

From: Nick Krnich [REDACTED]
Sent: Sunday, March 30, 2014 9:40 PM
To: Ivan
Cc: Philip Wilkinson; Jerry Yahr; Rochelle Putnam; Craig McAllister; Heather Slosar; Larry Spitcaufsky; Ann Boon
Subject: Rancho Santa Fe Association Disclaimer

Mr. Holler,

I was surprised and disappointed by the lengthy disclaimer you attached with my letter. I have received other communications over the years from fellow members mailed through the Association with disclaimers but nothing quite like this disclaimer. They have all looked similar to the attached disclaimer enclosed in the recent Garden Club communication. Your disclaimer actually had more verbiage than the content of my letter!

You took several days to vet my letter and you made only one correction. Why didn't you make a correction at that time regarding the \$400K reserve? Why didn't you inform me that the Association felt the following clarification was necessary: "in, addition, proceeds from the sale will be distributed to local no-profit groups through a committee comprised of board members from the RSF Association, the Garden Club and the RSF Foundation"? I could have easily made these corrections/additions.

You also chose to make other corrections/additions on your disclaimer form without contacting me. Do you normally add information in the disclaimer form like: "You only need to register once to vote on Association matters"?

Also, why did you feel it necessary to add the following disclaimer in my letter but not the Garden Club letter: "The Association takes no position on the other information in the letter"?

Why didn't you take five minutes to verify that the registration forms were accurate or contact me regarding their accuracy? After all, we both had the same stated goal of 100% registration of members. One call and a few minutes could have saved you the expense of having to produce this lengthy disclaimer and consult with counsel.

I would like to understand the process better for possible future mailings:

- What is the standard process in vetting letters i.e. Do you inform the member of any inaccurate information in the communication?
- Who sees the communication besides you prior to mailing?
- Did any member have access to my communication prior to mailing?

This information will be helpful for me in deciding how to proceed in any future communications with fellow members.

Thank you,

Nick Krnich

On 4/1/14 12:27 PM, "Ivan" <ivan@ranchosantafe.org> wrote:

Response from Mr. Holler

Dear Mr. Krnich,

In general, we do not edit member's mailings, and your mailing was unusual in that you created your own website for voter registration. I did discuss your letter with the Board, and asked Association counsel to help prepare the language in the disclaimer. With the exception of the Board, no member had access to your letter prior to mailing.

However, I did receive a few phone calls about an email which contained some of the same information that was in your letter. I believe that some members of the Board received similar calls as well. In response to those calls, the executive committee asked me to add language to the insert, clarifying the reserve amount, the make-up of the committee and that only local non-profit groups could receive funds.

Sincerely,
Ivan Holler

From: Nick Krnich <nick@ranchosantafe.org>
Date: Tue, 01 Apr 2014 14:25:52 -0700
To: Ivan <ivan@ranchosantafe.org>
Cc: Philip Wilkinson <phil@ranchosantafe.org>, Jerry Yahr <jerry@ranchosantafe.org>, Rochelle Putnam <rochelle@ranchosantafe.org>, Craig McAllister <craig@ranchosantafe.org>, Heather Slosar <heather@ranchosantafe.org>, Larry Spitcaufsky <larry@ranchosantafe.org>, Ann Boon <ann@ranchosantafe.org>
Conversation: Rancho Santa Fe Association Disclaimer
Subject: Re: Rancho Santa Fe Association Disclaimer

Mr. Holler,

I appreciate the Boards concern and responsiveness to other members calls. I would have appreciated the same service, respect and courtesy. After all it was my message not the Associations. I responded to the same members concerns you heard and made corrections to my email. I would have done the same with the mailing.

I believe other members agenda/influence biased the Board/Associations handling of this matter. Therefore, I will be forced to do my own mailings in the future to ensure that the integrity of my message is not compromised.

