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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

ROSS MIRKARIMI, SHERIFF OF THE CITY AND COUNTY OF SAN FRANCISCO,

Petitioner,

vs.

CITY AND COUNTY OF SAN FRANCISCO; ED LEE, MAYOR OF THE CITY AND COUNTY OF SAN FRANCISCO,

Respondents.

Case No. CPF-12-512077

OPPOSITION TO PETITIONER'S MOTION TO DISQUALIFY SAN FRANCISCO CITY ATTORNEY

Hearing Date:	April 19, 2012
Hearing Judge:	Judge Harold E. Kahn
Time:	9:30 a.m.
Place:	Department 302
Date Action Filed:	March 27, 2012
Trial Date:	None

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INTRODUCTION

Petitioner Ross Mirkarimi's motion to disqualify the City Attorney's Office is utterly without merit. The "conflict" that he alleges between the Mayor, the Ethics Commission (the "Commission") and the Board of Supervisors (the "Board") is not a conflict at all. Each of these agencies is a branch of City government, and the City Attorney's Office properly represents them all in its role as legal advisor to the City. Ethical conflicts can arise when an attorney's representation of *one* client would violate the attorney's duty of loyalty or confidentiality to *another* client. Here, the City Attorney's Office has only one client—the City—and the Office can represent multiple City agencies without compromising the City's right to loyalty or confidentiality.

Because the City, and not Petitioner, is the City Attorney's client, Petitioner does not have standing to seek disqualification. To disqualify an opposing party's lawyer, the moving party must have an attorney-client relationship or similar fiduciary relationship with the counsel it seeks to disqualify. Petitioner is not a client of the City Attorney's Office in his personal capacity, and the supposed conflict he alleges has absolutely no bearing on this litigation. Not only does Petitioner's motion fail on the merits, but he lacks standing to bring it.

Petitioner's real concern appears to be the fairness of the official misconduct proceeding—not the City Attorney's role in this litigation—but that concern is ill-founded. As it does in all administrative hearings, the City Attorney's Office has employed a screen that separates the attorneys advising the Mayor from those available to advise the Commission and the Board. Settled law approves the use of these screens, and they are a standard practice in public law offices. The City Attorney's Office routinely uses these screens in hearings as diverse as police discipline cases, property tax appeals, and ethics investigations.

Finally, the gravamen of Petitioner's complaint is mooted by the recent announcement that the Commission and the Board will be represented by outside counsel in Petitioner's official misconduct proceeding. While the law does not require the Commission and the Board to use outside counsel, their decision to do so here should eliminate all of Petitioner's professed concerns. The fact that Petitioner has persisted in this motion, even after appointment of outside counsel for the Commission and the Board, reveals Petitioner's motion for what it is: a tactical maneuver. This motion is

calculated simply to delay the proceedings under the San Francisco Charter for removing Petitioner from the Office of Sheriff for official misconduct, and to drive up the litigation costs borne by San Francisco taxpayers.

Under these circumstances, Petitioner's motion boils down to the claim that the City Attorney's Office is disqualified from all proceedings related to the charges of official misconduct against Petitioner because the Office has advised multiple City departments on this matter. If that were the disqualification rule, innumerable legal proceedings involving City would grind to a halt. Fortunately, it is not the rule.

BACKGROUND

I. THE CITY ATTORNEY'S OFFICE.

The City Attorney's Office is a public law office charged with representing the City in all its facets. Under the City's Charter, the Office serves as legal counsel for all the City's departments, boards and commissions, and also represents all those agencies in court. (*See* Declaration of Jonathan Givner ["Givner Decl."], Ex. A [S.F. Charter § 6.102].) City departments and commissions perform a variety of functions, including managing City programs, adopting and enforcing laws, and adjudicating disputes. While City departments have different roles and duties, they are all part of a single entity—the City—and the City Attorney's Office represents them all in their varied capacities.

