

1 LINDA MILLER SAVITT, SBN 94164
 2 lsavitt@brgslaw.com
 3 BALLARD ROSENBERG GOLPER & SAVITT, LLP
 4 15760 Ventura Boulevard, Eighteenth Floor
 5 Encino, California 91436
 6 Telephone: (818) 508-3700
 7 Facsimile: (818) 506-4827
 8 Attorneys for Respondent Hon. Alex Villanueva,
 9 Sheriff of Los Angeles County
 10

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF LOS ANGELES

BALLARD ROSENBERG GOLPER & SAVITT, LLP
 15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR
 ENCINO, CALIFORNIA 91436

11 COUNTY OF LOS ANGELES,
 12 Petitioner,
 13 vs.
 14 HON. ALEX VILLANUEVA, SHERIFF OF
 15 LOS ANGELES COUNTY,
 16 Respondent.

Case No. 22STCP02700

[Assigned to the Hon. Maureen Duffy-Lewis,
 Dept. 38]

**RESPONDENT’S NOTICE OF MOTION
 AND MOTION TO ORDER COUNTY TO
 REMOVE AND RECUSE THE LAW
 FIRM OF KENDALL BRILL & KELLY
 LLP, ITS ATTORNEYS AND FORMER
 ATTORNEYS FROM a) ALL MATTERS,
 OR, IN THE ALTERNATIVE, FROM
 b) REPRESENTING THE COUNTY
 AND/OR THE LASD ON ALL MATTERS
 INVOLVING THE SHERIFF OR, IN THE
 ALTERNATIVE, TO DISQUALIFY KBK
 ON ALL COUNTY AND/OR LASD
 CASES INCLUDING THE COC AD HOC
 COMMITTEE ON DEPUTY GANGS**

*[Filed concurrently herewith Request for
 Judicial Notice; Declaration of Linda Miller
 Savitt]*

**Hearing Date: February 10, 2023
 Time: 9:30 a.m.
 Dept.: 38**

RESERVATION ID: 571610910124

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


TO PLAINTIFFS AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 10, 2023 at 9:30 a.m. or as soon thereafter as the matter can be heard, in Department 38 of the above-entitled court, located at 111 N. Hill Street, Los Angeles, California 90012, Respondent SHERIFF ALEX VILLANUEVA will, and hereby does, move the Court to Order County of Los Angeles to remove and recuse the law firm of Kendall Brill & Kelly, LLP from all matters, or in the alternative, from representing the County of Los Angeles and/or the Los Angeles Sheriff's Department on all matters involving the Sheriff, or in the alternative, to disqualify Kendall Brill & Kelly LLP on all County and/or LASD cases including the COC ad hoc committee on deputy gangs.

This Motion is based on this Notice, the attached Memorandum of Points and Authorities and Declaration of Linda Miller Savitt with Exhibits, the Request for Judicial Notice, the complete file and records in this action, and such other oral and documentary evidence as may be presented at or before the hearing on this motion.

DATED: September 1, 2022

BALLARD ROSENBERG GOLPER & SAVITT, LLP

By: 

LINDA MILLER SAVITT
Attorneys for Respondent HON. ALEX
VILLANUEVA, SHERIFF OF LOS ANGELES
COUNTY

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 7

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY..... 7

A. Background..... 7

B. OIG Investigates the LASD Sheriff Villanueva Over Purported Deputy Gangs..... 10

C. The Other Cases on Behalf of the Sheriff 13

D. The Peace Over Violence Investigation..... 13

E. MTA’s Motion to Quash..... 16

F. The COC Ad Hoc Committee 17

III. THE BOS MAY NOT INTERFERE IN CRIMINAL INVESTIGATIONS 18

IV. THIS COURT HAS THE AUTHORITY TO REGULATE THE CONDUCT OF LAWYERS APPEARING BEFORE IT, INCLUDING THE DISQUALIFICATION OF COUNSEL 19

V. KBK’s REPRESENTATION OF THE SHERIFF, THE COUNTY, THE MTA AGAINST THE LASD AND THUS THE COUNTY CREATES THE APPEARANCE OF IMPROPRIETY AND UNDERMINES THE PUBLIC’S CONFIDENCE IN THE LEGAL PROFESSION AND THESE PROCEEDINGS..... 21

VI. KBK MUST BE DISQUALIFIED FROM REPRESENTING LASD, SHERIFF VILLANUEVA, THE COC AND THE COUNTY ON MATTERS RELATED TO LASD. 22

A. KBK Is Subject To Automatic Disqualification Due To A Concurrent Conflicted Representation Without Consent..... 22

B. The Matters Are Substantially Related and Thus KBK Is Subject To Disqualification..... 23

C. The Continued Maintenance of KBK as counsel for the County and COC Undermines Public Confidence..... 23

D. The Fact That Different Lawyers In The KBK Firm Work On Different Matters Makes No Difference. 25

VII. CONCLUSION..... 25

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Federal Cases

Brewster v. Shasta County
 275 F.3d 803 (9th Cir. 2001)..... 16

Cargill Incorporated et al. v. Budine, Progressive Dairy Solutions et al.
 (E.D. Cal. 2007) 2007 U.S. Dist. LEXIS 48405 22

Cinerama 5, Ltd. v. Cinerama Inc.
 528 F2d 1385 (1976 2d Cir)..... 24

Rosas v. Alex Villanueva, Sheriff,
 United States District Court Case No. CV 2:12-cv-00428-DDP 11, 14

Unified Sewerage Agency of Wash. Cty., or v. Jelco Inc.,
 646 F2d 1339 (9th Cir. 1981)..... 25

State Cases

In re A.C.
 (2000) 80 Cal.App.4th 994..... 21

Adams v. Airojet – General Corp.
 (2001) 86 Cal.App.4th 1324..... 26

Ames v. State Bar
 (1973) 8 Cal. 3d 910..... 25

City of Palo Alto v. Public Employment Relations Branch,
 5 Cal.App.6th 1271, 1287 (2016)..... 14

DCH Health Services Corp. v. Waite
 (2002) 95 Cal.App.4th 829..... 21

People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.
 (1999) 20 Cal. 4th 1135..... 20, 25

