

6/17/10 9:00am L73

1 JONES & MAYER  
2 Jeremy Rytky, Esq., SBN 252679  
3 3777 North Harbor Boulevard  
4 Fullerton, California 92835  
(714) 446-1400; Fax (714) 446-1448  
jjr@jones-mayer.com

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
LAMOREAUX JUSTICE CENTER  
JUN - 4 2010  
ALAN CARLSON, Clerk of the Court  
BY: W. Ellis DEPUTY

5 Attorneys for City of Fullerton

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF ORANGE**

12 In the Matter of the Petition of Fullerton  
13 Observer to Have the Standing of Fullerton  
14 Observer as a Newspaper of General  
15 Circulation Ascertained and Established.

Case No. 30-2010-00357417-PR-OP-LJC

15 **CITY OF FULLERTON,**

**OBJECTION TO PETITION TO  
ASCERTAIN AND ESTABLISH  
STANDING AS A NEWSPAPER OF  
GENERAL CIRCULATION  
[GOVERNMENT CODE § 6022];  
DECLARATION OF BEVERLY  
WHITE IN SUPPORT THEREOF**

16 C Contestant,

17 v.

18 **THE FULLERTON OBSERVER,**

19 Respondent.

Date: June 7, 2010 at 9:00 am  
Dept: L73

ORIGINAL

22 The City of Fullerton alleges:

- 23 1. The City of Fullerton ("City") is a municipal corporation duly organized and  
24 existing under the laws of the State of California.  
25 2. The standing of the Fullerton Observer ("Petitioner" or "Observer") as a  
26 newspaper of general circulation, as defined in Government Code section 6000, for the  
27 City of Fullerton, California, be denied for the reasons stated below.  
28



1 The petition fails to establish that this requirement is met; in addition, the City has reason  
2 to believe the Observer is not actually printed in Fullerton and, as a result, the Observer  
3 fails to meet the statutory definition of a newspaper of general circulation.

4 “Printed” is defined in section 6003 as “the mechanical work of producing it, that is  
5 the work of typesetting and impressing type on paper....” The Court of Appeals has  
6 clarified this definition as the “general mechanical means of multiplying copies of a  
7 newspaper....<sup>5</sup>” Thus, “printing” means the act of reproducing copies of the newspaper.

8 The City is requesting that the petition be denied on the grounds that the Observer is  
9 not printed in Fullerton as required by sections 6000 and 6004.5. While the City does not  
10 know where the physical act of duplicating copies of the Observer takes place, *Petitioner*  
11 *has admitted that the Observer is not printed in Fullerton.*

12 In an email to Fullerton’s City Clerk on February 16, 2010, regarding where the  
13 Observer was printed, Petitioner stated that “[w]e have to go out of town and in fact use  
14 the same out of town printer as the city has been using.” (See attached Declaration of  
15 Beverley White). Based on this admission, the petition should be denied since it is clear  
16 that the Observer does not meet the requirements of section 6000 and 6004.5 in that it is  
17 not actually printed in the Fullerton.

18 In addition, the petition itself is insufficient on its face to establish that the Observer  
19 meets the printing requirement under section 6000. Petitioner claims that it meets the  
20 printing requirement because “the mechanical work of producing the newspaper has been  
21 performed in Fullerton....<sup>6</sup>” But this statement fails to establish that the Observer is  
22 “printed” in Fullerton.

23 Petitioner’s statement fails to establish that the Observer is reproduced, i.e.  
24 “printed”, in the City of Fullerton. Petitioner has simply restated the codified language,  
25 but fails to set forth any specific facts to demonstrate that multiple copies of the Fullerton  
26

27 <sup>5</sup> *In re New-Ledger* (1967) 255 Cal.App. 2d 211, 215.

28 <sup>6</sup> Petition pg. 3, ln 6.

1 Observer are actually produced in the City of Fullerton. Petitioner fails to state the name  
2 and address of the printing company or other information to ascertain the exact location  
3 that printing occurs. This is essential information that is needed in order to make a  
4 determination of whether the Observer qualifies as a newspaper of general circulation  
5 under section 6000.

