

To: Dan McCrea

Subject: RE: Two Year Rule - Request for Clarification

INQ 04-45

Dan,

With respect to work that is undertaken on behalf of your client, I agree with statements 1-5 in your second paragraph. Regarding you statements about unrestricted City contact, I offer the following: You may appear on any interest of concern, zoning or otherwise, as a private citizen so long as you indicate you are not representing a third party. If there is some incidental benefit to your client as a result of your appearance, the Two Year Rule would not apply. You may "lobby" nongovernmental entities and other government entities (just not South Miami) while the Two Year Rule is in effect. If you become employed by another governmental entity, a 501(c)(s) non-profit organization or educational institution, you would be permitted to lobby the City of South Miami. Disclosure, whether it be in a private meeting or public setting, is absolutely essential. You must indicate that you are speaking for yourself in order not to be in violation of the Two Year Rule. I see no reason why you would have to disclose your client's interest because, in effect, the client's interests are presumably irrelevant for purposes of your appearance due to the fact you are presenting your views, not those of a client.

Please contact me if you have any additional questions.

Thanks,

Robert

-----Original Message-----

From: Dan McCrea [mailto:dan@mccrea.us]

Sent: Monday, May 10, 2004 4:09 PM

To: Robert Meyers

Subject: RE: Two Year Rule - Request for Clarification

Robert,

Would you please confirm receipt of this so I know it's working, and give me an idea when I can expect a reply. Of course, please don't hesitate if there are any questions or I have missed something in form.

Thanks,

-Dan

-----Original Message-----

From: Dan McCrea [mailto:dan@mccrea.us]

Sent: Monday, April 26, 2004 12:11 PM

To: Robert Meyers

Cc: Earl Gallop

Subject: Two Year Rule - Request for Clarification

Robert,

I have a client developing property in South Miami. I'd like to clarify restrictions on my participation further to the Two Year Rule (8A-1(p) of the Code of Ordinances of the City of South Miami). Of particular concern is to differentiate prohibited lobbyist activity from unrestricted citizen activity I may have on similar issues. As a resident of South Miami, a general contractor by profession, a former City Commissioner, and a long-time advocate for sound, progressive town planning, I remain free to exercise my rights to have contact with the city, so long as that contact does not fall within the prohibited contact further to the Two Year Rule. This request is to assist in clarifying the difference.

The client owns three adjacent properties for which they want to secure zoning changes, comprehensive plan changes, and all permissions and permits to develop the property. I understand my work for the client has the following characteristics, according to the the Two Year Rule:

1. I am subject to the Two Year Rule
2. My role when acting for this client meets the definition of lobbyist
3. The City actions sought by the client for this development meet the definition of actions for which lobbying by me is prohibited.
4. The term of the Two Year Rule is through 11 February 2006. (South Miami's election was 10 February 2004 with the new commission sworn in the next night, 11 February)
5. Therefore, I am prohibited from lobbying the City on the client's behalf for this project as defined in the Two Year Rule, through 11 February 2006.

In order to clarify the difference between prohibited City contact and unrestricted City contact, I understand the following to be true:

1. I may not lobby anyone in the city specifically on this client's behalf, as defined in the rule.
2. I may interact with anyone in the city, as a citizen of the city, not specific to this client's interests. (Key differences between 1. and 2. being specific vs general inquiry, and acting on my client's behalf vs. for myself. For instance, Speaking for myself, I can support, generally, the City's careful attention to providing for a rational pattern of transitional zoning from commercial to residential, throughout the city, which happens to include property owned by my client - a position I've long advocated publicly. This has particular significance related to the City's process for scheduled review of its Comprehensive Plan - a process already begun and going on for the next two years, including public workshops, hearings, etc. I may not lobby anyone in the City about changing the zoning for this specific property.)
3. I may advocate for my client's interests in or out of the City's municipal boundaries so long as it is not to The City of South Miami government entity, as defined in the rule. (I may, for instance, speak to other governments, homeowners, Homeowners Associations, their representatives, businesses, neighbors, the press, etc. on my client's behalf.)
4. I may speak as a citizen for myself at anytime, at any venue, notwithstanding the Two Year Rule.
5. Lobbyist Registration: I am not required to register as a lobbyist with the City in this case because I am prohibited from so acting. I would only be registering to act unlawfully, which I have no intention of doing.
6. Disclosure: When making contact with the City, as defined in the Two Year Rule, it would be prudent, wherever confusion might reasonably arise, to disclose my interest in my client's specific interests and/or clarify that I am speaking only for myself.

I would appreciate your affirmations, corrections, and comments on my understanding of how I properly comply with the Two Year Rule in this case. This is copied to City Attorney, Earl Gallop, and I request you confer as necessary and he also comment as he sees fit. Please don't hesitate to contact me if I can answer any questions or provide you with further information.

Very truly yours,

-Dan McCrea