Some City commissions, including the Ethics Commission, regularly hold quasi-adjudicative hearings affecting the rights of private parties. (*See* Givner Decl. ¶ 6.) In those circumstances, a City department often assumes the role of prosecutor while a City commission sits in a quasi-judicial capacity. (*See id.* ¶ 7.) Because the City Attorney's Office serves as legal counsel for all City agencies, the Office typically advises both the prosecutor and the adjudicator in such hearings. (*See id.*) One of the City Attorney's Office's responsibilities in those proceedings is to ensure that the parties receive a fair hearing. So, consistent with judicial precedent, the City Attorney's Office employs screens that separate the attorneys representing the prosecuting department from those advising the commission that is hearing the matter. (*See id.*)

II. THE CITY ATTORNEY'S ROLE IN THE OFFICIAL MISCONDUCT PROCEEDINGS INVOLVING PETITIONER.

On March 21, 2012, the Mayor suspended Petitioner from his position as Sheriff and initiated a removal process provided in Section 15.105(a) of the San Francisco Charter. The Mayor's charges were the first step in a process specified in the Charter for removal of elected officials. (*See id.*, Ex. B [S.F. Charter § 15.105].) Under that process, the Commission must hold a hearing on the misconduct charges, forward the transcript of that hearing to the Board, and make a recommendation whether the charges should be sustained. (*Id.*) On the basis of their own deliberations, Board members then vote whether to sustain the charges. (*Id.*) In response to the Mayor's official misconduct charges, the Commission scheduled a preliminary hearing with the parties for April 23, 2012. (*See* Givner Decl. ¶ 5.)

As with any other quasi-judicial proceeding, the City Attorney's Office initially provided advice to all involved City agencies—the Mayor, the Commission and the Board. And consistent with its longstanding protocols, even before the Mayor suspended Petitioner, the City Attorney's Office created two separate teams of lawyers and support staff—one to represent the Mayor and the other to advise the Commission and the Board. (*See id.* ¶ 9.) Those teams are formally screened from each other, so that the attorneys on either side of the screen may not communicate with one another about the substance of the matter. Computer and document management systems prevent attorneys on one side of the screen from having any access to the other side's files or billing records in this matter. (*See id.*) The City Attorney's Office memorialized the screen in writing and distributed it to every employee of the Office. (*See id.* ¶ 10.)

On April 12, 2012, the Commission announced that outside counsel will now advise the Commission and the Board in the official misconduct proceedings. (*See id.* ¶ 11, Ex. C.) Because of the internal screen in the City Attorney's Office, the attorneys advising the Mayor—and representing the City in this writ proceeding—are not aware of the reasons for the decision to retain outside counsel. (*See id.* ¶ 12.) But based on the public memorandum announcing the hiring of outside counsel, it is apparent that representatives of the Commission and the Board decided to retain outside

counsel weeks ago, not in response to the instant motion. (*See id.*, Ex. C; *see also id.*, Ex. D [March 21, 2012 press report referencing Ethics Commission search for outside counsel].)

The City Attorney's Office will continue to represent the Mayor in the official misconduct proceeding and this litigation. (*See id.* ¶ 14.) And the Office will continue to maintain the screen that has been in place for the past month, even though the Office is no longer advising the Commission or the Board. (*See id.*)

III. THE CITY ATTORNEY'S ROLE IN THIS LITIGATION.

Just days after the Mayor filed the official misconduct charges, Petitioner filed a writ petition asking this Court to reverse his suspension and halt the removal process. The City Attorney's Office has only one role in this litigation—defending the Mayor's decision to suspend Petitioner and the City's ability to move forward with the Charter-mandated process. The Commission and the Board are not parties to this proceeding.

To avoid compromising the screen for the official misconduct proceeding, the two separate teams described above have not communicated about the substance of this litigation or Petitioner's disqualification motion. Because the underlying writ proceeding challenges the Mayor's actions, the attorneys representing the City in this action are all on the Mayor's side of the screen.

DISCUSSION

I. MOTIONS TO DISQUALIFY ARE DISFAVORED.

Courts strongly disfavor motions to disqualify counsel. (*See Gregori v. Bank of America* (1989) 207 Cal. App. 3d 291, 300-01 ["[M]otions to disqualify counsel often pose the very threat to the integrity of the judicial process that they purport to prevent."]; *Visa U.S.A. v. First Data Corp.* (N.D. Cal. 2003) 241 F. Supp. 2d 1100, 1104.) While disqualification sometimes protects the public's confidence in the legal system, any motion to disqualify counsel "implicate[s] several important interests," including "a client's right to chosen counsel, an attorney's interest in representing a client, the financial burden on a client to replace disqualified counsel, and the possibility that tactical abuse underlies the disqualification motion." (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1144.) In particular, "disqualification of public sector attorneys should proceed with caution," and "[w]here only speculative or minimal benefit would be obtained by

disqualification of public counsel, the dislocation and increased expense of government is not justified." (*People v. Christian* (1996) 41 Cal. App. 4th 986, 998 [citation and quotations omitted].)