6 In sum, the City requests that the Court deny Petitioner's request to have the  
7 Observer declared a newspaper of general circulation on the grounds that Observer fails to  
8 meet the requirements of section 6000 and 6004.5 since it is not printed in the City of  
9 Fullerton.

10  
11 **2. The Petition Should Be Denied Because The Observer Is Not Published At**  
12 **Regular Intervals As Required By Section 6000**

13 Another essential requirement under section 6000 is that the newspaper seeking to  
14 be declared a newspaper of general circulation be "printed and published at regular  
15 intervals...." While section 6000 does not state explicitly how often a newspaper needs to  
16 printed and published to meet this requirement, section 6008 sheds light on the legislature  
17 intent regarding this issue.

18 Section 6008 is an alternative method for being declared a newspaper of general  
19 circulation. It does not require that the newspaper be printed and published in the same  
20 city, but it does contain other requirements such as a substantial distribution list of paid  
21 subscribers. One of the common requirements between section 6000 and 6008 is the  
22 requirement that the newspaper be published at regular intervals. In fact, section 6008(a)  
23 states that the newspaper must be "published at regular intervals of *not less than*  
24 *weekly....*<sup>7</sup>" Since both section 6000 and 6008 contain the requirement that a newspaper  
25

26  
27  
28 <sup>7</sup> Emphasis added.

1 of general circulation must be published at regular intervals, it is logical to look at section  
2 6008's weekly interval requirement as the minimum requirement for section 6000 as well.

3 Thus, based on this analysis, the petition should be denied because the Observer is  
4 only printed and published "as a bi-monthly newspaper on Monday every other calendar  
5 week (except only once in January, July and August).<sup>8</sup>"

6 Even if the Court disagrees and finds that the stated language in section 6008 should  
7 not be applicable to section 6000, the petition should still be denied on the grounds that the  
8 Observer is not printed and published at regular intervals because the Observer's is not  
9 printed and published often enough for persons or entities to meet their legal noticing  
10 requirements.

11 For example, if the Observer were found to be a newspaper of general circulation,  
12 the City would be required by law to publish public hearing notices<sup>9</sup> in the Observer and  
13 *would not be able to hold those hearings without this notice.* The City's ability to conduct  
14 public hearings would be seriously restricted because of the Observer's limited publication  
15 schedule, specifically during the months that the Observer is only published once a month.  
16 It is highly unlikely that the Legislature would intend for a local agency to have to plan its  
17 legislative agenda around a bi-monthly/monthly newspaper publication schedule.

18 In sum, the petition should be denied because the Observer is not published at least  
19 once a week which is, arguably, the required interval for publication. Even if this one  
20 week interval is found to be inapplicable, the petition should still be denied on these  
21 grounds since a bi-monthly/monthly publication schedule is simply not often enough for  
22 persons or entities to fulfill their legal noticing requirements.  
23

24  
25 <sup>8</sup> Petition Pg. 3, Ln. 8-9.

26 <sup>9</sup> Section 65090 states that "When a provision of this title requires notice of a public hearing to be given pursuant to  
27 this section, notice shall be published pursuant to Section 6061 in at least one newspaper of general circulation within  
28 the jurisdiction of the local agency which is conducting the proceeding at least 10 days prior to the hearing, or if there  
is no such newspaper of general circulation, the notice shall be posted at least 10 days prior to the hearing in at least  
three public places within the jurisdiction of the local agency." (Emphasis added.)



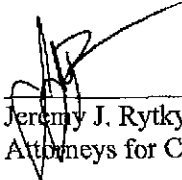
1 requirement that a newspaper of general circulation be printed and published at regular  
2 intervals. Finally, the Observer's petition should be denied because the 598 Fullerton  
3 residents that Petitioner is referring to are not subscribers since they are not actually paying  
4 for the Observer; they are paying for the postage to have it mailed to their homes.

5 **PRAYER**

6 The City prays that the Observer's petition be denied and that the City be awarded  
7 such other and further relief as the Court may deem proper.

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10 Dated: June 3, 2010

Respectfully submitted,  
JONES & MAYER

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Jeremy J. Rytky  
Attorneys for City of Fullerton