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October 24, 2002

J. Porter McClure
CEO
Nutshell Productions, Inc.
P.O. Box 5630005
Miami, FL 33256

RE: REQUEST FOR ADVISORY OPINION 02-108

Dear Mr. McClure:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on October 23, 2002 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding your company's ability to sell a mediation program to the Administrative Office of the Courts.

In your letter, you advised the Commission that Nutshell Office Productions produces case management software for mediators. One of the principals of the firm, David Wolfson, is an in-house mediator for the Administrative Office of the Courts. Nutshell would like to sell the software program to the Office of the Courts for the use of court mediators.

The Commission found the Conflict of Interest and Code of Ethics ordinance prohibits Nutshell from selling its software package to the Administrative Office of the Courts. Section 2-11.1 (c) prohibits employees from

contracting to provide products or services to the employee's department. Section 2-11.1 (d) states that "no person ... shall enter into any contract or transact any business through a firm, corporation or partnership or business entity in which he or any member of his family has a business interest, direct or indirect with Miami-Dade County or any person or agency acting for Miami-Dade County , and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. Section 2-11.1 (d) provides that "Notwithstanding any provision to the contrary herein, subsection (c) and (d) shall not be construed to prevent any employee as defined in subsection (b)(6) from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County as long as 1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, 2) the employee has not participated in determining the subject contract requirements or awarding the contract, and 3) the employee's job responsibilities and job description will not require him or her to be involved in the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination or forbearance. However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

Since Wolfson works the department that will administer the subject contract, Nutshell is

prohibited by Section 2-11.1(c) from contracting with the court system to provide the mediation software.

However, you may seek a waiver of the conflict of interest from the Board of County Commissioners. Section 2-11.1 (c) permits a waiver on the grounds that the property or services to be involved in the proposed transaction are unique and the County cannot avail itself of such property or services without entering into such transaction which would violate this subsection but for waiver of the requirements and that the proposed transaction will be in the best interest of the county.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director