



# Ocala

110 SE Watula Avenue  
Ocala, FL 34471

www.ocalafl.gov

## Item Details

**File Number: 2024-0219**

**ID #:** 2024-0219

**Type:** Agenda Item

**Status:** Passed

**Version:** 1

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**In Control:** City Council

**File Created:** 10/26/2023

**Presented By: :**

**Final Action:** 11/07/2023

**Item Title:** Approve Robert W. Batsel, Jr. and the firm to represent DOMACH, LLC in connection with the development of a hotel on property located at 210 West Silver Springs Boulevard

### Internal Notes:

#### Sponsors:

**Enactment Date:**

**Attachments:** Letter to Pete Lee requesting Council Approval -  
DOMACH w Enclosures 10-20-2023 Final

**Enactment Number:**

**Recommendation:**

**Hearing Date:** 11/07/2023

**Entered by:** tchighizola@ocalafl.org

**Effective Date:**

### History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	11/07/2023	Approved				Pass
	<b>Action Text:</b>						
	<b>Notes:</b>						
	Attorney Robert Batsel Jr., 1531 SE 36th Avenue, Ocala, FL 34471, stated the law firm had previously requested consent to represent a private party who may have business with the City. He spoke on his involvement in real estate transactions with the properties. Furthermore, his client would like to negotiate an incentives agreement for garage parking spaces with the City. He requested consent from Council to move forward with representation of DOMACH, LLC.						
	Mayor Guinn thanked Mr. Batsel for his transparency with the City.						
	There being no further discussion the motion carried by roll call vote.						
	Aye: 5 Council President Mansfield, Council Member Bethea Sr, Pro Tem Dreyer, Council Member Musleh, and Council Member Hilty Sr						

**Text of Legislative File 2024-0219**

Submitted By: Tye Chighizola

Presentation By: Tye Chighizola

Department: Growth Management

**STAFF RECOMMENDATION (Motion Ready):**

Approve Robert W. Batsel, Jr. and the firm to represent DOMACH, LLC in connection with the development of a hotel on property located at 210 West Silver Springs Boulevard

**OCALA'S RELEVANT STRATEGIC GOALS:**

Quality of Place, Economic Hub

**PROOF OF PUBLICATION:**

N/A

**BACKGROUND:** Mr. Batsel is requesting to represent DOMACH in connection with land use, permitting, and related matters including the negotiation of a redevelopment agreement with the City concerning the development of a hotel on property located at 210 West Silver Springs Boulevard.

While the land use/zoning work associated with the project will likely be limited (since the existing entitlements appear to permit a hotel), Mr. Batsel's representation would include interaction with the City in negotiating a redevelopment agreement providing for the hotel's exclusive use of spaces within the City parking garage to be constructed on property lying immediately south of the property.

**FINDINGS AND CONCLUSIONS:** Staff has no issues with Mr. Batsel or the firm representing the client concerning the development of the hotel or the negotiations concerning parking spaces in the new garage. The request is consistent with the guidelines outlined for consideration adopted by the City Council on April 4, 2023.

**FISCAL IMPACT:** N/A

**PROCUREMENT REVIEW:** N/A

**LEGAL REVIEW:** This agenda item has been reviewed by City Attorney, William E. Sexton.

**ALTERNATIVE:**

- Approve with changes
- Table
- Deny



# GOODING & BATSEL, PLLC

ATTORNEYS AT LAW

1531 SE 36TH AVENUE  
OCALA, FLORIDA 34471

W. JAMES GOODING III  
ROBERT W. BATSEL, JR.  
ROBERT W. BATSEL  
JAMES T. HARTLEY

TELEPHONE (352) 579-1290  
FACSIMILE (352) 579-1289  
email: rbatsel@lawyersocala.com

October 20, 2023

## By Email Only

Peter A. Lee AICP, City Manager  
City of Ocala  
201 SE 3rd Street, 2nd Floor  
Ocala, FL 34471-2172

RE: Request for conflict waiver concerning representation of DOMACH LLC ("DOMACH")

Dear Mr. Lee:

We are writing to request City Council consent for our firm to represent DOMACH in connection with land use, permitting, related matters including the negotiation of a redevelopment agreement with the City concerning the development of a hotel on property located at 210 West Silver Springs Boulevard.

As you know, we have previously sent requests for informed consent pursuant to the *Guidelines For Former City Attorneys* approved by City Council at its April 4, 2023 meeting ("Guidelines") which, among other things, established a mechanism for determining whether we "participated personally and substantially" in a matter and, if so, requiring us to obtain City Council consent. Prior to developing such Guidelines, we also entered into the enclosed *Agreement Concerning Continued Legal Representation in Specific Matters by Former City Attorneys* ("Special Projects Agreement"), providing for our completion of certain City projects after our City Attorney term expired and recognizing that we would also be representing private developers in matters involving the City (see Paragraph 5 of the Special Projects Agreement).

