

File No. 2810 — February 21, 2024

FINANCIAL DISCLOSURE

ATTORNEY WORKING FOR MULTIPLE MUNICIPALITIES IN VARIOUS CAPACITIES

To: *Lonnie N. Groot, Esq. (Daytona Beach Shores)*

SUMMARY:

An attorney associated with a firm that has been hired to provide legal services to a city is not required to file CE Form 1, "Statement of Financial Interests," unless he is the person regarded as the municipal attorney for that city. A local hearing officer is not required to file CE Form 1. Referenced are CEO 75-101, CEO 77-138, CEO 08-27, and CEO 19-15.

QUESTION 1:

Will an attorney associated with a firm that has been hired to provide legal services to a city who performs legal services for the city be required to file CE Form 1, "Statement of Financial Interests," if he is not the person regarded to be the municipal attorney for that city?

This question is answered in the negative.

You are an attorney who performs legal services for three cities in Florida. You perform legal services for the City of Sanford and the Town of Lady Lake through your business relationship with Stenstrom, McIntosh, Colbert, and Whigham, P.A. ("Stenstrom") and for the City of DeLand through your business relationship with Paul, Elkind, Branz and Paul, P.A. ("Paul"). You work as an independent contractor for both firms.

You state that the Stenstrom law firm has been retained by the cities of Sanford, Oviedo and Webster¹ to handle their legal work and that a member of the firm, other than you, is the attorney who is regarded as the "city attorney" for those cities. You state that you only attend Sanford City Commission meetings if the person regarded as the City Attorney is ill or has a conflict. You attend most of Sanford's Planning and Zoning Commission and Historic Preservation Board meetings, but someone else covers its other boards and Sanford's non-land use litigation. Sanford hires special counsel for some matters, as well. You state that you handle most of the routine tasks related to the City of Sanford's matters, such as drafting documents. You also serve as legal counsel to the Town of Lady Lake's Disciplinary Arbitration Panel through your relationship with Stenstrom.

You have performed legal services for the City of DeLand through the Paul firm and have not done any work for the firm or the City of DeLand in approximately a year, but you remain under contract. You state that you have covered city commission meetings in the absence of the person regarded as the City Attorney and that you have handled some ad hoc projects. You state that Paul has been retained as the City Attorney for DeLand (in an independent contractor relationship) and that a member of the firm, other than you, is regarded as DeLand's City Attorney. You state that this person has always performed the bulk of the work with regard to DeLand. You note that you are not considered the "city attorney" for any of the above-referenced cities or towns.

In addition, you serve as a special magistrate (hearing officer) for the City of Cocoa Beach, a position for which you have submitted a resignation effective the end of March, and you are seeking a special magistrate (hearing officer) position with Flagler County.

¹ Although Stenstrom continues to perform work for Oviedo and Webster, you state you have not done work for those municipalities recently. Therefore, we do not address your relationship to those municipalities any further.

Section 112.3145, Florida Statutes, sets forth the list of persons required to file a CE Form 1, Statement of Financial Interests ("Form 1"), with the Commission. Among those persons are "[e]ach state or local officer . . . and each specified state employee." § 112.3145(2)(b), Fla. Stat. Each of these three categories is defined with a list of positions or public responsibilities. Included in the list of "local officers" required to file are "municipal attorney[s]."² § 112.3145(1)(a)3., Fla. Stat.

When it comes to the requirement that city attorneys have to file financial disclosure, Section 112.3145(1)(a)3., Florida Statutes, does not differentiate between:

. . . an enumerated city attorney who is a city officer, a city attorney who is a city employee, an attorney retained via a contract directly with the attorney in his or her individual capacity, or an attorney whose firm was hired via contract when that attorney does the majority of the City's work for the firm.

See CEO 08-27.

² Section 112.3145(1)(a), Florida Statutes, provides, in relevant part:

- (1) For purposes of this section, unless the context otherwise requires, the term:
 (a) "Local officer" means:

. . .

3. Any person holding one or more of the following positions: mayor; county or city manager; chief administrative employee of a county, municipality, or other political subdivision; **county or municipal attorney**; finance director of a county, municipality, or other political subdivision; chief county or municipal building code inspector; county or municipal water resources coordinator; county or municipal pollution control director; county or municipal environmental control director; county or municipal administrator, with power to grant or deny a land development permit; chief of police; fire chief; municipal clerk; district school superintendent; community college president; district medical examiner; or purchasing agent having the authority to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY TWO, on behalf of any political subdivision of the state or any entity thereof.

