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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO  
10 (NORTH COUNTY BRANCH)

11 JULIE HATOFF, an individual,  
12 Plaintiff,

13 vs.

14 MIRACOSTA COLLEGE DISTRICT;  
15 VICTORIA MUNOZ-RICHART, as an  
16 individual and as President of MIRACOSTA  
17 COLLEGE DISTRICT; CHARLES ADAMS,  
18 SR., CAROLYN BATISTE, GLORIA  
19 CARRANZA, RODOLFO "RUDY"  
20 FERNANDEZ, HENRY HOLLOWAY,  
21 GREGORY M. POST, JACQUELINE SIMON  
22 and JUDY STRATTAN as members of the  
23 MIRACOSTA COLLEGE DISTRICT BOARD  
24 OF TRUSTEES; and DOES 1-100, Inclusive,  
25 Defendants.

) CASE NO.  
) 37-2007-00053061-CU-OE-NC  
)  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **PLAINTIFF'S MOTION TO**  
) **DISQUALIFY DANIEL SHINOFF**  
) **AND THE LAW FIRM OF STUTZ**  
) **ARTIANO SHINOFF & HOLTZ AS**  
) **ATTORNEYS OF RECORD**  
) **DATE: July 13, 2007**  
) **TIME: 1:30 p.m.**  
) **DEPT: N-28**  
) **JUDGE: Hon. Michael B. Orfield**  
) **COMPLAINT FILED: 05/24/07**  
) **TRIAL DATE: Not Set**  
)  
)

25 Plaintiff Julie Hatoff ("Ms. Hatoff" or "Plaintiff") submits the following Memorandum  
26 of Points and Authorities in Support of her Motion to Disqualify Daniel Shinoff and the law  
27 firm of Stutz Artiano Shinoff & Holtz.  
28

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1 I.

2 STATEMENT OF FACTS

3 For the past eighteen months, MiraCosta Community College ("MCCD") has been in an  
4 upheaval. In February 2006, MCCD began investigations into alleged illegal activity regarding  
5 the sale of palm trees in its Horticultural Department. (Declaration of Julie Hatoff ["Hatoff  
6 Decl.,"] ¶¶ 3-4.) Attorney Daniel Shinoff ("Attorney Shinoff") and his law firm of Stutz  
7 Artiano Shinoff & Holtz ("Stutz Artiano") were charged to conduct this investigation. (Hatoff  
8 Decl. ¶¶ 3-4.) Stutz Artiano retained ESI International, Inc. ("ESI") to assist in gathering  
9 information and interview witnesses. (Hatoff Decl. ¶¶ 3-4.) Robert Price ("Price"), the owner  
10 of ESI, and his wife Sandy Price worked as agents for and at the direction of Attorney Shinoff  
11 during the course of the MCCD criminal investigation. (Hatoff Decl. ¶¶ 3-4.)

12 The investigation involved interviewing more than fifty individuals associated with  
13 MCCD including vice presidents, deans, tenured and non-tenured faculty, and present and past  
14 employees. (Hatoff Decl. ¶ 4.) The purpose of the inquiries were to unearth illegal and  
15 inappropriate activity *on behalf of MCCD*.<sup>1</sup> (Hatoff Decl. ¶ 4.) During the course of the  
16 investigation, Vice President of Instructional Services Hatoff was approached on *five separate*  
17 *occasions* by Attorney Shinoff and/or investigator Price.<sup>2</sup> (Hatoff Decl. ¶ 18.)

18 In the course of an investigation Attorney Shinoff failed repeatedly to publicly disclose  
19 to Ms. Hatoff and others that he and Price represented *only MCCD interests*. (Hatoff Decl.  
20 ¶¶ 11-12.) Moreover, Attorney Shinoff and his agent Price received confidential information  
21 from Ms. Hatoff concerning the facts and circumstances of this pending litigation and the  
22 MCCD administrative case involving charges filed against Ms. Hatoff. (Hatoff Decl. ¶¶ 11-  
23 12.) Also, Attorney Shinoff went so far as to mislead Ms. Hatoff [and others] with assurances  
24

25 <sup>1</sup> The MCCD investigation which cost nearly a half million dollars in legal and private investigator fees resulted in only a single charge  
26 of theft of \$305 against a former MCCD instructor The San Diego District Attorney stated there was no evidence of wrongdoing by Julie  
Hatoff just four days after interviewing her (Declaration of Tracy A. Warren, Esq ["Warren Decl " ] ¶2 )

27 <sup>2</sup> Attorney Shinoff is no stranger to representing school districts He has worked with San Diego County Office of Education Joint  
28 Powers Authority (JPA) since 1982 in defense of cases representing school districts within San Diego and Imperial Counties He  
routinely counsels school boards, and school and community college districts regarding all aspects of school law (See website of Stutz  
Artiano Shinoff & Holtz at <http://www.stutzartiano.com>)

1 of attorney-client privilege to elicit further disclosures. (Hatoff Decl. ¶13; Declaration of  
2 Joseph Moreau ["Moreau Decl."] ¶¶ 5-7; Declaration of Lynda Lee ["Lee Decl."] ¶¶5-7.)  
3 Finally, Attorney Shinoff advised the MCCD Board of Trustees and the college president  
4 regarding the investigation, the dismissal of other employees and Ms. Hatoff's separation from  
5 and mediation with MCCD. Now, MCCD is being sued in part, for the actions and counsel of  
6 Attorney Shinoff. Most recently, three members of the Board of Trustees split from the  
7 remaining four members and obtain counsel *other than Attorney Shinoff*. (Warren Decl. ¶ 3.)  
8 Not once in *five meetings* with Ms. Hatoff did Attorney Shinoff or Price ever advise Ms. Hatoff  
9 the parties' interest had become adverse and she had the right to obtain her own counsel.  
10 (Hatoff Decl. ¶ 9, 18.)