To date, we have undertaken representation of private clients in City matters in which we have not previously participated personally and substantially on behalf the City, but in the event we previously represented the City in any matter, we sought and obtained informed consent of City staff and/or Council prior to engaging a client pursuant to the Guidelines.

This request concerns DOMACH's proposed redevelopment of property located at 210 W. Silver Springs Boulevard, known as "Project Hometown." DOMACH plans to construct a hotel on the former site of the recently demolished European Car Clinic. While the land use/zoning work associated with the project will likely be limited (since the existing entitlements appear to permit a hotel), our proposed representation would include interaction with the City in negotiating a redevelopment agreement providing for the hotel's exclusive use of spaces within the City parking garage to be constructed on property lying immediately south of DOMACH's property (the "Garage Property"), incentives to be provided by the City, obligations of DOMACH and similar matters.

During my tenure as City Attorney, I handled the real estate transactions resulting in the City's purchase of Garage Property from Mt. Moriah Missionary Baptist Church of Ocala, Inc. and IOM, LLC. Currently, pursuant to the Special Projects Agreement, I am preparing an action to quiet title to the property

purchased from Mt. Moriah. This has involved significant research to identify and locate heirs of a prior owner of the subject property who may still have an interest in the subject property due to a hiatus in legal descriptions.

During our firm's tenure as City attorney and pursuant to our Special Projects Agreement, Mr. Gooding has represented the City in an action styled *City of Ocala v. Wanda Hampton, et al*, Case No. 21-1011-CA, which concerned the location and boundary of the Hamptons' parcel and vis a vis a City alley contiguous to the Hamptons' parcel and the DOMACH property. The case is still pending, but has been substantively resolved and will be concluded soon. There is no dispute between the City and DOMACH concerning the City alley contiguous to the DOMACH property.

And, of course, we are still representing the City in a few other matters under the Special Projects Agreement.

The foregoing matters are separate and distinct from our proposed representation of DOMACH.

Further, because none of our prior or current representation of the City involves a matter involving the DOMACH project in which any lawyer in our firm (or in our prior firm) "participated personally and substantially" as an attorney on behalf of the City, Rule 4-1.11 of the Rules of Professional Conduct (dealing with conflicts of interests for former and current government officers and employees) does not apply to our representation of DOMACH.

However, Rule 4-1.7 of Rules Regulating the Florida Bar, entitled "Conflict of Interest; Current Clients" is involved because of our current representation of City. That Rule provides, in relevant part:

*(a) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer must not represent a client if:*

*(1) the representation of 1 client will be directly adverse to another client; or*

*(2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.*

*(b) Informed Consent. Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:*

*(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;*

*(2) the representation is not prohibited by law;*

*(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and*

*(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.*

*(c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.*

Pursuant to section (a)(1), above, our proposed representation of DOMACH would be adverse to the City since we will be negotiating on behalf of a party to a contract with the City. Pursuant to section (a)(2), we do not believe there is any risk that either party will be materially limited by our responsibilities to the other party. We believe we can each effectively represent the City concerning the Mt. Moriah quiet title action, completion of the Hampton case, or other unrelated City matters under the Special Projects Agreement, notwithstanding our representation of DOMACH as described above. Regarding Mt. Moriah, the parties' interests are aligned since DOMACH's ability to make use of spaces within the proposed parking garage would be contingent upon our success on behalf of the City in the quiet title action. Our representation of the City would be seeking a condition precedent to anyone making use of the Mt. Moriah property, including DOMACH. Regarding Hampton, our representation of the City does not affect the DOMACH property.

Because our proposed representation of DOMACH is adverse pursuant to section (a)(1), we may not represent DOMACH unless sections (b)(1), (b)(2), and (b)(4)<sup>1</sup> are satisfied. Concerning section (b)(1), we believe we can competently and diligently represent the City and DOMACH. Section (b)(2) is satisfied since the representation is not prohibited by law. Thus, the determination rests upon section (b)(4) and whether each affected client gives informed consent, which is the purpose of our letter.

As referenced in prior letters requesting conflict waivers, the Preamble to the Florida Rules of Professional Conduct sets forth definitions including the following:

“Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

I have included in the attached **Exhibit A** the Comment on such language.

