
From: William Murphy
Sent: Friday, January 06, 2017 9:35 AM
To: CommAsst
Subject: RE: the matter of Mark Peterson
Attachments: Articles etc. (1).pdf

FPPC Commission Members
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA. 95814

Re: In the Matter of Mark Peterson; FPPC No. 16/007

Dear Commission:

As a citizen and a former prosecutor for Contra Costa County, I would urge this commission to impose the strongest possible consequence against District Attorney Mark Peterson.

While lower fines may suffice for various elected officials, Mr. Peterson isn't a school board member or local mayor. As Mr. Peterson has noted many times in his speeches throughout the County, he is the top law enforcement officer in a county with well over one million people. He is the person in charge of enforcing the law in Contra Costa County. He is a lawyer and the head of the largest law firm in Contra Costa County. He is well versed in campaign finance law, the law of embezzlement and, perhaps most importantly, the law of perjury. Mr. Peterson knows better than to do what he did; yet he perjured himself and embezzled the money anyway.

In this situation a \$45,000 fine is just a slap on the wrist. Mr. Peterson embezzled over \$66,000 from the citizens who donated to his campaign. His thefts went on for an extended period of four years and an outrageous total of 600 transactions.

Ironically, Mr. Peterson might agree that the fine is just a slap on the wrist. Because a member of the FPPC asked for more details about Mr. Peterson's political history, I've attached several articles about him and a copy of a complaint from a lawsuit.

One of those articles describes how Mr. Peterson wrote the Department of Justice and asked for a felony prosecution of one of his fellow prosecutors. The prosecutor had sent out a fundraising e-mail and merely *asked* for money. By contrast, Mark Peterson *stole* money on over 600 different occasions. If Mr. Peterson feels you should get a felony charge for asking for campaign money on one occasion, then he would most certainly agree that he should get more than a fine for stealing campaign money on 600 separate occasions.

The articles and the complaint describe the political retaliation Mr. Peterson engaged in against his fellow prosecutors. I have spoken with several prosecutors who are embarrassed by Mr. Peterson and hope that he will resign. These prosecutors are wary of speaking out against Mr. Peterson now because they are keenly aware that to speak against Mr. Peterson will lead to certain retribution.

The articles show that several people have spoken out though. The Contra Costa Times has called for him to resign. Robin Lipetzky, the Public Defender of Contra Costa County, has called for his resignation. Bob Stern, the co-author of the Political Reform Act stated "this was a deliberate attempt to use his campaign funds for his personal use. For a District Attorney this is unbelievable....this is really an abuse of public trust."

I urge you to conduct a full public hearing on the matter of Mr. Peterson's embezzlement and perjury and to impose a far harsher fine than the one Mr. Peterson has currently agreed to pay.

Thank you for your time and consideration.

Sincerely,

William Murphy

Opinion > Editorials

Editorial: Contra Costa district attorney should resign



Contra Costa County District Attorney Mark Peterson.

(Kristopher Skinner/Bay Area News Group Archives)

By EAST BAY TIMES EDITORIAL

PUBLISHED: December 7, 2016 at 6:55 am | UPDATED: December 7, 2016 at 4:36 pm

Contra Costa District Attorney Mark Peterson should resign. This week's revelation that he illegally used \$66,372 of campaign funds for personal expenses makes it impossible for him to effectively remain the county's top law enforcement officer.

This was no minor violation for reporting technicalities. This was an egregious breach of the state Political Reform Act. The prohibition against personal use of campaign funds aims to reduce corruption by ensuring contributors' money does not end up in pockets of candidates and elected officials.

From 2011-15, Peterson used his campaign's debit card for personal restaurant meals, gasoline, clothing, movie tickets, hotel rooms, cellular telephone bills and other items, according to state [Fair Political Practices Commission findings](#).

He also used cash withdrawals from his campaign account for personal purposes. And he transferred funds from the campaign account to his personal one.

"This was not one mistake. This was a pattern of behavior," said Bob Stern, co-author of the 1974 Political Reform Act, who reviewed the commission findings.

"This was a deliberate attempt to use his campaign funds for his personal use. For a district attorney, this is unbelievable. ... This is really an abuse of public trust."

The seriousness of Peterson's offense is reflected in the \$45,000 fine the FPCC is expected to approve Dec. 15. Of hundreds of commission fines levied this year, that would be the fifth largest.

Peterson, [in a written statement](#), apologized for his "mistakes." He said he considered the money a loan and repaid it.

But that misses the point: He could not legally borrow money from his campaign account. It's not a personal slush fund. And more than half the repayment was made only after he learned his campaign was randomly selected for a state audit.

Meanwhile, his campaign disclosure statements did not reveal any of approximately 600 expenditures of campaign funds for personal use, nor any repayments.

Peterson knew, or should have known, he was breaking the law. After all, his office is supposed to prosecute crime in Contra Costa, including political corruption.

He knew the law when it served his purposes. In his 2010 campaign, Peterson pursued a flimsy campaign fundraising complaint against his opponent that was eventually rejected by the state attorney general's office.

