

The State

AG Bows Out of Rental Discrimination Action

By Hallye Jordan

Daily Journal Staff Writer

SACRAMENTO — In an unusual move, Attorney General Dan Lungren has withdrawn from representing a state agency in a lengthy battle over whether landlords can refuse to rent to unmarried couples on religious grounds.

The action means that staff attorneys for the state's Fair Employment and Housing Commission will have to represent the agency in its case against a Chico landlord it charged with violating state antidiscrimination laws. The little-noticed change by Lungren in the 5-year-old case was made June 28 in a notice of substitution of attorney filed with the 3rd District Court of Appeal.

Lungren spokesman David Puglia said Friday the attorney general had concluded that the Sacramento appeal court's ruling in May, *Smith v. FEHC*, C007654, upholding the landlord's position, was "correct, as a matter of law." Although the Attorney General is charged with defending state agencies and state laws against constitutional attack, Puglia said Lungren "is exercising his ability to say a case that is reasonably sound should stand."

But attorneys for the tenants blasted the attorney general, claiming his motive

appears to be political and aimed at bolstering his reelection campaign in the upcoming November election. Attorneys noted that up to now, Lungren had aggressively represented the FEHC in the Smith case and a similar case, *Donahue v. FEHC*, S024538.

"I was wondering when the ax would fall and he would let politics interfere with client representation," said Thomas F. Coleman, a Los Angeles attorney who represents tenants in both the Smith and Donahue cases. "I think it looks like a political decision by Lungren to appease the religious right and, at the same time, to avoid attacks from the religious right and stimulate contributions for his November election," Coleman said.

Puglia dismissed the charges: "Give me a break," he said. "This is a broken record. These people need to find a new song."

Coleman said Lungren's action, which was unusual but not unprecedented, is upsetting for the FEHC. "In terms of what is in the best interest of the client, it is to have the same attorney because they know the case and have for three years," he said.

Deputy Attorney General Kathleen W. Mikkelson, who has defended the FEHC

in both the Smith and Donahue cases for at least the past three years, declined to comment. She referred inquiries to Puglia and FEHC Executive and Legal Affairs Secretary Steven Owyang, who could not be reached for comment Friday.

But one attorney in the Department of Justice, familiar with both cases, said it was unfortunate Lungren dropped a case the attorney believes will ultimately be decided by the state Supreme Court.

"I don't think Lungren can make the argument that the law won't be upheld on appeal," said the attorney, who asked to remain anonymous.

But Puglia said the California Supreme Court effectively upheld a decision similar to the Smith ruling when it declined to hear an appeal of the Donahue case, where another appeal court upheld the right of landlords to refuse to rent to unmarried tenants.

The Supreme Court in February 1992 said it would hear the Donahue case, but reversed itself last October and dismissed the appeal. However, because it declined to order the Los Angeles appeal court's ruling republished, the Donahue case lost its standing as a precedent and the focus shifted to the Smith case.

State won't defend unmarried renters

LEGAL ISSUES: Attorney General's Office agrees with an appellate ruling that backed a landlady's position.

The Associated Press

SACRAMENTO — Attorney General Dan Lungren's office will no longer represent the state against a Chico landlady who cited religious reasons for refusing to rent to an unmarried couple.

A state appeals court ruled this May that the landlady's rights of religious freedom and free speech would be violated by enforcement of a state law prohibiting housing discrimination based on marital status. The ruling rejected the state's argument that commercial-property owners must follow civil-rights laws regardless of their personal beliefs.

Lungren, whose office had represented the state Fair Employment and Housing Commission in the case, quietly withdrew June 28, leaving the commission to use its own lawyer. The commission and both prospective tenants have since asked the state Supreme Court to review the case.

Lungren's action was disclosed Monday by the Los Angeles Daily Journal and confirmed by the Attorney General's Office.

"We strongly feel that the 3rd District Court of Appeal ruled correctly," said Dave Puglia, a spokesman for Lungren. "We do have a responsibility, as the state's chief legal officer, to exercise some degree of legal judgment as to which cases are pursued to higher courts."

Lungren's opponent in the November election, Assemblyman Tom Umberg, D-Garden Grove, said Lungren's action "will be a popular decision with the religious right."

"It's unfortunate that the chief law-enforcement officer of the state thinks you can deny housing because the potential tenants are not married," Umberg said.

