

February 13, 2020

CONFIDENTIAL AND ATTORNEY-CLIENT PRIVILEGED

VIA EMAIL

Cynthia.Schwerin@cc.cccounty.us

Cynthia Schwerin
Contra Costa County
651 Pine Street
Martinez, CA 94553

Re: *Informed Written Consent*
Client-Matter: DA010/008

Dear Ms. Schwerin:

Thank you for your call and email recently regarding our firm's representation of the Town of Danville ("Town") regarding an investigation into the conduct of a Contra Costa County ("County") employee who works for the Town pursuant to the enclosed Contract for Law Enforcement Services.

The State Bar of California requires that an attorney obtain informed written consent to represent two clients in the certain situations. Specifically, Rule of 1.7 of the Rules of Professional Conduct provides in relevant part:

- (a) A lawyer shall not, without informed written consent* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person,* or by the lawyer's own interests.

...

- (d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:

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- (1) the lawyer reasonably believes* that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

To comply with the requirements of this Rule, and to fulfill our understanding of our ethical obligations, we hereby disclose to you the following information:

The Town has asked us to provide legal services in the form of advice and counsel regarding a complaint by a Town employee against a County employee who provides services to the Town's police department. This letter is to inform you that our firm also provides legal services to the County in other matters. Although our representation of the Town in this matter is not directly adverse to the County at this time, it is our assessment that the representation has the potential to become adverse because the Town and County (collectively, the "Parties") may ultimately have adverse interests with respect to the County employee at issue. In addition, our representation of the Town in this matter may expose the County to liability associated with alleged County employee misconduct.

At this time, we do not believe that our representation of the Town will be materially limited by our responsibilities to or relationship with the County. However, if, at any time, we determine that our representation of the Town in this matter will be materially limited by our responsibilities to or relationship with the County, we will advise the Parties of that fact and obtain additional informed written consent before proceeding.

Despite the potentially adverse nature of this matter, at this time, we reasonably believe that we will be able to provide competent and diligent representation both the Town and the County in this and other matters in which we represent each agency. However, if either the Town or the County assert a claim against the other in connection with this matter, we will be precluded from representing the Town and County against one another. Should this occur, it may be necessary for the Parties to individually obtain legal representation other than Liebert Cassidy Whitmore.

In order for us to assist the Town in providing advice and counsel with respect to the employee complaint at issue, both the Town and the County must indicate their understanding of their potentially adverse interests, as described above. For purposes of Rule 1.7, "informed consent" means a person's agreement to a proposed course of conduct after the lawyer has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably foreseeable adverse consequences of the proposed course of conduct.

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“Informed written consent” means that the disclosures and the consent must be in writing within the meaning stated in Evidence Code section 250. (See Rule 1.0.1(e)-(e-1), (n).)

If you have any questions about this matter, please let me know. Otherwise, I am requesting that the County sign and return to us a copy of this letter and the enclosed Consent to Representation acknowledging that you have been advised of Rule 1.7 and the potential for conflicts associated with your interests; that you have been advised of our past and/or present relationship with the County; and that you consent to Liebert Cassidy Whitmore’s representation of the Town with respect to our advice and counsel concerning its employee’s complaint against a County employee.

Very truly yours,

LIEBERT CASSIDY WHITMORE



Suzanne Solomon

SS: pjk
Encls.

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CONSENT TO REPRESENTATION

Liebert Cassidy Whitmore has explained to the undersigned that there exist potential adverse interests inherent in its representation of the Town of Danville in providing it with advice and counsel regarding a Town employee's complaint against an employee of Contra Costa County. The County understands that it has a right to and has been encouraged to consult independent counsel before signing this consent. The County nevertheless consents to Liebert Cassidy Whitmore's representation of the Town in connection with the above-described matter.

Dated: _____

By: _____