Moreover, "it is widely understood by judges that attorneys now commonly use disqualification motions for purely strategic purposes." (*Dino v. Pelayo* (2007) 145 Cal. App. 4th 347, 352 [quoting *Gregori*, 207 Cal. App. 3d at 301].) Those concerns are particularly apt where, as here, the party seeking disqualification is "attempting to disrupt a case at a critical juncture" or "to increase an opponent's litigation burdens by seeking disqualification only after the challenged counsel performed a substantial amount of work." (*SpeeDee Oil*, 20 Cal.4th at 1144 n.2.)

II. PETITIONER LACKS STANDING TO SEEK DISQUALIFICATION OF THE CITY ATTORNEY'S OFFICE.

In his personal capacity, Petitioner is not a client of the City Attorney's Office, and the Office owes him no fiduciary obligations as legal counsel in connection with these proceedings. He therefore lacks standing to seek disqualification on the basis of a purported conflict. (*See Great Lakes Construction, Inc. v. Burman* (2010) 186 Cal. App. 4th 1347, 1359.) "A complaining party who files a motion to disqualify is required to have standing," namely, an attorney-client or other fiduciary relationship with the challenged attorney. (*Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal. App. 4th 477, 485.) This strict standing requirement "protects against the strategic exploitation of the rules of ethics and guards against improper use of disqualification as a litigation tactic." (*Great Lakes*, 186 Cal. App. 4th at 1358.)

The standing requirement is well settled, and Petitioner cannot avoid it. For example, in *Great Lakes*, the court held that the plaintiffs did not have standing to disqualify the defendants' counsel on the grounds that they were jointly representing several defendants with adverse interests. (*Id.* at 1353.) The court explained that "a moving party must have standing, that is, an invasion of a legally cognizable interest, to disqualify an attorney." (*Id.* at 1357.) But the parties seeking disqualification in *Great Lakes* "were not present clients, former clients, or prospective clients, and they had no prior confidential relationship with opposing counsel." (*Id.* at 1350.) Only the attorney's clients would "be harmed by any breach of the duty of loyalty," and "[i]f either party is getting bad advice in connection with their joint representation, then the issue is between [the attorney] and his clients." (*Id.* at 1359.)

The court did not even consider whether the allegations of a conflict had any merit, simply holding that the plaintiffs had no standing to seek the remedy they sought. (*Id.* at 1358-59.) (*See also Dino*, 145 Cal. App. 4th at 353 ["[S]ome sort of confidential or fiduciary relationship must have existed before a party is entitled to prevail on a motion to disqualify an attorney predicated on the actual or potential disclosure of confidential information."].)

Federal courts in California have repeatedly imposed similar standing requirements. (*See Colyer v. Smith* (C.D. Cal. 1999) 50 F. Supp. 2d 966, 969 [plaintiff lacked standing to disqualify opposing counsel because plaintiff "simply ha[d] no personal stake in the breach of loyalty" that he perceived].) In three recent cases, courts in the Northern District of California rejected disqualification claims against the City Attorney's Office because the moving party was not a client of the San Francisco City Attorney and therefore lacked standing. (*See IMCO, L.L.C. v. Ford* (N.D. Cal. October 27, 2011) 2011 WL 5117265 at *2-3; *Hechavarria v. City and County of San Francisco* (N.D. Cal. Sept. 17, 2010) 2010 WL 3743651 at *1; *Lim v. City and County of San Francisco* (N.D. Cal. May 4, 2010) 2010 WL 1838834 at *2.)

