

EXECUTIVE SUMMARY

To: Palm Beach County Commission on Ethics
From: Steven P. Cullen, Executive Director
Re: C13-014 – Darell Bowen, (Wellington)

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff via a sworn complaint filed by Bart Novack (Complainant), a resident of the City of Wellington, which was received by the COE on September 18, 2013. The complaint alleges Darell Bowen (Respondent) was both the Mayor of the Village of Wellington and a candidate for Mayor of the Village of Wellington. It is alleged Respondent received an unreported gift in the amount of \$408.50 from Attorney Alexander Domb for a lawsuit that was filed on his behalf with the Palm Beach County Clerk of Court on March 26, 2012. Current PBC Code of Ethics requires that all gifts valued over \$100 be reported on a formal Palm Beach County Gift Form.

- **Conclusion**

Based on supporting documentation and COE investigations, it could not determine if any ethical rules were broken by Respondent in this matter. There was no personal knowledge of alleged transactions between Respondent and his attorney by the Complainant. There was no formal documentation that could be produced to show specific payment trails or monetary gifts between the Respondent and his attorney. Lastly, the Respondent conveyed the invocation of attorney-client privilege in regards to this matter.

COE staff reviewed Florida State Statute and Florida Bar guidelines to verify if attorney-client privilege was in fact relevant in this case. Florida law states communication between lawyer and client is “confidential” and therefore does not have to be disclosed in matters such as this complaint. In addition, Florida Bar Opinion 93-2 states money entrusted to an attorney for a specific purpose, including advances for costs and expenses, is held in trust and must be applied only to that purpose. Based on conversation with Respondent, he advised that Attorney Domb was his legally retained lawyer and he paid Domb fees to handle all legal related work, which included filing fees. Therefore, **NO LEGAL SUFFICIENCY EXISTS** to warrant further investigation into this matter.

PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF INQUIRY

To: Steven P. Cullen, Executive Director
From: Anthony C. Bennett, COE Investigator
Re: C13-014 – Darell Bowen (Wellington)

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff via a sworn complaint filed by Bart Novack (Complainant), a resident of the City of Wellington, which was received by the COE on September 18, 2013. The complaint alleges Darell Bowen (Respondent) was a candidate for the Mayor of the City of Wellington. It is alleged Respondent received an unreported gift in the amount of \$408.50 from Attorney Alexander Domb for a lawsuit that was filed on his behalf with the Palm Beach County Clerk of Court on March 26, 2012. Current PBC Code of Ethics requires that all gifts valued over \$100 be reported on a formal Palm Beach County Gift Form.

The Complainant is questioning the following:

- Was this a gift?
- Was a Gift Form required?
- Was campaign money involved?
- Who paid the attorney?
- Was the work done by the attorney *pro bono*?

Below are the submitted documents along with the Complaint Form:

1. Palm Beach County COE notarized Complaint Form.
2. Letter from Bart Novack (Complainant) dated 8/30/13.
3. Palm Beach County Clerk of Court Receipt of Payment in the amount of \$408.50 (#CAMB66046)
4. Copy of court documents filed on March 26, 2012, listing Darell Bowen as Plaintiff and Village of Wellington Canvassing Board as Defendant. (4 pages)

- **Applicable Law**

The Following section of the PBC Commission on Ethics Ordinance establishes jurisdiction in this investigation:

Sec. 2-254. Creation and jurisdiction.

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to *any person required to comply with the countywide code of ethics*, the county lobbyist registration ordinance, and the county post-employment ordinance... (Emphasis added)

The following portions of the PBC Code of Ethics ordinance are relevant to this Investigation:

Section 2-442. Definitions.

Financial *benefit* includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid... The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies ...(Emphasis added)

Sec. 2-444. Gift law.

(a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

(f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.

(1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, § 112.3148, as may be amended. A copy of each report shall be filed with the county commission on ethics.

- **Inquiry**

On September 20, 2013, I was assigned this complaint for follow-up. I reviewed all submitted documents for relevant information. Within the documents, Complainant is alleging Respondent has received a gift of \$408.50 that was used to file a lawsuit on his behalf against Village of Wellington Canvassing Board. According to court documents, the lawsuit was formally filed on March 26, 2012 by Attorney Alexander Domb. The suit lists Darell Bowen as the plaintiff and Village of Wellington Canvassing Board as the defendant. The suit was dismissed voluntarily by Respondent on April 25, 2012.