Sincerely,

Nick Krnich

From: Ivan <[REDACTED]>
Date: May 1, 2014 at 12:16:32 PM HST
To: Nick Krnich <[REDACTED]>

Cc: Craig McAllister <[REDACTED]>, Heather Slosar <[REDACTED]>, Larry Spitcaufsky <[REDACTED]>, Rochelle Putnam <[REDACTED]>, Jerry Yahr <[REDACTED]>, Phil Wilkinson <[REDACTED]>, Ann Boon <[REDACTED]>
Subject: RE: "Appearance of Bias for Member Communications"

Dear Mr. Krnich,

Attached, please find responses to the questions contained in your email. My responses are in *italic* font after each question.

Thanks,
Ivan Holler
Rancho Santa Fe Association

Mr. Holler,

Thank you for your response to my initial questions. In reviewing your responses, I have the following questions and requests:

1. The accurate statement is that 24% of members supported the Garden Club, not 85%. As someone who has a duty to not mislead our community, an assertion that 85% of residents supported the Garden Club purchase is grossly misleading.

As I previously indicated, I agree that their mailer should have said approximately 85% people who voted in the election supported the Garden Club purchase, instead of 85% of residents. I did not catch the language at that time, which was my error.

a. I request that a correction and clarification be communicated to the members of the community as soon as possible.

Any statement would be at the discretion of the Board.

2. You made more than a correction to my statement that the reserve requirement was \$400k (a number used by the finance committee in their February 26th meeting ... still not sure where you got the \$310,000 figure). You added to your disclaimer that, "proceeds from the sale will be distributed to local non-profit groups through a committee comprised of Board members from RSF Association, the Garden Club and the RSF Foundation." You did not ask me permission to add this information.

a. Is it standard protocol to add additional information you deem appropriate?

Adding this clarification to the insert was done at the direction of the executive committee, in response to member concerns over an e-mail that you distributed with the same language that was in the letter. Based on the specific clarification and circumstance, clarifying language is appropriate.

b. Why didn't you ask me for permission?

This clarification was added after your letter had been printed and delivered to the mailing house.

3. Proposition 13 has nothing to do with the way HOA fees are allocated. The statement that the fees are "consistent with state law" is grossly misleading and would lead a reasonable person to believe that the fees are assessed to comport with the requirements of Proposition 13.

a. Why would there be any mention of Proposition 13, which has absolutely no bearing on the assessment of HOA fees?

The Association's assessment methodology is based on the assessed valuation of a property. Proposition 13 created the method currently used in California to assess the value of real property. The Association's annual assessments are therefore in lockstep with the annual real property assessments under Proposition 13. That's the connection between the Association's assessments and Proposition 13.

b. I request that a correction and clarification be communicated to the members of the community as soon as possible.

Any statement would be at the discretion of the Board.

4. The assertion made by your communications (which shall always be made in the interest of informing the community, not advocacy) said that the purchase was "thoroughly vetted." Many community members who have followed this transaction closely have asked me when did the Finance Committee make a recommendation to the Board?

a. The Board voted on the purchase of the Garden Club on February 6th. How did the discussion by the Finance committee at the February 26th meeting inform that vote?

According to the Treasurer, the Finance Committee discussed the Garden Club purchase on several occasions over the past year. The Board also discussed the Garden Club purchase on several occasions, both in executive session and in regular session. The Finance Committee is not required to make a formal recommendation to the Board on whether to purchase property.

b. Aside from the Finance Committee's February 26th minutes, I request all Associational communications related to the vetting of the Garden Club purchase.

We will provide minutes of Board actions from all regular session meetings where the Garden Club was on the agenda by May 7, 2014.

5. I understand that you discuss all requests for mailings and information with counsel and the board. However, it is not clear to me why, given the time it took to review and deliver my letter, there was not ample time to communicate to me any concerns you or the Board had and give me an opportunity to correct any information.

Some of the language in the insert was generally described in a letter to you on March 19, 2014. The additional clarifications were added after your letter had been printed and delivered to the mailing house. Had that not been the case, we would have attempted to contact you directly.

a. I request the names of all counsel and Board members who participated in discussing my letter and the related notice as well as any and all communications made with and among legal counsel and Board members related to my mailing and the attached Association notice.

