

Good morning,

February 3, 2025

I am writing regarding Tuesday's closed session on indemnification. I respectfully request your careful review of these materials prior to our session. Additionally, I must address a matter of significant legal and ethical concern: Councilmember Whitman's participation in this vote.

There are compelling reasons why Councilmember Whitman must recuse himself.

First, he is an active party to the legal action against me, which creates, de facto, a bias. He provided an evidentiary statement (evidence) to the court supporting the plaintiffs' position—a statement that was largely discredited.

Of our 22 objections to his 20+ statements, 21 were sustained and ruled inadmissible for a myriad of reasons including hearsay, irrelevance, lack of probative value, no foundation, inadmissible speculation, etc. The also court found that Mr. Whitman misrepresented the facts under penalty of perjury.

In addition, Mr. Whitman, an attorney who understands legal standards, in his "declaration of facts" made a defamatory and highly biased statement by suggesting my motive might have been to "curry favor with the developer"—despite the fact that I had never met or interacted with Jeff Becker. This was an attempt to bolster the case against me.

This is tantamount to an accusation of fraud wrapped in a transparent cape of innuendo for plausible deniability. But, the intent was clear: to cast doubt on my integrity and connect me to the developer so that my disclosures would be tainted with self-interest.

These false allegations were not only made up, they were made to the Superior Court under penalty of perjury. And these were not the only false statements Mr. Whitman swore were truth. *There is no clearer demonstration of bias than making up your own facts to persuade others to reach your desired conclusion...and then swearing to the truth of them.*

Furthermore, Mr. Whitman's many public statements from the dais stating with certainty that I violated the Brown Act necessitated a formal Cease-and-Desist Letter from my attorney. These actions, coming from a licensed attorney who understands their legal implications, cannot be dismissed as simple misunderstandings.

Mr. Whitman's continued participation in this matter will expose the city to additional legal risk and financial liability. To protect the city's interests and ensure an unbiased process, I formally request that the council vote to request Mr. Whitman's recusal from this matter.

The merits of indemnification should be evaluated objectively, based on legal standards rather than personal relationships or unfounded allegations. The facts, on balance, leave no doubt as to Mr. Whitman's bias. I trust you will make the appropriate decision to safeguard both the integrity of this process and the city's interests.

Thank you for your time and attention. I have attached a copy of Mr. Whitman's statement and the court's rulings for verification, and my attorney's Cease-and-Desist Letter.

A handwritten signature in blue ink, appearing to read "Leslie", with a stylized flourish at the end.

Leslie

Memorandum: Right to Indemnification

I. Introduction

Council Member Leslie Rule's entitlement to mandatory indemnification under Government Code § 825 is firmly established by two key elements: the Superior Court's determination that she did not violate the Brown Act, and substantial evidence demonstrating that her actions served to protect the City's interests against improper closed session conduct.

II. Factual Background and Context

The situation arose when Council Member Rule faced litigation alleging Brown Act violations. The subsequent Superior Court proceedings yielded two significant findings that shape this analysis:

1. The Court definitively ruled that Rule did not violate the Brown Act
2. The Court determined that it was actually the City Council that exceeded its authority during closed sessions, thereby violating the Brown Act themselves

III. Legal Framework and Analysis

A. Mandatory Indemnification Requirements

Government Code § 825 establishes three essential criteria for mandatory indemnification:

1. The official must have acted within their scope of employment
2. The conduct must be free from fraud, corruption, or actual malice
3. The actions must have served legitimate government interests; not adverse to its interests

Council Member Rule's actions satisfy each of these requirements comprehensively. The Court's validation of her position and her demonstrated commitment to protecting Brown Act compliance firmly establish her eligibility under the statute.

B. Absence of Conflict of Interest

A detailed examination of Rule's conduct reveals complete alignment with City interests through:

1. Active maintenance of Brown Act compliance
2. Prevention of council integrity compromises
3. Protection against unauthorized ex-parte communications

4. Preservation of proper closed session protocols

The controlling case of *Page v. MiraCosta Community College Dist.** (2009) 180 Cal.App.4th 471 established a crucial precedent: exposing improper governmental conduct does not create a disqualifying conflict. Instead, the court held that protecting proper governmental processes inherently serves city interests.

C. Binding Effect of Court Determination

The Superior Court's ruling carries decisive weight in this matter. Under **O'Connor v. State of California** (1987) 194 Cal.App.3d 1306, a judicial determination of proper conduct cannot be overridden by city judgment. The court established two key principles:

1. Judicial determinations regarding proper conduct are binding
2. Cities may not substitute their judgment for court rulings

The Superior Court's dual findings - that Rule did not violate the Brown Act while the Council exceeded its proper scope - create a binding determination of proper conduct that cannot be circumvented.

IV. Conclusion

Council Member Rule's right to mandatory indemnification is firmly established by:

1. Complete satisfaction of all statutory requirements under Government Code § 825
2. Clear alignment of her actions with City interests
3. Judicial validation of her conduct
4. Binding precedent supporting indemnification under these circumstances

The City lacks any valid legal basis to deny indemnification given these compelling factors and the clear judicial determination supporting Rule's position.

This analysis is supported by established case law and reflects the fundamental principle that public officials acting to protect governmental integrity must be shielded from personal liability.

Requirements for Denial of Indemnification

I. Statutory Framework

Core Requirements (Gov. Code § 995.2)

Written Notice Requirements:

- Must be formal written document
- Must be officially served on employee
 - o Case: Sinclair v. Arnebergh (1964) - Verbal denial found inadequate

Timing Requirements:

- Cannot delay until litigation develops
 - o Case: Jenkins v. County of LA (1999) - Delayed denial found prejudicial

II. Documentation Requirements

- Must articulate actual conflicts with factual basis
- Must include legal analysis
 - o Case: Rivas v. City of Kerman (9th Cir. 2015) – Conclusions without legal analysis inadequate
- Must use contemporary evidence from time of denial
 - o Case: Stewart v. City of Pismo Beach (1995) - Rejected retroactive justification

III. Formal Declaration Requirements

- Must cite specific code section and explain application
 - o Case: Masters v. San Bernardino County (1995) - Required explicit statutory basis
- Must be official action with proper procedures
 - o Case: City of Huntington Beach v. Petersen Law Firm (2022) – Must maintain complete records and properly serve employee

IV. Consequences of Improper Denial

- Denial deemed void; defense becomes mandatory
 - o Case: Davitt v. City of Upland (2015) - City lost discretionary authority
- Attorney fees and interest awarded
 - o Case: Page v. MiraCosta Community College Dist. (2009) - Enhanced remedies
- Policy changes required
 - o Case: Wilson v. City Council (2016) - required policy overhaul and enhanced oversight