

**From:** Scott Rafferty [REDACTED]  
**Sent:** Wednesday, March 25, 2020 8:35 PM  
**To:** Michael Barrett <mbarrett@cityofnapa.org>; Steve Potter <spotter@cityofnapa.org>; Tiffany Carranza <tcarranza@cityofnapa.org>; Marguerite Leoni <mleoni@nmgovlaw.com>  
**Subject:** Procedures in Light of Coronavirus

[EXTERNAL]

Given the pervasive health risk we all face, nothing is for sure and no one can predict what lies ahead. I hope you and your families are well.

An attorney in a different jurisdiction advised me that EO N-34-20 extended the safe harbor until September and/or allowed the jurisdiction to conduct at-large elections in 2020. I had a significant discussion with the Governor's office this morning, and spoke with several legislative consultants. The other jurisdiction is back on course. I would like to report that the crisis has passed, but was not able to confirm City of Napa's position with Mr. Barrett.

## PROCEDURAL ACCOMMODATIONS

**At this stage, the essential process for public input is to allow the public to submit written testimony at any time (including maps) and to have them posted so that others may comment. Posting enables the public can interact in a way that is not possible in the formal hearing. This creates a clear record for the demographer to advise the council. EC 21628(e) requires this effective next year. Three minutes of in person recitation is not sufficient to discuss maps. At least for the duration of N-29-20, it is no longer legally required.** We requested that the City post public comments on 3/16 - or in the alternative that it allow us to inspect them. We have no objection to editing the posted comments for relevance or civility, provided the unexpurgated version is available for inspection on request.

**The outreach to the Latino community was outstanding.** The physical hearings have been way above average, both in the quality of the public input and in the courtesies extended by the Council. Other bodies have demanded that speakers register before 6:30 and then altered the schedule so that it is after midnight before they can speak for two minutes. That is not fair to working-class Latinos with family obligations in the evenings. Elsewhere, some council members have engaged in long diatribes criticizing me, my clients, or even Latinos generally, which does not promote public participation. The quality of the two pre-map hearings was exceptional.

Although the first two of the three required map hearings have been cancelled, there has already been extensive input on the maps. As I understand it, most (but not all) of the agenda for March 31 has been cancelled, not just the map hearing. **We would encourage the Council to reconsider holding a summary hearing on March 31 to formally receive written comments and alternative maps, consistent with N-29-20.** The City already live-streams and provides downloadable video. If the city cannot provision Zoom or another service to permit live teleconferencing of public

comments, it would be acceptable to accept written comments that would be distributed to the Council before the meeting and posted online.

On this basis, we believe that it is highly likely that the Council can complete the three formal hearings as part of "regular" and adjourned meetings by the end of April, without disrupting other important business.

## **CONSEQUENCES OF POTENTIAL DELAY UNTIL 2022**

We commit to be flexible and accommodating, but the last time I agreed to an extension that transcended a general election, the Legislature passed a law against doing so (AB 2123). It is a good law, and I intend to comply with it. I also take seriously the Legislature's mandate to give remedial districts the benefit of the presidential cycle - and the obvious importance of giving minority-influenced officials a seat at the table before next year's redistricting draws lines for the entire decade.

Immediately after the meeting in which the Council committed to go forward in 2020, Ms. Leoni publicly criticized me for not engaging in "standstill agreements" that deferred transitions to 2022 without any public disclosure. She states that another attorney has allegedly done so in a number of jurisdictions, which I have since confirmed. These secret agreements violate AB 2123.\*

If we cannot get through the process by July 1, there will be no good choices. It will already be late for the minority community to recruit a candidate of choice, or for any candidate to mount a campaign. The remedy in Rey v Madera USD was to delay the election, but that deprives the minority community of presidential-level turnout. Court is exactly where we need to be, sooner rather than later. Hopefully (but not necessarily), we will agree on a joint proposal. This is the key reason that the safe harbor cannot bar access to the courts after May 11.

The safe harbor also reflects a bargain to act within a short timeframe in return for a limit on reimbursement for fees. As you are well aware, I have already exhausted this statutory cap. If, for whatever reason, compliance is achieved after 90 days, fees must be awarded under EC 14030 and CCP 1021.5. I am not abandoning my clients, but neither am I working for up to two more years without compensation.

These comments are intended to be public, but I do not rule out a settlement. While a proposal may be negotiated privately, I would expect it to be subjected to public comment before it was presented to a judge. There are three open seats. It would be problematic to elect new at-large members to these seats and then have them to draw lines for an entire decade, so one obvious mitigation would be an independent redistricting commission. Let me know if you propose to discuss 2022 implementation in the context of a settlement.

Scott Rafferty  
[REDACTED]

[REDACTED]

\* It is also contrary to the public interest if a jurisdiction has given priority to the accommodating attorney without notice to the public. Other attorneys (who may do extensive research before filing) should know the statutory fee (or a larger settlement) has already been claimed. If one attorney cannot achieve compliance before the next election, the statutory fee should become available so another potential plaintiff can try.