

The Cynthia D. Olsen Recall Election Primer

“Primer” - a small introductory book on a specific subject.

Port of Tahuya Commissioner Olsen is facing a recall election on August 16th 2005. In facing this recall election, Commissioner Olsen is reaping the harvest of misconduct she has sown.

The material that follows will help those that are interested more fully understand the recall process that is under way and why Commissioners Olsen is facing recall.

How can a citizen remove from office an elected public officer that is violating the law?

Under Washington State Law one or more legal voters, individually, or on behalf of an organization, are given the opportunity to attempt to remove an elected public officer, for cause, from office before the officer’s term of office expires. This removal process is known as “Recall”. One of the last steps in the process is a “Recall Election”. For those wanting more information than presented in this article, the detailed Recall law can be found under RCW 29A.56.

Washington State law allows a registered voter of the state, or of any political subdivision thereof, to file an application for recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution.

To successfully accomplish the removal from office of an elected public officer before the officer’s term of office expires, requires successful navigation by petitioner of a rigorous set of legal processes, conditions and criteria. A further deterrent to recalls is that they are sometimes both expensive and time consuming.

There is another reason recall elections rarely occur. Most public officers are realists. When confronted with violations of law that can lead to removal from office, and even more severe consequences, they practice damage control. They very quickly size up what they stand to lose by denial and stonewalling vs. what they have to gain by accepting responsibility and then resigning; often stating they have resigned “for personal reasons”. If the public officer has real grace, he/she might even apologize to the voters and even accept responsibility for his/her conduct and actions. If done early enough, and if done sincerely enough, this often is the end of the matter. And in this way the ex-public officer may get a chance at some future date and time to redeem his/her reputation with the public. Obviously Commissioner Olsen is not a realist.

For the above reasons, recalls do not often occur. The last recall election in Mason County occurred almost two decades ago.

An elected public officer can be recalled for one or more of the following charges:

An act or acts of malfeasance and/or

An act or acts of misfeasance and/or

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A violation of the oath of office and/or
Has been guilty of any two or more of the acts specified in the Constitution
(Washington State's) as grounds for recall.

Definitions:

- (1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
 - (a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and
 - (b) Additionally, "malfeasance" in office means the commission of an unlawful act;
- (2) "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

Any voter (petitioner) wishing to initiate the recall process prepares a typewritten charge as defined by law including such items as the name of the elected public officer, his/her title, and the charge or charges believed to be grounds for recall. Said voter must sign the charge under oath stipulating the charge or charges are believed to be true and said voter has knowledge of the alleged facts upon which the stated charges for recall are based.

For an officer elected from within Mason County, such as a Port of Tahuya Commissioner, the typewritten recall charge works its way through the Mason County Auditor, then the Mason County Prosecuting Attorney and finally on to the Mason County Superior Court. A superior court judge conducts a recall hearing. The first purpose of the recall hearing is to determine whether the act(s) stated in the charge are factually and legally sufficient so as to satisfy the criteria for which a recall petition may be created and the recall process continued. The second purpose of the hearing is to determine the adequacy of the potential ballot synopsis created by the Prosecuting Attorney from the charge prepared by the person demanding recall.

In making its decision as to whether the act or acts are factually and legally sufficient, the law states **“The court shall not consider the truth of the charges, but only their sufficiency.”** Please read this again!

What this means is the court does not decide on whether or not the recall process shall be allowed to continue based on the truth of the recall charges. The charges only need to be sufficient. If the charges pass the superior court's sufficiency test – the recall election process is allowed to continue. Further, if the court determines the charges are sufficient, it does not mean the court has found the elected public official guilty of the recall charges spelled out in the recall synopsis.

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If the charges do not pass the superior court's sufficiency test, the superior's court's decision terminates the recall process, unless the voter requesting recall appeals the lower court's decision to the Washington State Supreme Court. Whether appealed or not, this does not mean the elected public official has been found innocent of the charges spelled out in the recall synopsis.

