

MEMORANDUM OF LAW

DATE: January 20, 1988

TO: Allen M. Jones, Executive Assistant to
Councilmember Bob Filner
FROM: City Attorney
SUBJECT: Potential Conflict of Interest

This is in response to your memorandum of December 10, 1987, addressed to Ted Bromfield, Chief Deputy City Attorney. You attach a copy of this office's opinion of June 8, 1987, regarding your potential conflict of interest arising from your status as an employee of the Planning Department and your pending marriage to a private practitioner of law. You state that you have changed your employment with the City since that prior opinion.

The critical facts are summarized below:

You are now an executive assistant to Councilmember Filner and are no longer Deputy Director of the Planning Department. You have now married, the marital agreement that you and Ms. Michael executed is still in effect and you have no community property interest in either Ms. Michael's salary or her law firm. At the present time, the structure of Ms. Michael's law firm is unchanged from that discussed in our memo of June 8; therefore, that information will not be repeated here.

You first query whether you are disqualified from advising Mr. Filner on certain matters because of your changed status.

Under the Political Reform Act (California Government Code Section 81000, et seq.), you were and continue to be a "public official," since you were and are an "employee" of the City. Therefore, you continue to be subject to the Political Reform Act. Since there are no other facts that change the analysis of June 8, we conclude that you are not constrained from advising Mr. Filner on matters considered by the City Council which involve persons represented by Ms. Michael's law firm.

The second question you pose is whether Ms. Michael, or her law firm, would be constrained from representing a client where City Council action is required. We cannot answer that question because it involves questions of legal ethics of Ms. Michael and her law firm who are not City officers or employees. The question should be addressed to and by Ms. Michael and her law firm.

Lastly, you ask us to readdress the first question under a different set of facts from those set forth above. We are asked to assume that the structure of Ms. Michael's law firm is changed

so that she now benefits from the activities of other lawyers in the firm. Under the new facts our answers may change. It is unclear what the new structure of the law firm would be. However, if it means Ms. Michael would have an ownership interest in the firm, then you may also have an interest in her law firm despite the marital agreement and thereby may be constrained from advising Mr. Filner on certain governmental decisions.

Under the Political Reform Act "investment" includes an "ownership interest in a business entity owned directly, indirectly, or beneficially by a public official, filer or member of his or her immediate family." Gov't Code Sec.82034 (emphasis added). "Immediate family" includes spouse. Gov't Code Sec.82029. Therefore, you could have an "investment" interest in Ms. Michael's law firm despite the fact that you have no community property interest in it. This analysis is in accord with the analysis of the FPPC legal counsel in private advice letter No. A-86-201 (1986), which we also cited in our June 8 memorandum.

However, we do not purport to issue a definitive ruling here regarding your potential disqualification from advising Mr. Filner in certain matters under the vague facts presented about the potential future structure of Ms. Michael's law firm. We provide the above analysis only so that you will be alert to a potential issue.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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