

REQUEST FOR OPINION CHECKLIST

Request for Opinion

Dated: 7/6/2005

Investigative File

Draft Opinion

Notification to requestor of hearing before commission:

Scheduled for _____ at _____ .m; or No _____

Commission Action: _____

Final Disposition: _____

MIAMI-DADE COUNTY COMMISSION ON ETHICS AND
PUBLIC TRUST

FACSIMILE TRANSMITTAL SHEET

TO: Alex Vilarello	FROM: Ardyth Walker
COMPANY:	DATE: 7/21/2005
FAX NUMBER: (305) 374-5095	TOTAL NO. OF PAGES INCLUDING COVER: 1 5
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: RQO 05-77	YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

THE ETHICS COMMISSION WILL CONSIDER YOUR REQUEST FOR OPINION AT ITS MEETING ON WEDNESDAY, JULY 27TH AT 10:00 A.M. PLEASE FIND ATTACHED A COPY OF THE DRAFT OPINION. PLEASE CALL ME AT 350-0616 OR EMAIL ME AT AWALKER@MIAMIDADE.GOV IF YOU HAVE ANY QUESTIONS. THANKS.

M E M O R A N D U M

TO: COMMISSION ON ETHICS AND PUBLIC TRUST
FROM: ARDYTH WALKER, STAFF GENERAL COUNSEL
RE: RQO 05-77
DATE: JULY 20, 2005

.....

BACKGROUND

Alexander Villarello, an attorney for a municipal mayoral candidate, is seeking an advisory opinion regarding the use of qualified blind trusts for elected officials.

FACTS

Villarello represents a client who is considering a run for mayor in a municipality. The mayor is the political leader and top administrative official in the municipality. The candidate is seeking to place his assets in a qualified blind trust. A form of the trust agreement is attached to the request for opinion.

The trust agreement essentially contains the following elements:

1. The trustee of the trust and any other entity designated in the trust instrument to perform fiduciary duties is a financial institution, an attorney, a certified public accountant, a broker or an investment advisor who:
 - a) is independent of and not associated with the elected official so that the trustee cannot be controlled or influenced by the official; and
 - b) is not and has not been an employee of or affiliated with the official and is not a partner of or involved in, any joint venture or other investment with the official; and
 - c) is not a relative of the official.
2. Any asset transferred to the trust by the official is free of any restriction with respect to its transfer or sale.
3. The trust instrument which establishes the trust expressly provides that:

- a) the trustee in the exercise of his authority and discretion to manage and control the assets or the trust shall not consult or notify the official; and
- b) The trust tax return shall be prepared by the trustee or his or her designee and such return and any other information relating thereto (other than the trust income summarized in appropriate categories necessary to complete the official's tax return shall not be disclosed to the official; and
- c) The official shall not receive any report on the holdings and sources of income of the trust, except that a report at the end of each calendar quarter with respect to the total cost value of the interest of the official in the trust or the net income or loss of the trust or any reports necessary to enable the official to complete an individual tax return required by law or financial disclosure required by law, but such report shall not identify any asset or holding; and
- d) Except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and the official with respect to the trust unless such communication is in writing and unless it relates only to the general financial interest and needs of the official (including but not limited to an interest in maximizing income or long-term capital gain); and
- e) The official shall make no effort to obtain information with respect to holdings of the trust, including obtaining any trust tax return filed or any information related thereto except as provided herein.

The candidate would like to use the trust to avoid any conflicts related to official action that may affect holdings contained in the trust.

ARGUMENT

The Conflict of Interest and Code of Ethics ordinance does not permit an elected official to avoid potential conflicts of interest by placing assets in a qualified blind trust. Therefore, the candidate would still have conflicts under Section 2-11.1(d) (Commissioners-Voting Conflicts) and Section 2-11.1(n) (actions prohibited when financial interests involved) and Section 2-11.1(o) (Acquiring financial interest) if he or she were to take official action regarding assets owned by the elected official.

Section 2-11.1(d) prohibits elected officials from "voting or participating in any way in any matter presented to the Commission if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee fiduciary or beneficiary or (ii) stockholder, bondholder, debtor or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b) (1) in a manner distinct from the manner in which it would affect the public generally."

Section 2-11.1(n) provides that no elected official "shall participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest."

Section 2-11.1(o) provides that no elected official "shall acquire a financial interest in a project, business entity or property at a time when the he or believes or has reason to believe that said financial interest will be directly affected by his official actions or by official actions by the County or County agency of which he is an official, officer or employee."