11 **A. The February 13, 2006 Meeting**

12 On or about February 13, 2006, Attorney Shinoff and MCCD President Victoria  
13 Munoz-Richart ("Munoz-Richart") convened a meeting of MCCD college officials including  
14 Vice President of Business and Administrative Services Ed Coates, Director of Human  
15 Resources Sherri Wright, former Director of Risk Management Carol Rodriguez, and  
16 Ms. Hatoff, the Vice President of Instructional Services. (Hatoff Decl. ¶ 3.) During the  
17 meeting, Munoz-Richart introduced Attorney Shinoff from the law firm of Stutz Artiano and  
18 private investigator Price from ESI International. Munoz-Richart explained plans for  
19 investigating an alleged theft in the MCCD horticulture department. Attorney Shinoff began  
20 counsel immediately and directed the meeting attendees not to take any notes and to maintain  
21 strict confidentiality. (Hatoff Decl. ¶ 4.) Ms. Hatoff, adhering to Attorney Shinoff's directive  
22 complied, took no notes and told no one about the meeting. (Hatoff Decl. ¶ 4.)

23 **B. The February 23, 2006 Meeting**

24 On February 23, 2006, in a meeting with Career Technology Dean Eileen Kraskouskas  
25 ("Kraskouskas") and Ms. Hatoff, Attorney Shinoff chastised Kraskouskas for e-mailing the  
26 director of human resources Sherri Wright inquiring whether a proposed staff reorganization in  
27 the horticulture department could be considered retaliation against an instructional associate  
28 whom Attorney Shinoff had described as a whistleblower. Attorney Shinoff also directed

1 Kraskouskas and Ms. Hatoff to cease any and all email communications regarding the  
2 horticulture investigation. (Hatoff Decl. ¶¶ 5-6.) Again, Ms. Hatoff obeyed Attorney  
3 Shinoff's command. (Hatoff Decl. ¶ 6.)

4 **C. The March 23, 2006 Meeting**

5 One month later, on March 23, 2006, Attorney Shinoff's agent, investigator Price,  
6 interviewed Ms. Hatoff without notice or direction from Munoz-Richart, Attorney Shinoff or  
7 even Price. (Hatoff Decl. ¶ 8.) Price, like Attorney Shinoff, did not advise Ms. Hatoff: (1)  
8 that he was an agent of Attorney Shinoff and MCCD, (2) that he represented the interests of  
9 MCCD only, (3) that he was gathering information which potentially could be used against  
10 Ms. Hatoff or, (4) that her interests may be adverse to MCCD. (Hatoff Decl. ¶ 8.)

11 Instead, Price proceeded to ask Ms. Hatoff about her involvement in the MCCD palm  
12 tree issue. (Hatoff Decl. ¶ 8.) Ms. Hatoff denied any involvement and provided explanation,  
13 verbalized her thoughts, facts and opinions on the MCCD Horticultural Department and shared  
14 confidential information concerning suspected inappropriate activity at MCCD. Included  
15 within Ms. Hatoff's confidential disclosures were MCCD's possible misappropriation of staff  
16 time and flowers, as well as cash collection by MCCD teachers in Community Services  
17 classes. Ms. Hatoff also continued to give background to the best of her ability regarding  
18 Price's questions about the discipline of horticulture in the department of HAAT (horticulture,  
19 architecture and auto tech), a part of the career tech wing of Ms. Hatoff's division. (Hatoff  
20 Decl. ¶ 8.) Price did not take any notes of this meeting; nor did Hatoff in compliance with the  
21 instruction she had received earlier from Attorney Shinoff. (Hatoff Decl. ¶ 9.)

22 **D. The April 6, 2006 Meeting**

23 On April 6, 2006, Ms. Hatoff was instructed by Munoz-Richart to attend a meeting with  
24 her, Attorney Shinoff and Price allegedly for the purpose of learning about the palm tree  
25 investigation. Instead it was a collective ambush of an unrepresented college administrator.  
26 (Hatoff Decl. ¶ 12.) At the meeting, Attorney Shinoff specifically instructed Ms. Hatoff not to  
27 take notes and not to discuss the meeting or the MCCD investigation with anyone. *At no time*  
28 *was Ms. Hatoff instructed she could have the benefit of her own counsel.* (Hatoff Decl. ¶ 11.)

1 During the meeting, Ms. Hatoff was accused of, among other things, wasting taxpayer's  
2 money and protecting rogue MCCD employees who played a role in the palm tree incident.  
3 Ms. Hatoff was also told she was disloyal to the office of the president. Munoz-Richart  
4 purposefully instructed Ms. Hatoff *not to defend herself*. Shocked and incredulous, Ms. Hatoff  
5 asked Munoz-Richart, "What is happening here? I treated Bob [Price] as a new colleague who  
6 was helping us with these troubles." Munoz-Richart responded, "That's you're your mistake."  
7 Even after the meeting, Attorney Shinoff failed to notify Ms. Hatoff that she was entitled to her  
8 own counsel. (Hatoff Decl. ¶ 10-12.)

