




**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: CITY ATTORNEY**

**Prepared by: Lisa Goldfien, Asst. City Attorney**      **City Manager Approval:** \_\_\_\_\_ 

**TOPIC:            CONSENT TO CONCURRENT REPRESENTATION**

**SUBJECT:        RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A  
                      CONSENT TO CONCURRENT REPRESENTATION OF THE CITY OF SAN RAFAEL  
                      AND THE MARIN WILDFIRE PROTECTION AUTHORITY BY THE EPSTEIN +  
                      HOLTZAPPLE LAW FIRM**

**RECOMMENDATION:**

Staff recommends the City Council adopt a resolution authorizing the Mayor to execute the attached Consent to Concurrent Representation of the City and the Marin Wildfire Protection Authority by the law firm of Epstein + Holtzapple LLP.

**BACKGROUND:**

San Rafael City Attorney, Rob Epstein, is also a partner in the law firm of Epstein + Holtzapple LLP ("E+H") in San Rafael. E+H was recently hired for the position of general counsel to the newly formed Marin Wildfire Prevention Authority ("MWPA"). The City is a member of the MWPA. Attorney Megan Acevedo will be E+H's primary attorney representing the MWPA. (Ms. Acevedo also serves as Town Attorney for San Anselmo, which also is a member of MWPA.)

Rule 1.7 of the California State Bar's Rules of Professional Conduct provides that a lawyer shall not, without informed written consent from each affected client, represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client. Moreover, such representation is only allowed if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

**ANALYSIS:**

City Attorney Rob Epstein has prepared the attached "Clients' Consent to Concurrent Representation" which contains the disclosures and assurances set forth in Rule 1.7.

\_\_\_\_\_  
**FOR CITY CLERK ONLY**

**Council Meeting:** \_\_\_\_\_

**Disposition:** \_\_\_\_\_

As explained in the Consent document, Mr. Epstein and E+H do not believe there is a “significant risk” that E+H's representation of MWPA and Mr. Epstein's representation of the City will be materially limited by their responsibilities to or relationships with either of the two entities. The Consent also confirms that Mr. Epstein and E+H will ensure that each entity's confidential information is not shared with the other entity, and that they are aware of no current conflict of interest between the two entities. If in the future, either E+H, Mr. Epstein, or the City concludes that a conflict of interest does exist, Mr. Epstein and E+H will take steps to eliminate that conflict.

Staff agrees that at present, there appears to be no conflict of interest between San Rafael and the MWPA that would limit the effectiveness of Rob Epstein's representation of San Rafael, and therefore recommends that the City Council authorize the Mayor to execute the Consent document.

**FISCAL IMPACT:**

There is no fiscal impact associated with this action.

**OPTIONS:**

The City Council has the following options to consider on this matter:

1. Adopt the resolution approving the Consent to Concurrent Representation.
2. Do not adopt the resolution.
3. Direct staff to return with more information.

**RECOMMENDED ACTION:**

Adopt the resolution approving the Consent to Concurrent Representation.

**ATTACHMENTS:**

1. Resolution Approving and Authorizing the Mayor to Execute the Consent to Concurrent Representation with attachment: Clients' Consent to Concurrent Representation

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL  
APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A CONSENT TO  
CONCURRENT REPRESENTATION OF THE CITY OF SAN RAFAEL AND THE MARIN  
WILDFIRE PROTECTION AUTHORITY BY THE EPSTEIN + HOLTZAPPLE LAW FIRM**

**WHEREAS**, San Rafael City Attorney Robert Epstein is also a partner in the law firm of Epstein + Holtzapple LLP ("E+H") in San Rafael; and

**WHEREAS**, E+H was recently hired for the position of general counsel to the newly formed Marin Wildfire Prevention Authority ("MWPA"), with attorney Megan Acevedo to act as E+H's primary attorney representing the MWPA; and

**WHEREAS**, the City of San Rafael is a member of the MWPA; and

**WHEREAS**, Rule 1.7 of the California State Bar's Rules of Professional Conduct provides that a lawyer shall not, without informed written consent from each affected client, represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client. Moreover, such representation is only allowed if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