(Emphasis added.)

There is also no distinction, exemption, or exception in the statute for persons who serve as city attorneys on an independent contractor basis. In CEO 75-101, we said that city attorneys who are hired as independent contractors are required to file an annual statement of financial interests. In CEO 77-138, we also found that an attorney engaged in the private practice of law was, nevertheless, a "public officer" required to file financial disclosure by virtue of having been retained as the city attorney. In CEO 19-15, we said that a private attorney who routinely provides legal services to a town and who renders more legal services to the town than any other attorney is a "local officer" for purposes of Section 112.3145, Florida Statutes, and, thus, required to file an annual statement of financial interests even though he had no ongoing contractual obligation to serve as the town's attorney. In summary, the requirement to file an annual statement of financial interests applies to anyone who holds the position of municipal attorney or who "routinely serves as the attorney" for a city or town, renders more legal services to the city than any other attorney and is recognized to be the city attorney, regardless of whether they are employed by or an independent contractor of a municipality or a firm hired by a municipality. See § 112.313(16)(a), Fla. Stat.; CEO 08-27.

Turning to your situation, your duties with regard to Sanford include attending its City Commission meetings when the person in the firm who is recognized as Sanford's City Attorney is ill or has a conflict. You attend most of the City's Planning and Zoning Commission and Historic Preservation Board meetings and other people cover its other boards and handle the litigation. You state that the work you do on behalf of the City consists of handling routine tasks, such as the drafting of documents. You neither do the majority of Sanford's work at Stenstrom nor are you considered to be Sanford's City Attorney. As a result, you would not be considered a "municipal attorney" with regard to Sanford for purposes of Section 112.3145(1)(a)3., Florida Statutes, and,

thus, you would not be found to be a "local officer" required to file CE Form 1 for purposes of Section 112.3145(1)(a) and (2)(b), Florida Statutes. As such, you would not be required to file a CE Form 1 as a result of your relationship to the City of Sanford.

In that your legal services for the Town of Lady Lake only involve your being legal counsel to its Disciplinary Arbitration Panel, you would not be considered Lady Lake's municipal attorney (and, thus, not be found to be a "local officer" under Section 112.3145(1)(a), Florida Statutes). As such, there would be no requirement to file a CE Form 1 pursuant to Section 112.3145(2)(b), Florida Statutes, as a result of the work you perform on behalf of Lady Lake.

You have not performed any legal services for DeLand in approximately a year. When you were performing legal services for DeLand, you state that you covered city commission meetings in the absence of the member of your firm recognized as the City Attorney and handled some ad hoc projects. You state that the attorney at Paul who is regarded as DeLand's City Attorney has always handled the majority of the City's legal work. Given the nature of the duties you performed on behalf of DeLand and the fact that you were never regarded as its city attorney, you would not be considered a municipal attorney (or a local officer) for purposes of Section 112.3145(1)(a), Florida Statutes, and you would not have been required to file a CE Form 1.

QUESTION 2:

Will a local hearing officer be required to file CE Form 1, "Statement of Financial Interests?"

This question is answered in the negative.

You state that you serve as a special magistrate for the City of Cocoa Beach, a position for which you have tendered your resignation effective the end of March, and that you are seeking a

special magistrate position with Flagler County. You also interchange the words "hearing officer" for "special magistrate." The only "hearing officers" included in the list of persons required to file a CE Form 1, Statement of Financial Interests, in Section 112.3145, Florida Statutes, are those who are "state employees." See § 112.3145(1)(b)1., Florida Statutes.³ Section 112.3145(2)(b), Florida Statutes, provides that "[e]ach state or local officer and each specified state employee shall file a statement of financial interests . . ." but the only hearing officers listed that are required to file a statement of financial interests, i.e., a CE Form 1, are those who are specified *state* employees. The special magistrate/hearing officer position you currently hold is with a municipality, Cocoa Beach, and the special magistrate/hearing officer position you are seeking is a county position. Since these positions are not listed as "local officers," they do not create a requirement for you to file a CE Form 1, Statement of Financial Interests.

