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L A W Y E R S

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October 22, 2021

Michael J. Newman
Village Attorney for the Village of Pinehurst

Via Electronic Mail only: michaeln@vancamplaw.com

Dear Michael:

Thank you for speaking with Palmer Sugg and me yesterday afternoon. As we discussed, I am writing on behalf of Lydia Boesch in regards to the claims by your client, the Village of Pinehurst, that Mrs. Boesch violated the "Code of Ethics for the Village Council of the Village of Pinehurst, North Carolina." I also want to reiterate that Mrs. Boesch will not be submitting any formal response to these claims until she obtains the public records that she is seeking.

This letter is directed to the following individuals: John Strickland, Judy Davis, Jane Hogeman, Jeff Sanborn, Angie Kantor, Glen Webb and you. You indicated that you would be able to transmit this letter to the appropriate people/departments. With respect to any records that you may possess, as we discussed, I do not believe that any privilege exists between you and any individual Village councillor – or even a majority of the Village Council – with respect to the records that we are seeking because you were not providing any legal advice, nor could you provide legal advice, to individual members of the Village Council that would be contrary to the rights of other Village Councillors. If you disagree with me, I would suggest that you create a privilege log so that we can best determine how to work through this issue, should we have to do that in the future.

Public Records Request
N.C.G.S. §§ 132-1, et seq.

Specifically, with respect to the individuals listed above, I am writing to request any existing documents or records in your possession or control that were sent, received, or created from September 1, 2021, until the present date related to Mrs. Boesch and the unilateral decision by above-referenced members of the Village Council or Village staff that Mrs. Boesch violated the "Code of Ethics for the Village Council of the Village of Pinehurst, North Carolina." This would include, but is not limited to, any documents related to:

1. Emails and other communications or documents between or among John Strickland, Judy Davis, Jane Hogeman, Jeff Sanborn, Angie Kantor, Glen Webb and you from September 1 through the present date related to the decision that Mrs. Boesch violated the “Code of Ethics for the Village Council of the Village of Pinehurst, North Carolina.”

2. Emails and other communications or documents between or among John Strickland, Judy Davis, Jane Hogeman, Jeff Sanborn, Angie Kantor, Glen Webb and you and **any third party** from September 1 through the present date related to the decision that Mrs. Boesch violated the “Code of Ethics for the Village Council of the Village of Pinehurst, North Carolina.”

3. Emails and other communications between or among John Strickland, Judy Davis, Jane Hogeman, Jeff Sanborn, Angie Kantor, Glen Webb and you from September 1 through the present date related to the motion that Council member Hogeman read into the open meeting on October 12, 2021.

4. Any other documents in the possession of, between, or among, John Strickland, Judy Davis, Jane Hogeman, Jeff Sanborn, Angie Kantor, Glen Webb and you that support the assertion that Mrs. Boesch violated the “Code of Ethics for the Village Council of the Village of Pinehurst, North Carolina.”

5. Emails and other communications or documents between or among John Strickland, Judy Davis, Jane Hogeman, Jeff Sanborn, Angie Kantor, Glen Webb and you or any third party that support the following statements, beliefs or allegations detailed during the October 12, 2021 Village Council meeting, or in emails and other communications or documents leading up to that meeting, regarding Mrs. Boesch:

- There is continuing uncertainty about the employment status of the Village Manager;
- Rumors about the employment status of the Village Manager;
- Contact initiated by Lydia Boesch to senior staff;
- Contact initiated by Lydia Boesch to others;
- Violations of Council and/or ethical policies;
- Rumors in the Village;
- Innuendos in the Village;
- Actions by Council members which violate the policies and good ethical behavior;
- Problems with the Village Manager identified by Mrs. Boesch’s inquiries;
- Policies that were not followed by Mrs. Boesch;
- Inquiries about Jeff Sanborn by Mrs. Boesch;
- Continued concern among staff about Mrs. Boesch;
- “Information is out there” that Mrs. Boesch was trying to investigate Jeff Sanborn’s leadership style;

- Unease of all the staff regarding Mrs. Boesch; and
- Mrs. Boesch went outside “logical, known, and required procedures.”

Potential Violation of North Carolina Open Meetings Act
N.C.G.S. §§ 143-318.10, et seq.