Pursuant to that language:

1. Please see the discussion above concerning the matters in which we previously represented the City, and concerning the scope of the representation of DOMACH that we are requesting permission to undertake.
2. We do not believe that our representation of DOMACH poses any risk to the City, in that:
  - 2.1. Our representation of the City concerning the purchase of the Garage Property was unrelated to the DOMACH project and only concerned acquisition of the adjacent Garage Property.
  - 2.2. Our ongoing representation of the City concerning the quiet title action is intended to clear a title defect concerning a hiatus and is unrelated to the DOMACH project.
  - 2.3. Our representation of the City in the Hampton case concerns the parties' respective rights to property within an adjacent alley, but will have no effect on the DOMACH project. Further, that representation should soon be completed.

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<sup>1</sup> Section (b)(3) is not applicable because the proposed representation of DOMACH does not include representation of both clients in the same proceeding before a tribunal.

- 2.4. The other matters in which we are still representing the City do not involve the DOMACH property or nearby properties.
3. To the extent that there is any concern about the foregoing, I suggest consulting Mr. Sexton. We will certainly accept his determination and risk assessment to be conclusive.
4. The final point that must be addressed is the reasonably available alternatives to our representation of DOMACH.
  - 4.1. There is one clear alternative, which is prohibiting me from representing DOMACH in this matter. Obviously, we would prefer for City Council not to determine this alternative is necessary, particularly in light of the foregoing. However, we will respect any decision made by City Council.
  - 4.2. In some cases, one possible alternative is that the City permit us to represent DOMACH but place restraints on issues in which we can advocate on its behalf. We do not think such an approach would be possible in this case, but are willing to discuss any such alternative.

Thus, we request that City Council provide informed consent in writing to our representation of DOMACH in connection with the matters set forth above. We have included a consent on the bottom of this letter so that you can sign it if City Council provides such direction. Of course, we suggest you consult with City Attorney Will Sexton concerning this matter.

Finally, we have copied Tye Chighizola, Jeff Shrum, Aubrey Hale, Roberto Ellis, Tracy Taylor, and Joe Switt, since each has either been involved or will be involved in the matters referenced above so that they are aware of our request and invited to provide you and Mr. Sexton with their positions.

Please let me know if you have any questions or concerns. We respectfully request for this letter to be placed on the November 7 City Council agenda, or as soon thereafter as possible. Thank you in advance.

Sincerely,

GOODING & BATSEL, PLLC

*/s/ Robert W. Batsel Jr.*

*/s/ W. James Gooding, III*

Attachment: as stated

cc: City Attorney Will Sexton  
Mr. Tye Chighizola  
Mr. Jeff Shrum  
Mr. Aubrey Hale  
Mr. Roberto Ellis  
Mr. Tye Chighizola

Mr. Tracy Taylor  
Mr. Joe Switt

(All by email only with attachment)



### **CONSENT TO REPRESENTATION**

On \_\_\_\_\_, 2023, the City Council approved your representation of DOMACH LLC, in connection with the matters discussed in the bullet points on the first two pages of your letter.

The City Council indicated that its consent was conditioned upon your not representing DOMACH LLC in connection with the following matters: \_\_\_\_\_ (none if blank).

\_\_\_\_\_  
Mr. Peter A. Lee, AICP  
City Manager

Dated \_\_\_\_\_

**EXHIBIT A**  
**RULES OF PROFESSIONAL CONDUCT**

See attached.

P:\RWB\DOMACH, LLC - Project Hometown\Correspondence\Letter to Pete Lee requesting Council Approval - DOMACH 10-20-2023  
Final.docx

## **CHAPTER 4. RULES OF PROFESSIONAL CONDUCT**

### **PREAMBLE: A LAWYER'S RESPONSIBILITIES**

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As an adviser, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., rules 4-1.12 and 4-2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. See rule 4-8.4.

In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or by law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's

procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system, because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of the lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct and in substantive and procedural law. A lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Zealous advocacy is not inconsistent with justice. Moreover, unless violations of law or injury to another or another's property is involved, preserving client confidences ordinarily serves

the public interest because people are more likely to seek legal advice, and heed their legal obligations, when they know their communications will be private.

In the practice of law, conflicting responsibilities are often encountered. Difficult ethical problems may arise from a conflict between a lawyer's responsibility to a client and the lawyer's own sense of personal honor, including obligations to society and the legal profession. The Rules of Professional Conduct often prescribe terms for resolving these conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. These issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers of self-government. Self-regulation helps maintain the legal profession's independence from undue government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility.

Thus, every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

**Scope:**

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms of “must,” “must not,” or “may not.” These define proper conduct for purposes of professional discipline. Others, generally cast in the term “may,” are permissive and define areas under the rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of that discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer’s professional role.

The comment accompanying each rule explains and illustrates the meaning and purpose of the rule. The comments are intended only as guides to interpretation, whereas the text of each rule is authoritative. Thus, comments, even when they use the term “should,” do not add obligations to the rules but merely provide guidance for practicing in compliance with the rules.

