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6 Former Attorney for Petitioner  
7 Marina Strand Colony II Homeowners Association  
8 Respondent in Contempt Proceeding, also  
9 In Pro Per in the Contempt Proceeding

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF LOS ANGELES

9 CENTRAL DISTRICT

10 MARINA STRAND COLONY II,  
11 HOMEOWNERS ASSOCIATION,

12 Petitioner,

13 v.

14 COUNTY OF LOS ANGELES,

15 Respondent.

16 \_\_\_\_\_  
17 DEL REY SHORES JOINT VENTURE;  
18 DEL REY SHORES JOINT VENTURE  
19 NORTH

20 Real Party in Interest  
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) CASE NO. BS 109420

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)  
) **Notice of Motion and Motion for Renewal**  
) **of the Motion to Void and Annul All**  
) **Orders and Judgments Including Those in**  
) **the Contempt Proceedings in the Case**  
) **Made by Judge Yaffe**

) Date: March 4, 2011

) Time: 9:30 am

) New Place: Dept. 1

) OSC Filed: 11/3/2008

) Trial Date: 12/22/2008

) CCP Section 1008(b)(e)

1 **Notice of Motion and Motion for Renewal of Motion to Void and Annul All Orders and**  
2 **Judgments Including Those in the Contempt Proceedings in the Case Made by Judge Yaffe**

3 **To all parties and their attorneys of record:**

4 Please take notice that Richard I. Fine (Fine) will appear in Department 1 of the  
5 aforementioned court located at 111 North Hill Street, Los Angeles, California 90012 at 9:30 am  
6 on March 4, 2011 moving the court to renew the **Motion to Void and Annul All Orders and**  
7 **Judgments Including Those in the Contempt Proceedings in the Case Made by Judge Yaffe**  
8 (Motion to Void) previously set for January 14, 2011, and accelerated to January 7, 2011 by Judge  
9 Robert H. O'Brien and denied on January 7, 2011 without giving Fine the opportunity to file a  
10 Reply Brief and without having a hearing.

11  
12 The reasons for the motion to renew are that new facts have occurred which demonstrate  
13 that Retired Judge Robert H. O'Brien appointed to preside over the case and hear the Motion to  
14 Void on December 16, 2010 by Supervising Judge Berle after Judge Jones recused herself, did not  
15 have jurisdiction to preside over the case.

16  
17 The reason for such lack of jurisdiction is that Retired Superior Court Judge Robert H.  
18 O'Brien had received approximately \$250,000.00 in illegal payments from LA County, the  
19 Respondent in the case, commencing in 1985 and continuing until 1999 when he retired as a  
20 Superior Court judge.

21  
22 Based upon the receipt of such payments from LA County, a party to the case, Retired  
23 Judge Robert H. O'Brien was disqualified from presiding over the case and all of his rulings were  
24 void and null. See *Rossco Holdings Inc. v. Bank of America*, (2007) 149 Cal.App.4th 1353, 158,  
25 Cal.Rptr.3d 141, 148:

26  
27 Orders made by a disqualified judge are void. (*Cadenasso v. Bank of Italy* (1932),214 Cal.  
28 562, 6 P.2d 944;*Christie v. City of El Centro* (2006),135 Cal.App.4th 767, 37 Cal.Rptr.3d  
718.) There is a dispute in recent appellate authority as to whether such orders should be

1 considered void or only voidable at the option of a party; the Supreme Court's latest  
2 opinion on the matter held them to be void. (Christie v. City of El Centro, supra, 135  
3 Cal.App.4th at pp. 769-780, 37 Cal.Rptr.3d 718.)... "[Disqualification occurs when the  
4 facts creating disqualification arise, not when the disqualification is established." (Christie  
5 v. City of El Centro, supra, 135 Cal.App.4th at p. 776, 37 Cal.Rptr.3d 718.) "[I]t is the fact  
6 of disqualification that controls, not subsequent judicial action on that disqualification."  
7 (Id. at p. 777, 37 Cal. Rptr.3d 718.)

8 California law has long that held payments from a party to a case required the  
9 disqualification of the judge and the removal of the judge from office. See:

- 10 (1) CCP Section 170.3(a)(6)(A)(iii);
- 11 (2) Code of Judicial Ethics Code Canons 2A, 3E(1) and (2), and 4D(1);
- 12 (3) California Constitution, Article VI, Section 18(d) (...conduct prejudicial to the  
13 administration of justice that brings the judicial office into disrepute.); and
- 14 (4) California Supreme Court case of Adams v. Commission on Judicial Performance  
15 (July 20, 1995) 10 Cal.4th 866, 904 Rehearing Denied Sept., 14, 1995, (judge accepted gifts,  
16 financial benefits and favors from attorneys and a litigant appearing in the judge's court, this  
17 required disqualification with respect to matters involving these attorneys or their firms, pages  
18 879, 913-914 citing Adams v. Commission on Judicial Performance (1994), 8 Cal.4th 630, 661-  
19 663 (Adams I) which represented "... conduct prejudicial to the administration of justice that  
20 brings the judicial office into disrepute..").