The looming question is why Peterson broke the law. Was he having financial troubles? He refused to answer questions, claiming the terms of the pending settlement prohibit him commenting further before the commission approves it.

Not so. The FPPC's spokesman says all the terms of the deal are spelled out in the proposed order. That order contains no restrictions on Peterson commenting.

His refusal to publicly explain himself is the final straw. His credibility is shot. How can he prosecute others when he personally breaks the law? Peterson must go.

Tags: Campaign Finance, Crime



East Bay Times editorial

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By *NETJETS*

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Commentary: To avoid being hypocrite, Mark Peterson must resign



Contra Costa County Public Defender Robin Lipetzky argues that District Attorney Mark Peterson, shown here in 2014, should resign after admitting he took more than \$66,000 from his campaign accounts. (Kristopher Skinner/Bay Area News Group)

By **ROBIN LIPETZKY**

PUBLISHED: December 20, 2016 at 1:19 pm | UPDATED: December 20, 2016 at 2:15 pm

A 36-year-old single mother of four with no criminal record, like many in today's economy, is having a hard time making ends meet. In 2011 and 2012, she was awarded public benefits from Contra Costa County in the form of cash assistance and food stamps.

As it happened, while she was getting these benefits, she continued to work at her part-time, minimum-wage job. She did not disclose these earnings fearing she would lose the benefits she needed to keep her children housed, clothed and fed.

In 2015, she was investigated by the district attorney's office for welfare fraud. In April, District Attorney Mark Peterson filed two felony charges against her: one count of receiving aid by misrepresentation and one count of perjury. If convicted, she faces up to four years in county prison.

This is one example of dozens of similar cases filed every year by Peterson against poor people in the county for overpayment of public benefits. As the public defender, I represent these poor, working people who get caught up in the court system for trying to care for their families.

News broke recently that Peterson admitted to unlawfully embezzling funds from his campaign committee to the tune of more than \$60,000 over the course of four years. Peterson, who enjoys an annual salary and benefit package from the county worth roughly \$372,000, used these funds to feed his own lavish lifestyle: meals at expensive restaurants, hotel rooms, car rentals and clothing. And he filed numerous documents under penalty of perjury in which he lied about taking funds from the campaign account.

In a pathetic attempt to minimize his wrongdoing, Peterson tells us that he is "humbled and embarrassed by his mistakes," and he "apologizes for his regrettable errors."

These were not mistakes or errors, these were crimes. A mistake is a wrong done inadvertently. Peterson knew full well what he was doing when he pilfered funds from his campaign account for his own use, and he knew full well that he was lying when he signed documents under penalty of perjury that did not mention the theft.

However, if a humbling apology is the standard for avoiding criminal consequences for embezzlement, fraud and perjury, then I expect that Peterson will dismiss hundreds of pending cases as soon as my clients pen their apologies. But the sad truth is that poor people who commit offenses born of poverty will continue to be prosecuted while people in positions of authority like Peterson hold themselves to a different standard.

Peterson's office has offered a sweet deal to the mother I mentioned earlier. She can plead guilty to a misdemeanor offense once she pays back the money owed. She will then be saddled with a criminal record and will spend three years on probation during which time she must give up her Fourth Amendment rights. Or she can go to trial and face two felony convictions and a prison sentence. Either way she will be branded a criminal and saddled with a criminal record that will haunt her anytime she applies for a job, tries to get housing, or applies for school loans.

Peterson's punishment for violating the public trust, bilking his campaign donors to the tune of \$66,000 and committing perjury on multiple occasions to cover-up his actions? A \$45,000 fine. Whether the State Bar or the Attorney General will investigate Peterson and take appropriate action remains to be seen. In the meantime, Peterson should exhibit some true humility and resign. His actions bring shame on all of us who work to see justice served in Contra Costa County.

Robin Lipetzky is the Contra Costa County chief public defender.

Tags: Crime, Editorials, My Word



Robin Lipetzky

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By 

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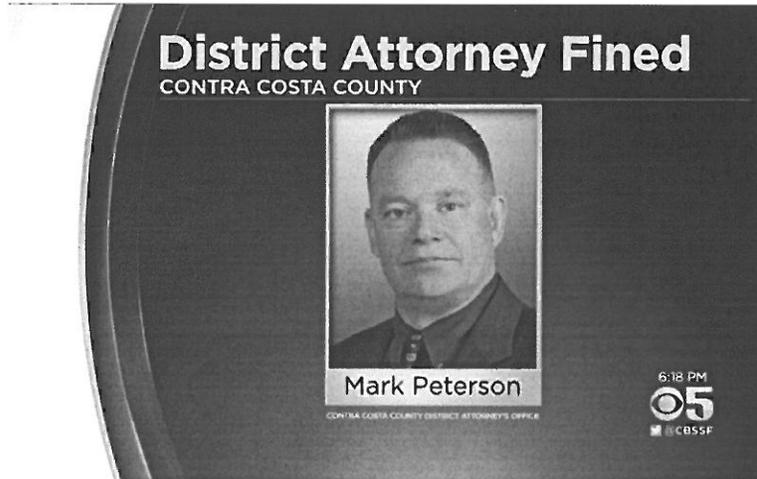
News > Crime & Courts

Contra Costa: Turmoil in DA's office after agency head admits to violating California law



By NATE GARTRELL | ngartrell@bayareanewsgroup.com

PUBLISHED: December 7, 2016 at 3:50 pm | UPDATED: December 8, 2016 at 6:18 am



MARTINEZ — Pressure mounted Wednesday on Mark A. Peterson after an expert on campaign spending law said the Contra Costa County district attorney likely committed a crime, and prosecutors within his own office demanded answers.

