

## STATE CRIMINAL PROBE OF **FILNER** UNDER WAY

### CIVIL CASE, POTENTIAL CRIMINAL PROBES WAIT IN WINGS

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San Diego Mayor Bob **Filner**'s resignation Friday solved his immediate political problem of trying to fight off a recall movement that could have removed him from office.

But the mayor's legal problems remain on several fronts, both in civil and possible criminal cases.

After he announced his resignation Friday, a spokesman for Attorney General Kamala Harris said "an investigation is underway" into complaints that have been made to a San Diego County Sheriff's Department hotline over encounters people have had with him. Authorities declined to give details about the complaints or the investigation.

It was the most explicit statement yet by authorities that the criminal inquiry into **Filner**'s conduct is gaining traction and may not go away soon.

The deal struck after three days of mediation to get the mayor to resign does not cover any potential criminal prosecution, but it likely strengthens the city's hand in resolving the sexual harassment lawsuit filed by **Filner**'s former communications director, Irene McCormack Jackson.

Under the terms of the deal, the city agreed to defend **Filner** in the current suit and any others that could be filed by current or former employees, city contractors or city volunteers. **Filner** will sign a waiver that allows the city to do this.

The waiver is needed because the city and the mayor's defense of the suit, if done separately, could have been in conflict.

The city also has agreed to pay a maximum of \$98,000 to **Filner** for any private lawyers he hires or consults with. Anything more than that, the mayor has to pay.

And if McCormack Jackson or others sue over **Filner**'s conduct as mayor and receive a financial settlement, the city will pay that.

McCormack Jackson's lawyer, Gloria Allred, and others had urged the city to not agree to pay any of **Filner**'s costs. But City Attorney Jan Goldsmith said that under state law, employers are liable for the sexual harassment of supervisors and managers even if they were unaware it was going on.

**"Just getting him out is a good deal for the city legally," said James Frantz, a San Diego civil lawyer who has won numerous personal injury suits against public entities. "They're not really giving anything up, because they would have had to pay (monetary damages) under the law anyway."**

The settlement presents a united defense in the sexual harassment lawsuit, which is better for the city, said Lonny Zilberman, a San Diego employment lawyer. And coming to a settlement with **Filner** and linking his defense with the city's probably weakened Allred's hand, he said.

Now, Allred runs the risk of appearing to simply want as much money out of the city as possible.

The deal Goldsmith and other city leaders worked out with **Filner** is "a very shrewd, tactical move," Zilberman said. "If this ever gets to trial, and I don't think it would, but if it did, every juror would know every penny against **Filner** is something the taxpayer will be paying."

Goldsmith noted that another condition of the settlement allows the city to seek reimbursement from **Filner** for any monetary damages. While allowed under the law, it rarely happens.

"It's not regular, not a common procedure," Goldsmith said.

It's impossible to predict how much the city could be on the hook for from McCormack Jackson's suit. Zilberman and others agreed that the biggest danger is from damages for emotional distress.

She claimed that **Filner** put her in a headlock and made inappropriate comments, including that she work without wearing panties.

McCormack Jackson has worked for the city since January. She did not lose her job or suffer retaliation when she complained about the mayor, so her claims for economic loss will likely not be very large.

That leaves her emotional distress — and Allred's legal fees.

"The city is going to argue that as soon as they learned about the mayor's conduct they took swift, remedial action," said San Diego employment lawyer Joshua Gruenberg. The mayor was barred from meeting with women alone, he said, and McCormack Jackson was moved to a different department with similar responsibilities.

Though nearly 20 women have come forward to describe gropes, grabs and unwanted advances from the mayor over the years, Gruenberg said that most do not fall into the legal category of sexual harassment. That's defined as an employee working in a hostile environment where the harassment was severe and pervasive.

He said at this point it appears only McCormack Jackson and Peggy Shannon, a 67-year-old volunteer at City Hall who said the mayor kissed her and made a lewd remark about his sexual stamina, would fall under that category.

Gruenberg said the city will likely argue that **Filner's** conduct did not rise to being "severe and pervasive" with either of the women.

**Filner** personally must still deal with potential criminal prosecutions.

The FBI is looking into his dealings with two developers who paid the city \$100,000 each at **Filner's** suggestion after the mayor put a hold on their projects.

The money went to a veterans program and a bike event, city projects that **Filner** supported. What investigators are specifically looking at is not known. The U.S. attorney has declined to comment or even confirm there is a probe, but sources have said the FBI has made inquiries about the payments.

But because **Filner** did not personally pocket the money or put it in his campaign coffers, making a federal criminal case against him could be complicated.

His bigger potential problem could be from state authorities.

On July 19, the Sheriff's Department set up a hotline after several women came forward to allege that **Filner** had touched them inappropriately. The state Attorney General's Office has been designated to prosecute any criminal charges that may arise from complaints about **Filner's** conduct. District Attorney Bonnie Dumanis, who ran against **Filner** in the 2012 mayor's race, removed her office from prosecuting any criminal cases that may be brought.

Even with **Filner's** resignation, the hotline will continue to operate. The number is (619) 481-0220.

"Our dedicated phone line will remain open and we have no further comment to make," sheriff's Capt. Duncan Fraser wrote in an email Friday.

Earlier this month, Sheriff Bill Gore said in an interview with U-T San Diego that investigators were interviewing witnesses and talking regularly with the Attorney General's Office. He declined to say how many calls the line had received or to describe the kinds of complaints coming in.

A source close to the investigation said on Friday that the mayor's resignation, effective Aug. 30, had no effect on the criminal probes into his conduct.

"This is certainly not over," the source said. "A criminal investigation is under way. Mr. **Filner's** resignation does not change that."