21 United States law, in particular 18 U.S.C. Section 1346 - the intangible right to honest  
22 services, which Article 6, Cl. 2 requires state judges to obey mandates that payments by a party in  
23 a case to a judge are illegal, particularly in California which has a "unique" bribery statute. The  
24 cases are:

- 25 (1) U.S. v. Frega, U.S. v. Malkus, U.S. v. Adams (1999) 179 F.3d 793 (the payment  
26 by a party and an attorney appearing before a judge to such judge are bribery and violate 18  
27

1 U.S.C. Section 1346-the intangible right to honest services) stating at 805-807:

2 Because no linkage of payment and specific official act is required under California law  
3 and because the indictment incorporates the relevant state bribery statutes, which, in turn,  
4 state the elements of the bribery offenses, the indictment is valid in this respect.; and

5 (2) Skilling v. United States, (Decided June 24, 2010) \_\_\_\_\_ U.S. \_\_\_\_ (18 U.S.C.  
6 Section 346 “criminalizes only the bribe and kick-back core of the pre-McNally case law, page 45  
7 of opinion.)

8 In California, the payments to judges by counties were held to violate Article VI, Section  
9 19 of the California Constitution in the case of Sturgeon v. County of Los Angeles, (2008) 167  
10 Cal.App.4th 630, Rev. Denied 12/23/08. Such payments were confirmed to be criminal by  
11 California Senate Bill SBX 2 11 enacted 2/20/09, effective 5/21/09

13 The new facts are as follows:

14 (1) While he was a Superior Court judge, Robert H. O’Brien received “compensation”  
15 in the form of “Megaflex cafeteria plan benefits”, contributions to a 401(k) retirement plan and  
16 “professional development allowances” from LA County in the amount of approximately  
17 \$250,000.00 from 1985 until his retirement in 1999. These payments were set forth in e mails  
18 from the Auditor/Controller of LA County in response to a Public Documents Request by Richard  
19 I. Fine on January 10, 2011 as set forth in the attachments to the Declaration of Richard I. Fine  
20 filed herewith.;

21 (2) Such “compensation” was held to violate Article VI, section 19 of the California  
22 Constitution in the case of Sturgeon v. County of Los Angeles, 167 Cal.App.4th 630 (2008), Rev.  
23 Denied 12/23/08.;

24 (3) The California Court of Appeal reaffirmed its position in Sturgeon v. County of  
25 Los Angeles, Appeal No. D056266, 4<sup>th</sup> Appellate District, Div. One, December 10, 2010, in  
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1 which it upheld California Senate Bill SBX 2 11 as an interim response to the earlier Sturgeon  
2 decision.;

3  
4 (4) California Senate Bill SBX 2 11 which became effective May 21, 2009 gave  
5 retroactive immunity from civil liability, criminal prosecution and disciplinary action to  
6 government officials [including judges] on account of the giving or receiving of county payments.

7 The state retroactive immunity in Senate Bill SBX 2 11 was very narrow on its face and  
8 did not extend to the "obstruction of justice" of a judge presiding over a case in which he/she had  
9 received or was receiving illegal payments from a county, nor did it extend to a judge violating  
10 provisions of laws such as the California Code of Civil Procedure, the Penal Code, the Code of  
11 Judicial Ethics or any federal laws such as the intangible right to honest services, 18 U.S.C. 1346,  
12 or the U.S. or California Constitutions or any liability, prosecution or disciplinary action resulting  
13 from the county payments after May 21, 2009.

14  
15 (5) From the time he was assigned to this case on December 16, 2010, through the  
16 present Retired Judge Robert H. O'Brien violated California Code of Civil Procedure, section  
17 170.1(a)(6)(A)(iii) and California Code of Judicial Ethics, Canons 2A, 3E(1) and (2), 4D(1) and  
18 6B by not disclosing the LA County payments to him, not disqualifying himself from the case and  
19 deciding the motion to void and annul.  
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21  
22 (6) The Joint Opposition of Respondent LA County and Real Parties in Interest Del  
23 Rey Shores Joint Venture and Del Rey Shores and Del Rey Shores Joint Venture North violated  
24 B&P Code Section 6068(d) and Rules of Professional Conduct Rule 5-200 by "obstructing  
25 justice" through the concealment of the LA County payments to Retired Judge Robert H. O'Brien.  
26

27 (7) The January 7, 2011 Order Denying Motion to Void Orders was erroneous in that it  
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1 was void and null.

2           This motion is based upon this notice of motion, the Memorandum of Points and  
3 Authorities and Declaration of Richard I. Fine filed herewith and such other evidence presented at  
4 the hearing.  
5

6 Dated: January 30, 2011

Respectfully presented,

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8  
9 Richard I. Fine

10 Former Attorney for Petitioner  
11 Marina Strand Colony II Homeowners Association  
12 Respondent in Contempt Proceeding, also  
13 In Pro Per in the Contempt Proceeding  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. PREFATORY STATEMENT**

Since the 1980's, LA County has made illegal payments to State judges serving on the Superior Court for the County of Los Angeles. These payments amount to approximately \$300 million and are presently approximately \$57,000.00 per judge for each of the State judges serving on the Superior Court for the County of Los Angeles.

LA County is not alone in these illegal payments. A 2009 California Judicial Council Report shows that approximately 90% of the State judges received illegal payments from counties.

These illegal payments have corrupted the California judiciary and the California legal system. In LA County, according to LA County Counsel Annual Litigation Reports for FY 2005-2006 through FY 2009-2010, only three people have won cases against LA County when a State judge sitting on the Superior Court for the County of Los Angeles made the decision. Approximately 600-700 cases per year were filed against LA County during those years.

The clear conclusion is that the illegal LA County payments to the State judges influenced the judges and "corrupted" the California judiciary and judicial system. This conclusion is bolstered by the fact that the LA County payments were held to violate Article VI, Section 19 of the California Constitution in the case of *Sturgeon v. County of Los Angeles*, (2008) 167 Cal.App.4th 630, Rev. Denied 12/23/08.