The rules presuppose a larger legal context shaping the lawyer’s role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law. The comments are sometimes used to alert lawyers to their responsibilities under other law.

Furthermore, for purposes of determining the lawyer’s authority and responsibility, principles of substantive law external to these

rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, for example confidentiality under rule 4-1.6, which attach when the lawyer agrees to consider whether a client-lawyer relationship will be established. See rule 4-1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption that a legal duty has been breached. In addition, violation of a rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating a substantive legal duty. Nevertheless, since the rules do establish standards of



conduct by lawyers, a lawyer's violation of a rule may be evidence of a breach of the applicable standard of conduct.

### **Terminology:**

"Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

"Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

"Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See "informed consent" below. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time.

"Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in the legal department of a corporation or other organization.

"Fraud" or "fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

"Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

"Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.



“Lawyer” denotes a person who is a member of The Florida Bar or otherwise authorized to practice in the state of Florida.

“Partner” denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

“Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

“Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

“Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

“Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

“Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

“Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular matter.

“Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communications. A “signed” writing

includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

## **Comment**

### **Confirmed in writing**

If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time.

### **Firm**

Whether 2 or more lawyers constitute a firm above can depend on the specific facts. For example, 2 practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by 1 lawyer is attributed to another.

With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the

members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these rules.

## **Fraud**

When used in these rules, the terms “fraud” or “fraudulent” refer to conduct that has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

## **Informed consent**

Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., rules 4-1.2(c), 4-1.6(a), 4-1.7(b), and 4-1.18. The communication necessary to obtain consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client’s or other person’s options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or

other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, these persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules state that a person's consent be confirmed in writing. See, e.g., rule 4-1.7(b). For a definition of "writing" and "confirmed in writing," see terminology above. Other rules require that a client's consent be obtained in a writing signed by the client. See, e.g., rule 4-1.8(a). For a definition of "signed," see terminology above.

## **Screened**

This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under rules 4-1.11, 4-1.12, or 4-1.18.

The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To

implement, reinforce, and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake these procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.

In order to be effective, screening measures must be implemented as soon as practicable after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 23, 2006, effective May 22, 2006 (933 So.2d 417); amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (164 So.3d 1217), amended November 9, 2017, effective February 1, 2018 (234 So.3d 577).

## **4-1. CLIENT-LAWYER RELATIONSHIP**

### **RULE 4-1.1 COMPETENCE**

A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

#### **Comment**

##### **Legal knowledge and skill**

In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or

otherwise be prohibited by this rule. Whether a lawyer may be required to take additional steps in order to comply with other law, for example state and federal laws that govern data privacy, is beyond the scope of these rules.

### **Former client**

The duty of confidentiality continues after the client-lawyer relationship has terminated. See rule 4-1.9 for the prohibition against using such information to the disadvantage of the former client.

Amended July 23, 1992, effective January 1, 1993 (605 So.2d 252); amended Oct. 20, 1994 (644 So.2d 282); March 23, 2006, effective May 22, 2006 (933 So.2d 417); amended July 7, 2011, effective October 1, 2011 (67 So. 3d 1037); amended May 29, 2014, effective June 1, 2014 (140 So. 3d 541); amended June 11, 2015, effective October 1, 2015 (167 So.3d 412); amended March 16, 2023, effective May 15, 2023 (SC22-1292).

## **RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS**

**(a) Representing Adverse Interests.** Except as provided in subdivision (b), a lawyer must not represent a client if:

(1) the representation of 1 client will be directly adverse to another client; or

(2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

**(b) Informed Consent.** Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;



(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

**(c) Explanation to Clients.** When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

**(d) Lawyers Related by Blood, Adoption, or Marriage.** A lawyer related by blood, adoption, or marriage to another lawyer as parent, child, sibling, or spouse must not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except with the client's informed consent, confirmed in writing or clearly stated on the record at a hearing.

**(e) Representation of Insureds.** Upon undertaking the representation of an insured client at the expense of the insurer, a lawyer has a duty to ascertain whether the lawyer will be representing both the insurer and the insured as clients, or only the insured, and to inform both the insured and the insurer regarding the scope of the representation. All other Rules Regulating The Florida Bar related to conflicts of interest apply to the representation as they would in any other situation.

## **Comment**

### **Loyalty to a client**

Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. For specific rules regarding certain conflicts of interest, see rule 4-1.8. For former client conflicts of interest, see rule 4-1.9. For conflicts of interest involving prospective clients, see rule 4-1.18. For definitions of "informed consent" and "confirmed in writing," see terminology.