People v. Donaldson
 (2001) 93 Cal. App. 4th 916..... 22

Flatt v. Super. Ct.
 (1994) 9 Cal.4th 275..... 23, 24, 25

Fremont Indem. Co. v. Fremont Gen. Corp.
 (2006) 143 Cal.App.4th 50..... 24

1	<i>Gilbert v. National Corp. for Housing Partnerships</i>	
2	(1999) 71 Cal. App. 4th 1240.....	20, 25
3	<i>Great Lakes Construction Inc. v. Burman</i>	
4	(2010) 186 Cal.App.4th 1347.....	20
5	<i>Hernandez v. Paicius</i>	
6	(2003) 109 Cal. App. 4th 452.....	25
7	<i>Jessen v. Hartford Casualty Ins. Co.</i>	
8	(2003) 111 Cal. App. 4th 698.....	20, 24
9	<i>Kennedy v. Eldridge</i>	
10	(2011) 201 Cal. App. 4th 1197.....	22
11	<i>Meza v. H. Muehlstein & Co., Inc.</i>	
12	(2009) 176 Cal.App.4th 969.....	21
13	<i>People v. Peoples</i>	
14	(1997) 51 Cal.App.4th 1592.....	21
15	<i>Pitts v. County of Kern</i>	
16	(1998) 17 Cal.4th 340.....	19
17	<i>Rivero v. Superior Court</i>	
18	(1997) 54 Cal.App.4th 1048.....	19
19	<i>Truck Ins. Exchg. v. Fireman’s Fund Ins. Co.</i>	
20	(1992) 6 Cal.App.4th 1050.....	23
21	<i>Venegas v. County of Los Angeles</i>	
22	32 Cal.4th 820 (2004)	16, 20
23	<i>Woods v. Superior Court</i>	
24	(1983) 149 Cal.App.3d 931.....	21
25	State Statutes	
26	Code Civ. Proc. § 128	20
27	Gov. Code, § 26600.....	19
28	Government Code section 25302	16
	Government Code section 25303	12, 16, 19, 20
	Meyer-Milias-Brown Act.....	13
	Ordinance 20-0520.....	13

1 Penal Code § 995..... 17

2 Penal Code Section 1538.5..... 16, 17

3 Public Records Act..... 18

4 **Other Authorities**

5 California Rules of Professional Conduct, Rule 1-100 (A) 22

6 California Rules of Professional Conduct, Rule 3-310(c)(3) 25

7 Employee Groups which Violate Rights of Other Employees or Members of the

8 Public (<http://pars.lasd.org/Viewer/Manuals/10008/Content/14944>) 12

9 Los Angeles *Analysis of the Criminal Investigation of the Alleged Assault by the*

10 *Banditos* (Oct. 2020) 11

11 Los Angeles County Employee Relations ordinance 13

12 Rule 1.7(a)..... 23, 24

13 Rule 1.9(a)..... 24

14 Rule 1.9.(b)..... 26

15 Rules 1.6(a) and 1.9(c) 24

16 *United States of America v. County of Los Angeles, et al*

17 Case No. 2:15-cv-05903-DDP 10

18

19

20

21

22

23

24

25

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Kendall Brill & Kelly (“KBK”) represents the Los Angeles Sheriff’s Department (“LASD”)
4 and Sheriff Villanueva in several federal court lawsuits.

5 KBK represents The Metropolitan Transit Authority (“MTA”) in an effort to quash a search
6 warrant obtained by the LASD. (One member of the Board of Supervisors (“BOS”) and one member
7 of the Civilian Oversight Commission (“COC”) are tangentially named in the search warrant.)

8 KBK and 2-3 attorneys/former attorneys represent the BOS and the COC on an ad hoc
9 committee in seeking to attack the LASD about purported deputy gangs.

10 This motion is necessitated by the egregious inherent conflict of interest that arises from
11 simultaneous representation of the County of Los Angeles (“COLA” or "County") (Petitioner in this
12 matter) on matters involving the LASD, as well as the MTA by the law firm of KBK, in direct
13 opposition to a search warrant lawfully obtained from the Superior Court by the LASD. This court
14 has jurisdiction because the COLA is seeking to hold Sheriff Villanueva in contempt, despite his
15 objection to the COC ad hoc committee’s subpoena and biased hearings led by KBK partner (Bert
16 Deixler), and assisted by another KBK partner (Nary Kim), and former KBK associate Sarah E.
17 Moses (who also specifically represented Sheriff Villanueva) based on their conflict of interest.

18 KBK cannot adequately represent the Sheriff, the LASD, COLA, BOS and COC and
19 simultaneously represent MTA against the Sheriff. By virtue of its representation of the Sheriff and
20 LASD, and frequent communications with LASD, KBK has access to privileged attorney-client and
21 other confidential communications that are directly relevant to a) the defenses or monitoring of
22 LASD federal lawsuits, b) LASD information in conflict with the MTA and (c) information being
23 used by the COC.

24 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

25 **A. Background**

26 It is difficult to simplify this complex web which becomes more interwoven over time. But
27 a brief chronology may help.

28 Since 2018, KBK has been paid over \$300,000 from the LASD’s budget regarding litigation

1 in federal court in which it represents the COLA, or the LASD, or both. (See Exh. 1)

2 On or about early August 2019 Jennifer Loew, an MTA employee contacted the LASD to
3 file a criminal complaint.

4 On September 19, 2019 LASD opened a criminal investigation involving the MTA and
5 Peace Over Violence (“POV”) based on Jennifer Loew’s allegations of public corruption.

6 On February 26, 2020 Jennifer Loew filed a retaliation lawsuit against the MTA, LASC Case
7 No. 20STCV07756, alleging among other things pubic corruption. (RJN - A)

8 On February 27, 2020 Jennifer Loew filed a federal lawsuit against the MTA, members of
9 the BOS and others, USDC Case No. 20-cv-01900-VAP-JEM. (RJN - B)

10 On December 30, 2020 KBK partner Robert E. Dugdale appeared on behalf of George
11 Gascon, in his official capacity as District Attorney, and the Los Angeles County District Attorney’s
12 Office in LASC Case No. 20STCP04250, *The Association of Deputy District Attorneys for Los*
13 *Angeles County v. George Gascon, et al.* (RJN - C)

14 On February 18, 2021 the LASD apparently obtained a search warrant for records from the
15 MTA based on the criminal investigation initiated by Jennifer Loew.

16 On February 24, 2021, a KBK attorney apparently negotiated a withdrawal by the LASD of
17 the search warrant. (Exh. 2)

18 On February 28, 2021, the LASD again obtained a search warrant from the Superior Court
19 for documents and records between POV with any organization under the control of COLA or the
20 BOS, including MTA and other documents. (Exh. 3) That search warrant also sought email
21 communications relating to Supervisor Sheila Kuehl, COC Commissioner/POV CEO Patti Giggans,
22 Jennifer Loew and others.

23 On March 1, 2021, the LASD served the search warrant on the MTA for records regarding
24 a criminal investigation of the awarding of a contract by MTA to POV.

25 On or about March 8, 2021, KBK filed a motion to quash (MTQ) the search warrant on
26 behalf of the MTA and served Proof of Service not only on Sheriff Alex Villanueva but also District
27 Attorney George Gascon, a non-party to the search warrant, (but another of KBK’s clients). (Exh. 4)

28 On March 18, 2021 the MTQ was assigned to Judge Ronald S. Coen (the judge who

1 originally issued the search warrant).

2 On March 19, 2021 Judge Coen questioned the procedural process of a MTQ but ordered
3 LASD to respond. (Exh. 5)

4 On April 1, 2021 KBK filed a 170.6 challenge to Judge Coen. (Exh. 6)

5 On April 5, 2021 Harvinder Anand of the Anand Law Group (counsel for the County in this
6 action) served a MTQ the Search Warrant on behalf of the MTA / OIG. (RJN - D)

7 On April 16, 2021 Laura Brill, named partner of KBK, filed a Petition for Writ of Mandate
8 with the court of appeal regarding Judge Coen’s denial of the 170.6 challenge. (Exh. 7).