The criminality of the LA County payments and all county payments to the State judges was affirmed in California Senate Bill SBX 2 11 enacted on February 20, 2009 in response to *Sturgeon, supra*, which gave retroactive immunity from criminal prosecution to the judges and the

1 government officials who gave the payments. Clearly, California Senate Bill SBX 2 11 recognized  
2 the LA County payments to the State judges to be “bribes”, as it gave retroactive immunity from  
3 criminal prosecution.

4  
5 Throughout California and United States legal history, this conduct of taking money  
6 “bribes” from a party appearing before them or likely to appear before them has been the cause for  
7 the disqualification of judges, the removal of judges from the judiciary and the voiding and  
8 annulling of the decisions of the “disqualified judges”.

9  
10 The laws of the United States and California have not changed. However, the corruption  
11 has become so endemic that the judiciary has refused to obey them.

12 The Motion to Void seeks to restore the “rule of law” in California and to begin the  
13 process of ridding California of the institutionalized corruption in the judiciary which the  
14 acknowledged LA County and other county criminal payments to State judges has wrought.

15  
16 Judge Yaffe resigned after being reported to the Commission on Judicial Performance for  
17 corruption. Supervising Judge Berle assigned the case to Retired Judge Robert H. O’Brien after  
18 Judge Jones recused herself. New facts reveal that the corruption has continued.

19  
20 This motion for renewal is a step in the process to stop that corruption. It is also a signal to  
21 the judiciary. Each time corrupt judges who have taken criminal payments obstruct justice, they  
22 will be exposed and prosecuted until the “rule of law” and the “integrity of the judiciary” is  
23 restored.

24  
25 **II. HISTORY OF MOTION**

26 The Motion to Void was initially filed on August 9, 2010. On September 16, 2010 Judge  
27 Yaffe, took the motion “off calendar” but commented that the court did not have jurisdiction. He  
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1 wrongly argued that the decision in the case was final and ignored the law that jurisdiction is  
2 always subject to attack in the trial court. The case law has long held that "...any act of a  
3 disqualified judge is absolutely void whenever brought into question. A judgment rendered by  
4 such a judge is open to attack at any time.." In re Henry C., (1985) 161 Cal.App.3d 646, 652 citing  
5 T.P.B. v. Superior Court, (1977) 66 Cal.App.3d 881, 886.  
6

7 It was undisputed that Judge Yaffe was disqualified for having taken payments from LA  
8 County, the Respondent in the case. From the outset of the case on June 17, 2007 until March 20,  
9 2008, Judge Yaffe concealed the payments. On March 20, 2008, Judge Yaffe admitted in open  
10 court to the payments in response to questions by former counsel for Petitioner Marina Strand  
11 Colony II Homeowners Association Richard I. Fine (Fine). Judge Yaffe then failed to respond to a  
12 CCP Section 170.3 Objection filed by Fine on March 25, 2008. Such failure to respond caused  
13 Judge Yaffe's automatic disqualification under CCP Section 170.3(c)(4) ten days after the filing  
14 and service of the CCP Section 170.3 Objection.  
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17 On December 23, 2008, Judge Yaffe again admitted to taking payments from LA County  
18 while being questioned by Fine as the first witness in the Contempt Proceeding. At such time, the  
19 LA County payments were held to be unconstitutional as a violation of Article VI, Section 19 of  
20 the California Constitution in the case of Sturgeon v. County of Los Angeles, (2008) 167  
21 Cal.App.4th 630, Rev. Denied 12/23/08. During the course of the Contempt Proceeding, the  
22 county payments were acknowledged to be criminal by the enactment of California Senate Bill  
23 SBX 2 11 on February 20, 2009 which gave retroactive immunity from criminal prosecution to the  
24 judges and the government officials who gave the payments.  
25

26 In their Joint Opposition to the Motion to Void, LA County and Real Parties in Interest  
27 did not contest that LA County, Del Rey Shores Joint Venture, Del Rel Rey Shores Joint Venture  
28

1 North and their respective attorneys and Judge Yaffe engaged in the following acts:

2 (1) In the late 1980's, LA County began paying "compensation" to State elected  
3 Superior Court judges sitting on the State of California Superior Court for the County of Los  
4 Angeles in violation of Article VI, Section 19 of the California Constitution;  
5

6 (2) Both LA County and the LA Superior Court judges knew that such payments were  
7 illegal and violated Article VI, Section 19 of the California Constitution as shown by a November  
8 10, 1988 letter from Roger M. Whitby, Sr. Asst. LA County Counsel to Frank S. Zolin, County  
9 Clerk/Executive Officer of the LA Superior Court stating "compensation is now commonly used  
10 to mean salary and fringe benefits" (page 2), that only the California State Legislature can  
11 prescribe such for judges citing the case of County of Madera v. Superior Court, 39 Cal.App.3d  
12 665 (1974) (page 2), stating that "judges are technically state constitutional officers" (page 6) and  
13 stated as the only reason for the payments to the state judges as "the Board of Supervisors had  
14 evidently found that to attract and retain qualified judges to serve in this [LA] county, it was  
15 necessary and appropriate to provide them with benefits such as the flexible benefit plan  
16 contribution and 401(k) match, which was available to many court officers and employees other  
17 than judges" (page 10). On its face, the letter demonstrated "misappropriation of funds", "bribery"  
18 and "obstruction of justice" as LA County had numerous cases before the judges of the State of  
19 California Superior Court for the County of Los Angeles at the time that the payments were  
20 initiated and being made.;  
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24 (3) The November 10, 1988 letter was concealed from the litigants against LA County  
25 and the public by LA County, the LA Superior Court and the State judges sitting in the State of  
26 California Superior Court for the County of Los Angeles for approximately twenty years, from  
27  
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1 November 10, 1988 until 2008, when it was ultimately produced in response to questions by the  
2 appellate panel in the case of Sturgeon v. County of Los Angeles, 167 Cal.App.4th 630 (2008),  
3 Rev. Denied 12/23/08.;

