

August 2, 2024

Via Email

james.reeves@napavalley.edu;
sheryl.bratton@countyofnapa.org

Mr. James Reeves
Assistant Superintendent/Vice President of
Administrative Services
Napa Valley Community College District
2277 Napa-Vallejo Highway
Napa, California 94558

Ms. Sheryl Bratton
County Counsel
Napa County Counsel's Office
1195 Third Street
Suite 301
Napa, California 94559

Re: *Informed Consent Regarding Legal Services*
Client-Matter: NA025/500

Dear Mr. Reeves and Ms. Bratton:

The Napa Valley Community College District (“District”) has asked Liebert Cassidy Whitmore (“LCW”) to provide it with legal advice in connection with reviewing an agreement for law enforcement services between the District and the County of Napa (“Napa”) for the Napa County Sheriff’s Office to patrol housing areas owned by the District (“Agreement”).

Because the District and the County are each separate and individual clients of LCW, we are writing to advise you that informed written consent from all parties is required before LCW can proceed with reviewing the Agreement on behalf of the District. The informed consent discussed herein would be strictly limited to LCW’s representation of the District in the aforementioned matter. The District’s and the County’s consent to this representation would not apply to any other matter or services provided by LCW to the District or County. In addition, in the event all parties sign and return the attached informed consent, Heather DeBlanc and Cindy Allen will be advising the District on the contemplated Agreement. Neither Ms. DeBlanc nor Ms. Allen will be personally representing or advising the County while working on this matter.

California Rules of Professional Conduct (the “Professional Rules”), Rule 1.7(a) requires that lawyers obtain informed written consent from each client when the representation of one client is directly adverse to another client in the same or a separate matter. An attorney owes a duty to represent a client with undivided loyalty and without being influenced by the interests of others, including the interests of other current clients in unrelated matters. A lawyer’s judgment and advice must be entirely independent of any such influences. An attorney’s ability to discharge his or her duty of loyalty is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer’s other

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responsibilities or interests towards a different client. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. (Professional Rules, Rule 1.7, subd. (a), cmt. 1.)

Moreover, California Rules of Professional Conduct, Rule 1.7(b) requires that lawyers obtain informed written consent from each affected 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 relationship with another client. The critical questions with respect to "material interference" include: the likelihood that a difference in interests exists or will eventuate and, if it does, whether it will interfere with a lawyer's independent professional judgment in considering alternatives or foreclose courses of actions that reasonably should be pursued on behalf of each client. (Professional Rules, 1.7 subd. (b), cmt. 4.) A material limitation conflict could arise out of any interest that impacts a lawyer's ability to provide diligent, impartial representation for a client, such as a desire to maintain good relations with another client.

Here, the Parties' interests are not aligned for several reasons. The Parties will be negotiating the terms of the Agreement, which may include key provisions on which we would likely consider advising each client differently. For example, indemnity provisions between contracting parties are typically negotiated, and each contracting party would typically have independent counsel to review and advise on such terms. As distinct public agencies on opposite sides of this transaction, it is likely you will have differing views on how some of these provisions should be drafted. As another example, each party here may have differing views as to the amount of compensation to be paid for the law enforcement services. Accordingly, a divergence in interests currently exists which may require LCW to act as an advocate for the District, against the County, a current LCW client, compromising its duties to the County. This may rise to the level of direct adversity, or could constitute a material limitation conflict, both of which require each client's consent to represent the District. In addition to the divergent interests of the District and the County, discussed above, differences in the positions of the Parties may become evident during the course of our representation due to new facts discovered or new legal issues that arise.

Even if the representation of the District in this matter, and concurrent representation of the County in other matters, does not in fact result in direct adversity or material interference with LCW's professional judgment, the Rules requires LCW to disclose its relationship with the District and the County to each party, because of its professional attorney-client relationship with both. (Professional Rules, Rule 1.7, subd. (c).) This letter also serves this disclosure purpose.

As the District's attorney in this matter, contingent on all Parties' executed consent to such representation below, LCW would have to provide advice consistent with its duty of loyalty to the District and would not modify or tailor its advice to the District due to its current client relationships with the County. LCW strongly recommends that the County seek independent counsel to both review this informed consent, and to provide advice in connection with the contemplated Agreement. Neither the District nor the County must sign this consent.

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Please be advised that this consent to LCW's representation of the District in this matter will not extend to litigation arising from any disputes over sharing information between the Parties. In other words, we are not asking any party to waive any potential conflict of interest with LCW's representation of the District in litigation arising from a dispute over the above-referenced matter. If litigation arises in connection with the above-referenced matter, LCW will not represent either the District or the County.

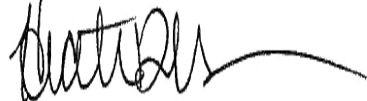
Please note also that LCW is not merely providing this letter regarding informed consent to you to enable LCW to comply with its own ethical obligations. Failure to obtain fully informed consent can have significant consequences for clients of the same law firm negotiating business transactions that result in later litigation between the parties. Courts have found negotiated provisions in written agreements that benefit one client over another unenforceable where an actual conflict existed and consent was deemed inadequate. Moreover, if a client's lawyer is disqualified by a court due to a conflict of interest, a client will be harmed by legal fees incurred in having to find alternate legal counsel.

In conclusion, the District and the County should carefully consider whether to provide informed consent to waiving the conflict of interest issues described above. If the District wishes to have LCW serve as its legal counsel for the above-referenced matter, the District must sign the last page of this letter indicating its informed consent regarding conflicts. Similarly, if the County consents to have LCW represent the District in this matter, they must sign the last page of this letter indicating their informed consent regarding conflicts.

If you wish to discuss any related issues, please contact me at your earliest convenience. However, if you agree to LCW's representation of the District in this matter, please sign the attached and return an executed copy of this letter.

Very truly yours,

LIEBERT CASSIDY WHITMORE

A handwritten signature in black ink, appearing to read 'Heather L. DeBlanc', with a long horizontal flourish extending to the right.

Heather L. DeBlanc

HLD:cla

