

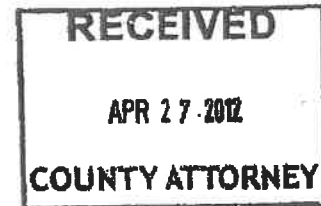


JAMES L. BENNETT
COUNTY ATTORNEY

PINELLAS COUNTY OFFICE OF COUNTY ATTORNEY

PHONE (727) 464-3354 • FAX (727) 464-4147 • 315 COURT STREET • CLEARWATER, FLORIDA 33756

April 12, 2012



Ken Burke, Clerk of the Circuit Court
315 Court Street
Clearwater, FL 33756

Dear Ken:

Based upon our prior discussions, and pursuant to my ethical obligations as defined in the Rules of Professional Conduct ("Rules") and related County Attorney's Office ("CAO") Policy on Legal Representation of Multiple Clients (CAO Policy – attached) and Client Information Screening Policy (CAO Policy - attached), this letter will serve as a explanation of the CAO's ongoing common legal representation of you in your official capacity and other CAO clients, including the Board of County Commissioners ("BCC") pursuant to Rule 4-1.7(c), as well as my written request on behalf of the CAO, pursuant to Rule 4-1.7(b), for your informed consent to our continued representation of you in your official capacity as described herein. This letter is limited to the CAO's obligations with respect to its representation of the Clerk and is not intended to address either the Clerk's independent authority to select legal counsel or the Clerk's independent authority to raise issues of conflicts of interest in legal representation as they may arise.

The CAO representation of the Clerk of the Circuit Court includes litigation and other adversarial administrative proceedings, as well as general legal representation handling legal matters on behalf of the Clerk, which are summarized as follows:

- General Legal Representation. This involves non-litigation legal representation of the Clerk in the performance of constitutional and statutory duties for both Court and Clerk to the Board of County Commissioner ("BCC") functions, in coordination with and support of your general counsel. Areas of Court-related representation include, but are not limited to, judicial sales, probate/guardianship matters, child support, civil and possibly criminal appeals, filing fees, Clerk staff subpoenas, contract preparation and/or review, technology issues, and judicial records issues. Clerk to the Board-related representation generally includes, but is not limited to, official records, tax deeds, finance issues, Records Management, Board Records, contract preparation and/or review, technology issues, and public records issues.

- **Litigation.** This involves claims against the Clerk that are covered by the County's Risk Management program (i.e., tort claims, workers' compensation, and personnel-related claims), as well as claims and adversarial proceedings against, or on behalf of, or involving the Clerk that are generally non-Risk matters (i.e., interpleader actions, actions arising from foreclosures and other judicial sales, grievances and appeals before the Personnel Board, actions arising from tax deed sales, and public/court records disputes).

With your acknowledgement and consent as requested herein, general legal representation and litigation matters will be handled as follows:

- 1) As to the general legal representation matters for the Clerk, this does not normally involve representation of multiple County clients, nor the need to establish ethical screens. However, there are instances when different CAO attorneys provide, or sometimes even the same attorney provides, legal advice to both the Clerk's office, and a board or department under the Board of County Commissioners or other Constitutional Officers, on the same legal matter. Examples include projects that the Clerk participates in, or that impacts your operations, such as the OPUS, discharging statutory duties and responsibilities relating to tax deeds, and Justice Coordination. While we have provided blanket notifications of this legal representation of multiple clients in the past, I request that you again acknowledge this explanation of our ongoing legal representation of multiple clients pursuant to Rule 4-1.7(c) as described in the next to the last paragraph on page 3.
- 2) There are also areas of general legal representation where the interests of the Clerk and County are or are likely to be adverse to one another. Your recent review of the Clerk's Office's participation in the Risk Workers' Compensation program is an example. In that instance, as you indicated in our initial meeting on this matter, you decided to utilize outside counsel, and this office therefore represented and will continue to represent the interests of the County, unless otherwise conflicted on that matter under the Rules, in accordance with CAO Policy. Another area where there are potential adverse interests is the payment of County obligations. The CAO is frequently involved in discussions with your Finance Department as well as BCC departments or boards, advising both the Clerk and the department on payment obligations. However, if the matter involves the Clerk's decision to not pay the obligation in accordance with the Clerk's responsibilities under §129.09, Florida Statutes, and if the County disagrees, the CAO will only represent the interests of the BCC in that situation in accordance with applicable policies, unless otherwise conflicted on that matter under the Rules, with your consent pursuant to Rule 4-1.7(c) described in the next to the last paragraph on page 3.
- 3) Finally, there are two areas of general legal representation where it is foreseeable that the CAO will represent the interests of the County because the interests of the County and the Clerk are or are likely to be adverse to one another. These areas include Clerk to the Board budget and funding matters, and the internal audit/Inspector General function. In those situations, dual representation would potentially interfere with my professional judgment in considering alternatives or foreclosing courses of action that reasonably should be pursued on your behalf, compromising my responsibilities to you. Therefore, you will have to rely on your own counsel in these matters.