Petitioner does not allege that he has a personal attorney-client or other confidential relationship with the City Attorney's Office—and he plainly does not. Under the Charter, the City Attorney's Office represents and advises the Office of the Sheriff, but it does not represent Petitioner in his individual capacity. While the City Attorney's Office sometimes represents City employees in their personal capacities where the employee is sued for on-the-job conduct (Cal. Gov. Code §§ 995 *et seq.*) or where the Board of Supervisors requests it (S.F. Charter § 6.102(2)), that is not the case here. The City Attorney's Office does not represent Petitioner and does not have a confidential or fiduciary relationship with him relating to the official misconduct charges. Petitioner therefore lacks standing to seek disqualification.

Moreover, the non-existent "conflict" that Petitioner alleges has nothing to do with *this* litigation. Petitioner claims that the City Attorney's Office's representation of the Mayor will undermine his due process right to a fair hearing *before the Ethics Commission*. (*See* Petitioner's Motion To Disqualify San Francisco City Attorney ["MPA"] at 5.) But the Petition does not challenge any act or decision of the Ethics Commission or the Board of Supervisors. They have not done

anything. Rather, the Petition challenges the Mayor's decision to suspend Petitioner and bring official misconduct charges. Disqualifying the City Attorney's Office from representing the Mayor in *this* writ proceeding would not even address Petitioner's professed concerns with regard to the separate *administrative* proceedings. (And as discussed immediately below, *see infra* Part III, Petitioner's professed concerns with regard to the administrative proceedings are groundless in any case.)

Nor can Petitioner gain standing by relying on general pronouncements about government lawyers' heightened obligations to ensure integrity and impartiality. (*See* MPA at 4.) Courts have repeatedly rejected arguments based on "lofty values" and a "broad interest in the administration of justice" as "insufficiently concrete and particularized to support a finding of standing." (*See Great Lakes*, 186 Cal. App. 4th at 1358 [quoting *Colyer*, 50 F. Supp. 2d at 973].) A plaintiff's challenge to an adversary's choice of counsel must be based on a conflict of interest that bears directly on that plaintiff's right to a "just determination of *its* claims" in the litigation—not a general interest in abstract notions of justice. (*See id.* at 1359 [emphasis added].)

Petitioner thus lacks standing to bring a motion to disqualify the City Attorney's Office, and the Court should deny the motion on this ground. The attorney-client relationship between the City Attorney's Office and the City's departments and commissions is, quite simply, a matter between the City and its attorneys. (*See id.*)

III. THE CITY ATTORNEY'S OFFICE DOES NOT HAVE AN ETHICAL CONFLICT OF INTEREST.

Even if Petitioner had standing to bring the instant motion, there is no conflict of interest here. Both of Petitioner's arguments—that the Charter does not allow the City Attorney to defend the City in litigation, and that the City Attorney's Office cannot represent multiple City agencies in a single proceeding—completely lack merit. Indeed, Petitioner does not cite a single legal authority that supports either theory.

A. The City Charter Requires The City Attorney's Office To Represent The Mayor In Litigation Related To Official City Business.

Petitioner first suggests that the City's Charter prohibits the City Attorney's Office from defending the Mayor in a writ proceeding challenging the Mayor's official actions. But the City Attorney *is the lawyer for the City*. It is hard to conceive of anything more clearly within his

prescribed role. The Charter specifically requires the City Attorney to "[r]epresent the City and County in legal proceedings with respect to which it has an interest." (*See* S.F. Charter § 6.102(1)).

This litigation is unquestionably a "legal proceeding" in which the City "has an interest," so the City Attorney has a duty to defend it. (*Id.*) Petitioner is challenging the Mayor's decision to suspend Petitioner and initiate official misconduct proceedings—a decision the Mayor made in his official capacity, pursuant to his authority under the City Charter. And Petitioner seeks an order *against the City* ending his suspension and enjoining a Charter-prescribed hearing process. In those respects, this case is no different from thousands that have preceded it in which the City Attorney's Office has defended in court the official decisions of City officers. There are few tasks more central to the job of City Attorney.

B. The City Attorney's Office Does Not Have An Ethical Conflict By Representing The Office Of Mayor As Well As Other City Agencies.