Your question is answered accordingly.

AL/kbh/ks

cc: Lonnie N. Groot

³ Section 112.3145(1)(b)1., Florida Statutes, pertaining to "specified state employees," provides:

(b) "Specified state employee" means:

1. Public counsel created by chapter 350, an assistant state attorney, an assistant public defender, a criminal conflict and civil regional counsel, an assistant criminal conflict and civil regional counsel, a full-time state employee who serves as counsel or assistant counsel to any state agency, an administrative law judge, or a hearing officer.

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January 7, 2024

Kerrie Stillman, Executive Director
The Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

SUBJECT: Request An Advisory Opinion

Dear Kerrie:

First, I hope that all is well with you and that this letter finds you in the best of health.

I am requesting an advisory opinion in the context of my current practice of law as Lonnie N. Groot, P.L., a Florida limited liability company, which has been existent since August, 2008. That entity has entered into a series of contracts with the law firm of Stenstrom, McIntosh, Colbert and Whigham, P.A. since 2008 under which under the entity, I as an attorney, serve in an of counsel contractual relationship with the Stenstrom firm. All of the dates expressed in this letter are approximate dates, but reflect enough specificity, in my judgment, to allow the question asked herein to be answered, but if a more precise timeline as to any matter is needed, I will endeavor to provide it expeditiously to you.

It should be noted that from March, 2021 until September, 2021 I "retired" from the Stenstrom firm with some continuing consulting for limited inquiries as to past legal services. Prior to retirement, legal representation of the firm extended to the City of Oviedo, the City of Sanford and the City of Webster. Upon returning, on behalf of the firm I have focused on the City of Sanford's work, but have assisted, a small bit, as to the City of Oviedo and the City of Webster.

From October, 2019 to the present I have also been engaged contractually to serve as of counsel to the Paul, Elkind, Branz and Paul, P.A. law firm with an emphasis in assisting in the legal work for the City of DeLand. I was also engaged by 2 other law firms to act of counsel (one of which is involved in local government work for an array of governmental entities) and I provided some limited assistance to those firms in their municipal work although never billing for time except when, as to one incident, independent legal opinions were needed relating to disputes between a City Attorney and City staff.

The time frames below and above will not be chronologically correct, but, I believe, are expressed in a manner which best presents the issue being presented to the Commission and the past actions that I have taken with regard to filing a Form 1 financial disclosure form. As a footnote to the local entities represented, as outlined herein, over the past decades I have served as a special magistrate/hearing officer for the City of Palm Coast, Seminole County, Flagler County, the City of Cocoa Beach and the City of Sanford as to various code enforcement, animal control/dangerous dog, red light camera and gun and cash possession issues over time (but never overlapping to avoid dual office holding issues which, as you know, arise under the *Florida Constitution*). And, on 2 occasions I served on the legal expert review panel for the review of the *Brevard County Charter*.

Prior to August, 2008, the entity under which I practiced law was Lonnie N. Groot, P.A., which was also a Florida limited liability company (now dissolved and inactive), which was in existence from March, 2006 through September, 2007. From July, 2001 to November, 2006 I worked under contract as either an individual or as the entity in an of counsel contractual capacity for the Stenstrom firm (which had another, similar, name during that time). During that time, I assisted or lead in the representation of the following governmental entities that were engaged with the firm for the provision of legal services: the Seminole County Supervisor of Elections, Seminole Community College, the Orange/Seminole County Wastewater Transmission Authority, Seminole County, the City of Sanford, the City of Oviedo, the City of Lake Mary, the City of Casselberry, the City of DeLand, the City of Daytona Beach Shores, the City of Orange City, the City of Lake Helen, Lake County, the City of Maitland, the City of Edgewood, the City of Palm Coast, the City of Titusville and Citrus County.

From December, 2006 to February, 2008 I served as the in house City Attorney for the City of Palm Coast, under an employment contract.

From March, 2008 to August, 2008 I was employed, under an employment contract, with the Tallahassee law firm of Williams, Wilson and Sexton. That firm acted as County Attorney for Gadsden County and I did a great deal of work for the County while *employed*.

