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March 12, 2008

Andres R. Villarreal
7340 SW 131 St.
Miami, FL 33156

Via First Class Mail and email at ARVManagement@bellsouth.net

Re: INQ 08-31
The two-year rule (q) as it applies to building plan expeditors

Dear Mr. Villarreal:

In a letter to our office dated March 9, 2008, you inquired about the two-year prohibition on lobbying the City of Miami Beach based on your recent retirement as an employee with the City of Miami Beach.

You are currently employed by a local private developer as a consultant-expediter. In this capacity, you typically drop off building plans and permit applications and make inquiries regarding these plans and applications at the City Building Department and Fire Department.

As we discussed, at least two opinions from the Ethics Commission written in 2004 define the activities you may engage in until you pass the two-year anniversary of your retirement from the City. *See* RQO 04-33 and RQO 04-48, attached.

To clarify in general, "lobbying" is broadly interpreted as it relates to the two-year rule.¹ Activities that are ministerial or routine in nature are generally not considered lobbying. Notice, however, that certain activities performed with great regularity are not "routine" in this sense if staff must use discretion or authority to make official decisions. *See* RQO 04-48. Trying to persuade staff to take any action, decision, recommendation, or determination is considered lobbying and is not allowed.

¹ "For purposes of this subsection, lobbying by former employees contemplates a broad interpretation and common understanding of the word 'lobbying' by capturing activities and subject matters which may not be precisely outlined by subsection (s) in its definition of 'lobbyist.'" RQO 04-33.

PLEASE BE ADVISED THAT WHAT MAY APPEAR TO BE MINISTERIAL ACTIONS INITIALLY MAY CHANGE INTO PROHIBITED LOBBYING ACTIVITIES, DEPENDING ON THE CIRCUMSTANCES.

Regarding the scenarios you presented, the following is a likely interpretation of your activities, based on our limited knowledge of the facts:

1. **May I visit the Building Department to drop off plans and permit applications or obtain information?**

You may drop off plans and applications and obtain information about processes and procedures. You may *not attempt to influence* a decision in your efforts to *obtain information*.

2. **May I consult by phone, email, or in person with city employees about the status of plans or permits in process with the Building Department and/or Fire Department?**

You may *inquire* about the status of plans via phone, email, or in person, but you may *not consult or discuss* the status of the plans *in an attempt to influence a decision*.

3. **May I ask for the Florida Building Code/Fire Code interpretation(s) from the Building Department and Fire Department officials and/or staff members?**

You may *inquire* about the way the Building and Fire Codes are being interpreted by staff, but you may *not attempt to influence* staff to obtain a particular interpretation.

4. **May I call the Building Department or Fire Department for inspection requests and consult with the inspector in his/her office or on the job site(s) as in reference to the Florida Building Code/Fire Code interpretations or concerns?**

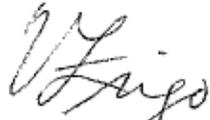
You may *call to request inspections*, a ministerial task, but you may *not engage* in conversations, regardless of the location, in an *attempt to influence an interpretation or press your case about a concern*.

Lastly, please be advised that government staff has an inherent duty to prevent former government employees from lobbying them for two years following government employment. In RQO 04-33, the Ethics Commission recommended that government staff, at minimum, ask former employees about the date they left government service. If the former employees are still within the two-year period, staff may inquire as to

whether the former employees have requested an opinion from the Ethics Commission regarding post-employment activities. Finally, as per RQO 04-33, department staffs always have the prerogative to refuse to meet with former employees if they believe that they have been lobbied or will be lobbied by former employees.

Please feel free to contact me at 305.350.0601 if I can be of further assistance in this matter.

Sincerely,



VICTORIA FRIGO
Staff Attorney

Attachments: RQO 04-33 and RQO 04-48

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