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SUPERIOR COURT OF WASHINGTON
FOR CHELAN COUNTY

ALBERT H. LIN,)	No. 12-2-01098-1
)	
	Plaintiff,)	DECLARATION OF ARTHUR J.
)	LACHMAN
vs.)	
)	
GRANT COUNTY, a municipal corporation,)	
)	
	Defendant.)	
)	

I, Arthur J. Lachman, declare as follows:

1. I am over the age of eighteen, and I am competent to testify to the matters herein.

I have personal knowledge of the matters stated herein, or as indicated, have information concerning those matters.

BACKGROUND & QUALIFICATIONS

2. As indicated on my CV, attached, I have been a lawyer licensed to practice in the State of Washington since 1989, when I graduated with highest honors from the University of Washington School of Law in Seattle. After a clerkship with Judge Eugene Wright of the Ninth Circuit Court of Appeals and a year of teaching litigation and commercial law subjects at the University of Puget Sound (now Seattle University) School of Law in 1991, I have practiced as a commercial litigation attorney since 1991. From 1999 until 2003, I served as chair of Graham &

1 Dunn's Ethics/Loss Prevention Committee, where I had primary responsibility for resolving
2 ethics and loss prevention issues at the firm.

3 3. From 1999 until 2003, I served as chair of Graham & Dunn's Ethics/Loss
4 Prevention Committee, where I had primary responsibility for resolving ethics and loss
5 prevention issues at the firm. In connection with this role at Graham & Dunn, I benefited from
6 the expertise, training, and extensive materials provided by the firm's liability insurer, Attorneys'
7 Liability Assurance Society (ALAS), which has the premiere loss prevention program for
8 lawyers. Because conflict of interest issues are so important in law firms from both an ethics and
9 liability perspective, they are the primary focus of ALAS's materials and programs. It is not
10 surprising, therefore, that the vast majority of issues I dealt with in my capacity as Chair of my
11 firm's Ethics/Loss Prevention Committee involved conflicts of interest. Law firms take conflict
12 of interest issues seriously because they can have serious ramifications for professional
13 discipline, disqualification, and liability.

14 4. Since 2003, my solo practice has focused on advising lawyers and law firms on
15 ethics and risk management issues. My practice involves a wide range of lawyer ethics and risk
16 management advising and consulting services, including providing opinions and advice to
17 lawyers and firms about ethics, discipline, sanctions, and liability issues (including those related
18 to conflicts of interest); conducting training on ethics and liability issues; providing expert
19 services in liability and disqualification matters; and consulting on the development of a risk
20 management program for a national insurer of criminal and legal aid lawyers. I have also
21 conducted numerous ethics CLE programs on ethics and liability issues for practicing lawyers,
22 including the Ethics School for the WSBA Office of Disciplinary Counsel, and taught the
23 Professional Responsibility class at the University of Washington School of Law in the winter
24 quarter of 2013 and the spring quarter of 2008.

25 5. I was a member of the WSBA Rules of Professional Conduct Committee from
26 2003 to 2008, and served as its chair from 2008 to 2010. In addition, I have worked on WSBA

1 task forces dealing with advance fee/retainer issues and lawyer succession planning. I am
2 currently the President-Elect of the Association of Professional Responsibility Lawyers (APRL),
3 a national organization of lawyers who practice in the areas of ethics and lawyer risk
4 management. I have been actively involved in creating training sessions for APRL, and have
5 served on many panels presenting ethics issues. I serve as Chair of the Planning Committee for
6 the ABA Center for Professional Responsibility's annual National Conference on Professional
7 Responsibility, the country's premiere ethics program. I also served a two-year term as the
8 national co-chair of the Firm Counsel Project, an ABA initiative bringing together lawyers
9 working as ethics and risk management counsel in law firms, and I moderated several local FCP
10 roundtables in Seattle.