9 On June 28, 2021 the District Attorney's office advised the court of appeal they were not a
10 party to the MTA subpoena. (Exh. 8)

11 On September 23, 2021 the COC passed a motion to request the California Attorney General
12 to investigate the Sheriff and LASD regarding criminal investigations of “elected Los Angeles
13 County Officials,” among others. (Exh. 9)

14 On September 29, 2021 attorney Robert E. Dugdale entered his appearance as attorney of
15 record on behalf of the County of Los Angeles and **Sheriff Alex Villanueva** in *United States of*
16 *America v. County of Los Angeles, et al* Case No. 2:15-cv-05903-DDP. (Exh. 10)

17 On October 13, 2021 Supervisor Mark Ridley-Thomas was indicted on federal corruption
18 charges.

19 On January 19, 2022 the OIG advised the Sheriff it was conducting an investigation on
20 “deputy gangs” (Exh.11).

21 On January 13, 2022 attorney Katelyn Kuwata of KBK entered her appearance as attorney
22 of record on behalf of Defendants County of Los Angeles and **Sheriff Alex Villanueva** in *United*
23 *States of America v. County of Los Angeles, et al* Case No. 2:15-cv-05903-DDP. (Exh. 12)

24 On March 25, 2022, the COC (an arm of the BOS) announced it was using Bert Deixler, a
25 partner of KBK, to head the COC’s ad hoc “investigation” of alleged deputy gangs in the LASD.
26 Also assisting Mr. Deixler on the COC ad hoc committee are Nary Kim (a KBK partner) and Sarah
27 Moses, a former attorney of KBK who also represented Sheriff Villanueva. (Exh. 13)

28 On May 4, 2022, attorney Robert Dugdale of the KBK law firm appeared as counsel of

1 record on behalf of **Sheriff Alex Villanueva** in *Rosas v. Alex Villanueva, Sheriff*, United States
2 District Court Case No. CV 2:12-cv-00428-DDP. Mr. Dugdale even filed papers on behalf of the
3 Sheriff. (Exh. 14)

4 On May 23, 2022 Sheriff Villanueva wrote the Executive Director for the COC about his
5 objections to KBK based on an actual conflict of interest. (Exh. 15)

6 On June 29, 2022, the Sheriff served objections to the subpoena to the COC on the basis of
7 the conflict. (Exh. 16)

8 On July 12, 2022 the BOS ordered County Counsel to draft an ordinance for placement on
9 the ballot an ordinance to grant the BOS the authority to remove the elected Sheriff for cause by a
10 4/5 vote. (Exh. 17)

11 On August 2, 2022 the BOS voted to put the Measure on the ballot.

12 On August 10, 2022 Sheriff Villanueva sent an additional letter to the COC and County
13 Counsel again challenging the conflict (Exh. 18)

14 On August 16, 2022 Sheriff Villanueva received a cease and desist letter from ALADS
15 attorneys re the COC hearing. (Exh. 19)

16 On August 25, 2022, County Counsel advised the Sheriff that they were not accepting his
17 objection to Mr. Deixler. Thus this motion is necessary.

18 In the summer of 2022, MTA settled the Loew lawsuit for \$750,000.

19 **B. OIG Investigates the LASD Sheriff Villanueva Over Purported Deputy Gangs**

20 For years the OIG, COC and the BOS have been investigating alleged deputy gangs in the
21 LASD. See Office of Inspector General County of Los Angeles *Analysis of the Criminal*
22 *Investigation of the Alleged Assault by the Banditos* (Oct. 2020). On January 5, 2021, COC
23 Commissioner Sean Kennedy published “*Fifty Years of ‘Deputy Gangs’ in the Los Angeles County*
24 *Sheriff’s Department; Identifying Root Causes and Effects to Advocate for Meaningful Reforms.*”
25 COLA hired the Rand Corporation which issued it September 21, 2022 study on this issue:
26 “*Understanding Subgroups within the Los Angeles County Sheriff’s Department: Comments and*
27 *Department Perceptions with Recommendations for Change*”

28 Despite studying the issue to death, it is only Sheriff Villanueva who has actually done

1 something about alleged deputy gangs.

2 On his first day in office in 2018, Sheriff Villanueva, in response to allegations regarding
3 the “Banditos” and a fight at Kennedy Hall (which occurred prior to him taking office), Sheriff
4 Villanueva removed the East LA Captain and command personnel from that station. Throughout
5 2019, 36 employees were transferred from the East LA Station, four employees were terminated,
6 and 22 employees who participated in the Kennedy Hall incident received major suspensions
7 without pay. Both criminal and administrative investigations were conducted where investigators
8 interviewed over 70 involved parties and witnesses in the case. In addition, the case was submitted
9 to the District Attorney’s Justice System Integrity Division (JSID) for their review and the DA’s
10 office concluded there was insufficient evidence to prove the case and declined to file criminal
11 charges.

12 In February 2020 the Sheriff implemented a policy specifically addressing employee groups
13 which violate the rights of other employees or members of the public. See Policy 3-01/050.83.
14 Employee Groups which Violate Rights of Other Employees or Members of the Public
15 (<http://pars.lasd.org/Viewer/Manuals/10008/Content/14944>).

16 At the conclusion of the Kennedy Hall fight between deputies investigation, Sheriff held a
17 press conference to publish the results of the investigation for the public. The press conference may
18 be viewed at (<https://www.youtube.com/watch?v=XEg6Gzilpt4&feature=youtu.be>). The press
19 conference was held on August 13, 2020.

20 Notwithstanding these affirmative and remedial actions by the Sheriff in response to the
21 Kennedy Hall incident and allegations of deputy gangs, the COC through a subcommittee is
22 investigating “how” the LASD investigated that incident. Why?

23 A reasonable inference is because of the investigation of the award of the POV contract as
24 reported by MTA former employee Jennifer Loew. The COC has previously gone on record that it
25 believes the LASD should not investigate possible criminal conduct by public officials and has tried
26 to force the Sheriff to justify why he has undertaken such criminal investigations. (Exh. 9) Of
27 course, Government Code section 25303 precludes the BOS (the COC is an arm of the BOS) from
28 interfering with criminal investigations and that section applies to the COC.

1 Shockingly, Commissioner Bonner of the COC even stated at the COC September 23, 2021
2 meeting “the Sheriff and his department have no business investigating those with oversight
3 responsibilities over them. We make that clear. Isn’t it clear to the Sheriff?” (See minutes of that
4 meeting as Exh. 9) (Online video available on COC website @ 2:00:41-48.

5 Trying to make clear to the Sheriff that he has no business investigating members of the
6 COC or BOS sounds remarkably close to illegal interference with or obstruction of justice.
7 Seriously, since when are individuals who are members of an oversight body immune from criminal
8 scrutiny if they do something criminally wrong? While it was the FBI who actually had former
9 Supervisor Ridley-Thomas indicted, what would have precluded the Sheriff from doing that
10 investigation if necessary? Such hubris by the COC demonstrates why the Petition for an OSC Re
11 Contempt should be denied, given the conflict of interest. This motion, however, addresses the
12 disqualification of KBK and the logical consequence of disbanding the COC ad hoc committee due
13 to its being poisoned with such conflicts. That the COC has used its subpoena power instead of
14 inviting the Sheriff tells volumes.

