

Andrew J. Meyers
County Attorney



OFFICE OF THE COUNTY ATTORNEY
115 S. Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301

954-357-7600 · FAX 954-357-7641

December 13, 2018

Via Electronic Mail

Mr. Peter Antonacci
Supervisor of Elections
115 South Andrews Avenue, Room 102
Fort Lauderdale, Florida 33301

Re: Provision of Legal Services by the County Attorney's Office; Conflict Waiver

Dear Mr. Antonacci:

As we have previously discussed, the Broward County Charter permits the Broward County Attorney's Office ("CAO") to represent Constitutional Officers such as the Supervisor of Elections upon their request. You have requested that the CAO provide legal services to the Office of the Broward County Supervisor of Elections ("SOE").

Scope of Engagement. Subject to the terms of this letter agreement and ratification by the Board of County Commissioners, the CAO agrees to serve as primary legal counsel to the SOE. If we are unable to accept any matter due to time constraints or other limitations, we agree to advise you as soon as possible. The following matters are expressly excluded from the scope of our representation: (i) any disputes between Broward County and the SOE including, without limitation, relating to budget requests, approval of budgets, or any part of the annual or supplemental budget process; (ii) any matter that may be commenced by or on behalf of Broward County against the SOE including, without limitation, any challenge to the appointment of the SOE; and (iii) any matter as to which the interests of the SOE may be adverse to the interests of Broward County or the Broward County Canvassing Board.

Conflicts; Waiver of Conflicts. The SOE acknowledges that the CAO currently represents Broward County and the Broward County Canvassing Board. General representation of Broward County is the CAO's primary and most compelling function. In our opinion, no actual conflict exists at this time that would prevent the CAO from also providing legal services to the SOE, including because there is no ongoing litigation between Broward County and the SOE. Moreover, the interests of the SOE and Broward County or the Canvassing Board are generally aligned, including with regard to ongoing litigation in which both the Canvassing Board and SOE are parties. In any such aligned matters, the SOE acknowledges that the representation of the

Broward County Board of County Commissioners

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Mr. Peter Antonacci, Supervisor of Elections
December 13, 2018
Page 2

SOE by the CAO will be in addition to, and therefore joint representation along with, representation of Broward County or the Canvassing Board.

In the event we determine a conflict exists or is likely to develop between the SOE and Broward County or the Canvassing Board, we cannot and will not advise, represent, or provide legal services to the SOE as to the matter or matters in which a conflict exists or is likely to develop (or as to any other matters as to which applicable law or Bar rules would prohibit us from providing or continuing such representation). To the full extent permitted under applicable law and the Bar rules in that matter or those matters, we will continue to represent Broward County or the Canvassing Board, as applicable.

There are various ways in which a future conflict of interest could arise. The SOE acknowledges that the Board of County Commissioners has considered whether to bring a legal action in connection with or related to the gubernatorial appointment of an SOE. Additionally, the County funds the Office of the SOE and, if the SOE and the County cannot reach agreement on the recommended and approved budget or any related financial matters, budgetary disputes may arise. The SOE is also required to follow certain laws, rules, and regulations regarding elections; it is theoretically possible that challenges to the propriety of the conduct of elections could arise in which the CAO would be required to represent Broward County, the Canvassing Board, or to otherwise take a position adverse to that of the SOE.

In the event any of the above-referenced or any other conflict arises or appears to the CAO likely to develop, including if the CAO receives conflicting instructions from two or more represented parties, the CAO will follow the instructions of Broward County or the Canvassing Board, as applicable, and will discontinue representation of the SOE. The CAO's obligations to Broward County and the Canvassing Board will take precedence over our duty to the SOE in the event of a conflict. Please be alert to this priority of interest, including in connection with the disclosure of any confidential information to the CAO that may be relevant (and therefore used by Broward County or Canvassing Board to the full extent permitted by law and under the applicable Bar rules) in the event of a dispute between the SOE and Broward County or the Canvassing Board. By signing below, the SOE waives any rights, defenses, and conflicts that may otherwise exist to the ongoing, joint, and concurrent representation as referenced herein, and waives any rights, defenses, and conflicts, to the full extent permissible under applicable law and Bar rules, that would otherwise prevent or inhibit the CAO from representing or continuing to represent Broward County or the Canvassing Board in any such matter(s).

In the event a conflict arises that would require us to withdraw as counsel for the SOE, we will make reasonable efforts to facilitate an orderly transition to new SOE counsel. In addition, during any representation of more than one party in a single matter, the CAO will make reasonable efforts to confirm the continued commonality of interest or, at least, that there are not inconsistent interests as to any positions, statements, or actions we assert on behalf of the parties in interest. In the event an actual conflict occurs or appears imminent, we will: provide

Mr. Peter Antonacci, Supervisor of Elections
December 13, 2018
Page 3

the SOE prompt notice as to the nature of the conflict and the action the CAO will take; use good faith efforts to cooperate to allow the SOE to retain other counsel; and cease any and all representation of the SOE in all matters affected by such conflict or adverse interests.

Billing. The CAO will provide services on a due-course basis, and any increased costs to the CAO as a result of the legal services rendered to the SOE will be addressed through the budget process, including any requested budget amendment. We may, but are not required to, maintain regular timesheets and records of time incurred in the representation of the SOE. Any out-of-pocket expenses, including any court or litigation costs, will be paid by or otherwise charged directly to the SOE's Office for prompt payment or reimbursement, unless otherwise approved in writing by the CAO. Any recovery of attorneys' fees in any litigation or settlement in connection with which representation had been provided by the CAO shall be paid to Broward County; any recovery of expenses shall be paid to the party that paid the expense. These billing practices may be adjusted at any time upon mutual agreement.

Termination of Representation. The CAO may terminate its representation of the SOE at any time provided such termination complies with applicable law and Bar rules. If we decide to terminate such representation, we will, absent a conflict, continue to provide the representation for a period of time reasonably calculated to permit the SOE to retain new counsel. THE SOE may also terminate the CAO's representation at any time.

After consulting with any legal counsel you deem appropriate, please sign below to indicate your approval of the terms and conditions of this engagement for legal services, and email a signed copy back to me. We will ask the Board of County Commissioners at its January 8, 2019, meeting to ratify this engagement. If the Board declines to approve or ratify this engagement, this engagement will be deemed null and void, provided however that the foregoing waivers will survive and remain in full force and effect.

We look forward to serving as counsel to your Office.

Sincerely,



Andrew J. Meyers

By: _____
Peter Antonacci, Supervisor of Elections (Date)

c: Board of County Commissioners
Bertha Henry, County Administrator
Bob Melton, County Auditor