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For more information regarding the content of this material, please contact the Charter Schools Division by phone at 916-322-6029 or by email at [charters@cde.ca.gov](mailto:charters@cde.ca.gov).

## **Attachment 10**

# **Samoa Beach Academy's Elimination of Argument Regarding Conflict**



Samoa Beach Academy  
PO Box 128  
Samoa, CA 95564  
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MARCH 21, 2022

VIA: EMAIL  
CharterAppeals@cde.ca.gov

Stephanie Farland, Director  
Charter Schools Division  
California Department of Education  
1430 N Street, Suite 5401  
Sacramento, CA 95814

**Re: *Samoa Beach Academy's Appeal of the Denial of its  
Establishment Charter Petition to the State Board of Education  
Elimination of Argument Regarding Conflict***

Dear Director Farland:

I write as lead petitioner of Samoa Beach Academy ("SBA") to notify the State Board of Education ("SBE") and the California Department of Education ("CDE") that SBA is eliminating the argument appearing on pages 9-11 of SBA's March 10, 2022 appeal under the heading "4. SBA Was Denied a *De Novo* Review by the County Board..." and the reference to that argument on pages 3 and 4. SBA is no longer appealing the denial of its charter petition based on that argument, and it need not be considered. To be clear, SBA continues to stand on all remaining arguments that it submitted.

If, for official use going forward, the CDE would prefer to receive a copy of the appeal that omits that argument and references thereto, we would be pleased to provide a new copy upon request.

Through this letter, we also would like to make it completely clear that the at-issue argument at no time made any allegations that School & College Legal Services of California ("SCLS") engaged in any ethical wrongdoing in serving its clients, and it was never SBA's intention to imply that to be the case. Instead, SBA identified the appearance of a conflict impacting whether SBA received the benefit of a *de novo* review by the County Board; even if that conflict of interest was deemed waived by SCLS' clients (i.e., an agreement to move forward in light of the conflict), the concern that SBA was denied a *de novo* review in the presence of the conflict was still present.



Subsequent to the submission of SBA's appeal, SCLS provided SBA a copy of a letter it sent to its clients (attached) confirming that like SBA, SCLS also believed that an actual conflict existed:

**It is SCLS's opinion that there is an actual conflict with regard to the above-referenced matter because representation of the HCOE and the HCBOE is directly adverse to NHUHSD in the same matter.** Specifically, the HCBOE must review the decisions made by NHUHSD and can choose to overturn those decisions if the HCBOE determines that such action is necessary. The HCOE will assist the HCBOE with reviewing Samoa Beach Academy's petition and will make recommendations regarding the petition appeal to the HCBOE.

....

**If you wish to authorize SCLS to simultaneously represent HCOE and NHUHSD with regard to the charter petition appeal, and you waive this conflict, please signify your consent** by signing and dating Exhibits A, B, and C, and then send the original, executed document to our office and retain a copy for your records.

(October 28, 2021 conflict letter, page 2) (Emphasis added.) That letter included signatures indicating that both SCLS clients ultimately waived SCLS' ability to represent them in the presence of a conflict, as indicated, and that SCLS intended to implement a "screen" to prohibit the attorneys involved in the two representations from collaborating with one another on those matters.

From the standpoint of attorney professional responsibility, SBA believes that SCLS satisfied its professional obligations to its own two clients in the presence of an actual conflict by disclosing the conflict and obtaining their consent to waive the prohibition on representation in light of that conflict, and thereafter instituting the "screen." Of course, the presence of a conflict waiver does not provide assurance or comfort to SBA that SBA itself received the benefit of a true *de novo* review from the County in the presence of an acknowledged actual conflict, where two colleagues from the same law firm were involved in rendering recommendations for denial (which was the point of the position in the charter appeal cover letter). However, SBA understands that SCLS views the argument as questioning its professional ethics. SBA does not see its argument that way for the reasons stated, and respectfully views SCLS' attorneys as zealous advocates for their clients as the professional rules governing attorneys require. However, as a professional courtesy to SCLS to make completely clear that SBA is not alleging an ethical lapse of any kind by SCLS attorneys as to their own two clients, SBA is eliminating that argument from the appeal as stated above.

\* \* \*

Samoa Beach Academy's  
Elimination of Argument Regarding Conflict

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**SAMOA BEACH**  
ACADEMY

Please feel free to contact me (sfdoubled@gmail.com; (707) 496-8954) if you have any questions.