On Monday, the California Fair Political Practices Commission recommended that Peterson be fined \$45,000 for violating the state's political reform act from 2011-15, when he spent thousands of his campaign's cash on personal expenses. The FPPC board is scheduled to vote on the fine Dec. 15.

Bob Stern, a co-author of the law, said Peterson's violations constituted a misdemeanor offense. Between 2011 and 2015, Peterson withdrew more than \$66,000 from his re-election campaign contribution fund and used it for movie tickets, dining, clothes, his cellphone and other personal expenses.

But Stern, a former president of the Center for Government Studies, added that it's unusual for politicians to be charged when they violate the reform act.

"Any violation of the political reform act is a misdemeanor, but it's very rarely prosecuted, mainly because the penalties are usually much less than what the FPPC would bring," Stern said. "For (the FPPC) to fine him \$45,000 on \$66,000 worth of violations, that is a major fine and shows how serious it was. It's very rare to even approach that amount of money in terms of a fine."

Concerns also are being raised over inconsistencies between Peterson's statement to the media issued Monday, in which he said he considered the withdrawals a loan, and financial disclosure documents his campaign submitted to the FPPC under penalty of perjury, which show no trace of the \$66,000 he withdrew for personal expenses. Using campaign contributions on personal expenses is explicitly prohibited by an amendment to the state's political reform act passed in 1982, Stern said.

"It is very surprising that a DA would violate this law. He's charged with enforcing this law," Stern said. "If someone did this within Contra Costa County, (Peterson) would have an obligation to look at it and decide whether to file criminal action."

The criticism continues to pile up for Peterson, who was elected district attorney in 2010 and re-elected in 2014, when he ran uncontested.

On Wednesday morning, the East Bay Times published an editorial online calling for Peterson to resign. Hours later, the District Attorney's Office union president, prosecutor Aron DeFerrari, blasted Peterson in a statement, saying attorneys within the DA's office needed to know all the facts and were deeply disappointed in their boss.

"The people who are in the association, we work to defend the Constitution and uphold the law," DeFerrari said. "It is profoundly disturbing to know that Mr. Peterson may have violated the law."

DeFerrari added that the violations call into question whether the association "can trust (Peterson) with a \$30 million DA budget."

"Peterson has been in elected office almost 20 years, and his name has been on the ballot seven times," DeFerrari said. "How far back does this go?"

Peterson previously served on the Concord City Council.

Peterson issued a statement Monday, minutes after the FPPC made public the \$45,000 fine, saying he was "humbled and embarrassed" by the violations. He declined to comment for this report.

But the head of the District Attorney Investigators' Association, Isaias Menchaca, came to Peterson's defense Wednesday afternoon.

Menchaca said he reached out to this newspaper at Peterson's request. He praised Peterson for his "creativity and resourcefulness" as a leader, in tackling violent crime in West Contra Costa and building task forces to take down local gangs.

"Unfortunately, he's made a mistake, and I'm glad to see he's admitting that and owning up to that; that's important to the healing process," Menchaca said. "The investigators here, we love him, we think he's a fantastic leader."

But Menchaca said he hadn't reviewed documents related to the FPPC violations, and couldn't comment on specifics.

"If he has committed a crime, I'm sure he'll have to deal with that. I just don't know enough about it to say whether or not he did," Menchaca said.

Peterson said Monday he "considered the money a loan" and kept track of how much he withdrew from his campaign fund. But all five campaign disclosure forms submitted by Peterson's campaign in 2014 — the year Peterson spent \$24,504.03 of his campaign's money on personal expenses — say his campaign made zero in loan expenditures that year.

The forms were signed under penalty of perjury. Stern said it was possible Peterson committed perjury when he submitted the forms but added that it was unlikely he'd be charged.

"Perjury cases are very rare, and very difficult to prove," he said.

While criminal cases against officials found to have misused money are rare, they're not unheard of. In 2014, former Santa Clara County Supervisor George Shirakawa Jr. pleaded guilty to 12 charges after he used campaign donations to feed a gambling habit, among other things. Shirakawa was given the maximum sentence — a year in jail plus probation — but was released on good behavior after serving seven months.

A spokeswoman for the California Attorney General's office, when asked whether Peterson was being investigated for criminal wrongdoing, issued a written statement saying, "We can't comment on, or even confirm or deny, any potential or ongoing investigations in order to protect the integrity of any investigation."