9 **E. The May 23, 2006 Meeting – Atorney Shinoff Promises Ms. Hatoff Attorney-Client Privilege After Ms. Hatoff Is Falsely Accused of Wrongdoing**

10 On or about May 23, 2006, Ms. Hatoff attended a regularly-scheduled meeting of the  
11 MCCD President's cabinet held in the Administration Building of the MCCD Oceanside  
12 campus. Also present at that meeting were Munoz-Richart, Attorney Shinoff and Munoz-  
13 Richart's Cabinet members Dean of Academic Information Services Joseph Moreau, Dean of  
14 Community Education Lynda Lee, psychology Professor Sally Foster, Vice President of  
15 Student Services Dick Robertson, Executive Assistant to the President Loretta Burke, Human  
16 Resources Director Sheri Wright, Executive Director of Foundation an Fund Development  
17 Linda Fogerson, and Director of Marketing and Communication Bonnie Hall. (Hatoff Decl.  
18 ¶ 13; Moreau Decl. ¶ 3; Lee Decl. ¶3.) Both Munoz-Richart and Attorney Shinoff discussed  
19 the alleged illegal activities involving the MCCD palm trees. (Hatoff Decl. ¶ 14 Moreau Decl.  
20 ¶ 4; Lee Decl. ¶4.)

21 During the May 23, 2006 meeting, Attorney Shinoff explained attorney-client privilege  
22 and specifically advised the attendees that each person in attendance at the meeting, including  
23 Ms. Hatoff, was bound and protected by attorney-client privilege. He specifically counseled  
24 that nothing discussed in his presence at that meeting could be shared outside the meeting with  
25 third parties; nor was it even to be discussed again among those in attendance at the meeting.  
26 (Hatoff Decl. ¶ 15; Moreau Decl. ¶5; Lee Decl. ¶5.)  
27  
28

1 Attorney Shinoff stated attorney client privilege would be given only to people who  
2 cooperated, warning us that any violation of the rules of confidentiality he had described in the  
3 meeting would result in *their* loss of protection under the attorney-client privilege and could  
4 result in discipline or prosecution of any individual who committed such breach of  
5 confidentiality. (Hatoff Decl. ¶ 16; Moreau Decl. ¶5; Lee Decl. ¶5.) During the meeting after  
6 asked whether MCCD had only allegations of wrongdoing, Attorney Shinoff replied “*we* have  
7 proof of wrongdoing.” (Lee Decl. ¶6.)

8 Ms. Hatoff and others followed Shinoff’s instruction and spoke to no one. Some  
9 attendees felt fearful to talk to anyone. (Lee Decl. ¶6.) Several of the attendees including  
10 Ms. Hatoff felt misled. Further many of the attendees learned several months later that Shinoff  
11 represents only the interests MCCD and its president Munoz-Richart – not individual  
12 employees. (Hatoff Decl. ¶ 17; Moreau Decl. ¶7; Lee Decl. ¶7.) In May 2006, after  
13 Ms. Hatoff expressed concerns regarding Attorney Shinoff and Price, their tactics, the  
14 investigation and their representation, Munoz-Richart directed Ms. Hatoff to obtain counsel.  
15 Ms. Hatoff thereafter obtained counsel. (Hatoff Decl. ¶ 19.)

16 **F. June 2006 through October 2006 – Attorney Shinoff Counsels MCCD and Its**  
17 **Board of Trustees in Ms. Hatoff’s Forced Departure**

18 From June 12, 2006 to July 26, 2006, Attorney Shinoff repeatedly and unilaterally set  
19 up meetings with Ms. Hatoff and her counsel without verifying the availability of either.  
20 (Hatoff Decl. ¶ 20; Warren Decl. ¶¶4-10.) On July 26, 2006 Attorney Shinoff, becoming  
21 further immersed in the matter and writing on behalf of the *entire* Board, wrote in part:

22 The Board has lost confidence in Ms. Hatoff because of the  
23 adversarial nature of the relationship that *she has created*. We are  
24 beyond a crisis in confidence; the situation is untenable,  
25 unworkable and unsalvageable. The Board no longer wishes to  
26 schedule a meeting with you and your client. Instead, they wish to  
27 receive a written response under penalty of perjury from her and  
28 **they wish for me to negotiate a separation of Ms. Hatoff from  
the College.** [Emphasis added.]

27 Attorney Shinoff demanded that Ms. Hatoff:

1 [C]ease and desist all communications regarding her employment  
2 with anyone associated with the College. **All communications**  
3 **regarding Ms. Hatoff's employment are to come directly to**  
4 **me. . . .** Any continued effort on Ms. Hatoff's part to disparage the  
5 College, its employees or Board members will certainly have an  
6 adverse impact on any negotiations surrounding her graceful  
7 departure from the College. (Warren Dec. ¶11.)

8  
9 Nearly one month later on August 24, 2006, Attorney Shinoff commanded Ms. Hatoff's  
10 separation from MCCD. In doing so, he overtly *threatened disciplinary charges* if Ms. Hatoff  
11 would not agree to a settlement.

