

1 JOSEPH W. FLETCHER  
2 CITY ATTORNEY (SBN 96813)  
3 RYAN O. HODGE  
4 DEPUTY CITY ATTORNEY (SBN 234047)  
5 CITY OF SANTA ANA  
6 20 CIVIC CENTER PLAZA M-29  
7 P.O. BOX 1988  
8 SANTA ANA, CALIFORNIA 92702  
9 TELEPHONE: (714) 647-5201  
10 FACSIMILE: (714) 647-6515

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

JUL 16 2010

ALAN CARLSON, Clerk of the Court

BY:  DEPUTY

Attorneys for Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA








SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15  CALHOON,  
16  CHAPMAN,  
17  COLLINS,  
18 JAMES F   
19  GREENE,  
20  SAAVEDRA,  
21  TRUONG,








Defendants.

Case No.: SA151929PE  
SA154656PE  
SA153758PE  
SA154550PE  
SA154097PE  
SA154608PE  
SA152672PE

**OPPOSITION TO DEFENDANTS'  
MOTION TO DISQUALIFY SANTA ANA  
CITY ATTORNEY AS PROSECUTOR  
FOR THE PEOPLE OF THE STATE OF  
CALIFORNIA**

Date: July 21, 2010  
Time: 1:30 p.m.  
Dept.: C-52

22 TO DEFENDANTS, DEFENDANTS' ATTORNEY, AND THE HONORABLE  
23 COURT:

24 COMES NOW Plaintiff, The PEOPLE OF THE STATE OF CALIFORNIA, in  
25 opposition to Defendants',  CALHOON  CHAPMAN  COLLINS,  
26 JAMES F   GREENE,  SAAVEDRA, and  TRUONG, Motion to  
27 Disqualify Santa Ana City Attorney as Prosecutor for the People of the State of California on the  
28 following grounds:

1 1. Neither the City of Santa Ana nor the Santa Ana Police Department seeks to be the  
2 prosecuting party in the above-captioned matters;

3 2. The Santa Ana City Attorney has the authority to prosecute the above-captioned  
4 matter pursuant to *California Government Code* section 72193, *California*  
5 *Government Code* section 41803.5(a), and *Santa Ana Charter* section 703(d).

6 3. The Santa Ana City Attorney does not have a conflict of interest that would  
7 disqualify the City Attorney's Office from prosecuting the instant matters.

8 Accordingly, Defendants' Motion should be denied.

9 Plaintiff's Opposition is based upon this Memorandum of Points and Authorities, upon  
10 the Declaration of Ryan O. Hodge, upon all documents already on file in these matters, and upon  
11 any additional oral or documentary evidence offered at the hearing on Defendants' Motion.

12 **I. ARGUMENT**

13 **A. *NEITHER THE CITY OF SANTA ANA NOR THE SANTA ANA POLICE***  
14 ***DEPARTMENT SEEKS TO BE THE PROSECUTING PARTY IN THE***  
15 ***INSTANT MATTERS.***

16 The Santa Ana City Attorney's Office is appearing in the instant matter as the prosecutor  
17 on behalf of the People of the State of California. Contrary to the assertion of the Defendants,  
18 neither the City of Santa Ana, nor the Santa Ana Police Department seeks to be the prosecuting  
19 party in the instant matter.

20 **B. *THE SANTA ANA CITY ATTORNEY HAS THE AUTHORITY TO***  
21 ***PROSECUTE THE INSTANT MATTERS***

22 The Santa Ana City Attorney has the statutory authority to prosecute misdemeanor and  
23 infraction state code violations. *Government Code* section 72193 states that, "Whenever the  
24 charter of any city creates the office of city prosecutor, or provides that a deputy city attorney  
25 shall act as city prosecutor, and charges such prosecutor with the duty, when authorized by law,  
26 of prosecuting misdemeanor offenses arising out of violations of state laws, the city prosecutor  
27 may exercise the following powers" of prosecution.

28 ///

B

1 The *Santa Ana City Charter* provides such prosecutorial authority to the City Attorney.  
2 Specifically, section 703(d) of the *Charter* provides that the City Attorney shall have the power to  
3 “prosecute on behalf of the people such criminal cases for violation of this charter, or City  
4 ordinances, and of misdemeanor offenses and infractions arising upon violations of the laws of  
5 the state as in his opinion, or that of the City Council, or of the City Manager, warrant his  
6 attention.” Essentially, the City Charter provides the City Attorney authority to prosecute  
7 misdemeanor and infraction state law violations, as required by *Government Code* section 72193  
8 for City Attorney state code violation prosecution.