Tags: Politics



Nate Gartrell Nate Gartrell covers crime, politics, and corruption in Contra Costa County. He joined the Bay Area News Group in 2014. Outside of journalism, he doesn't do much. He aspires to visit all 30 Major League Baseball stadiums. Reach him at 925-779-7174.

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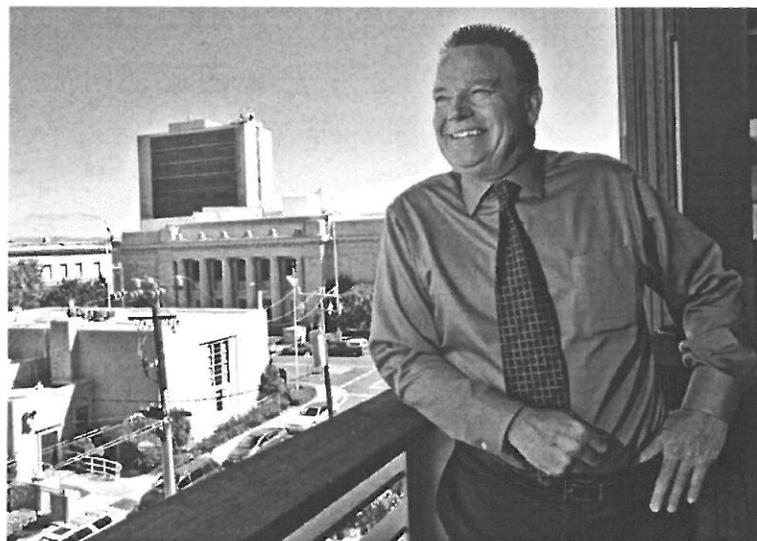
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News > Crime & Courts

FPPC postpones decision on Contra Costa DA, county's racial justice coalition calls for him to resign



(Dan Rosenstrauch/Bay Area News Group)

Mark Peterson, seen here in 2014, admitted to spending more than \$66,000 of his campaign's money on personal expenses.

By NATE GARTRELL | ngartrell@bayareanewsgroup.com

PUBLISHED: December 15, 2016 at 3:30 pm | UPDATED: December 16, 2016 at 10:29 am

SACRAMENTO — The California Fair Political Practices Commission postponed a vote Thursday on whether to impose a \$45,000 fine against Contra Costa County's top law enforcement officer.

With two of five commissioners absent, the FPPC's 2-1 vote in favor of fining Contra Costa District Attorney Mark Peterson means that commissioners will have to vote again on the matter in January 2017. All FPPC items require three "yes" votes to pass, per commission rules.

Last week, it was made public that Peterson violated California law more than 600 times from 2011-15, when he spent money from his campaign contribution funds on personal expenses. The expenses totaled \$66,000 and included cellphone payments, movie tickets, clothes and gasoline, [according to FPPC documents](#).

Peterson only stopped making the expenses after being informed he was being audited. He said in an apology statement last week that he considered the money a loan. Yet from 2011-15, he repeatedly submitted documents to the FPPC, signed under penalty of perjury, that said his campaign made \$0.00 in loan expenditures.

At Thursday's meeting, FPPC Chair Jodi Remke and Commissioner Patricia Wynne voted to impose the fine, and Commissioner Maria Audero voted against it, saying she wanted more context — like Peterson's political history and what political consequences, if any, he suffered — before voting.

Peterson issued a written statement Thursday acknowledging the FPPC had postponed a decision on the fine and apologizing again for the violations.

"I accept responsibility for my campaign account finance errors and have agreed to pay a \$45,000 fine," Peterson said. "I am humbled and embarrassed by my mistakes, and I apologize for them."

The \$45,000 fine is for nine violations of the California political reform act. FPPC commissioners said \$5,000 per violation is the maximum fine.

Criticism against Peterson has continued to pile on, days after a member of his own office blasted him in a statement. Jeff Landau, a deputy public defender, issued a statement on behalf of the Contra Costa Coalition for Racial Justice calling for Peterson's "immediate resignation." Landau, a coalition member, said Peterson had violated the "fundamental values of the law and his ethical duties as an attorney."

"Peterson obviously cannot and will not hold himself accountable under the law. He has lost our community's trust, and we insist that he resign immediately," Landau said.

Deputy district attorney Aron DeFerrari, who heads the DA's union, declined to comment on the FPPC's decision, saying association members had nothing new to say. Last week DeFerrari said attorneys at the office were "deeply disappointed" in Peterson and questioned whether he could be trusted with the DA office's budget.

Deputy public defender Brandon Banks, the head of the public defender's association, issued a statement saying Peterson's actions were hypocritical, given his office has prosecuted people for "receiving excess food stamps and welfare aid."

"The vast majority of our clients come from poor families and communities of color and have not had the same advantages that Mr. Peterson has had," Banks said. "Had one of our clients violated the law 600 times over a four-year period and embezzled over \$66,000, we find it hard to believe that Mr. Peterson would be satisfied with an apology and a promise to do better in the future."