From January, 2000 to June, 2001 I was employed as a contract partner with the law firm of Shutts and Bowen. During a portion of that time, the firm was contractually engaged by the City of Lake Helen and I served in the capacity of City Attorney under that engagement.

From July, 1985 to January, 2000, I was employed as an Assistant County Attorney or Deputy County Attorney for Seminole County. During my employment with Seminole County, I was assigned the role of General Counsel to the Seminole County Expressway Authority. Also, while employed by Seminole County, I was tasked with representing the Seminole County Supervisor of Elections, the Seminole County Tax Collector and the Seminole County Property Appraiser, on an *ad hoc* basis, as well as the City of Lake Mary relative to an eminent domain project.

As you know, persons holding the positions in local government of mayor; county or city manager; chief administrative employee or finance director of a county, municipality, or other political subdivision; county or municipal attorney; chief county or municipal building inspector; county or municipal water resources coordinator; county or municipal pollution control director; county or municipal environmental control director; county or municipal administrator with power to grant or deny a land development permit; chief of police; fire chief; municipal clerk; appointed district school superintendent; community college president; district medical examiner; and purchasing agent (regardless of title) having the authority to make any purchase exceeding \$35,000 for the local governmental unit are required to file limited financial disclosure (Form 1). Assistant or deputy county or city attorneys are not mentioned and the attorney positions that are mentioned are, of course, positions.

With regard to State employees, assistant state attorneys, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, public counsel, full-time State employees serving as counsel or assistant counsel to a State agency, judges of compensation claims, administrative law judges, and hearing officers are required to file limited financial disclosure (Form 1). As can be seen, some assistant legal counsel positions are mentioned when the persons are holding a full time position.

From the time that I was tasked with serving as General Counsel to the Seminole County Expressway Authority or was engaged as City Attorney for the City of Lake Helen, through the engagement of Shutts and Bowen, I have either mailed in to or sojourned to DeLand to deliver to the Volusia County Supervisor of Elections a Form 1 each July. Upon my "retirement" in 2021 I ceased filing the Form 1s having come to the conclusion that acting as of counsel to a law firm engaged to serve as City Attorney and acting as a non-State hearing officer/special magistrate did not necessitate the filing of a Form 1. I was, within the past few days, preparing to file a Form 6 as I was going to seek appointment to a vacant City Commissioner position, and I have no issue with doing so, but I determined that I would seek a special magistrate position with Flagler County instead (the dual office holding provision of the *Florida Constitution*, as you know, prohibits holding both of those offices). This decision though gave rise to the question that I am now asking. I have no issue with filing a Form 1, but I believe that I am not required to file and have for years been unnecessarily cluttering files by filing them except when actually engaged to serve as the in house full time City Attorney for the City of Palm Coast.

It seems to me that my conclusion is supported by the guidance issued by the Commission in CEO 08-27, dated December 10, 2008, issued to attorney John O. Williams of the Tallahassee firm of Williams & Holz, P.A., in which the question arose as to whether a city attorney who serves in that capacity because his firm was retained as an independent contractor is required to file financial disclosure. The question was answered in the affirmative, but the attorney making the inquiry was a named partner of the firm and he held the position of municipal attorney as an independent contractor as a firm member. I have no contract, as my personal entity, with any City except the City of

Cocoa Beach and, then, that contract is to serve solely as special magistrate. I am not a member of any firm as I am neither a partner, associate, holder of equity or member of any firm. I am an independent contractor to firms that are in independent contractor relationships with cities.

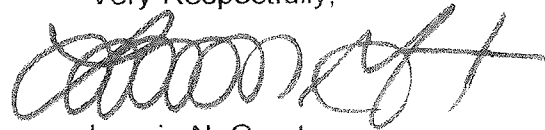
I would like the Commission to validate my conclusion that, at this juncture, holding the engagements that I have (that is a contractual of counsel relationship with firms that are serving as city attorney in the context of an independent contractor relationship) does not result in my being required to file the Form 1 level of financial disclosure.

The Commission accepts requests for advisory opinions from any public officer, candidate for public office or public employee in Florida who is in doubt about the applicability of the standards of conduct or disclosure laws to himself or herself. I am not certain that serving in an of counsel contractual position to a law firm that acts as city attorney to municipalities as an independent contractor or serving as a local government special magistrate/hearing officer makes me a public officer or public employee for the purpose of the laws relating to financial disclosure, but I would appreciate the question set forth herein being answered.

