

Roz Lassoff

From: cindy4253@aol.com
Sent: Friday, April 05, 2013 2:08 PM
To: Christine Brown; Roz Lassoff
Cc: Doug Schulze; Debbi Lester; Sarah Blossom; Steve Bonkowski; Kirsten Hytopoulos; David Ward; Anne Blair; Bob Scales
Subject: Fwd: Ethics Complaint

Dear Legal Department and City Clerk:

Please forward to the Ethics Committee

Ethics Complaint

It is my belief that Council person Bob Scales failed to disclose potential conflicts of interests between his duties on the council with regard to police misconduct issues and his duties as an attorney working for the Seattle City Attorney's office, beginning in January of 2010 through July of 2012. I also feel that Mr. Scales had and still has a conflict of interest between his duties as a Bainbridge Island Council member and his job as the compliance coordinator for the city of Seattle's Police Department beginning in January of 2013 and continuing through the present.

Background:

The information pertaining to Mr. Scales employment and the scope of his duties comes from articles that appeared in the press, the Seattle Times, the Stranger, Bainbridge Review and Kitsap Sun. I am basing my complaint on what I read in those articles and information provided to me by the City of Bainbridge Island in the absence of disclosures from Mr. Scales.

History of Damage Complaints that Mr. Scales knew or should have known about:

1. In 2006 Henry Narte filed a Complaint for Damages against Officer Steven Cain and Officer Richard Christopher. Excessive force was alleged and backed up with photographs taken of Mr. Narte that were inconsistent with the police reports written by these officers.

There was no Internal Investigation of either officer (as per legal documentation released to Kim Koenig) by the police department.

There was no investigation of the claim for damages by the city.

There was no adjustment of Mr. Narte's claim for damages by WCIA.

WICA hired an outside attorney working at the firm of their legal counsel, to 'review' and defend the claim.

Mr. Narte's claim was allowed to sit until he filed a lawsuit in federal court. Unfortunately, Mr. Narte had to drop the lawsuit due to a lack of funds.

I believe Mr. Bob Scales was on the city council. As an elected official, he was responsible for the legal operation of the city government and police department (along with the mayor and the rest of the council).

2. In 2008 Kim Koenig filed a Complaint for Damages with the city against Officer Steven Cain. The other arresting officer was Officer Richard Christopher.---just like Narte.

There was no fair Internal Investigation of Officer Cain.

There was no investigation of Ms. Koenig's claim for damages.

There was no adjustment of Ms. Koenig's claim for damages by WCIA.

WICA hired an outside attorney working at the firm of their legal counsel, to 'review' and defend the claim rather than attempt to resolve or settle it.

Ms. Koenig's claim was allowed to sit with no response from WICA or the City for 2 years when she sent the 1/31/2010 email to Scales.

3. In October of 2009 a Complaint for Damages was filed by Max Anderson against Officer Richard Christopher for Excessive Force. (Officer Christopher of the Narte and Koenig arrests).

There was no Internal Investigation of Officer Christopher.

There was no investigation by the city of M. Anderson's Complaint for Damages.

There was no adjustment by WCIA of M. Anderson's Complaint for Damages.

WCIA hired an outside attorney working at the firm of their legal counsel, to review and defend the claim rather than attempt to resolve or settle it.

M. Anderson's claim was allowed to sit with no response from WCIA or the City until he was left with no option but to file litigation.

Do you see a pattern in a department of less than 18 patrol officers in a relatively crime free city?

The following information comes from emails released to me by the city and I will forward to you. If you like, you can skip ahead and read the emails before continuing to have a context for the rest of the complaint.

4. On January 31, 2010 Kim Koenig blew the whistle on the city and WCIA (Washington Cities Insurance Authority-the city's liability insurance provider). Her emails to Bob Scales and Lee Walton exposed the city's refusal to investigate serious felony allegations of misconduct. The same officers were involved in Excessive Force lawsuits and damage complaints over and over again and the police and city manager refused to take any action. Now, it additional allegations against Officer Cain were going to come out unless Mr. Scales could somehow conceal them and prevent their investigation.

