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Memorandum

To: Santa Barbara County Citizens Independent Redistricting Commission

Date: February 3, 2021

From: Fredric Woocher
Strumwasser & Woocher LLP

Re: Conflict of Interest Allegation

During the course of the Commission's interview of the Nielsen, Merksamer firm on Monday evening, February 1, 2021, Christopher Skinnell raised the issue of my prior representation of former Santa Barbara County Supervisor Doreen Farr in the context of whether either Nielsen, Merksamer or my firm (Strumwasser & Woocher) had a disqualifying conflict of interest under Measure G (the Ordinance). I have not been able to review the video of the meeting, but my recollection is that Mr. Skinnell was not actually suggesting that our firm actually had a disqualifying conflict, but — to the contrary — was arguing that the Ordinance must be read strictly in accordance with its precise language, for otherwise one might consider certain events and relationships to constitute conflicts when the Ordinance's language did not in fact apply to them.

In any event, Mr. Churchwell has asked me to clarify this issue with the Commission prior to entering into any contract for legal services. With this memo, I am pleased to do so, for we examined this issue carefully prior to submitting our application to serve as the Commission's legal counsel and concluded — as I hope you will, as well — that there is no disqualifying conflict under the terms of the Ordinance.

Background Facts

In November 2008, Doreen Farr defeated Steven Pappas in the election for Santa Barbara County Supervisor, Third District, by 806 votes. In December 2008, Mr. Pappas filed a lawsuit contesting the results of the election, contending that thousands of registrations gathered from UC Santa Barbara students were illegal because — even though they were received by the County Registrar's office prior to the close of the registration period — they allegedly were not turned in to the Registrar's office within 3 days of having been signed by the voters. Pappas' lawsuit contended that the ballots cast by these voters were therefore illegal and should not have been counted by the Registrar, and that he — not Farr — would have won the election if these ballots had properly been disqualified. Under the Elections Code provision governing such election contests, even though it was the County Registrar who allegedly violated the law and Supervisor Farr was not accused of any wrongdoing, she was named as the defendant in the lawsuit since it was her election that the lawsuit sought to overturn.

I did not know Supervisor Farr at the time and I had not worked on her election campaign, but I believe she was referred to me by someone in the County Counsel's office because of our firm's expertise in election law. I agreed to represent Supervisor Farr in the lawsuit along with another lawyer who lived in Santa Barbara, Philip Seymour. The case went to trial in February and March of 2009, and on March 30, 2009, Superior Court Judge William McLafferty entered judgment against Mr. Pappas, finding that the election had been conducted in compliance with all state and federal election laws and that no grounds for invalidating even a single vote had been shown. Mr. Pappas appealed the judgment, but the Court of Appeal affirmed the Superior Court's ruling in an opinion issued on October 14, 2010, ending the litigation on the merits of Mr. Pappas' lawsuit.

Following the Superior Court's entry of judgment, Mr. Seymour and I applied to the court for an award of attorneys' fees against Mr. Pappas under a provision of state law requiring the losing party in a case that achieved a significant benefit for the public to pay the legal fees and expenses of the prevailing party's attorneys. Although the Superior Court initially denied our request for a fee award, the Court of Appeal reversed in an opinion issued on December 21, 2010, remanding the case back to the trial court to determine the amount of the fee award. After extensive further litigation, the Superior Court on October 19, 2011, issued an order awarding Mr. Seymour and myself over $500,000 in costs and attorneys' fees that we had incurred in litigating the case and the fee motion. Mr. Pappas again appealed *that* ruling, and the Court of Appeal once again affirmed the trial court's decision in an opinion issued on September 26, 2012. Mr. Pappas then sought review of the Court of Appeal's decision, first in the California Supreme Court, which denied his petition for review on December 12, 2012, and finally in the United States Supreme Court, which denied his petition for certiorari on June 10, 2013. In the meantime, Mr. Seymour and I had obtained payment of the fee award by executing judgment against the surety company that had posted the appeal bond required for Mr. Pappas to pursue his appeal.

There Is No Disqualifying Conflict

As set forth in the Request for Statement of Qualifications, applicants were asked to confirm that "anyone assigned to provide services under the contract would not be disqualified under Elections Code Section 23003 or Santa Barbara County Code Sections 2-10.9A(4)(d)(5) or (4)(d)(6)." Prior to submitting our application, we reviewed those provisions and concluded that my representation of former Supervisor Farr did not constitute a disqualifying conflict. We continue to believe that this is the proper conclusion.