Thus, I am requesting an advisory opinion by means of this letter which presents a question based on a real situation and including a detailed description of the situation (I hope both that not too much detail and enough detail is set forth herein). If the Commission determines to publish the resulting advisory opinion, I have no issue with the document bearing my name and I consent to the Commission using of my name and, indeed, it is my view that the transparency required for an appropriately functioning government would support my decision in that regard.

Thank you for your attention to this matter. I appreciate the work of the Commission and its staff and the importance of your role in ensuring a high quality and ethical government serves the citizens of the State of Florida.

Very Respectfully,

A handwritten signature in black ink, appearing to read "Lonnie N. Groot", written in a cursive style.

Lonnie N. Groot

Heyward, Katharine

From: Heyward, Katharine
Sent: Thursday, January 18, 2024 4:42 PM
To: lonniegrootlawyer@gmail.com
Cc: Steverson, Kathryn
Subject: Your request for a formal opinion - follow-up

Mr. Groot,

Your request for a formal opinion has been assigned to me. There are some things I would like to ask you regarding your request.

My understanding is that your current positions are:

- 1) Serving, through Lonnie N. Groot, P.L., as an independent contractor for Stenstrom, McIntosh, Colbert and Whigham, P.A. ("Stenstrom") in an of counsel position;
- 2) Serving, as an independent contractor for Paul, Elkind, Branz and Paul, P.A. ("Paul") in an of counsel position; and
- 3) Serving as a special magistrate for the City of Cocoa Beach.

In addition, you are seeking a special magistrate position with Flagler County. **Could you confirm that my understanding of your current positions with regard to your work done on behalf of cities/counties is correct?**

With regard to your work at Stenstrom as it relates to cities, you currently perform work for Sanford, Oviedo, and Webster. Do you currently perform work for any other cities in your position with Stenstrom? If so, which cities do you perform work for? I am assuming that you do not perform any work on behalf of counties at this time but, if you do, please include the counties in the answers to these questions.

For each city you currently do work for through Stenstrom, are you the person who is considered to be the "city attorney" for those cities? (Please break down your answer by city.)

Has Stenstrom been retained to be the city attorney for those cities?

With regard to **Stenstrom's** work done on behalf of cities, are you the person who does the majority of **the firm's** work for those cities? (Please break down your answer by city.)

With regard to your work at Paul as it relates to cities, you currently perform work for DeLand. Do you currently perform work for any other cities in your position with Paul? If so, which cities do you perform work for?

For each city you currently do work for through Paul, are you the person who is considered to be the "city attorney" for those cities?

Has Paul been retained to be the city attorney for DeLand (and any other cities, if applicable)?

With regard to Paul's work done on behalf of DeLand (and any other cities, if applicable), are you the person who does the majority of **the firm's** work for the city or cities? (Please break down your answer by city, if applicable.)

Do you currently perform work for any other cities (or counties)? If so, in what capacity (e.g., through a firm)? If you list any additional cities/counties, please state: 1) whether you are considered to be the city/county attorney for those cities/counties, and 2) if your work for these additional cities/counties is done as an independent contractor for a firm, please state whether you are the person who does the majority of the firm's work for those cities/counties.

Do you anticipate performing work for any other cities or counties in the future? If so, please specify.

It would be great if you could respond by January 31, 2024.

Thank you.

Kathy Heyward

Katharine B. Heyward

Attorney

Florida Commission on Ethics

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Heyward, Katharine

From: Lonnie Groot <lonniegrootlawyer@gmail.com>
Sent: Friday, January 19, 2024 3:39 PM
To: Heyward, Katharine
Cc: Steverson, Kathryn
Subject: Re: Your request for a formal opinion - follow-up

You don't often get email from lonniegrootlawyer@gmail.com. [Learn why this is important](#)



Kathy:

Thanks for the questions and the diligence. I realize that my letter contained a lot of information.

You are correct that my current positions are:

- 1) Serving, through Lonnie N. Groot, P.L., as an independent contractor for Stenstrom, McIntosh, Colbert and Whigham, P.A. ("Stenstrom") in an of counsel position;
- 2) Serving, through Lonnie N. Groot, P.L., as an independent contractor for Paul, Elkind, Branz and Paul, P.A. ("Paul") in an of counsel position; and
- 3) Serving as a special magistrate for the City of Cocoa Beach through Lonnie N. Groot, P.L.

