

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

Local Government Center, Inc.; Local
Government Center Real Estate, Inc.;
Local Government Center HealthTrust,
LLC; Local Government Center
Property-Liability Trust, LLC;
HealthTrust, Inc.; New Hampshire
Municipal Association Property-Liability
Trust, Inc.; LGC-HT, LLC; Local
Government Center Workers'
Compensation Trust, LLC; and the
Following individuals: Maura Carroll,
Keith R. Burke, Stephen A. Moltenbrey,
Paul G. Beecher, Robert A. Berry,
Roderick MacDonald, Peter J. Curro,
April D. Whittaker, Timothy J. Ruehr,
Julia N. Griffin, Paula Adriance, John
P. Bohenko, and John Andrews

Case No.: C-2011000036

OBJECTION TO MOTION TO DETERMINE STATUS OF COUNSEL

The Local Government Center entities and Maura Carroll, jointly (here, collectively “LGC”), have voluntarily and deliberately chosen their counsel for this hearing process. They perceive no conflict on that counsel’s part, despite the Bureau’s efforts to invent one. They object to the effort to separate them from their chosen counsel, and consider it a procedural maneuver by the Bureau, unrelated to the merits at issue, designed solely to cost them additional money and time, to confuse the process, and to distract attention from the weaknesses of the Bureau’s Petition. Accordingly, they ask that the Motion be denied.

I. FACTUAL BACKGROUND

1. The Bureau of Securities Regulation (“Bureau”) began its investigation of Local Government Center, Inc. and related entities in 2009, in response to a complaint filed by the Professional Fire Fighters of Hampton, NH.

2. The Bureau released its Report of Investigation on August 2, 2011.

3. The Bureau filed a Petition for Relief on September 2, 2011, naming multiple Respondents, including several corporate entities, among which were Local Government Center, Inc.; Local Government Center Real Estate, Inc.; HealthTrust, Inc.; New Hampshire Municipal Association Property-Liability Trust, Inc.; LGC-HT, LLC; LGC-PLT, LLC; the New Hampshire Municipal Association, LLC; Local Government Center HealthTrust, LLC; Local Government Center Property-Liability Trust, LLC; and Local Government Center Workers’ Compensation Trust, LLC. The Notice of Order, also issued that day by William M. Gardner, Secretary of State, names several of these entities in his Order to Cease and Desist; Order to Show Cause; and Hearing Order of the same date.

4. Notices of Appearance for the named corporate entities, and Maura Carroll, were filed by Brian Quirk and William Saturley of Preti Flaherty Beliveau & Pachios PLLP, on September 14, 2011.

5. On August 31, 2011, HealthTrust, Inc., a Chapter 292 corporation (now known as Local Government Center HealthTrust, Inc.), revived its charter, which had been allowed to lapse. The action was taken by documents filed with and accepted by the Secretary of State, pursuant to RSA 292:30. Under RSA 292:30, III, the corporation is “revived with the same force and effect as if its charter had not been forfeited.”

6. New Hampshire Municipal Association Property-Liability Trust, Inc.'s charter was also revived, in the same manner, on the same date.

7. On September 15, 2011, LGC HealthTrust, Inc. and New Hampshire Municipal Association Property-Liability Trust, Inc. elected new slates of trustees.

8. On October 11, 2011, the Bureau filed its Motion to Determine Status of Counsel (the "Motion"). The Motion claims that LGC HealthTrust, Inc. and New Hampshire Municipal Association Property-Liability Trust, Inc. have adverse interests to two of the LLC Respondents, creating a conflict on the part of Preti Flaherty.¹

9. On October 14, 2011, certain filings were made with the Secretary of State's office concerning the records of Local Government Center HealthTrust, LLC and Local Government Center Property-Liability Trust, LLC. The filings confirmed information included in the original Certificates of Formation of both LLCs, to the effect that they were operated by a single member, Local Government Center, Inc., and were not run by managers. That has been the intent and the operational effect since the formation of those LLCs in 2003, and remains true today. The filings were made to correct inadvertent errors in the signature blocks on certain annual filings, and were accepted by the Secretary of State's office. Copies of the filings are attached as Exhibit A.