"It's like stabbing your client in the back," said Thomas F. Coleman, a private lawyer for the tenants in the Chico case and a similar case in Los Angeles. While Lungren had the authority to withdraw from the case, it was ethically questionable to declare that his former client's position was wrong, Coleman said.

Puglia denied any political motives or contacts with conservative religious organizations, which supported the property owners in court.

But he said he knew of no other instance in which Lungren had dropped out of a case after an unfavorable appellate ruling. Lungren refused to represent the state Coastal Commission in two recent cases, involving public beachfront access and a Long Beach coastal curfew, before courts had ruled on the merits of those cases.

In the Chico case, Evelyn Smith, owner of two duplexes, refused to rent to an unmarried couple, saying she believed it was sinful to rent to anyone who engaged in nonmarital sex. The Fair Employment and Housing Commission said Smith violated the housing discrimination law and fined her \$954.

The Sacramento-based appeals court, in a ruling May 26, said the state has no "overriding interest" in protecting the unmarried from discrimination.

Smith "cannot remain faithful to her religious convictions and beliefs and yet rent to unmarried couples," said the 3-0 decision by Presiding Justice Robert Puglia, who is the father of Dave Puglia, Lungren's spokesman.

The court said the commission's action against Smith violated not only her religious rights but also her freedom of speech, because she was ordered to post a notice saying discrimination based on marital status is illegal.

Robert Puglia acknowledged that the state can interfere with religious practices and free speech when necessary to serve a "compelling interest." But he said protecting the housing rights of unmarried couples is not such an interest, noting that neither the courts nor the Legislature have treated unmarried couples as the legal equivalent of married couples.

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The State

AG Criticized for Dropping Case

By Hallye Jordan

Daily Journal Staff Writer

SACRAMENTO — A complaint against Attorney General Dan Lungren has been lodged with the State Bar over his recent decision to stop representing a state agency in a lawsuit over whether landlords may refuse to rent to unmarried couples on religious grounds.

Kenneth C. Phillips, a tenant turned away in 1987 from renting a Chico duplex with his girlfriend at the time, on Monday asked the State Bar to investigate and "take whatever action it deems appropriate to remedy this clear violation of ethics." He said Lungren's actions had jeopardized the case in which he is a real party in interest.

Lungren spokesman Dave Puglia said the attorney general has not seen the complaint and thus could not comment.

Lungren withdrew from the 5-year-old case in late June, following a May ruling by the 3rd District Court of Appeal upholding the right of Evelyn Smith of Chico to refuse to rent to the unmarried couple. The panel held that Smith's constitutional rights to religious freedom and free speech supersede state laws prohibiting housing discrimination, *Smith v. FEHC*, C007654.

Lungren served notice June 28 his office had withdrawn and that staff attor-

neys of the Fair Housing and Employment Commission would represent the agency in the case. In response to inquiries by the Daily Journal, Puglia said last week the attorney general withdrew because he believes the ruling "is correct, as a matter of law."

In his complaint to the bar, Phillips contends Lungren violated ethical standards and case law by saying publicly the appellate court ruling should stand. Phillips cited a 1981 California Supreme Court ruling, *The People ex rel. George Deukmejian v. Edmund G. Brown Jr.*, 29 Cal.3d 150, which held that although the Attorney General has "the right to withdraw from representation of his statutory clients," the law does not exempt the Attorney General "from the prevailing rules governing an attorney's right to assume a position adverse to his clients or former clients..."

In a letter to State Bar members, Phillips said Lungren's comments already have had an injurious affect on the case. He noted that attorney Jordan W. Lorence of Paeonian Springs, Va., representing Smith, within days used Puglia's comments to the press in asking the state Supreme Court to deny review.

In a reply to be filed with the state's



DAN LUNGREN — The State Bar was asked to investigate the attorney general's decision to stop representing a state agency in a lawsuit.

high court today, Phillips' attorney, Thomas F. Coleman of Los Angeles, said the court should disregard statements made in the press but outside the record regarding the attorney general's motivation in dropping the case.

Coleman said Lungren's comments endorsing the appellate court ruling are injurious to both the state's client and to Phillips.

"Lungren is stabbing the FEHC in the back," Coleman said. "But the knife is so long, it's affecting my client as well."