At the time of the alleged gift, Respondent was the Mayor of the Village of Wellington and a Mayoral candidate for the Village of Wellington. The Complainant is questioning the origin of the filing fees of \$408.50 and why there was no formal reporting done. I searched COE records to see if there was a gift form submitted by Respondent for the monies. I found no such gift form on file.

On October 11, 2013, I contacted Respondent's attorney Alexander Domb via telephone, due to Respondent's contact information not being included in the accompanying documentation. Attorney Domb, advised that some of my questioning was covered under the Attorney Client Privilege. When asked specifically if he could disclose where the filing fees came from to file the lawsuit, Domb advised that he would contact his client and ask if that information could be disclosed. Domb requested that I submit my questions and a copy of the receipt for \$408.50 to him via email so he could present it to Respondent for follow-up. As requested, I sent the email and a copy of the receipt. The telephone conversation ended at this point.

On November 14, 2013, I sent Mr. Domb a follow-up email asking if he had made contact with his client regarding my requested information. I received a response email stating that he had discussed the matter with his client and his client advised that he was refusing to participate in this investigation. He also stated he had no authority disclose privileged information without client consent. A copy of this email exchange has been included in the file.

However, also November 14, 2013 prior to receiving the email from Mr. Domb, I was able to make contact with Respondent via telephone from a number the COE previously had on file. In speaking with Respondent, he voiced

concern that complaints were still being filed against him not only through the COE but also through the Office of Inspector General and that these complaints had no merit. He advised that he is not a public official and that he lost the election. I stated that I understood his concerns, but this complaint was properly filed and according to COE guidelines it would cover the time frame that he served in public office.

When asked if he had any knowledge of who paid the fee to file the lawsuit, he stated he was not there when the actual fee was paid but believed his Attorney, Alexander Domb, paid the fee out of his account. Then he advised that Mr. Domb had been retained as his attorney for years. He stated Mr. Domb has handled legal issues on the personal, business and political side for him for some time. He advised that Mr. Domb "sends him bills" and "he pays them." He also advised that he could not tell me when he specifically paid for this particular lawsuit, but he was certain that it was covered within the legal expenses paid to date. Respondent advised that he was not going to dig out old bills from years ago. He reminded me again, "He lost the election and is not in government anymore."

Respondent also stated some of the work performed by Attorney Domb was covered under his attorney-client privilege and he would not comment on that work. He again stressed concern that the complainant continues to file complaints against him. The telephone conversation ended at this point.

Based on this conversation, I reviewed the 2013 Florida Statutes (Title VII, Ch. 90, 90.502) which covers Attorney-client privilege. Below are the statutes that are relevant in this matter:

90.502 Lawyer-client privilege.—

- (1) For purposes of this section:
 - (a) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.
 - (b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults a lawyer with the purpose of obtaining legal services or who is rendered legal services by a lawyer.
 - (c) A communication between lawyer and client is "confidential" if it is not intended to be disclosed to third persons other than:
 1. Those to whom disclosure is in furtherance of the rendition of legal services to the client.
 2. Those reasonably necessary for the transmission of the communication.
- (2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client.
- (3) The privilege may be claimed by:
 - (a) The client.
 - (b) A guardian or conservator of the client.
 - (c) The personal representative of a deceased client.
 - (d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.

As stated by Respondent, Attorney Domb was under retainer at the time lawsuit was filed. Under FSS 90.502, Respondent has the right to invoke attorney-client privilege in regards to all work and payments made or received between him and his attorney.

I additionally reviewed Professional Ethics of the Florida Bar, Opinion 93-2, dated October 1, 1993. This opinion, registered on the Florida Bar website (<https://www.floridabar.org>), covers all issues governing the use of retainers paid by clients to attorneys. It includes the differences regarding prepaid services, the use of trust accounts, and flat fees. According to Respondent, Attorney Domb was on retainer and had permission to conduct legal services, which included the payment of fees. Question 2, of Opinion 93-2 states:

Opinion 93-2

Question 2. Does any applicable rule require that prepaid costs and prepaid fees for services to be performed be deposited and kept in the trust account?

