

RESOLUTION NO. 2009- 165

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND CONDITIONS ASSOCIATED WITH A CLASS REPRESENTATIVE EMPLOYMENT CONTRACT WITH DOFFERMYRE, SHIELDS, CANFIELD & KKNOWLES, JOHN S. KALIL, P. A., BRENNAN, MANNA & DIAMOND, P.L., AND R. BRYANT MCCAULEY, P.L., AND AUTHORIZING THE COUNTY ATTORNEY TO EXECUTE THE CONTRACT ON BEHALF OF THE COUNTY

WHEREAS, the County seeks to receive all tourist development or other taxes due the County from web-based travel companies that withhold/collect and remit such taxes; and

WHEREAS, an issue has arisen as to whether such web-based travel companies actually withhold/collect and remit the proper amount (as imposed by the County) of such taxes to the County; and

WHEREAS, a class-action lawsuit has been initiated by certain law firms, on behalf of represented local governments concerning the afore-mentioned issue; and

WHEREAS, the County has reviewed the terms and conditions associated with a Class Representative Employment Contract with Doffermyre, Shields, Canfield & Knowles, John S. Kalil, P.A., Brennan, Manna & Diamond, P.L., and R. Bryant McCully, P.L. (attached hereto, and incorporated herein); and

WHEREAS, the proposed contract is a contingency fee contract, which states that "compensation [to the law firms] shall be contingent upon the [law firms] making recovery for or on behalf of the Client of money or property..."; and

WHEREAS, if there is no recovery on behalf of the County, the County is not responsible for any costs associated with pursuing the class-action lawsuit; and

WHEREAS, the County has determined that entering into the above-referenced Contract will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, and conditions of the Class Representative Employment Contract with Doffermyre, Shields, Canfield & Knowles, John S. Kalil, P.A., Brennan, Manna & Diamond, P.L. and R. Bryant McCully, P.L. to represent the County in connection with any, and all, claims and remedies the County may

have against any, and all persons or entities arising out of, or related to, web-based travel companies withholding tourist development or other taxes due the County, and authorizes the County Attorney to execute the Contract on behalf of the County.

Section 3. To the extent that there are typographical or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 2nd day of June, 2009.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

BY: Cyndi Stevenson
Cyndi Stevenson, Chair

ATTEST: Cheryl Strickland, Clerk

BY: Patricia Ale Grande
Deputy Clerk

Effective Date: 6-2-09



CLASS REPRESENTATIVE EMPLOYMENT CONTRACT

The County of St. Johns, Florida (hereinafter "Client") hereby agrees to employ the law firms of Doffermyre, Shields, Canfield & Knowles, John S. Kalil, P. A., Brennan, Manna & Diamond, P.L. and R. Bryant McCulley, P.L. (hereinafter collectively the "Firms") to represent it in connection with any and all claims and remedies it may have against any and all persons or entities arising out of or related to web-based travel companies withholding tourist development or other taxes due the Client arising out of the facts and circumstances described in the attached memorandum. The Client agrees to the following conditions of employment and terms of payment to the Firms.

IT IS UNDERSTOOD AND AGREED that the compensation to be paid to the Firms for their services under this Contract shall be contingent upon their making recovery for or on behalf of the Client of money or property and, if the Firms obtain recovery, the Client will pay to the Firms, as an attorneys' fee, a percentage of the gross (i.e. before paying costs or expenses incurred or advanced) amount recovered, in accordance with the following schedule:

- A. Before the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for arbitrators is made, the expiration of the time period provided by such action, thirty-three and one-third percent (33-1/3%) of any recovery.
- B. An additional five percent (5%) of any recovery after a notice of appeal is filed or post-judgment relief or action is required for recovery on the judgment or, another proceeding is initiated before an appellate court.
- C. Client also agrees that the costs and expenses associated with its representation by the Firms and incurred in such representation will be paid from any recovery first, but the Firms' fee shall be based on the gross recovery before deduction any such costs and expenses.
- D. The Client understands it will be asserting the claims against parties responsible for the damages described herein on behalf of itself individually and potentially as the representative of all other persons similarly situated (hereinafter "Class") and that in the event the case is settled based on the claims asserted on behalf of the Class, as opposed to a settlement of only the Client's individual claims, and whether or not a Class has been certified by the Court, the Firms may negotiate their attorneys' fees as part of such settlement. Alternatively, if a Class of those persons whom the Client represents is certified by the Court and such certification is not subsequently withdrawn or revoked, and there is a recovery on behalf of the class, whether by settlement, judgment or otherwise, the Firms may negotiate their attorneys fee as part of settlement may seek Court approval of same, or they may make an application for an award of attorneys' fees as counsel to the Client and the Class. Under any of the circumstances enumerated in this paragraph or in any other such circumstances as may result in any recovery involving or related to