The information in Kim's emails and subsequent amended complaint was completely ignored by the council. I can find no evidence that Bob Scales shared the information with the other council members. The only reason why Hytopoulos knew about them (see emails) was because Althea Poulson leaked the information to her (so much for the confidential journalist). Bob Scales managed to cover it all up with an Executive Session consisting of a 'review of current police complaints' and a 'review of litigation'---supposedly necessary because the new council was reviewing budget reductions and 'risk management'.

The only way the existing litigation was a threat to the budget was if the allegations were proven and the insurance provider invoked the liability exclusion for willful and wanton violations of the penal code. Mr. Scales connected risk management and avoiding the investigation of felony police misconduct for the purposes of budget reductions. That would be illegal.

5. In March of 2010, Council man Bob Scales sent an email to the city manager, city attorney and police chief regarding the 'recent' officer misconduct complaints and the subsequent legal actions. He says that he was going to recommend that the city hire a consultant to conduct an assessment of the police department's accountability and internal investigations procedures and that he would like to present this information about this consultant to the Council in their Executive Session on March 10, 2010. Once again, it looks like he was plotting behind closed doors to avoid the investigation of police misconduct. Why not hire someone to investigate the actual complaints and investigate why the city manager and police chief had ignored them in the first place? How would hiring a consultant to review general policy (and not actual complaints or investigations) be a subject for an Executive Session under the OPMA?

6. Douglas Ostling was shot to death on October 26, 2010. We will never know if the death of Doug Ostling could have been prevented by an investigation of the numerous felony allegations made by citizens against a single officer that were ignored by council members Bob Scales and Kirsten Hytopoulos.

7. Bob Scales was employed as the Director of Government Affairs Section in the Seattle City Attorney's office in February of 2010. There had been serious complaints about Excessive Force made about the Seattle police over the prior years. A Justice Department Investigation was initiated in 2011. Therefore, is logical to assume that in February of 2010, when my complaint begins, there were allegations of excessive force and lawsuits pending with the city of Seattle.

In February of 2010, Bob Scales was also a council man for the City of Bainbridge Island.

I cannot speak to what Mr. Scales did or did not do at work. However, according to news reports, Mr. Scales, Mayor Mike McGinn and other city officials strongly challenged the Justice Department's subsequent findings that Seattle officers had engaged in a pattern of excessive force. It would be logical that Bob Scales would have felt the same way in 2010. That alone should have precluded Mr. Scales from making decisions about the Bainbridge Police Department ever.

This begs the following questions with regard to ethics:

Did Mr. Scales employment at the City Attorney of Seattle's sometimes involve matters related the Seattle police?

Did Mr. Scales employment involvement with matters pertaining to the Seattle Police compromise or influence his voting record on the Bainbridge Island City Council?

Should Mr. Scales be on the city council now given how Mr. Scales derives his income at the present time?

While I know Mr. Scales has reminded us many times of his position as an attorney, I do not recall him ever disclosing the nature of his employment and the subsequent bias he might have.

I will forward you emails that support all this separately as the files are rather large.

Cindy Anderson
206-842-2264

* The above is my own opinion and I have not verified information that I took from press reports about Mr. Scales.

Roz Lassoff

From: Roz Lassoff
Sent: Monday, April 08, 2013 1:18 PM
To: Bob Scales
Subject: FW: Ethics Complaint---Scales
Attachments: Attorney_Letter_2011-09_for_2010_fin_stmts.pdf; 2010_Auditor's_Letter.pdf

Forwarded to the ethics board per Ms. Anderson's request.

From: cindy4253@aol.com [<mailto:cindy4253@aol.com>]
Sent: Monday, April 08, 2013 12:44 PM
To: Christine Brown; Roz Lassoff
Subject: Ethics Complaint---Scales

Dear City Clerk and Legal Department,

Please forward the attached to the Ethics committee as part of the documentation for the complaint I filed against Council person Scales.

