



# MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

JOSE SMITH CITY ATTORNEY

## LETTER TO COMMISSION

TO: Mayor Matti Herrera Bower and Members of the City Commission

CC: Jorge Gonzalez, City Manager

FROM: Jose Smith, City Attorney

DATE: December 10, 2008

SUBJECT: **Request by the law firm of Greenberg Traurig, P.A. for a Waiver of Conflict of Interest in representing the City of Miami Beach, on a Pro Bono basis, relative to obtaining temporary visas (or other authorizations, as required) for foreign national entertainers who will be performing in the City's "Sleepless Night 2009" special event.**

The law firm of Greenberg Traurig has requested that the City grant a waiver of conflict of interest relative to that firm's representation of the City, on a Pro Bono basis, to obtain temporary visas (or other authorizations, as required) for entertainers who are foreign nationals, and who would be contracted by the City to perform as part of, and during, the City's "Sleepless Night 2009" special event, to be held in various locations throughout the City of Miami Beach on November 7, 2009.

Greenberg Traurig's lead counsel (and primary point of contact) to the City would be Mr. Oscar Levin, Esq., whose specialization and area of practice with the firm is in immigration and naturalization law. As stated, Mr. Levin has graciously agreed to represent the City, on a Pro Bono basis, with the City's only costs limited to out of pocket disbursements (such as filing fees with the immigration service and the U.S. State Department, evaluation or no objection fees – if required, etc). His resume is attached.

If the retention is approved, Mr. Levin would work directly with the City's Arts Culture and Entertainment Division, and any City out-of-pocket costs (or other costs) would be paid by that department.

Agenda Item C7BB  
Date 12-10-08

The Florida Rules of Professional Conduct provide as follows:

**Rule 4-1.7 Conflict of Interest; general rule**

**(a) Representing Adverse Interests.** A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client; and

(2) each client consents after consultation.

Any work by Mr. Levin and/or Greenberg Traurig on the instant matter would be limited to providing immigration/naturalization legal services exclusively for the 2009 Sleepless Night event.

The reason this waiver has been requested, is that other attorneys from Greenberg Traurig (primarily from the firm's Land Use division) have ongoing matters which require, or may require, them to appear before (i) the City Commission and/or (ii) certain City boards (including without limitation, the City's land use boards); or (iii) meet with members of the City Administration (on behalf of the firm's clients) This waiver, if the Commission wishes to grant it, may be accomplished by a motion approved by a majority vote of the Commission.

The Florida Bar has ruled that a law firm representing a municipality may ethically represent private clients before municipal boards or committees in unrelated matters, even if adverse, provided a waiver of conflict is granted. Opinion 75-33 is attached.

COMMISSION PRECEDENT

On May 5, 2004, the City Commission considered a request by Akerman Senterfitt for a waiver of conflict with regard to the firm's representation of the Wallace Corporation before the Division of Administrative Hearings ("DOA") in a challenge to the City's coastal construction permit for the Beach Walk behind the Richmond Hotel. The City Commission voted to deny the waiver.

Soon thereafter, on July 7, 2004, the City Commission considered a similar request by Boies, Schiller & Flexner, LLP for a waiver of conflict with regard to that firm's representation of Star Island Entertainment, Inc. (Mansion Nightclub) before the City's Special Master. At that time, the firm was representing the City in a Harris Act claim. (Mirabella) The City Commission denied the waiver request.

On May 10, 2006, Akerman Senterfitt sought a waiver of conflict to represent Cirque du Soleil ("Cirque") in its negotiations with the City. Contrary to the prior situations, Akerman Senterfitt stated that its representation of Cirque would not involve any adverse administrative and/or legal proceedings. The representation would be limited to contract negotiations. The City Commission approved the waiver.

#### CONCLUSION

Since the City will be saving significant legal fees in having the firm perform these services on a pro-bono basis, and Greenberg Traurig is not currently involved in any litigation adverse to the city, I recommend that the waiver be granted.

## people biography

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### Experience

Co-Chair and Founder, Immigration Department

### Education

J.D., University of Florida Levin College of Law, 1978

B.A., University of Florida, 1975  
Phi Beta Kappa

### Admitted to Practice

Florida

U.S. Court of Appeals, Eleventh Circuit

U.S. District Court for the Southern District of Florida

### Languages

Spanish



### Oscar Levin

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Board Certified, Immigration and Nationality Law, Mr. Levin focuses his practice on business immigration and international law matters.

### Areas of Concentration

Immigration and international law

### Significant Representations

Representation of U.S. and foreign companies and education of in-house legal personnel

Assistance in obtaining foreign visas and work authorization for employees assigned outside the United States

Federal Court litigation

Policy advisor to international business organizations

Advisor to private and non-government organizations on pending and implemented immigration legislation

### Professional & Community Involvement

Member, The Florida Bar

Member, American Immigration Lawyers Association (AILA)

Member, Dade County Bar Association

The Florida Bar, Immigration and Nationality Law Certification Committee

Chair, 2002

Member, two-year appointment effective 2004

Member, three-year appointment effective 2001

Inaugural member, 1995 - 1997

Active in providing pro-bono services to the community at large

Barry University

Michael Ann Russell Jewish Community Service

Orphaned children adopted in the United States

Assistance to many children and elderly persons requiring immigration help on a regular basis

Representation of witness testifying before the United Nations High Commission on Human

**Rights**

Assist federal, state and local elected officials in pro-bono work for their constituents

**Awards & Recognition**

Listed, *Chambers & Partners USA Guide*, an annual listing of the leading business lawyers and law firms in the world, 2006, 2007 and 2008 editions

AV® Peer Review Rated (CV, BV and AV are registered certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies.)

