

September 8, 2009

Via Facsimile & U.S. Mail
(619) 533-3448

Alison Adema
City Ethics Commission
1010 2nd Avenue, #1530
San Diego, CA 92101

Re: Marti Emerald for City Council

Dear Alison:

Almost a year ago, an anonymous complaint was filed against the campaign committee advancing the candidacy of Marti Emerald for the San Diego City Council. Your office opened an investigation of *that complaint*. My office has been working with you for almost half a year and the campaign has cooperated with you fully, providing you with every requested document, offering all of its officials for meetings, and strongly encouraging third party vendors to cooperate.

During this time, the questioning and requests for documents have ranged far beyond that which would have been necessary to resolve the initial complaint. Third parties have told me it looks more and more like a complete audit. It would appear all of the information necessary to resolve the original anonymous complaint has been gathered long ago.

Commission investigations are supposed to be confidential. Yet, the existence of the investigation has been leaked publicly, resulting in a story in the *San Diego Union-Tribune*. You have told me you have *not* initiated an investigation of the leak. My client has recused herself from decisions affecting your Commission as a result of the ongoing investigation, and remains in a situation in which she feels required to do so. Her inability to participate has left the San Diego City Council unable to act on important issues affecting the Commission.

In candid conversations between our offices, you have advised that the only potential issue causing the investigators any concern was whether my client *overpaid* Mr. Remer (the original complaint was that he was underpaid). We offered to resolve that three months ago by taking the matter to court via a declaratory relief action. While you have said you would not be bound by such a decision, I do not think the Ethics Commission is going to find Ms. Emerald's committee to be in violation of campaign laws if a San Diego Superior Court judge has ruled, on the exact matter, that

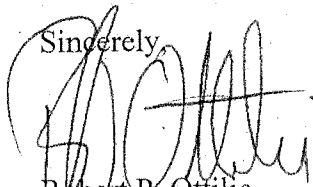
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Ms. Emerald did nothing improper. And, if the judge rules there was an overpayment, I have already assured you that the Committee will immediately seek reimbursement and collect on the judgment.

As you know, I personally have been a big supporter of the Ethics Commission since it was founded. However, a reasonable person looking at this investigation could easily conclude it has expanded far beyond the initial anonymous complaint. With full cooperation from the Committee, its Treasurer, its fundraiser, its consultant, and the candidate, and three of your staff members working on the case, it is unclear why the matter remains open after eleven months. Failure to conclude the matter has frozen the San Diego City Council from acting on important business.

It seems it is time to either come to the determination that probable cause exists that my client violated a campaign ordinance, in which case we can litigate the matter before the Commission or, alternatively, conclude the investigation. There is no question that your investigation has determined, some time ago, that the initial anonymous complaint was not supported by facts. The matter should have resolved in 45-90 days, or by February 2009. The staff's inability to conclude an investigation of a minor complaint in almost a year arguably is more damaging to the system than would be the allegations of the underlying anonymous complaint even if they were well founded.

Thank you.

Sincerely,

Robert P. Otilie

RPO:mau
cc: Marti Emerald for San Diego Committee
Marti Emerald