



Marin County counsel defends supervisors' handling of grand jury pension report



David Brown withdrew his lawsuit over the Board of Supervisors' handling of a grand jury report on pension actions. IJ photo

By **Janis Mara**, *Marin Independent Journal*

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Marin's county counsel Tuesday strongly defended the Board of Supervisors' handling of a grand jury report on pension actions, days after the plaintiff in a related lawsuit withdrew his action.

County Counsel Steven Woodside also said it is "a common practice" for a respondent in a lawsuit to ask that attorneys' fees and court costs be granted to them should they prevail. David Brown of Mill Valley, the plaintiff in the suit, withdrew because he said he couldn't run the financial risk of losing.

Woodside did not write the response in question. An outside attorney, Robin Johansen, a founding partner of Remcho, Johansen & Purcell, a firm specializing in ethics and government decision-making, was hired to defend the county because Woodside was named in Brown's complaint, according to Assistant County Administrator Angela Nicholson.

Woodside said, "It's a common practice for a respondent in a lawsuit, when they file their first response, to include a prayer that says, 'If we prevail, we would be entitled to costs and fees.' If you don't put that in your response, you will have waived your right to ask for it."

In response, "It seems that what both County Counsel and the County Administrator are saying is that it is standard practice to reserve the right to ask for attorney's fees though they rarely do," Brown said in an email.

"Neither of these mitigating statements does the poor schlep on the other side any good because he never knows when the reserved right will be exercised. He has to operate under the assumption that it will. That is exactly what I did, and what they knew I would be forced to do," Brown said.

Brown filed a lawsuit in Marin Superior Court on March 9 contesting how county officials handled a 2014-15 grand jury report on pensions. Brown said he withdrew his suit May 4 after the county administration set aside \$50,000 to hire an outside attorney to defend the county.

Brown's legal action sought to have the court declare county supervisors and administrative staffers in conflict of interest, and to compel the county to provide \$40,000 for an independent legal review of issues involved.

Last year's grand jury found that county supervisors as well as the San Rafael City Council, and Novato and Southern Marin fire district boards, "granted no less than 38 pension enhancements from 2001 to 2006, each of which appears to have violated disclosure requirements and fiscal responsibility requirements of the California Government Code."



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Brown asserted that supervisors and key officials who benefit from pension funds should have recused themselves from responding to the grand jury because of financial conflict.

Woodside strongly disagreed.

"The response (by Remcho, Johansen & Purcell) lays out the fact that the board has a constitutional duty to set salaries and a constitutional duty to respond to the grand jury report and the court should not do what Mr. Brown wants and in effect arrange for the rewriting of the response," Woodside said. "That is beyond the court's power."

Woodside added, "The response by Remcho stated that there is no conflict. It is their (supervisors') duty, so in consequence, it is not a conflict for them to perform their duty."

Brown has said he plans to bring another lawsuit, this time focusing on what he alleged to be government code violations.

ABOUT THE AUTHOR



Janis Mara covers education for the Marin IJ. She has worked at the Oakland Tribune, the Contra Costa Times and Adweek, winning awards for business coverage, live-blogging and investigative work. Reach the author at jmara@marinij.com or follow Janis on Twitter: [@jmara](https://twitter.com/jmara).

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