4  
5 (4) The payments to Judge Yaffe from LA County were approximately \$500,000.00.;

6 (5) At all times, LA County and its attorneys concealed the LA County payments to  
7 Judge Yaffe.; and

8  
9 (6) At all times LA County, its attorneys, and Real Parties in Interest Del Rey Shores  
10 Joint Venture, Del Rey Shores Joint Venture North, their Managing Partner the Epstein Family  
11 Trust and its Trustees Jerry B. Epstein and Pat Epstein and their attorneys (collectively Del Rey  
12 Shores) concealed the fact that LA County Board of Supervisor’s approval of Environmental  
13 Impact Report (EIR) sought jointly by LA County and Del Rey Shores was illegal. The illegality  
14 of the Board of Supervisors approval was based upon the fact that the Epsteins and their  
15 associates in Del Rey Shores had contributed to LA Supervisors Antonovich and Knabe  
16 approximately six weeks before the vote on the EIR.  
17

18  
19 The Antonovich and Knabe votes were illegal under the California Political Reform Act  
20 and the case of BreakZone Billiards v. City of Torrance, (2000) 81 Cal.App.4th 1205 which  
21 precluded their voting after having received such contributions, resulting in the Board of  
22 Supervisors approval being illegal due to a lack of votes.  
23

24 The Motion to Void was re noticed on December 6, 2010 before Judge Ann I. Jones. The  
25 hearing was set for January 14, 2011. On December 16, 2010, Judge Jones recused herself stating  
26 that Judge Yaffe had discussed “matters raised in the instant motion” with Judge Yaffe.  
27

28 On December 16, 2010, Supervising Judge Berle assigned the case to Retired Judge

1 Robert H. O'Brien in Department 85. On January 7, 2011, Judge O'Brien "on [his] own motion  
2 advance[d] and denie[d]" the denied the Motion to Void.

3  
4 **III. NEW FACTS AND THEIR LEGAL SIGNIFICANCE**

5 (1) While he was a Superior Court judge, Robert H. O'Brien received "compensation"  
6 in the form of "Megaflex cafeteria plan benefits", contributions to a 401(k) plan and "professional  
7 development allowances" from LA County in the amount of approximately \$250,000.00 from  
8 1985 until his retirement in 1999. These payments were set forth in e mails from the  
9 Auditor/Controller of LA County in response to a Public Documents Request by Richard I. Fine  
10 on January 10, 2011 as set forth in Exhibit 1 to the Declaration of Richard I. Fine filed herewith.  
11 As shown above, such payments were held to be illegal in Sturgeon, supra, and criminal in  
12 California Senate Bill SBX 2 11.  
13

14  
15 (2) Such "compensation" was held to violate Article VI, section 19 of the California  
16 Constitution in the case of Sturgeon v. County of Los Angeles, 167 Cal.App.4th 630 (2008), Rev.  
17 Denied 12/23/08 which stated at page 635:  
18

19 **Section 19, article VI of the California Constitution requires that the Legislature**  
20 **"prescribe compensation for judges of courts of record." The duty to prescribe**  
21 **judicial compensation is not delegable. Thus the practice of the County of Los**  
22 **Angeles (the county) of providing Los Angeles County superior court judges with**  
23 **employment benefits, in addition to the compensation prescribed by the Legislature,**  
24 **is not permissible.** Accordingly, we must reverse an order granting summary judgment in  
25 favor of the county in an action brought by a taxpayer who challenged the validity of the  
26 benefits the county provides to its superior court judges. (Emphasis added.)

27 At page 654 the court stated:

28 **We have been unable to identify any enactment of the Legislature which prescribes**  
**the judicial benefits the county pays its judges.** (Emphasis added.)

1 The court concluded at pages 656-657:

2  
3 **Both section 69894.3 and the audit and credit procedures set forth in Lockyer-**  
4 **Isenberg are also ineffective as legislative prescriptions. They do not require the**  
5 **payment of benefits, let alone set any standard or safeguard which regulate the size**  
6 **or the conditions under which they should be paid.** In giving the county's the option of  
7 providing the benefits, and no limitation on the kind and amount of those benefits, these  
8 statutes in no sense set a fundamental policy with respect to benefits, provide any standard  
9 for applying such a policy, or contain any safeguards which would insure that benefits are  
10 consistent with the Legislature's adopted policy. Indeed, without violating section 69894.3,  
11 or Lockyer-Isenberg, the county could, in any given year, deprive its judges of MegaFlex  
12 benefits and continue to provide them to other employees.