Sincerely,

*David Lonn*

David Lonn  
Lead Petitioner

(enclosure)



## SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority  
serving school and college  
districts throughout the  
state.*

October 28, 2021

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Sent Via Email Only

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**Re: Disclosure of Adverse Representation & Waiver of Conflict of Interest  
Matter: Charter Petition Appeal by Samoa Beach Academy**

Dear Dr. Hartley, Mr. McMahon, and Mr. Macdonald:

School and College Legal Services of California ("SCLS") provides on-going legal services to the Humboldt County Office of Education ("HCOE"), the Humboldt County Board of Education ("HCBOE"), and Northern Humboldt Union High School District ("NHUHS") regarding a variety of legal matters. This fall, SCLS assisted and provided legal advice to NHUHS with the review of a charter school petition for Samoa Beach Academy. NHUHS denied Samoa Beach Academy's request for a charter petition. Samoa Beach Academy appealed that denial to the HCBOE. HCOE and HCBOE have requested that SCLS provide assistance and legal guidance regarding the appeal of the denial of the charter petition for Samoa Beach Academy.

As attorneys, we are governed by the Rules of Professional Conduct when actual or potential conflicts of interest exist between clients. Rule 1.7, paragraph (a) provides: A lawyer shall not, without informed written consent from each client and compliance with paragraph (d) of Rule 1.7, represent a client if the representation is directly adverse to another client in the same or a separate matter. A complete copy of Rule 1.7 is attached for your reference.

Carl Corbin, SCLS's General Counsel, spoke with Colby Smart regarding this matter on October 19, 2021. Following that call, he spoke with Damara Moore

and Jennifer Nix regarding this matter. Mr. Corbin spoke with Roger MacDonald on October 28, 2021. Lastly, Mr. Corbin spoke with Thomas McMahon on October 28, 2021. Based on those discussions, and our review of the facts, it is SCLS's opinion that there is an actual conflict with regard to the above-referenced matter because representation of the HCOE and the HCBOE is directly adverse to NHUHSD in the same matter. Specifically, the HCBOE must review the decisions made by NHUHSD and can choose to overturn those decisions if the HCBOE determines that such action is necessary. The HCOE will assist the HCBOE with reviewing Samoa Beach Academy's petition and will make recommendations regarding the petition appeal to the HCBOE.

However, we believe that we can fully represent both parties by creating an "ethical screen." California Rules of Professional Conduct, rule 1.0.1(k) provides that "'Screened' means the isolation of a lawyer from any participation in a matter, including the timely imposition of procedures within a law firm that are adequate under the circumstances (i) to protect information that the isolated lawyer is obligated to protect under these rules or other law; and (ii) to protect against other law firm lawyers and nonlawyer personnel communicating with the lawyer with respect to the matter."

Attorney Damara Moore assisted NHUHSD with the initial charter petition. In doing so, she did not consult with Ms. Nix regarding the charter petition. Moving forward, Ms. Moore will continue to represent NHUHSD, and Ms. Nix will represent the HCOE and the HCBOE. An ethical screen was instituted on October 19, 2021, there will be no communications across the screen, and all files, documents, and information have been locked to ensure access is limited to Ms. Moore (NHUHSD) and Ms. Nix (HCOE, HCBOE). Legal assistants and other SCLS staff also have access restricted as is appropriate. Ms. Moore and Ms. Nix do not work in the same office. Mr. Corbin will monitor the ethical screen to ensure that all ethical requirements are in place through the duration of this matter.

It is important to note that, if NHUHSD, HCOE, and/or HCBOE become dissatisfied with our representation, each party has the right to withdraw from our representation and choose different legal counsel. No party has the right to require another party to withdraw from our representation and choose different legal counsel.

If you wish to authorize SCLS to simultaneously represent HCOE and NHUHSD with regard to the charter petition appeal, and you waive this conflict, please signify your consent by signing and dating Exhibits A, B, and C, and then send the original, executed document to our office and retain a copy for your records.

If desired, you may consult other legal counsel to further advise you regarding the import of giving your consent. You may also seek independent counsel at any time even if you decide to sign the consent included below.

Should you have any questions concerning the above, please do not hesitate to contact me.

