

## PUBLIC EMPLOYMENT RELATIONS BOARD



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May 17, 2012

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Re: *Deputy City Attorneys Association of San Diego v. City of San Diego*  
Unfair Practice Charge No. LA-CE-752-M  
ORDER DENYING MOTION TO DISQUALIFY PERB ALJ

Dear Counsel:

Respondent City of San Diego's Motion to Disqualify PERB Board and Staff of PERB Office of General Counsel and Charging Party Deputy City Attorneys Association's Opposition have been reviewed by the undersigned. Lacking good cause the motion IS HEREBY DENIED, for the reasons set forth below.

Respondent contends that because PERB and its General Counsel sought injunctive relief in superior court against Respondent following investigation of an unfair practice charge in *San Diego Municipal Employees Association v. City of San Diego* (case no. LA-CE-746-M) and issuance of a complaint, a fair and impartial PERB formal hearing cannot be conducted. More specifically, Respondent contends that PERB, the General Counsel, and its agents have pre-committed to the position of Charging Party because they have made factual findings adverse to Respondent and initiated litigation against Respondent.

Based on *Nightlife Partners, Ltd v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, Respondent appears to maintain that the entire agency, including the undersigned administrative law judge, has disqualified itself from further adjudication of its own case because of a "combination of prosecutorial and adjudicative functions in one individual or one decision-making body" and the prior factual "findings." Respondent cites Government Code section 11425.10, subdivision (a)(4) and section 11425.30, subdivision (a)(2), which require separation of prosecutorial and adjudicative functions in PERB.

Respondent has failed to present evidence that PERB's prosecutorial and adjudicative functions are not separate or legal argument that PERB administrative law judges are without authority to conduct adjudicative hearings due to lack of separate functionality. *Nightlife Partners, Ltd. v. City of Beverly Hills, supra*, is distinguishable because the hearing officer there was represented and assisted in the hearing by an advisory attorney, who was previously involved in the decision being appealed and had taken a position adverse to the complaining party. (108 Cal.App.4th at pp. 84-85.) No such involvement by other PERB agents will occur in the formal hearing in this case. Respondent has not identified any facts supporting grounds for disqualification of the undersigned. The undersigned has made no factual findings, and the PERB General Counsel has only made a probable cause determination in issuing a complaint and seeking injunctive relief. (*Eastside Union School District* (1984) PERB Decision No. 466, pp. 6-7; *Sacramento City Unified School District* (1987) PERB Order No. IR-49, pp. 2-3; see also Gov. Code, sec. 11425.30, subd. (b)(2).)

The undersigned's ruling concerns only his capacity to serve as the administrative law judge in the matter.

Sincerely,



Donn Ginoza  
Administrative Law Judge

DNG:dg

## PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1330 Broadway, Suite 1532, Oakland, CA 94612-2514.

On May 17, 2012, I served the Letter regarding Case No. LA-CE-752-M on the parties listed below by

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

personal delivery.

facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

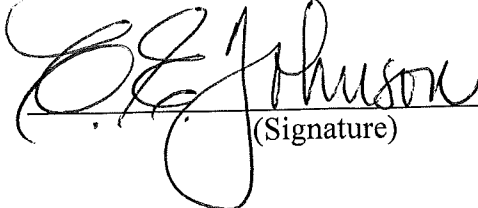
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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 17, 2012, at Oakland, California.

\_\_\_\_\_  
C. Johnson  
(Type or print name)

  
\_\_\_\_\_  
(Signature)