15 COC Commissioner Bonner, at the September 23, 2021 meeting stated:

16 If you’re being bullied then you need to call out the bully. I mean, I—I – I really
17 believe that profoundly. And so I – I -- I don’t think this is one where we invite him
18 and we – we negotiate with him whether he appears or not. (Transcript online at
COC website 3:56:58 – 3:59:09)

19 While not directly on point, but nevertheless related, following two unfair practice charges
20 brought by the Association of the Los Angeles Deputy Sheriff’s (ALADS) and the Los Angeles
21 County Professional Peace Officers Association (PPOA), a County hearing officer on August 18,
22 2022 has recommended the County cease and desist from implementing its Oversight Legislation
23 (Measure R and ordinance 20-0520) as violating the Meyer-Milias-Brown Act (MMBA)
24 requirement to bargain. (Exh. 20)

25 The report also recommended the County cease enforcing compliance with subpoenas until
26 its duty to bargain pursuant to the MMBA and the Los Angeles County Employee Relations
27 ordinance was complied with. That recommendation came down on August 18, 2022 and is still
28

1 pending before the COLA Employee Relations Commission (ERC) which has the authority to order
2 the County to cease and desist. *City of Palo Alto v. Public Employment Relations Branch*, 5
3 Cal.App.6th 1271, 1287 (2016). To go forward with any contempt proceedings or even any further
4 COC ad hoc committee, before the issue is finally resolved would cause irreparable harm.

5 **C. The Other Cases on Behalf of the Sheriff**

6 There are several cases pending in federal court before Judge Dean Pregerson involving
7 specifically the LASD, KBK is involved in all of them, representing the County and Sheriff
8 Villanueva.

9 KBK, since 2018, has been paid over \$300,000 out of the Sheriff’s Department budget
10 involved with litigation in federal court. (Exh. 1) KBK has been retained to represent Sheriff
11 Villanueva as an individually named defendant in his official capacity in *Rosas v. Alex Villanueva*,
12 *Sheriff*, United States District Court Case No. CV 2:12-cv-00428-DDP. (Exh. 14) Fees have also
13 been paid to KBK for USDC Case No. CV-2:15-cv-03174 *United States of America v. The County*
14 *of Los Angeles and the Los Angeles County Sheriff’s Department* and for USDC Case No. 2:15-cv-
15 05903-DDP, another *United States of America v. The Sheriff* case. KBK attorneys also represent
16 Sheriff Villanueva in those actions. (Exh. 10 and 12). As such, KBK attorney Dugdale is in
17 consistent communication with the LASD and obtaining information from the LASD. His access to
18 confidential information creates a per se conflict. (See Exh. 21)

19 **D. The Peace Over Violence Investigation**

20 On September 11, 2019, after receiving a credible whistleblower complaint, LASD opened
21 a public corruption investigation regarding the award by the MTA of a contract to POV. BOS
22 Supervisor Sheila Kuehl, (a member of the MTA Board and an advisory board member of POV)
23 and Patricia “Patti” Giggans, a COC member, CEO of POV and a major political donor to Kuehl
24 had been named by Jennifer Loew as potentially involved. So too were other officials and MTA
25 employees. The whistleblower’s story of public corruption was the subject of an in-depth televised
26 investigative report on September 24, 2020 which can be viewed at: <https://fb.watch/eFdNLutT2S>.
27 See also “LA Metro Hotline Costing Taxpayers Thousands Per Call; Whistleblower alleges
28 Cronyism” article of September 23, 2020. (Exh. 22).

1 In February 2020 Jennifer Loew filed whistleblower lawsuits against the MTA and many
2 individuals associated with COLA and MTA, alleging among many other things, improper award
3 of a contract to Patti Giggans’ POV because of directives from Mayor Garcetti, Supervisor Kuehl
4 and Supervisor Ridley Thomas. (RJN - A and B). The LASD had already opened a criminal
5 investigation, but Sheriff Villanueva recused himself from any actual involvement in the department
6 investigation.

7 On September 17, 2020, Supervisor Kuehl publicly called for Sheriff Villanueva to resign
8 as Sheriff. She was quoted as stating, *“I do believe it is time for the sheriff to resign. . . he has shown
9 himself to be in almost every way a rogue sheriff. He does not follow any of the rules, and that
10 means. . . his behavior is the greatest threat to public safety.”* Supervisor Mark Ridley-Thomas also
11 called for the Sheriff’s resignation; a year later Ridley-Thomas would be indicted for corruption.

12 In connection with that criminal investigation the LASD sought a search warrant for records
13 from the MTA¹ (Exh. 3). LASD filed an affidavit in support of the search warrant under seal, per
14 order of the magistrate. Immediately upon serving the search warrant, the MTA hired the law firm
15 of KBK to quash a subpoena for the search warrant and seek to unseal the confidential affidavit
16 (undoubtedly to try to find out what information the LASD had on this investigation.) But KBK had
17 been involved in LASD litigation on behalf of the LASD since 2018. KBK then filed a 170.6
18 challenge to the judge who issued the search warrant, the Honorable Ronald Coen. (Exh. 6). When
19 that 170.6 challenge was denied, KBK lawyers filed an appeal, and that appeal delayed the criminal
20 investigation further. (Exh. 7). The motions to quash (MTQ) the search warrant are in fact still
21

22 ¹ MTA is a separate public entity, governed by a board of directors with 14 members, 13 of whom
23 are voting members. The Board is composed of:

- 24 • The five Los Angeles County Supervisors
- 25 • The mayor of Los Angeles
- 26 • Three Los Angeles mayor-appointees (at least one of whom must be an L.A. City
27 Council Member)
- 28 • Four city council members or mayors from cities other than Los Angeles, who each
represent one region: San Gabriel/Pomona Valley, Arroyo/Verdugo, Gateway
Cities and Westside Cities
- One non-voting member appointed by the Governor of California (traditionally the
Director of Caltrans District 7)

1 pending.

2 Remarkably, the MTQ was served on Sheriff Villanueva and District Attorney George
3 Gascon, both KBK clients. KBK, counsel for MTA, is also counsel for the County and the BOS,
4 and Sheriff Villanueva (Exhs. 10, 12, 14). By filing a MTQ an LASD search warrant, KBK has
5 taken a position in **direct conflict** with their client. As counsel for the County/BOS, by filing a
6 MTQ, they are in effect interfering with a criminal investigation. ²The BOS is expressly prohibited
7 from interfering with the criminal investigative functions of the Sheriff. Government Code § 25303.
8 *Brewster v. Shasta County* 275 F.3d 803, 811 (9th Cir. 2001) in California “County boards of
9 supervisor have authority to supervise the conduct of sheriffs, including the law enforcement
10 conduct of sheriffs, subject to the limitation that the Board not obstruct the Sheriff’s investigation
11 of crime.” See also *Venegas v. County of Los Angeles* 32 Cal.4th 820, 839 (2004) (California
12 Sheriff’s act as state officers while performing state law enforcement such as investigation of
13 possible criminal activity.)