11 6. I am a co-author (with Professors Thomas Andrews and Robert Aronson, and
12 practitioner Mark Fucile) of the treatise, *The Washington Law of Lawyering*, published in 2012
13 by the WSBA. In addition, I edited portions of the revised version of the Washington Legal
14 Ethics Deskbook, also published by the WSBA.

15 **MATERIALS REVIEWED & RELIED UPON**

16 7. In reaching my opinions in this declaration, I reviewed and relied on factual
17 information and material contained in the following documents (references to specific factual
18 material in these documents also appear in the text of my opinions below):

- 19 • Transcript of Albert H. Lin Deposition, Moses Lake, Washington, May 1,
20 2013, including Exhibits;
- 21 • Transcript of D. Angus Lee Deposition, Moses Lake, Washington, May 2,
22 2013, including Exhibits;
- 23 • Complaint dated September 25, 2012, *Lin v. Grant County*, Chelan County
24 Superior Court Cause No. 12-2-01098-1
- 25 • Formal Complaint dated July 24, 2012, *In re D. Angus Lee*, WSBA
26 Disciplinary Board Cause No. 12-00037

- 1 • Letter dated March 23, 2012 from Leland G. Ripley to WSBA Review
2 Committee Re Couture Grievance against Attorney D. Angus Lee (WSBA
3 File No. 09-01571) (without Exhibits)
- 4 • Letter dated February 14, 2012 from Christine Gray, WSBA Senior
5 Disciplinary Counsel, to Daniel P. Couture and Leland G. Ripley Re
6 Grievance of Daniel P. Couture against lawyer D. Angus Lee (WSBA File
7 No. 09-01571)
- 8 • Memo dated October 29, 2009 from Edward A. Owens, Grant County Chief
9 Deputing Prosecutor, to D. Angus Lee, Grant County Prosecutor, Re Deputy
10 Prosecutor Ted Chow's actions on October 15, 2009
- 11 • Letter dated September 25, 2009 from Melanie Tratnick, Washington
12 Assistant Attorney General, to D. Angus Lee, Grant County Prosecuting
13 Attorney, Re Criminal Charging Review: Cathleen Neils (EPD 09-EP2190)
- 14 • Letter dated September 14, 2009 from D. Angus Lee, Grant County
15 Prosecuting Attorney, to Melanie Tratnick, Washington Assistant Attorney
16 General, Re Request for Criminal Charges Review, Suspect: Cathleen D.
17 Neils (EPD 09-EP2190) (without enclosures)

18 **OPINIONS**

19 8. In my opinion, for the reasons set forth in detail below, Angus Lee did not violate
20 the conflict of interest provisions of the Washington Rules of Professional Conduct in the Neils,
21 Ecklund, or Fitterer matters. Any personal interest conflicts of interest of Mr. Lee, Mr. Lin, or
22 other deputy prosecutors in these matters were not imputed to other lawyers in the Grant County
23 Prosecutor's Office or to the Grant County Prosecutor's Office as a whole, and no conflicting
24 representation was undertaken by anyone in the Prosecutor's Office that harmed or damaged
25 Mr. Lee's client, the State of Washington. At no time did Mr. Lee require Mr. Lin to undertake a
26 representation in any of these matters that involved a conflict of interest on his part or otherwise

1 engage in a representation that violated the conflict of interest provisions of the RPCs. In fact, in
2 my opinion, it was Mr. Lin's failure initially to communicate with Mr. Lee honestly about the
3 nature of his personal interest conflict in the Neils matter, and Mr. Lin's failure to undertake
4 more than a cursory evaluation of the conflict of interest issue in the Ecklund matter, that are
5 troubling from a legal ethics and lawyer professional responsibility perspective.