An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See rule 4-1.16. Where more than 1 client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by rule 4-1.9. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see comment to rule 4-1.3 and scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client's or another client's interests without the affected client's consent. Subdivision (a)(1) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Subdivision (a)(1) applies only when the representation of 1 client would be directly adverse to the other and where the lawyer's responsibilities of loyalty and confidentiality of the other client might be compromised.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Subdivision (a)(2) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.



## **Consultation and consent**

A client may consent to representation notwithstanding a conflict. However, as indicated in subdivision (a)(1) with respect to representation directly adverse to a client and subdivision (a)(2) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than 1 client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and 1 of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

## **Lawyer's interests**

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See rules 4-1.1 and 4-1.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

## **Conflicts in litigation**

Subdivision (a)(1) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by subdivisions (a), (b), and (c). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities

of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than 1 co-defendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of subdivisions (b) and (c) are met.

Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

### **Interest of person paying for a lawyer's service**

A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. See rule 4-1.8(f). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement and the insurer is required to provide special counsel for

the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after consultation and the arrangement ensures the lawyer's professional independence.

### **Other conflict situations**

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise, and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of some jurisdictions. In Florida, the personal representative is the client rather than the estate or the beneficiaries. The lawyer should make clear the relationship to the parties involved.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the 2 roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the

conflict, the effect of the lawyer's resignation from the board, and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

### **Conflict charged by an opposing party**

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. See scope.

### **Family relationships between lawyers**

Rule 4-1.7(d) applies to related lawyers who are in different firms. Related lawyers in the same firm are also governed by rules 4-1.9 and 4-1.10. The disqualification stated in rule 4-1.7(d) is personal and is not imputed to members of firms with whom the lawyers are associated. The purpose of Rule 4-1.7(d) is to prohibit representation of adverse interests, unless informed consent is given by the client, by a lawyer related to another lawyer by blood, adoption, or marriage as a parent, child, sibling, or spouse so as to include those with biological or adopted children and within relations by marriage those who would be considered in-laws and stepchildren and stepparents.

### **Representation of insureds**

The unique tripartite relationship of insured, insurer, and lawyer can lead to ambiguity as to whom a lawyer represents. In a particular case, the lawyer may represent only the insured, with the insurer having the status of a non-client third party payor of the lawyer's fees. Alternatively, the lawyer may represent both as dual clients, in the absence of a disqualifying conflict of interest, upon

compliance with applicable rules. Establishing clarity as to the role of the lawyer at the inception of the representation avoids misunderstanding that may ethically compromise the lawyer. This is a general duty of every lawyer undertaking representation of a client, which is made specific in this context due to the desire to minimize confusion and inconsistent expectations that may arise.

**Consent confirmed in writing or stated on the record at a hearing**

Subdivision (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing or clearly stated on the record at a hearing. With regard to being confirmed in writing, such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See terminology. If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time afterwards. See terminology. The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Amended July 23, 1992, effective January 1, 1993 (605 So.2d 252); amended January 23, 2003, effective July 1, 2003 (838 So.2d 1140); amended March 23, 2006, effective May 22, 2006, revised opinion issued June 29, 2006 (933 So.2d 417); amended May 29, 2014, effective June 1, 2014 (140 So.3d 541).

**RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS**

**(a) Business Transactions With or Acquiring Interest Adverse to Client.** A lawyer is prohibited from entering into a

needs for fully informing clients exist, as recognized in rules 4-1.7(c) and 4-1.8(f).

### **Imputation of prohibitions**

Under subdivision (k), a prohibition on conduct by an individual lawyer in subdivisions (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, 1 lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with subdivision (a), even if the first lawyer is not personally involved in the representation of the client.

Amended July 23, 1992, effective January 1, 1993 (605 So.2d 252); amended April 25, 2002 (820 So.2d 210); amended May 20, 2004 (875 So.2d 448); amended March 23, 2006, effective, May 22, 2006 (933 So.2d 417); amended November 19, 2009, effective February 1, 2010 (24 So.3d 63); amended November 9, 2017, effective February 1, 2018 (234 So. 3d 577).

### **RULE 4-1.9 CONFLICT OF INTEREST; FORMER CLIENT**

A lawyer who has formerly represented a client in a matter must not afterwards:

- (a)** represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;
- (b)** use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or
- (c)** reveal information relating to the representation except as these rules would permit or require with respect to a client.

### **Comment**

After termination of a client-lawyer relationship, a lawyer may not represent another client except in conformity with this rule.



The principles in rule 4-1.7 determine whether the interests of the present and former client are adverse. Thus, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction.