After serving on the Concord City Council, Peterson was elected DA in 2010, following a contentious campaign, and ran unopposed in 2014. He faced lawsuits by current and former county prosecutors, supporters of his 2010 opponent, who accused him of retaliation.

Four written comments were issued to the FPPC, all criticizing Peterson. One called for his resignation. It was written by Dasha Millson, speaker chair of a community group called Lamorinda Republican Women Federated.

"Last year, I booked Mark Peterson to speak to our club. He was dynamic and engaging. Everyone loved his talk," Millson wrote, "but in light of recent circumstances, he should resign."

Tags: Crime



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Opinion > Editorials

Editorial: Case shows why Contra Costa district attorney should resign



(Kristopher Skinner/Bay Area News Group Archives)
Contra Costa County District Attorney Mark Peterson.

By **EAST BAY TIMES EDITORIAL BOARD**

PUBLISHED: December 30, 2016 at 7:00 am | UPDATED: December 30, 2016 at 9:44 am

A Contra Costa County education trustee lies to voters about, of all things, his academic credentials. And he gets away with only a slap on the wrist.

The outcome of the case against county Board of Education member Jeff Belle has three lessons:

1. State law should be changed to provide real punishment for deceiving voters.
2. As we've said before, Contra Costa's district attorney must resign because his own campaign finance abuses leave him with no credibility to prosecute others.
3. East Contra Costans should boot out Belle in the 2018 election if he doesn't first relinquish his seat.



Contra Costa Board of
Education Trustee
Jeffery Belle (CCTV)

Belle had faced a misdemeanor charge for lying to voters in his ballot statement, claiming he had a bachelor's degree when he didn't. The deceit undoubtedly helped him squeak out just over 50 percent of the vote in his 2014 campaign.

Unfortunately, state law punishes material lies in ballot statements with only a misdemeanor fine of no more than \$1,000. State lawmakers don't put a high premium on election-season truth.

Rather than conduct a trial for such a small punishment, county prosecutors let Belle off with 20 hours' community service as part of a diversion program. Not even a misdemeanor. And he can keep his ill-gotten seat on the education board, where he has been an embarrassment.

Perhaps that would have been appropriate, if this were his first transgression. However, as reporter Matthias Gafni uncovered, Belle has a history of claiming credentials he doesn't have, including a bachelor's degree from American University in Washington, D.C., and a master's degree from Oklahoma City University.

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He has also touted a doctoral degree from Harrington University in London, which is a diploma mill where students can get a degree based on "life experience."

There's more: He illegally practiced respiratory care without a license in California, for which he was cited and fined; faced charges three times in Oklahoma and Florida of cashing bogus checks and pleaded guilty in one case; and, according to his ex-wife, ran up a \$35,000 credit card bill before they divorced after just a few months of marriage.

So why would District Attorney Mark Peterson let this guy off in the ballot case without meaningful punishment? It's hard to know what influenced the decision of the county's top prosecutor, who faces his own very serious political abuse case for illegally using \$66,372 of campaign funds for personal expenses.

Peterson should be criminally investigated, but so far only faces a hefty fine from the state Fair Political Practices Commission. As Robin Lipetzky, Contra Costa's chief public defender, eloquently noted in a recent commentary, Peterson regularly prosecutes poor people on public assistance for less serious crimes.

He must go, and so must Belle. Contra Costans deserve better.

Tags: Campaign Finance, Education, Elections, Politics



East Bay Times editorial board

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News

Political retaliation lawsuits stack up against Contra Costa District Attorney Mark Peterson

By ADAPTED FROM 'QUICK & HEALTHY RECIPES AND IDEAS, 3RD EDITION,' BY BRENDA J. PONICHTERA (SMALL STEPS PRESS, 2008) and MALAIKA FRALEY | mfraley@bayareanewsgroup.com
October 3, 2012 at 10:33 am

MARTINEZ — Two more prosecutors are suing District Attorney Mark Peterson over claims he retaliated against them for supporting his opponent in the 2010 election, bringing to three the number of federal lawsuits that accuse Contra Costa County's top prosecutor of punishing staff over politics since he took office nearly two years ago.

Peterson won the DA job in a November 2010 run-off after a contentious campaign season in which the majority of his colleagues supported local attorney and former judge Dan O'Malley.

"The lawsuits are without merit, and the allegations are an unfortunate product of residual feelings from the election," Peterson said, adding that he could not comment on specific claims. "I've worked very hard since the election to heal divisions within the office, including promoting many more of my opponent's supporters than those who supported me during the election."

Deputy district attorney Jill Henderson and former deputy district attorney Lucinda Simpson last week filed separate lawsuits alleging that Peterson retaliated against them because they were active in the O'Malley campaign. Their complaints follow a \$6 million political retaliation lawsuit filed in April by prosecutor and former office administrator David Brown, who says he was demoted by Peterson and harassed by two of his managers in the election aftermath.

Contra Costa County, a defendant in all three suits, does not comment on pending litigation.

