

Dear Editor – Questionable Methods by Which the City Attorney Hinder Objective-Independent Investigations

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Dear Editor,

I have previously written about how City Attorney Carol Schwab surreptitiously co-opted Culver City’s supposed-to-be independently managed fraud, waste, and abuse program and associated hotline. (CCCR, 11/22/19, “How Culver City Threw Cold Water on Its Hotline”; CCCR, 7/8/20, “Staff or Council?”)

It appears that Schwab developed another artful method to quash fraud-waste-and-abuse investigations.

City Council Members are encouraged to seek advice from the City Attorney. The City

Attorney is paid by and represents the City. She is not legally forbidden to simultaneously represent a City Council Member or City employee on the same issue. However, if she makes the person her client, she thereby disables herself from ever investigating any related wrongdoing by the person. I'll explain.

The State Bar's Rules of Professional Conduct forbid an attorney from representing a current client, e.g., the City, against a former client, e.g., the City Council Member who sought advice, on matters related to that prior representation. Thus, the City Attorney can protect a City Council Member from her inquiries by allowing that person to become a client.

It is not rocket science. The League of California Cities' Practicing Ethics – A Handbook for Municipal Lawyers states, “[D]o not promise confidentiality to individual council members or other city officials or lead them to believe they have a confidential relationship. ... Some city attorneys make it a practice to provide standing memoranda to elected officials and staff explaining this principle.”

Our City Attorney has recklessly ignored that recommendation. The City Attorney's Office responded to a recent Public Records Act request by admitting that it has absolutely no record of any operating procedure/policy or standing memoranda dealing with allowing individual council members or other city officials to become clients. Further, for at least the past five years, there is no record that the City Attorney has informed any individual seeking advice that they are not her client. Thus, individual council members and other city officials may reasonably assume that the City Attorney is their personal attorney. Her recklessness has real-world repercussions.

I wrote a Letter to the Editor stating, “With regard to Mr. Hackman's gift of CCF [Culver City Forward] to [Council Member Thomas] Small, City Attorney [Schwab] ... should review [...] Code of Ethics Policy No. 4006.... It states [...] No Public Official ... shall accept any gift valued in excess of \$25 from any person, firm, or corporation which to his/her knowledge is interested in any business dealing with the City.” (CCCR, 8/18/20, “Resignation Required”)

Small had previously sought the City Attorney's advice. Schwab knew if she allowed him to become her client, she would voluntarily disable herself from taking any related action against him; even if he failed to follow her advice or violated the law.

The City Attorney responded to another Public Records Act request by revealing that, when Council Member Small sought that legal advice, he became a client of the City Attorney. In practical terms, Schwab protected Small from any investigation by allowing him to become her client.

Later, I wrote directly to the City Attorney's Office requesting an independent investigation to determine whether Small violated Code of Ethics Policy No. 4006. It was no surprise that Schwab denied the request.

Schwab is supposed to protect us—Culver City residents—from government officials who go astray. However, her pattern of conduct thwarts the discovery and prevention of malfeasance.

Hopefully, our City Council Members will rise above their own self-interest, and instruct Schwab to follow the above advice of the League of California Cities. To do otherwise would enable, contribute to and condone Culver City's continuing-downward-ethical spiral.

Les Greenberg, Esq.