The scope of a “matter” for purposes of rule 4-1.9(a) may depend on the facts of a particular situation or transaction. The lawyer’s involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Matters are “substantially related” for purposes of this rule if they involve the same transaction or legal dispute, or if the current matter would involve the lawyer attacking work that the lawyer performed for the former client. For example, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent.

Lawyers owe confidentiality obligations to former clients, and thus information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to

the disadvantage of the client without the former client's consent. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. Information that has been widely disseminated by the media to the public, or that typically would be obtained by any reasonably prudent lawyer who had never represented the former client, should be considered generally known and ordinarily will not be disqualifying. The essential question is whether, but for having represented the former client, the lawyer would know or discover the information.

Information acquired in a prior representation may have been rendered obsolete by the passage of time. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

The provisions of this rule are for the protection of clients and can be waived if the former client gives informed consent. See terminology.

With regard to an opposing party's raising a question of conflict of interest, see comment to rule 4-1.7. With regard to disqualification of a firm with which a lawyer is associated, see rule 4-1.10.

Amended July 23, 1992, effective January 1, 1993 (605 So.2d 252); amended April 25, 2002 (820 So.2d 210); amended March 23, 2006, effective May 22, 2006 (933 So.2d 417); amended November 19, 2009, effective February 1, 2010 (24 So.3d 63); amended May 29, 2014, effective June 1, 2014 (140 So.3d 541).



#### **RULE 4-1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES**

**(a) Representation of Private Client by Former Public Officer or Employee.** A lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to rule 4-1.9(b) and (c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

**(b) Representation by Another Member of the Firm.** When a lawyer is disqualified from representation under subdivision (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is directly apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

**(c) Use of Confidential Government Information.** A lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the

disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

**(d) Limits on Participation of Public Officer or Employee.** A lawyer currently serving as a public officer or employee:

(1) is subject to rules 4-1.7 and 4-1.9; and

(2) shall not:

(A) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent; or

(B) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

**(e) Matter Defined.** As used in this rule, the term “matter” includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

### **Comment**

A lawyer who has served or is currently serving as a public officer or employee is personally subject to the rules of professional conduct, including the prohibition against concurrent conflicts of interest stated in rule 4-1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this rule. See terminology for definition of informed consent.

Subdivisions (a)(1), (a)(2), and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 4-1.10 is not applicable to the conflicts of interest addressed by this rule. Rather, subdivision (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, subdivision (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

Subdivisions (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under subdivision (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by subdivision (d). As with subdivisions (a)(1) and (d)(1), rule 4-1.10 is not applicable to the conflicts of interest addressed by these subdivisions.

This rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to

inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in subdivision (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in subdivisions (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

When a lawyer has been employed by 1 government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by subdivision (d), the latter agency is not required to screen the lawyer as subdivision (b) requires a law firm to do. The question of whether 2 government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these rules. See rule 4-1.13 comment, government agency.

Subdivisions (b) and (c) contemplate a screening arrangement. See terminology (requirements for screening procedures). These subdivisions do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Subdivision (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it

does not operate with respect to information that merely could be imputed to the lawyer.

Subdivisions (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by rule 4-1.7 and is not otherwise prohibited by law.

For purposes of subdivision (e) of this rule, a “matter” may continue in another form. In determining whether 2 particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 23, 2006, effective May 22, 2006 (933 So.2d 417); amended July 7, 2011, effective October 1, 2011 (67 So.3d 1037).

#### **RULE 4-1.12 FORMER JUDGE OR ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL**

**(a) Representation of Private Client by Former Judge, Law Clerk, or Other Third-Party Neutral.** Except as stated in subdivision (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

**(b) Negotiation of Employment by Judge, Law Clerk, or Other Third-Party Neutral.** A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

**AGREEMENT CONCERNING CONTINUED LEGAL REPRESENTATION IN SPECIFIC  
MATTERS BY FORMER CITY ATTORNEYS**

**THIS AGREEMENT CONCERNING CONTINUED LEGAL REPRESENTATION IN SPECIFIC MATTERS BY FORMER CITY ATTORNEYS** is entered into this October 23, 2022, by and between:

- The City of Ocala, a Florida municipal corporation (“City”); and
- The following in their individual capacities and as members of the law firm of Gooding & Batsel, PLLC, a Florida professional limited liability company (the “GB Firm”):
  - Robert W. Batsel, Jr. (“Batsel”); and
  - W. James Gooding III (“Gooding”).

(GB Firm, Batsel and Gooding are collectively referred to as “Attorneys”).

