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14 KEN TORRE, Court Executive Officer of the Superior Court of
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15 *Exempt from Filing Fees Pursuant to Government Code, § 6103*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF CONTRA COSTA

19
20 DAVID C. COLEMAN, Public Defender, Contra
Costa County

21 Petitioner,

22 v.

23 KEN TORRE, in his capacity as Chief
24 Administrative Officer, CONTRA COSTA
COUNTY SUPERIOR COURT,

25 Respondent.
26
27
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Case No. MSN07-0867

Assigned To Justice Rick Sims

**ANSWER OF RESPONDENT KEN
TORRE TO PETITION FOR WRIT
OF MANDATE**

Action Commenced: June 8, 2007

1 Respondent Ken Torre in answer to the Petition hereby admits, denies and alleges as follows:

2 1. Answering Paragraph 1 of the Petition, Torre admits that the Petition is brought
3 pursuant to California Rules of Court 10.802 and 10.803 and Section 3 of Article I of the
4 Constitution. Torre admits that the records in question pertain to a procurement conducted by the
5 Superior Court of California, County of Contra Costa (the "Superior Court") for a contract for
6 court-appointed counsel services in juvenile dependency cases. Except as expressly otherwise
7 admitted herein, Torre denies each and every allegation contained in Paragraph 1 of the Petition.

8 2. Answering Paragraph 2 of the Petition, Torre admits that Petitioner David C. Coleman
9 is the Public Defender for Contra Costa County. Torre does not admit or deny the allegation that
10 Coleman is a "beneficially interested" party as it constitutes legal argument rather than factual
11 allegations.

12 3. Answering Paragraph 3 of the Petition, Torre denies that he is the "Chief
13 Administrative Officer of the Superior Court of Contra Costa County." He is the Court Executive
14 Officer of the Superior Court. Torre denies that the Superior Court is "an agency of the State of
15 California." The Superior Court is a duly constituted superior court of the State of California
16 pursuant to Article VI of the California Constitution. Torre admits that he has possession and control
17 over some of the documents sought. Except as expressly otherwise admitted herein, Torre denies
18 each and every allegation contained in Paragraph 3 of the Petition.

19 4. Answering Paragraph 4 of the Petition, Torre denies that he is the "Chief
20 Administrative Officer of the Superior Court of Contra Costa County." He is the Court Executive
21 Officer for the Superior Court of Contra Costa County. Torre does not deny or admit the remaining
22 allegations in this paragraph as they constitute legal argument rather than factual allegations.

23 5. Answering Paragraph 5 of the Petition, Torre admits that Exhibit A to the Petition is a
24 Request for Proposals issued by the Superior Court. Torre does not admit or deny the allegations
25 regarding the content of this Exhibit A on the ground that the exhibit speaks for itself.

26 6. Answering Paragraph 6 of the Petition, Torre does not admit or deny the allegations
27 regarding the content of the websites cited in this paragraph on the ground that the websites speak for
28 themselves.

1 7. Answering Paragraph 7 of the Petition, Torre does not admit or deny the allegations
2 regarding the content of Exhibits A and B to the Petition on the ground that the exhibits speak for
3 themselves. Torre does not admit or deny the remaining allegations in Paragraph 7 because they are
4 not sufficiently clear or specific to allow a substantive response.

5 8. Answering Paragraph 8 of the Petition, Torre admits that Exhibit A to the Petition is a
6 copy of a Request for Proposals issued by the Superior Court. Torre does not admit or deny the
7 allegations regarding the content of this Exhibit A on the ground that the exhibit speaks for itself.

8 9. Answering Paragraph 9 of the Petition, Torre admits that Exhibit C to the Petition is a
9 copy of the April 6, 2007, letter from Coleman to Torre. Torre does not admit or deny the allegations
10 regarding the content of this Exhibit A on the ground that the exhibit speaks for itself.

11 10. Answering Paragraph 10 of the Petition, Torre lacks information or knowledge and on
12 that basis denies the allegations regarding what motivated Coleman to write a letter to Torre. Torre
13 admits that Exhibit D is a copy of the April 17, 2007, letter from Coleman to Torre. Torre does not
14 admit or deny the allegations regarding the content of this Exhibit D on the ground that the exhibit
15 speaks for itself.

16 11. Answering Paragraph 11 of the Petition, Torre admits that Exhibit E is a copy of the
17 April 17, 2007, letter from Torre to Coleman. Torre does not admit or deny the allegations regarding
18 the content of this Exhibit E on the ground that the exhibit speaks for itself.

19 12. Answering Paragraph 12 of the Petition, Torre admits that Exhibit F is a copy of the
20 April 18, 2007, letter from Torre to Coleman. Torre does not admit or deny the allegations regarding
21 the content of this Exhibit F on the ground that the exhibit speaks for itself.

22 13. Answering Paragraph 13 of the Petition, Torre admits that Exhibit G contains copies
23 of newspaper accounts. Torre does not admit or deny the allegations regarding the content of this
24 Exhibit G on the ground that the exhibit speaks for itself.

25 14. Answering Paragraph 14 of the Petition, Torre denies the allegations contained in this
26 paragraph.

27 15. Answering Paragraph 15 of the Petition, Torre does not deny or admit the allegations
28 in this paragraph as they constitute legal argument rather than factual allegations.