9 *Government Code* section 72193 also requires that the prosecution of misdemeanor  
10 offenses arising out of violations of state laws by a City Attorney must be authorized by law.  
11 *Government Code* section 41803.5(a) provides such authorization by stating that, “with the  
12 consent of the district attorney of the county, the city attorney of any general law city or chartered  
13 city within the county may prosecute any misdemeanor committed within the city arising out of  
14 violation of state law.”

15 The Santa Ana City Attorney has been granted consent from the Orange County District  
16 Attorney’s Office to appear on behalf of the People of the State of California to prosecute red  
17 light camera violations of the *Vehicle Code*, as required by *Government Code* section 41803.5(a)  
18 for the Santa Ana City Attorney to prosecute violations of such state law committed with the City  
19 of Santa Ana. See, Declaration of Ryan O. Hodge attached herewith and incorporated herein by  
20 this reference. Based upon this consent from the District Attorney’s Office, as well as statutory  
21 authority, the Santa Ana City Attorney’s Office has the right to appear on behalf of the People of  
22 the State of California to prosecute such state code violations.

23 Defendants contend that the Santa Ana City Attorney is not authorized to act as  
24 prosecutor for the People of the State of California. In support of this contention, defendants cite  
25 to the case of *People v. Dehle*, (2008) 166 Cal.App.4th 1380. However, this case is  
26 distinguishable from the issues presented in the instant motion. The *Dehle* case discussed the  
27 appearance of a private attorney at a restitution hearing in place of the prosecutor. The reference  
28 in this case to the district attorney as the public prosecutor was to emphasize that private

1 prosecutions are not permitted, not that a city attorney cannot serve as the public prosecutor.  
2 Thus, the *Dehle* case does not provide guidance on the Santa Ana City Attorney's authority to  
3 prosecute state code violations.

4 Defendants also cite to *City of Merced v. County of Merced*, (1966) 240 Cal.App.2d 763  
5 and *People v. Menveg*, (1964) 226 Cal.App.2d 569 to support the argument that only a district  
6 attorney has the authority to prosecute violations of state law. The *Menveg* court ruled that the  
7 city attorney could not prosecute a specific state code violation. The *Merced* court determined  
8 that the district attorney was required to prosecute state law violations. However, the *Merced*  
9 court also noted that "it is possible that the Legislature may see fit to change the legal rule with  
10 respect to prosecutions in justice courts in cities such as Merced." *City of Merced*, 240  
11 Cal.App.2d at 768. In 1967, in response to these rulings, the Legislature enacted *Government*  
12 *Code* section 41803.5(a) to specifically allow city attorneys the opportunity to prosecute state law  
13 violations. See, *People v. Enriquez*, (1968) 267 Cal.App.2d 424, 427.

14 Defendants further contend that if a city attorney prosecutes state law violations, they  
15 must prosecute all state code violations within the city. However, this argument does not follow  
16 the language of *Government Code* section 41803.5(a), which specifically states that with district  
17 attorney authority, the city attorney "*may* prosecute any misdemeanor committed within the city  
18 arising out of violation of state law (emphasis added)." As such, a city attorney's authority to  
19 prosecute state code violations is permissive, not a mandatory duty. See, *Montgomery, et al. v.*  
20 *The Superior Court of Solano County*, (1975) 46 Cal.App.3d 657, 666.

21 Defendants further argue that a city attorney cannot prosecute state code violations  
22 because the state has an interest in assuring that state law is applied uniformly, which is  
23 accomplished by making the various district attorneys subordinate to the Attorney General.  
24 According to Defendants, allowing city attorneys to prosecute violations of state law would  
25 frustrate the constitutional and statutory measures put in place in order to assure uniform  
26 application of state law. If this uniform application of the law argument was accurate, then there  
27 would never be a situation in which city attorneys were allowed to prosecute state code  
28 violations. However, there are several examples of city attorneys prosecuting state code

R

1 violations. In addition, the authority cited herein, most notably *Government Code* sections  
2 41803.5 and 72193, clearly discuss the authority of city attorneys to prosecute state code  
3 violations.

4 Defendants also argues that the City Attorney must be duly authorized as a Deputy  
5 District Attorney by the District Attorney, and is required to take the oath of office for the  
6 position of District Attorney. However, as clearly detailed above, statutory law allows the City  
7 Attorney to prosecute State Code violations in particular instances without mentioning any  
8 requirement that the City Attorney act as a Deputy District Attorney. Thus, there is no obligation  
9 for the prosecutor from the City Attorney's Office to assume any position within the District  
10 Attorney's Office.