6 **Conflicts of Interest Under the Washington RPCs**

7 9. Under RPC 1.7(a), a lawyer is generally prohibited from representing a client if
8 the representation involves a concurrent conflict of interest. A concurrent conflict of interest
9 exists if "there is a significant risk that the representation of one or more clients will be
10 materially limited by the lawyer's responsibilities to another client, a former client or a third
11 person or by a personal interest of the lawyer." RPC 1.7(a)(2). A lawyer is permitted to represent
12 a client notwithstanding the existence of a concurrent conflict of interest if, among other things,
13 the lawyer reasonably believes that he or she will be able to provide competent and diligent
14 representation to the affected client(s), and each affected client give informed consent, confirmed
15 in writing. A lawyer serving as "public officer or employee" is subject to RPC 1.7. RPC 1.11(d).

16 10. The general rule in RPC 1.10(a) is that a lawyer's conflict of interest is imputed to
17 other all other lawyers in a firm. However, the imputation rule does not apply if "the prohibition
18 is based on a personal interest of the disqualified lawyer and does not present a significant risk of
19 materially limiting the representation of the client by the remaining lawyers in the firm."
20 RPC 1.10(a). Also, "Rule 1.10 is not applicable to the conflicts of interest addressed by
21 [Rule 1.11(d)]" because of the "special problems raised by imputation with a government
22 agency." RPC 1.11, cmt. [2]; *see also* RPC 1.10(d) ("The disqualification of lawyers associated
23 in a firm with former or current government lawyers is governed by Rule 1.11."). Thus, conflicts
24 of interest in governmental practice settings are *not* imputed to other lawyers in the governmental
25 agency or organization. *See* WSBA Ethics Op. 2101 (2006) (a prosecutor's office is not a "law
26 firm" for purposes of the RPC 1.10 imputation rule); Tom Andrews, Rob Aronson, Mark Fucile

1 & Art Lachman, *The Law of Lawyering in Washington* §7.V., at 7-113 (WSBA 2012) (“The rule
2 regarding imputation of conflicts in the private sector, RPC 1.10, does not apply to governmental
3 lawyers.”); *State v. Stenger*, 111 Wn.2d 516, 522-23, 760 P.2d 357 (1988) (“There is a difference
4 between the relationship of a lawyer in a private law firm and a lawyer in a public law office
5 such as prosecuting attorney . . .; accordingly, where a deputy prosecuting attorney is for any
6 reason disqualified from a case, and is thereafter effectively screened and separated from any
7 participation or discussion of matters concerning which the deputy prosecuting is disqualified,
8 then the disqualification of the entire prosecuting attorney’s office is neither necessary nor
9 wise.”).

10 11. One of the practical difficulties in applying the general conflict of interest
11 provisions contained in the RPCs in the prosecutor context is that it is, as a practical matter,
12 difficult if not impossible to fulfill the requirement to obtain informed, written consent from the
13 “client.” As WSBA Ethics Op. 2101 recognizes, the prosecutor’s client is the State of
14 Washington rather than the county, and while the conflict of interest rules in the RPCs apply to
15 this representation of the State, there is simply no mechanism in Washington law to obtain
16 written consent to a conflict of interest from the State. Thus, “pragmatically, it may be
17 impossible to fulfill [the] requirement of written consent to a conflict of interest [as required in
18 RPC 1.7(b)].” WSBA Ethics Op. 2101. Conflict of interest situations in prosecutor’s offices,
19 therefore, must be evaluated with this pragmatic difficulty in mind.

20 12. Where a conflict of interest disqualifies a particular lawyer in a prosecutor’s
21 office, therefore, there is no imputation of the conflict to other lawyers in the office under the
22 RPCs, and other lawyers without disqualifying conflicts can proceed with handling the matter.
23 The commentary to RPC 1.11 notes that in such cases it will “ordinarily be prudent to screen”
24 lawyers in the office who are disqualified. Where no lawyers are available in the office to handle
25 the matter, it may be referred to the Attorney General’s office under RCW 43.10.232 or to a
26 special prosecutor or to a prosecutor’s office in another county.