14 The law firm of KBK, by acting as counsel for the MTA and filing a MTQ against the
15 LASD’s lawfully issued search warrant (as opposed to a Penal Code Section 1538.5 motion to
16 suppress the evidence), has taken a position directly in contrast and in conflict with their clients the
17 LASD and the County of Los Angeles. KBK also unnecessarily brought the DA, a non-party to the
18 search warrant into the matter. KBK of course was representing Gascon at the time. ³

19 To make the story a little bit more interesting, two of the many people whose emails and
20 communications were sought in the search warrant were Supervisor Kuehl and Patty Giggans, who
21 is a member of the COC (Ms. Giggans has herself apparently separately complied and cooperated
22 with a request to her for documents from the LASD). The COC then became outraged that the LASD
23 was pursuing a criminal investigation.

24

25 ² Government Code section 25203 provides that the BOS "direct[s] and control[s] the conduct of
26 any litigation in which the County, or any public entity of which the County is a governing body,
is a party."

27 ³ A peace officer affiant in support of a search is not required to seek the DA's approval or
28 consent.

1 It doesn't take much imagination to realize that the COC ad hoc committee is just an attempt
2 to interfere with the Sheriff's investigating potential criminal activity. However, KBK has a serious
3 conflict of interest in representing all seven (LASD, DA, MTA, BOS, COC, County, and Sheriff
4 Villanueva) on these related issues. The Sheriff filed a proper objection to the subpoena on the basis
5 of conflict of interest and he is entitled not to waive the conflict. (Exh. 16). Mr. Deixler dismissively
6 ignored the objections at the COC meeting.

7 **E. MTA's Motion to Quash**

8 The criminal investigation leading up to the search warrant was conducted by the LASD.
9 Remarkably KBK on page 4 of their MTQ, asserts, "the scope and substance of the LASD's
10 investigation is somewhat a mystery." (RJN - E). This is taking a position against their client but
11 even more significantly, this is how criminal investigations are conducted. Once a case is filed, the
12 investigation becomes transparent and there are a host of procedures in place by which one could
13 challenge the sufficiency of a search warrant or seek to exclude evidence if a defendant in a case.
14 (E.g. Penal Code § 1538.5, Penal Code § 995.)

15 Notwithstanding Judge Coen's concern about the procedural irregularity used by KBK to
16 challenge the search warrant, Judge Coen ordered the LASD to respond (Exh. 5). In KBK's reply
17 to the opposition filed by the LASD, KBK actually highlights the impropriety of KBK's
18 representation by arguing that the DA's Office – their client – had not opposed the motion to quash
19 stating "it [the DA's office] seemingly has nothing to do with, and wants nothing to do with, this
20 campaign waged by the LASD to target and harass certain members of the MTA's Board
21 [presumably Supervisor Kuehl] and Peace Over Violence who have oversight over the Los Angeles
22 County Sheriff and his job performance." (RJN - F).

23 By making statements about KBK's other existing client's (the DA's) purported thought
24 process, Mr. Dugdale conveys the optics that he may have inside knowledge. But evidenced by Exh.
25 8, the DA was not a party.

26 Then completely ignoring the minute order of Judge Coen ordering the LASD to respond to
27 the motion (Exh. 5), KBK attacks the LASD by arguing "Instead, private counsel representing the
28 LASD had injected himself into the proceeding and done so without citing to any authority for the

1 notion the LASD, as opposed to the District Attorney’s office, can defend a search warrant. . .” By
2 making statements about his existing client’s actions (the Sheriff), Mr. Dugdale is violating the rules
3 of ethics. (RJN – F p. 3, ln 16-19.)

4 On April 16, 2021 the MTA filed a Petition for Writ of Mandate with the court of appeal,
5 case No. B311725. Laura Brill of KBK filed the briefing. (See Exh. 7) KBK’s client, the District
6 Attorney finally weighed in by letter of June 28, 2021, actually contradicting KBK’s comment in
7 the MTQ. (Exh. 8) A remittitur was issued on November 26, 2021.

8 The MTA is going to great lengths to quash a search warrant that seeks primarily documents
9 that would be available under the Public Records Act.

10 **F. The COC Ad Hoc Committee**

11 On March 24, 2022 the COC launched a “full scale” investigation into alleged deputy gangs,
12 claiming “the Department has failed to eliminate gangs”; and not surprisingly the new COC inquiry
13 is led by Bert Deixler, a KBK partner as Special Counsel. Another KBK for the COC partner, Nary
14 Kim, is also assisting him. Sarah Moses, apparently an attorney with KBK until October 2021 and
15 attorney for Sheriff Villanueva is also assisting. (Exh. 13).

16 But before then, the OIG asserted it was investigating deputy gangs and Sheriff Villanueva
17 testified before the OIG on April 22, 2022 on this topic. The OIG then abandoned its investigation.

18 The COC held their first “*Special Hearing on Deputy Gangs in the Sheriff’s Department.*”
19 The meeting took place in a mock courtroom at Loyola Law School. There was no judge, no
20 opportunity to examine a witness (redirect) based on COC examination. By presenting this hearing
21 in a mock courtroom, the COC created the illusion of a trial. It was one-sided political theater
22 designed to defame and demoralize the LASD and attack Sheriff Villanueva. But that is politics and
23 to be expected.

24 What is not to be expected is the blatant conflict of interest by KBK and total disregard of
25 the Rules of Professional Responsibility. How can KBK lawyers Dugdale, Kuwata and Moses
26 represent the Sheriff, Dugdale and Brill represent the MTA against the Sheriff and Deixler, Kim and
27 Moses represent the COC investigating the Sheriff without there being a conflict? A court has the
28 power to disqualify these lawyers from all matters involving the Sheriff and should.

1 The reasonable inference is that KBK was brought in to the COC ad hoc committee to derail
2 and threaten the Sheriff and his department for conducting an investigation into the POV contract
3 and search warrant. They have successfully obstructed that search warrant for 18 months.

4 Why in March 2022? Well, the LA County election was scheduled for June 7, 2022 and the
5 Sheriff was up for re-election. Why now? The LA County election is scheduled for November 8,
6 2022. The Sheriff is up for re-election.

7 Lest the court believe elections are not a part of the BOS' thinking, then a review of the
8 March 2019 COC meeting may be enlightening. At the March 4, 2019 COC meeting, Sheriff
9 Villanueva, County Counsel, the Inspector General were in attendance. County Counsel advised
10 that former Sheriff McDonald had met in the summer of 2017 with County officials "to figure out
11 how to handle the issue of deputy sub-groups or cliques" but **decided to suspend any research into**
12 **it due to upcoming 2018 election.** (Exh. 23)

13 So all of a sudden, when the issue of the POV criminal investigation is again becoming
14 active after the KBK appeal and remittitur, it's time to divert attention from that and draw attention
15 to the deputy cliques, using the Sheriff's own counsel, right before the election. How can a lawyer
16 and the lawyer's firm accept representation of the LA Sheriff and LASD at the same time as that
17 same firm is attacking him? The conflict is enormous and outrageous.