The full Board and the executive committee discussed the insert. Communications with legal counsel are not subject to disclosure.

b. I also request the written standard protocol for addressing members' requests for communication. If no such protocol is in place, I request that one be implemented immediately.

The process is for the manager to review the mailing, and refer it to legal counsel for their review. The manager also provides the mailing to the Board President, executive committee or the full Board for their review as well. The manager then replies to the member regarding the mailing and instructions for the mailing.

6. Further, with respect to your notice, the disclaimer went far beyond matters of clarification. You stated in your letter that: "the Association has not independently verified whether the registration forms on the members websites are accurate. Association membership cannot be updated through third party websites."

a. The registration form was a copy of the exact form provided by the Association. Given the time and diligence you took to review the information in my letter, why was this not readily apparent to the Board? Why didn't you ask me if I used the actual registration forms rather than provide information that would lead a reasonable person to believe I created my own forms?

The Association had never encountered a third party website offering members an option for registration. We also wanted to clearly inform members that information cannot be updated through any third party website. Finally, we recognize that information on websites can easily change, and the Association is not in a position to routinely monitor your website for accuracy.

b. My website does not suggest that anyone update their information through the website itself. What is the necessity for this additional assertion on the notice?

To avoid confusion on the part of the members.

c. According to an Internet website archiving service (<https://web.archive.org/web/20140108142658/http://www.rsffassociation.org/index2.html>), voter registration forms were not offered by the Association online until after I presented the board with my communication.

i. A reasonable person would believe that these forms were made available prior to me creating the registration website and paying for the Association to deliver my communication to the members of our community.

ii. In light of the purpose of my letter (to increase voter registration) why didn't you inform me that the Association decided to make registration forms available online?

At many Board meetings during the past few months, the Board has unanimously encouraged increased voter registration and has directed staff to take various actions to accomplish such goal, including notices and mailings. In this vein, the Board also directed staff to make registration forms available on the Association website as a service to the members. Although the Association's posting of the voter registration form online may have occurred after you activated your website, the Board's push for increased voter registration began around the same time.

7. Finally, you sent a lengthy letter along with the actual Garden Club ballot. There are several omissions in that letter regarding important information relating to the purchase. For example, there is no mention of the \$310,000 reserve requirement, an amount that represents an additional 12% over the purchase price.

a. Is it your position that this is not critical information for our members to cast an informed vote?

Although the initial reserve requirement is important, the \$310,000 will remain on the Association's books as a transfer from the Community Enhancement Fund to restricted reserves. We will however, need to budget for the \$50,000 annual reserve requirement.

Thank you for a timely response. I am copying the Board and request that his topic to be discussed by the Board in open session.

From: Nick Krnich <[REDACTED]>

Date: Fri, May 2, 2014 at 5:19 PM

Subject: Re: Unfair Practices

To: Ivan <[REDACTED]>

Cc: Philip Wilkinson <[REDACTED]>, Jerry Yahr <[REDACTED]>, Rochelle Putnam <[REDACTED]>, Craig McAllister <[REDACTED]>, Heather Slosar <[REDACTED]>, Larry Spitcaufsky <[REDACTED]>, Ann Boon <[REDACTED]>

Mr. Holler,

I want to preface this response by addressing some information I heard regarding disturbing comments made by a Board Member at the previous Board meeting. I was told that she said that voter registration forms that appeared to have been downloaded from my website were destroyed.

(1) Is this true?

(2) If this was an attempt at humor, where is the jest derived?

(3) What is the protocol for handling inaccurate or incomplete registration forms?

(4) What is the status of any inaccurate or incomplete forms that may have been received by the Board?

I have taken my efforts to register voters very seriously. In that regard, over 190 members, whom you work for, downloaded a registration form from my website. We should not joke about denying such a significant portion of the electorate their right to participate in our government. We still have another 600 members that cannot exercise their right to vote.

Further, your responses (in red below) to my previous set of questions were, at the very least, vague. An impartial eye might observe them balancing on the ledge of willful disregard of the actual questions being asked.

