

Jim Cox

From: "Jim Cox" <jlscproperties@gmail.com>
Date: Friday, March 07, 2014 1:24 PM
To: "Benjamin Stevenson" <box353@gmail.com>; "Dan Smith" <dbsmith2@bellsouth.net>; "Liz Hewson" <elizabethkhewson@gmail.com>; "Terry Preston" <terry@ehsmadeeasy.com>
Cc: "Lila Cox" <lilascox9@gmail.com>; "Danny Kepner" <dkepner@shellfleming.com>
Subject: Tax Litigation

PBA has been receiving many questions about the Waiver of Conflict of Interest form that Shell Fleming sent out three weeks ago. Terry asked me to look at it and see what kind of advice we could give our members. This is touchy, as we cannot give legal advice.

I spoke with Danny Kepner this morning, and also spoke with Mike Stebbins and Benjamin Stevenson.

I explained to Danny that these was a lot of confusion about the letter. He said he had received the Waiver from about 824 of the 2,079 plaintiffs so far, and if he did not receive the Waiver from the other 1,250 plaintiffs soon (March 31?), he would be sending each of them a letter withdrawing from representing them further. I told him I was not aware of a deadline to respond, and that I recommend he send a clarifying letter to the 1,250 who have not responded, giving them a deadline and explaining the consequences of signing or not signing.

If a plaintiff SIGNS the waiver,

1. He/she does NOT give up their right to sue Shell Fleming for malpractice, if that should be necessary.
2. Shell Fleming would continue to represent the plaintiff if additional findings become necessary for the 2004 – 2012 lawsuits
3. Shell Fleming will file a 2014 challenge if the Supreme Court fails to rule by this fall, unless the plaintiff directs otherwise.

If a plaintiff does NOT SIGN the Waiver by _____ date,

1. Shell Fleming will have to withdraw from representing the plaintiff
2. If additional filings become necessary for the 2004 – 2012 lawsuits, plaintiff would need to engage other counsel.
3. If the Supreme Court fails to rule by this fall, plaintiff will need to engage other counsel to challenge the 2014 taxes and protect their interests in the 2004 – 2012 cases.

Danny thanked me for my thoughts, and will seriously consider sending such a letter.

For the PBA, this would be better than having PBA be seen as giving legal advice. If Danny decides not to issue the letter, I think we would need to send our PBA members an e-mail with the facts stated above and emphasize that we are not giving legal advice and that each plaintiff needs to make their own decision.

Jim Cox

3/7/2014

WAIVER OF CONFLICT OF INTEREST FOR CONTINUED REPRESENTATION

302 SCH 5-DIGIT 32562
Harry J. Hewson
Elizabeth K.
1203 Ariola Dr
Gulf Breeze, FL 32561-2209



PARCEL NUMBERS:

If you wish for us to continue to represent you in the litigation challenging taxation of Pensacola Beach leasehold property, we would be pleased to do so, subject to the following understandings.

Although the interests of you and our law firm in this matter are generally consistent, it is recognized and understood that differences may exist or become evident during the course of our representation, because you have a potential attorney malpractice claim against our firm if the Florida Supreme Court rules that beach property cannot be taxed. Notwithstanding these possibilities, you have determined that it is in your best interest to have this law firm continue to represent you in connection with the challenge to ad valorem taxation of Pensacola Beach leasehold property.

Accordingly, this confirms your agreement that we continue to represent you in connection with the above-described matter.

If you agree that the foregoing accurately reflects our understanding, please print your name where indicated, sign, date and return to Danny Kepner the enclosed copy of this Waiver, by U.S. Mail, by fax (850) 435-1074, or by email to his assistant: jriesau@shellfleming.com.

Print: _____

Client Name

Client Signature

Date

**NOTE: IF THERE HAS BEEN ANY CHANGE IN YOUR CONTACT INFORMATION,
PLEASE PROVIDE UPDATED CONTACT INFORMATION ALONG WITH THIS
FORM.**

SHELL, FLEMING, DAVIS & MENGE
ATTORNEYS AT LAW

GEOFFREY P. BRODERSEN
CHARLES L. HOFFMAN, JR.
LL.M. in Taxation
DANNY L. KEPNER
Board Certified Civil Trial Lawyer
LOUIS A. (TRIP) MAYGARDEN, III
STEPHEN B. SHELL
Board Certified Real Estate Lawyer
TOMMY G. SMITH

226 PALAFOX PLACE
NINTH FLOOR, SEVILLE TOWER
PENSACOLA, FLORIDA 32502

DANNY L. KEPNER

TELEPHONE ♦ (850) 434-2411 Ext. 129
FACSIMILE ♦ (850) 435-1074
E-MAIL ♦ dkepner@shellfleming.com

February 14, 2014

Of Counsel:
THURSTON A. SHELL
FLETCHER FLEMING

ROLLIN D. DAVIS, JR.
(1932-2002)
M.J. MENGE
(1936-2007)

MAIL TO:
POST OFFICE BOX 1831
PENSACOLA, FLORIDA 32591-1831

RE: Potential Conflict of Interest

Dear Client:

As noted in my recent letter, I made a mistake and the 2013 filing deadline was missed.* Because of this error, a conflict of interest now exists between my firm and our clients in this litigation. Consequently, the Florida Bar rules require that the firm obtain your consent for our continued representation of you.

My firm does not believe that there is a substantial risk that the representation of you will be materially limited by a personal interest of me or the firm. We believe the firm can provide competent and diligent representation to you since the representation is not prohibited by law, provided that you give your informed consent, confirmed in writing signed by you, that you still desire our representation. At this point, there is no significant action to be taken on this case before the Supreme Court rules. Any action that may be taken after the ruling is announced, will pertain to motions for re-hearing or additional matters depending on the overall outcome of the case.

We have enclosed herein a "Waiver of Conflict of Interest for Continual Representation," for your consideration. If you agree with our staying on the case, please sign and date the waiver document and return it to us. Without your written consent, we have been told by the Bar we will be required to withdraw from representing you. Obviously, you can retain other counsel.

Whether you agree to stay with us or not, please accept our grateful thanks for allowing us to represent you to this point.

Very truly yours,
SHELL, FLEMING, DAVIS & MENGE



Danny L. Kepner

DLK/jer
Enclosure

***NOTE: IF YOU DID NOT RECEIVE A COPY OF THE FIRST LETTER** dated January 30, 2014, please contact my assistant, Juelee and she will promptly forward one to you.