

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, April 20, 2017 9:23 AM
To: Sanchez, Rodzandra (COE)
Subject: Linda Christian, Paralegal, Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. (Lobbyist Registration) INQ 17-118

INQ 17-118 Christian

From: Linda Christian [mailto:lchristian@stearnsweaver.com]
Sent: Wednesday, April 19, 2017 5:31 PM
To: Ethics (COE) <ethics@miamidade.gov>
Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; 'Robert Meyers' <RMeyers@wsh-law.com>; 'slt@wsh-law.com' <slt@wsh-law.com>; 'clerk@balharbourfl.gov' <clerk@balharbourfl.gov>; Sanchez, Gerald (CAO) <Gerald.Sanchez@miamidade.gov>; Kirtley, Eddie (CAO) <Eddie.Kirtley@miamidade.gov>
Subject: RE: 17-118 Linda Christian, Paralegal, Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. (Lobbyist Registration)

Thank you!

Linda Christian
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From: Ethics (COE) [<mailto:ethics@miamidade.gov>]
Sent: Wednesday, April 19, 2017 5:28 PM
To: Linda Christian
Cc: Turay, Radia (COE); Perez, Martha D. (COE); Diaz-Greco, Gilma M. (COE); 'Robert Meyers'; 'slt@wsh-law.com'; 'clerk@balharbourfl.gov'; Sanchez, Gerald (CAO); Kirtley, Eddie (CAO)
Subject: 17-118 Linda Christian, Paralegal, Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. (Lobbyist Registration)

Ms. Christian:

You have inquired concerning whether an attorney appearing before the Village Council of the Village of Bal Harbour in a quasi-judicial proceeding must register as a lobbyist pursuant to Section 2-11.1(s) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance.

Requirements for lobbyists, including lobbyist registration, are contained generally in Section 2-11.1(s) of the County Ethics Code, which is generally applicable to municipalities within Miami-Dade County. The Village of Bal Harbour has acknowledged that it abides by the provisions of Section 2-11.1(s) by virtue of its own lobbyist ordinance, Section 2-301 of the Village of Bal Harbour Code of Ordinances.

Subsection 2-11.1(s)(1)(b) of the County Ethics Code contains an explicit exclusion concerning appearances at quasi-judicial proceedings. It applies to “attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communications...”

The prohibition on *ex parte* communications in quasi-judicial proceedings stems from the case of *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3rd DCA 1991), wherein the Florida Supreme Court imposed a strict rule against *ex parte* communications by parties or others communicating privately with members of a quasi-judicial board. The court indicated that such contacts would give rise to a presumption of prejudice that would be required to be rebutted by the local government.

Following the *Jennings* decision, the Florida Legislature adopted a statute, Section 286.0115, Florida Statutes, which permits a county or municipality to adopt a procedure removing the presumption of prejudice from *ex parte* communications. Such a procedure must require disclosure of the communication and the identity of the individual involved in the communication on the record during the publicly noticed quasi-judicial proceeding. It is my understanding that the Village of Bal Harbour has adopted such a procedure, which, in effect, removes the prohibition against *ex parte* communications in quasi-judicial proceedings, provided that the designated procedure is followed. By contrast, Miami-Dade County government has not adopted such a procedure and abides by the original *Jennings* decision prohibiting such communications and imposing the presumption of prejudice where such communications occur.

The explicit provision in the County Ethics ordinance makes no reference to the *Jennings* decision or to any exemption from the lobbyist registration requirement for those municipalities which have adopted the procedure permitting such communications subject to the requirements of F.S. 286.0115. While the Ethics Commission has never issued a formal opinion (RQO) regarding this precise issue, there is an informal opinion, INQ 07-70, which does cite to the *Jennings* rule as the basis for the lobbyist registration exemption in Subsection 2-11.1(s)(1)(b), and which appears to limit the application of the exemption to a publicly noticed quasi-judicial proceeding “that is subject to the *Jennings* rule.” This precedent, albeit a limited one, as well as the explicit language in Subsection 2-11.1(s)(1)(b), has led me to conclude that the exemption applies only to those public boards operating under the original *Jennings* rule, such as those within Miami-Dade County government. The exemption does not apply to boards in municipalities such as the Village of Bal Harbour, where the prohibition against *ex parte* communications in quasi-judicial hearings no longer exists due to their adoption of the procedure outlined in F.S. 286.0115.

Therefore, an attorney (or other representative) appearing before the Village Council of the Village of Bal Harbour in a quasi-judicial proceeding must register as a lobbyist pursuant to Section 2-11.1(s) of the Miami-Dade County Code.

Sincerely,

Joe Centorino

Joseph M. Centorino

Executive Director and General Counsel
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From: Linda Christian [<mailto:lchristian@stearnsweaver.com>]
Sent: Tuesday, April 18, 2017 4:45 PM
To: Ethics (COE) <ethics@miamidade.gov>
Subject: RE: Lobbyist Registration

Village of Bal Harbour

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From: Ethics (COE) [<mailto:ethics@miamidade.gov>]
Sent: Tuesday, April 18, 2017 4:43 PM
To: Linda Christian
Subject: RE: Lobbyist Registration

Is this in Miami-Dade County government or the City of Miami or another municipality?

From: Linda Christian [<mailto:lchristian@stearnsweaver.com>]
Sent: Tuesday, April 18, 2017 4:37 PM
To: Ethics (COE) <ethics@miamidade.gov>
Subject: Lobbyist Registration

Question: Does an attorney appearing before a Council in a quasi-judicial proceeding need to register as a lobbyist? I would appreciate receiving your thoughts.

Thank you,

Linda Christian
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