


12.11.12 # 23

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

FROM: James L. Bennett, County Attorney 

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

DATE: December 11, 2012

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 as well as counsel in the ongoing Medicaid litigation and has requested that the County consent to the firm engaging in dual legal representation on an ongoing basis, as described in the correspondence attached, as counsel for the cities of Largo, Safety Harbor, St. Pete Beach and New Port Richey, as well as the Pinellas Suncoast Transit Authority (“Local Governments”). Currently, the interests of the County and the Local Governments are not directly adverse, and if the situation arises in the future where there is a conflict of interest relating to this dual representation, the Rules of Professional Conduct would require BMO to secure consent for the continued representation or withdraw from the representation, as appropriate. Therefore, it is recommended that the Board of County Commissioners consent to this dual legal representation, and authorize the County Attorney’s Office to approve the consent.

JLB:DRL:sme

Attachment

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November 16, 2012

Dennis R. Long, Esq.
Chief Assistant County Attorney
Pinellas County Attorney's Office
315 Court Street, 6th Floor
Clearwater, FL 33756

Re: Conflict Waiver Request – Pinellas County/Cities of Largo, Safety Harbor and St.
Pete Beach, New Port Richey and Pinellas Suncoast Transit Authority

Dear Mr. Long:

This letter is 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"). Bryant Miller Olive P.A. ("BMO") is pleased to provide ongoing bond counsel services to Pinellas County (the "County") and from time-to-time, its other agencies. BMO also represents the County, among others, in a lawsuit filed against the State of Florida in a constitutional challenge to the Medicaid revenue withholding scheme (the "Medicaid Litigation"). In addition, as you know, BMO also supplies legal services to numerous other counties, municipalities, special purpose governments, state agencies, underwriters and commercial banks and we primarily focus on public finance and local governmental issues.

With the addition of Alan Zimmet and Nicole Nate to BMO, we now are city attorneys for the cities of Largo, Safety Harbor and act as General Counsel for the Pinellas Suncoast Transit Authority, and we continue to act as city attorney to the City of St. Pete Beach (collectively, the "Local Governments"). We represent these Local Governments from time to time in matters involving Pinellas County. These matters include mortgage foreclosures, the negotiations of agreements involving such issues as the provision of services, annexation, and funding/taxation issues, intergovernmental relations, joint projects, permitting of County projects, funding issues, and other matters that arise from time to time between Pinellas County and the cities of Pinellas County.

These matters for which we represent the Local Governments do not generally involve the ongoing bond counsel services provided by BMO to the County ("Bond Counsel Services") or in the Medicaid Litigation. Should any specific matters arise from our representation of these Local Governments conflict directly with our representation of Pinellas County as set forth in

Dennis R. Long
November 16, 2012
Page 2

the scope of services set forth in our Agreement dated October 12, 2010 ("Bond Counsel Services") this conflict waiver would be deemed inapplicable.

Rule 4-1.7 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 the Local Governments and BMO's representation of the County 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. Further, we believe that the representation will not adversely affect BMO's responsibilities to and relationship with either the County or the Local Governments. Neither do we believe that BMO's representation of the County in the Medicaid Litigation would be prohibited or effected by our representation of the Local Governments.

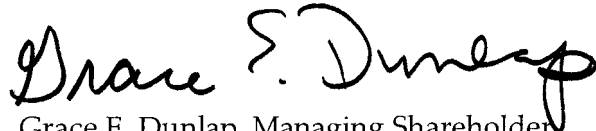
In a dual representation situation, Rule 4-1.7 and the Pinellas Conflicts Policy require both parties to consent to such representation, both after an explanation of the conflict. The explanation must include explanation of the implications of the common representation and the advantages and risks involved. We believe that this letter and our prior conversation with you have satisfied this requirement with respect to the County and we have discussed this matter with the Local Governments, which have already provided their consent. Further, while not directly on point, Section I.C. of the Pinellas Conflicts Policy provides that we may not represent a client before the County's Board of County Commissioners (the "Board") and simultaneously represent the County if such representation would require notice to the County by BMO under Rule 4-1.7, unless consent is given by the Board at a Board meeting in accordance with Rule 4-1.7. The purpose of this letter is to request the Board consider the foregoing matters at its next meeting and consider providing BMO with consent to proceed to serve as counsel to the Local Governments in the ongoing matters described above, while continuing our role providing Bond Counsel Services and representation in the Medicaid Litigation to the County or any other work in progress.

So that we might move forward with your approval, we ask that you place this item before the Board for consideration at its next available meeting. If we receive the Board's consent to represent the Local Governments in the ongoing matters described above while maintaining our role as bond counsel to the County, please execute this letter and return a copy

Dennis R. Long
November 16, 2012
Page 3

of your counterpart to us for our file. 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: Dennis R. Long
Title: Chief Assistant County Attorney
Date: _____, 2012