The Conflict of Interest ordinance contains a statutory scheme for the waiver of conflicts under certain circumstances. However, the ordinance does not contain any provision which authorizes the use of a qualified blind trust as a mechanism to avoid the conduct prohibited in Sections 2-11.1(d), (n) and (o). Since the ordinance does not contain any such waiver provision and the elected official would still reap the financial benefit of any

decision made that affected the holdings in the trust, a qualified blind trust may not be used as a mechanism to avoid conflicts of interest under the Miami-Dade County Conflict of Interest ordinance.

CONCLUSION

The Conflict of Interest and Code of Ethics does not permit an elected official to avoid potential conflicts of interest by placing holdings in a qualified blind trust. Unlike federal law, the statutory scheme created in the Conflict of Interest ordinance for waiver of conflicts does not include a qualified blind trust as one of the mechanisms for resolving conflicts. Therefore, an elected official may not use a qualified blind trust to avoid conflicts under the ordinance.

TRANSMISSION VERIFICATION REPORT

TIME : 07/20/2005 20:22
NAME : COMMISSION ON ETHIC
FAX : 3055750273
TEL : 3055752594
SER. # : BR0C2J157947

DATE, TIME 07/20 20:21
FAX NO./NAME 3053745095
DURATION 00:01:26
PAGE(S) 05
RESULT OK
MODE STANDARD
ECM

19 West Flagler, Suite 207, Miami, FL 33130 (305) 350-0616-Phone (305) 579-1093-Fax

NOTES/COMMENTS:
THE ETHICS COMMISSION WILL CONSIDER YOUR REQUEST FOR OPINION AT ITS MEETING ON WEDNESDAY, JULY 27TH AT 10:00 A.M. PLEASE FIND ATTACHED A COPY OF THE DRAFT OPINION. PLEASE CALL ME AT 350-0616 OR EMAIL ME AT AWALKI@MIAMI.DADE.GOV IF YOU HAVE ANY QUESTIONS. THANKS.

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE



Fort Lauderdale
Jacksonville
Miami
Orlando
Tallahassee
Tampa
Washington, DC
West Palm Beach

One Southeast Third Avenue
SunTrust International Center
28th Floor
Miami, Florida 33131-1714

www.akerman.com

305 374 5600 u / 305 374 5095 fax

Alejandro Villarillo
305 982 5631
alejandro.villarillo@akerman.com

July 5, 2005

VIA TELEFAX AND U.S. MAIL

Mr. Robert Meyers
Miami-Dade County
Commission on Ethics & Public Trust
19 W. Flagler Street, Suite 207
Miami, FL 33130

Re: Qualified Blind Trusts

Dear Mr. Meyers:

The sample blind trust agreement, attached to this memorandum, is patterned after the model used by the Staff of the Select Committee on Ethics for use by Senate Members, officers, employees, and their attorneys when drafting proposed trust agreements to be submitted for certification pursuant to 102(f)(3) of the Ethics in Government Act of 1978, as amended.

This sample is being submitted for your review and consideration in connection with a request for an advisory opinion related to the use of a Blind Trust in order to avoid any actual or perceived conflicts of interest in connection with the exercise of their official duties related to an elective office that they intend to seek in a future election. My client intends to run for Mayor, in a municipality, whose mayor serves both as its political leader and as its top administrative official.

We would conform to the following Senate Staff recommendations, that the certification of independence for proposed trustees should be executed in the attached form. Additionally, information should be submitted respecting the relationship between the Grantor, his or her family members, and the proposed trustee and any proposed investment advisor for their consideration in approving the individuals as truly independent. Prospective trustees or their

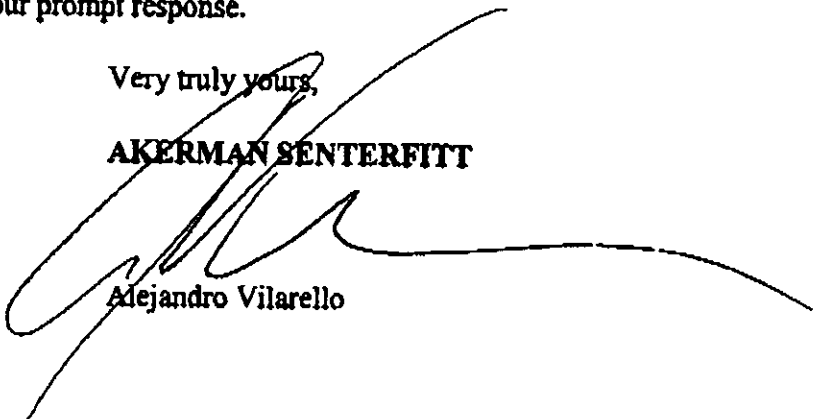
Mr. Robert Meyers
July 5, 2005
Page 2

representatives should discuss, with appropriate Commission on Ethics staff, the procedures and legal requirements concerning blind trust communication restrictions and administration.

