

**TO:** Diana J.S. Fuentes, City Clerk

**CC:** Kathy J. Steinman, Deputy City Clerk

**FROM:** Fred Galante, Special Counsel 

**DATE:** July 26, 2023

**RE:** San Diego City Attorney Qualifications for Office

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### **Issue**

We have been asked to analyze the effect of language added in 2016 to San Diego City Charter Section 40 on nominees for the office of City Attorney. The relevant provision added to Charter Section 40, in relevant part, provides:

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.

We understand the question to be whether the above language prevents someone who was listed as inactive for some of those required ten years from becoming a nominee for that office. In other words, does “licensed,” as used in Section 40, include the period during which the attorney may have been listed as inactive?

### **Summary of Conclusion**

The above excerpt from San Diego City Charter Section 40 does not prevent someone who was listed as inactive for some of those required ten years from becoming a nominee for that office. In other words, the term “licensed,” as used in Section 40, includes the period during which the attorney may have been listed as inactive.

### **Analysis**

In performing our analysis, we reviewed various materials provided to us by the San Diego City Clerk’s Office to ascertain if there was anything that further defines what is meant by the term “licensed” in Measure E. Specifically, we reviewed San Diego City Council Ordinance No. 0-20708 adopted August 1, 2016 placing the amendment to San Diego Charter Section 40 to add the provision that an attorney must be licensed to practice law in California and must have been so licensed for at least ten years at the time of submitting nomination petitions. We reviewed all Reports from the San Diego City Attorney to the Charter Review Committee provided to us

preceding the City Council's consideration of Ordinance No. 0-20708. We also reviewed the staff report submitted in support of Ordinance No. 0-20708, minutes and video of the City Council's August 1, 2016 deliberations in adopting Ordinance No. 0-20708. We further reviewed the City Attorney's Impartial Analysis of Measure E as well as the Argument in Favor drafted by Council President and supported by various organizations. That argument explains only that the Measure would "[a]dd minimum qualifications that the City Attorney must be a licensed attorney in the State of California for ten years. (Currently the City Attorney does not even need to be a licensed attorney.)" No argument was submitted in opposition of Measure E.

To address the question, we first turn to California Business & Profession Code Section 6003, which provides:

Licensees of the State Bar are divided into two classes:

- (a) Active licensees.
- (b) Inactive licensees.

Business & Professions Code Section 6005, in turn, provides in relevant part:

Inactive licensees are not entitled to hold office, vote, or practice law. Those who are enrolled as inactive licensees at their request may, on application and payment of all fees required, become active licensees. Those who are or have been enrolled as inactive licensees at their request are licensees of the State Bar for purposes of Section 15 of Article VI of the California Constitution.

California Constitution, Article VI, Section 15 provides:

A person is ineligible to be a judge of a court of record unless for 10 years immediately preceding selection, the person has been a member of the State Bar or served as a judge of a court of record in this State.

It is clear there are two types of licenses issued by the State Bar, one of which is inactive. In addition, language similar to that in Section 40 of the San Diego City Charter appears in Article VI, Section 15 of the California Constitution. Section 6005 provides that a person with an inactive license meets the 10-year requirement set forth for in Article VI, Section 15 if the reason that person holds an inactive license is made at that person's request.

The amendment to San Diego City Charter Section 40 to add the language quoted above was adopted by the voters by way of ballot Measure E in November 2016. Since then, at least one California Court of Appeal considered similar language in *Early v. Becerra*, 47 Cal. App. 5th 325 (2021). The Court there analyzed Business & Professions Code Section 6003 and concluded that

an attorney on voluntary inactive status remains a member of the State Bar and eligible to run for office of California Attorney General.

Specifically at issue in *Early v. Becerra* was the statutory requirement for seeking the office of California Attorney General under Government Code Section 12503. That section provides that “[n]o person shall be eligible to the office of Attorney General unless that person has been admitted to practice before the Supreme Court of the state for a period of at least five years immediately preceding that person's election or appointment to this office.” The plaintiff there argued that an “inactive” attorney may not practice law in California and therefore is not “admitted to practice” under Government Code Section 12503. Citing Business & Professions Code Section 6003, the Court concluded that the phrase “admitted to practice” under 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.” 47 Cal. App. 5th, at 329. The Court further explained that:

“An 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.”

47 Cal. App. 5th, at 336.

Based on all the foregoing, if, before a person becomes San Diego City Attorney, he or she holds an active license and if that person held an active license or, at his or her request, an inactive license from the State Bar for at least ten years when submitting a nominating petition, then that person is eligible to run for and be elected as San Diego City Attorney. Additionally, none of the materials provided to us by the City Clerk’s Office related to Measure E provide any information that would suggest or compel a different conclusion.

### **Conclusion.**

A person seeking to be elected to the position of San Diego City Attorney is eligible to run for and be elected to the position of San Diego City Attorney if the person holds an active license and if that person held an active license or, at his or her request, an inactive license from the State Bar for at least ten years when submitting a nominating petition.