"Under Peterson, things have really gone off the rails at the DA's office," Henderson's attorney, Kathy Dickson, said. "It's been politicized more than it's ever been before, and morale is at an all-time low."

The plaintiffs and other current and former prosecutors will testify about political retaliation claims before an administrative law judge at a five-day county merit board hearing for Henderson that's scheduled to start Monday. The hearing comes as prosecutors and public defenders, the lowest-paid public attorneys in the Bay Area, deal with crushing case loads and are considering a strike over pay.

"In contrast to such retaliation, those who supported Peterson's candidacy have been rewarded with promotions and favorable assignments, in many cases despite the availability of far more experienced and accomplished prosecutors," Henderson's lawsuit says. "In many instances, such adverse actions led to early retirement or resignation by highly regarded, experienced, career prosecutors and have caused a substantial decline in morale within the District Attorney's Office."

Simpson served as a deputy DA for 11 years before she quit to take another job during the campaign season in August 2010. Her lawsuit seeking an undisclosed amount says that then-DA Robert Kochly approved her request to be placed on the office's rehire list, but Peterson removed her name once he took office.

Simpson alleges she was added back to the list and interviewed in December 2011 for an entry-level position, only to be passed over for a Peterson campaign supporter with less experience. Her suit includes county human resources director Ted Cwiek as a defendant. Her attorney could not be reached Wednesday.

Henderson is a 14-year deputy DA who claims she was transferred to an inferior position after the election and told by one of Peterson's managers that she "would not be moving up until she demonstrated her loyalty to Mark Peterson."

She alleges that she was also retaliated against for testifying against deputy DA Michael Gressett, a friend of Peterson and some of his managers, when he was accused of raping a junior colleague during a lunch break in 2008. Gressett has remained on paid leave since a judge dismissed his 13-count indictment and is suing the county, his former bosses, investigators and others involved in his criminal case for malicious prosecution.

Henderson's lawsuit further alleges that she and other women suffer ongoing gender discrimination that's pre-dated Peterson's reign. It claims that women make less money, are denied promotions in favor of less-experienced male colleagues and in some case were told their maternity leave was a factor in being passed over.

Henderson's lawsuit demands a promotion with back pay and money for emotional distress.

"She's not asking for millions of dollars here; she's standing up because it's just wrong," Dickson said.

Contact Malaika Fraley at 925-234-1684. Follow her at [Twitter.com/malaikafraley](https://twitter.com/malaikafraley).

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Malaika Fraley East Bay native Malaika Fraley is an award-winning criminal justice reporter with 16 years experience covering Bay Area courthouses. She's currently on the Alameda County courts beat.

Follow Malaika Fraley @malaikafraley

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1 KATHRYN BURKETT DICKSON (SBN: 70636)
2 DICKSON GEESMAN LLP
3 1999 Harrison, Suite 2000
4 Oakland, CA 94612
5 Tel: (510) 899-4670
6 Fax: (510) 899-4671
7 E-Mail: kathy@dicksongeesman.com

8 Attorneys for Complainant
9 JILL HENDERSON

10 **MERIT BOARD**
11 **CONTRA COSTA COUNTY**

12 JILL HENDERSON,
13 Complainant

14 v.

15 CONTRA COSTA COUNTY, OFFICE OF
16 THE DISTRICT ATTORNEY, and MARK
17 PETERSON, DISTRICT ATTORNEY

18 Respondents.

19 Complaint No.:

20 **COMPLAINT FOR UNLAWFUL**
21 **RETALIATION FOR POLITICAL**
22 **ACTIVITY IN VIOLATION OF**
23 **CONTRA COSTA COUNTY**
24 **PERSONNEL MANAGEMENT**
25 **REGULATION 1401**

26 **COMPLAINT**

27 1. Complainant Jill Henderson brings this Complaint alleging that the District
28 Attorney and the District Attorney's Office have engaged in retaliation against Complainant for
protected political activity. (Complainant also has separate claims for discrimination and
retaliation for opposing discrimination and sexual harassment, but will pursue these latter claims
through the California Department of Fair Employment and Housing and in court. She did not
request the Affirmative Action Officer to address such allegations in her complaint below, and
these latter complaints are not included in the instant matter. Complainant respectfully requests
that the Merit Board not address or determine these separate claims.)

2. This Complaint is being filed within thirty days of Complainant's receipt of the
Interim Affirmative Action Officer's letter on January 26, 2012.

1 3. Complainant Henderson is employed as a Deputy District Attorney of Contra
2 Costa County. She has been employed for over 13 ½ years as an attorney with the District
3 Attorneys' office. As described below, there are other individuals who experienced similar
4 retaliation for protected political activity, who are are also employed as Deputy District
5 Attorneys in the office.

6 4. In January 2010, in recognition of her many years of experience and her high
7 level abilities as a Deputy District Attorney, Complainant Henderson was assigned to the vertical
8 Drug Unit, a prestigious and challenging position. This position is significant in positioning
9 Complainant for a promotion from her current position as a Deputy District Attorney III to
10 District Attorney IV position, a promotion that is long overdue. This assignment required
11 specialized training in Asset Forfeiture, gangs, and drug-endangered children, which
12 Complainant successfully completed. The rotation in the Drug Unit has been for a period of
13 approximately three to four years, a period that recognizes the significant investment of time,
14 money, and effort in the specialized training associated with the position. Complainant's
15 performance in the Unit was exemplary.