I have asked simple questions that that deserve direct answers. Please respond to my renewed questions, requests, and comments that I have written in green below.

Thank you for your response to my initial questions. In reviewing your responses, I have the following questions and requests:

1. The accurate statement is that 24% of members supported the Garden Club, not 85%. As someone who has a duty to not mislead our community, an assertion that 85% of residents supported the Garden Club purchase is grossly misleading.

As I previously indicated, I agree that their mailer should have said approximately 85% people who voted in the election supported the Garden Club purchase, instead of 85% of residents. I did not catch the language at that time, which was my error.

(1) What, if any, steps have been taken to remedy the misleading statement?

a. I request that a correction and clarification be communicated to the members of the community as soon as possible.

Any statement would be at the discretion of the Board.

You, as the acting manager, communicate with members such as myself on behalf of the Board. Implied in my request is that you make the aforementioned request to the Board on my behalf. In light of your position, your rather peculiar response leads to the following questions. Please answer the questions and perform the requests specifically in your capacity as the acting manager and in light of the fiduciary duties that accompany such a position:

(1) Have you communicated my request to the Board?

(2) If not, why not?

(3) If not, please request that the Board take actions to correct the communication immediately.

(4) If you did communicate the request to the Board, please provide the names of all Board members who received the request and their response(s).

2. You made more than a correction to my statement that the reserve requirement was \$400k (a number used by the finance committee in their February 26th meeting ... still not sure where you got the \$310,000 figure). You added to your disclaimer that, "proceeds from the sale will be distributed to local non-profit groups through a committee comprised of Board members from RSF Association, the Garden Club and the RSF Foundation." You did not ask me permission to add this information.

a. Is it standard protocol to add additional information you deem appropriate?

Adding this clarification to the insert was done at the direction of the executive committee, in response to member concerns over an e-mail that you distributed with the same language that was in the letter. Based on the specific clarification and circumstance, clarifying language is appropriate.

In your circuitous response to my Question in item #7 below, your answer seems to imply that you didn't find it appropriate to add a material term of the sale to the letter that accompanied the Garden Club ballot.

The information you added to my communication did not relate to any matter or potential ambiguity contained in my communication.

In light of the requirements of California Civil Code Section 5105, what "concerns" did the executive committee use to justify the "appropriateness" of the additional information?

Further, because of the obfuscation in your response to my question in item 1(a), I am specifically requesting that you ask the executive committee for the concerns and provide them to me.

b. Why didn't you ask me for permission?

This clarification was added after your letter had been printed and delivered to the mailing house.

This is not an answer to my question. What you have done is provided me a timeline, not an answer. To add to your timeline, this clarification was added after the Board took 10 days to review and approve my letter. Let me reiterate the question and ask another:

(1) Why didn't you ask me for permission?

(2) If you or the Board or the executive committee did not believe you needed my permission, why did you not, at the least, inform me that the clarification would accompany my letter?

3. Proposition 13 has nothing to do with the way HOA fees are allocated. The statement that the fees are "consistent with state law" is grossly misleading and would lead a reasonable person to believe that the fees are assessed to comport with the requirements of Proposition 13.

a. Why would there be any mention of Proposition 13, which has absolutely no bearing on the assessment of HOA fees?

The Association's assessment methodology is based on the assessed valuation of a property. Proposition 13 created the method currently used in California to assess the value of real property. The Association's annual assessments are therefore in lockstep with the annual real property assessments under Proposition 13. That's the connection between the Association's assessments and Proposition 13.

*Your answer provides an explanation of **relevance**, not **reliance**. The statement regarding Proposition 13 implied that the assessment was **reliant** on California law.*

As you, the Board, and/or the executive committee articulated in your answer to my question in Item #2, clarifications are often necessary in order to provide members clear and accurate information.

Can you understand why some members, including myself, perceive a bias among those acting on behalf of the Association?

b. I request that a correction and clarification be communicated to the members of the community as soon as possible.