12 Mr. Shinoff wrote to Ms. Hatoff's counsel in pertinent part:

13 The Board has authorized the following offer. She [Ms. Hatoff]  
14 will have until September 1, 2006 to provide written acceptance of  
15 the terms of this offer. Acceptance of this offer contemplates a  
16 complete separation of Ms. Hatoff from the College in any  
17 capacity. If acceptance of this offer is not received by 4:00 p.m. on  
18 September 1, 2006, it will be withdrawn. Ms. Hatoff is to pick a  
19 date prior to September 15, 2006 on which to retire. She will  
20 continue to be paid between this date and March 1, 2007, at which  
21 time she would retire from the State system . . . .

22 As stated, this offer will be withdrawn on September 1, 2006 at  
23 4:00 p.m. In the event we are unable to resolve this issue, we have  
24 been directed to move down a disciplinary path. [Emphasis  
25 added.] (Warren Dec. ¶12.)

26 On August 25, 2006, Ms. Hatoff was placed on administrative leave *by MCCD's legal*  
27 *counsel* Attorney Shinoff. To that effect, MCCD president Munoz-Richart made an  
28 announcement during the Academic Senate Council meeting. Munoz-Richart also sent an  
29 email to MCCD Academic Senate President Jonathan Cole detailing that Attorney Shinoff  
30 *informed her that Ms. Hatoff is on leave until further notice.* (Declaration of Jonathan Cole  
31 ["Cole Decl.,"] ¶¶ 5-7; Declaration of Thomas Severance ["Severance Decl.,"] ¶¶ 3-5.)

32 Munoz-Richart's e-mail stated in pertinent part:

33 Today I was informed by MiraCosta's legal counsel that Vice  
34 President Hatoff is on leave until further notice. (Cole Decl. ¶ 6;  
35 Severance Decl. ¶5.)

1 On August 29, 2006, Shinoff wrote to Ms. Hatoff's counsel threatening to charge  
2 Ms. Hatoff with thousands of dollars for a key she had already promised to return in a timely  
3 manner. Shinoff threatened:

4 Regarding Ms. Hatoff's return of the [MCCD] key, it is  
5 unacceptable that she retain the key. If the key is not returned to  
6 me today, the College will have all of the offices re-keyed at  
7 Ms. Hatoff's expense which literally is a cost approximating  
8 \$50,000 . . . . (Warren Decl. ¶13.)

9 Further on September 25, 2006, when Ms. Hatoff demanded that MCCD pay for  
10 mediation costs to facilitate settlement among the parties, Shinoff further threatened discipline  
11 writing:

12 . . . We believe that your client has made a choice, and the choice is  
13 not to mediate in good faith. The College is not going to  
14 underwrite a mediation that will be unproductive and an exercise in  
15 futility. Unless Ms. Hatoff is willing to commit and invest in the  
16 mediation we will not unilaterally pay for the mediator.

17 Attorney Shinoff topped off his letter with:

18 **We are in the process of analyzing the evidence that has been**  
19 **gathered and will advise you as soon as possible when a**  
20 **recommendation for disciplinary charges have been prepared.**  
21 (Warren Decl. ¶14 [emphasis added].)

22 Ms. Hatoff had reported Shinoff's threats of discipline to the California State Bar. And  
23 the California Bar responded accordingly. (Hatoff Decl. ¶ 23.) Just two months later, in  
24 October 2006, Ms. Hatoff demanded the recusal of attorney Shinoff and the law firm of Stutz  
25 Artiano Shinoff & Holtz from representation of MCCD. He refused. (Warren Decl. ¶15.)<sup>3</sup>

26 **G. November 2006 to May 2007 – MCCD Is Sued by Ms. Hatoff Based in Part on the**  
27 **Actions and Counsel of Attorney Shinoff - His Recusal Is Demanded Again**

28 On November 20, 2006 and again on May 22, 2007, Ms. Hatoff filed a Tort Claims Act  
against MCCD. The parties unsuccessfully mediated on December 14, 2006 at which time

<sup>3</sup> Also, on August 21, 2006, Attorney Shinoff threatened to seek recoupment of legal fees against plaintiff Karen Austin if she rightfully  
proceeded to file a lawsuit against MCCD. In response to a settlement demand, Attorney Shinoff wrote: "Accordingly – please let  
Ms. Austin know that if she goes forward with a lawsuit, the District will seek a Court order for payment of the District's attorney fees  
when we prevail." (Declaration of Attorney Michael Lusby ¶¶ 2-5 )

1 Attorney Shinoff represented MCCD *and* the Board. Three MCCD board members attended  
2 the mediation and actively participated in negotiations with Attorney Shinoff as counsel.  
3 (Hatoff Decl. ¶ 28) After the mediation when settlement terms had been negotiated between  
4 the parties, MCCD sought to add the proviso that Ms. Hatoff agree never to seek  
5 reemployment at MCCD. When Ms. Hatoff refused to accept MCCD's newly-imposed  
6 condition, MCCD brought administrative charges against her. (Hatoff Decl. ¶ 29.)

