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**ORIGINAL**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JUL 21 2010

Superior Court of the State of California  
County of Orange - Central Justice Center

BY: *[Signature]* DEPUTY

People of the State of  
California,  
Plaintiff,

vs.

*[Redacted]* Calhoon  
*[Redacted]* Chapman  
*[Redacted]* Collins  
James F. *[Redacted]*  
*[Redacted]* Greene  
*[Redacted]* Saavedra  
*[Redacted]* Troung,  
Defendants

) Case Nos.: SA151929PE **J. KELLY**  
) SA154656PE  
) SA153758PE  
) SA154550PE  
) SA154097PE  
) SA154097PE  
) SA154608PE  
) SA152672PE  
)  
) **RULING ON DEFENDANT'S MOTION TO**  
) **DISQUALIFY SANTA ANA CITY**  
) **ATTORNEY AS PROSECUTOR FOR THE**  
) **PEOPLE OF THE STATE OF**  
) **CALIFORNIA.**  
) **GOVERNMENT CODE §§100; 72193;**  
) **26500; 41803.5(A)**  
) **PENAL CODE §§ 1424(B); 19.7;**  
) **684**

Having read and considered the moving papers, the opposition, and the response to the opposition, and having heard argument, **THE COURT RULES AS FOLLOWS:**

The Court notes that this ruling is limited to the issues presented by the Defendants' motion to disqualify the City Attorney, and does not in any way address the substantive issues addressed in the parties' trial briefs concerning the admissibility and sufficiency of the evidence proffered by the prosecution in the underlying criminal actions.

Defendants' motion to disqualify the Santa Ana City Attorney from prosecuting the red light enforcement cases before the Court (under the case numbers identified in the motion) on behalf of the people of the state of California presents two issues.

1. Can the City Attorney act as prosecutor, for the people of the State of California, in these cases?

1 2. If the City Attorney can so act, is he nevertheless disqualified from doing so by reason of  
2 a conflict of interest?

3 As to the first question, Government Code §72193, read with the Santa Ana City Charter  
4 §703(d), combined with the requisite consent of the District Attorney pursuant to Government  
5 Code §41803.5(g) (as confirmed in the Hodge declaration) authorizes the City Attorney to  
6 prosecute these cases on behalf of the people of the State of California. (The Court notes that  
7 there is no factual dispute about the District Attorney having granted the consent described in the  
8 Hodge declaration.)

9 Defendants contend that prosecution by the City Attorney must be an “all or nothing”  
10 proposition (that is, that the City Attorney must prosecute all misdemeanors committed in the  
11 City’s jurisdiction, or none at all) (Motion at 17, citing *People v Menveg*, 226 Cal.App.2d 569).  
12 *Menveg* does not stand for that proposition, instead focusing on the proper interpretation and  
13 scope of Penal Code §272’s then mandate that the District Attorney “shall prosecute all  
14 violations charged under that section.” (Emphasis added.)

15 Moreover, Government Code §41803.5 references the power of the City Attorney to  
16 prosecute “any misdemeanor committed within the City arising out of a violation of state law,”  
17 (emphasis added) not all, as in *Menveg*, and Government Code §72193 references “all such  
18 misdemeanors.”

19 The references to “any” and “such” are consistent with the interpretation that the District  
20 Attorney can grant his or her consent as to certain misdemeanors, and the City Attorney is then  
21 empowered to prosecute such misdemeanors – but not others as to which no consent has been  
22 given. The references to “any” and “such” are inconsistent with Defendants’ suggested  
23 interpretation that the sections are to be read to mean that consent can only be granted as to “all  
24 misdemeanors,” which could have been easily and plainly stated, had that been the intent. (See,  
25 for example, the *Menveg* case, above.) Neither party has been able to cite any case standing for  
26 the proposition that these sections mean the City Attorney must prosecute all misdemeanors  
27 committed within the city, or none at all.

1 In sum, the Court finds that the City Attorney can be, and here has been, properly  
2 authorized and empowered to prosecute the offenses in question in the name of the people of the  
3 State of California.

4 Turning then to the second question – Does a conflict of interest disqualify the City  
5 Attorney from prosecuting these particular offenses?

6 Defendants identify three factors as allegedly supporting a finding that a conflict of  
7 interest exists here sufficient to mandate disqualification.

8 First, Defendants refer to positions taken by the City, represented by the City Attorney, in  
9 the *Khaled* matter. Those positions by the City establish no more than that the City indeed has  
10 an understandable interest in knowing what systems and procedures used by it are or are not  
11 legal and enforceable; every entity affected by any law in this state has an understandable,  
12 justified interest in knowing whether such law is or is not valid and enforceable. That the City  
13 would want a full airing of the issues does not establish anything improper about the conduct of  
14 either the City or the City Attorney. Zealous prosecution (which the people of the State of  
15 California have a right to expect from any of their prosecutors) does not, without more, equate to  
16 improper or biased prosecution.