Thank you,

Cindy Anderson



CITY OF BAINBRIDGE ISLAND

September 20, 2011

Thomas J. Taylor
Assistant State Auditor
Washington State Auditor's Office
600 Kitsap Street
Port Orchard, WA 98366

RE: Pending Litigation: City of Bainbridge Island – 2011 Audit

Dear Mr. Taylor:

As part of the state auditing process, the State Auditor's Office has asked for information regarding pending or threatened litigation involving the City of Bainbridge Island in connection with your audit as of the fiscal year ending December 31, 2010, and for the period from that date to the effective date of this response, which is September 20, 2011.

Pending or Threatened Litigation

I have reviewed pending or overtly threatened litigation, claims, and assessments that could, individually or in some reasonable aggregate, be considered material to the presentation of the City's financial statements. Although you have not specified a dollar amount for materiality, I have excluded items involving less than \$10,000. I have also excluded matters where any material exposure would be covered by the City's insurance programs.

Subject to the last paragraph of this letter, the following matters constitute the only pending or overtly threatened litigation against the City for the relevant time period.

1. *Kelly Samson, et al v. City of Bainbridge Island*, United States District Court Cause No. C05-5197RJB. Plaintiffs filed nine separate complaints, each alleging that the City's moratorium on docks in Blakely Harbor and its subsequent enactment of restrictions on such docks violate RCW Chapter 64.40, constitute a regulatory taking, and violate plaintiffs' federal civil rights. The City is represented by Michael Walter of Keating, Bucklin & McCormack on the tort damages claims and by Rosemary Larson of Inslee, Best, Doezie & Ryder for the regulatory takings claim. The City removed the cases to federal district court, and all cases were consolidated. Plaintiffs have voluntarily

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dismissed their state claims, including the takings claim, but may re-file them in state court. The City obtained a summary judgment dismissing the federal claims. Plaintiffs have appealed that decision to the 9th Circuit Court of Appeals. I am unable to provide any meaningful assessment of the legal or financial risk associated with these matters.

2. *Darrell and Vannee McNabb v. City of Bainbridge Island and Bainbridge Island Park and Recreation District*, Kitsap County Superior Court Cause No. 06-2-01832-1. Plaintiffs own property adjacent to Pritchard Park, which is owned by the City and the Bainbridge Island Metropolitan Park and Recreation District. The original complaint alleges that the City's Taylor Avenue right-of-way does not exist and claims ownership to a portion of Pritchard Park. They also claim that the City trespassed on plaintiffs' abutting tidelands and marina by capturing and channeling stormwater and debris through the City's stormwater system and outfall. Plaintiffs previously claimed the City also trespassed by placing a fence and other improvements on Plaintiffs' property without obtaining proper permits for the Japanese Memorial project. Plaintiffs seek damages and a variety of remedies including inverse condemnation. The parties have settled the quiet title and boundary line issues concerning Taylor Avenue and the Japanese Memorial project. The damages, inverse condemnation, contractual interference, and trespass claims remain unresolved. For the inverse condemnation claims, the City is represented by William Linton and Meghan Frazier of Inslee, Best, Doezie & Ryder. For the tort-based claims, the City is represented by Michael Walter of Keating, Bucklin & McCormack. I am unable to provide any meaningful assessment of the legal or financial risk associated with this matter.
3. *Bainbridge Island Ratepayers v. City of Bainbridge Island*, Kitsap Superior Court Cause No. 10-2-00638-1. The plaintiff makes twelve diverse claims regarding the City's use of utility funds. In July, 2011, following cross-motions for partial summary judgment, the court ruled for the City on one claim and for the plaintiff on another claim. A trial date on the remaining ten claims has not been set. The City is represented in the litigation by Stephen DiJulio of Foster Pepper. I am unable to provide any meaningful assessment of the legal or financial risk associated with these matters.
4. *Wildsmith v. City of Bainbridge Island, et al*, Kitsap Superior Court No. 10-2-03000-1. This complaint alleges that, by its actions to enforce building code requirements, the City wrongfully damaged the plaintiffs and breached a settlement agreement. I am unable to provide any meaningful assessment of the legal or financial risk associated with this matter.
5. *Carruthers v. City of Bainbridge Island, et al*, King County Superior Court No. 11-2-24982-4SEA. This case presents certain claims by the City's municipal court judge for breach of her employment contract, declaratory relief, and wages. The case originally was filed in Kitsap County Superior Court, but the parties stipulated to a change of venue to King County. The City is represented in the litigation by David Bruce of Savitt Bruce & Willey LLP. I am unable to provide any meaningful assessment of the legal or financial risk associated with this matter.