Any statement would be at the discretion of the Board.

You, as the acting manager, communicate with members such as myself on behalf of the Board. Implied in my request is that you make the aforementioned request to the Board on my behalf. In light of your position, your rather peculiar response leads to the following questions. Please answer the questions and perform the requests specifically in your capacity as the acting manager and in light of the fiduciary duties that accompany such a position:

- (1) Have you communicated my request to the Board?*
- (2) If not, why not?*
- (3) If not, please request that the Board take actions correct the communication immediately.*
- (4) If you did communicate the request to the Board, please provide the names of all Board members who received the request and their response(s).*

4. The assertion made by your communications (which shall always be made in the interest of informing the community, not advocacy) said that the purchase was “thoroughly vetted.” Many community members who have followed this transaction closely have asked me when did the Finance Community make a recommendation to the Board?

a. The Board voted on the purchase of the Garden Club on February 6th. How did the discussion by the Finance committee at the February 26th meeting inform that vote?

According to the Treasurer, the Finance Committee discussed the Garden Club purchase on several occasions over the past year. The Board also discussed the Garden Club purchase on several occasions, both in executive session and in regular session. The Finance Committee is not required to make a formal recommendation to the Board on whether to purchase property.

The assertion made in your communication was that the purchase was “thoroughly vetted.” In light of your answer:

- (1) Did the finance committee make a formal recommendation?
- (2) Wouldn't “thorough vetting” include input and a recommendation by the finance committee?
- (3) If not, who “thoroughly vetted” the purchase?
- (4) What steps, beyond “a discussion” were taken to “thoroughly vet” the purchase?

b. Aside from the Finance Committee's February 26th minutes, I request all Associational communications related to the vetting of the Garden Club purchase.

We will provide minutes of Board actions from all regular session meetings where the Garden Club was on the agenda by May 7, 2014.

Please provide the minutes immediately pursuant to the following CA State law:

Civil Code §4935. Executive Session Meetings.

(e) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

See: **Civil Code §4935**<http://www.davis-stirling.com/MainIndex/Statutes/CivilCode4935/tabid/3779/Default.aspx#ixzz30ZrSqqjO>

5. I understand that you discuss all requests for mailings and information with counsel and the board.

However, it is not clear to me why, given the time it took to review and deliver my letter, there was not ample time to communicate to me any concerns you or the Board had and give me an opportunity to correct any information.

Some of the language in the insert was generally described in a letter to you on March 19, 2014. The additional clarifications were added after your letter had been printed and delivered to the mailing house. Had that not been the case, we would have attempted to contact you directly.

Again, this is not an answer to my question. What you have done is provided me a timeline, which leads to a few natural questions.

- (1) Why didn't you inform me of the disclaimer and give me an opportunity to address the clarifications and/or reprint the letter?*
- (2) If you or the Board or the executive committee did not believe you needed to give me that opportunity, why did you not, at the least, inform me that the clarification would accompany my letter?*

a. I request the names of all counsel and Board members who participated in discussing my letter and the related notice as well as any and all communications made with and among legal counsel and Board members related to my mailing and the attached Association notice.

The full Board and the executive committee discussed the insert. Communications with legal counsel are not subject to disclosure.

I have confirmed that more than one member of the Board was not involved in the discussion of the disclosure. I hereby request that you inform ALL board members of the existence and the substance of all aforementioned communications pursuant to California law articulated below:

No Director Confidences. Because the attorney acts as legal counsel for the corporation rather than individual directors, the attorney generally cannot agree to keep communications with one director secret from other directors.

See: **HOA Attorney**<http://www.davis-stirling.com/tabid/1460/Default.aspx#ixzz30ZozM2xO>

b. I also request the written standard protocol for addressing members' requests for communication.

If no such protocol is in place, I request that one be implemented immediately.

The process is for the manager to review the mailing, and refer it to legal counsel for their review. The manager also provides the mailing to the Board President, executive committee or the full Board for their review as well. The manager then replies to the member regarding the mailing and instructions for the mailing.