Regarding prepaid costs, Rule 4-1.15(a) states that money entrusted to an attorney for a specific purpose, including advances for costs and expenses, is held in trust and must be applied only to that purpose. See also Rule 5-1.1(a). Accordingly, in view of the specific requirement of these rules, advances for costs and expenses must be deposited in the attorney's trust account and withdrawn and applied against such expenses as they are incurred and paid.

Due to the invocation of attorney-client privilege, I was unable to secure information regarding a trust account or the amount of any monies given to Attorney Domb by Respondent. However, the above opinion, explains the process of the use of fees by attorneys to cover future legal costs. Based on Respondents phone interview, one could reasonably assume that this process was utilized by Respondent and his attorney to conduct the legal business which is the ultimate foundation of this complaint.

- **Definition: Legal Sufficiency**

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the Complainant filed in a sworn complaint, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Conclusion**

In reviewing all other associated documents, I could not determine if any ethical rules had been broken by Respondent in this matter. Due to the lack of personal knowledge of alleged transactions between Respondent and his attorney by the Complainant, the lack of documentation specifically showing payment trails, and the invocation of attorney-client privilege by both Respondent and Attorney Domb, staff recommends that **NO LEGAL SUFFICIENCY EXISTS** to warrant further investigation into this matter.

Submitted by:


Anthony C. Bennett, Investigator
PB County Commission on Ethics


Date

Reviewed by:


(Initials)


Date



PALM BEACH COUNTY COMMISSION ON ETHICS

300 North Dixie Highway, Suite 450, West Palm Beach, Florida 33401

Hotline: 877-766-5920 or 561-355-1915

COMPLAINT FORM

1. Complainant (Person bringing Complaint) Add pages, if necessary.

Please list all information where you would like to be contacted. Our preference is email.

Name: Bart Novack E-Mail: _____
Address: 15670 Cedar Grove Lane
City: Wellington, Fl. Zip: 33414
Home #: on file Work #: on file Cell #: on file

2. Respondent (Person against whom complaint is made) Add pages, if necessary.

Please provide as much information as possible.

Name: Darell W. Bowen E-Mail: _____
Address: 12669 Headwater Way
City: Wellington, Fl. Zip: _____
Home #: _____ Work #: _____ Cell #: _____
Title/Office Held or Sought: X-Mayor of Wellington last know address listed

3. IF KNOWN, CHECK THE BOX OR BOXES THAT APPLY

Allegation is against person in
County/Municipal Government

Allegation is about County:
Whistleblower Retaliation

4. STATEMENT OF FACTS BASED ON YOUR PERSONAL KNOWLEDGE

In a separate attachment, please describe in detail the facts and actions that are the basis of your complaint, including the dates when the actions occurred. Also attach any relevant documents as well as names and contact information of persons who may be witnesses to the actions. If known, indicate the section of the ordinance you believe is being violated. For further instructions, see page 2 of this form.

5. OATH

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments are true and correct, to the best of my knowledge and belief.

[Signature]
Signature of Person Making Complaint

STATE OF FLORIDA

COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me this 30 day of August, 2013, by

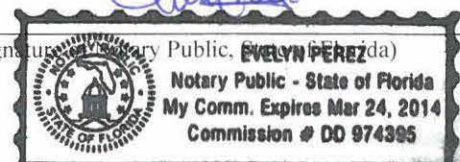
Bart M. Novack

(Name of Person Making Statement)

who is personally known to me ☐ or produced identification ☒. Type of identification produced:

Driver License N120073562960

(Signature of Notary Public, Evelyn Perez)



(Print, Type, or Stamp Commissioned Name of Notary Public)

8/30/13

Enclosed is a filling receipt in the amount of \$408.50 dated March 26 2012 for a lawsuit paid by Alexander I. Domb pa. Was this cash, check? Darell Bowen was a candidate for Mayor of Wellington, while being Mayor of Wellington. Also attached is the type of case and who's being named.

To get started my questions are as follow; Did Mr. Domb represent Mr. Bowen and if so, was it pro bono or payment and who paid him and was campaign money involved? Was a gift form needed or any other form? If it was pro bono was it required to list how it was paid and by whom?

Mr. Domb is a part of the Wellington Chamber. Did they have involvement in payment and why was the chamber doing this? I believe a form was need in any event. This will raise other question in the future on your questioning.