17 Second, Defendants generally contend (as an inference rather than a fact) that the City  
18 Attorney is “influenced in his prosecutorial discretion by an interested third party, the City of  
19 Santa Ana.” Third, and really in furtherance of the second argument, Defendants contend that  
20 the City has a strong financial interest in the prosecution of these cases, and that in turn (again by  
21 inference) improperly influences the City Attorney.

22 In support of these latter contentions, Defendants allege (a) that the City Attorney has  
23 sought to intervene only in these cases, with this attorney, and no others, and (b) that certain  
24 adjustment provisions in the City’s contract with Redflex create a financial conflict.

25 As to the first point, there is no evidence in support of this allegation, and in any event  
26 the Court sees nothing improper in the City Attorney devoting its resources to those cases where  
27 it deems its involvement is necessary to assist with the proper prosecution of the offenses  
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1 charged. (As to implied selective prosecution, see also the discussion below concerning the  
2 appropriate dismissal of certain cases, which negates any such implication).

3 As to the second point, the fact that the Redflex contract permits periodic adjustments  
4 undercuts rather than supports Defendants' concerns about improper financial motives on the  
5 part of the City (and by inference the City Attorney). There is no dispute that the contract (in  
6 conformity with Vehicle Code §21455.5(g)(1)) does not tie payment to the number of citations  
7 generated or any level of successful prosecution. That the City can periodically seek to adjust  
8 the flat fee it must pay Redflex if revenues are insufficient to pay for the costs of the system  
9 (Motion p. 15) eliminates (rather than encourages) the City's need to get revenue from the red  
10 light enforcement system at all costs (including at the cost of fair prosecutions).

11 In *Hambarian v Superior Court*, 27 Cal.4<sup>th</sup> 826 (2002), the California Supreme Court,  
12 with numerous references to and reliance upon *People v Eubanks*, 14 Cal.4<sup>th</sup> 580 (1996),  
13 enunciated a high standard for disqualification under Penal Code §1424 (consistent with the clear  
14 language of that section). (As noted, for example, in *People v Petrisca*, 138 Cal.App.4<sup>th</sup> 189  
15 (2006): "Unlike the appearance of impropriety standard announced in *Greer*, section 1424 "does  
16 not allow disqualification merely because the district attorney's further participation in the  
17 prosecution would be unseemly, would *appear* improper, or would tend to reduce public  
18 confidence in the impartiality and integrity of the criminal justice system." (*People v. Eubanks*,  
19 *supra*, at p. 592, original italics.)")

20 Even if I were to conclude that the City's assumed financial benefit if the red light  
21 enforcement system is found to be legally effective and a positive source of revenue, and the fact  
22 that the City Attorney is employed by the City, create an apparent conflict of interest (meeting  
23 the first prong enunciated in *Eubanks*), on the facts before me I conclude, as the California  
24 Supreme Court did in *Hambarian*, that the Defendants have failed to meet the second prong in  
25 *Eubanks*, namely that the conflict is "so grave as to render it unlikely that defendant will receive  
26 fair treatment" during all portions of the criminal proceedings. With respect to that second  
27 prong, the Court in *Hambarian* further explained (citing *Eubanks*) that, under that prong, "the  
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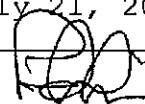
1 potential for prejudice to the defendant – the likelihood that the defendant will not receive a fair  
2 trial – must be real, not merely apparent, and must rise to the level of a *likelihood* of unfairness.”

3 Here, there has been no such showing. Instead, Defendants simply ask the Court to infer  
4 that the City Attorney will be motivated to act improperly in its prosecutorial decisions. Apart  
5 from the fact that as noted in *Hambarian* (fn 5) “all presumptions of the law are in favor of the  
6 good faith of public officials,” in these specific cases the Court has itself witnessed prosecutorial  
7 neutrality and objectivity. At the commencement of the trials on these matters, numerous cases  
8 (in which the defendants were represented by the same attorney as in the matters presently before  
9 the Court) were dismissed at the request of the prosecutor, because of various shortcomings in  
10 the available proof. Indeed, when defense counsel requested findings of factual innocence  
11 (rather than mere dismissals of the complaints) with respect to certain defendants, the prosecutor  
12 appropriately, and without prompting, submitted without argument on all such requests (which  
13 were granted).

14 Under the circumstances, then, I find that even if there is the appearance of conflict (or  
15 even an actual conflict) (based on the City Attorney’s employment by the City, and the City’s  
16 financial interest in the red light enforcement system), Defendants have not discharged their  
17 burden under Penal Code §1424 of showing that any such conflict creates a real, not merely  
18 apparent, likelihood of unfairness as required under *Eubanks* and *Hambarian*.

19  
20 Therefore, the motion to disqualify the City Attorney as prosecutor for the people of the State of  
21 California (filed July 2, 2010), with respect to the cases identified in the motion, is DENIED.

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24 Dated this July 21, 2010

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26 \_\_\_\_\_  
27 Peter J. Wilson  
28 SUPERIOR COURT JUDGE