1 **Neils Matter**

2 13. The Neils matter involved the evaluation of a criminal complaint brought by
3 Elisia Dalluge against Cathleen Neils, a former administrative employee of the Grant County
4 Prosecutor's Office, for allegedly submitting a false police report. Ms. Neils had previously
5 submitted a police report alleging that Ms. Dalluge violated an Order for Protection relating to
6 Grant County Deputy Prosecuting Attorney Teddy Chow. Ms. Neils had also brought a civil
7 lawsuit against Grant County and Mr. Lee personally alleging wrongful employment
8 termination, among other claims. In that lawsuit, Grant County and Mr. Lee had asserted
9 counterclaims against Ms. Neils. Mr. Lee referred Ms. Dalluge's false arrest criminal matter to
10 Mr. Lin to obtain his evaluation of how to proceed. Initially, in three memos dated July 13, 14,
11 and 15, 2009, Mr. Lin asserted that a conflict of interest would prevent the entire Grant County
12 Prosecutor's Office from evaluating the Dalluge criminal complaint. On July 16, 2009, Mr. Lin
13 told Mr. Lee that Mr. Lin had a personal interest conflict of interest because Ms. Neils was
14 Mr. Lin's personal friend and she was working on his campaign for election as Grant County
15 Prosecutor. After learning of Mr. Lin's personal interest conflict in the Neils matter, Mr. Lee did
16 not require Mr. Lin to review or handle it. Mr. Lee later referred the matter to the Washington
17 Attorney General's office, which declined to review it, citing insufficient staff resources.

18 14. No conflicting representation by the Grant County Prosecutor's Office or any of
19 its lawyers occurred in this matter. It was ultimately decided to refer this matter to the
20 Washington Attorney General's Office, which declined to review it, citing staffing issues. Thus,
21 even assuming that there was a disqualifying conflict of interest presented in this situation,
22 neither the Grant County Prosecutor's Office nor any of its lawyers handled the matter and no
23 client was harmed as a result of any conflict. There was no violation of RPC 1.7.

24 15. Any conflict of interest presented in this situation was a personal interest one
25 under RPC 1.7(a)(2) as to Mr. Lee and Mr. Lin. As discussed above, such conflicts are not
26 imputed to other lawyers in the prosecutor's office under the Washington RPCs. In addition,

1 screening would have been permitted (and probably advisable) if Mr. Lee and the prosecutor's
2 office had decided that other lawyers in the office could handle the matter. Instead, after Mr. Lee
3 learned from Mr. Lin and his counsel that Mr. Lin also had a personal interest conflict in this
4 matter, it was referred to the AG's office and was not handled or pursued further by the Grant
5 County Prosecutor's Office. In my opinion, the conflict of interest issues in the Neils matter were
6 handled by Mr. Lee in conformance with RPC 1.7, RPC 1.10, and RPC 1.11.

7 16. The Washington Supreme Court decision in *Stenger* recognizes the possibility
8 that a conflict of interest may under limited circumstances be imputed to the entire organization
9 (i.e., the entire county prosecutor's office). The *Stenger* court, in the context of a death penalty
10 case, stated:

11 Where the prosecuting attorney . . . has previously personally represented the
12 accused in the same case or in a matter so closely interwoven therewith as to be in
13 effect a part thereof, the entire office of which the prosecuting attorney is
14 administrative head should ordinarily also be disqualified from prosecuting the
15 case and a special deputy prosecuting attorney appointed.

16 *Stenger*, 111 Wn.2d at 522. There is doubt that this principle of imputation for prosecutors set
17 forth in *Stenger* has continued validity in light of the commentary in RPC 1.11 adopted by the
18 Washington Supreme Court in 2006, which clarifies that there is no imputation of conflicts of
19 interest to a personally disqualified lawyer's office in the governmental context. *See Andrews,*
20 *Aronson, et al., Washington Law of Lawyering, supra*, §V.D.2., at 7-120. In any event, in my
21 opinion, the nature of the conflict presented in this matter did not require imputation of the entire
22 office. This matter does not implicate policies applicable in a death penalty situation like
23 *Stenger*, and the alleged conflicts do not involve a prior representation by any lawyer in the
24 Grant County Prosecutor's Office in the same or closely related matter. Rather, the conflicts of
25 interest presented in this situation are entirely personal in nature (as to both Mr. Lee and
26 Mr. Lin). Neither the fact that one or more lawyers in the office were involved in obtaining the
underlying Order for Protection nor the fact that Mr. Lee was sued in his personal capacity by