Petitioner is also wrong that the City Attorney's Office has an "ethical conflict" because the Office represents the Mayor and also advised the Commission and the Board. (MPA at 3.) While the City is a public corporate entity with many departments and commissions, it is well settled that the City Attorney's Office has only one client: the City. (*See Ward v. Superior Court* (1977) 70 Cal. App. 3d 23, 32 ["The Los Angeles County Counsel has only one client, namely, the County of Los Angeles," even though the county "acts through its board of supervisors, its officers and its employees, much as does a private corporation."].) The City has many departments and commissions, and they often speak with different and sometimes opposing voices, but the City Attorney's Office may simultaneously represent and advise them all without ethical concern. In these circumstances, the Rules of Professional Conduct provide that "the client is the organization itself," and the organization may act through different officers, employees and bodies. (*See* Cal. R. Prof. Cond. 3-600(a).)

Ethical conflicts arise when an attorney's representation of one client would violate the attorney's duty of loyalty of confidentiality to *another client*. (*See City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 846.) That is not the case here. The City Attorney's Office is not one lawyer trying to serve two different clients with conflicting viewpoints, but many lawyers serving one client. Petitioner is correct to note that the Mayor's role as a prosecutor in the

official misconduct proceedings is different from the adjudicatory roles of the Commission and the Board. But all three departments are "arms" of the City Attorney's single client, the City. (*See Ward*, 70 Cal. App. 3d. at 35; Cal. Eth. Op. 2001-156, 2001 WL 34029610 (Cal. St. Bar Comm. Prof. Resp.) ["[T]he city attorney represents the municipal corporation as an indivisible unit. There is no attorney-client relationship formed with the component parts, because the component parts cannot function as independent entities under the City of Prosperity's charter."].)

Moreover, the City Attorney's representation of the Mayor, the Commission and the Board is consistent with the role set out in the Charter. The Charter created a single City Attorney's Office, responsible for advising and representing all City agencies. (*See* Charter §§ 6.102, 15.102.) The Charter also provided for a removal process in which the Mayor, Commission and Board play separate roles. (*See id.* § 15.105.) But all three agencies are united by a shared goal of ensuring a fair process, mandated by the voters and set out in the Charter, to determine whether Petitioner has committed official misconduct. And the Charter assigns the City Attorney's Office to provide legal counsel to all three agencies in furtherance of that shared goal. There is no ethical conflict.

Nonetheless, the Commission and the Board *can* request outside counsel to advise them in the official misconduct proceeding with consent of the City Attorney's Office, and they have done so here. This type of request is not uncommon in politically sensitive matters where clients seek to take prophylactic measures beyond what is legally required. Going forward, the City Attorney's Office will not advise the Commission or the Board. But nothing in the Charter or the Rules of Professional Conduct *requires* outside counsel, and the City Attorney's Office's role in advising the Commission and Board up to this point does not create any conflict precluding the Office's continued representation of the Mayor.

Further, because the City has now retained outside counsel for the Commission and the Board, Petitioner's "conflict" argument is moot. In the proceedings before the Commission and the Board, and in this litigation, the City Attorney's Office will represent only the Mayor. Respondents asked Petitioner to withdraw his disqualification motion in light of these facts, but Petitioner declined. (*See* Declaration of Peter Keith ¶¶ 3-4.) As it stands, then, Petitioner continues to seek disqualification

with no factual basis for his request, let alone a credible legal argument. This is an abuse of the court process and a waste of judicial resources.

IV. THE CITY ATTORNEY'S OFFICE HAS ACTIVELY SAFEGUARDED THE FAIRNESS OF THE OFFICIAL MISCONDUCT PROCESS.

Although the City Attorney may represent multiple City departments without any conflict, it still must ensure that parties like Petitioner receive a fair hearing in adjudicative proceedings—and it has. This is not an *ethical* issue; it is a question of due process. (*See Howitt v. Superior Court* (1992) 3 Cal. App. 4th 1575, 1579-80 ["[T]he answer to the question in this case is not provided by rules of ethics and professional responsibility for lawyers."].) When "an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal." (*Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 737.)[1] "A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party." (*Id.*) The same person cannot act as the prosecutor and the judge. Nor can the same *lawyer* represent the prosecutor and advise the judge in a single hearing. Accordingly, a hearing may be unfair when one of the attorneys appearing before the commission as an advocate for a party is simultaneously serving as the commission's legal advisor in the same proceeding. (*Id.* at 741.)