**WHEREAS:**

- A. Batsel currently serves as the City Attorney, and Gooding currently serves as an Assistant City Attorney, pursuant to that certain “City Attorney Agreement” dated October 21, 2020 (“City Attorney Agreement”).
- B. The term of the City Attorney Agreement expires on October 31, 2022.
- C. The City has retained a new City Attorney who assumed office on October 1, 2022.
- D. Attorneys are currently representing City in a number of matters, including the particular matters (the “Ongoing Matters”) defined below.
- E. City has determined that it is in the best interest of the City for Attorneys to continue to represent City in connection with the Ongoing Matters.

**NOW THEREFORE**, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **Ongoing Matters.** City hereby engages Attorneys to perform legal services concerning the following matters (the “Ongoing Matters”):
  - 1.1. That certain action styled *City of Ocala v. Wanda Hampton, et al*, Case No.: 21-1011-CA pending in the Circuit Court of Marion County, Florida.
  - 1.2. Closing the transactions arising under various agreements between City, on the one hand, and the following entities, on the other hand, concerning the construction of NW 44th Avenue:
    - 1.2.1. W.G. One Corp, a Nevada corporation, as Trustee of the Wintergreen B.T., a business trust (“WC”);

- 1.2.2. Country Green, LP, a Nevada limited liability partnership (“Country Green”); and
- 1.2.3. KAS Ocala, LLC, a Florida limited liability company (“KAS”), on the other hand.
- 1.3. Filing and completing an action to quiet title to property recently acquired from Mt. Moriah Missionary Baptist Church, Inc.
- 1.4. Performing due diligence and closing the transaction concerning the purchase of property from IOM, LLC, a Florida limited liability company.
- 1.5. Assisting with due diligence and closing the transaction concerning the sale of property adjacent to Ocala International Airport to Seefried Industrial Properties, Inc., a Georgia corporation.
- 1.6. Handling the conveyance private roads within the subdivision known as “Hidden Village” to the City.
- 1.7. Assisting with the replat of property within the boundaries of an area commonly known as “Imagine North Magnolia.”
- 1.8. Completing negotiations of that certain Lease Agreement with Burrell Aviation Ocala, LLC, a Delaware limited liability company.
- 1.9. Completing negotiations concerning that certain Amendment to Lease Agreement with Sheltair Ocala, LLC, a Florida limited liability company.
2. **Term of Agreement.**
  - 2.1. This Agreement shall be for a term of one (1) year whereupon it shall be automatically extended for consecutive periods of one (1) year unless terminated under other provisions of this Agreement.
  - 2.2. The term of this Agreement as to each Specific Matter specified in paragraph 1 shall terminate upon the conclusion of such matter.
  - 2.3. Any party may terminate this Agreement as to all Ongoing Matters or for a specific Ongoing Matter by providing at least one (1) month advance written notice of its intent to terminate this Agreement. Notwithstanding the foregoing, Attorneys may not withdraw from the representation of City in any litigation except as permitted by the Court in which such litigation is pending and pursuant to applicable laws and procedures.
3. **Supervision by City Attorney.**
  - 3.1. As attorneys, the Attorneys are obligated to exercise their best judgment and to comply with the Rules of Professional Conduct in their representation of City.
  - 3.2. Notwithstanding the foregoing, Attorneys shall consult with the City Attorney in connection with the Ongoing Matters and, to the extent that they may do so and still comply with their professional obligations to City, shall follow the direction of the City Attorney; in the event that they cannot do so, Attorneys may terminate this Agreement pursuant to paragraph 2.3 above.

4. **Compensation.** City shall compensate the GB Firm as follows:
- 4.1. The Attorneys shall be paid an hourly rate of \$325.00 per hour for all services provided.
  - 4.2. A detailed breakdown of services performed by the GB Firm shall be prepared and included within itemized bills submitted to City Council monthly. These bills shall include all hours worked and costs incurred by the GB Firm and attorneys employed by such Firm for legal work performed as legal counsel for the City.
  - 4.3. The GB Firm shall not charge for routine office overhead incurred during the course of providing services hereunder, such as ordinary photocopying, postage and telephone charges.
  - 4.4. Routine costs incurred in the representation of the City may be paid directly by the City or by the GB Firm to vendors or service providers. If paid by the GB Firm, said routine costs shall be submitted to City for reimbursement and itemized as required by paragraph 4.2 above. Routine costs shall include, but are not limited to, filing fees, deposition costs, subpoena costs, witness fees, expert witness fees, municipal legal publications and large scale non-routine photocopying such as voluminous discovery requests and large mail outs or priority or overnight shipping costs.
  - 4.5. In addition to fees for legal services, City agrees to pay the GB Firm for out-of-pocket expenditures, plus sales tax if required by Florida law. In the event unusually large costs or advances are anticipated, the GB Firm reserves the right to require a cost deposit from City prior to undertaking the expenditure of funds on City's behalf. Out-of-pocket expenses incurred in connection with this matter include, without limitation, application fees, filing and witness fees, travel, sheriff's fees, deposition and investigative expenses, photocopying, express mail, telephonic transmissions, court costs, long distance phone charges, and all other expenses which in the opinion of the GB Firm are necessary to the proper advancement of the City's representation. City authorizes the GB Firm to withdraw any of City's funds in the trust account to pay the GB Firm's fees or expenses, except to the extent that such funds in the trust account are allocated for other purposes. Any deposit is refundable to the extent that it is not expended on City's case.
  - 4.6. The GB Firm should receive prior approval, if possible, from City Council for out-of-town travel or training prior to submitting costs to the City for payment, and shall be governed by the same City travel and training reimbursement policies as City employees.
  - 4.7. The City shall provide in kind support for extraordinary requirements relating to postage, copying and record storage.
5. **Representation of Private Clients in Matters Involving City.**
- 5.1. Attorneys have advised City, and City is aware, that Attorneys represent not only City, but also private persons and entities (collectively, "Other Clients") in the municipal limits of City and surrounding areas, and that occasionally, such Other Clients – and particularly developers or contractors – have relationships with, or seek approvals from, City.
  - 5.2. City retains Attorneys solely concerning the Ongoing Matters set forth in paragraph 1. Without limiting the foregoing, Attorneys are not retained as "local government attorneys"