1 Ms. Neils in an unrelated employment matter (and that Mr. Lee asserted compulsory
2 counterclaims in response to that lawsuit, which were eventually dismissed) requires imputation
3 of the entire prosecutor's office under the principles stated in *Stenger* (assuming for the sake of
4 argument that those principles continue to govern in light of the RPC 1.11 comment adopted in
5 2006). Nor would the personal interest conflict based on Ms. Neils's working in Mr. Lin's
6 campaign be imputed to the entire prosecutor's office. As the court recognized in *Stenger*, where
7 the matters are not the same or "closely interwoven," screening disqualified lawyers would be
8 appropriate in any event. Here, the matter was instead referred on to the AG's office, and was not
9 even handled or pursued by the prosecutor's office. There was no impermissible conflict of
10 interest under RPC 1.7 by Mr. Lee even if it is assumed (incorrectly in my view) that the
11 imputation principle set forth in *Stenger* applies in this situation.

12 17. Regarding the Neils matter, a fact I find particularly troubling is that Mr. Lin
13 failed initially to tell his employer's managing lawyer, Mr. Lee, the precise nature of his personal
14 interest conflict. *Lin Dep.*, at 79-89. Evaluating conflicts of interest issues properly requires
15 knowledge of all relevant facts, and Mr. Lin's withholding of relevant information relating to the
16 conflict interfered with Mr. Lee's and his office's ability to appropriately exercise judgment and
17 evaluate the applicable conflict of interest issues under the Washington RPCs. In my opinion,
18 this conduct by Mr. Lin implicated RPC 1.7 and 1.11 (duties regarding conflicts of interest and
19 RPC 8.4(c) (duty not to engage in conduct involving dishonesty), and appears to have interfered
20 with Mr. Lee's ability to comply fully with his managerial and supervisory duties in RPC 5.1. It
21 was appropriate for Mr. Lee to determine that such conduct by an employee of his office was
22 problematic.

23 **Ecklund Matter**

24 18. Mr. Lin also asserted that he had a conflict of interest that prevented him from
25 reviewing the Eckland matter. This matter was also a criminal complaint by Ms. Dalluge, this
26 time asserted against her spouse for alleged perjury in her dissolution proceeding. Mr. Lin's

1 purported basis for this conflict was that Ms. Neils' name appeared in a post-investigation letter
2 from Ms. Dalluge expressing concerns about the Sherriff's report issued in the case. Ms. Neils's
3 name appeared in the letter in reference to the alleged refusal by the Sherriff to pursue the false
4 reporting claim described above regarding the Neils matter, and on its face had nothing to do
5 with the perjury allegations against Mr. Ecklund for which she was seeking criminal charges.

6 19. In my opinion, this matter did not present a conflict of interest for the Grant
7 County Prosecutor's Office or any of its lawyers, including Mr. Lin. The mere mention of a
8 person's name in a document does not, by itself, create a conflict of interest. That is especially
9 true where, as here, the name mentioned is completely unrelated to the underlying allegations in
10 the matter. While the appearance of Ms. Neils's name might have given Mr. Lin pause to look
11 more closely at a potential conflict of interest issue given the fact that Ms. Neils was a personal
12 friend who was also working in his campaign, Mr. Lin's professional duty was to look at the
13 relevant facts and evaluate whether there was a conflict of interest under RPC 1.7. He did not do
14 so. In his deposition, Mr. Lin stated that he relied *only* on the fact that Ms. Neils's name
15 appeared in the letter in concluding that he had a disqualifying conflict of interest preventing him
16 from handling the matter. *See* Lin Dep., at 102 (in response to a question about what he saw in
17 the file that would indicate Ms. Neils would be a witness in the Ecklund matter, Mr. Lin
18 responded: "Her name was in the file. I didn't go any deeper than that. . . . I didn't query any
19 further than that.").

