

# **Key West Committee for Safer, Cleaner Ships**

August 25, 2021

## Key West City Commission

Mayor Johnston & Commissioners:

At a Commission meeting one month ago, City Attorney Shawn Smith rejected our recommendation of former Florida Deputy Attorney General Joe Jacquot to serve as counsel to the City for drafting and defending an ordinance implementing limits on cruise ship operations, stating that Jacquot was not a sufficiently “independent” choice. At last week’s meeting, City Attorney Shawn Smith stated that he intends to hire the Tallahassee-based Radey Law Firm. Our initial review has uncovered a number of potential conflicts of interest in this proposed arrangement, due to the fact that Radey has represented members of the Florida Harbor Pilots Association on multiple occasions from 2014–2018. We do not know if Radey currently represents any Harbor Pilots, or the cruise industry, or Pier B, or any of the other collaborators who have sought to undermine local municipal control of cruise ship operations. Using City Attorney Smith’s own standard for “independent” counsel, we ask the Commission to fully investigate potential conflicts with the Harbor Pilots and other parties, before any steps are taken toward hiring Radey as outside counsel.

As you should be aware, the Pilots strongly oppose any limits on cruise ship operations in Key West and have worked against the City’s stated interests in this regard. The Key West Bar Pilots sued the City of Key West in federal court last summer in an attempt to block the cruise ship referendums from appearing on the ballot. Florida Harbor Pilots Association attorneys were responsible for drafting the bills (SB 426 / HB 267) that were introduced in the Florida Legislature to invalidate the results of the referendum, which bills were unanimously opposed by the City Commission. The Harbor Pilots also employed lobbyists who worked for passage of the final bill (SB 1194).

We ask Commissioners to present the following list of questions directly to Radey Law Firm, and to make Radey’s written responses available to the public. Our legal advisors note that it is standard practice to use this kind of list of questions in a high-profile matter such as this one in order to ferret out any conflicts, or appearance of conflicts. You will also find the relevant provisions of the Florida Bar Code of Professional Ethics at bottom, for reference.

### **Questions for the Radey Firm respecting engagement by the City of Key West**

- 1) Does the firm have an existing legal relationship (either representation, consulting or lobbying) with any of the following?
  - a) Florida Harbor Pilots Association
  - b) Biscayne Bay Pilots Association

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c) Key West Bar Pilots Association

If so, please describe the date, subject matter, and nature of that relationship.

2) Has the firm in the past had a legal relationship (either representation, consulting or lobbying) with any of the following?

a) Florida Harbor Pilots Association

b) Biscayne Bay Pilots Association

c) Key West Bar Pilots Association

If so, please describe the date, subject matter, and nature of that relationship.

3) Does the firm have an existing or past relationship with the Cruise Lines International Association (CLIA), with any members of CLIA, or with any individual Cruise Line? If so, please describe the date, subject matter, and nature of that relationship.

4) Did the firm provide any advice or counsel during either the drafting or legislative consideration of Florida legislation during 2021 whose purpose was to pre-empt citizen referendums relating to cruise ships passed by any Florida City or County? If yes, to whom was the advice, counsel or drafting provided?

5) Has the firm participated in state association meetings of the Florida Harbor Pilots Association in the period 2019-2021? To which legal entities was advice or counsel provided during any of those meetings?

6) Has the firm provided advice or counsel to any Harbor Pilot entity in proceedings before the Florida Board of Pilots Commissioners during the period 2019-2021? If so, to which entities was advice or counsel provided? Did any of the advice provided relate to pilotage fees and any member of the Cruise Ship Industry operating within Florida state waters?

7) Has the firm ever provided advice or counsel related to pilotage fees in the Port of Key West?

8) Has the firm provided advice, counsel or lobbying services to any of the following entities in the period 2019-2021?

a) Pier B Corporation? Any entity owned or controlled by Pier B Corporation?

b) Mark Walsh? Any entity beneficially owned or controlled by Mark Walsh or any family member?

c) Caribe Nautical? Any entity owned or controlled by Caribe Nautical?

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- d) John or Richard Wells? Any entity owned or controlled by John or Richard Wells or any family member?
  - e) Michael Halpern? Any entity owned or controlled by Michael Halpern or any family member?
- 9) Has your firm's representation of any existing or former client created a "positional conflict"? In other words, have you in any existing or former representation taken a position that cannot be squared with the position you will be required to assert for Key West in this matter?
- 10) Does your firm have, or has it had, any co-counsel relationship with the law firm of Smith/Hawks of Key West? If so, please describe the date(s) and nature of those co-counsel relationship(s).
- 11) Does your firm have, or has it had, any co-counsel relationship with the law firm of Metz, Husband, & Daughton of Tallahassee? If so, please describe the date(s) and nature of those co-counsel relationship(s).
- 12) Have you asked any client or former client to waive a possible or existing conflict of interest that might arise from your representation of the City of Key West? If so, please identify the client or former client, and the nature of the conflict or possible conflict you seek waiver on.
- 13) Have you ever previously represented the City of Key West? If so, when and on what matter(s)?
- 14) Will you be asking the City of Key West to waive a possible or existing conflict of interest? If so, please provide the particulars and a detailed explanation of the possible benefits and risks associated with such a waiver.
- 15) Assuming you are engaged in, or have engaged in prior, representation of other clients whose interests potentially conflict with those of the City of Key West, how can you zealously represent the interests of the City of Key West?

### **Relevant Provisions of the Florida Bar Code of Professional Ethics**

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

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.

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### 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.

Thank you for your attention to this important matter.

***Evan Haskell, President***

**Key West Committee for Safer, Cleaner Ships**

cc:

Patti McLauchlin, City Manager

Shawn Smith, City Attorney

Cheri Smith, City Clerk