13  
14 Admittedly, in one respect Lockyer-Isenberg goes beyond section 69894.3 and its own  
15 audit and credit procedures. As we have noted, in section 3, subdivision (g) of Lockyer-  
16 Isenberg, the Legislature expressed its intention that no court personnel employed as of  
17 July 1, 1997, suffer any reduction in salary or benefits as a "result of this act." (Stats. 1997,  
18 ch. 850, § 3.) As to court personnel, including judges, serving as of July 1, 1997, an  
19 argument can be made that this provision of Lockyer-Isenberg set a floor on the benefits to  
20 which those judges were entitled. This provision nonetheless would not bring the county's  
21 benefits program within the requirements of the Constitution. First, by its terms section 3  
22 of Lockyer-Isenberg only applies to judges serving as of July 1, 1997. We would have to  
23 ignore its express provisions to extend its protection to judges who began their service  
24 after July 1, 1997. There is also the difficulty posed by the last phrase of section 3, "as a  
25 result of this act." That phrase undermines our ability to conclude that by way of Lockyer-  
26 Isenberg, the Legislature intended to affirmatively prescribe benefits for superior court  
27 judges. **However, these defects are relatively minor compared with the absence in**  
28 **Lockyer-Isenberg of any standard or inherent safeguard by which future increases**  
**or decreases in judicial benefits would be regulated. The fact the county itself has**  
**elected to tie its judicial benefits to the benefits it provides other salaried employees is**  
**not a substitute for a legislative mandate that it do so.**

29  
30 **Because the benefits provided by the county are compensation within the meaning of**  
31 **section 19, article VI of our Constitution, and because this record does not establish**  
32 **those benefits have been prescribed by the Legislature, the trial court erred in**  
33 **granting the county's motion for summary judgment.**<sup>11</sup>

34 Judgment reversed. Appellant to recover his costs of appeal. (Emphasis added)

35  
36 (3) The California Court of Appeal reaffirmed its position in *Sturgeon v. County of*  
37 *Los Angeles*, Appeal No. D056266, 4<sup>th</sup> Appellate District, Div. One, December 10, 2010, in  
38 which it upheld California Senate Bill SBX 2 11 as an interim response to the earlier *Sturgeon*  
decision stating at page of the opinion certified for publication:

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**However, on its face SBX 211 is not a permanent response to either the constitutional issues we identified in *Sturgeon I* or the difficult problem of adopting a compensation scheme that deals with varying economic circumstances in an equitable and efficient manner. Thus, we would be remiss in discharging our duties if we did not state that while the Legislature's *interim* response to *Sturgeon I* defeats the particular challenges asserted by *Sturgeon* in this litigation, that interim remedy, if not supplanted by the more comprehensive response SBX 211 plainly contemplates, most likely will give rise to further challenges by taxpayers or members of the bench themselves. As we noted at the outset, the issue of judicial compensation is a state, not a county, responsibility. We are confident that the Legislature within a reasonable period of time will act to adopt a uniform statewide system of judicial compensation.** (Emphasis added.)

(4) California Senate Bill SBX 2 11 which became effective May 21, 2009 gave

retroactive immunity from civil liability, criminal prosecution and disciplinary action to government officials [including judges] on account of the giving or receiving of county payments.

Senate Bill SBX 2 11 stated in relevant part:

**Section 5. Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or shall be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law.** (Emphasis added.)

The state retroactive immunity in Senate Bill SBX 2 11 was very narrow on its face and did not extend to the "obstruction of justice" of a judge presiding over a case in which he/she had received or was receiving illegal payments from a county, nor did it extend to a judge violating provisions of laws such as the California Code of Civil Procedure, the Penal Code, the Code of Judicial Ethics or any federal laws such as the intangible right to honest services, 18 U.S.C. 1346, or the U.S. or California Constitutions or any liability, prosecution or disciplinary action resulting from the county payments after May 21, 2009.

(5) In his order of "Recusal Re Assignment" Supervising Judge Berle did not disclose and concealed the fact that Retired Judge O'Brien had received illegal payments from LA County and immunity from criminal prosecution, civil liability and disciplinary action for having received

1 such payments under California Senate Bill SBX 2 11.

2 (6) LA County and its attorneys did not disclose, and concealed the fact that Retired  
3 Judge O'Brien had received illegal payments from LA County and immunity from criminal  
4 prosecution, civil liability and disciplinary action for having received such payments under  
5 California Senate Bill SBX 2 11.  
6

7 (7) Retired Judge O'Brien did not disclose and concealed the fact that he had received  
8 illegal payments from LA County and immunity from criminal prosecution, civil liability and  
9 disciplinary action for having received such payments under California Senate Bill SBX 2 11.  
10

11 (8) Retired Judge O'Brien was disqualified under law from presiding over the case due  
12 to the fact that he had received illegal payments from LA County which were acknowledged to be  
13 criminal under California Senate Bill SBX 2 11.

14 (9) All of Retired Judge O'Brien's orders and decisions were void and null from the  
15 time that he was disqualified, which was at the outset of his assignment.

16 (10) In their Joint Opposition to the Motion to Void, Respondent LA County and its  
17 attorneys, Real Parties in Interest Del Rey Shores Joint Venture and Del Rey Shores Joint Venture  
18 North, their Managing Partner- the Epstein Family Trust, its Trustees Jerry B. Epstein and Pat  
19 Epstein and their attorneys have committed "obstruction of justice" by not disclosing that Retired  
20 Judge Robert H. O'Brien had received approximately \$250,000.00 in illegal payments from LA  
21 County commencing in 1985 and continuing until 1999 when he retired as a Superior Court judge.  
22 They acted in concert to have Retired Judge Robert H. O'Brien preside over this case and Motion  
23 to Void.

24 (11) Such "obstruction of justice" also included the acts of the Supervising Judge as set  
25 forth above and the failure of Retired Judge Robert H. O'Brien to disclose the payments and to  
26 disqualify himself.

