

May 1, 2018

**ADVISORY OPINION AS TO FLA. ADMINISTRATIVE  
RULE 61G19-6.012 PROVISIONAL CERTIFICATE**

**Issue:**

The Broward County Board of Rules and Appeals has asked the attorney for clarification on Rule 61G-6.012 as it pertains to the scope of authority given through provisional certification as set forth in 61G19-6.012(3) which states:

**(3) Provisional certificates shall only be issued to persons employed or contracted by an agency of government and the authority of the certificate shall be limited to the jurisdiction of the government agency with which the applicant was employed at the time the provisional certificate was originally issued.**

More specifically, the Board seeks interpretation where provisional certificates may be issued by a governmental agency which is also acting in the capacity of independent contractor in another jurisdiction..

**Rule:**

As with all questions pertaining to statutory language or administrative rules, “words used should be given their plain and ordinary meaning.” See *Broward Children's Ctr., Inc. v. Hall*, 859 So. 2d 623, (Fla. 1<sup>st</sup> DCA 2003). See also *Fla. Dep't of Corr. v. Abril*, 969 So. 2d 201, (Fla. 2007). (“*When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning*”).

**Analysis:**

The rule determines that: “Provisional certificates shall only be issued to persons employed or contracted by an agency of government” so that the person(s) in question is clear. It applies to any person(s) employed or contracted by an agency of government.

The second part of the Rule states “the authority of the certificate shall be limited to the **jurisdiction of the government** agency with which the applicant was employed at the time the provisional certificate was originally issued.” The fact that the authority may also be acting in the capacity of an independent contractor, in another jurisdiction, is irrelevant. All that is necessary is to determine the governmental agency with which an individual was employed at the time of provisional certification.”

**For sake of clarification, there is no language of limitation as to other municipalities for which the government agency may have concurrent jurisdiction and none can be imputed.**

No administrative body can unilaterally add or remove language to/from the Administrative Rules, the Florida Statutes or local rules where there is no ambiguity. In the event of an ambiguity, the courts instruct all parties to review legislative intent. In this case, there is no ambiguity and no need for review of legislative intent.

By way of example: If a Broward County inspector is given temporary certification for Dania Beach as a building inspector, and Broward County is inspecting structures in unincorporated Broward County as well as the city of Dania Beach, that inspector's provisional certification it is not limited to Dania Beach. He may perform inspection work in unincorporated Broward as well.

**Conclusion:**

The fact that the authority may also be acting in the capacity of an independent contractor, in another municipality, is irrelevant. All that is necessary is to determine the governmental agency with which an individual was employed at the time of provisional certification.”

The Rule has the effect of giving broader powers to employees of a government agency which is working in more than one jurisdiction. Agents or subcontractors of a government agency (such as Calvin Giordano, CAP, etc.) are not given the same breadth of discretion and may only act “within the jurisdiction of the government agency **with which the applicant was employed** at the time the provisional certificate was originally issued.”

Highest regards,

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Charles M. Kramer, Esq. for  
The Broward County Board of  
Rules and Appeals