

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Consent to Engage in Dual Legal Representation for Bryant Miller Olive

DATE: May 20, 2014

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS GRANT CONSENT TO BRYANT MILLER OLIVE ("BMO") TO ENGAGE IN DUAL LEGAL REPRESENTATION.

DISCUSSION: The County Attorney's office procedure on Legal Representation of Multiple Clients, approved by the Board of County Commissioners, proscribes outside legal counsel from simultaneously representing Pinellas County and other clients in matters involving Pinellas County unless otherwise approved by the Board of County Commissioners at a Board meeting. BMO currently represents Pinellas County on an on-going basis as bond counsel, both for County Bond issues and for its conduit financing entities, and has previously requested that the County consent to the firm engaging in dual legal representation on an ongoing basis as counsel for the city of Largo, which consent was granted by the Board.

The Board, in addition to its role as the County Commission, also sits as both the Pinellas County Emergency Medical Services Authority ("PCEMSA") and as the Pinellas County Industrial Development Authority ("IDA") – two distinct legal entities from the Board as the County Commission. The IDA is one of the separate legal entity conduit bond financing entities. BMO's representation of the City of Largo has led it to be in direct conflict with the PCEMSA. Greater detail of the pending situation is laid out in the attached BMO letter seeking the County's consent.

The prior consent required that, if the interests of the County and the entities represented by BMO became directly adverse, BMO would secure consent for the continued representation or withdraw from the representation, as appropriate. As BMO recognizes that their ethical legal obligations do not hinge on legal technicalities, they are seeking the consent of the Board, in its capacity as the County Commission and as the governing body of the IDA, to continue to represent the IDA in currently pending bond issues. Therefore, it is recommended that the Board of County Commissioners consent to this dual legal representation for the outstanding bond issues of the IDA, and authorize the County Attorney's Office to approve the consent.

The situation relating to these nuanced matters will continue to be closely monitored.

JLB:DSC

Attachment

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May 14, 2014

James L. Bennett, Esq.
County Attorney
Pinellas County Attorney's Office
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Dear Mr. Bennett:

I am writing in order to describe part of the discussion we had Monday during our meeting. In particular you asked that I write in order to address our representation of the Pinellas County Industrial Development Authority for an upcoming financing in behalf of Hydro-Dyne. This letter is also written to you to discuss the applicability of and our obligation to consult with you regarding Rule 4-1.7 of the rules regulating The Florida Bar ("Rule 4-1.7") as well as the County's "Policy on Legal Representation of Multiple Clients" (the "Pinellas Conflicts Policy").

The background for this letter is as follows:

The Board of County Commissioners of Pinellas County sits as the board of the Pinellas County Industrial Development Authority (the "IDA"). The Board of County Commissioners of Pinellas County also sits as the Board of the Pinellas County Emergency Medical Services Authority, which was created by the Legislature pursuant to Chapter 80-585, Laws of Florida. As was addressed in our letter dated November 16, 2012, the firm acts as counsel to the City of Largo, among other cities. On April 15th the City of Largo adopted a Resolution stating its intent to initiate conflict resolution proceedings under Chapter 164 with the Pinellas County Emergency Medical Services Authority (the "EMS Authority") regarding the "Advance Life Support Agreement" between the City of Largo and the EMS Authority. Currently there is a meeting scheduled for May 27th in Largo in order to work towards resolving the dispute amicably before October 1, 2014.

The two entities, the EMS Authority and the IDA, are separate legal discrete units of government. Therefore for purposes of the Florida Bar rules, the representation by the firm of Largo (in the Advance Life Support matter) and of the IDA as bond counsel (in the Hydro-Dyne financing) does not create a conflict of interest. In addition to the fact that the two are separately

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identifiable entities and therefore are two distinct clients, the two matters are wholly unrelated. We believe that our loyalty to the IDA during the financing representation will not be impaired because of any considerations or responsibilities to Largo.

However, realistically an inherent adversity exists in that the exact same individuals comprise both boards. Therefore although technically the affected clients are different, the propriety of undertaking both engagements merits a full discussion and the utmost transparency. We discussed the sensitive nature of the situation and the need for ongoing informative and full discussions.

The IDA representation was somewhat unexpected as manufacturing financings are seldom undertaken. The nature of the Hydro-Dyne application is time sensitive and the County desires to be able to move forward and assist in the job creation with the bond financing for the project. The firm has many years of experience with the policies and procedures of its IDA and the IDA would therefore be disadvantaged by a sudden transition to different counsel given the time constraints.

In a meeting yesterday Largo expressed willingness to go forward with the meeting with the EMS Authority without having Mr. Zimmet representing the City at the proceeding. The City Manager has further expressed his willingness to present and recommend to the City Commission the hiring of different counsel to represent the City in the matter if the conflict is not resolved as a consequence of the meeting. As a practical matter, Mr. Zimmet is leaving for a planned vacation today and will not be returning until the day before the scheduled EMS/Largo meeting.

Rule 4-1.7 of the Florida Bar prohibits a lawyer from representing a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest. Rule 4-1.7 further directs that a lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client. This is the case unless: (i) the lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client, and (ii) each client consents after consultation. In the instant case, we do not believe that BMO's ongoing representation of Largo in the EMS in the Advance Life Support matter and BMO's representation of the IDA in providing Bond Counsel Services will be materially limited by our responsibilities to the other, nor would the representation be limited by BMO's own interests.

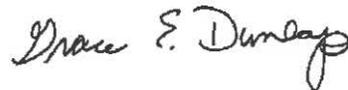
So in summary we are requesting that you and request the Board consider the foregoing matters at the upcoming meeting to consent to the firm moving forward with the current IDA matter. We understand that further decisions regarding the firm continuing to act as bond counsel for Pinellas County will then be held in abeyance temporarily pending the attempt to

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reconcile the positions in the Advance Life Support matter at the meeting on the 27th, which will occur without attendance and representation by Mr. Zimmet. There is an in house attorney, Mary Hale, who will be attending and representing Largo in those proceedings. Meanwhile we will proceed with the time sensitive matter for the IDA if this representation is approved. We do so with the understanding that our ongoing role as Bond Counsel to Pinellas County itself will ultimately be reexamined as facts evolve in the EMS conflict resolution process.

We appreciate your consideration and very much value the opportunity to provide our services as the County's bond counsel.

Sincerely,



Grace E. Dunlap, Managing Shareholder
Bryant Miller Olive P.A.

PINELLAS COUNTY, FLORIDA:

For the purposes of Rule 4-1.7 of the Rules regulating The Florida Bar and Section I.C. of the Pinellas County Policy on Legal Representation of Multiple Clients, the undersigned on behalf of Pinellas County, Florida consents to the provision by Bryant Miller Olive P.A. of the services outlined herein.

Name: James L. Bennett
Title: County Attorney
Date: _____, 2014