Thank you in advance for your prompt response.

Very truly yours,

AKERMAN SENTERFITT



Alejandro Vilarello

AV/bf
Enclosure

TRUST AGREEMENT

DRAFT

THIS TRUST AGREEMENT made and entered into this _____ day of _____, 2005, between _____ whose home address is _____ Florida, hereinafter called the Grantor, and _____ of _____, whose business address is _____ hereinafter called the Trustee.

WITNESSETH

GRANTOR is a candidate for Mayor of _____, Florida. To avoid any conflict of interest, or appearance of any such conflict, which may arise from his duties and power; in such office, Grantor hereby creates a trust to be administered as herein provided, which shall become effective on the date this agreement bears.

The Trustee is an independent person.

Grantor, therefore, hereby delivers to the Trustee, and the Trustee hereby acknowledges receipt of, the property listed in the annexed Schedule A, subject to the provisions of this Trust.

The primary purpose of this Trust is to entrust to the Trustee decisions as to when and to what extent the original assets of the Trust are to be sold or disposed of and in what investments the proceeds of sale are to be reinvested, without any participation in, or knowledge of, such decisions by any interested person. Accordingly, the Grantor and the Trustee agree as follows:

FIRST: (A) This Trust shall terminate upon the first to occur of the following -- (1) Grantor's ceasing for any reason to serve as Mayor of _____ and Grantor thereafter giving Trustee written notice directing that this Trust be terminated; or (2) Grantor's death or incompetence. The period between the date of this agreement and the termination of the Trust shall be called the "Trust Term".

(B) Notwithstanding Paragraph (A) of this Article FIRST, this Trust agreement may in addition be terminated through revocation by the Grantor.

SECOND: The Trustee shall administer this trust in accordance with the terms hereof and, in the exercise of its authority and discretion to manage and control the assets of this Trust shall not consult or notify any interested party.

THIRD: (A) Each asset listed in the annexed Schedule A is free of any restriction with respect to its transfer or sale, except as fully described in such Schedule A, and none of the assets listed are prohibited by any law or regulation.

(B) During the Trust Term, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held in

DRAFT

trust hereunder.

FOURTH:

The Trustee shall not knowingly or negligently disclose to the public or to any interested party any information as to the acquisition, retention, or disposition of any particular securities or other Trust property.

FIFTH:

The income tax return of the Trust shall be prepared by the Trustee or his designee, and such return and any information relating thereto (other than the Trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to the public or to any interested party. To effectuate the provisions of this Article FIFTH, the Trustee shall use its best efforts to provide the interested party, promptly after the close of each taxable year of the Trust during the Trust Term, with that information concerning the Trust, including information on income, expenses, capital gains and capital losses, which is necessary for the interested party to prepare and file tax returns required by the laws of the United States and the laws of any State, district or political subdivision; provided however, that in no event shall the Trustee disclose publicly or to any interested party any information whatsoever which might identify the securities or other property which comprise the assets of the Trust or identify the securities or other property which have been sold from the assets of the Trust.

SIXTH:

An interested party shall not receive any report on the holdings and sources of income of the Trust other than provided by Article FOURTH of this trust; except that the Trustee shall --

Report the net income or loss of the Trust and make other reports necessary to enable the interested party to complete an individual tax return required by law (in accordance with Article FIFTH of this Trust).

SEVENTH:

There shall be no direct or indirect communication between an interested party and the Trustee with respect to the Trust unless --

(A) It relates to a request for a distribution from the Trust of cash or other unspecified assets of the trust, or

(B) The communication is in writing and it relates only --

(1) To the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain),

(2) To the notification of the Trustee of a law or regulation subsequently applicable to the Grantor which prohibits the Grantor from holding an asset, which notification directs that the asset not be held by the Trust, or

DRAFT

(3) To directions to the Trustee to sell all of an asset initially placed in the Trust by an interested party which in the determination of the Grantor creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the Grantor (but any such direction is not required).

