



Palm Beach County Commission on Ethics

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February 3, 2012

Jeffrey M. Garber, Esquire
Casey, Ciklin, Lubitz, Martens & O'Connell
515 North Flagler Drive, 20th Floor
West Palm Beach, FL 33401

RE: RQO 12-004
Voting Conflicts/attorney-client

Dear Mr. Garber,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion and rendered its opinion at a public meeting held on February 2, 2012.

YOU ASKED whether you must abstain and not participate in voting as an advisory board member of the Palm Beach County Fair Housing/Equal Employment Board when a person appearing before your board is represented by the non-profit Legal Aid Society and your fellow law firm partners serve as officials or board members of that non-profit.

IN SUM, as an appointed official you are prohibited from using your official position as an advisory board member to give a special financial benefit, not shared with similarly situated members of the general public, to yourself, your outside business, a customer of client of your outside business or a nonprofit for which you serve as an officer or director. Once presented with such a conflict, you must *publicly disclose the nature of the conflict*, file the required state disclosure form, refrain from voting and not participate in, or influence the advisory board decision-making process. However, you are not prohibited from participating based upon a business associate's status as a non-profit director, unless your outside business or business associate will financially benefit in a manner not shared by similarly situated members of the general public.

THE FACTS as we understand them are as follows:

You are a partner at the law firm of Casey, Ciklin, Lubitz, Martens and O'Connell (the Firm) and serve on the Palm Beach County Fair Housing/Equal Employment Board (the Board). As a BCC appointee to the Board, you are an official as defined under the Code of Ethics. The Board is charged with hearing and adjudicating Fair Housing and Equal Employment Complaints following a determination by the Executive Director of the Office of Equal Opportunity (OEO) that there are reasonable grounds to believe that an unlawful or discriminatory practice has occurred. The Board is also responsible for approving conciliation agreements.

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A partner within your firm serves on the Board of Trustees of the Legal Aid Society of Palm Beach County (Legal Aid) and a second partner serves on its Board of Directors. The Board routinely hears matters in which Legal Aid either prosecutes an employment/housing claim in its own name, or in which it serves as legal counsel for a party who has brought an employment/housing claim.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the Palm Beach County Code of Ethics:

Section 2-443(a) prohibits you from using your official position to give yourself, your outside business, a customer or client of your outside business, or a non-profit you serve as an officer or director a financial benefit, in a manner which you know or should know with the exercise of reasonable care will result in a special financial benefit not shared with similarly situated members of the general public. A customer or client is defined as a person or entity to which your firm has supplied goods or services in excess of \$10,000 over the previous 24 months.¹

Similarly, §2-443(c) prohibits you from voting on an issue or participating in a manner that would result in a special financial benefit attributable to yourself, outside business, client or non-profit entity as previously described. Essentially, the voting conflict section addresses the scenario whereby in voting or participating in the matter you would violate the misuse of office prohibitions of the code. In such a scenario you are required to 1) disclose the nature of your conflict before your board discusses the issue; 2) abstain from any discussion or vote or otherwise participate in the matter; and 3) file a state voting conflict form (8B), submitting a copy to the clerk of your Board and the Palm Beach County COE.

Based upon the specific facts and circumstances you have provided, you may not vote on a matter that would result in a special financial benefit to yourself, members of your law firm, the Firm itself or a customer or client of the Firm.

While your colleagues do serve Legal Aid in an officer/director capacity, you do not. The misuse of office and voting conflicts sections of the code are grounded in the desire to limit potential misuse of a public duty to treat all citizens and entities on an equal footing. Accordingly, the code prohibits only those persons (or their spouse or domestic partner) serving as a non-profit officer/director from participating and voting on issues unique to that non-profit.² As a result you are not required to abstain from voting under these circumstances. Legal Aid representation is pro bono and does not result in a financial benefit for the Firm, however, should an associate of the Firm appear before your advisory board on behalf of a Firm client, you must abstain and not participate in the matter. Should a member of your firm appear before your advisory board on behalf of a Legal Aid client you are not prohibited from hearing and participating in the matter. Not only is there no financial benefit to a law firm or individual lawyer as a result of representation in the context of pro-bono service, but moreover, Rule 4-6.1(b) of the Florida Rules of Professional Conduct suggests that members of the bar should provide at least 20 hours of pro bono legal service to the poor each year. These hours are the *personal* responsibility of each member of the bar and the service hours inure to the individual attorney providing the representation, not to his or her firm.

¹ §2-442. Definitions. *Customer or client*

² Since this section does not apply to a board member who is not a director of a non-profit, we need not address whether or not the representation of a Legal Aid client constitutes a special financial benefit to Legal Aid itself.

IN SUMMARY, based on the facts and circumstances presented, provided that there is no special financial benefit to your law firm, the Code of Ethics does not prohibit you from participating and voting on a matter notwithstanding the fact that your business associates are directors of the Legal Aid Society, a non-profit organization, or represent pro bono clients before your board on behalf of Legal Aid.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but is not applicable to any conflict under state law or rules regulating the Florida Bar. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics. Inquiries regarding Florida Bar Rules Regulating Professional Conduct should be directed to the Florida Bar.

Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/mr/gal