27 (12) These acts are the same as occurred with Judge Yaffe having committed  
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1 "obstruction of justice" by presiding over the case while Judge Yaffe had received and was  
2 receiving illegal payments of approximately \$500,000.00 from LA County, not disclosing such,  
3 and not disqualifying himself from the case.

4 The specific laws and legal principles violated are:

- 5 (1) CCP Section 170.3(a)(6)(A)(iii);
- 6 (2) Code of Judicial Ethics Code Canons 2, 3E(1) and (2), and 4D(1);
- 7 (3) California Constitution, Article VI, Section 18(d) (...conduct prejudicial to the  
8 administration of justice that brings the judicial office into disrepute.),
- 9 (4) the holding in the California Supreme Court case of Adams v. Commission on  
10 Judicial Performance (July 20, 1995) 10 Cal.4th 866, 904 Rehearing Denied Sept., 14, 1995,  
11 (judge accepted gifts, financial benefits and favors from attorneys and a litigant appearing in the  
12 judges court, this required disqualification with respect to matters involving these attorneys or  
13 their firms, pages 879, 913-914 citing Adams v. Commission on Judicial Performance (1994), 8  
14 Cal.4th 630, 661-663 (Adams I) which represented "... conduct prejudicial to the administration of  
15 justice that brings the judicial office into disrepute..");
- 16 (5) U.S. v. Frega, U.S. v. Malkus, U.S. v. Adams (1999) 179 F.3d 793 (the payments  
17 by a party and an attorney before a judge to a judge are bribery and violate 18 U.S.C. Section  
18 1346-the intangible right to honest services) stating at 805-807:

19 Because no linkage of payment and specific official act is required under California law  
20 and because the indictment incorporates the relevant state bribery statutes, which, in turn,  
state the elements of the bribery offenses, the indictment is valid in this respect.

- 21 (6) Skilling v. United States, (Decided June 24, 2010) \_\_\_\_\_ U.S. \_\_\_\_ (18 U.S.C.  
22 Section 346 "criminalizes only the bribe and kick-back core of the pre-McNally case law, page 45  
23 of opinion.)

- 24 (7) Rossco Holdings Inc. v. Bank of America, (2007) 149 Cal.App.4th 1353, 158  
25 Cal.Rptr.3d 141, 148:

26  
27 Orders made by a disqualified judge are void. (Cadenasso v. Bank of Italy (1932),214 Cal.  
28 562, 6 P.2d 944;Christie v. City of El Centro (2006),135 Cal.App.4th 767, 37  
Cal.Rptr.3d 718.) There is a dispute in recent appellate authority as to whether such



1 orders should be considered void or only voidable at the option of a party; the Supreme  
2 Court's latest opinion on the matter held them to be void. (Christie v. City of El Centro,  
3 supra, 135 Cal.App.4th at pp. 769-780, 37 Cal.Rptr.3d 718.) The distinction is of no  
4 difference in this case as Ross timely requested the order compelling arbitration to be  
5 vacated. Nonetheless, whether the order of a disqualified judge is considered void or  
6 voidable, it is clear that it is only the disqualified judge who cannot act; the court retains  
7 jurisdiction over the subject matter. (See 2 Witkin, Cal. Procedure (4th ed. 1996) Courts,  
8 §§ 93, 94, pp. 131-132.)

9 "[Disqualification occurs when the facts creating disqualification arise, not when the  
10 disqualification is established." (Christie v. City of El Centro, supra, 135 Cal.App.4th at p.  
11 776, 37 Cal.Rptr.3d 718.) "[I]t is the fact of disqualification that controls, not subsequent  
12 judicial action on that disqualification." (Id. at p. 777, 37 Cal. Rptr.3d 718.)

13 (13) From the time he was assigned to this case on December 16, 2010, through the  
14 present Retired Judge Robert H. O'Brien violated California Code of Civil Procedure, section  
15 170.1(a)(6)(A)(iii) and California Code of Judicial Ethics, Canons 2A, 3E(1) and (2), 4D(1) and  
16 6B by not disclosing the LA County payments to him, not disqualifying himself from the case and  
17 deciding the motion to void and annul.

18 (14) California Code of Civil Procedure, section 170.1(a)(6)(A)(iii) and California Code  
19 of Judicial Ethics, Canons 2A, 3E(1) and (2), 4D(1) and 6B respectively state as follows:

20 CCP Section 170.1. (a) A judge shall be disqualified if any one or more of the  
21 following are true:  
22 (6) (A) For any reason:  
23 (iii) A person aware of the facts might reasonably entertain a doubt that the judge would  
24 be able to be impartial.

25 Canon 2A. Promoting Public Confidence  
26 A judge shall respect and comply with the law and shall act at all times in a manner that  
27 promotes public confidence in the integrity and impartiality of the judiciary.

28 Canon 3E. Disqualification  
(1) A judge shall disqualify himself or herself in any proceeding in which  
disqualification is required by law.  
(2) In all trial court proceedings, a judge shall disclose on the record information that  
is reasonably relevant to the question of disqualification under Code of Civil Procedure  
section 170.1, even if the judge believes there is no actual basis for disqualification.

Canon 4D. Financial Activities  
(1) A judge shall not engage in financial dealings that  
(a) may reasonably be perceived to exploit the judges judicial position, or  
(b) involve the judge in frequent transactions or continuing business relationships with  
lawyers or other persons likely to appear before the court on which the judge  
serves.