Sincerely,



Carl D. Corbin, General Counsel  
School & College Legal Services of California



Jennifer E. Nix, Sr. Associate General Counsel  
School & College Legal Services of California

Enc: Exhibit A – Agreement and Consent – Humboldt County Office of Education  
Exhibit B – Agreement and Consent – Humboldt County Board of Education  
Exhibit C – Agreement and Consent – Northern Humboldt Union High School District  
Exhibit D – Rule 1.7 Conflict of Interest: Current Clients  
Exhibit E – Rule 1.0.1 Terminology

C: Damara Moore, Senior Associate General Counsel, School & College Legal Services





Dr. Chris Hartley, Superintendent, Humboldt County Office of Education  
Mr. Thomas McMahon, Board President, Humboldt County Board of Education  
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District  
October 28, 2021  
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## EXHIBIT A

### **“MATTER”: Charter Petition Appeal by Samoa Beach Academy**

The undersigned hereby confirms that he has carefully reviewed the above letter from School and College Legal Services of California (“SCLS”) by Carl D. Corbin and Jennifer E. Nix, dated October 28, 2021, and that he has been apprised of the above circumstances which constitute an actual conflict of interest in SCLS’s representation of the Humboldt County Office of Education (“HCOE”) and the Humboldt County Board of Education (“HCBOE”) with regard to the above-referenced matter, as that representation is directly adverse to Northern Humboldt Union High School District (“NHUHSD”) in the same matter. The undersigned acknowledges that he has been apprised of Rule 1.7 of the California Rules of Professional Conduct of the State of California and been given the opportunity to obtain the advice of independent counsel in this matter, if desired.

Consequently, with full knowledge of Rule 1.7, the undersigned, on behalf of HCOE, hereby agrees to SCLS’s representation of HCOE, HCBOE, and NHUHSD with regard to the charter petition appeal involving Samoa Beach Academy. HCOE agrees to waive the actual conflicts specified in the letter.

HUMBOLDT COUNTY OFFICE OF EDUCATION

By:   
\_\_\_\_\_  
Dr. Chris Hartley, Superintendent

Dated: 10/28/2021



Dr. Chris Hartley, Superintendent, Humboldt County Office of Education  
Mr. Thomas McMahon, Board President, Humboldt County Board of Education  
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District  
October 28, 2021  
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## EXHIBIT B

### **“MATTER”: Charter Petition Appeal by Samoa Beach Academy**

The undersigned hereby confirms that he has carefully reviewed the above letter from School and College Legal Services of California (“SCLS”) by Carl D. Corbin and Jennifer E. Nix, dated October 28, 2021, and that he has been apprised of the above circumstances which constitute an actual conflict of interest in SCLS’s representation of the Humboldt County Board of Education (“HCBOE”) and the Humboldt County Office of Education (“HCOE”) with regard to the above-referenced matter, as that representation is directly adverse to Northern Humboldt Union High School District (“NHUHSD”) in the same matter. The undersigned acknowledges that he has been apprised of Rule 1.7 of the California Rules of Professional Conduct of the State of California and been given the opportunity to obtain the advice of independent counsel in this matter, if desired.

Consequently, with full knowledge of Rule 1.7, the undersigned, on behalf of HCBOE, hereby agrees to SCLS’s representation of HCBOE, HCOE, and NHUHSD with regard to the charter petition appeal involving Samoa Beach Academy. HCBOE agrees to waive the actual conflicts specified in the letter.

HUMBOLDT COUNTY BOARD OF EDUCATION

By: \_\_\_\_\_  
Thomas McMahon, Board President

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



Dr. Chris Hartley, Superintendent, Humboldt County Office of Education  
Mr. Thomas McMahon, Board President, Humboldt County Board of Education  
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District  
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## EXHIBIT C

### **“MATTER”: Charter Petition Appeal by Samoa Beach Academy**

The undersigned hereby confirms that he has carefully reviewed the above letter from School and College Legal Services of California (“SCLS”) by Carl D. Corbin and Jennifer E. Nix, dated October 28, 2021, and that he has been apprised of the above circumstances which constitute an actual conflict of interest in SCLS’s representation of the Humboldt County Office of Education (“HCOE”) and the Humboldt County Board of Education (“HCBOE”) with regard to the above-referenced matter, as that representation is directly adverse to Northern Humboldt Union High School District (“NHUHSD”) in the same matter. The undersigned acknowledges that he has been apprised of Rule 1.7 of the California Rules of Professional Conduct of the State of California and been given the opportunity to obtain the advice of independent counsel in this matter, if desired.

Consequently, with full knowledge of Rule 1.7, the undersigned, on behalf of NHUHSD, hereby agrees to SCLS’s representation of NHUHSD, HCOE, and HCBOE with regard to the charter petition appeal involving Samoa Beach Academy. NHUHSD agrees to waive the actual conflicts specified in the letter.