16 5. A contested election was held for the position of Contra Costa County District
17 Attorney in November 2010. Complainant Henderson and a number of other attorneys in the
18 office supported Mr. Peterson's opponent, and/or otherwise did not support Mr. Peterson in the
19 election. Respondent Mark Peterson was elected as District Attorney in that election and
20 assumed office in January 2011.

21 6. As was known to Complainant Henderson and others in the District Attorney's
22 office, Contra Costa County has a policy embodied in a Personnel Management Regulation that,
23 among other things, protects political activity on behalf of candidates and protects those who
24 participate from retaliation after the election. That regulation states, in relevant part:
25

26 1401. NO DISCRIMINATION. No person in the merit system or seeking admission
27 thereto shall be appointed, promoted, disciplined, reduced, removed or in any way
28

1 favored, disfavored, or discriminated against, because of political or religious or
2 union activities, or race, color, national origin, sex, age, handicap, sexual orientation,
3 or other unlawful discrimination.

4 7. Within a few months after taking office, newly-elected District Attorney Mark
5 Peterson engaged in a pattern of retaliation against Complainant Henderson and a number of
6 other attorneys employed in the office, who either opposed or did not support his candidacy
7 during the election. In contrast to such retaliation, those who supported his candidacy have been
8 favored with promotions and favorable assignments, in many cases despite the availability of far
9 more experienced and accomplished prosecutors. Such retaliatory actions directly violate Contra
10 Costa County Personnel Management Regulation 1401. In many instances, such actions led to
11 early retirement or resignation by highly-regarded, experienced, career prosecutors and has
12 caused a substantial decline in morale within the District Attorney's office. Those actions
13 included, but are not limited to the following examples.

14
15 8. David Brown is an attorney with nearly 25 years of service in the District
16 Attorney's office. Mr. Brown was promoted to Deputy District Attorney Level 5 approximately
17 eight years ago. He ran the Richmond branch office until Mark Peterson won the election. Mr.
18 Peterson shortly thereafter demoted Mr. Brown, assigning him to a position in the Sexually
19 Violent Predator/Mental Health unit. This was a very unpopular assignment because these are
20 civil, rather than criminal cases. Complainant is informed and believes that Mr. Brown
21 complained about the retaliation and in July 2011, Mr. Peterson transferred him to Juvenile,
22 another punitive assignment for a 20 year veteran. Complainant is informed and believes that
23 Mr. Brown was told that he was sent to Juvenile because he had not demonstrated his "loyalty"
24 to Peterson.

25 9. As a result of retaliatory demotions of a number of other high-ranking attorneys,
26 the office has lost some of its most experienced and highly-regarded prosecutors, all of whom
27 had achieved the rank of Level 5 before Mr. Peterson demoted them. Chief Deputy Brian Baker
28

1 retired. Paul Sequeira retired within the past two weeks (after having been physically assaulted
2 by one of Mr. Peterson's managers). Dara Cashman, an extremely well-regarded prosecutor,
3 retired recently after Mr. Peterson demoted her. Her departure caused a disruption in the
4 implementation of a massive, critical computer program project for the office for which she had
5 been responsible. Bruce Flynn continues to work, although the level of his duties was slashed
6 and he was banished to the Richmond Police Department as a Community Prosecutor.

7 10. Barry Grove has 18 years of experience and is one of the office's top homicide
8 prosecutors. Mr. Grove supported Mr. Peterson's opponent in the election. In July 2011, Mr.
9 Peterson retaliated against Barry Grove by transferring him from Homicide to Juvenile, a
10 demotion of the most dramatic sort. The retaliatory intent was apparent to all.

11 11. Mary Knox, another highly-respected prosecutor with approximately 28 years of
12 experience, currently is assigned to the Richmond Division. This retaliatory transfer of a high-
13 performing prosecutor, and single mother, created significant childcare, as well as career issues
14 for her. When she told the administration about the hardship, they claimed they didn't know she
15 was a single mother, a claim that is ridiculous on its face. She has long been divorced and her
16 son has been present at many office-related functions. Ed Dang, a Deputy District Attorney who
17 lives in Castro Valley and who does not have an issue with the commute and was on the
18 preliminary hearings team in Martinez, offered to simply switch with her. The Administration
19 did not allow that to happen.