Canon 6A. Retired Judge Serving in the Assigned Judges Program  
A retired judge who has filed an application to serve on assignment, meets the eligibility

1 requirements set by the Chief Justice for service, and has received an acknowledgment for  
2 participation in the assigned judges program shall comply with all provisions of this code  
3 except for the following:  
4C2 Appointment to Governmental Positions  
4E Fiduciary Activities

4 (15) The Joint Opposition of Respondent LA County and Real Parties in Interest Del  
5 Rey Shores Joint Venture and Del Rey Shores and Del Rey Shores Joint Venture North also  
6 violated B&P Code Section 6068(d) and Rule of Professional Conduct Rule 5-200 by "obstructing  
7 justice" through the concealment of the LA County payments to Retired Judge Robert H. O'Brien.

8 (16) B&P Code Section 6068(d) states as follows:

9 6068. It is the duty of an attorney to do all of the following:  
10 (a) To support the Constitution and laws of the United States and of this state.

11 ©) To counsel or maintain those actions, proceedings, or defenses only as appear to him  
12 or her legal or just, except the defense of a person charged with a public offense.

13 (d) To employ, for the purpose of maintaining the causes confided to him or her those  
14 means only as are consistent with truth, and never to seek to mislead the judge or any  
15 judicial officer by an artifice or false statement of fact or law.

16 (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless  
17 required by the justice of the cause with which he or she is charged.

18 (g) Not to encourage either the commencement or the continuance of an action or  
19 proceeding from any corrupt motive of passion or interest.

20 (17) The January 7, 2011 Order Denying Motion to Void Orders was erroneous in that it  
21 was void and null.

22 **CONCLUSION**

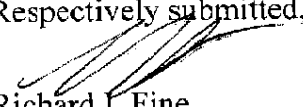
23 The case and the Motion to Void should never have been assigned to now Resigned Judge  
24 Yaffe and Retired Judge O'Brien, or any judge who received payments from LA County. As  
25 shown herein, no judge who has, or is receiving payments from LA County may preside over this  
26 case.

27 Further, as shown herein, such judges are not fit to serve in the judiciary under the  
28 precedent of Adams, supra.

The time has come for the California judiciary to face the realities and comply with the  
law, instead of being a "totalitarian regime" operating in violation of the Constitution, the law and  
all international human rights treaties signed by the United States.

1 Dated: January 30, 2011

Respectively submitted,

  
Richard I. Fine  
Former Attorney for Petitioner Marina Strand  
Colony II Homeowners Association  
Respondent in Contempt Proceedings, also  
In Pro Per in the Contempt Proceeding

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**DECLARATION OF RICHARD I. FINE**

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STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I, Richard I. Fine declare:

The following facts are within my personal knowledge and if called to testify, I could and would competently testify thereto as follows:

1. I am the former counsel for the Petitioner Marina Strand Colony II Homeowners Association, the Respondent in the Contempt Proceeding in which I appeared in pro per.
2. On August 9, 2010, I filed the Motion to Void and Annul All Orders and Judgments Including Those in the Contempt Proceedings in the Case Made by Judge Yaffe.
3. On September 16, 2010, Judge Yaffe took such motion "off calendar".
4. I re-noticed the motion in Department 86 before Judge Jones.
5. On December 16, 2010, Judge Jones "recused" herself.
6. On December 16, 2010, Supervising Judge Berle issued an order of "Recusal Re-Assignment" assigning the case and the motion to "Judge Robert H. O'Brien".
7. On January 7, 2011, "Judge Robert H. O'Brien" advanced and denied the motion without a hearing.
8. On January 10, 2011, I made a California Public Records Act request to the LA County Auditor/Controller for all LA County payments to Judge Robert H. O'Brien. A true and correct copy of such request and the response thereto showing LA County payments from approximately 1985 to 1999 when he retired in an approximate amount of \$250,000.00 marked collectively as Exhibit 1 is attached hereto and incorporated herein as if set forth in full.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30<sup>th</sup> day of January at Los Angeles, California.

Richard I. Fine

**EXHIBIT /**

Read Message

<http://mail.richardfinelaw.com/cgi-bin/inbox.exe?id=01f8e79cd90e135a...>**Read Message**[Previous](#) [Next](#)[Move To](#) [Select One](#)**From:** Iverson, Gregg M. <GIVERSON@auditor.lacounty.gov>[\[ add to contacts \]](#)**To:** richardfine@richardfinelaw.com**Cc:****Date:** Thursday, January 13, 2011 05:13 pm**Subject:** RE: Public Records Request for Documents

Mr. Fine,

The County's records show that Judge O'Brien terminated 8/16/1999, based on this he would not have receive County payments from 2000 to present.

As for years prior to the years prior 1989, Judge O'Brien first started receiving Cafeteria Plan and 401k plan benefits in 1985. the professional development allowance did not start until 1991.

The cost to create and run a program to extract the information for years prior to 1989 (1985 through 1988) would be about \$400.

I hope this helps.

**From:** richardfine@richardfinelaw.com [mailto:richardfine@richardfinelaw.com]**Sent:** Thursday, January 13, 2011 10:58 AM**To:** Iverson, Gregg M.**Cc:** richardfine@richardfinelaw.com**Subject:** Re: Public Records Request for Documents

Dear Mr. Iverson:

Thank you for your speedy reply. It is most appreciated. Would you please be so kind as to inform me of the other years in which Judge Obrien received the "local judicial benefits" or LA County payments, if such can be done without engaging in extensive research. Additionally, would you please be so kind as to inform me of the cost of the research to receive the full report of the remaining years. I am particularly interested to know if Judge Obrien received LA County payments from 2000 through the present.

