



CYNDY DAY-WILSON, ESQ. • LL.M. ENVIRONMENTAL LAW
628 H STREET, EUREKA, CA 95501 • (707) 798-5048
CDAYWILSON@DAYWILSONLAW.COM

December 4, 2020

Via Email Only

Jefferson Billingsley
Interim County Counsel
County of Humboldt
825 Fifth Street
Eureka, CA 95501

RE: Request for Outside Counsel by Auditor-Controller

Dear Mr. Billingsley:

The following supplements my response to you of November 25, 2020 and provides comment on the agenda item that you drafted regarding the Auditor-Controller's request for outside counsel.

County Counsel's office has already admitted the existence of a conflict when County Counsel Billingsley stated in his November 16 correspondence that: "the office represents the County as a whole and does not provide individual representation to employees or elected officials in investigations." I think we can all agree that as County Counsel that you represent the Board of Supervisors and if a county department has an adversarial position then you report to the Board not the department.

Based on the events that occurred during the Board of Supervisors special meeting on November 23, 2020, the Board of Supervisors is clearly adverse to the Auditor-Controller in this matter. The agenda itself identified the item as "Fiscal Operations and Financial Condition Arising from the Operational Gaps **Created by the Auditor-Controller's Office.**" This meeting proceeded for over six hours, during which the Board invited members of the public, including representatives of local public agencies, to publicly criticize and critique the Auditor-Controller and the operation of her office. The Auditor-Controller was not aware of this meeting pertaining to her office until the agenda was publicly posted; she was not notified that a special meeting had been set to discuss her position and office. Throughout this meeting, the Board ignored Ms. Paz

Dominguez' raised hand, and would not allow her to respond to accusations made against her office, including not allowing her to share her screen with the Board to demonstrate an example of a County department budget that contained errors and omissions.

This special meeting occurred after Ms. Paz Dominguez was notified by the County Human Resources Department and County Counsel's Office that the Board was instituting an investigation into the Auditor-Controller's Office, despite the fact that the Auditor-Controller is an independently elected official, over which the Board of Supervisors has no supervisory authority. Further, on the Board agenda for Tuesday, December 8, is an item for a \$250,000 contract with an outside consultant to perform an audit of the auditor. This is not an audit that is being suggested by the state comptroller but an audit by the Board, using public funds, in an effort to discredit and even displace Ms. Paz-Dominguez, an elected official. The mere instigation of this investigation, coupled with the contentious special meeting and now an audit, make it clear that the Board of Supervisors is adverse to the Auditor-Controller.

You cite the case of *Strong v. Sutter* in the agenda summary which provides legal support that County Counsel's office has a conflict: "Obviously county counsel could not represent the board's interest and defend the board's decision to settle the claim and at the same time ethically advise Strong, as the board's potential adversary, on the same matter." (*Strong v. Sutter* (Cal. Ct. App. 2010) 188 Cal.App.4th 482, 494). Further: "It strains credulity to believe the board here ever would have concluded county counsel could ethically represent both the board and Strong in a matter where Strong was questioning the board's decision to settle a tax refund claim over Strong's objection and where Strong sought 'counsel to represent [him] in [the] resolution of [his] disagreement with the [b]oard' on the matter." (*Id.* at 493-94). Further, to state that this dispute is outside of the Auditor-Controller's duties defies logic. The Board has instigated an investigation and has accused the Auditor-Controller of misconduct in the performance of her job duties. These accusations were also made during the special meeting held on November 23.

The creation of an ethical wall within the County Counsel's office does not remove the conflict. An ethical wall only protects the sharing of information between attorneys it does not remove conflicts between the parties. In this situation, the Board of Supervisors is the sole client of County Counsel's office and you provide advice to county departments through the Board. As the Board is adverse to the Auditor-Controller in this matter, any attorney within the County Counsel's office who was assigned to represent the Auditor-Controller would necessarily have to be screened off from *all* other matters pertaining to the Board of Supervisors and the Auditor-Controller would be his/her sole client. In addition, that attorney could not report to you or the Board of Supervisors. And considering how this matter is progressing, you will end up with County Counsel (Billingsley) versus County Counsel (Miles) in litigation which leads to the question that you need to ask yourself: how can County Counsel's office be adversarial to the Board of Supervisors? More importantly for you as an attorney, such a situation would constitute an actual conflict, and is not waivable pursuant to California Rules of Professional Conduct 1.7(d)(3).

As a conflict exists between the Board of Supervisors and the Auditor-Controller in this matter, representation by any member of County Counsel's office would be a violation of Rules of Professional Conduct 1.7. Thus, independent outside counsel should be appointed to represent the Auditor-Controller in the matter pertaining to the Board's investigation.

Sincerely,

A handwritten signature in black ink that reads "Cyndy Day-Wilson". The signature is written in a cursive style with a large, looping initial "C".

Cyndy Day-Wilson, Esq.