Selected by *Super Lawyers* magazine, 2006 - 2008

Listed, "The International Who's Who of Corporate Immigration Lawyers," 2005 - 2008

Recipient, American Immigration Lawyers Association 1997 pro-bono award on behalf of the Counsel for Cuban Detainees

Previously co-chaired the faculty and steering committee of the Annual Immigration Law Update Conference sponsored by the Florida Bar Continuing Legal Education Committee and the South Florida Chapter of AILA

**Articles, Publications, & Lectures****Articles**

Interviewed, *Newsweek en Español*, on US immigration law

**Speeches**

AILA National and State Conferences

Florida Bar Continuing Legal Education Programs

Chamber of Commerce events

**Associated News & Events****Press Releases**

- 07.07.08 More than 130 Greenberg Traurig Attorneys Recognized in 2008 Chambers & Partners USA Guide
- 06.19.07 More Than 100 Greenberg Traurig Attorneys Included in 2007-2008 Chambers & Partners USA Guide
- 01.23.07 Greenberg Traurig LLP Attorneys and Practice Areas Recognized in 2007 Chambers Global Guide
- 06.13.06 More than 70 Greenberg Traurig LLP Attorneys Included in 2006-2007 Chambers & Partners USA Guide
- 03.07.05 Greenberg Traurig's Oscar Levin Named to Who's Who Legal Ranking
- 05.08.02 Greenberg Traurig LLP Attorney Oscar Levin Appointed Chair of The Florida Bar Immigration and Nationality Law Certification Committee



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GT Strategic Alliances: Berlin \* Brussels \* London \* Milan \* Rome \* Tokyo

## Member Services

### Ethics Opinions

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**OPINION 75-33**  
**January 19, 1976**

A law firm representing a municipality in labor relations matters may ethically represent private clients adverse to the municipality and appear before municipal boards or bodies in matters unrelated to labor relations.

**CPR:** Canon 5, Canon 9

**Opinions:** 59-25, 60-12, 65-42, 69-21

Vice Chairman Sullivan stated the opinion of the committee:

A law firm in Florida advises:

1. A municipality with approximately 4,000 employees has a full-time city attorney and both full-time and part-time assistant city attorneys. One of the full-time assistants works exclusively for and is answerable only to the City Council. His assignment is to review legal advice given to the Council by the city attorney and the other assistant city attorneys.
2. Upon occasion, the municipality retains private attorneys to handle matters requiring special expertise. The Mayor initiates and recommends to the City Council the hiring of special counsel. The Council in public session discusses all details regarding such employment - the nature of the legal work, the term of employment, the fee arrangement - and then approves or rejects the Mayor's recommendation.
3. A labor organization, proceeding under Chapter 447, Florida Statutes, has filed a petition seeking representation and bargaining rights for a specific group of municipal employees and has requested a hearing to determine the legal question of the appropriate unit and for a time, date and place for an election.
4. The City Attorney is of the opinion, in which the Mayor and City Council join, that his office does not have the expertise to represent the municipality in the matter. The Mayor and City Council have determined that the municipality must retain special counsel with expertise in the area of public employer labor relations and, to protect its interests, must do so immediately. They have asked the law firm to accept this representation.
5. The law firm is composed of more than 30 attorneys, three of whom specialize in labor relations. The firm is representing a regular client in

a condemnation action which the municipality is prosecuting. The attorney handling the condemnation action for the firm will not be involved in the labor matter. None of the labor lawyers is involved in any other matter pending before the municipality.

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6. The Mayor and City Council and the client in the condemnation proceeding have been fully informed and have indicated their desire that the firm proceed with both matters.

The law firm asks:

1. Whether the firm may ethically represent the municipality before the Public Employees Relations Commission (see Section 447.05, Florida Statutes) in the matter involving the unit of employees sought.
2. If the firm undertakes the representation in the labor matter, would other attorneys in the firm be barred from appearing before other boards or bodies of the municipal government in matters totally unrelated to the labor matters, assuming disclosure to and consent by both those clients and the municipality?

A majority of the Committee answers "Yes" to the first question and "No" to the second.

In considering these inquiries we are, of course, dealing with possible conflict of interest and Canon 5 of the Code of Professional Responsibility. In Opinions 59-25, 60-12, 65-42 and 69-21 we dealt with situations where an attorney or a law firm regularly represented a public body and sought to represent private clients regularly before that body. We disapproved the practice.

While some members of the Committee believe that those opinions are too restrictive and should be re-examined, we need not go that far. The proposed representation of the municipality in the labor matter is for a limited purpose only. The Committee majority believes that the legal issues in the labor matter and the condemnation case are not so related that independent professional judgment in behalf of one client will be or is likely to be adversely affected by the acceptance of such employment or continuance of such multiple employment.

Because the matters in which the law firm proposes to represent other clients before boards or other bodies of the municipality are totally unrelated to the labor matter, the Committee majority is of the same opinion regarding representation of those clients.

We believe that the government-in-the-sunshine laws which require advance public disclosure of the dual representation and the terms of the law firm's representation of the municipality eliminate here any problems of appearance of professional impropriety under Canon 9. The condemnation action was already in progress when the

municipality asked the law firm to represent it in the labor matter. While it does not appear that the law firm has any current matters before any boards or agencies of the municipality, the firm has represented regular clients before such boards and agencies in the past.

It seems to us that the law firm is requesting only the right to continue with its regular practice if it agrees to represent the municipality in the specialized field pursuant to the municipality's request. As applied to the inquiries here, we recede from any suggestion in Opinion 60-12 that a public body cannot agree to such dual representation.

One Committeeman believes the dual representation is improper for the reasons stated in our prior opinions.

[Revised: 06-01-2005 ]



**RESOLUTION TO BE SUBMITTED**