County Code Section 2-10.9A(5)(d)(1) states that "[t]he commission shall not retain a consultant who would not be qualified as an applicant pursuant to subsection (4)(d)." ***Subsection (4)(d)(6)*** provides that no commissioner (A) may have a significant financial interest

in any business entity that donated $500 or more to any candidate for elective office in Santa Barbara County or to any political committee that expended funds in support or opposition to a candidate within the last eight years preceding appointment to the commission; (B) may, within the last eight years, have contributed $500 or more to any candidate or political committee that has expended more than $1,000 in support or in opposition to the campaign of any Santa Barbara County candidate; or (C) may, within the last eight years, have been a board member, officer, paid or volunteer staff of, a political committee that expended $500 or more in support or opposition to a candidate for Santa Barbara County office. Obviously, none of these prohibitions apply to my representation of former Supervisor Farr.

Similarly, County Code Section 2-10.9A, ***subsection (4)(d)(5)***, provides that a member of the Commission "must also be eligible under the provisions of Elections Code § 23003(c)," and Elections Code §23003(c) in turn states that "[a] person shall not be appointed to serve on the commission if the person or any family member of the person has been elected or appointed to, or been a candidate for, an elective office of the local jurisdiction in the eight years preceding the person's application." Again, this provision plainly does not apply to my representation of Supervisor Farr.

Thus, my prior representation of Supervisor Farr does not constitute a disqualifying conflict under any provision of the County Ordinance. Mr. Skinnell may perhaps have been referring to Elections Code § 23003***(d)***. That subsection, however — in explicit contrast to § 23003***(c)*** — was ***not*** incorporated into subsection 4(d) of the County Ordinance. By its express terms, then, subsection (d) applies only to *commissioners themselves*, not to any consultants retained by the Commission.

Moreover, subsection (d) would not apply to my representation of Supervisor Farr in any event. Elections Code § 23003(d) provides that "[a] person shall not be appointed to serve on the commission if . . . (1) The person or his or her spouse has done any of the following *in the eight years preceding the person's application*: (A) Served as an officer of, employee of, or *paid consultant to*, a campaign committee or *a candidate for elective office* of the local jurisdiction." (Emphasis added.) There are several reasons why this prohibition does not apply to my representation of Supervisor Farr.

First and foremost, I represented Supervisor Farr in the election contest lawsuit back in 2009 and 2010 — more than eight years preceding our application to be the Commission's counsel. The election contest trial ended almost 12 years ago, in March 2009, and Mr. Pappas' appeal of that judgment was denied more than 10 years ago, in October 2010. All of the ensuing litigation was pursued solely on behalf of Mr. Seymour and myself, seeking our statutory attorneys' fee award, the entitlement to which Supervisor Farr had assigned to us at the outset of the litigation.

Second, at the time I represented her, Supervisor Farr was not "a *candidate* for elective office of the local jurisdiction," but was the sitting Supervisor; I had no involvement whatsoever in her 2008 campaign or in any subsequent campaign for elective office, nor in providing any advice or legal services to her as a candidate or to her campaign committee.

Third, I was not a "paid consultant" to Supervisor Farr or her campaign committee. The regulations adopted to implement the independent redistricting commission statute define "paid consultant" to mean "a person who, pursuant to a contract, provides *expert advice* or personal services related to *conducting campaign activities or holding office*, and who receives compensation for providing such advice or services." (2 Cal. Code Regs., § 60821; see also *id*., § 60813 [defining "consultant" to mean "any person who has entered into an agreement to provide consulting services to a political party, campaign committee, the Governor, a member of the Legislature, a member of Congress elected from California, or a member of the State Board of Equalization," and defining "consulting services" as "expert advice or personal services related to conducting campaign activities or to holding congressional or state office"].) In defending Supervisor Farr in court against Mr. Pappas' election contest, I was not providing "consulting services" to her or her campaign. Furthermore, the only payments Mr. Seymour and I received from Supervisor Farr were made in 2009 — eleven years prior to our application to serve as this Commission's counsel.

In sum, we are confident that our application to serve as the Commission's counsel conforms to all legal requirements and that my prior representation of Supervisor Farr does not constitute a conflict under the County Ordinance or state law. I apologize for the lengthy and detailed recitation of these events and accompanying analysis, but we want the Commission and the public to have complete trust in us and in our compliance with all legal requirements as we begin our exciting and important journey together.