

TO: ALL COUNTY PERSONNEL

FROM: VERDENIA C. BAKER
COUNTY ADMINISTRATOR

PREPARED BY: COUNTY ATTORNEY'S OFFICE

SUBJECT: OUTSIDE COUNSEL CONFLICTS OF INTEREST

PPM #: CW-O-052

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ISSUE DATE

January 4, 2017

EFFECTIVE DATE

January 4, 2017

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PURPOSE: The purpose of this memorandum is to establish the Board of County Commissioners' policy regarding actual and potential conflicts of interest of outside counsel representing Palm Beach County.

UPDATES:

Future updates of this PPM are the responsibility of the County Attorney.

AUTHORITY:

Rule 4-1.7, Rules Regulating the Florida Bar.

POLICY: The policy of Palm Beach County is to eliminate and limit conflicts of interest by outside counsel in order to prevent the occurrence of all adverse conflicts, resolve any conflicts that may otherwise arise during representation, and to provide a procedure to waive and consent to apparent conflicts of interest which would not adversely affect the interests of Palm Beach County.

Rule 4-1.7 (a) and (b) of the Rules Regulating the Florida Bar provides:

- “(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.”

Under Rule 4-1.7 it is the responsibility of the lawyer to determine if undertaking the representation of a client constitutes a conflict of interest. If a lawyer representing Palm Beach County becomes aware of a conflict or potential conflict, such lawyer shall immediately notify the County Attorney in writing of the circumstances of such conflict of interest and the action which the lawyer is taking to resolve such conflict. It is the individual lawyer’s responsibility to comply with the Standards of Conduct established by the Florida Supreme Court (Rule 3-4).

Any lawyer¹ undertaking representation of Palm Beach County shall not represent any other client with regard to any litigation or other adversary proceeding in which Palm Beach County, a County Commissioner or a county employee (acting in their capacity as a county employee) is named as an adverse party.

All law firms serving as bond counsel or disclosure counsel as selected by the Board of County Commissioners are precluded from serving as underwriter’s counsel on any Palm Beach County bond issue. This prohibition includes all law firms serving as bond counsel or disclosure counsel for issues in which Palm Beach County is a conduit issuer.

A lawyer representing Palm Beach County who has undertaken, or wishes to undertake, representation of a client who has matters or transactions with Palm Beach County which the lawyer believes will not adversely affect his representation of the County shall apply to the County for a waiver under Rule 4-1.7. Examples of waivable conflicts would include representing clients: who have applications planned or pending for development orders or approvals or other land use review of a quasi-legislative nature; who have routine administrative matters; who are seeking permits from Palm Beach County; who have commenced real property foreclosure actions in which Palm Beach County has been named as a defendant having an obviously subordinate interest in the property; who have applications before the Palm Beach County Value Adjustment Board; and in similar non-adverse matters. To undertake or continue all such undertakings to represent such clients, the lawyer shall obtain a waiver as provided herein.

Any lawyer requesting a waiver under Rule 4-1.7 shall identify the prospective client, business association, interest or circumstance, the nature of the work that the attorney may undertake, explain

in writing why he believes the concurrent representation will not violate Rule 4-1.7, and furnish a copy of the written consent of such client. If the County Attorney and County Administrator agree that a waiver as to a particular conflict of interest is in the best interest of Palm Beach County, the County Attorney may consent to such waiver on behalf of the Board of County Commissioners; otherwise, the County Attorney may present such request to the Board of County Commissioners for its consideration.

Palm Beach County retains absolute discretion to object to any concurrent representation which results or has the potential to result in a conflict of interest.

The provisions of this PPM are to be read in conformity with Rule 4-1.7, Rules Regulating the Florida Bar, and the comments thereto.

¹"Lawyer" as used herein includes the lawyer's law firm, partners and associates.


VERDENIA C. BAKER
COUNTY ADMINISTRATOR

Supersession History:

1. PPM #CW-O-052, issued October 5, 1993
2. PPM #CW-O-052, reviewed and current July 12, 2011