I asked if this protocol was written in writing. Is it? If so, where can I find it?

If not, as the acting manager, please communicate my request to the Board immediately.

6. Further, with respect to your notice, the disclaimer went far beyond matters of clarification. You stated in your letter that: "the Association has not independently verified whether the registration forms on the members websites are accurate. Association membership cannot be updated through third party websites."

a. The registration form was a copy of the exact form provided by the Association. Given the time and diligence you took to review the information in my letter, why was this not readily apparent to the Board? Why didn't you ask me if I used the actual registration forms rather than provide information that would lead a reasonable person to believe I created my own forms?

The Association had never encountered a third party website offering members an option for registration. We also wanted to clearly inform members that information cannot be updated through any third party website. Finally, we recognize that information on websites can easily change, and the Association is not in a position to routinely monitor your website for accuracy.

Again, this is not an answer to my question. What you have done is provided me a restatement of your rationale without addressing the following questions:

(1) Why didn't you inform me of the disclaimer and give me an opportunity to address the clarifications and/or reprint the letter?

(2) If you or the Board or the executive committee did not believe you needed to give me that opportunity, why did you not, at the least, inform me that the clarification would accompany my letter?

b. My website does not suggest that anyone update their information through the website itself.

What is the necessity for this additional assertion on the notice?

To avoid confusion on the part of the members.

Your statement is more likely to confuse members into thinking that I was asking them to update their information from my website. This is not a question, but a statement. Your answer is confusing.

Please explain the potential for confusion more specifically.

c. According to an Internet website archiving service (<https://web.archive.org/web/20140108142658/http://www.rsfaassociation.org/index2.html>), voter registration forms were not offered by the Association online until after I presented the board with my communication.

i. A reasonable person would believe that these forms were made available prior to me creating the registration website and paying for the Association to deliver my communication to the members of our community.

ii. In light of the purpose of my letter (to increase voter registration) why didn't you inform me that the Association decided to make registration forms available online?

At many Board meetings during the past few months, the Board has unanimously encouraged increased voter registration and has directed staff to take various actions to accomplish such goal, including notices and mailings. In this vein, the Board also directed staff to make registration forms available on the Association website as a service to the members. Although the Association's posting of the voter registration form online may have occurred after you activated your website, the Board's push for increased voter registration began around the same time.

You did not answer my question. You added information to my communication on behalf of the Association. I paid for the communication, not the Association. In light of Section 5105 of the California Civil Code, please answer the following question directly:

- (1) Who directed you to include information outside the scope of a disclaimer?
- (2) Why did you not inform me that information outside the scope of a disclaimer would be added to my communication?

7. Finally, you sent a lengthy letter along with the actual Garden Club ballot. There are several omissions in that letter regarding important information relating to the purchase. For example, there is no mention of the \$310,000 reserve requirement, an amount that represents an additional 12% over the purchase price.

a. Is it your position that this is not critical information for our members to cast an informed vote?

Although the initial reserve requirement is important, the \$310,000 will remain on the Association's books as a transfer from the Community Enhancement Fund to restricted reserves. We will however, need to budget for the \$50,000 annual reserve requirement.

You did not answer the question. According to the Court, "... the imposition of a duty is ultimately a question of fairness and the inquiry involves a weighing of the relationship of the parties, the nature of the risk, and the public interest in the proposed solution [citations]." (Totten v. More Oakland Residential Housing Inc. (1976) 63 Cal.App.3d 538, 545 [134 Cal.Rptr. 29].)

See: Kovich v. Paseo del Mar<http://www.davis-stirling.com/MainIndex/CaseLaw/KovichvPaseodelMar/tabid/833/Default.aspx#ixzz30ZxbrV97>

I'll ask the question another way: Do you think it was FAIR not to include this information in the letter that accompanied the ballot which asked members to decide if they wanted to spend their Association dues on the purchase of the building?

Thank you for a timely response. I am copying the Board and request that his topic to be discussed by the Board in open session.

Sincerely,

Nick Krnich