In addition to the above request, we anticipate that the documents sought could evidence a violation of the North Carolina Open Meetings Act by a majority of the Pinehurst Village Council. Accordingly, we instruct that John Strickland, Judy Davis, Jane Hogeman, Jeff Sanborn, Angie Kantor, Glen Webb and you preserve and not destroy, alter, or erase any information or documents that could be relevant to the assertions that Mrs. Boesch violated the Code of Ethics for the Village Council of the Village of Pinehurst, North Carolina.

Specifically, you are instructed to preserve any information or documents listed above, including all electronic communications, related to the actions leading up to and taken against Mrs. Boesch by Mayor Strickland, Mayor Pro Tem Davis and Council member Hogeman on October 12, 2021 regarding the secretive, unilateral decision that Mrs. Boesch violated the “Code of Ethics for the Village Council of the Village of Pinehurst, North Carolina.”

You and your clients are receiving this preservation notice because information and evidence that might be relevant to any potential litigation related to the violation of the Open Meetings Act is in your possession, custody, or control, and, as a member of the Village of Pinehurst Council – or staff of the Village of Pinehurst – all of you have a legal duty to preserve that information. The Village Council also has an ethical duty to preserve such information pursuant to Section 5 of the Code of Ethics for the Village Council of the Village of Pinehurst, North Carolina. Failing to maintain evidence that might be relevant to any potential litigation regarding any violation of the Open Meetings Act may constitute spoliation of evidence, which would subject you and your clients to evidentiary or monetary sanctions.

Further, as the legal custodian of public records as defined in Chapter 132 of the North Carolina General Statutes, destruction of such evidence will expose you to additional legal claims pursuant to the North Carolina Public Records law.

This list above is a broad, but non-exhaustive, set of examples of potentially relevant materials and evidence. If you or your clients have any questions about whether something should be preserved, you should err on the side of caution and preserve it.

The requirement to preserve includes, but is not limited to, email and voicemail messages, text messages, memoranda, letters, reports, contracts, evaluations, calendar entries, and notes (whether in paper or electronic form). This litigation hold notice applies to all sources

of potentially relevant information and evidence, including institutional, unit, and home computing networks; PDAs; laptops and tablet PCs; cell phones; and other similar devices.

To the extent that the Village does not maintain or have access to any e-mail correspondence that falls within the scope of this notice and was created, sent, or received without using Village email addresses, you and your clients have a duty to preserve the same. The same is true for any electronic information stored on non-Village issued computers or other devices. For this reason, consistent with the obligations pursuant to state and federal law and Village policy, you and your clients will need to preserve and gather this information.

For purposes of this obligation to preserve electronically stored information, it is insufficient simply to print out copies of all e-mails and save the printouts. Rather, you must save the e-mails themselves. Similarly, you must save electronic versions of all memos you drafted or received concerning any matters related to the topics listed above. This notice also covers any text messages sent or received related to the topics listed above. **Please ensure that any automatic deletion function on any phone or computer is disabled and that you do not delete or destroy any text messages covered by this notice.**

Please retain these documents until further notice. The legal obligation to preserve these documents and records supersedes any routine document retention or destruction policies that ordinarily apply. To the extent that additional documents or records are discovered or created, please retain those documents and records as well.

Should any litigation proceed to discovery, we will expect to obtain from you a number of records, including files and data stored on your computer and mobile devices. These requests will be directed to obtaining the original media. Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, we will require all documents to be produced in their electronic form.

Moreover, we may also request copies of paper printouts of such documents that contain unique information after they were printed out, such as paper documents containing handwriting, signatures, annotations, and highlighting, along with any paper documents for which no corresponding electronic files exist. Additionally, this notice is not limited to paper documents or final versions, but rather includes electronically-stored evidence and electronic data (whether stored on a hard drive, on a disk, on DVD, on CD, on a zip drive, on a flash drive, on a network drive, on a server or other online/cloud storage, on tape, audio recordings, videotape, e-mail, text messages, instant messages, etc.) and also includes any handwritten notes or drafts of documents.

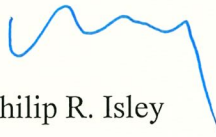
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To reiterate, if there are any questions about whether evidence or electronic data falls within the scope of this request, please err on the side of preservation. If you have any questions about this matter, please do not hesitate to give me a call.

With kindest personal regards, I remain

Sincerely yours,

Blanchard, Miller, Lewis & Isley, PA



Philip R. Isley

cc: Lydia Boesch