September 20, 2011

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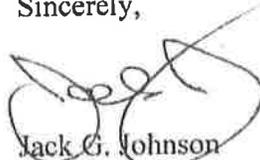
Unasserted Claims and Assessments

Subject to the last paragraph of this letter, I am aware of no unasserted claims or assessments that are probable of assertion and, if asserted, would have a reasonable possibility of an unfavorable outcome.

The information in this letter is current as of September 20, 2011, the date I completed my review, and I disclaim any undertaking to advise you of changes which thereafter may be brought to my attention or to the attention of the lawyers over whom I exercise general legal supervision.

This response is limited by and in accordance with, the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December, 1975). Without limiting the generality of the foregoing, the limitation set forth in the Statement on the scope and use of this response (paragraphs 2 and 7) are specifically incorporated herein by reference, and description herein of any "loss contingencies" is qualified by paragraph 5 of the Statement and accompanying Commentary. Consistent with the last sentence of paragraph 6 of the Statement, this confirms the City of Bainbridge Island's understanding that whenever, in the course of performing legal work for the City with respect to a matter involving an unasserted possible claim or assessment that may call for financial statement disclosure, I have formed a professional opinion that the City must disclose or consider disclosing such claims or assessments, I will so advise the City and will consult with the City concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5.

Sincerely,



Jack G. Johnson
City Attorney

cc: Brenda Bauer, City Manager
Ellen Schroer, Finance Director



CITY OF BAINBRIDGE ISLAND

November 29, 2010

Thomas J. Taylor
Assistant State Auditor
Washington State Auditor's Office
600 Kitsap Street
Port Orchard, WA 98366

RE: Pending Litigation: City of Bainbridge Island – 2010 Audit

Dear Mr. Taylor:

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Pending or Threatened Litigation

I have reviewed pending or overtly threatened litigation, claims, and assessments that could, individually or in some reasonable aggregate, be considered material to the presentation of the City's financial statements. Although you have not specified a dollar amount for materiality, I have excluded items involving less than \$10,000. I have also excluded matters where any material exposure would be covered by the City's insurance programs.

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regulatory takings claim. The City removed the cases to federal district court, and all cases were consolidated. Plaintiffs have voluntarily dismissed their state claims, including the takings claim, but may re-file them in state court. The City obtained a summary judgment dismissing the federal claims. Plaintiffs have appealed that decision to the 9th Circuit Court of Appeals. I am unable to provide any meaningful assessment of the legal or financial risk associated with these matters.

