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**GOREN CHEROF
DOODY & EZROL P.A.**
ATTORNEYS AT LAW

GCDE ETHICS ADVISORY OPINION

To: Commissioner Jason Joffe

From: Michael D. Cirullo, City Attorney *MDC*
Jacob G. Horowitz, Assistant City Attorney *JGH*

Date: August 9, 2016

Re: City of Lighthouse Point (“City”) / Code of Ethics – Advisory Opinion

I. ISSUE AND FACTS PRESENTED

You are an attorney licensed to practice law in the State of Florida. You have indicated that you participated in an “in house” National Institute of Trial Advocacy (“NITA”) 2.5 day program hosted by Becker Poliakoff (“BP”). You were invited to attend the program by BP’s managing partner, and you received CLE credit for your attendance. You have advised that you are currently co-counsel in a pending litigation with the managing partner, and that your professional relationship with the partner pre-dates your election to the City Commission. The event was not open to the public, but other non-BP lawyers were also invited to attend the program, which took place at the Riverside Hotel on Las Olas. In addition to professional training, you have indicated that you also received breakfast, lunch and dinner, including an “off-site” dinner during your participation at the program. You were not provided with hotel accommodations. BP is not a lobbyist, vendor or contractor of the City.

Unrelated to the NITA event, you have also been invited by the BP managing partner to attend a dinner event at Morton’s Steakhouse hosted by BP which will include a presentation by a BP client who is the president of the Brady Center to Prevent Gun Violence.

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Please reply to Fort Lauderdale Office

Fort Lauderdale Office
3099 E. Commercial Blvd., Suite 200, Fort Lauderdale, FL 33308. T 954-771-4500 | F 954-771-4923

Delray Beach Office
76 N.E. Fifth Avenue, Delray Beach, FL 33483. T 561-276-9400

www.cityatty.com

You have asked the City Attorney to provide you with an advisory opinion examining whether you may accept the “gift” from BP under the Broward County Code of Ethic for Elected Officials (“Code of Ethics”) or whether you must reimburse BP for all costs associated with the program.

II. ANSWER

Based on the information provided, the training/CLE credits as well as all meals provided by BP, including the dinner event, would **legally be considered a “gift,”** as defined by Florida law. The nature and extent of your professional relationship with BP and its managing partner suggests that this gift was given to you in your personal/nonofficial capacity. Therefore, in accordance with Section 1-19(C)(1)(c) of the Code of Ethics, you **are legally permitted** to accept the gift from BP, subject to the reporting requirements set forth in Section 112.3148 F.S.

III. ANALYSIS

The Code of Ethics expressly incorporates the definition of “gift” from Section 112.312, F.S. Participation in CLE training, as well as food and beverage is legally considered a “gift” pursuant to this definition. For purposes of this analysis, the CLE credits, food, beverages, the dinner speaker event, any other items of value provided by BP shall be collectively referred to as the “Gift.”

The Code of Ethics has a \$50.00 limit on gifts that an elected official may accept in their “official capacity” and provides that “the \$50.00 limitation **does not** apply to gifts given to Elected Officials in their personal (nonofficial) capacity.” Such personal capacity gifts are still subject to the reporting requirements of Section 112.3148, F.S.

You have advised that BP and its managing partner are co-counsel with you in a pending litigation matter in which you are involved as part of your outside/concurrent employment. Your professional relationship with BP is entirely unrelated to your position as an elected official. Further, this relationship existed prior to your election to the City Commission. Based on these factors, it is our opinion that the Gift from BP was offered to you in your **personal/nonofficial** capacity.

As noted, you may accept gifts in your personal/nonofficial capacity, subject to the disclosure requirements of Section 112.3148, F.S. This section requires the quarterly disclosure of all gifts received by reporting individuals that have a value in excess of \$100.00. The Form 9 quarterly gift disclosure is promulgated by the Florida Commission on Ethics, and must be filed by the end of the quarter following the calendar quarter for which the form is filed. A copy of the Form 9 is attached for your convenience.

Please be advised that the Code of Ethics provides additional limitations on gifts that elected officials may accept from lobbyists, vendors and contractors. These restrictions do not apply since BP does not have any such relationships with the City.

IV. CONCLUSION

Based on the foregoing, it is the opinion of the City Attorney's Office that you **are legally permitted** to accept CLE training/credits, as well as food and beverage, including the dinner speaker event, from Becker Poliakoff in your personal/nonofficial capacity, subject to the disclosure requirements set forth in Section 112.3148, F.S.