Thank You

Bart Novack

R E C E I P T

PALM BEACH CTY CIR CT JISPROD

Receipt Number: CAMB660466
Date: 26-MAR-2012
Cashier: KBUTLERPayor: ALEXANDER L DOMB PA
Addr:

Violation/Docket	Description	Amount

Case: 2012CA005699 - DARELL BOWEN V VILLAGE OF WELLINGTO		
Party: DARELL BOEWN		
CAFF		401.00
CAFF		7.50
	CHECK RECEIVED GENERAL ACCT	-408.50
	Total Fees:	408.50
	Total Payment:	408.50

I. CASE STYLE

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

502012 CA 00 56 99 XXXX

Division: _____

DARELL BOWEN, in his capacity as candidate for
mayor

Plaintiff,

vs.

VILLAGE OF WELLINGTON CANVASSING
BOARD, AWILDA RODRIGUEZ, in her official
capacity as Village Clerk and Chairperson of the
Village of Wellington Canvassing Board,
CARMINE PRIORE, in his official capacity as a
member of the Village of Wellington Canvassing
Board, HOWARD COATES, in his official capacity
as a member of the Village of Wellington
Canvassing Board, ANNE GERWIG, in her official
capacity as a member of the Village of Wellington
Canvassing Board, SUSAN BUCHER, in her
official capacity as Supervisor of Elections, Palm
Beach County, Florida and ROBERT MARGOLIS,
in his capacity as candidate for mayor

Defendants

FILED
2012 MAR 26 PM 2:41
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL

II. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- | | |
|--|---|
| <input type="checkbox"/> Condominium | <input type="checkbox"/> Nonhomestead residential foreclosure
\$50,001 - \$249,999 |
| <input type="checkbox"/> Contracts and indebtedness | <input type="checkbox"/> Nonhomestead residential foreclosure
\$250,000 or more |
| <input type="checkbox"/> Eminent domain | <input type="checkbox"/> Other real property actions \$0 - \$50,000 |
| <input type="checkbox"/> Auto negligence | <input type="checkbox"/> Other real property actions \$50,001 -
\$249,999 |
| <input type="checkbox"/> Negligence - other | <input type="checkbox"/> Other real property actions \$250,000 or
more |
| <input type="checkbox"/> Business governance | <input type="checkbox"/> Professional malpractice |
| <input type="checkbox"/> Business torts | <input type="checkbox"/> Malpractice - business |
| <input type="checkbox"/> Environmental/Toxic tort | <input type="checkbox"/> Malpractice - medical |
| <input type="checkbox"/> Third party indemnification | <input type="checkbox"/> Malpractice - other professional |
| <input type="checkbox"/> Construction defect | <input checked="" type="checkbox"/> Other |
| <input type="checkbox"/> Mass tort | <input type="checkbox"/> Antitrust/Trade regulation |
| <input type="checkbox"/> Negligent security | <input type="checkbox"/> Business transactions |

- | | |
|---|--|
| <input type="checkbox"/> Nursing home negligence | <input type="checkbox"/> Constitutional challenge - statute or ordinance |
| <input type="checkbox"/> Premises liability - commercial | <input type="checkbox"/> Constitutional challenge - proposed amendment |
| <input type="checkbox"/> Premises liability - residential | <input type="checkbox"/> Corporate trusts |
| <input type="checkbox"/> Products liability | <input type="checkbox"/> Discrimination - employment or other |
| <input type="checkbox"/> Real property/Mortgage foreclosure | <input type="checkbox"/> Insurance claims |
| <input type="checkbox"/> Commercial foreclosure \$0 - \$50,000 | <input type="checkbox"/> Intellectual property |
| <input type="checkbox"/> Commercial foreclosure \$50,001 - \$249,999 | <input type="checkbox"/> Libel/Slander |
| <input type="checkbox"/> Commercial foreclosure 250,000 or more | <input type="checkbox"/> Shareholder derivative action |
| <input type="checkbox"/> Homestead residential foreclosure \$0 - \$50,000 | <input type="checkbox"/> Securities litigation |
| <input type="checkbox"/> Homestead residential foreclosure \$50,001 - \$249,999 | <input type="checkbox"/> Trade secrets |
| <input type="checkbox"/> Homestead residential foreclosure \$250,000 or more | |
| <input type="checkbox"/> Nonhomestead residential foreclosure \$0 - \$50,000 | |

III. REMEDIES SOUGHT (check all that apply):

- ☐ monetary
☒ nonmonetary declaratory or injunctive relief
☐ punitive

IV. NUMBER OF CAUSES OF ACTION: [1]

Election Contest

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- ☐ yes
☒ no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- ☒ no
☐ yes If "yes", list all related cases by name, case number, and court.

