

Frigo, Victoria (COE)

From: Frigo, Victoria (COE)
Sent: Monday, May 12, 2008 2:56 PM
To: 'Louis J. Terminello'
Subject: INQ 08-81 North Bay Village Two Year Rule

Dear Mr. Terminello,

I am writing in response to your question about your associate, James E. Rauh, and any ethics conflicts that may have been created as a result of Mr. Rauh's former employment with the law firm of Rosen & Switkes, which serves as the City Attorney for the City of North Bay Village.

Briefly, the City Code of North Bay Village prevents Mr. Rauh from lobbying or appearing before the City on behalf of third parties for two years following his departure from Rosen & Switkes, but Mr. Rauh may file routine administrative requests or applications. Others in your law firm have no conflict in representing clients before the City of North Bay Village.

The facts as I understand them are as follows:

1. James E. Rauh became an associate in your law firm, Terminello & Terminello, P.A., in September 2007.
2. Prior to his employment with your law firm, Mr. Raul worked for the firm of Rosen & Switkes, a firm that serves as the City Attorney for the City of North Bay Village.
3. Mr. Rauh's responsibilities at Rosen & Switkes included representing the City of North Bay Village in building and code violation matters, assisting on litigation, advising the City's planning board, advising appointed committees of the City, and occasionally advising the City Commission.
4. At your firm, Mr. Rauh has no involvement in any matters whatsoever dealing with the City of North Bay Village. You stated that standard and routine applications for licensure at the City of North Bay Village are filed by your firm's paralegals; if these matters were to become adversarial, Mr. Rauh would not handle them.

The City of North Bay Village has promulgated its own ethics rules in Chapter 38 of the City Code. The County Ethics Commission has jurisdiction to interpret municipal ethics ordinances under the County Code at Sec. 2-1068.

At Sec. 38.02 (E) of the City Code, the City Attorney and "all assistants to the ... City Attorney, however titled," are subject to the Sec. 38.16 (A), which states the following:

§ 38.16 Continuing application after city service. (A)

No person included in the terms defined in section 38.02(A), (E) and (F) shall, for a period of two years after his or her city service or employment has ceased, lobby any city official [as defined in section 38.02(A) through (F)] in connection with any judicial, quasi-judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which the City of North Bay Village or one of its agencies is a party or has any interest whatever, whether direct or indirect. ... Nothing contained in this section shall prohibit any individual from submitting a routine administrative request or application to a city department or agency during the two-year period after his or her service has ceased.

Consequently, Mr. Rauh is prohibited from lobbying or representing your client's interests before the City of North Bay Village for two years following his departure from Rosen & Switkes. Your decision to ban any involvement at all by Mr. Raul dealing with the City of North Bay Village is not strictly required (only lobbying and appearances are banned), but your action is prudent and will avoid even the appearance of

impropriety.

I have consulted with our Executive Director, Robert Meyers, on this matter, and he concurs with this informal opinion. If you have any further questions, please do not hesitate to contact me.

Sincerely,

Victoria Frigo, Staff Attorney
Miami-Dade Co. Commission on Ethics
Direct Phone: 305.350.0601
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-----Original Message-----

From: Louis J. Terminello [mailto:ljt@terminello.com]
Sent: Thursday, May 08, 2008 8:58 AM
To: Frigo, Victoria (COE)
Cc: Jim
Subject: informal inquiry

Dear Ms. Frigo,

In a follow up to our recent telephone conversation and my request for your informal review, I have attached the subject letter from the Commission on Ethics regarding Jeff Donner. I use Mr. Donner’s letter only because some of the factual scenarios are similar. However, the facts also differ in a number of material ways. The attorney who is the subject of this inquiry is James E. Rauh, an associate in my office.

- 1. Mr. Donner was a full time appointed assistant city attorney for the City of Miami Beach; Mr. Rauh worked for the law firm which was the appointed City Attorney for the City of North Bay Village as an associate, but Mr. Rauh was never appointed assistant city attorney. He was more akin to an assistant to the City Attorney.**
- 2. Mr. Donner did in fact represent the City of Miami Beach before the special master for code violations and similar items; Mr. Rauh also represented the City of North Bay Village in building and code violation matters, in his position as an assistant or associate to the city attorney. In addition, Mr. Rauh, in his position as an assistant or associate, assisted as an attorney for the City of North Bay Village on a number of other matters, including litigation, advising the City’s planning board, advising appointed committees of the City, and on very few occasions when the City Attorney was not present or unavailable, advising the City Commission.**
- 3. Mr. Donner was governed not only by the county ethic rules, but with the specific ethics rules of the City of Miami Beach, which are quite strict; it is my understanding that the City of North Bay Village has not promulgated its own ethics rules.**
- 4. Mr. Donner sought to represent clients, as a private attorney, within the two year period of his separation from the City of Miami Beach as an Assistant City**

Attorney; Mr. Rauh took a position with my law firm in September 2007, also within 2 years of his separation as an associate with the firm representing North Bay Village, but will have no involvement, in any matter whatsoever, involving the City of North Bay Village. My licensing paralegal staff will be asked to file standard and routine applications for licensure which may or may not become adversarial, and if so, will involve other attorneys in the firm.

As I explained in our conversation the other day, although some similarities exist, the facts and circumstances surrounding Mr. Rauh and his prior contact with the City of North Bay Village, and my firm's potential involvement on behalf of a client, in which only a small percentage of the legal work has to do with the City of North Bay Village, are materially different. I would hope that the Commission's executive director does not require this matter to be more formalized and go before the Ethics Commission, because time is of the essence. It would seem odd that Mr. Rauh could not work for a law firm that files standard routine applications for municipal permitting, merely because he acted as an associate of the firm acting in the capacity of the city attorney on a part time basis. Of course, not only will Mr. Rauh have no involvement in our client's matters with the City of North Bay Village, he certainly would not be involved on behalf of any persons with whom he had contact with while acting in his capacity as an assistant or associate to the North Bay Village city attorney.

Your attention to this matter is truly appreciated.

Louis J. Terminello, Esq.
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***When I sell liquor, it's called bootlegging:
when my patrons serve it on silver trays
. . . it's called hospitality.***

- Al Capone

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From: Frigo, Victoria (COE) [mailto:FRIGOV@miamidade.gov]
Sent: Monday, May 05, 2008 4:33 PM
To: Louis J. Terminello
Subject: RE: contact info

Victoria Frigo, Staff Attorney
Miami-Dade Co. Commission on Ethics
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-----Original Message-----

From: Louis J. Terminello [mailto:ljt@terminello.com]
Sent: Monday, May 05, 2008 4:31 PM
To: Frigo, Victoria (COE)
Subject: contact info

Hi

Louis J. Terminello, Esq.
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