I have submitted for a special magistrate position with Flagler County having resigned, effective the end of March, the Cocoa Beach position to avoid a violation of the dual office holding prohibition.

i currently perform work for Sanford, Oviedo (rarely or without compensation) and Webster (rarely), but for no other cities in my position with Stenstrom under its contract with Lonnie N. Groot, P.L.

I am not considered to be the "city attorney" for any city - Bill Colbert is as to all. The Stenstrom law firm been retained to be the city attorney for all of the cities.

With regard to Stenstrom work done on behalf of cities, I do virtually no work for Oviedo or Webster any more. As to Sanford, I do not attend City Commission meetings unless Mr. Colbert is ill or has a conflict, I attend most all Planning and Zoning Commission and Historic Preservation Board meetings, but someone else covers the other boards and I do most of the grunt work - - drafting, etc., but someone else handles all non-land use litigation. Sanford also retains special counsel for labor matters, defense work and bond counsel/finance work.

I have stopped doing work for Paul/DeLand and have done nothing for a year or so, but still remain under contract. I was never considered the City Attorney for DeLand. I covered a City Commission meeting or so in Darren Elkind's absence, but I did that even before I was of counsel with the firm. Paul is retained as the City Attorney. When I was doing a bit of work, it was before the firm was staffed more, I did ad hoc projects while, overall, Mr. Elkind did the bull of the work. It was intended to be a part-time post-retirement gig that changed when i unretired and was called back to work for Stenstrom.

I was just recently engaged by the Town of Lady Lake to serve as legal counsel to that Town's Disciplinary Arbitration Panel which work was engaged through Stenstrom.

Kathy. I do not intend to solicit any work. I tired to retire. Cocoa Beach reached out to me and Flagler County reached out to me. Lady Lake reached out to me. If I survive until May, 2025, I plan to stop once and for all and start writing more and doing more travelling - we will be on our 10th Rick Steves tour in June, 2025 and take our first Viking cruise the month prior - - never enough traveling!

I hope that this email provides you with the information that you need.

Thanks and carpe diem.

Lonnie

Lonnie N. Groot

Lonnie N. Groot, P.L.
3047 South Atlantic Avenue
Suite 1103
Daytona Beach Shores, Florida 32118
386-748-3685

On Thu, Jan 18, 2024 at 4:42 PM Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us> wrote:

Mr. Groot,

Your request for a formal opinion has been assigned to me. There are some things I would like to ask you regarding your request.

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- 1) Serving, through Lonnie N. Groot, P.L., as an independent contractor for Stenstrom, McIntosh, Colbert and Whigham, P.A. (“Stenstrom”) in an of counsel position;
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For each city you currently do work for through Stenstrom, are you the person who is considered to be the “city attorney” for those cities? (Please break down your answer by city.)

Has Stenstrom been retained to be the city attorney for those cities?

With regard to **Stenstrom's** work done on behalf of cities, are you the person who does the majority of **the firm's** work for those cities? (Please break down your answer by city.)

With regard to your work at Paul as it relates to cities, you currently perform work for DeLand. Do you currently perform work for any other cities in your position with Paul? If so, which cities do you perform work for?

For each city you currently do work for through Paul, are you the person who is considered to be the "city attorney" for those cities?

Has Paul been retained to be the city attorney for DeLand (and any other cities, if applicable)?

With regard to Paul's work done on behalf of DeLand (and any other cities, if applicable), are you the person who does the majority of **the firm's** work for the city or cities? (Please break down your answer by city, if applicable.)

Do you currently perform work for any other cities (or counties)? If so, in what capacity (e.g., through a firm)? If you list any additional cities/counties, please state: 1) whether you are considered to be the city/county attorney for those cities/counties, and 2) if your work for these additional cities/counties is done as an independent contractor for a firm, please state whether you are the person who does the majority of the firm's work for those cities/counties.

Do you anticipate performing work for any other cities or counties in the future? If so, please specify.

It would be great if you could respond by **January 31, 2024**.

Thank you.

Kathy Heyward

Katharine B. Heyward

Attorney

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