EIGHTH:

The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information with respect to the holdings of, and the sources of income of, the Trust, including obtaining a copy of any Trust tax return filed by the Trustee or any information relating thereto, except for the reports and information specified in Article SIXTH of this Trust.

NINTH:

The Trustee shall not knowingly and willfully, or negligently --

(A) Disclose any information to any interested party with respect to this Trust that may not be disclosed pursuant to any provision or requirement of this Trust,

(B) Acquire any holding the ownership of which is prohibited by, or not in accordance with the terms of, this Trust, including the acceptance of any contribution in cash or in kind to the trust from an individual other than the Grantor,

(C) Solicit advice from any interested party with respect to this Trust, which solicitation is prohibited by any provision or requirement of this Trust.

TENTH:

The Grantor shall not knowingly and willfully, or negligently --

Solicit or receive any information with respect to this Trust that may not be disclosed pursuant to any provision or requirement of this Trust.

ELEVENTH

Subject to such amounts as the Trustee may from time to time reserve for the payment of such income taxes as may be due and payable by the Trust, and for payment of expenses and compensation as provided for in this Trust. The Grantor may from time to time request distribution of such cash or other unspecified assets and the Trustee will comply.

TWELFTH:

In addition to the rights, duties, and powers conferred upon the Trustee by law, the Trustee shall have the following powers, rights, and discretion with respect to any Trust property held by him:

(A) To sell, exchange, or otherwise dispose of the property in such manner and upon such terms as the Trustee in its sole discretion shall deem appropriate;

DRAFT

(B) Except as limited by specific enumeration in this Trust agreement or subsequent notification pursuant to Article SEVENTH, paragraph (B)(2), to invest and reinvest the principal and any undistributed income, in property of any kind;

(C) Except as limited by specific enumeration in this Trust agreement, to participate in any reorganization, consolidation, merger, or dissolution of any corporation having stocks, bonds or other securities which may be held at any time, to receive and hold any property which may be allocated or distributed to it by reason of participation in any such reorganization, consolidation, merger, or dissolution;

(D) To exercise all conversion, subscription, voting, and other rights of whatsoever nature pertaining to any such property and to grant proxies, discretionary, or otherwise, with respect thereto,

(E) To elect, appoint, and remove directors of any corporation, the stock of which shall constitute Trust property, and to act through its nominee as a director or officer of any such corporation;

(F) Except as limited by specific enumeration in this Trust agreement, to manage, control, operate, convert, reconvert, invest, reinvest, sell, exchange, lease, mortgage, grant a security interest in, pledge, pool, or otherwise encumber and deal with the property of this Trust for Trust purposes and in behalf of the Trust to the same extent and with the same powers that any individual would have with respect to his own property and funds (but such actions may not take into account any interests of an interested party or other individual outside of those interests held by the Trust);

(G) Except as limited by specific enumeration in this Trust agreement, to borrow money from any person or corporation (including the Trustee hereunder) and for the purpose of securing the payment thereof, to pledge, mortgage, or otherwise encumber any and all such Trust property for Trust purposes upon such terms, covenants, and conditions as it may deem proper and also to extend the time of payment of any loans or encumbrances which at any time may be encumbrances on any such Trust property irrespective of by whom the same were made or where the obligations may or should ultimately be borne on such terms, covenants, and conditions as it may deem proper (but such actions may not take into account any interests of an interested party or other individual outside of those interests held by the Trust);

(H) To register any property belonging to the Trust in the name of its nominee, or to hold the same unregistered, or in such form that title shall pass by delivery;

DRAFT

(I) To abandon, settle, compromise, extend, renew, modify, adjust, or submit to arbitration in whole or in part and without the order or decree of any court any and all claims whether such claims shall increase or decrease the assets held under this Trust agreement;

(J) To determine whether or to what extent receipts should be deemed income or principal, whether or to what extent expenditures should be charged against principal or income, and what other adjustments should be made between principal and income, provided that such adjustments shall not conflict with well-settled rules for the determination of principal and income adjustments, or the Florida Uniform Principal and Income Act.

