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August 2, 2019

Attn: Board of Directors  
Kalapana Seaview Estates Community Association (KSECA)  
c/o Sage Melillo, Board President

*Via email to: [board@kseca.org](mailto:board@kseca.org)*

RE: Clarification of Attorney-Client Relationship and Collections Services Bid

Dear KSECA Board,

Please note that the fundamental nature of any attorney-client relationship is that the attorney's role is to provide legal advice, counsel, and recommendations, but decision-making always rests with the client. As such, any claim that I am making decisions for KSECA is false.

The Board is the decision-making body, by law, and of course, each Board member has also received advice and counsel as to the legal duties that accompany serving in the role of a Director.

Under our current arrangement, I have offered, and the Board has accepted, no cost legal services to KSECA. My offer was consistent with my ethical obligation as a Hawaii practicing attorney, in which I am not required, but nevertheless encouraged, to donate 50 hours per year in free legal services. Because the services are free, we do not have a written attorney-client agreement at this time, as the primary purpose of such agreements is to clarify the payment of attorney fees.

Instead, via motion adopted by the prior Board, it was mutually agreed that the collection services agreement served as a retainer, having the effect of ensuring my availability to KSECA for any desired legal services, and with the understanding that any given legal services that are procured beyond collections would be separately negotiated, and could made part of any separate legal services fee agreement.

This correspondence is to notify you that the pro bono legal services I have provided so far this calendar year are now well in excess of 50 donated hours. There will never be any charge for these already provided services, and it has been an honor to assist KSECA as a deserving not-for-profit entity in need of legal assistance.

Please be advised, however, that going forward, it will be appropriate to enter into a payment agreement should KSECA desire or require legal services in the future, such as in the filing of a re-stated Declaration with the Bureau of Conveyances, or other legal needs. In this regard, as always, KSECA is absolutely free to negotiate a legal services payment agreement with me, or to release me as its attorney, and/or to retain any legal counsel it so desires. Pursuing any of these options is all in accordance with the governing and decision-making authority that, by law, rests exclusively with the Board of Directors.

As we also know, I chose to terminate the collections services agreement that had been entered into last February, and I provided notice of same to the Board. Since that time, by mutual agreement, a proposed new collections services agreement has been negotiated, and in which the negotiations have been made by both parties in good faith, with concessions back and forth.

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The proposed new agreement has been published in draft form, to the membership, for comment. I have also advised the Board that I cannot give legal counsel as to the proposed new agreement, and I have encouraged the Board to secure independent legal counsel and receive any appropriate legal advice/counsel.

Allow me to also clarify that because KSECA through its governing Board chose to enter into good faith re-negotiation of a possible new agreement, I am satisfied. Consequently, should KSECA award collections services to a different bidder through its RFP process, I will consider the matter resolved.

In other words, there is not, and has not been, any adversarial relationship as between my law practice and KSECA ever since the KSECA Board responded to my contract termination notice with an agreement to re-negotiate, rather than to terminate and settle.

In addition, there is not, and never has been, any obligation on the part of KSECA to retain me as its lawyer.

Thus, to summarize and clarify:

- I have no power or authority to decide matters for a client. My role is that of advisor, and decision-making always rests exclusively with the client.
- I have fulfilled my ethical obligation under state Rules of Professional Conduct to provide 50 hours per year of free legal services, via services already provided to KSECA this calendar year, and those services are absolutely free of charge.
- KSECA has no duty of loyalty to me as its legal counsel, instead a duty of loyalty applies only to me with respect to any client that retains me. In other words, I cannot withdraw as attorney for a client without good cause, but my client may discharge me at any time, including for no reason whatsoever.
- Should the Board desire future legal services from me, I am requesting that such services be compensated under a written fee agreement.
- I would be happy to be among those invited to bid for any needed legal services, but of course, the Board as KSECA's governing body may retain any lawyer it chooses to retain.
- Please note that lawyer services may be procured under state law without any RFP process because such services fall under professional services, but KSECA is also free to utilize an RFP process for procuring such services.
- The current bid for collections services that is pending with KSECA is in full satisfaction of the terms I requested upon termination of the prior collection services contract.
- Consequently, all matters are settled, and this is true regardless of whether the current bid for a new collection services agreement is ultimately accepted by KSECA.
- I have recommended, and continue to recommend, that KSECA's governing Board evaluate all offers and proposals, and award collection services as it deems most appropriate, and on the basis of best value.

I trust that this communication clarifies the nature of our relationship.

In light of all of the above, the status quo as of this writing is that no monies are owed, regardless of any decisions made into the future.

It has been a challenge to serve such a discordant organization.

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Should legal services be desired in the future, I am available, and regardless, I will of course abide by my duty of loyalty.

Should collection services be desired through my Association Services division, my pending bid is “on the table”, and KSECA may choose to accept it, or not.

Should our relationship end altogether, I will happily carry on, wishing KSECA the best of luck. It has been an honor to be of service.

With or without my involvement, please know that I truly hope and desire that KSECA is able to overcome its challenges, and that it will ultimately become a healthy, fully legally compliant, and effective planned community association.

With Kindest Regards,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino  
Attorney at Law

cc: Client File