7 On May 24, 2006 within six months of filing her first Tort Claims Act letter, Ms. Hatoff  
8 filed her Complaint with this court. (Hatoff Decl. ¶ 32; Hatoff Request for Judicial Notice,  
9 Exhibits 1, 2.) In the Complaint, Ms. Hatoff seeks injunctive relief and damages from MCCD,  
10 its president Munoz-Richart, all seven current Board members and past Board member Henry  
11 Hollway. (Hatoff Request for Judicial Notice, Exhibits 1, 2.) Ms. Hatoff is suing MCCD in  
12 part, based on the wrongful, harassing and intimidating actions of Attorney Shinoff. (Hatoff  
13 Request for Judicial Notice, Exhibits 1, 2.)

14 On June 1, 2007, Ms. Hatoff's counsel sent a letter to Mr. Shinoff and Attorney Jack  
15 Sleeth demanding, for a second time, they recuse themselves from this action due in part to a  
16 conflict of interest. They refused to do so. (Warren Decl. ¶¶16, 17.)

17 **H. June 2007 – MCCD Minority Board Membership Retains Other Counsel**

18 On June 7, 2007, attorney David Monks informed Ms. Hatoff's counsel that he and the  
19 law firm of Klinedinst Attorneys at Law would be representing Board members Gloria  
20 Caranza, Judith Strattan and Jacqueline Simon in this instant litigation. (Warren Decl. ¶18.)  
21 Attorney Monks indicated, as he understood, Attorney Shinoff was representing MCCD but he  
22 was uncertain whether Attorney Shinoff would be representing Board members Charles  
23 Adams, Jacqueline Batiste, Rudolph Fernandez and Gregory Post. (Warren Decl. ¶19.)

24 Based on the foregoing, Ms. Hatoff requests Attorney Shinoff be recused from this  
25 matter. Attorney Shinoff failed to fully disclose his representation, obtained confidential  
26 information creating a conflict of interest, crossed ethical boundaries and has become a witness  
27  
28

1 in this matter. Ms. Hatoff requests this Court intervene and disqualify Attorney Shinoff and  
2 the law firm of Stutz Artiano Shinoff & Holtz.<sup>4</sup>

3 II.

4 ARGUMENT

5 A. Attorney Shinoff's Violation of Rule of Professional Conduct 3-600 Warrants  
6 Disqualification

7 California Rule of Professional Conduct 3-600 provides in pertinent part:

8 (A) In representing an organization, a member shall conform his  
9 or her representation to the concept that the client is the  
10 organization itself, acting through its highest authorized officer,  
11 employee, body or constituent overseeing the particular  
12 engagement.

11 \* \* \*

12 (D) In dealing with an organization's directors, officers,  
13 employees, members, shareholders, or other constituents, a member  
14 shall explain the identity of the client for whom the member acts,  
15 wherever it is or becomes apparent that the organization's interests  
16 are or *may become adverse* to those of the constituent(s) with  
17 whom the member is dealing. *The member shall not mislead such*  
18 *a constituent into believe that the constituent may communicate*  
*confidential information to the member in a way that will not be*  
*used in the organization's interest if that is or becomes adverse to*  
*the constituent.*

19 (Cal. Rule of Prof. Conduct 3-600 [emphasis added].)

20 Case law expounds on this concept. There is a distinction between a counsel's  
21 representation of corporate officers and managers in their representative capacities and the  
22 representation of persons in their individual capacities. (*Koo v. Rubio's Restaurants, Inc.*  
23 (2003) 109 Cal.App.4th 719, 732-733.) An attorney who represents a corporation does not  
24 thereby represent its officers, directors, shareholders or other constituents in their individual  
25 capacity. (*Jacuzzi v. Jacuzzi Bros., Inc.* (1963) 218 Cal.App.2d 24, 29.)

26  
27 \_\_\_\_\_  
28 <sup>4</sup> Ms. Hatoff also seeks the disqualification of Attorney Shinoff and Stutz Artiano in administrative proceeding in defense of charges  
propounded by MCCD for many of the same reasons expounded upon herein

1 An attorney must not *mislead the individuals involved* into believing they may  
2 communicate *confidential information* to the attorney in a way that will not be used in the  
3 organization's interest, even where this is adverse to them individually. (*La Jolla Cove Motel*  
4 *& Hotel Apts., Inc. v. Superior Court (Jackman)* (2004) 121 Cal.App.4th 773, 785.)<sup>5</sup>

5 Here, Attorney Shinoff, while charged with conducting the investigation failed to  
6 disclose that he represented only MCCD and not Ms. Hatoff in her individual capacity. In fact,  
7 Attorney Shinoff met at least five times with Ms. Hatoff while gathering facts, and provided  
8 direction and counsel to her for *MCCD's benefit*; advice which subverted her own interests to  
9 that of MCCD. Even if Ms. Hatoff was acting on as a MCCD official, in an investigation of  
10 this magnitude, there was a chance that her interests could become adverse. At the very least,  
11 in an abundance of caution, Attorney Shinoff should have disclosed his representation of  
12 MCCD's interests and afforded individuals the opportunity to obtain their own counsel from  
13 the very outset.