4) As to litigation matters, our legal representation generally involves, or could involve: (i) litigation or adversarial actions where the Clerk is the only party represented by the CAO; (ii) litigation or adversarial proceedings where the CAO represents multiple parties in the legal matter; or (iii) litigation or adversarial proceedings between the County and the Clerk.

A. As to (i) above, we will continue to follow the current practices in place relating to assignment, strategy, and case management in coordination with your office, until we jointly agree to a different process.

B. As to (ii) above, our current practice is to provide notification when the CAO represents multiple clients in a single matter on a case-by-case basis, as required by the Rules and the CAO Policy. When it is determined at the commencement of the representation that the clients' interests are, or are likely to be, directly adverse with one another, then I will notify all clients of the situation. Consent will be secured from each client as required by the Rules before the multiple client representation is undertaken (e.g., a lawsuit initiated by a third party involving the Clerk and another CAO client, or an appeal of discipline by a Clerk employee to the Personnel Board). With regards to the representation of multiple clients in a single litigation matter, the Client Information Screening Policy is also in place, and outlines the CAO practices to protect client information and address due process considerations where appropriate. If, however, consent is not secured from all CAO clients, then the CAO will represent the interests of the BCC, if the BCC is one of the multiple parties, unless otherwise conflicted on that pending matter under the Rules, in accordance with CAO Policy I.B.4, and the Clerk and other non-BCC clients will be required to retain their own legal counsel outside the CAO.

C. As to those situations involving an adverse matter between the Clerk and the County described in (iii) above, the CAO will represent the interests of the County, unless otherwise conflicted on that pending matter under the Rules, in accordance with CAO Policy I.B.4, and you will necessarily have to rely on your own counsel, unless other arrangements are approved in accordance with the Rules and CAO Policy.

The County Attorney's Office has enjoyed a long relationship with the Clerk's Office, and we look forward to providing quality legal services in the most cost efficient manner possible in the future. While I have attempted to outline the scope of this legal representation herein, there will be instances that we have not addressed in this correspondence, and we will resolve those in accordance with the Rules and CAO Policies. To the extent that I have explained the ongoing legal representation of multiple parties, I request that you acknowledge that receipt of the notification in accordance with Rule 4-1.7(c) by signing below. To the extent this letter serves as a general consent for the CAO to represent the BCC/County in those instances when it would be a conflict to represent both the BCC/County and you in your official capacity, as described in paragraphs 2, 3, and 4.B. and C., I request that you provide your consent in accordance with Rule 4-1.7(b) by signing below.

As outlined in the first paragraph of this letter, the acknowledgement of the multiple representation of clients and this general consent is without prejudice to the Clerk's independent authority on a specific matter to raise issues of conflict in legal representation as they may arise.

I am, of course, available to meet with you to answer any questions or discuss this further at your convenience.

Very truly yours,



James L. Bennett
County Attorney

Acknowledgment of receipt of explanation of
multiple clients and consent to represent the
BCC/County as described in this correspondence



Ken Burke, Clerk of the Circuit Court

Date: April 27, 2012

JLB:sme

Attachments (2)

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