20 20. In my experience, proper evaluation of conflict of interest issues requires lawyers
21 to review all relevant facts and carefully apply the framework set forth in RPC 1.7. In applying
22 RPC 1.7(a)(2) specifically, relevant interests (in this matter, the personal interest(s) of Mr. Lin)
23 that might be conflicting with the client's (here, the state of Washington) must be identified, and
24 risks associated with proceeding with the representation must be thoughtfully assessed, in order
25 to determine whether the particular personal interest of the lawyer will create a *significant risk*
26 that the representation will be *materially limited*. Mr. Lin's failure to evaluate the conflict of

1 interest issue was inadequate and violated his duty under RPC 1.7. It also had the effect of
2 interfering with Mr. Lee's ability to comply fully with his managerial and supervisory duties in
3 RPC 5.1. Mr. Lee was rightly concerned that Mr. Lin's failure to exercise appropriate
4 professional judgment on this issue as an employee and agent of the prosecutor's office was
5 problematic, and pursuing employment action against him was not, in my opinion, a violation of
6 Mr. Lee's managerial duties under RPC 5.1, Mr. Lee's obligation to avoid prohibited conflicts of
7 interest under RPC 1.7, or Mr. Lee's obligation not to assist or induce another to violate or the
8 RPCs (or do so through an act of another) under RPC 8.4(a).

9 **Fitterer Matter**

10 21. The conflict of interest principles described above, including the rules of non-
11 imputation in the governmental context and non-imputation of personal interest conflicts, apply
12 with equal force in the Fitterer matter. This matter arose from a vehicle collision on June 5, 2009,
13 involving a sitting Grant County District Court judge. There is no absolute or per se rule
14 prohibiting prosecuting lawyers from reviewing or handling matters involving judges in their
15 own jurisdiction. Nor is the conflict of interest issue governed by an "appearance of fairness" or
16 "appearance of impropriety" standard as suggested by Phillip Ginsberg in his October 14, 2009
17 letter to Mr. Lee. *See* WSBA Ethics. Op. 2101 (citing *State v. Finch*, 137 Wn.2d 792, 810, 975
18 P.2d 967 (1999)). While particular lawyers in the office may conclude, in the exercise of
19 professional judgment in applying the RPC 1.7 framework, that their personal interests constitute
20 a conflict in this situation, any such conflict is not imputed to other lawyers in the prosecutor's
21 office or to the prosecutor's office as a whole under the Washington RPCs.

22 22. Mr. Lin concluded after consulting his own counsel that he had a conflict of
23 interest that prevented him from reviewing the Fitterer matter. After Mr. Lin asserted that he had
24 a conflict of interest, Mr. Lee did not require Mr. Lin to review or pursue the matter further. Lin
25 Dep., at 175. Another prosecutor in the office, Teddy Chow, had reviewed the file and concluded
26 that there was no evidence of chargeable conduct against Judge Fitterer. *See* Oct. 15, 2009 E-

1 mail from Teddy Chow to Derek Lee (Exh. 18 to Lee Dep.); Oct. 29, 2009 Memo from Edward
2 A. Owens to D. Angus Lee. In reliance on Mr. Chow's opinion, and after conferring with another
3 experienced lawyer regarding his professional obligations, Mr. Lee made the decision not to
4 pursue the matter further. Lee Dep., at 201-208. In my opinion, under these circumstances,
5 Mr. Lee complied with his obligations under RPC 1.7 regarding the Fitterer matter.

6
7 I declare under penalty of perjury under the laws of the state of Washington that the
8 foregoing is true and correct.

9 SIGNED in Lake Forest Park, Washington, on this 15th day of July, 2013.

10
11 
12 Arthur J. Lachman