18 **III. THE BOS MAY NOT INTERFERE IN CRIMINAL INVESTIGATIONS**

19 A County cannot interfere with the Sheriff's independent exercise of his duty to investigate
20 potential criminal violations where it involves potential criminal conduct. See Gov. Code, § 26600
21 [Sheriff shall preserve peace]; § 26601 [Sheriff shall arrest and take before the nearest magistrate
22 for examining all persons who attempt to commit or have committed a public offense] § 26602
23 ["The Sheriff shall prevent and suppress affrays . . . and investigate public offenses which have been
24 committed."]. *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 355 [county cannot instruct Sheriff
25 on how to investigate crime, make arrests, or secure evidence.] As explained in *Rivero v. Superior*
26 *Court* (1997) 54 Cal.App.4th 1048, 1058:

27 "Very few activities performed by public officials are more important to the public
28 and to the individuals more directly involved than the full and proper investigation
of criminal complaints."

1 Government Code section 25303 bars county boards of supervisors from affecting or
2 obstructing the Sheriff’s investigative functions. The Supreme Court in *Venegas v. County of Los*
3 *Angles* 32 Cal.4th 820 (2004) found that with respect to law enforcement functions, sheriff and
4 district attorneys do not act as County officials, citing *County of Los Angeles v. Superior Court*
5 (1998) 68 Cal.App.4th 1166 (Peters). Local ordinances “cannot override Section 25303.” *Rivero*.

6 By utilizing KBK which represents the Sheriff ⁴ the COC, the County, the DA, and allow
7 KBK to continue representing when KBK is filing a MTQ. against the Sheriff and LASD, the BOS
8 is doing indirectly what it is not allowed to do directly. By using KBK to represent the Sheriff and
9 LASD, the ethical rules for attorneys are being violated.

10 **IV. THIS COURT HAS THE AUTHORITY TO REGULATE THE CONDUCT OF**
11 **LAWYERS APPEARING BEFORE IT, INCLUDING THE DISQUALIFICATION**
12 **OF COUNSEL**

13 A trial court’s authority to disqualify an attorney derives from the power inherent in every
14 court “[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other
15 persons in any manner connected with the judicial proceeding before it, in every matter pertaining
16 thereto.” (Code Civ. Proc. § 128; *People ex rel. Dept. of Corporations v. Speedee Oil Change*
17 *Systems, Inc.* (1999) 20 Cal. 4th 1135, 1145.) In considering a motion to disqualify counsel, the
18 “paramount concern is the preservation of public trust in the scrupulous administration of justice
19 and the integrity of the bar.” (*Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal. App. 4th 698,
20 705.) “Motions to disqualify counsel are . . . necessary under certain circumstances, to protect the
21 integrity of our judicial process by enforcing counsel’s duties of confidentiality and loyalty.”
22 (*Speedee Oil Change*, 20 Cal. 4th at pp. 1145-1146.) See also *Great Lakes Construction Inc. v.*
Burman (2010) 186 Cal.App.4th 1347, 1355.

23 In *Gilbert v. National Corp. for Housing Partnerships* (1999) 71 Cal. App. 4th 1240, the
24 Court of Appeal made the following observations:

25 _____
26 ⁴ County may argue that the Sheriff’s Department is not a separate governmental entity but a
27 department of the County. Given the obvious conflict between the BOS and the Sheriff and the
28 fact that the County is suing the Sheriff for contempt, it misses the point about adverse interests.
All that argument does is highlight the conflict KBK has by representing the MTA against an
LASD (by County’s reasoning the County) search warrant. KBK simply cannot do that.

1 “Although the law places great emphasis on the importance of a client’s ability to
2 retain the attorney of his or her choice, on occasion this interest must yield to the
3 even more important public policy of maintaining the integrity of the judicial
4 process. The issue of disqualification ultimately involves a conflict between the
5 client’s right to counsel of their choice and the need to maintain ethical standards
6 of professional responsibility. *The paramount concern, though, must be the
preservation of public trust in the scrupulous administration of justice and the
integrity of the bar. The recognized and important right to counsel of one’s
choosing must yield to considerations of ethics that run to the very integrity of
our judicial process.* (*Id.* at pp. 1254-1255.) (Emphasis added, citations and
internal quotation marks omitted.)

7 Utilizing KBK to conduct the ad hoc committee investigation violates the rules of ethics and
8 challenges the integrity of their representation on all fronts.

9 COLA may argue that LASD and the Sheriff are really the County and that the Sheriff does
10 not have standing to challenge KBK. That argument would be specious. Case law abounds with
11 examples of orders disqualifying counsel that have not been the product of motions by present or
12 former clients. (See, e.g., *Meza v. H. Muehlstein & Co., Inc.* (2009) 176 Cal.App.4th 969, 980-981
13 [law firm disqualified after hiring attorney who was privy to adversary’s privileged work product
14 information]; *People v. Peoples* (1997) 51 Cal.App.4th 1592, 1599 [defense attorney with direct
15 familial connections to victim, witnesses and the defendant disqualified on court’s own motion];
16 *Woods v. Superior Court* (1983) 149 Cal.App.3d 931, 937 (in a divorce action, court properly
17 granted wife’s motion to disqualify counsel for husband who had formerly represented the family
18 business]; see also *DCH Health Services Corp. v. Waite* (2002) 95 Cal.App.4th 829, 832 (“Standing
19 arises from a breach of the duty of confidentiality owed to the complaining party, regardless of
20 whether a lawyer-client relationship existed.”))

21 Why is County and BOS using a firm which is adverse to County in another matter? “[T]he
22 court has an *independent interest* in ensuring trials are conducted within ethical standards of the
23 profession and that legal proceedings appear fair to all that observe them.” (*In re A.C.* (2000) 80
24 Cal.App.4th 994, 1001 (Italics added.) Accordingly, where an attorney’s continued representation
25 would undermine the integrity of the judicial process, the trial court may grant a motion for
26 disqualification, regardless of whether a motion is brought by a present or former client of recused
27 counsel. If the Court declines to disqualify KBK, then at the very least the Court should sustain
28 Sheriff Villanueva’s objections, not enforce the subpoena and not issue a contempt order.

1
2 **V. KBK’s REPRESENTATION OF THE SHERIFF, THE COUNTY, THE MTA**
3 **AGAINST THE LASD AND THUS THE COUNTY CREATES THE APPEARANCE**
4 **OF IMPROPRIETY AND UNDERMINES THE PUBLIC’S CONFIDENCE IN THE**
5 **LEGAL PROFESSION AND THESE PROCEEDINGS**

6 KBK is obviously the firm the County BOS uses on its law enforcement related cases (at
7 least since 2018) and therefore has access to confidential privileged information through its
8 representation of the County of Los Angeles in other matters. Thus, the potential for use of
9 confidential LASD information in its representation of the MTA (a public entity separate and
10 distinct from the County) is a conflict for KBK. Why KBK didn’t decline that representation is a
11 mystery. The only effective way to prevent the disclosure of privileged communications and the
12 appearance of impropriety, and to preserve the public’s confidence, is to disqualify KBK from its
13 continued representation of the County in Sheriff-related litigation and from the COC ad hoc
14 committee. Since Mr. Deixler has been the lead investigator on the ad hoc committee, the entire
15 process is contaminated and must be stopped. But Ms. Moses also has held herself out specifically
16 as counsel for the Sheriff (Exh. 24) and is a member of the ad hoc team and also has a conflict. KBK
17 partner Nary Kim is also on the team.