(K) To determine whether or not to amortize bonds purchased at a premium;

(L) Except to the extent otherwise expressly provided in this Trust agreement, to make distributions to or at the request of an interested party in kind or in cash or partly in each and for such purposes to fix, insofar as legally permissible, the value of any property;

(M) To pay such persons employed by the Trustee to assist it in the administration of the Trust, including investment counsel, accountants, and those engaged for assistance in preparation of tax returns, such sums as the Trustee deems to be reasonable compensation for the services rendered by such persons. Such persons may rely upon and execute the written instructions of the Trustee, and shall not be obliged to inquire into the propriety thereof,

(N) No person may be employed or consulted by the Trustee to assist it in any capacity in the administration of the Trust or the management and control of Trust assets, including investment counsel, investment advisers, accountants, and those engaged for assistance in preparation of tax returns, unless --

(1) such person is instructed by the Trustee to make no disclosure to the public or to any interested party which might identify the securities or other property which comprise the assets of the Trust or identify securities or other property which have been sold from the assets of the Trust, or of any other information which may not be disclosed by the Trustee, and

(2) such person is instructed by the Trustee to have no direct communication with any interested party, and that any indirect communication with an interested party shall be made only through the Trustee pursuant to Article SEVENTH of this Trust;

DRAFT

(3) Except as specifically limited in this Trust agreement, to do all such acts, take all such proceedings, and exercise all such rights and privileges, although not otherwise specifically mentioned in this Article TWELFTH, with relation to any such Trust property, as if the Trustee were the absolute owner thereof, and in connection therewith to make, execute, and deliver any instruments and to enter into any covenants or agreements binding the Trust.

THIRTEENTH: The Trustee shall not at any time be held liable for any action taken or not taken or for any loss or depreciation of the value of any property held in the Trust whether due to an error of judgment or otherwise where the Trustee has exercised good faith and ordinary diligence in the exercise of its duties such as would have been exercised by a prudent man.

FOURTEENTH: No Trustee hereunder shall be required, in any jurisdiction, to furnish any bond or other security, or to obtain the approval of any court before applying, distributing, selling, or otherwise dealing with property.

FIFTEENTH: Except as provided in Article SIXTH of this Trust, the Trustee shall make no accounting to the Grantor until the date of termination of this Trust, and, at such time, it shall be required to make full and proper accounting and turn over to the Grantor all assets of the Trust then held by it the said Trustee.

SIXTEENTH: The Trustee shall be compensated in accordance with the table in the annexed Schedule B, or as provided for by the laws of the State of Florida.

SEVENTEENTH: The Trustee (and any substitute or successor) shall have the right, by a duly acknowledged instrument delivered to the Grantor to resign as Trustee in which event the Grantor shall designate and appoint a substitute or successor Trustee in his place and stead, which shall have all of the rights, powers, discretions, and duties conferred or imposed hereunder upon the original Trustee.

EIGHTEENTH: Any such substitute or successor Trustee shall have all of the rights, powers, discretions, and duties conferred or imposed hereunder upon the original Trustee.

The term "interested party" as used in this Trust means the Grantor, his spouse, any minor or dependent child, and their representatives.

The validity, construction, and administration of this Trust shall be governed by the laws of the State of Florida.

DRAFT

Dated this _____ day of _____, 2005.

Grantor

The above Trust is accepted this ____ day of _____, 2005.

Trustee

By: _____

(title)

DRAFT

**CERTIFICATION OF INDEPENDENCE
OF TRUSTEE OF QUALIFIED BLIND TRUST**

Trust Name: _____ **Blind Trust (the Trust)**

With respect to the trust of _____ (Grantor), the undersigned proposed Trustee of such trust, or the person in addition to the Trustee who is designated in the trust instrument as an investment adviser, or an officer or employee of the undersigned, certifies:

1. The undersigned is:
 - () a financial institution;
 - () an attorney;
 - () a certified public accountant;
 - () a broker under the definition set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); or
 - () an investment advisor who, other than with respect to his or her involvement with this trust, _____ is generally involved in his or her role as such an advisor in the management or control of _____ trusts.

2. The undersigned and any officer or employee of the undersigned person or entity who is involved in, or who will be involved in the management or control of the trust:
 - (a) Is independent of and not associated with any interested party so that the trustee or other person cannot be controlled or influenced in the administration of the trust by any interested party as defined in the Trust;
 - (b) Is not and has not been an employee of or affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and
 - (c) Is not a relative of any interested party (a "relative" is defined as a spouse or any of the following whether by blood or adoption; parent, child, brother or sister, aunt or uncle, niece or nephew, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister, half-brother or half-sister.

The undersigned certifies that the statements contained herein are true, complete, and correct to the best of her knowledge and belief.

Certified by _____ Date _____

Name of Trustee _____

Address _____