10. On Thursday, October 20, 2011, the Boards of Trustees of both Local Government Center HealthTrust, Inc. and New Hampshire Municipal Association Property-Liability Trust, Inc. met in public meeting, for a briefing by Preti Flaherty on the history of the events leading up to the Petition, and the Bureau's Motion, and the issues raised by the Bureau's Motion. Each Board then met, in recess, to consult with independent legal counsel, Russell

¹ For the record, LGC denies many of the factual allegations and legal conclusions in the Motion. For ease of the Hearing Officer, LGC will limit its focus in this Objection to the allegations it considers pertinent. If the Hearing Officer requests, LGC will submit an answer to the material in the Motion, allegation by allegation.

Hilliard of the firm Upton & Hatfield, who had been retained specifically to advise them on the issues raised by the Bureau's Motion. Attorney Hilliard is a well-respected member of the New Hampshire Bar and a former president of the New Hampshire Bar Association, and is noted for his expertise in the fields of ethics and the Rules of Professional Conduct. He has extensive experience before the New Hampshire Professional Conduct Committee, and teaches ethics at the University of New Hampshire School of Law.

11. Following consultation with Attorney Hilliard, each Board adopted its respective version of the following resolution:

RESOLVED: Seeing no adversity to the other corporate entities or Maura Carroll on the issues raised by the Petition at this time, anticipating no claims to be made by [the Board] against any of the other clients represented by Preti Flaherty, and thus, perceiving no conflict of interest on the part of its counsel, the Board determined to continue with Preti Flaherty representing its interests in the hearing process begun by the Bureau.

(Emphasis supplied.)

12. Both LGC, Inc. (the sole member of the LLCs) and Maura Carroll, the other persons represented by Preti Flaherty, are familiar with the issues raised by the Motion; have had access to independent legal counsel; and have likewise determined to continue with Preti Flaherty as their counsel.

II. ARGUMENT.

A. THE BUREAU'S CONCLUSIONS ABOUT CORPORATE MANAGEMENT AND STATUS ARE WRONG, AND ACTING ON THEM WOULD BE PREMATURE.

The Petition raises unresolved issues about the effect of certain corporate transactions which occurred in 2003. Accordingly, the two Chapter 292 entities (Local Government Center HealthTrust, Inc. and New Hampshire Municipal Association Property-Liability Trust, Inc.) were

revived on August 31, pursuant to existing, recognized statutory procedures. The Secretary of State's office accepted the filings.

RSA 292:30, III sets forth the legal significance of that revival:

III. Upon the filing of the certificate of revival, the corporation shall be revived with the same force and effect as if its charter had not been forfeited pursuant to this subdivision.

Further, to the extent any of the LLC annual filings incorrectly stated the status of the signer, those inadvertent (and innocuous) errors were clarified by the recent filings found in Exhibit A. As set forth in RSA 304-C:17:

- I. A certificate of formation may be restated at any time by filing a restated certificate of formation with the Secretary of State...
- II. Upon the filing of a restated certificate of formation with the Secretary of State...the initial certificate of formation...shall be superseded. The restated certificate...shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

The corporations have been validly revived. The LLC records are clear they are operated by a member, not a manager, and that member is Local Government Center, Inc. Accordingly, it would be premature for the Hearing Officer to conclude that the Bureau's allegations have merit, without having received any evidence on the topic. The Hearing Officer can only find the various entities lack proper status or management authority, as the Bureau contends, at the conclusion of the hearing process.

B. THE LAW FAVORS ALLOWING PARTIES TO RETAIN THE ATTORNEY OF THEIR CHOICE, AND DISFAVORS INTERFERENCE IN THAT CHOICE BY THIRD PARTIES.