Thank you for your cooperation and attention to this most important matter.

Sincerely,

Richard I. Fine

-----Original Message-----

**From:** Iverson, Gregg M. [mailto:GIVERSON@auditor.lacounty.gov]**Sent:** Thursday, January 13, 2011 12:45 PM**To:** richardfine@richardfinelaw.com**Cc:** 'Victor, Michele'**Subject:** RE: Public Records Request for Documents

Read Message

<http://mail.richardfinelaw.com/cgi-bin/inbox.exe?id=01f8e79cd90e135a...>

Mr. Fine,

I'm responding to your request for a summary of local judicial benefits for Superior Court Judge Robert H. O'Brien from 1980's to the present. The County's payroll records show the Judge O'Brien assumed his position on 12/30/1981 and terminated the position on 8/16/1999. For that period, I'm able to provided you with the requested information for the years of 1989 through 1999. I have provided that information below.

As for the other years, the County does not have an identifiable summary record of Judge O'Brien's local judicial benefits. Electronic detailed records do exist for these periods, but accessing the records would require custom programming which you would be required to reimburse the County for its cost. If you have questions, please contact by e-mail at:

[giverson@auditor.lacounty.gov](mailto:giverson@auditor.lacounty.gov)

Year	Cafeteria Plan Benefits	401K and 457 Employer Contributions	Professional Development Allowance
1989	\$ 6,111.54	\$ 3,492.30	\$ -
1990	\$ 7,206.83	\$ 3,758.78	\$ -
1991	\$ 15,192.52	\$ 4,535.44	\$ 1,960.00
1992	\$ 18,866.40	\$ 6,536.64	\$ 4,704.00
1993	\$ 18,866.40	\$ 549.03	\$ 4,954.00
1994	\$ 19,731.22	\$ 2,067.85	\$ 5,004.00
1995	\$ 20,354.56	\$ 7,442.24	\$ 5,154.00
1996	\$ 20,404.08	\$ 7,667.64	\$ 5,184.00
1997	\$ 20,404.08	\$ 7,420.97	\$ 5,324.00
1998	\$ 20,659.16	\$ 5,175.66	\$ 5,352.00
1999	\$ 15,992.92	\$ 3,970.78	\$ 3,882.00

**From:** CONSTITUENT

**Sent:** Monday, January 10, 2011 12:10 PM

**To:** [richardfine@richardfinelaw.com](mailto:richardfine@richardfinelaw.com)

**Subject:** RE: Public Records Request for Documents

Thank you for contacting Los Angeles County Department of Auditor-Controller.

Your e-mail inquiry has been reviewed and has been forwarded to the appropriate Auditor-

Read Message

<http://mail.richardfinelaw.com/cgi-bin/inbox.exe?id=01f8e79cd90e135a...>


Controller staff to be researched. You will receive a direct response from them. If you have any further questions, please contact Michele Victor at (213) 974-8505.

Reference No.: CE11 - 6

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**From:** richardfine@richardfinelaw.com [mailto:richardfine@richardfinelaw.com]  
**Sent:** Mon 1/10/2011 11:38 AM  
**To:** CONSTITUENT  
**Cc:** richardfine@richardfinelaw.com  
**Subject:** Public Records Request for Documents

Dear Auditor: Pursuant to the provisions of the California Public Records Act, request is hereby made for documents showing all payments made from LA County commonly known as "local judicial benefits" to LA Superior Court Judge Robert H. O'Brien from the commencement of such payments believed to be in the 1980's through the present. A yearly summary of "cafeteria plan benefits", 401(k) or other retirement contributions, and "professional development allowances" and any other LA County compensation for each year that the "local judicial benefits" were paid will be sufficient. Time is of the essence. An e mail response to richardfine@richardfinelaw.com containing all available records or a summary thereof will be sufficient. Thank you for your immediate attention to this most urgent matter. Sincerely, Richard I. Fine

**Attachments:**  Text version of this message. (5KB)

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PROOF OF SERVICE

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STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and a party to the contempt proceedings to the within action. My business address is 18102 Jaguar Ct., Tarzana, California 91335.

On December 24, 2010, I served the foregoing document described as Motion to Void and Annul All Orders and Judgments Including Those in the Contempt Proceedings in the Case Made by Judge Yaffe on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:


Andrea Ordin	Armbruster, Goldsmith & Delvac, LLP
Elaine M. Lemke	R.J. Comer
648 Kenneth Hahn Hall of Administration	10940 Wilshire Blvd., Suite 2100
500 West Temple Street	Los Angeles, CA 90024
Los Angeles, CA 90012-2713	FACSIMILE: (310) 209-8801
FACSIMILE: (213) 687 7337	
Rose M. Zoia	Joshua L. Rosen
50 Old Courthouse Square, Suite 401	5905 Sherbourne Drive
Santa Rosa, CA 95404	Los Angeles, CA 90056
FACSIMILE: (707) 540-6249	FACSIMILE: (310) 410-7227

BY MAIL. BY EXPRESS MAIL /FED EX As follows: I am "readily familiar" with the firm'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 Los Angeles, 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 meter date is more than one day after the date of deposit for mailing in affidavit.

BY FACSIMILE: By transmitting the documents by facsimile to the stated parties at their respective facsimile numbers as shown above pursuant to CCP § 1013(e).

BY PERSONAL SERVICE: By delivering a copy to the above mentioned persons at:

STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed January 31, 2011 at Los Angeles, California.

  
RICHARD I. FINE