11 The Orange County District Attorney exercises his prosecutorial discretion to not appear  
12 on traffic infractions. As such, the District Attorney's Office granted the authority to the Santa  
13 Ana City Attorney's Office to appear on behalf of the People of the State of California to  
14 prosecute red light camera violations of the *Vehicle Code* in the City of Santa Ana, as authorized  
15 pursuant to *Government Code* sections 41803.5 and 72193 and *Santa Ana Charter* section 703(d),  
16 as detailed above.

17 **C. THE SANTA ANA CITY ATTORNEY DOES NOT HAVE A CONFLICT OF**  
18 **INTEREST THAT WOULD DISQUALIFY THE CITY ATTORNEY'S**  
19 **OFFICE FROM PROSECUTING THE INSTANT MATTERS**

20 *Penal Code* section 1424(a)(1) requires that, "The motion [to disqualify district attorney  
21 or city attorney from performing authorized duty] may not be granted unless the evidence shows  
22 that a conflict of interest exists that would render it unlikely that the defendant would receive a  
23 fair trial." Defendants seek to have the City Attorney's Office disqualified from prosecuting the  
24 instant matters, yet nothing has been provided to suggest that the fairness or impartiality of  
25 Defendants' trials would be affected by the City Attorney's Office serving as prosecutor.

26 In order to support their argument for the disqualification of the City Attorney's Office as  
27 prosecutor in these matters, Defendants formulated their own test to determine if a disqualifying  
28 conflict of interest exists, as follows: where the factual circumstances in a case indicate that the

R

1 public prosecutor's discretionary decision making is not likely to be impartial, the standard of  
2 neutrality has been violated and the prosecutor may be disqualified. This self created test is  
3 based upon Defendants' interpretation of court rulings in *People v. Superior Court (Greer)*,  
4 (1977) 19 Cal.3d 255 and *Hambarian v. Superior Court*, (2002) 27 Cal.4th 826.

5 A closer examination of the *Greer* decision reveals that *Greer* has been superseded by  
6 statute and is no longer the proper standard for a determination on disqualification. Specifically,  
7 *Penal Code* section 1424 was enacted in response to "the substantial increase in the number of  
8 unnecessary prosecutorial recusals under the "appearance of conflict" standard set forth in  
9 [*Greer*]." *People v. Merritt*, (1993) 19 Cal.App.4th 1573, 1578. This was confirmed in *People v.*  
10 *Cannedy*, (2009) 176 Cal.App.4th 1474, 1481 fn. 5, which noted that *Greer* "predates the  
11 enactment of *Penal Code* section 1424 which supersedes case law that previously allowed a  
12 defendant to recuse a district attorney by showing a conflict of interest might prejudice him or her  
13 against the defendant and thus appear to affect the district attorney's ability to impartially perform  
14 the discretionary functions of the office. (*People v. Jenan* (2006) 140 Cal.App.4th 782, 791.) The  
15 enactment of section 1424 was intended to make the requirements for recusal of a district  
16 attorney stricter, in order to reduce the number of recusals. (See, e.g., *People v. Merritt*, 19  
17 Cal.App.4th at p. 1578.)" Thus, any test based upon *Greer* is inaccurate since *Penal Code*  
18 section 1424 was enacted to supersede *Greer* and make the requirements for prosecutorial  
19 recusals stricter than the requirements set forth in *Greer*.

20 Defendants also downplay the second prong of the actual test established by *Penal Code*  
21 section 1424; which requires the following: 1) there must be a conflict of interest, and 2) that  
22 conflict must be "so severe as to disqualify the district attorney from acting." *Hambarian v.*  
23 *Superior Court*, (2002) 27 Cal. 4th 826, 833. However, the *Hambarian* Court notes that the  
24 conflict of interest is "disabling only if it is 'so grave as to render it unlikely that defendant will  
25 receive fair treatment' during all portions of the criminal proceedings." *Hambarian*, 27 Cal. 4th  
26 at 833 (citing *People v. Eubanks*, (1996) 14 Cal. 4th 580, 594). Of note, the *Hambarian* Court  
27 actually declined to disqualify the District Attorney as prosecutor, noting that there was no  
28 conflict, but "even if a conflict exists, it is not so grave as to render it unlikely that the defendant

1 would receive fair treatment.” *Hambarian*, 27 Cal. 4th at 832. A thorough analysis of the current  
2 statutory and case law reveals that the focus for disqualification considerations lies in the ability  
3 of Defendants to receive a fair trial.

4 Nothing presented by Defendants affects Defendants’ ability to receive a fair trial.  
5 Defendants stress that the City Attorney’s Office has a conflict because the City Attorney’s  
6 Office represent the City of Santa Ana, which has an interest in the red light photo enforcement  
7 program. Defendants’ theory is that the prosecutorial discretion of the City Attorney’s Office is  
8 influenced by the third party interests of the City. However, if such an argument were correct,  
9 then no City Attorney would ever be able to prosecute any crimes because the City’s interest in  
10 protecting its citizens could improperly influence prosecutorial discretion. This is obviously not  
11 accurate, as there are several examples of City Attorney’s Offices serving as prosecutors of state  
12 code violations without being disqualified.

