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Direct: (213) 452-6550

VIA U.S. MAIL AND E-MAIL

Mara Elliott
San Diego City Attorney
Civic Center Plaza
1200 Third Ave., #1620
San Diego, CA 92101
melliott@sandiego.gov

Re: Qualifications for Office of San Diego City Attorney

Dear Ms. Elliott:

We are writing on behalf of Assemblymember Brian Maienschein, a candidate for San Diego City Attorney in the 2024 City election. It is our understanding, based on public reports, that you have been reviewing the issue of Mr. Maienchein's qualifications to serve as San Diego City Attorney, and are considering hiring outside counsel for advice on the issue. The City Charter requires candidates for City Attorney to be licensed in the State of California for a period of ten years prior to submitting nominating petitions for the office. Mr. Maienschein has been a licensed member of the California State Bar since 1994. Therefore, he clearly meets these eligibility requirements, and we respectfully request that you cease from any further consideration of this issue.

As you are no doubt aware, the requirements to serve as City Attorney are found in Section 40 of the San Diego City Charter. It reads, in relevant part, as follows: "The City Attorney must be licensed to practice law in the State of California and must have been so licensed for at least ten years at the time he or she submits nominating petitions." This sentence was added to Charter Section 40 via ballot measure (Measure E) in the November 2016 statewide general election. The Measure passed with over 85% of the vote. When the voters enacted this measure, it was clear that only State Bar membership (i.e. being a "licensed" attorney) for a period of at least 10 years was required to serve as City Attorney. Had the Council (which placed this measure on the ballot) and the voters intended otherwise, they would have said so.

Subsequent to the enactment of Measure E, the California Court of Appeal considered similar language in the seminal case, *Early v. Becerra*, 47 Cal.App. 5th 325 (2021), which involved the statutory requirements for seeking the office of California Attorney General. The *Becerra* Court held that the phrase "admitted to practice" in Government Code Section 12503 "refers to the

event of admission to the bar and the status of being admitted, and does not require engagement in the 'actual' or 'active' practice of law." *Id.* at 329. The Court further found that "[a]n inactive attorney unable to engage in the practice of law remains admitted to practice in California and may accrue time towards eligibility for the office of Attorney General of California. An attorney who chooses voluntary inactive status is not thereby disqualified from accruing eligibility for the office of Attorney General." *Id.* at 336. Lastly, the Court rejected Plaintiff's argument that the language of the statute required something more than bar admission, finding that "Early contends '[t]he phrase "admitted to practice" as used in the statute can mean only one thing—the actual ability to practice law.' However, the word 'actual'— or 'active,' for that matter—does not appear in the statute." *Id.* at 332.

Courts in other States that have considered this issue also support this interpretation. For example, a Maryland court held that the word "active" is required in order for there to be an active practice requirement. *Abrams v. Lamone*, 398 Md. 146 (2007). Similarly, in a Connecticut case, *Bysiewicz v. Dinardo*, 298 Conn. 748 (2010), the Connecticut Supreme Court held that the word "active" must be present in order to impose an "active practice" requirement on a candidate for Attorney General.

California statutes have also made this distinction. Although the Legislature chose not to impose an "active" practice requirement on candidates for Attorney General, it has required "active" practice of law for other offices. For example, Business and Professions Code Section 467 requires that "at least four of the persons appointed to the [dispute resolution] advisory council shall be *active* members of the State Bar of California." Business and Professions Code Section 6015 also states that "no person is eligible for attorney membership on the board [of governors of the state bar] unless he or she is an *active* member of the State Bar."

Similar to the Attorney General statute at issue in *Becerra*, the language in the City Charter does not contain the words "actual" or "active," or any other language that suggests one must be an active practitioner to meet these requirements. The phrase "licensed to practice law" is virtually identical to "admitted to practice," the language at issue in *Becerra*. Therefore, membership in the State Bar alone -- whether active or inactive -- is sufficient to meet the qualifications for the office of City Attorney.

Since Mr. Maienschein has been licensed to practice law, *i.e.,* a member of the State Bar, for almost 30 years, he clearly meets the eligibility requirements to serve as San Diego City Attorney under the City Charter requirements. In fact, you acknowledged Mr. Maienschein's eligibility for the office in your communications with him last year. We therefore urge you to cease from any further review.

Very truly yours,

Stephen J. Kaufman