

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

518



**FROM:** Human Resources and County Counsel

**SUBMITTAL DATE:**  
November 20, 2012

**SUBJECT:** Waiver of Conflict of Interest for the law firm of Liebert Cassidy Whitmore to represent the Idyllwild Arts Foundation in the submission of planning and environmental documents to County planning.

Departmental Concurrence

**RECOMMENDED MOTION:** That the Board of Supervisors consent to the waiver of conflict of interest and authorize County Counsel to sign the letter of consent of waiver for the law firm of Liebert Cassidy Whitmore to represent the Idyllwild Arts Foundation in their submission to County Planning Department for revision of their campus master plan with associated environmental documentation.

**BACKGROUND:** Currently, the County, through the Human Resources Department-Employment Relations Division, retains the law firm of Liebert Cassidy Whitmore (LCW) to represent the County's interests with regard to employment relations issues.  
(continued on page 2)

  
**Barbara Olivier, Asst CEO/Human Resources Director**

  
**Marsha L. Victor, Principal Deputy for Pamela J. Walls, County Counsel**

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

<b>SOURCE OF FUNDS:</b> N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** **APPROVE**  
BY:   
**Ivan M. Chand** 11/7/2012

**County Executive Office Signature**

- Consent
- Policy
- Consent
- Policy

Dept's Recomm.:  
Per Exec. Ofc.:

Prev. Agn. Ref. | ATTACHMENTS FILED | District: All | Agenda Number:

WITH THE CLERK OF THE BOARD

3.33

**BACKGROUND** (continued):

LCW has stated that only the potential for a conflict exists at this time and that if an actual conflict arises, they will withdraw from representing the Idyllwild Arts Foundation with respect to the referenced transaction. The request for a conflict of interest waiver by LCW is prompted by Rule 3-310 of the California Rules of Professional Conduct, which provides, in pertinent part:

“(C) A member [of the Bar] shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.”

County Counsel and Human Resources have reviewed the attached waiver of conflict of interest letter and do not believe a conflict of interest would arise in connection with the firm's representation of Idyllwild Arts Foundation or that the County's interests would be adversely affected by the firm's representation of Idyllwild Arts Foundation in this matter as represented in their letter concurrently with representing and advising the County on employment relations issues.

Attachment:  
Conflict of Interest Waiver Request Letter

# LIEBERT CASSIDY WHITMORE

A PROFESSIONAL LAW CORPORATION

LOS ANGELES | FRESNO | SAN FRANCISCO

6033 WEST CENTURY BOULEVARD, SUITE 500  
LOS ANGELES, CALIFORNIA 90045  
T: (910) 981-2000 F: (910) 937-0897

CFALLON@LCWLLEGAL.COM  
(910) 981-2000

September 26, 2012

VIA EMAIL

COUNTYCOUNSEL@CO.RIVERSIDE.CA.US

Pamela Walls, County Counsel  
County of Riverside  
Law Library Building  
3535 10<sup>th</sup> Street  
Riverside, California 92501

VIA EMAIL

ADEVLIN@IDYLLWILDARTS.ORG

Anne Devlin  
Director of Finance  
Idyllwild Arts Foundation  
PO Box 38, 52500 Temecula Road  
Idyllwild, California 92549

Re: *Informed Consent to Representation*  
*Client-Matter: ID010-001*

Dear Ms. Walls and Ms. Devlin:

Idyllwild Arts Foundation ("School") has asked Liebert Cassidy Whitmore ("LCW") to provide advice related to the revisions of the School's campus master plan ("Plan") which is subject to approval by the County of Riverside ("County"). The School would like LCW to advise on its options to attempt to have the Plan approved by the County. We understand that the County is involved in the approval of this Plan. However, only the School has asked LCW to represent it in this matter.

As the School and the County are clients of LCW for current and past matters unrelated to the matter referenced above, we believe in an abundance of caution that we should explain in writing the nature and consequences of our duty of loyalty to both the County and the School. In addition, we also believe that under the State Bar of California's Rules of Professional Conduct, it is prudent to obtain written consent to representation from both the County and the School (Rules of Professional Conduct Rule 3-310). Please review the following information carefully.

As described above, the purpose of our representation will be to provide advice related to the School's Plan which is subject to approval by the County. Because the School and the County will both be parties to and involved in the approval of the Plan, at least a potential conflict is raised in LCW's representation of the School. An attorney, without the written consent of both clients, may not accept employment from another client or act in a manner that is against the interests of a current client without client consent, even as to an unrelated matter, and even if the current client is not named a party in the matter in which the adversity occurs.

An attorney owes a duty to represent a client with undivided loyalty without being influenced by the interests of others, including the interests of other current clients in unrelated matters. A lawyer's judgment and advice must be independent of any such influences. An

attorney's ability to discharge his or her duty of loyalty is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests towards a different client.

Here, the interests of the School and the County are not currently adverse regarding the Plan. This means there is, at most, only a potential conflict, rather than an actual conflict. Therefore, there is no apparent reason why LCW cannot presently represent the School in this matter while having represented the County in the past and continuing to represent both entities in unrelated matters.

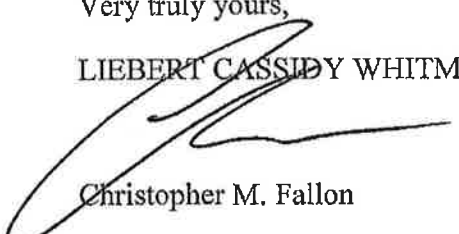
If, however, during the course of representing, advising and counseling the School on this issue an actual conflict arises between the interests of the School and the interests of the County, we will withdraw from representing the School with respect to the above transaction. This consent to representation will not extend to litigation arising from any disputes over sharing information regarding students. In other words, no party is being requested to waive any potential conflict of interest with LCW's representation of the School in litigation arising from a dispute over the Plan. If litigation arises over the Plan, LCW will not represent either the School or the County. In addition, no LCW lawyer who is currently working on matters for the County will be personally representing or advising the School regarding this issue.

Therefore, before LCW represents the School with respect to advice on the Plan, we are requesting both the County and the School to indicate their understanding of the potential conflict issues described above as well as their willingness to waive those potential conflicts. If the School wishes to have LCW represent its interests, it will be necessary for the School to sign the last page of this letter indicating its informed consent regarding conflicts. By signing the last page, the School also consents to allow LCW to withdraw from representing the School if, at some time in the future, a determination is made that an actual conflict exists between the County and the School relating to the sharing of information regarding students by the County with the School employees. If the County consents to have LCW represent the School in this matter, it will be necessary for the County to sign the last page of this letter indicating its informed consent regarding conflicts. After signing the last page of this letter, please return it to my attention in the enclosed self-addressed stamped envelope.

The County and the School may wish to seek independent legal counsel to review the issues in this letter. Please call me if you have any questions or comments.

Very truly yours,

LIEBERT CASSIDY WHITMORE



Christopher M. Fallon

CMF/btp

**INFORMED CONSENT REGARDING POTENTIAL CONFLICT**

This informed consent refers to and incorporates the entirety of this letter contained above. By signing below, the County of Riverside and the Idyllwild Arts Foundation ("School") are providing their informed consent to have Liebert Cassidy Whitmore represent the School in the matter discussed above. Moreover, if an actual conflict does arise, the School consents to Liebert Cassidy Whitmore withdrawing from representing of the School in the matter discussed above.

\_\_\_\_\_  
Pamela Walls  
On behalf of The County of Riverside

\_\_\_\_\_  
Date

\_\_\_\_\_  
Anne Devlin  
On behalf of Idyllwild Arts Foundation

\_\_\_\_\_  
Date