

CITY OF OAKLAND



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November 18, 2003
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HONORABLE CITY COUNCIL
Oakland, California

Subject: Resolution Authorizing the City of Oakland to File Amicus Briefs in the Appellate Proceedings Involving City and County of San Francisco and Office of City Attorney v. COBRA Solutions, Inc...

Dear President De La Fuente and Members of the City Council:

SUMMARY

At its September 30, 2003 closed session, the City Council discussed the request of the City and County of San Francisco and the League of California Cities that the City of Oakland file amicus briefs in the appellate proceedings regarding the subject matter. The City Attorney recommended that the Council authorize this Office to file amicus briefs in appellate proceedings supporting the City and County of San Francisco's appeal of the Superior Court's decision in City and County of San Francisco and Office of City Attorney v. COBRA Solutions, Inc...

The Superior Court found that the entire City Attorney's Office was tainted with a conflict of interest because the City Attorney's former law firm previously advised one of the defendants in a public corruption case on some non-litigation matters. The City Attorney erected an ethical wall between himself and the attorneys handling the litigation and there was no evidence and no allegation that any confidential information leaked across the wall.

FISCAL IMPACTS

None. The amicus briefs will be prepared and filed at no cost to the City.

BACKGROUND

The Superior Court disqualified the San Francisco City Attorney's Office from continuing to investigate and prosecute a public corruption case because City Attorney Dennis Herrera's former law firm previously advised one of the defendants—COBRA—in some non-litigation matters. The court made its ruling even though the San Francisco City Attorney erected an ethical wall and there was no evidence or even an

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allegation that the San Francisco City Attorney shared any confidential information with attorneys in the San Francisco City Attorney's Office.

In the trial court it was undisputed that the San Francisco City Attorney's Office implemented a timely and effective ethical screen. Nonetheless, the lower court held as a *matter of law* that a public law office cannot use an ethical screen when an attorney in that office is deemed to have a conflict arising out of his previous employment at a private law firm. The Superior Court held the law requires vicarious disqualification of an *entire* public law office whenever *any one* of its attorneys in his or her former practice has represented a party in a matter related to one the office later brings or defends.

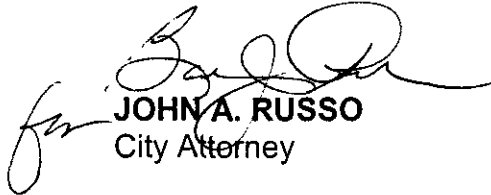
KEY ISSUES AND IMPACTS

The Superior Court's ruling contradicts a long line of California cases, which have held that a government law office may employ an ethical screen to prevent potential disclosure of confidential information. Courts have rejected a rule of wholesale disqualification of public law offices on public policy grounds. Disqualifying public law offices whenever one attorney has a conflict would impose tremendous costs on taxpayers and discourage government law offices from hiring lawyers with private sector experience. If the appellate courts do not reverse the Superior Court, there will be significant ramifications for public entities. The City and other public entities would be obliged to retain and pay for outside counsel in many circumstances where currently the City Attorneys perform the work.

RECOMMENDATION(S) AND RATIONALE

For the reasons discussed above, the City Attorney's Office recommended that the City Council authorize this Office to file amicus briefs in the appellate proceedings in support of San Francisco's effort to obtain a reversal of the Superior Court's decision.

Very truly yours,


JOHN A. RUSSO
City Attorney

Attorney Assigned:
Barbara J. Parker

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OFFICE OF THE CITY CLERK
BOARD

OAKLAND CITY COUNCIL

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RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER

Resolution Authorizing the City of Oakland to File Amicus Briefs in the Appellate Proceedings Involving *City and County of San Francisco and Office of City Attorney v. COBRA Solutions, Inc*

WHEREAS, in 2001, the San Francisco City Attorney's Office, under former City attorney Louise Renne, initiated an inquiry into San Francisco's technology contracting program, known as the Computer Store; and

WHEREAS, the Computer Store consists of a group of competitively selected vendors that contract with San Francisco to provide technology goods and services to the City of San Francisco's departments; and

WHEREAS, the San Francisco City Attorney's Office filed a complaint against certain Computer Store vendors alleging that they had engaged in a kickback scheme; and

WHEREAS, the San Francisco City Attorney subsequently amended its complaint to name COBRA Solutions, Inc. as a defendant in the litigation; and

WHEREAS, COBRA Solutions, Inc., moved to disqualify the entire San Francisco City Attorney's Office from the litigation, claiming that then City Attorney Dennis Herrera had a conflict of interest because of his former firm's prior representation of COBRA in non litigation matters; and

WHEREAS, the Superior Court ruled that the entire San Francisco City Attorney's Office was tainted with a conflict of interest because of the City Attorney's and his former law firm's representation of COBRA in some non-litigation matters; and

WHEREAS, the City and County of San Francisco has asked the California Court of Appeal to reverse the Superior Court's decision; and

WHEREAS, the Superior Court made its ruling despite the City Attorney's erection of an ethical wall between himself and the attorneys in his office and even though there was no evidence or even an allegation that the San Francisco City Attorney's shared any confidential information with attorneys in the office; and

WHEREAS, the Superior Court's ruling contradicts a long line of California cases which have held that a government law office may employ an ethical screen to prevent potential disclosure of confidential information; and

WHEREAS, disqualifying public law offices whenever one attorney has a conflict would impose tremendous costs on taxpayers and discourage government law offices from hiring lawyers with private sector experience; and

WHEREAS, if the appellate courts do not reverse the Superior Court, there will be significant ramifications for public entities; now therefore be it

RESOLVED: that the City Council authorizes the City Attorney to file amicus briefs in seeking reversal of the Superior Court's ruling disqualifying the entire San Francisco City Attorney's Office in *City and County of San Francisco and Office of City Attorney v. COBRA Solutions, Inc.*

IN COUNCIL, OAKLAND, CALIFORNIA, _____ 2003

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN AND PRESIDENT
DE LA FUENTE

NOTES-

ABSENT-

ABSTENTION-

Attest: _____

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CITY CLERK AND CLERK OF THE
COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA

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