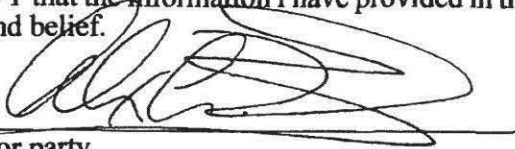
VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- ☐ yes
☒ no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature

Attorney or party



FL Bar No.: 558362
 (Bar number, if attorney)

Alexander L. Domb
 (Type or print name)

March 26, 2012
 Date

Report Selection Criteria**Case ID:** 502012CA005699XXXXMB**Docket Start Date:****Docket Ending Date:****Case Description****Case ID:** 502012CA005699XXXXMB**Case Caption:** DARELL BOWEN V VILLAGE OF WELLINGTON**Division:** AG - CROW**Filing Date:** Monday , March 26th, 2012**Court:** CA - CIRCUIT CIVIL**Location:** MB - MAIN BRANCH**Jury:** N-Non Jury**Type:** OC - OTHER CIRCUIT**Status:** DBO - DISPOSED BEFORE OTHER**Related Cases***No related cases were found.***Case Event Schedule***No case events were found.***Case Parties**

Seq #	Assoc	Expn Date	Type	ID	Name	Aliases:	
1			PLAINTIFF	02937963	BOWEN, DARELL	Aliases:	none
2	1		ATTORNEY	0350362	DOMB , ESQ, ALEXANDER L	Aliases:	none
3			DEFENDANT	02937967	VILLAGE OF WELLINGTON CANVASSING BOARD	Aliases:	none
4			DEFENDANT	02937968	RODRIGUEZ, AWILDA	Aliases:	none

5		DEFENDANT	@2937969	PRIORE, CARMINE	Aliases:	none
6		DEFENDANT	@2937970	COATS JR, HOWARD	Aliases:	none
7		DEFENDANT	@2937971	GERWIG, ANNE	Aliases:	none
8		DEFENDANT	@2937972	GERWIG, SUSAN	Aliases:	none
9		DEFENDANT	@2937973	BUCHER, SUSAN	Aliases:	none
10		DEFENDANT	@2937974	MARGOLIS, ROBERT	Aliases:	none
11		JUDGE	AG	CROW, JUDGE DAVID	Aliases:	none

Docket Entries

Docket Number	Docket Type	Book and Page No.	Attached To:
	00000 - ADDITIONAL COMMENTS		
Filing Date:	26-MAR-2012		
Filing Party:			
Disposition Amount:			
Docket Text:	none.		
	800FF - CAFF		
Filing Date:	26-MAR-2012		
Filing Party:	BOWEN, DARELL		
Disposition Amount:			
Docket Text:	none.		
	PE - PENDING		
Filing Date:	26-MAR-2012		
Filing Party:			

Disposition Amount:	
Docket Text:	<i>none.</i>
RCPT - RECEIPT FOR PAYMENT	
Filing Date:	26-MAR-2012
Filing Party:	BOWEN, DARELL
Disposition Amount:	
Docket Text:	A Payment of -\$408.50 was made on receipt CAMB660466.
1	CMP - COMPLAINT
Filing Date:	26-MAR-2012
Filing Party:	BOWEN, DARELL
Disposition Amount:	
Docket Text:	<i>none.</i>
2	CCS - CIVIL COVER SHEET
Filing Date:	26-MAR-2012
Filing Party:	BOWEN, DARELL
Disposition Amount:	
Docket Text:	<i>none.</i>
DBO - DISPOSED BEFORE OTHER	
Filing Date:	25-APR-2012
Filing Party:	
Disposition Amount:	
Docket Text:	<i>none.</i>
3	NOVD - NOTICE OF VOLUNTARY DISMISSAL
Filing Date:	25-APR-2012
Filing Party:	BOWEN, DARELL
Disposition Amount:	
Docket Text:	WITHOUT PREJUDICE