County, and that the Special Olympics Southern California received payments of \$30,000.00 from LA County from July 1, 2005-January 18, 2008, while he was the trial judge on, and decided the case of *In the Matter of Richard Isaac Fine*. Judge Honn found “Fine” guilty of “moral turpitude” for the filing of the *LACAOEHS* and *Silva* cases. As shown above, the *Sturgeon* decision upheld “Fine’s” allegations in such cases that the LA County payments to the LA Superior Court judges violated Article VI, § 19 of the California Constitution.

Additionally, California State Bar Court Judge Patrice E. McElroy who refused to disqualify Judge Honn was a member of the Board of Directors of the San Francisco Child Abuse Prevention Center. Another member of such board was Jerry Roth, a Partner of Munger, Tolles & Olson, LLP, whose partner Jeffrey Bleich was a member of the Board of Governors of the California State Bar and President of the California State Bar, succeeding Sheldon H. Sloan. Munger, Tolles & Olson represented LA County in the negotiations and drafting of the “Option to Extend Lease” and the “Restated and Amended Lease” with Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North as shown by the signature page of the “Draft” documents. Campaign Contribution reports showed that the attorneys and partners of Munger, Tolles & Olson contributed over \$14,000.00 to the Supervisors of LA County. The combination of Judges Honn and McElroy on “Fine’s” State Bar case, demonstrated an inordinate “unity” of LA County interest in the disbarment of Fine.

The San Francisco Child Abuse Prevention Center did not release or post the contributions from its donors.

Such action by Judge Honn violated the California Code of Judicial Ethics, Cannons 2A, B(1) and (2), 3E (1) and (2) and 4C (3)(c)(I) and (ii) and 4D(1) (4) and (5). Judge Honn also knew that the taking of money for the charity where he was on the Board of Governors violated Code of Judicial Ethics Cannons 2A, 2B(1), 3B(5), 3E(1) and (2), and 4D(1) (4) and (5).

The acts of being on the Board of Governors of Special Olympics Southern California with a person from LA County and the Special Olympics Southern California receiving \$30,000.00 from LA County while Judge Honn was hearing and deciding a case involving LA County and not disclosing such made him biased and violated Cal. Bus. & Prof. Code 6085(e).

The violating of a state law violates the “implied right to honest services”.

F. Charges Against Los Angeles County Supervisors Michael Antonovich and Donald Knabe.

Los Angeles County Supervisors Michael Antonovich and Donald Knabe on May 15, 2007, voted for the approval of an Environmental Impact Report (EIR) for the Del Rey Shores Project, after having accepted campaign contributions from its proponents.

The Del Rey Shores Project was the re development of a 202 unit apartment complex into a 544 unit apartment complex with 1088 parking spaces.

Neither Supervisors Antonovich nor Knabe disclosed such contributions prior to, or at the time of the hearing, or recused themselves.

The proponents, time of contribution and amount given, as shown on the LA County Registrar's Official Campaign Contributions website, were Marina del Rey "developers" Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North through Jerry B. Epstein (Real Estate, Jerry B. Epstein Mgmt. Co)- 4/24/07, Antonovich, \$1,000.00, the Epstein Family Trust (Jerry B. Epstein, Trustee)- 4/4/07, Knabe, \$1,000.00, Pat Epstein(Artist, Pat T. Epstein)- 4/24/07, Antonovich, \$1,000.00, David Levine (Real Estate Management, Del Rey Shores)-4/24/07, Antonovich, \$1,000.00 and David O. Levine (Real Estate Consultant, Office of Jerry B. Epstein)-4/4/07, Knabe, \$1,000.00. The contributions were made within six weeks prior to the vote of approval of the EIR for the Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North Project.

Such non disclosure, failure to recuse and vote violated the California Political Reform Act, Cal. Govt. Code §§ 81000 et seq., 87100 and 87103 (requires disclosure of receipt of political contributions of \$500.00 or more within the previous twelve months of voting on the contributor's project and prohibits voting on the project, See *BreakZone Billards v. City of Torrance*, 81 Cal.App.4th 1205, 1227-1229 (Second App. Dist., Div. 2, 2000). As violations of the California Political Reform Act, such acts violate the right to honest services.

On December 16, 2008, Supervisors Antonovich and Knabe voted for the approval of the re circulated EIR for the Del Rey Shores Project, after having accepted campaign contributions from its proponents Marina del Rey "developers" Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North through Jerry B. Epstein-8/14/08, Antonovich, \$1,000.00, David O. Levine-8/15/08, Antonovich, \$1,000.00 and Marina Properties, LLC-3/18/08 (an entity controlled by Jerry Epstein), Knabe, \$1000.00, within one year of the vote.

Neither Supervisors Antonovich nor Knabe disclosed such contributions prior to, or at the time of the hearing, or recused themselves.

Such non disclosure, failure to recuse and vote violated the California Political Reform Act and as such was a violation of the "implied right to honest services".

G. Charges against Los Angeles County Supervisor Gloria Molina.

Los Angeles County Supervisor Gloria Molina on December 16, 2008, voted for the approval of the re circulated EIR for the Del Rey Shores Project. She did so after having accepted campaign contributions to the Gloria Molina Yes on Measure U etc. fund from Jerry B. Epstein (Real Estate, Jerry B. Epstein Mgmt. Co)-\$1,250.00 on

10/8/08 and David Levine (Real Estate, Jerry B. Epstein Management)-\$1,250.00 on 10/8/08 within six weeks of the vote.

Supervisor Gloria Molina did not disclose such contributions prior to, or at the time of the hearing, and did not recuse herself. Such non disclosure, failure to recuse and vote violated the California Political Reform Act and as such violated the right to honest services.

Conclusion

The LA Superior Court and LA County Government have been “perniciously compromised ” for approximately twenty (20) years due to the “unconstitutional” payments from LA County to the LA Superior Court judicial officers. This “pernicious comprise ” has expanded into the greater California judicial system through the appellate courts, Judicial Council and Commission on Judicial Performance’s refusal to address the “unconstitutional payments” problem and its devastating effects.

The time has now come to “reform the judicial system” by enforcing the law and thereby restoring meaningful access to justice to millions of people. The mood of the country has now changed. “Corruption” is out. “Transparency” is in. Government is again attempting to be responsive to the needs of the people, instead of ignoring them. Public servants will hopefully “serve the public”, instead of “abusing their office”, trampling the rights of the citizens, and disregarding the Constitution and the law.

Thank you for your immediate attention to this urgent matter. The citizens of Los Angeles, California and the nation await your expeditious action on this matter. We eagerly await the day that meaningful access to justice and our constitutional rights are restored.

Sincerely,

Dr. S. Moore
President, DisclosureWatch

cc:

Hon. Dianne Feinstein
Hon. Barbara Boxer
Hon. Patrick J. Leahy, Chm. Senate Judiciary Comm.
Hon. John Conyers Jr., Chm. House Judiciary Comm.
Hon. Henry Waxman
Hon. Brad Sherman
Thomas P. O’Brien, U.S. Attorney
California Chief Justice Ronald M. George
California Attorney General Edmund G. Brown, Jr.
LA District Attorney Steve Cooley