A public law office can ensure a fair hearing by establishing a screen between the attorneys directly advising the commission and the attorneys advocating for a particular side in the matter before the commission. (*Howitt*, 3 Cal. App. 4th at 1586.) In *Morongo Band*, the California Supreme Court described the kind of screen adequate to guarantee a fair hearing. There, the attorneys for the State Water Resources Control Board divided themselves into two teams—an enforcement team and a hearing team—for each adjudicatory hearing. (*Morongo Band*, 45 Cal.4th at 735.) The composition of the two teams varied from matter to matter, with attorneys from the enforcement and hearing teams

[1] As Respondents explained in their brief on the merits, Petitioner has no cognizable property interest in his elective office, so he is not entitled to the full array of due process protections in the official misconduct proceeding. (*See* Respondents' Opposition To Petitioner's Motion To Enforce Petition at 23-24; *see also In re Carter* (1903) 141 Cal. 316, 320 [a public office "may always be terminated in such manner and by such means as are prescribed by the law which created it."].) Nonetheless, to ensure that the proceeding is absolutely fair to Petitioner, the City Attorney's Office is using its standard screening procedures, which, as discussed in the text, fully satisfy due process even when a cognizable property interest is at stake.

sometimes changing sides for different matters. With respect to any given matter, however, screens prohibited the attorneys on the enforcement team from contacting the attorneys on the hearing team and vice versa. (*Id.* at 735-36.) Each attorney had his or her own work space, computer, and telephone, but otherwise, no extraordinary measures were taken to prevent contact between the attorneys. (*Id.*) After finding that there were no other circumstances that gave rise to additional bias concerns, the Supreme Court held that the agency's screening process adequately safeguarded the rights of the parties in those proceedings. (*Id.* at 740-41.)

Here, the City Attorney's Office, like the public law office examined in *Morongo Band*, has adopted a formal screen to ensure that separate teams of lawyers work independently in advising the Mayor on one hand and the Commission and Board on the other. (*See* Givner Decl. at ¶ 9.) Even before the Mayor decided to initiate official misconduct proceedings against Petitioner, the Office separated the two teams by circulating a formal memorandum. (*See id.* ¶ 10.) Under the screen, the attorneys on either side may not communicate with one another about the official misconduct proceeding or this related litigation. (*See id.* ¶ 9.) They may not share files, they may not share computers or printers, and they may not access or view each other's electronic files or billing records in the Office's computer system. (*See id.*) And because of the high level of publicity accompanying the official misconduct proceedings here, the Office circulated an office-wide reminder about the screen on the day the Mayor initiated the charges against Petitioner. (*See id.* ¶ 10.) This process fully complies with the demands of due process set forth in *Morongo Band*.[2]

This screen is also consistent with the longstanding practice of the City Attorney's Office in all quasi-adjudicatory proceedings where the Office advises both the prosecuting party and the adjudicator. The City has a large number of such proceedings—from police and firefighter misconduct charges adjudicated by the Police and Fire Commissions (Charter § A8.344) to permit and license appeals adjudicated by the Board of Appeals (Charter § 4.106) to campaign finance hearings

[2] Petitioner fails to cite *Morongo Band* or any other case discussing the authority of public law offices to use due process screens. Instead, Petitioner relies exclusively on general principles discussed in *Cobra Solutions*, 38 Cal.4th 839. But *Cobra* is entirely off point. That case addressed the use of screens to cure ethical conflicts under the Rules of Professional Conduct, and had nothing to do with fair hearings or due process.

adjudicated by the Ethics Commission (Charter § C3.699-13)—and the City Attorney uses the same screening process in all of them. (*See* Givner Decl. ¶¶ 6-7.) Consistent with the caselaw, the Office has been using screens to ensure fair hearings for more than a decade. (*See id.* ¶ 7.) And to ensure absolute compliance with the screens, every lawyer in the Office recently received mandatory training on screening procedures. (*See id.* ¶ 8.)

The recent announcement that the Commission and the Board will use outside counsel for the remainder of the proceeding does not call into question the fairness of the default process. Petitioner will receive a fair hearing. The City Attorney's Office's initial role as legal counsel for the Commission and the Board does not change that. Quite the contrary, the City Attorney's Office has gone to lengths to ensure that the hearing will be absolutely fair.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's motion to disqualify the City Attorney's Office.

Dated: April 13, 2012

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