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July 15, 2019

Via E-Mail and U.S. Mail

Town Council, Town of Windham
c/o Donald Gerrish, Acting Town Manager
8 School Road
Windham, ME 04062



Dear Mr. Gerrish:

I have been asked to review and respond to assertions made by Joanne E. Mattiace at the July 9, 2019 Town Council meeting that Preti Flaherty's representation of an entity that operates medical marijuana dispensaries in Maine poses a conflict of interest and disqualifies it from representing the Town of Windham in the development of ordinances regulating medical and adult use marijuana. I have listened to the recording of Ms. Mattiace's comments on the issue and conducted a careful review of the applicable Maine Rules of Professional Conduct. I see no viable basis for finding a conflict of interest, or that Preti's concurrent representation of such an entity and the Town of Windham violates these Rules.

Rule 1.7 (a) of the Maine Rules of Professional Conduct – the Rule cited by Ms. Mattiace – defines two situations where a concurrent conflict of interest would exist. The first is where the attorney or law firm is representing two clients that are directly adverse to one another. Preti's client that operates medical marijuana dispensaries is not involved in any matter that involves or is adverse to the Town. Thus, this direct adversity prong of the Rule is not implicated.

The second situation that implicates the conflict rule arises when there is a significant risk that the representation of one client (here, the Town of Windham) would 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. An honest evaluation of the relevant facts and circumstances in my view discloses no such risk. Of the nine (9) medical marijuana stores in Windham, none are owned or operated by a Preti client. Nor does any Preti client have any application pending for a facility in Windham. The mere fact that Preti represents clients with dispensaries in other parts of the State does not undermine its ability to adequately represent the interests of the Town and advise it about its regulatory options. This is particularly true where, as here, these other clients have no matters pending before and no relationship with the Town of Windham. There is no indication that Preti is doing work for cannabis clients that will undercut any legal position being taken by the Town. There is no compromising influence or competing interest that might negatively affect the advice Preti would otherwise give to the Town. We therefore see no limitation on our ability to adequately represent the Town. In fact, if the conflict rules were to be interpreted as Ms. Mattiace suggests, Preti (and all other firms representing municipal entities) would be

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precluded from representing clients from virtually any industry that municipal regulations might affect.

Ms. Mattiace also argued that Preti was required to obtain the informed consent of the Town, in writing, to its continued representation of the Town given its representation of a marijuana dispensary owner. This obligation arises when a waivable concurrent conflict of interest exists. Because we do not believe our concurrent representation of the Town and the dispensary client involves a conflict of interest, no such consent or waiver is necessary.

We, as a firm, are mindful of our obligations under the Rules of Professional Conduct, particularly those relating to conflicts of interest. Although we have concluded that there is no conflict within the meaning of Rule 1.7(a), we are available to answer any questions members of the Council might have. You also should feel free to obtain an opinion from independent counsel of your choosing.

Sincerely.



Elizabeth A. Olivier
General Counsel

EAO/nc

cc: Stephen E.F. Langsdorf, Esq.
Kristin M. Collins, Esq.