The Bureau cites, as its only legal authority, the New Hampshire Rules of Professional Conduct, Rule 1.7(a).

The Rules are aimed at policing the conduct of attorneys, not at creating substantive rights on behalf of third parties. See N.H. R. Prof. Conduct Statement of Purpose (“the Rules...constitute the disciplinary standard for New Hampshire lawyers....The Rules are not designed to be a basis for civil liability. The purpose of the Rules can be subverted when the Rules are invoked by opposing parties as procedural weapons.”) See also, State v. Decker, 138 N.H. 432, 438 (1994); Sullivan County Regional Refuse Disposal Dist. v. Town of Acworth, 141 N.H. 479, 483 (1996) (“Decker reflects our reluctance to allow the Rules to become a wellspring of rights that protect other parties or other interests.”).

The courts of this State, and in particular the Supreme Court, are the primary regulators of attorney conduct. Sullivan County Regional Refuse Disposal Dist. at 482. It is far from clear that a hearing officer in this process has the same authority to disqualify an attorney from representing a client before him, or (even less likely) to discipline him for alleged violations of the Rules.

The Bureau has never been a client of Preti Flaherty. In this instance, in particular, it is an adversary of the client that chose Preti Flaherty for its counsel. In a case where the New Hampshire Supreme Court considered an effort by an adversary to disqualify opposing counsel, McElroy v. Gaffney, 129 N.H. 382 (1987), the Court highlighted the potential for abuse inherent in such a process. “By forcing the client, often at considerable expense, to employ other and usually less suitable counsel, the rule effectively penalizes individuals for having the foresight to consult an attorney on a legal problem in advance.” 129 N.H. at 390, quoting from “Note, The Advocate-Witness Rule,” 52 N.Y.U.L. Rev. at 1367. “In this regard, we will be less than candid were we not to recognize that disqualification motions ‘are often simply common tools of the litigation process....used...for purely strategic purposes.’” (Citation omitted.) Id. at 391.

In this instance as well, the Bureau's efforts to undermine the relations between the clients and their chosen counsel should be rebuffed.

C. CONCLUSION.

Because the allegations of corporate mismanagement remain to be proven, they afford no basis for action by the Hearing Officer on the Motion.

Further, the Bureau's Motion is inappropriately based on the Rules of Professional Conduct, which provide no rights in third parties. Those in a position of adjudication should be particularly wary when the Rules are invoked as a procedural weapon, as in this case.

Finally, each of the respective clients has had access to independent counsel on the Motion, separate from Preti Flaherty, and still chosen to keep Preti Flaherty as counsel. Their choice should be respected.

WHEREFORE, LGC requests the Hearing Officer to:

- A. Deny the Motion; and
- B. Grant such other and further relief as may be just and proper.

Respectfully submitted,

LOCAL GOVERNMENT CENTER, INC.;
LOCAL GOVERNMENT CENTER REAL
ESTATE, INC.;
LOCAL GOVERNMENT CENTER
HEALTHTRUST, LLC;
LOCAL GOVERNMENT CENTER
PROPERTY-LIABILITY TRUST,
LLC;
LOCAL GOVERNMENT CENTER
HEALTHTRUST, INC.;
NEW HAMPSHIRE MUNICIPAL
ASSOCIATION PROPERTY-
LIABILITY TRUST, INC.;
LGC-HT, LLC;
LOCAL GOVERNMENT CENTER
WORKERS' COMPENSATION
TRUST, LLC; AND
MAURA CARROLL,

By Their Attorneys:
PRETI FLAHERTY BELIVEAU &
PACHIOS PLLP

Dated: October 21, 2011

By: /s/ William C. Saturley
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October 2011 I provided copies of the within
Objection to Motion to Determine Status of Counsel *via* electronic transmission to all counsel of
record.

/s/ William C. Saturley