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November 2, 2018

City of Alamogordo
City Attorney's
Office

I Richard Merrick do hereby state that all facts and information contained within this complaint are true and correct and that I have good reason to believe that the facts alleged constitute a violation of the City of Alamogordo's Code of Conduct.

This complaint is based on information contained within the attached documents and the five attachments to that document.

Signed:



Richard Merrick

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April D Jones
11-2-2018

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To the Honorable Mayor Richard Boss and distinguished members of the Alamogordo City Commission,

I am submitting this complaint to the Commission via the City Attorney, as required, to report a violation of the Alamogordo Code of Ordinances, 2-03-570. - Code of conduct, Paragraphs (3) a, c, d, h, & k, by the City of Alamogordo, District 3 Commissioner, Mrs Susan Payne.

However, as the current City Attorney, Ms Petria Schreiber is noted as part of this complaint, I also respectfully request that either an assistant city attorney, or outside counsel, review this complaint for consideration by the Alamogordo City Commission. While City Attorney Schreiber is not identified as directly participating in the alleged violation, she did "Like" some of these Facebook posts from Commissioner Payne, obviously without counseling her to either remove the post or add into the original post a statement saying that Commissioner Payne was posting as a private citizen. Thus it is my opinion that Ms Schreiber should recuse herself from this process completely to ensure an unimpeachable and transparent process.

Alleged violations:

Between Wednesday, September 26th, 2018 at 9:09 pm & Saturday, September 29th, 2018, at 10:05 pm, Commissioner Payne posted at least three public posts, on her personal Facebook Page, as well as the Alamogordo City Watch Group Facebook page among others, attacking the New Mexico State Auditor, Wayne Johnson, both personally as well as professionally. Her posts shared news articles from the Albuquerque Journal & the Alamogordo News, with her negative comments attached. These posts have been widely interpreted by the public, some of the local news stations, as well as an Albuquerque news Station, as a City Commissioner attempting to deflect attention from the scathing report by the State Auditor's office alleging several significant errors and violations of NM State Finance laws in regard to the financing and building of the Alamogordo Family Fun Center, aka; Basin Lanes, aka; Rocket City Fun Center, by attempting to impeach the integrity and competence of the State Auditor thru the sharing of negative press reports about Mr Johnson. Additionally, in one of her posts, she also attacked the integrity and respect for the office of the State Auditor itself.

In this complaint, I believe I will show that Commissioner Payne's actions and writings were not only direct violations of the Alamogordo City Commission Code of Conduct, but additionally caused damage to the reputation of the entire City Commission and City of Alamogordo. It is my belief that the PSA published on September 12th, 2018 (see attachment 1), by the City of Alamogordo Public Information Office, clearly stated to the citizens of Alamogordo that the "The City takes that use of taxpayer dollars very seriously..." and would be hiring outside counsel to investigate the allegations thoroughly. By appearing to deflect attention to possible issues with Mr Johnson, criticizing his competence and qualifications, no less issues that he has not been cited for or convicted of, Commissioner Payne indicated by her own words that the report should not be believed or taken seriously in any manner by the citizens of Alamogordo.

Note: as of this writing, the City of Alamogordo has published another PSA responding to the State Auditor's report. That response has no bearing on this Code of Conduct complaint other than to once again show that the City of Alamogordo is taking those allegations seriously. However, I believe that Commissioner Payne's posts, as identified here, show that she held the whole process, the Auditor himself, and the office of the State Auditor in contempt.



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Those posts directly contravened the specifics and intent of the City Commission Code of Conduct, 2-03-570 Paragraphs (3) a ("...they will endeavor to treat all persons, claims and transactions in a fair and equitable manner."), c ("Commissioners shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the commission, city staff or the public."), h ("Personal opinions and comments may be expressed only if the commissioner clarifies that these statements do not reflect the official position of the city commission."), & k ("Even if the commissioner is representing his or her own personal opinions, remember that this still may reflect upon the city as an organization. If the commissioner is representing the city, the commissioner must support and advocate the official city position on an issue, not a personal viewpoint.").

Specific posts:

In the first post she simply posted "Go figure???" above a link to an Albuquerque Journal article titled "Wayne Johnson rejects claim that dual posts violate law". I believe this implies that Mr Johnson is willing to issue a negative report about the city but won't accept potential faults within his own conduct. Please note that this post was "liked" by Alamogordo City Attorney Petria Schreiber and is why I have requested for her to be recused from any part of the process of this complaint. (please see attachment 2).

In the next post, apparently on Commissioner Payne's personal Facebook page she posted, "Not only is he not a CPA, he's not even an accountant. He worked for his mommy, lost the mayoral race and was awarded the boobie prize of state auditor after losing the mayoral race. Well now I have confidence." She then added three laughing emojis. This quote is from a news report by KQRE News on Monday, October 1st, 2018 (please see attachments 3 & 4).

By the apparently dismissive and sarcastic tone of this post, I believe that Commissioner Payne was deriding Mr Johnson's qualifications, his work in his family's business, his run for mayor, and then implied that when he lost that race he "was awarded the boobie prize of state auditor". Not only does this post continue the apparent attack on Mr Johnson personally, but now clearly states that Commissioner Payne feels that the State Auditor's office is a "boobie prize". This may seem silly to put it here, however "boobie prize" is defined as: "1: an award for the poorest performance in a game or competition, 2: an acknowledgment of notable inferiority" – Merriam-Webster online dictionary. In this comment she has not only attacked the integrity of the person, but also attacked the office to which he is posted. This can only bring discredit to the City Commission and City itself.

Then finally on Saturday, September 29th, 2018 at 10:05pm, Commissioner Payne posted this on the Alamogordo City Watch Group page:

"The bio of our state auditor. Not only is he not a CPA, he's not even an accountant...it just screams qualified" She then again added three laughing emojis. After the emoji's, she posted a portion of Mr Johnson's bio. (please see attachment 5)