This advisory opinion is issued pursuant to Section 1-19(c)(8) of the Code of Ethics, and may be relied upon by the individual who made the request. This analysis is limited solely to the facts presented. Within fifteen (15) days of receiving this opinion, a copy must be sent in a searchable "pdf" format to ethicsadvisoryopinions@broward.org for inclusion in the searchable database of advisory opinions maintained by the County.

Please contact our office if there is any additional information that we can provide.

Form 9

QUARTERLY GIFT DISCLOSURE (GIFTS OVER \$100)

LAST NAME -- FIRST NAME -- MIDDLE NAME:			NAME OF AGENCY:	
MAILING ADDRESS:			OFFICE OR POSITION HELD:	
CITY:	ZIP:	COUNTY:	FOR QUARTER ENDING (CHECK ONE):	YEAR
			<input type="checkbox"/> MARCH <input type="checkbox"/> JUNE <input type="checkbox"/> SEPTEMBER <input type="checkbox"/> DECEMBER	20__

PART A — STATEMENT OF GIFTS

Please list below each gift, the value of which you believe to exceed \$100, accepted by you during the calendar quarter for which this statement is being filed. You are required to describe the gift and state the monetary value of the gift, the name and address of the person making the gift, and the date(s) the gift was received. If any of these facts, other than the gift description, are unknown or not applicable, you should so state on the form. As explained more fully in the instructions on the reverse side of the form, you are not required to disclose gifts from relatives or certain other gifts. **You are not required to file this statement for any calendar quarter during which you did not receive a reportable gift.**

DATE RECEIVED	DESCRIPTION OF GIFT	MONETARY VALUE	NAME OF PERSON MAKING THE GIFT	ADDRESS OF PERSON MAKING THE GIFT

CHECK HERE IF CONTINUED ON SEPARATE SHEET

PART B — RECEIPT PROVIDED BY PERSON MAKING THE GIFT

If any receipt for a gift listed above was provided to you by the person making the gift, you are required to attach a copy of that receipt to this form. You may attach an explanation of any differences between the information disclosed on this form and the information on the receipt.

CHECK HERE IF A RECEIPT IS ATTACHED TO THIS FORM

PART C — OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed herein and on any attachments made by me constitutes a true accurate, and total listing of all gifts required to be reported by Section 112.3148, Florida Statutes.

SIGNATURE OF REPORTING OFFICIAL

STATE OF FLORIDA
COUNTY OF _____
Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____
by _____

(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)
Personally Known _____ OR Produced Identification
Type of Identification Produced _____

PART D — FILING INSTRUCTIONS

This form, when duly signed and notarized, must be filed with the Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317-5709; physical address: 325 John Knox Road, Building E, Suite 200, Tallahassee, Florida 32303. The form must be filed no later than the last day of the calendar quarter that follows the calendar quarter for which this form is filed (For example, if a gift is received in March, it should be disclosed by June 30.)

PART E — INSTRUCTIONS

WHO MUST FILE THIS FORM?

- Any individual, including a candidate upon qualifying, who is required by law to file full and public disclosure of his financial interests on Commission on Ethics Form 6, except Judges. (See Form 6 for a list of persons required to file that form.)
- Any individual, including a candidate upon qualifying, who is required by law to file a statement of financial interests on Commission on Ethics Form 1. (See Form 1 for a list of persons required to file that form.)
- Any procurement employee of the executive branch or judicial branch of state government. This includes any employee of an officer, department, board, commission, council, or agency of the executive branch or judicial branch of state government who has participated in the preceding 12 months through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in s. 287.012, F.S., if the cost of such services or commodities exceeds or is expected to exceed \$10,000 in any fiscal year.

NOTE: Gifts that formerly were allowed under Section 112.3148, F.S., now may be prohibited under Sections 11.045, 112.3215, and 112.31485, F.S.

WHAT GIFTS ARE REPORTABLE?