18 In *Cargill Incorporated et al. v. Budine, Progressive Dairy Solutions et al.* (E.D. Cal. 2007)
19 2007 U.S. Dist. LEXIS 48405 the court granted a motion for disqualification, relying, in part, on
20 Canon 9 of the Model Code of Professional Responsibility (“Model Code”) which states that a
21 “lawyer should avoid even the appearance of professional impropriety.” (*Id.* at *30.)

22 Former California Rules of Professional Conduct, Rule 1-100 (A), provided that “[e]thics
23 opinions and rules and standards promulgated by other jurisdictions and bar associations may also
24 be considered” when deciding issues related to disqualification. (*People v. Donaldson* (2001) 93
25 Cal. App. 4th 916, 928 [“Especially where there is no conflict with the public policy of California,
26 the Model Rules serve as a collateral source for guidance on proper professional conduct in
27 California.”]). *Kennedy v. Eldridge* (2011) 201 Cal. App. 4th 1197, 1210-1211, also applied the
28 ABA Model Rules and affirmed the trial court’s order regarding disqualification because “the
multiple and interconnected family entanglements present here result in a strong appearance of

1 impropriety and undermine the integrity of the judicial system.”.

2 In this case, there is even a further impropriety. Six out of 20 current KBK attorneys and one
3 former one have their fingers in the various pots. One of the individuals whose communications are
4 sought sits on the BOS, was a director of the MTA and is an advisory board member to POV.
5 Another is a member of the COC and CEO of POV. Having the law firm for the BOS and MTA
6 working all these aspects creates a tremendous perception of misfeasance. Disqualification is the
7 only remedy.

8 **VI. KBK MUST BE DISQUALIFIED FROM REPRESENTING LASD, SHERIFF**
9 **VILLANUEVA, THE COC AND THE COUNTY ON MATTERS RELATED TO**
10 **LASD.**

11 **A. KBK Is Subject To Automatic Disqualification Due To A Concurrent Conflicted**
12 **Representation Without Consent.**

13 California Rules of Professional Conduct (“CRPC”, rule 1.7(a) prohibits a lawyer from
14 representing a client “if the representation is directly adverse to another client in the same or separate
15 matter” without informed written consent. That is the situation here. *Flatt v. Super. Ct.* (1994) 9
16 Cal.4th 275, 284. Automatic, or “per se” disqualification, is required in these cases even if the
17 simultaneous representations have nothing in common – which is not the case, here. *Ibid.* In fact the
18 Sheriff has gone on record that he objects to the representation and disqualification should have
19 been automatic.

20 Critical, and relevant to this case, an attorney may not attempt to cure a concurrent adverse
21 conflict of interest by dropping one client in favor of another, in order to apply the more lenient
22 disqualification test used in successive representation cases. *See, Flatt v. Super. Ct., supra*, 9 Cal.4th
23 at p. 288 [“So inviolate is the duty of loyalty to an existing client that not even by withdrawing from
24 the relationship can an attorney evade it.”]; *see also, Truck Ins. Exchg. v. Fireman’s Fund Ins. Co.*
25 (1992) 6 Cal.App.4th 1050, 1059 [discussing the “unavailability of withdrawal as a means of
26 escaping application of the per se disqualification rule”].

27 Having established that KBK and MTA had an attorney-client relationship as of 2021 and
28 KBK and the Sheriff as of 2018, the facts mandate per se disqualification of KBK. Dropping one
client would not cure the breach of duty of loyalty and does not permit the court to apply the more

1 lenient successive representation disqualification standard. *Flatt v. Super. Ct., supra*, 9 Cal.4th at
2 p. 288. [There is a bar on curing dual representation of clients with the adverse interests.] Without
3 informed consent in violation of CRPC rule 1.7(a), KBK is subject to automatic, “per se”
4 disqualification. *Flatt v. Super. Ct., supra*, 9 Cal.4th at p. 284. The Sheriff is entitled to undivided
5 loyalty. *Cinerama 5, Ltd. v. Cinerama Inc.* 528 F2d 1385, 1386 (1976 2d Cir) cited with approval
6 in *Flatt*.

7 **B. The Matters Are Substantially Related and Thus KBK Is Subject To**
8 **Disqualification**

9 CRPC, rule 1.9(a) prohibits a lawyer from representing persons “in the same or a
10 substantially related matter in which that person’s interests are materially adverse to the interests of
11 the former client” absent informed written consent. A substantial relationship between matters exists
12 when there is a rational relationship between the subject matters. *See, Jessen v. Hartford Cas. Ins.*
13 *Co.* (2003) 111 Cal.App.4th 698, 713 [“substantial relationship” exists where “information material
14 to the evaluation, prosecution, settlement or accomplishment of the former representation given its
15 factual and legal issues” is material to the current representation].

16 KBK’s reference in its reply to the opposition to the MTQ as to what the District Attorney’s
17 Office’s position on the MTQ is a clear example of how there is a rational relationship between all
18 these cases. (RJN - F). If a substantial relationship exists between the two matters, “the attorney’s
19 access to privileged and confidential information in the former representation is presumed and
20 disqualification of the attorney from the current representation is mandatory in order to preserve the
21 former client’s confidences.” *Fremont Indem. Co. v. Fremont Gen. Corp.* (2006) 143 Cal.App.4th
22 50, 67. Further, a lawyer may not use a former client’s confidential information in a successive
23 representation without informed written consent. CRPC. rules 1.6(a) and 1.9(c).

24 A substantial relationship exists between the POV investigation and the *Rosas* and other
25 federal litigation and the COC ad hoc investigation. They are all intertwined.

26 **C. The Continued Maintenance of KBK as counsel for the County and COC**
27 **Undermines Public Confidence**

28 The California Supreme Court has stated that “[a]ttorneys have a duty to maintain undivided

1 loyalty to their clients to avoid undermining public confidence in the legal profession and the judicial
2 process. . . . The effective functioning of the fiduciary relationship between attorney and client
3 depends on the client’s trust and confidence in counsel.” *SpeeDee Oil*, 20 Cal.4th at 1146 (citations
4 omitted). Indeed, “[t]he most egregious conflict of interest is representation of clients whose
5 interests are directly adverse in the same litigation Such patently improper dual representation
6 suggests to the clients – and to the public at large – that the attorney is completely indifferent to the
7 duty of loyalty and the duty to preserve confidences.” *Id.* at 1147 (citation omitted); *See also Unified*
8 *Sewerage Agency of Wash. Cty., or v. Jelco Inc.*, 646 F2d 1339, 1345 (9th Cir. 1981) (discussing
9 concurrent representation under prior ABA Code of Responsibility and stating that “representation
10 adverse to a present client must be measured not so much against the similarities in litigation, as
11 against the duty of undivided loyalty which an attorney owes to each of his clients”).

