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7 PUBLIC ATTORNEYS ASSOCIATION

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9 STATE OF CALIFORNIA

10 PUBLIC EMPLOYMENT RELATIONS BOARD

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12 SAN BERNARDINO COUNTY PUBLIC
ATTORNEYS ASSOCIATION,

CASE NO. LA-CE-431-M

13 Charging Party,

**CHARGING PARTY'S RESPONSE TO
RESPONDENT'S STATEMENT OF
EXCEPTIONS**

14 vs.

[Concurrently filed with Charging Party's
Supporting Brief]

15 COUNTY OF SAN BERNARDINO
16 (OFFICE OF THE PUBLIC DEFENDER),

17 Respondent.

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20 Charging Party San Bernardino County Public Attorneys Association (hereafter,
21 "SBCPAA") hereby files its response to the Statement of Exceptions filed by Respondent County
22 of San Bernardino (hereafter, "County"). In addition to this response, SBCPAA raises its own new
23 and independent exceptions to the ALJ's Proposed Decision. Arguments in support of Charging
24 Party's exceptions and opposing the County's exceptions are set forth in more detail in Charging
25 Party's concurrently-filed Supporting Brief.

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1 **Charging Party's Exception No. 1**

2 Charging Party takes exception to the ALJ's factual assertion that

3 There may be counties in which the level of trust between defenders and prosecutors
4 would be high enough for simple recusal to be reasonably acceptable, but I do not see
5 evidence of that level of trust in this case.

6 [Proposed Decision, at p. 7.] This factual finding is not supported by the record. In fact, there is
7 no evidence in the record to suggest that either a Deputy District Attorney (hereafter, "DDA")
8 representative or a Deputy Public Defender (hereafter, "DPD") employee has ever failed to comply
9 with his or her ethical obligations, and it is error to assume without evidence that any would do so.

10 **Charging Party's Exception No. 2**

11 Charging Party takes exception to the ALJ's protocol that restricts DDAs from representing
12 DPDs during investigatory meetings in which case files and other client information are discussed.

13 [Proposed Decision, at pp. 12-13.] The ALJ's protocol is too restrictive given that case law and
14 other authorities do not require imposing such a restriction nor does the record reflect any actual
15 ethical breaches by DDAs or DPDs based on their representation activities. Charging Party urges
16 PERB to strike the ALJ's protocol and allow DDAs to represent DPDs in disciplinary meetings,
17 provided that each attorney ensures, on a case-by-case basis, that the actual representation of their
18 clients is not compromised.

19
20 Dated: July 30, 2012

REICH, ADELL & CVITAN
A Professional Law Corporation

21
22 By Marianne Reinhold
23 MARIANNE REINHOLD
24 Attorney for Charging Party
25 SAN BERNARDINO COUNTY PUBLIC
26 ATTORNEYS ASSOCIATION
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PROOF OF SERVICE
(Code Civ. Proc. § 1013a(3))

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STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party of the within action; my business address is 2670 North Main Street, Suite 300, Santa Ana, CA 92705.

On July 30, 2012, I served the document described as **CHARGING PARTY'S RESPONSE TO RESPONDENT'S STATEMENT OF EXCEPTIONS** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

California Public Employment Relations Board
Attention: Appeals Assistant
1031 - 18th Street, Suite 200
Sacramento, California 95811-4124
Telephone: (916) 322-8231
Facsimile: (916) 327-7960

Kenneth Hardy, Esq.
Office of the San Bernardino County Counsel
385 North Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415
Telephone: (909) 387-5401
Facsimile: (909) 387-4068

Sent via Facsimile and UPS Overnight Mail

Sent via Facsimile and Regular U.S. Mail

John Thomas, SBCPAA
E-Mail: Thomas_jp@msn.com

Sent via E-mail only

BY MAIL: I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

BY OVERNIGHT COURIER: I sent such document(s) on the above date, by overnight delivery with postage thereon fully prepaid at Santa Ana, California.

BY FAX: I sent such document by use of facsimile machine telephone number (714) 834-0762. The facsimile machine I used complied with California Rules of Court Rule 2003(3) and no error was reported by the machine.

BY PERSONAL SERVICE: I placed the above document in a sealed envelope. I caused said envelope to be delivered by hand to the above addressee.

BY EMAIL: I caused to be sent such document by use of email to the email addressee above. Such document was scanned and emailed to such recipient.

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

Executed on July 30, 2012, at Santa Ana, California.

Rita A. Pollard