14 Further, through his agent Price, Attorney Shinoff obtained confidential disclosures  
15 from Ms. Hatoff related to MCCD and then used this information *to benefit MCCD and*  
16 *separate Ms. Hatoff from the college*. *Not one time in five meetings* in the scope of a criminal  
17 investigation, did Attorney Shinoff advise Ms. Hatoff she had the right to obtain her own  
18 counsel. Instead, Ms. Hatoff was misled to believe Attorney Shinoff represented her – in  
19 violation of the Rules of Professional Conduct. In fact, attorney-client privilege was promised  
20 to Ms. Hatoff *after* she had disclosed confidential facts and received a caustic reception from  
21 Shinoff. Attorney-client privilege applies to a lawyer's pre-litigation investigation for a client,  
22 provided the *dominant purpose* is to give *legal advice* regarding the subject matter of the  
23 litigation rather than routine fact-finding. (*Wellpoint Health Networks, Inc. v. Superior Court*

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25 <sup>5</sup> The Rutter Group's *California Practice Guide on Professional Responsibility* provides this basic tip: "When you are  
26 approached by one or more constituents of an organization (directors, officers, partners, members, etc.) seeking to retain  
27 your services and you agree to represent the organization as a client, consider sending a letter to those who contacted you  
28 as well as those with whom you may be dealing in representing the organization that identifies exactly who the client  
is (i.e., the *organization as an entity*) and underscores the fact that you are not entering into a professional  
relationship with any of the organization's individual constituents. (*Vapnek, Tuft, Peck & Weiner*, Cal Prac. Guide:  
Professional Responsibility (The Rutter Group 2006) §3:92.1 [emphasis added] )

1 (1997) 59 Cal.App.4th 110, 122-124.) It is clear Attorney Shinoff individually and through his  
2 agent Price engaged in *fact finding* for which Ms. Hatoff made confidential disclosures.  
3 Promises of attorney-client privilege to Ms. Hatoff *after accusing her of wrongdoing* is clearly  
4 misleading. The bell cannot be unring. MCCD should not benefit from Attorney Shinoff's  
5 actions.

6 **B. Violation of Rule of Professional Conduct 3-310 and Common Law Warrants**  
7 **Disqualification**

8 California Rule of Professional Conduct 3-310 provides in pertinent part:

9 (B) A member shall not concurrently represent clients whose  
10 interests conflict, except with their informed written consent.

11 A trial court may disqualify a party's counsel to enforce ethical standards governing  
12 attorney conduct. (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.*  
13 (1999) 20 Cal.4th 1135, 1143-1144.) Professional ethics demand that an attorney avoid  
14 conflicts of interest in which duties owed to different clients are in opposition. (*Flatt v.*  
15 *Superior Court* (1994) 9 Cal.4th 275, 282; Cal. Rule of Prof. Conduct 3-310(c).)

16 Further:

17 [A] conflict of interest ... may arise from an attorney's  
18 relationship with a non-client. Such a conflict of interest may  
19 arise...where an attorney's relationship with a person or entity  
20 creates an expectation that the attorney owes a duty of fidelity. It  
21 may also arise...where the attorney has acquired confidential  
22 information in the course of such relationship which will be, or  
23 may appear to the person or entity to be, useful in the attorney's  
24 representation of an action on behalf of a client. (*Allen v.*  
25 *Academic Games Leagues of America, Inc.* (1993) 831 F.Supp.  
26 785, 788, citing *William H. Raley Co. v. Superior Court* (1983) 149  
27 Cal.App.3d 1042, 1046-1047.)

28 Also, an attorney may be disqualified when he has received confidential information  
outside an attorney-client relationship. Typically, a fiduciary or quasi-fiduciary relationship  
must exist between the attorney and the opposing party or between the attorney and the  
confidential information. (*Morrison Knudsen Corp. v. Hancock, Rothert & Bunshortf, LLP*  
(1999) 69 Cal.App.4th 223, 232-235.) Even a non-client has standing to move for *per se*

1 disqualification of an attorney when the non-client has a personal stake in the motion because  
2 the “ethical breach so infects the litigation in which disqualification is sought that it impacts the  
3 moving party’s interest in a just and lawful determination” of the claims at issue. (*Concat LP*  
4 *v. Unilever, PLC* (N.D. Cal. 2004) 350 F.Supp.2d 796.) Even potentially adverse interests  
5 have been deemed sufficient to trigger attorney disqualification. (*Flatt, supra*, 9 Cal.4th at  
6 282-284.)

7 It is beyond dispute that MCCC directly and indirectly obtained confidential  
8 information from Ms. Hatoff and gained an advantage. Attorney Shinoff, who directly or  
9 indirectly “heard both sides of the story,” and then conveyed it to MCCC’s president and  
10 purportedly to the Board of Trustees can no longer represent MCCC or *any* of the Board of  
11 Trustees in an action involving Ms. Hatoff. Whether she was acting in an official capacity or  
12 acting in an individual capacity, Ms. Hatoff *or any MCCC employee* had the potential to  
13 become adverse to the college in a criminal investigation. Moreover, after the April 6, 2006  
14 collective lashing of Ms. Hatoff, of which Attorney Shinoff participated, it was clear Ms.  
15 Hatoff’s interests were in conflict with MCCC – yet Attorney Shinoff continued with his  
16 representation. The taint of this conflict creates serious ethical concerns impacting the rights  
17 of Ms. Hatoff.