NORTHERN HUMBOLDT UNION HIGH SCHOOL DISTRICT

By: \_\_\_\_\_  
Roger Macdonald, Superintendent

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

## EXHIBIT D

### Rule 1.7 Conflict of Interest: Current Clients

- (a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), 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, a former client or a third person, or by the lawyer's own interests.
- (c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written disclosure of the relationship to the client and compliance with paragraph (d) where:
  - (1) the lawyer has, or knows that another lawyer in the lawyer's firm has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or
  - (2) the lawyer knows or reasonably should know that another party's lawyer is a spouse, parent, child, or sibling of the lawyer, lives with the lawyer, is a client of the lawyer or another lawyer in the lawyer's firm, or has an intimate personal relationship with the lawyer.
- (d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:
  - (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.
- (e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons.

## EXHIBIT E

### Rule 1.0.1 Terminology

- (a) “Belief” or “believes” means that the person involved actually supposes the fact in question to be true. A person’s belief may be inferred from circumstances.
- (b) [Reserved]
- (c) “Firm” or “law firm” means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.
- (d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.
- (e) “Informed consent” means a person’s agreement to a proposed course of conduct after the lawyer has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably foreseeable adverse consequences of the proposed course of conduct.
- (e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.
- (f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.
- (g) “Partner” means a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.
- (g-1) “Person” means a natural person or an organization.
- (h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer means the conduct of a reasonably prudent and competent lawyer.
- (i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer means that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) “Reasonably should know” when used in reference to a lawyer means that a lawyer of reasonable prudence and competence would ascertain the matter in question.

- (k) “Screened” means the isolation of a lawyer from any participation in a matter, including the timely imposition of procedures within a law firm that are adequate under the circumstances (i) to protect information that the isolated lawyer is RRC2 - 1.0.1 [1-100(B)] - Rule - XFT1 (10-26-16).docx 1 obligated to protect under these rules or other law; and (ii) to protect against other law firm lawyers and nonlawyer personnel communicating with the lawyer with respect to the matter.
- (l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.
- (m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.
- (n) “Writing” or “written” has the meaning stated in Evidence Code § 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person with the intent to sign the writing.

## **Comment**

### *Firm\* or Law Firm\**

- [1] Practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a law firm.\* However, if they present themselves to the public in a way that suggests that they are a law firm\* or conduct themselves as a law firm,\* they may be regarded as a law firm\* for purposes of these rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm,\* as is the fact that they have mutual access to information concerning the clients they serve.
- [2] The term “of counsel” implies that the lawyer so designated has a relationship with the law firm,\* other than as a partner\* or associate, or officer or shareholder, that is close, personal, continuous, and regular. Whether a lawyer who is denominated as “of counsel” or by a similar term should be deemed a member of a law firm\* for purposes of these rules will also depend on the specific facts. Compare *People ex rel. Department of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135 [86 Cal.Rptr.2d 816] with *Chambers v. Kay* (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536].

*Fraud\**

- [3] When the terms “fraud”\* or “fraudulent”\* are used in these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform because requiring the proof of those elements of fraud\* would impede the purpose of certain rules to prevent fraud\* or avoid a lawyer assisting in the perpetration of a fraud,\* or otherwise frustrate the imposition of discipline on lawyers who engage in fraudulent\* conduct. The term “fraud”\* or “fraudulent”\* when used in these rules does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. RRC2 - 1.0.1 [1-100(B)] - Rule - XFT1 (10-26-16).docx 2 Informed Consent\* and Informed Written Consent\*
- [4] The communication necessary to obtain informed consent\* or informed written consent\* will vary according to the rule involved and the circumstances giving rise to the need to obtain consent.

*Screened\**

- [5] The purpose of screening is to assure the affected client, former client, or prospective client that confidential information known\* by the personally prohibited lawyer is neither disclosed to other law firm\* lawyers or nonlawyer personnel nor used to the detriment of the person\* to whom the duty of confidentiality is owed. The personally prohibited lawyer shall acknowledge the obligation not to communicate with any of the other lawyers and nonlawyer personnel in the law firm\* with respect to the matter. Similarly, other lawyers and nonlawyer personnel in the law firm\* who are working on the matter promptly shall be informed that the screening is in place and that they may not communicate with the personally prohibited lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected law firm\* personnel of the presence of the screening, it may be appropriate for the law firm\* to undertake such procedures as a written\* undertaking by the personally prohibited lawyer to avoid any communication with other law firm\* personnel and any contact with any law firm\* files or other materials relating to the matter, written\* notice and instructions to all other law firm\* personnel forbidding any communication with the personally prohibited lawyer relating to the matter, denial of access by that lawyer to law firm\* files or other materials relating to the matter, and periodic reminders of the screen to the personally prohibited lawyer and all other law firm\* personnel.
- [6] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm\* knows\* or reasonably should know\* that there is a need for screening.