

Opinion: EDC legal counsel giving bad advice

By Larry Weitzman

I have read hundreds of legal arguments in my life, maybe thousands, but on Feb. 5 I read one of the most specious and poorly supported “legal arguments ever” and it was from our newly appointed interim County Counsel Michael Ciccozzi. It was as if he were arguing before the Supreme Court of the United States and he cited a small claims court decision from Ryegate, Mont., as the legal authority behind his case. In this case, Ciccozzi was attempting to defend the employment contract of our interim CAO Larry T. Combs that appears to have violated important Government Code sections.



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Combs' contract problem stems from executing an employment contract that didn't meet the requirements of CalPERS as explained in my **recent column**. CalPERS has strict requirements to prevent double dipping of a CalPERS annuitant, such as Combs. It was public pressure from citizens who were outraged at public officials making \$200,000 a year in retirement benefits, like Combs, and then getting another similar job effectively doubling their income. Poor Mr. Combs because of the double dipping laws is only pulling down \$300K annually. Those requirements are spelled out in Government Code Sections 21221 (h) and 21224. Two of those requirements are that an

open recruitment for CAO is required before signing such a contract and that the contract have an end date.

Printed below the fold on the front page of the *Mountain Democrat* on Feb. 5 and titled "CAO contract details questioned" the news story quoted Ciccozzi who cited "a more recent CalPERS publication (April 2015) titled 'Employment After Retirement.'" Ciccozzi wrote that the more recent document "does not require that the employment requirements of a retired annuitant include a specified end date or that the appointment be during an open recruitment."

First, I have rarely seen a more misleading statement by a lawyer with the intent to deceive the public. While he found a CalPERS 10 page, double spaced pamphlet which listed some of the requirements for employment of retired annuitants, it didn't list them all. But it did list all CalPERS offices and phone numbers, allowing easy access for questions. It was not a legal document nor intended to be a legal document, and it, therefore, has no legal force. It did not supersede or replace Government Code Section 21221(h), which still has the requirements of an open recruitment being required before Combs' hiring as well as an end date in the contract. The claim that Ciccozzi implies, by the informational pamphlet, since it is later in time than the CalPERS advisory circular or the code sections, that the law has been superseded by the pamphlet and code section requirement of having an open recruitment and no end date in the contract is no longer required. Nothing could be further from the truth, GCS 21221(h) et seq. is still the law.

For Ciccozzi, that becomes a multiple edged sword. Any real defense claiming there was an open recruitment ongoing at the time the contract was executed and having an end date is now out the window as Ciccozzi says the law didn't require that according to his "pamphlet law" and Ciccozzi knows that. His statement becomes a tacit admission that the county did not have an open recruitment or end date as required by Government

Code Section 21221(h), the law as codified before and after the date of the Combs' contract and as set forth in the current California Code. Combs' contract speaks for itself as to having an end date. It doesn't have one.

Trying to cover all his bases in the *Mountain Democrat* story, Ciccozzi said, "The contract will terminate when Combs reaches 960 hours in the fiscal year." But if Combs works 959 hours in every fiscal year, it will never terminate so the contract is not of limited duration and still violates the code section. Code section 21221(h) still requires both contract requirements that Ciccozzi says don't exist anymore even though he speaks with a forked tongue.

Ciccozzi's cited pamphlet is not the law, was not published as a legal document and advised readers to call or check with the nearly dozen CalPERS offices throughout the state whose addresses are listed in the back of the pamphlet along with the CalPERS phone number listed prominently on every other page of the pamphlet and Ciccozzi must be aware of that.

Additionally, even after claiming an open recruitment is not required by his "pamphlet authority," Ciccozzi states pursuant to the code section the interim appointment is to be made "during recruitment for a permanent appointment" and not necessarily during an open recruitment. Perhaps Ciccozzi should read EDC personnel rules, which say without question, "All recruitment announcements will be posted on the county's website and other appropriate locations for a minimum of five days." There was no posting on the county website or anywhere else for a permanent CAO on or before this contract was executed. His statements and/or emails as published in the *Mountain Democrat* are misleading and false. Ciccozzi's only defense will be "it depends on what the definition of 'is' is."

Ciccozzi now has acquired other problems and the Board of Supervisors needs to take notice. As a lawyer you swear an

oath to uphold the law of the state. For whatever reason Ciccozzi chose to misstate the law, the purpose of which is obvious, i.e., to make it appear Combs' contract is CalPERS compliant. But by doing so he also fails his employer, the EDC Board of Supervisors who need to know the law and their exposure.

With his statements in the *Mountain Democrat* the BOS has been misled about the law from their own highest ranking lawyer. That is unacceptable behavior and the BOS needs to deal with that immediately. Maybe Ciccozzi thinks that is what the BOS wants to hear or maybe he is attempting to cover for his ex-boss Robyn Drivon, who should have not approved the Combs' contract considering the requirements of the law. It's hard to say why Ciccozzi did what he did, but as to whatever he says in the future, will it be believable?

But whatever he says, he may have already violated his State Bar duty, part of which is "to support the Constitution and the laws of the United States and of this state." Perhaps we will find out. This not the first time for Ciccozzi misstating the law. This just appears to be a persistent pattern of practice.

"Integrity without knowledge is weak and useless, knowledge without integrity is dangerous and dreadful."

– Samuel Johnson, (1709-1784) Rasselas, ch. 41

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