18 Further, even if Ms. Hatoff did not officially retain Attorney Shinoff to represent her,  
19 but still proceeded to make statements to him, those statements are privileged whether or not  
20 actual employment ensues. (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 345 [a  
21 person may discuss legal issues with an attorney for the purpose of obtaining advice or  
22 representation, and the statements made are privileged whether or not actual employment  
23 ensues]; see also Cal. Evid. Code §951.) Clearly, a conflict of interest exists for which  
24 Attorney Shinoff and the law firm of Stutz Artiano Shinoff & Holtz must be disqualified.

25 **C. Violation of Rule of Professional Conduct 5-100 Warrants Disqualification**

26 California Rule of Professional Conduct 5-100 states:

- 27 (A) A member shall not threaten to present criminal,  
28 administrative, or disciplinary charges to obtain an advantage in a  
civil dispute.

1 (B) As used in paragraph (A) of this rule, the term  
2 “administrative charges” means the filing or lodging of a complaint  
3 with a federal, state, or local governmental entity which may order  
4 or recommend the loss or suspension of a license, or may impose or  
5 recommend the imposition of a fine, pecuniary sanction, or other  
6 sanction of a quasi-criminal nature but does not include filing  
7 charges with an administrative entity required by law as a condition  
8 precedent to maintaining a civil action.

9 (C) As used in paragraph (A) of this rule, the term “civil  
10 dispute” means a controversy or potential controversy over the  
11 rights and duties of two or more parties under civil law, whether or  
12 not an action has been commenced, and includes an administrative  
13 proceeding of a quasi-civil nature pending before a federal, state, or  
14 local governmental entity.

15 On August 24, 2006, Attorney Shinoff, in the course of settlement negotiations, used  
16 threats of discipline – a direct violation of the California Rules of Professional Conduct.  
17 (Warren Decl. ¶¶12-14) Ms. Hatoff reported this threat and other Attorney Shinoff behavior to  
18 the California State Bar. The California State Bar responded accordingly (Hatoff Decl. ¶ 24.).  
19 It was not an isolated incident. Instead the threats represent unfortunate tactics utilized over  
20 several months against an unknowing and unrepresented MCCD employee – Julie Hatoff.

21 Also on August 29, 2006, after Ms. Hatoff confirmed timely return of MCCD’s master  
22 key, Attorney Shinoff threatened to charge Ms. Hatoff \$50,000 if the key was not returned  
23 immediately. (Warren Decl. ¶ 13) Then on September 25, 2006, when mediation was stalled,  
24 Attorney Shinoff again threatened to proceed with disciplinary charges to force Ms. Hatoff into  
25 action [charges which would not come to fruition until *seven months later*]. (See Warren Decl.  
26 ¶ 14.) The se multiple threats and ethical violations warrant automatic disqualification of  
27 Attorney Shinoff and his law firm from this matter.

28 **D. Violation of Rule of Professional Conduct 5-210 – Attorney Shinoff Is a Witness  
Obligated to Arrange for Other Counsel**

California Rule of Professional Conduct 5-210 states:

A member shall not act as an advocate before a jury which will  
hear testimony from the member unless:

(A) The testimony relates to an uncontested matter; or

1 (B) The testimony relates to the nature and value of legal  
2 services rendered in the case; or

3 (C) The member has the informed written consent of the client.  
4 If the member represents the People or a governmental entity, the  
5 consent shall be obtained from the head of the office or a designee  
6 of the head of the office by which the member is employed and  
7 shall be consistent with principles of recusal.

8 Further, it is dangerous for an attorney who represents a client also to testify in the  
9 client's case. (*Comden v. Superior Court* (1978) 20 Cal.3d 906, 912 ["An attorney who  
10 attempts to be both advocate and witness impairs his credibility as witness and diminishes his  
11 effectiveness as advocate".])

12 Here, Attorney Shinoff has clearly become a witness in this matter. He has actively  
13 participated in the MCCD investigation and communicated with Ms. Hatoff and other  
14 witnesses directly. Also, independently and through his agent Price, he has acquired  
15 confidential information relevant to Ms. Hatoff's claims and defenses. Ultimately, Attorney  
16 Shinoff's testimony may be required. Further, Attorney Shinoff has communicated and  
17 directed those who have a direct conflict with MCCD, [including now the minority members of  
18 the MCCD Board of Trustees] disciplined and threatened MCCD employees, and made  
19 decisions on behalf of and directed MCCD in its dealings with Ms. Hatoff [as admitted and  
20 announced by defendant Munoz-Richart]. In determining the necessity of counsel's testimony,  
21 the court should consider "the significance of the matters to which he might testify, the weight  
22 his testimony might have in resolving such matters, and the availability of other witnesses or  
23 documentary evidence by which these matters may be independently established." (*Smith,*  
24 *Smith & Kring v. Superior Court (Oliver)* (1997) 60 Cal.App.4th 573, 581.)

25 Further, Attorney Shinoff has provided counsel to MCCD and the Board of Trustees  
26 regarding Ms. Hatoff. MCCD and the Board, which is now split, are likely to point to  
27 Attorney Shinoff's counsel as reason for their decision making regarding Ms. Hatoff. This  
28 scenario runs the risk of finger pointing, accountability issues and defensive intra-fighting –  
further creating chaos and loss of objectivity.

1 Attorney Shinoff has been at the epicenter of MCCD's upheaval, advising Board  
2 members, the college president, Ms. Hatoff, administrators, deans, employees and other  
3 individuals. His actions are currently at issue in Ms. Hatoff's pending litigation. For these  
4 reasons, and the reasons previously stated, his disqualification is warranted.