- Any gift (as defined below) you received which you believe to be in excess of \$100 in value, **EXCEPT**:
 - 1) Gifts from the following RELATIVES: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, a person who is engaged to be married to you or who otherwise holds himself or herself out as or is generally known as the person whom you intend to marry or with whom you intend to form a household, or any other natural person having the same legal residence as you.
 - 2) Gifts which you are prohibited from accepting by Sections 112.313(4) and 112.3148(4), Florida Statutes. These include any gift which you know or, with the exercise of reasonable care, should know was given to influence a vote or other action in which you are expected to participate in your official capacity; it also includes a gift worth over \$100 from a vendor doing business with your agency, a political committee ~~or committee of continuous existence~~ under the elections law, from a lobbyist who lobbies your agency or who lobbied your agency within the past 12 months, or from a partner, firm, employer, or principal of such a lobbyist.
 - 3) Gifts worth over \$100 for which there is a public purpose, given to you by an entity of the legislative or judicial branch, a department or commission of the executive branch, a water management district created pursuant to s. 373.069, South Florida Regional Transportation Authority, ~~the Technological Research and Development Authority~~, a county, a municipality, an airport authority, or a school board; or a gift worth over \$100 given to you by a direct-support organization specifically authorized by law to support the governmental agency of which you are an officer or employee. These gifts must be disclosed on Form 10.
- A "gift" is defined to mean that which is accepted by you or by another in your behalf, or that which is paid or given to another for or on behalf of you, directly, indirectly, or in trust for your benefit or by any other means, for which equal or greater consideration is not given within 90 days after receipt of the gift. A "gift" includes real property; the use of real property; tangible or intangible personal property; the use of tangible or intangible personal property; a preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin; forgiveness of an indebtedness; transportation (unless provided to you by an agency in relation to officially approved governmental business), lodging,

or parking; food or beverage; membership dues; entrance fees, admission fees or tickets to events, performances, or facilities; plants, flowers, or floral arrangements; services provided by persons pursuant to a professional license or certificate; other personal services for which a fee is normally charged by the person providing the services; and any other similar service or thing having an attributable value and not already described.

- The following are **NOT** reportable as gifts on this form: salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with your employment, business, or service as an officer or director of a corporation or organization; contributions or expenditures reported pursuant to the election laws, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party; an honorarium or an expense related to an honorarium event paid to you or your spouse; an award, plaque, certificate, or similar personalized item given in recognition of your public, civic, charitable, or professional service; an honorary membership in a service or fraternal organization presented merely as a courtesy by such organization; the use of a governmental agency's public facility or public property for a public purpose. Also exempted are some gifts from state, regional, and national organizations that promote the exchange of ideas between, or the professional development of, governmental officials or employees.

HOW DO I DETERMINE THE VALUE OF A GIFT?

- The value of a gift provided to you is determined using the actual cost to the donor, and, with respect to personal services provided by the donor, the reasonable and customary charge regularly charged for such service in the community in which the service is provided. Taxes and gratuities are not included in valuing a gift. If additional expenses are required as a condition precedent to the donor's eligibility to purchase or provide a gift and the expenses are primarily for the benefit of the donor or are of a charitable nature, the expenses are not included in determining the value of the gift.
- Compensation provided by you to the donor within 90 days of receiving the gift shall be deducted from the value of the gift in determining the value of the gift.
- If the actual gift value attributable to individual participants at an event cannot be determined, the total costs should be prorated among all invited persons. A gift given to several persons may be attributed among all of them on a pro rata basis. Food, beverages, entertainment, etc., provided at a function for more than ten people should be valued by dividing the total costs by the number of persons invited, unless the items are purchased on a per-person basis, in which case the per-person cost should be used.
- Transportation should be valued on a round-trip basis unless only one-way transportation is provided. Round-trip transportation expenses should be considered a single gift. Transportation provided in a private conveyance should be given the same value as transportation provided in a comparable commercial conveyance.
- Lodging provided on consecutive days should be considered a single gift. Lodging in a private residence should be valued at \$44 per night.
- Food and beverages consumed at a single sitting or event are a single gift valued for that sitting or meal. Other food and beverages provided on a calendar day are considered a single gift, with the total value of all food and beverages provided on that date being the value of the gift.
- Membership dues paid to the same organization during any 12-month period are considered a single gift.
- Entrance fees, admission fees, or tickets are valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater. If an admission ticket is given by a charitable organization, its value does not include the portion of the cost that represents a contribution to that charity.
- Except as otherwise provided, a gift should be valued on a per occurrence basis.

FOR MORE INFORMATION

The gift disclosures made on this form are required by Sec. 112.3148, Florida Statutes. Questions may be addressed to the Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317-5709 or by calling (850) 488-7864; information is provided at: www.ethics.state.fl.us.