13 Defendants further contend that the City Attorney’s Office should be disqualified as  
14 prosecutor because the City has a financial interest in the red light photo enforcement program.  
15 The Vehicle Code provisions that allow the use of red light cameras, also regulate the type of  
16 contracts that may be utilized in such situations in order to prevent a financial interest in the  
17 prosecution of such citations. Specifically, *Vehicle Code* section 21455.5(g)(1) provides that, “A  
18 contract between a governmental agency and a manufacturer or supplier of automated  
19 enforcement equipment may not include provision for the payment or compensation to the  
20 manufacturer or supplier based on the number of citations generated, or as a percentage of the  
21 revenue generated, as a result of the use of the equipment authorized under this section.” In  
22 compliance with this regulation, the City of Santa Ana’s contract with Redflex to assist with its  
23 automated traffic enforcement system is based upon a flat fee. As such, the City’s financial  
24 obligations will have no bearing or influence on the prosecution of the citation by the City  
25 Attorney’s Office.

26 Again, Defendants have not pointed to any alleged conflict within the City Attorney’s  
27 Office that would prevent Defendant from receiving a fair trial, as required for disqualification  
28 under *Penal Code* 1424. Rather, Defendants argue that the City Attorney’s Office’s

2

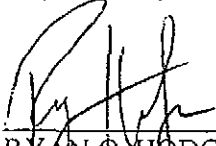
1 representation of the City creates a conflict for prosecuting state code violations, even though  
2 statutory and case law specifically allows such assignments, as detailed above.

3 **II. CONCLUSION**

4 For the foregoing reasons, Defendants' Motion to Disqualify Santa Ana City Attorney as  
5 Prosecutor for the People of the State of California should be DENIED.

6  
7 Respectfully submitted,  
8 JOSEPH W. FLETCHER  
9 City Attorney

10 Dated: July 16, 2010

11 By:   
12 RYAN O. HODGE  
13 Deputy City Attorney  
14 Attorneys for THE PEOPLE OF THE STATE OF  
15 CALIFORNIA



DECLARATION OF RYAN O. HODGE

I, Ryan O. Hodge, declare as follows:

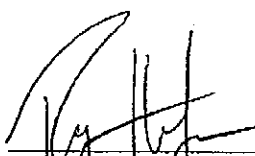
1. I am an attorney licensed to practice law in the State of California and am employed by the City of Santa Ana as a Deputy City Attorney.

2. In these matters, as captioned above, I am the prosecuting attorney representing the People of the State of California.

3. With respect to the prosecution of red light camera cases, I have spoken with Jaime Coulter, Senior Deputy District Attorney in charge of Central Court operations, on several occasions, and he has provided me with verbal authorization from the Orange County District Attorney's Office for the Santa Ana City Attorney's Office to appear on behalf of the People of the State of California to prosecute red light camera violations of the *California Vehicle Code* in the City of Santa Ana.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 16<sup>th</sup> day of July, 2010, at Santa Ana, California.

  
\_\_\_\_\_  
Ryan O. Hodge  
Deputy City Attorney  
City of Santa Ana

2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
(C.C.P. SECTION 1013(a), 2015.5)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the aforesaid county; I am over the age of eighteen and not a party to the within action; my business address is 20 Civic Center Plaza, Santa Ana, California 92702.

On July 16, 2010, I served the foregoing document described as:

**OPPOSITION TO DEFENDANTS' MOTION TO DISQUALIFY SANTA ANA  
CITY ATTORNEY AS PROSECUTOR FOR THE PEOPLE OF  
THE STATE OF CALIFORNIA**

in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

R. Allen Baylis, Esq.	Attorney for Defendants
9042 Garfield Ave. Suite #306	██████████ Calhoon, ██████████ Chapman, ██████████
Huntington Beach, CA 92646	Collins, James F. ██████████, ██████████ Greene, ██████████
Facsimile: (714) 962-0930	Saavedra, ██████████, Troung

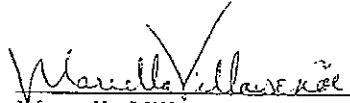
I caused to be delivered by courier, such envelope by hand to the office of the addressee(s).

I am readily familiar with my employer's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

The document was transmitted by facsimile transmission and was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 16, 2010, at Santa Ana, California.

  
\_\_\_\_\_  
Marcella Villaseñor

R