5 **E. Attorney Shinoff's Disqualification Should Be Imputed to Stutz Artiano Shinoff &**  
6 **Holtz**

7 When a conflict of interest requires an attorney's disqualification from a matter, the  
8 disqualification normally extends vicariously to the attorney's entire law firm. (*See Flatt v.*  
9 *Superior Court* (1994) 9 Cal.4th 275, 283.) This rule safeguards clients' legitimate  
10 expectations that their attorneys will protect client confidences. (*SpeeDee Oil Change, supra,*  
11 20 Cal.4th at 1139.) The individual attorney's disqualification extends to his or her entire law  
12 firm. (*Id.* at 1146.) "When attorneys presumptively share access to privileged and confidential  
13 matters because they practice together in a firm, the disqualification of one attorney extends  
14 vicariously to the entire firm. [Citation.] The vicarious disqualification rule recognizes the  
15 everyday reality that attorneys, working together and practicing law in a professional  
16 association, share each other's, and their 24 clients', confidential information." (*Id.* at 1153-  
17 1154.) Vicarious disqualification not only preserves the confidentiality of client information, it  
18 preserves public confidence in the legal profession and the judicial process by enforcing the  
19 attorney's duty of undivided loyalty. (*Id.* at 1146; see also *Flatt, supra*, 9 Cal.4th at 285; *Cho*  
20 *v. Superior Court* (1995) 39 Cal.App.4th 113, 125.)

21 Here, Attorney Shinoff, a named partner is the law firm of Stutz Artiano Shinoff &  
22 Holtz, cannot be screened with an ethical wall. As a principal at the law firm, many other  
23 partners and associates have worked with him on the MCCD and Hatoff matter including but  
24 not limited to attorneys Jeffery Morris, Jack Sleeth and Susan Bartlestone. (Warren Decl.  
25 ¶ 20.) Others may have provided research assistance or facilitated Attorney Shinoff's  
26 representation of MCCD. Shared information among attorneys is likely. The answer is  
27 apparent: Attorney Shinoff's disqualification extends to his entire law firm. (*SpeeDee Oil*  
28

1 *Change, supra*, at 1146; *City of Santa Barbara v. Superior Court* (2004) 122 Cal.App.4th 17,  
2 23-24.)

3 **F. MCCD Would Not Be Prejudiced by the Disqualification of Attorney Shinoff and**  
4 **the Law Firm of Stutz Artiano Shinoff & Holtz**

5 Under California law the starting point for deciding a motion to disqualify counsel is the  
6 recognition of interests implicated by such a motion. Courts “must examine these motions  
7 carefully to ensure that literalism does not deny the parties substantial justice.” (*Speedee Oil*  
8 *Change, supra*, 20 Cal. 4th at 1135.)

9 At base, “disqualification motion[s] may involve such considerations as a client's right  
10 to chosen counsel, an attorney's interest in representing a client, [and] the financial burden on a  
11 client to replace disqualified counsel.” (*Id.* at 1145.) Ultimately, however, a court must  
12 maintain ethical standards of professional responsibility. (*Ibid.*) The paramount concern must  
13 be to preserve the public trust in the scrupulous administration of justice and the integrity of  
14 the bar. The important right to counsel of one’s choice must yield to ethical considerations that  
15 affect the fundamental principles of our judicial process. (*Id.* at 1135.)

16 Here, MCCD will not be prejudiced by Attorney Shinoff’s disqualification. MCCD,  
17 which is part of the San Diego Joint Powers Authority, has available at least a half dozen other  
18 law firms which specialize in defense of public entities to defend it. Already, the JPA has  
19 appointed another law firm to represent the interests of the minority membership of the MCCD  
20 Board of Trustees. There will be minimal, if any, financial burden for MCCD to replace  
21 counsel as this action just began. Litigation commenced on May 24, 2007 with the filing of  
22 Ms. Hatoff’s Complaint. Attorney Shinoff was twice put on notice that Ms. Hatoff demanded  
23 his disqualification, once on October 18, 2006 and the second time on June 1, 2007, within one  
24 week of the Complaint’s filing. (Warren Decl. ¶¶15-17.) Attorney Shinoff failed to  
25 voluntarily recuse himself both times. Now, the Court must intervene.

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**III.**

**CONCLUSION**

Over the period of four months of inquiry, Ms. Hatoff was misled to believe Attorney Shinoff represented her interests – no contrary information was ever communicated by Attorney Shinoff, M CCD, its president or investigator Price. Yet Ms. Hatoff, now in litigation, shared confidences with Attorney Shinoff and investigator Price. Ms. Hatoff should not be disadvantaged because of M CCD’s counsel’s silence. Further, on multiple occasions Attorney Shinoff’s communications to Ms. Hatoff have been overreaching, overtly caustic and volative of the Rules of Professional Conduct. Also, as a potential witness in this matter, Attorney Shinoff runs the risk that his effectiveness as counsel may be impaired. Attorney Shinoff and the law firm of Stutz Artiano Shinoff & Holtz should be disqualified from this matter.

Dated: June 8, 2007

SELTZER CAPLAN McMAHON VITEK  
A Law Corporation

By   
\_\_\_\_\_  
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