12 This is nothing new. The applicable standard of conduct was previously set forth in the
13 California Rules of Professional Conduct, Rule 3-310(c)(3), which stated: “A member shall not,
14 without the informed written consent of each client . . . [r]epresent a client in a matter and at the
15 same time in a separate matter accept as a client a person or entity whose interest in the first matter
16 is adverse to the client in the first matter.” Put another way, a conflict of interest exists “when, on
17 behalf of one client, it is [a lawyer’s] duty to contend for that which duty to another client requires
18 him to oppose.” (*Flatt v. Superior Court* (1994) 9 Cal 4th 275, 282.) An “adverse” interest is one
19 that is “hostile, opposed, antagonistic . . . detrimental, unfavorable to one’s own interests. (*Ames v.*
20 *State Bar* (1973) 8 Cal. 3d 910, 917.) Further, when considering purported conflicts of interest
21 arising from concurrent representations, courts focus on the attorney’s duty of loyalty. (*Flatt*, 9 Cal.
22 4th at p. 284; *Gilbert*, 71 Cal. App. 4th at p. 1252 [holding that “a conflict of interest exists
23 whenever a lawyer’s representation of one of two clients is rendered less effective because of his
24 representation of the other.”].) One court has noted “[t]he spectacle of an attorney skewering her
25 own client on the witness stand in the interest of defending another client demeans the integrity of
26 the legal profession and undermines confidence in the attorney-client relationship.” (*Hernandez v.*
27 *Paicius* (2003) 109 Cal. App. 4th 452, 467.) (Overruled on other grounds).

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. The Fact That Different Lawyers In The KBK Firm Work On Different Matters Makes No Difference.


County or KBK may argue that different lawyers in the firm work on different matters – Dugdale, Kuwata, and Moses on the federal court cases, Dugdale and Brill on the MTA MTQ, Deixler, Kim and Moses on the COC matter. That makes no difference. *Adams v. Airojet – General Corp.* (2001) 86 Cal.App.4th 1324 has been codified in Rule 1.9.(b). A lawyer in a law firm may become privy to the confidential information of a firm client even if the lawyer did not personally represent the client in the same or a substantially related matter. This is sometimes known as the “water cooler phenomenon.” In a firm of 20 lawyers, with a named partner participating, and at least three other partners involved, the water cooler is simply too accessible.

VII. CONCLUSION

Respondent has established that grounds exist to disqualify KBK and all its attorneys from matters involving the LASD, Sheriff Villanueva and the COC, based on a serious conflict of interest. Based on this same conflict of interest, the Sheriff’s objections to the subpoena should be sustained, and the Petition for an OSC re Contempt should be dismissed.

DATED: September 1, 2022

BALLARD ROSENBERG GOLPER & SAVITT, LLP

By: 
LINDA MILLER SAVITT
Attorneys for Respondent HON. ALEX
VILLANUEVA, SHERIFF OF LOS ANGELES
COUNTY

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 15760 Ventura Boulevard,
Eighteenth Floor, Encino, CA 91436.

5 On September 1, 2022, I served true copies of the following document(s) described as
6 **RESPONDENT’S NOTICE OF MOTION AND MOTION TO ORDER COUNTY TO**
7 **REMOVE AND RECUSE THE LAW FIRM OF KENDALL BRILL & KELLY LLP, ITS**
8 **ATTORNEYS AND FORMER ATTORNEYS FROM a) ALL MATTERS, OR, IN THE**
9 **ALTERNATIVE, FROM b) REPRESENTING THE COUNTY AND/OR THE LASD ON**
10 **ALL MATTERS INVOLVING THE SHERIFF OR, IN THE ALTERNATIVE, TO**
11 **DISQUALIFY KBK ON ALL COUNTY AND/OR LASD CASES INCLUDING THE COC**
12 **AD HOC COMMITTEE ON DEPUTY GANGS** on the interested parties in this action as follows:

13 **SEE ATTACHED SERVICE LIST**

14 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
15 persons at the addresses listed in the Service List. I am “readily familiar” with Ballard Rosenberg
16 Golper & Savitt, LLP’s practice for collecting and processing correspondence for mailing with the
17 United States Postal Service. Under that practice, it would be deposited with the United States
18 Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for
19 collection and mailing with postage thereon fully prepaid at Encino, California, on that same day
20 following ordinary business practices.

21 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** By electronic mail transmission
22 from sholland@brgslaw.com on September 1, 2022, by transmitting a PDF format copy of such
23 document(s) to each such person at the e-mail address listed below their address(es). The
24 document(s) was/were transmitted by electronic transmission and such transmission was reported
25 as complete and without error.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.

28 Executed on September 1, 2022, at Encino, California.



Susan D. Holland

BALLARD ROSENBERG GOLPER & SAVITT, LLP
15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR
ENCINO, CALIFORNIA 91436

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Harvinder S. Anand, Esq.
Anand Law Group
790 East Colorado Boulevard, Suite 900
Pasadena, CA 91101
Phone: (626) 239-7250
Fax: (626) 239-7150
Email: harv@anandlawgroup.com

Attorney for the County of Los Angeles

Bill Seki
Seki, Nishimura & Watase
600 Wilshire Blvd., Suite 1250
Los Angeles, CA 90017
Email: bseki@snw-law.com

Attorneys for the Los Angeles County Sheriff's Dept.

Bert H. Deixler
Kendall Brill & Kelly LLP
10100 Santa Monica Blvd., Suite 1725
Los Angeles, CA 90067
Email: bdeixler@kbkfirm.com



View a Reservation

Reservation

Reservation ID:
571610910124

Reservation Type:
Motion re: (RESPONDENT'S NOTICE OF MOTION AND MOTION TO ORDER COUNTY TO REMOVE AND RECUSE THE LAW FIRM OF KENDALL BRILL & KELLY LLP, ITS ATTORNEYS AND FORMER ATTORNEYS, ETC.)

Case Number:
22STCP02700

Case Title:
COUNTY OF LOS ANGELES vs HON. ALEX VILLANUEVA, SHERIFF OF LOS ANGELES COUNTY, et al.

Filing Party:
Hon. Alex Villanueva, Sheriff Of Los Angeles County (Respondent)

Location:
Stanley Mosk Courthouse - Department 38

Date/Time:
February 10th 2023, 9:30AM

Status:
RESERVED

Number of Motions:
1

Motions

Motion re: (RESPONDENT'S NOTICE OF MOTION AND MOTION TO ORDER COUNTY TO REMOVE AND RECUSE THE LAW FIRM OF KENDALL BRILL & KELLY LLP, ITS ATTORNEYS AND FORMER ATTORNEYS, ETC.)

 Reschedule >

 Cancel >

Reservation History

Status	Date	Status	Acti.	Chat
--------	------	--------	-------	------

Status Date	Status	Action
09/01/2022 10:07AM	Reserved by User Date: February 10th 2023, 9:30AM Location: Stanley Mosk Courthouse - Department 38 Motions: 1	\$ View Receipt

 [My Reservations](#)

Copyright © Journal Technologies, USA. All rights reserved.