the Class claims, as opposed to solely the Client's individual claims, the percentage recovery compensation set forth above in Paragraphs A-D will not be applicable and the Firms will receive their compensation in accordance with the attorneys' fees negotiated by the Firm or any award entered by the Court. Such attorneys' fees will not be contingent upon the outcome of this matter or upon the amount of recovery for or on behalf of the client or the class and the Firms are entitled to any negotiated attorneys fees or court award of attorneys' fees whether entered in conjunction with a settlement, judgment or otherwise. Under such circumstances neither the attorneys' fees nor the costs and expenses associated with the Client's representation by the Firms will be deducted from any recovery by the Client individually, but may be separately recovered by the Firms from any recovery associated with the claims asserted on behalf of the Class, whether obtained by settlement, judgment or otherwise. In addition, the Firms are authorized to deduct out of any balance of such proceeds the amount of all unpaid bills for consultants, experts, investigators, court reporters, stenographers, and others retained by counsel to assist or advise in the prosecution of the Client's and/or the Class claims.

IT IS FURTHER UNDERSTOOD AND AGREED that:

1. The Firms and their representatives are authorized to investigate fully any of the claims or potential claims to be asserted and, should a lawsuit or any other legal proceeding be commenced on behalf of the Client, to prepare for and prosecute those claims fully. The Client will remain responsible for all court costs and other expenses incurred by the Firm in the prosecution of those claims in accordance with the terms of this agreement. However, if there is no recovery, the Firm will not seek to recover costs and expenses they have incurred in the representation from the Client. If, after reasonable investigation of such claim(s), the Firms determine that it is not feasible or desirable to further prosecute such claim(s), the Firms may withdraw from representation under this Contract upon notification to the Client of that fact.
2. The Firms have discussed with the Client the possibility of the Firms association with another law firm in connection with this action, and Client consents to this if the Firms believe this would be of benefit. However, any additional firm's compensation shall be paid out of the compensation otherwise due the Firms as provided herein.
3. The undersigned Client has, before signing this contract, received and read the Statement of Client's Rights and understands each of the rights set forth therein. The undersigned Client has signed the Statement and received a signed copy to refer to while being represented by the undersigned attorney(s).
4. This contract may be cancelled by written notification to the undersigned attorneys at any time within 3 business days of the date the contract was signed,

as shown below, and if cancelled, the Client shall not be obligated to pay any fees to the attorneys for the work performed during that time.

5. By signing a copy of this Employment contract, the Client acknowledges s/he received a copy of the Statement of Client's Rights that is attached.

ACCEPTED:

COUNTY OF ST. JOHNS, FLORIDA.

By: _____ Date: _____

Print Name

Firm: DOFFERMYRE, SHIELDS, CANFIELD & KNOWLES. on behalf of the FIRMS.

By: _____ Date: _____

Robert E. Shields, Esq.

STATEMENT OF CLIENT'S RIGHTS

Before you, the prospective client, arrange a contingency fee agreement with a lawyer, you should understand this Statement of your rights as a client. This Statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate of percentage as in any other contract. If you do not reach an agreement with one lawyer you may talk with other lawyers.

2. Any contingency fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within three (3) business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during the time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the three-day period, you may have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingency fee contract with you, a lawyer must advise you whether the lawyer intends to handle to your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different firms will represent you, at least one lawyer from each firm must sign the contingency fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associates with other lawyers, you should sign a new contract which includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in this case.

6. You, the client, have the right to know in advance, how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to

decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount minus the costs.

7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money which you might have to pay to your lawyer for costs, and liability you might have for attorney's fees to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement you need not pay any money to anyone, including your lawyer. You also have the right to have every lawyer or law firm working on your case sign this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer's ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

11. If at any time, you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach the Florida Bar, call (904) 561-5600, or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit unless your fee contract provides for arbitration. You can request, but may not require, that a provision for arbitration under Chapter 682, Florida Statutes, or under the Fee Arbitration Rules of the Rules Regulating the Florida Bar be included in your fee contract.

County of St. Johns, Florida

DOFFERMYRE SHIELDS CANFIELD & KNOWLES

By _____
Its _____

By _____
on behalf of the Firms

Date

Date