20 12. Bill Murphy has 10 years of experience in the District Attorney's office.
21 Complainant Henderson is informed and believes and therefore alleges that Mr. Peterson
22 observed Mr. Murphy hanging a campaign sign in support of Mr. Peterson's electoral opponent.
23 In retaliation for his political activity, the new Peterson administration sent Mr. Murphy to
24 Richmond Preliminary Hearings and to Misdemeanor Team Leader in Richmond despite
25 knowing that Mr. Murphy has young triplets and needs to be close to home. The Richmond
26 Preliminary Hearings Team is typically staffed by 1 permanent and 2 contract attorneys. In
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- a position commensurate with her experience;
- 2. For promotion to a Level 4 position;
- 3. For wages and benefits lost by Complainant as a result of the retaliation, as well as damages for emotional distress she suffered as a result;
- 4. For a declaration that the transfers of Complainant and others similarly affected violate Contra Costa County Personnel Management Regulation 1401;
- 5. For costs and attorneys' fees;
- 6. For such other and further relief as the Merit Board deems just and proper.

Dated: February 23, 2012

DICKSON GEESMAN LLP

By: *Kathryn Burkett Dickson*
Kathryn Burkett Dickson
Attorney for Complainant
JILL HENDERSON

News

Contra Costa DA's campaign heats up

By LISA VORDERBRUEGGEN

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The race for Contra Costa County's top prosecutor has taken a decidedly nasty turn.

District attorney candidate and deputy district attorney Mark Peterson has asked the state Department of Justice to investigate allegations that some of his colleagues and his opponent, attorney and former Superior Court Judge Dan O'Malley, committed numerous misdemeanors and a felony related to a Jan. 14 fundraiser.

Campaigns often inspire, if that's the right word, back-and-forth allegations of wrongdoing.

But when a 25-year prosecutor accuses an attorney and former judge of criminal acts, it requires more serious attention.

There's no proof that Peterson's motives were malicious. That said, there is no evidence thus far that O'Malley broke the law. At most, a few deputy district attorneys were sloppy and ignorant.

As a campaign issue, it's a nonstarter.

But the case serves as an important reminder of the delicate balancing act between candidates for public office and the employees of the agencies they seek to govern.

State law says candidates for elected office of a public agency cannot directly, or indirectly, solicit campaign contributions from employees of that agency.

It exempts fundraising appeals sent to a broader group that includes employees of that agency. For example, a district attorney candidate could send a donation request to all Contra Costa County lawyers but not solely to deputy district attorneys.

The rarely prosecuted law dates to the late 1930s, when Republicans sought to end the patronage system and protect public workers against strong-arm campaign fundraising tactics by their superiors.

Peterson's allegations focus on two key questions: Did the organizers of the fundraiser solely target District Attorney's Office employees and was O'Malley involved?

O'Malley clearly knew it was a fundraiser hosted by district attorneys. A Jan. 14 post on his Facebook page reads, "A number of DA's from the CCC Office are so kind to throw a fundraising event for me this evening."

But O'Malley and two event organizers deny he was involved in its instigation or its planning.

As Barry Grove, president of the Contra Costa Deputy District Attorneys Association, explained it, he and a handful of other attorneys decided to host a get-together for O'Malley where people could also give the union-endorsed candidate money.

Johanna Schonfield, a young prosecutor in the office who sits on the union board, volunteered to send out electronic invitations.

She sent them via her Facebook page, and Grove says he and others will testify under oath that they extended verbal invites to dozens of people outside the office.

The red flag went up when Schonfield also sent an electronic invite to the home e-mail addresses of a list of almost exclusively district attorneys, which said "Join Dan O'Malley and your fellow Deputy District Attorneys for appetizers and drinks at an intimate fundraiser."

It also suggested donations of \$200 for contract attorneys and \$500 for permanent staffers.

The verbiage angered some deputy attorneys, who understandably interpreted it as a direct appeal from O'Malley and felt pressured to contribute and attend.

"If I had read the eVite before it went out, I would have nixed it," said Grove, who said he has never heard of the statute cited in Peterson's complaint. "My mistake was to farm out this task to an inexperienced person."

For her part, Schonfield agrees the invite was poorly worded but says she feels she is being scapegoated and her intent mischaracterized. The electronic invite list was composed of her peers and friends in the office, and was not a nefarious list of targeted colleagues, she says.

"I was just trying to do something nice," Schonfield said.

Clearly, candidates for public office and those who raise money for them should know the law, especially attorneys.

Even if candidates cannot cite a specific government code, it ought to be obvious that neither they nor their supporters can morally or legally use their positions to coerce public employees into making campaign contributions.

That said, it would be the equivalent of killing ants with sledgehammers to send Grove and Schonfield to the pokey and strip them of their licenses to practice law over a fundraising e-mail.

Some would argue, in contrast, that Grove and Schonfield were exercising their right to free speech, and that the state cannot legally quash their right to reach out to their colleagues using personal addresses and nonwork computers.

Oakland-based campaign finance attorney Elaine Dugger Shaw says the recent Supreme Court ruling, in which justices reversed restrictions on corporations' ability to spend money in political campaigns, could raise legitimate constitutional questions about the legality of these types of limits on public employees.

"There is no way the state is going to prosecute this case, particularly in the climate after the Citizens United decision," Shaw said.

Contact Lisa Vorderbrueggen at 925-945-4773, lvorderbrueggen@bavareanewsgroup.com or www.ibabuzz.com/politics.



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