as defined in Section 112.313(16), Florida Statutes, as they shall not routinely serve as the attorney for the City.

- 5.3. Therefore, consistent with Section 112.313(16), Florida Statutes, Attorneys are not precluded from representing a private client in matters involving City, including in connection with applications to be considered by City Council, other City boards or City staff, provided that, in doing so, Attorneys comply with all provisions of Florida law and the Rules of the Florida Bar, including those set forth in Rules 4-1.9 through 4-1.11 of the Rules of Professional Conduct.
- 5.4. Consistent with the foregoing, Attorneys shall not represent a private client in connection with a matter in which Attorneys participated personally and substantially as a City Attorney or Assistant City Attorney, unless City Council gives its informed consent, confirmed in writing, to the representation.
  - 5.4.1. City agrees that, notwithstanding any assistance that Attorneys may have provided in connection with the drafting of City's Comprehensive Plan or City Code, Attorneys did not "participate personally and substantially," in connection with the provisions of the Comprehensive Plan or City Code. Thus, Attorneys are not precluded from representing private clients in connection with requests for Comprehensive Plan amendments, zoning changes or other applications for approvals under the City Code.
  - 5.4.2. Notwithstanding the foregoing, in the event that City (including City staff) believes that any matter in which Attorneys seek to represent a client does involve a manner in which Attorneys participated personally and substantially, City shall advise Attorneys, and Attorneys shall, except as approved by City Council, not represent such client in connection with such matter.
  - 5.4.3. Further, Attorneys may request City, including City staff, to advise Attorneys whether they believe that Attorneys participated personally and substantially in connection with any matter in which Attorneys propose to represent a private client and are entitled to rely upon such advice.
6. **Amendment.** This Agreement may be amended at any time with the mutual consent of City and Attorneys. Amendments of this Agreement shall be in writing, executed by all participants.

INTENTIONAL PAGE BREAK – SIGNATURES FOLLOW

Therefore, City and Attorneys agree as set forth above.

**ATTEST:**

**CITY**

City of Ocala, a Florida municipal corporation

*Angel B. Jacobs*

Angel B. Jacobs  
City Clerk

*Ire Bethea Sr.*

Ire Bethea  
President, Ocala City Council

Approved as to form and legality

*William E. Sexton*

William E. Sexton  
City Attorney

**ATTORNEYS**

GOODING & BATSEL, PLLC, a Florida  
professional limited liability company

By: *W. James Gooding III*

W. James Gooding III, individually and as  
Manager

By: *Robert W. Batsel, Jr.*

Robert W. Batsel, Jr., individually and as  
Manager

<b>TITLE</b>	FOR SIGNATURES - Agreement Concerning Continued Legal.....
<b>FILE NAME</b>	Agreement for Att...ev 10-07-2022.pdf
<b>DOCUMENT ID</b>	c968b034d707f292842c91b5f445e7adaf60ec29
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## Document History



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Sent for signature to William E. Sexton (wsexton@ocalafl.org), W. James Gooding III (jgooding@ocalalaw.com), Robert W. Batsel, Jr. (rbatsel@lawyersocala.com), Ire Bethea Sr. (ibethea@ocalafl.org) and Angel Jacobs (ajacobs@ocalafl.org) from biverson@ocalafl.org  
IP: 216.255.240.104



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IP: 24.250.250.64



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