If the Superior Court's decision is appealed, regardless of how the Supreme Court rules, it does not mean that the elected public officer has been found either innocent or guilty of said recall charges.

A recall election is a legal process that places the fate of the elected public officer in the hands of the voter instead of in the hands of the court. At the end of the day, the voters that elected the public officer in the first place determine, through the recall election process, whether to retain or remove the previously elected public officer. If a simple majority of those voting in the recall election vote to remove from office the previously elected officer, then he/she is removed from office. Otherwise, said officer retains his/her elected office.

Assuming the court finds sufficiency for the recall process to continue, the petitioner must create a Recall Petition as defined by law and obtain a percentage of signatures of registered voters that voted for the public officer during said officer's last election. The petitioner has a fixed amount of time in which to obtain the required number of registered voter signatures. Assuming this all happens, a recall election will be set.

Applying the above paragraph to Commissioner Olsen's Recall Petition, and based on the size of the Port District of Tahuya, it means the petitioner needs to obtain at least 35% of 294 votes, or 103 valid signatures of registered voters, for Commissioner Olsen's recall election to be held. The petitioner must obtain these signatures within 180 days after the issuance of a ballot synopsis by the superior court. (Petitioner obtained 155 signatures in approximately 10 days of which 140 were found to be valid by the County Auditor & a recall election has therefore been set. However, I am getting ahead of myself.)

As it turns out, Commissioner Olsen has committed dozens of acts that qualify as recallable charges. Unfortunately for the taxpayers and voters, Commissioner Olsen is what one could call "target rich" when it comes to acts and charges available for recall. Even more unfortunate for the taxpayers and voters, Commissioner Olsen refused, and continues to refuse to this very day, to either "clean up her act" or to resign. By last August 2004, it was decided that recalling Commissioner Olsen was long overdue. Counsel was hired. Counsel reviewed some of the alleged illegal acts; i.e. recallable charges. The most obvious and glaring recallable act and charge was a conflict of interest violation dealing with indemnification. Let's take a brief look at it.

The indemnification matter became paramount in Commissioner Olsen's mind because she and her husband had personally been sued for alleged violations of the State of Washington's Open Public Meetings Act – RCW 42.30. No problem. The Port of

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Tahuya provides insurance coverage for its commissioners to protect them from personal financial damage from lawsuits such as these. Only there was a problem. Commissioner Olsen tendered her claim to the insurance company and on April 22nd 2004 the insurance company formally notified Commissioner Olsen that said insurance company was refusing to provide coverage. This meant Commissioner Olsen was going to have to pay her own legal expenses.

Why did the insurance company refuse to provide a paid for defense for the lawsuit filed against Commissioner Olsen?

Quoted below are two of the five reasons given by the insurance company as to why they refused Commissioner Olsen's claim:

“This coverage does not apply to personal injury arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the Member.”

“This coverage does not apply to any Public Officials' Errors and Omission for any claim or Suit made against a Member arising, whole or in part, out of the willful violation of a penal code or ordinance committed by or with the knowledge or consent of any Member.”

The insurance company's reasons for denial are self-explanatory.

As stated earlier, this meant Commissioner Olsen was going to have to pay her own legal fees and expenses. This seems reasonable, but not to Commissioner Olsen.

With the unauthorized and unethical help of the Port's attorney, Commissioner Olsen was advised she had the power to transfer her financial responsibility. She could make the taxpayers pay for her personal lawsuits. The Port's attorney concocted a custom-made self-indemnification scheme for commissioner Olsen. Commissioner Olsen and the Port's attorney subsequently made the first attempt to get it “slipped” by the public, as a non agenda item, during the Port's regularly scheduled May 19th 2004 meeting. All hell broke loose! The indemnification scheme was tabled.