1 Torre alleges the affirmative defenses set forth below:

2 First Affirmative Defense

3 (Failure to State a Claim)

4 (As to All Causes of Action)

5 16. As a separate and distinct affirmative defense to the Petition, Torre alleges that the
6 Petition fails to state any claim.

7 Second Affirmative Defense

8 (Lack of Subject Matter Jurisdiction Pursuant to Rule 10.803 of the California Rules of Court)

9 (As to All Causes of Action)

10 17. As a separate and distinct affirmative defense to the Petition, Torre alleges that this
11 Court lacks subject matter jurisdiction to hear Coleman's claim to the extent that Coleman relies on
12 the procedure outlined in rule 10.803 of the California Rules of Court to claim that the California
13 Constitution or common law requires disclosure of the documents he seeks.

14 Third Affirmative Defense

15 (Preemption)

16 (As to All Causes of Action)

17 18. As a separate and distinct affirmative defense to the Petition, Torre alleges that
18 California Government Code section 77206 and rule 10.802 of the California Rules of Courts
19 preempt Petitioner's claim that California common law requires disclosure of the documents he
20 seeks.

21 Fourth Affirmative Defense

22 (No Cause of Action under California Constitution)

23 (As to All Causes of Action)

24 19. As a separate and distinct affirmative defense to the Petition, Torre alleges that
25 Petitioner has no cause of action under the California Constitution to obtain the documents he seeks.
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1 Fifth Affirmative Defense

2 (No Cause of Action under Public Records Act)

3 (As to All Causes of Action)

4 20. As a separate and distinct affirmative defense to the Petition, Torre alleges that
5 Petitioner has no cause of action under the California Public Records Act to obtain the documents he
6 seeks.

7 Sixth Affirmative Defense

8 (Privacy)

9 (As to All Causes of Action)

10 21. As a separate and distinct affirmative defense to the Petition, Torre alleges that Article
11 I, section 1 of the California Constitution precludes disclosure of certain of the documents Petitioner
12 seeks because disclosure of such documents would be an unwarranted invasion of privacy.

13 Seventh Affirmative Defense

14 (Privilege)

15 (As to All Causes of Action)

16 22. As a separate and distinct affirmative defense to the Petition, Torre alleges that certain
17 of the of the documents Petitioner seeks are privileged from disclosure, including without limitation
18 privilege protecting disclosure that would improperly intrude upon the deliberative process.

19 PRAYER FOR RELIEF¹

20 WHEREFORE, Torre prays that:

- 21 1. This Court denies the Petition for a peremptory writ of mandate;
22 2. This Court denies the Petition for an alternative writ of mandate;
23 3. This Court order that Petitioner take nothing by his action;
24 4. This Court dismiss this case and enter judgment in favor of Torre;
25 5. This Court award to Torre his costs in this proceeding; and

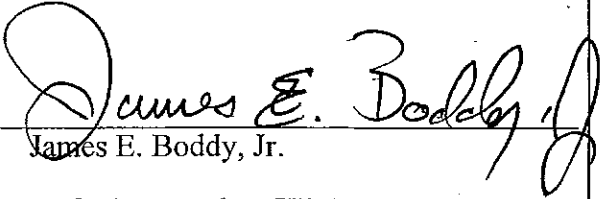
26 _____
27 ¹ Respondents as public entities are not required to file verifications pursuant to C.C.P.
28 section 446(a). (See *Murrietta Valley Unified School Dist. v. County of Riverside* (1991) 228
Cal.App.3d 1212, 1221-1223)

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6. This Court grant Torre such other and further relief as it deems just and proper.

Dated: August 3, 2007

MORRISON & FOERSTER LLP

By: 
James E. Boddy, Jr.

Attorneys for Respondent KEN TORRE, Court
Executive Officer of the Superior Court of
California, County of Contra Costa

1 **PROOF OF PERSONAL SERVICE**
2 **(Code Civ. Proc. secs. 1011, 2015.5)**

3 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is
4 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause; I am
5 over the age of eighteen years; and I am readily familiar with Morrison & Foerster's practice for the
6 collection and processing of documents for hand delivery and know that in the ordinary course of
Morrison & Foerster's business practice the document(s) described below will be taken from
Morrison & Foerster's mailroom and hand delivered to the document's(s') addressee (or left with an
employee or person in charge of the addressee's office) on the same date that it is placed at
Morrison & Foerster's mailroom.

7 I further declare that on the date hereof I served a copy of:

8 **ANSWER OF RESPONDENT KEN TORRE TO PETITION FOR**
9 **WRIT OF MANDATE**

10 on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows
11 for collection and delivery at the mailroom of Morrison & Foerster LLP, 425 Market Street, San
Francisco, California 94105-2482, in accordance with Morrison & Foerster's ordinary business
practices:

12 **David C. Coleman** **Petitioner**
13 **Public Defender**
14 **Contra Costa County**
15 **800 Ferry Street**
Martinez, California 94553
(925) 335-8000

16 I declare under penalty of perjury under the laws of the State of California that the above is
17 true and correct.

18 Executed at San Francisco, California, this 3rd day of August, 2007.

19
20
21 **Brenda Fuller**

22 (typed)

(signature)