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June 30, 2018

VIA ELECTRONIC MAIL

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George Flint, District Manager
Governmental Management Services -
Central Florida, LLC
135 West Central BLVD, Suite 320
Orlando, Florida 32801

Re: Michael Eckert; Disclosure and Waiver of Conflict
Our File No.: 129740

Dear Mr. Flint:

You have retained me on behalf of Poinciana Community Development District and Poinciana West Community Development District to review the Client Disclosure and Consent forms (“waivers”) tendered to the Boards of PCDD and PWCDD by their lawyer, Michael C. Eckert, and his firm, Hopping Green & Sams. My role is to determine if the waivers satisfy Mr. Eckert’s obligations of full disclosure to his clients and whether the Boards should approve the waivers of conflict. My answer to both questions is in the affirmative.

I have reviewed Mr. Eckert’s waivers, including his first waivers and the more recent ones, and I am of the opinion that they meet not only the letter, but the spirit, of his ethical obligations under the Rules of Professional Conduct (RCP). Those rules are promulgated by the Supreme Court of Florida and set forth the ethical obligations of lawyers practicing in Florida. While the RCP is the starting point when considering any ethical questions, I have also reviewed several Ethics Opinions of the Professional Ethics Committee of The Florida Bar. (I am not citing to any of those Ethics Opinions in this letter because I did not rely on any of them in drafting this opinion letter.)

Rule 4-1.7 of the RPC governs the issue before the Boards at present. It says:

RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS

(a) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer must not represent a client if:

- (1) the representation of 1 client will be directly adverse to another client; or
- (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) **Informed Consent.** Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

(c) **Explanation to Clients.** When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

Rule 4-1.7 is applicable even though, at present, there is no conflict of interest in Mr. Eckert's representing PCDD and PWCDD and his firm's representing TM Florida. There is, however, a potential conflict of interest emanating from TM's announced plan to buy the stock of AV Homes. Upon learning of TM's plans, Mr. Eckert properly disclosed his firm's representation of a subsidiary of TM, i.e., TM Florida and is now seeking a waiver of a potential conflict.

It is my opinion that Mr. Eckert's disclosure of potential conflict meets his requirement to give "full" disclosure and his waivers meet the requirements of Rule 4-1.7 (c). He has given notice of his firm's representation of TM Florida even though TM, not TM Florida, will be the buyer of AV's stock. He has laid out the four areas of potential conflict and discussed them in his waiver. I find the four disclosures (for ease of discussion I will simply refer to the numbers

of the four potential conflicts that Mr. Eckert used) are sufficient to put the Boards of the CDDs on notice of the potential conflicts and the discussions are sufficient to allow a knowing waiver.

Paragraph (a) (1) of Rule 4-1.7 is not the relevant paragraph to be considered because there is no “directly adverse” representation before us. At present, neither CDD is directly adverse to TM Florida.

Rule 4-1.7 (b) (2) is applicable, however, because Mr. Eckert has a potential conflict of interest should the sale of AV’s stock by TM go through. This potential conflict can be waived as set forth by paragraph (b) as to items 1, 2, and 3. I believe Mr. Eckert has properly withdrawn as counsel on item 4. Should TM buy the stock of AV there could be a direct conflict with the firm’s representing both TM Florida and the two CDDs. (I say “could” because, as discussed below, for the purpose of conflict of interest discussions, Florida treats related companies, e.g., subsidiaries, as separate entities.) Even if a direct adversity never arises, the language in the rule relating to limited responsibilities to third parties makes Mr. Eckert’s withdrawal on item 4 advisable.

The Rules of the RPC are “black letter” rules. As such, they must be followed. After each rule the Supreme Court of Florida has added comments which explain the rules and, at times, recommend conduct that, while not required, should be followed. Relevant portions of the comment to Rule 4-1.7 are:

Comment

Loyalty to a client

Loyalty to a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer’s other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Subdivision (a)(2) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer’s independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

Consultation and consent

A client may consent to representation notwithstanding a conflict. However, as indicated in subdivision (a)(1) with respect to representation directly adverse to a client and subdivision (a)(2) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent.

As a "disinterested lawyer" (I did not meet Mr. Eckert until three days ago and I have no past or present ties to his firm) I conclude that Mr. Eckert properly asked the Boards for waivers.

It is my understanding that Mr. Eckert's firm has received waivers from TM and TM Florida.

I mentioned above that Florida, when discussing conflict of interest, allows the adverse representation of related companies. The comment to Rule 4-1.13, captioned Organization as client, has the following comment:

Representing related organizations

Consistent with the principle expressed in subdivision (a) of this rule, a lawyer or law firm who represents or has represented a corporation (or other organization) ordinarily is not presumed to also represent, solely by virtue of representing or having represented the client, an organization (such as a corporate parent or subsidiary) that is affiliated with the client. There are exceptions to this general proposition, such as, for example, when an affiliate actually is the alter ego of the organizational client or when the client has revealed confidential information to an attorney with the reasonable expectation that the information would not be used adversely to the client's affiliate(s). Absent such an exception, an attorney or law firm is not ethically precluded from undertaking representations adverse to affiliates of an existing or former client.

Based on the above comment, a lawyer may have adverse positions against companies that are related. For example, if waivers are obtained, a law firm could represent Ford Motor in suing another company for patent infringement while simultaneously suing Ford Motor Credit Company on behalf of a borrower for improperly repossessing a car. I mention this comment because it allows Mr. Eckert to continue to represent the Boards in various matters while his firm represents TM Florida in unrelated matters.

In reaching my conclusions, I must stress that my opinion is based solely on obligations imposed by the Rules of Professional Conduct. I take no position on any of the legal issues before the boards. My focus is on Mr. Eckert's professional obligations to his clients and whether the Boards should waive the potential conflicts that he has identified.

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In summation, it is my opinion that Mr. Eckert has properly disclosed the potential conflicts that have arisen as a result of TM's announced purchase of AV's stock. It is further my opinion that his asking the Boards of PCDD and PWCDD to waive potential conflicts numbered 1, 2, and 3 in his waivers is proper and that it would be appropriate for the boards to approve the waivers.

It is my understanding that there will be a special joint meeting of the Boards of both PCDD and PWCDD on July 9, 2018 at 2:30 PM EDT. I will be available to appear at that meeting by telephone on that date and at that time. Of course, should the Boards so request, I am available to appear in person.

Thank you very much for the opportunity to be of assistance to you.

Sincerely,

John A. Weiss

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