2. *Darrell and Vannee McNabb v. City of Bainbridge Island and Bainbridge Island Park and Recreation District*, Kitsap County Superior Court Cause No. 06-2-01832-1. Plaintiffs own property adjacent to Pritchard Park, which is owned by the City and the Bainbridge Island Metropolitan Park and Recreation District. The original complaint alleges that the City's Taylor Avenue right-of-way does not exist and claims ownership to a portion of Pritchard Park. They also claim that the City trespassed on plaintiffs' abutting tidelands and marina by capturing and channeling stormwater and debris through the City's stormwater system and outfall. Plaintiffs previously claimed the City also trespassed by placing a fence and other improvements on Plaintiffs' property without obtaining proper permits for the Japanese Memorial project. Plaintiffs seek damages and a variety of remedies including inverse condemnation. The parties have settled the quiet title and boundary line issues concerning Taylor Avenue and the Japanese Memorial project. The damages, inverse condemnation, contractual interference, and trespass claims remain unresolved. For the inverse condemnation claims, the City is represented by William Linton and Meghan Frazier of Inslee, Best, Doezie & Ryder. For the tort-based claims, the City is represented by Michael Walter of Keating, Bucklin & McCormack. I am unable to provide any meaningful assessment of the legal or financial risk associated with this matter.
3. *Kenneth Hammer v. City of Bainbridge Island, et al*, Kitsap Superior Court Cause No. 08-2-0291-6. This lawsuit challenges the City's issuance of a dock permit to a neighbor of plaintiffs, and other determinations relating to enforcement of the City code. In a prior challenge to the permit, plaintiffs lost at all levels and then dismissed their own appeal to the Court of Appeals. Plaintiffs have filed a second lawsuit in Kitsap County Superior Court making a variety of new claims and seeking damages based on the City's alleged failure to enforce the Shoreline Management Act. The City is represented in the litigation by Rosemary Larson of Inslee, Best, Doezie & Ryder. I am unable to provide any meaningful assessment of the legal or financial risk associated with this matter.
4. *Bainbridge Island Ratepayers v. City of Bainbridge Island*, Kitsap Superior Court Cause No. 09-2-00123-6 and Washington Court of Appeals, Division Two, No. 39850-8-II ("BRA I") and Kitsap Superior Court Cause No. 10-2-00638-1 ("BRA II"). BRA I challenged the validity of the City's process in issuing bonds to finance the completion of the construction of Wastewater Treatment Plant modifications and the cost of the project, and made a number of unrelated claims

relating to the City's utility funds. Kitsap County Superior Court granted the City's partial summary judgment and severance motions, validating the bond ordinance and dismissing the Alliance's bond-related claims and severing off and dismissing without prejudice the claims unrelated to the bond ordinance. Plaintiffs have appealed the bond-related ruling to the Court of Appeals, where a decision is pending. They also re-filed their non-bond-related claims, and additional claims, in BRA II. The City is represented in the litigation by Stephen DiJulio of Foster Pepper. I am unable to provide any meaningful assessment of the legal or financial risk associated with these matters.

5. *Western Devco LLC and Doug and Karina Nelson v. City of Bainbridge Island*, Kitsap Superior Court Cause No. 09-2-01688-9. This lawsuit seeks to invalidate the City's building standards that require certain native vegetation zone setbacks and maintenance. Originally the case included a takings claim but that has been dismissed through amendment. The case raises several constitutional and statutory arguments against enforcement of the setbacks. The claims as revised do not include damages or takings claims. There may be some equitable claims for attorney fees and costs that may be advanced by plaintiffs. The City is represented by Rosemary Larson and William Linton of Inslee, Best, Doezie & Ryder and, for the previously asserted tort-based claims, by Michael Walter of Keating, Bucklin & McCormack. The financial consequences of this matter now appear to be limited to the cost of defense.

Unasserted Claims and Assessments

Subject to the last paragraph of this letter, I am aware of no unasserted claims or assessments that are probable of assertion and, if asserted, would have a reasonable possibility of an unfavorable outcome.

The information in this letter is current as of November 19, 2010, the date I completed my review, and I disclaim any undertaking to advise you of changes which thereafter may be brought to my attention or to the attention of the lawyers over whom I exercise general legal supervision.

This response is limited by and in accordance with, the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December, 1975). Without limiting the generality of the foregoing, the limitation set forth in the Statement on the scope and use of this response (paragraphs 2 and 7) are specifically incorporated herein by reference, and description herein of any "loss contingencies" is qualified by paragraph 5 of the Statement and accompanying Commentary. Consistent with the last sentence of paragraph 6 of the Statement, this confirms the City of Washington's understanding that whenever, in the course of performing legal work for the City with respect to a matter involving an unasserted possible claim or assessment that may call for financial statement disclosure, I have formed a professional opinion that the City must disclose or consider disclosing such claims or assessments, I will so advise the City and

November 29, 2010
Page 4 of 4

will consult with the City concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack G. Johnson", written over a horizontal line.

Jack G. Johnson
City Attorney

cc: Brenda Bauer, Interim City Manager
Ellen Schroer, Finance Director