**WHEREAS**, Mr. Epstein and E+H do not believe there is a "significant risk" that E+H's representation of MWPA and Mr. Epstein's representation of the City will be materially limited by their responsibilities to or relationships with either of the two entities, and the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

**WHEREAS**, Mr. Epstein and E+H have confirmed that they will ensure that each entity's confidential information is not shared with the other entity; and

**WHEREAS**, Mr. Epstein and E+H have confirmed that they are aware of no current conflict of interest between the two entities; if in the future, either E+H, Mr. Epstein, or the City concludes that a conflict of interest does exist, Mr. Epstein and E+H will take steps to eliminate that conflict;

**NOW, THEREFORE IT IS HEREBY RESOLVED** that the City Council does hereby approve and authorize the Mayor to execute the attached "Clients' Consent to Concurrent Representation" of the City of San Rafael and the Marin Wildfire Protection Authority by Robert Epstein and the law firm of Epstein + Holtzapple LLP.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, do hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on the 17<sup>th</sup> day of August 2020, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

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LINDSAY LARA, City Clerk

### Clients' Consent to Concurrent Representation

Epstein + Holtzapple LLP ("the Firm") has been requested to represent the Marin Wildfire Prevention Authority ("MWPA"). Megan Acevedo will be the primary attorney working for the MWPA.

Rob Epstein is a partner in the Firm. Mr. Epstein also serves as part-time City Attorney for the City of San Rafael ("the City"). We are seeking your consent to this concurrent representation.

Under Rule 1.7 of the California Rules of Professional Conduct, a lawyer shall not, without informed written consent from each affected client, represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client. Pursuant to this rule, concurrent representation under such circumstances is permitted only if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal. (Cal. Bar RPC, Rule 1.7(d)).

The Firm and Mr. Epstein believe that the Firm's representation of MWPA and Mr. Epstein's representation of the City do not present such a "significant risk." Nevertheless, we note that the Firm believes that it will be able to provide competent and diligent representation to MWPA, while Mr. Epstein believes that he will be able to continue to provide competent and diligent representation to the City. This concurrent representation is permitted by law and does not involve the assertion of a claim by one client against the other in any proceeding before a tribunal.

We do not anticipate the Firm's representation of MWPA to interfere with the work that Mr. Epstein does for the City. Mr. Epstein will continue to serve as City Attorney and work closely with City staff and officials to offer advice on a broad range of legal issues that impact the City, including land use, emergency response, open meeting laws, and public contracting.

We similarly do not anticipate Mr. Epstein's representation of the City to interfere with the work that the Firm will do for MWPA. MWPA is a newly formed joint powers authority made up of 17 member agencies from across Marin, including the City. The Firm will serve as General Counsel for the MWPA and its Board of Directors. Ms. Acevedo will assist the Board and staff with legal issues related to government transparency, environmental compliance, and other questions that may arise as the Board develops and implements a comprehensive wildfire prevention and emergency preparedness plan for most of Marin County.

The Firm and Mr. Epstein will ensure that each client's confidential information will not be shared. The Firm and Mr. Epstein are aware of no current conflicts of interest, though it is possible that a conflict could develop. If either client believes that they see a conflict of interest, or if either or both believe concurrent representation is no longer in their individual or joint interest, we ask that you notify the Firm and Mr. Epstein. If a conflict occurs, we will discuss the potential need for hiring outside counsel in relation to the conflict.

Please be aware that MWPA and the City are invited to seek independent counsel at any time, regardless whether this consent form has been executed.

Dated: 8/4/20

EPSTEIN + HOLTZAPPLE LLP

By: \_\_\_\_\_

Robert F. Epstein

Partner

**Client Consent**

I have read and understand this consent to concurrent representation . I have had adequate opportunity to review it, and to decide whether to discuss it with separate counsel. I consent to the concurrent representation on the conditions stated above.

Dated: \_\_\_\_\_

CITY OF SAN RAFAEL

By: \_\_\_\_\_

Gary Phillips

Mayor

Dated: \_\_\_\_\_

MARIN WILDFIRE PREVENTION AUTHORITY

By: \_\_\_\_\_

Bruce Goines

President, Board of Directors