The indemnification scheme was not mentioned again until it was announced there was going to be a special meeting July 9th 2004, and the indemnification scheme was on the agenda. Further, having learned from the May 19th fiasco, the agenda also made clear that no public comment would be permitted during the entire meeting. The meeting was held. No public comment was permitted. The Port's attorney, with Commissioner Olsen's support, ramrodded the indemnification scheme into existence.

Basically, what occurred during the July 9th 2004 indemnification agenda is as follows:

Commissioner Olsen presented a letter of self-review in which she found herself

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to have always acted in good faith as she performed her duties for the Port and to have always acted within the scope of her duties – even though on April 22nd 2004 she was denied insurance coverage for reasons listed above, and even though on June 18th 2004 she had lost in court for not acting in good faith and for not performing within the scope of her duties. Regardless, the July 9th presentation of Commissioner Olsen’s un-sworn letter permitted her to become eligible for indemnification by the Port of Tahuya for her legal fees, expenses and judgments; legal fees, expenses and judgments related to personal lawsuits filed against her for “alleged violations” of law as an elected public officer.

Next, because Commissioner Olsen found herself to be innocent of any wrong doing, she then voted for her own indemnification (a contract between herself and the Port) thereby making it mandatory for the taxpayers to pay the tab for all her legal fees, expenses and judgments associated with her personal current lawsuit and for all legal fees, expenses and judgments associated with any and all future personal lawsuits.

Finally, and again at the taxpayers’ expense, Commissioner Olsen voted to hire herself one of the best lawyers money can buy at \$340 per hour and placed no limits on herself as to what she could spend of the Port’s money for legal fees and expenses.

Petitioner’s attorney recommended that petitioner file a recall charge based on the self-indemnification scheme; a scheme that resulted in a classic case of a conflict of interest – a recallable offense. It was believed at the time that getting this recall charge approved in the required Superior Court recall hearing should be as close as anyone could get to a “slam-dunk”.

As sometimes happens in “slam-dunk” situations, the “ball” bounced off the rim – rather than through the hoop. Let me explain. Both Mason County Superior Court, via visiting Judge Draper of Lewis County, and the Washington State Supreme Court found the conflict of interest charge to lack sufficiency. To Commissioner Olsen’s way of rationalizing, this means she has been found innocent of conflict of interest issues relating to self-indemnification. As explained earlier, this is not true. She was not found innocent. Innocence or guilt can, and only will, be determined by trial at some future date. All the State Supreme Court’s decision means is that petitioner cannot attempt to recall Commissioner Olsen on that particular conflict of interest charge in its present form.

Not wanting to put all of their eggs in one basket, petitioner filed a second recall action, shortly after Judge Draper’s decision, listing two additional causes for recall. The first charge dealt with an alleged act of perjury and the second charge dealt with a **proven** Public Disclosure Act violation. At the Superior Court hearing for this 2nd recall petition, the judge found the perjury charge lacked sufficiency and the second charge to be totally sufficient and therefore eligible to have the requested recall process continue.

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Again, Commissioner Olsen is misinforming the Public by telling them she has been found innocent of perjury. Perjury, like conflict of interest, will be determined at a subsequent trial; a trial that is separate and distinct from the mail-in recall election occurring July 27th 2005 – August 16th 2005. However, Commissioner Olsen is strangely silent when it comes to touting the Public Disclosure Act violation recall charge.

The Public Disclosure Act violation recall charge was actually tried in Mason County Superior Court on June 18th 2004. Mason County Court Judge Sawyer found Commissioner Olsen guilty of violating the Public Disclosure Act. For those interested, see Case Number 03-2-00758-1.

In making their decision as whether or not to vote to recall Commissioner Olsen, the voters of the Port District of Tahuya will not have to wonder whether or not she is guilty of the petitioner's recall charge. On June 18th 2004 a court of law found her guilty of the matter presented in petitioner's recall charge and that is absolute legal proof of the validity of petitioner's recall charge and that is absolute justification for the voters of the Port District of Tahuya to vote to remove Commissioner Olsen from office.

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