

OP
OLENN & PENZA

ATTORNEYS AT LAW - LLP

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August 24, 2020

Via Electronic Mail Only

Rhode Island Office of Energy Resources

Attn: Becca Trietch

One Capitol Hill, 4th floor

Providence, RI 02908

eermc.rfp@gmail.com

Re: Legal Services Technical Proposal
EERMC-2020-02

Dear Ms. Trietch and Council Members:

This package is being sent in response to your solicitation for competitive proposals for the provision of legal services for the Rhode Island Energy Efficiency and Resources Management Council.

In addition to the documents you requested, I have enclosed a personal resume which I believe will assist you in determining that I am qualified to provide the types of legal services you have advertised. I have experience in working with municipal agencies, general corporate matters, civil litigation, and labor and pension matters. I have the professional qualifications required to be a great asset to the Council, and the administrative support to provide you with the assistance and counsel you need and desire.

As you will see from my resume, I am a member of the bar and admitted to practice in state and federal courts in Rhode Island and Massachusetts, including the United States Court of Appeals for the First Circuit and both the Rhode Island Supreme Court and the Supreme Court of the United States. I have a Master of Business Administration degree and have been certified by the Association of Certified Fraud Examiners as a Certified Fraud Examiner.

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In addition to representing private clients and companies who had matters involving public entities, I have experience working with and for governmental entities. For example, I have served as counsel to a legislative committee and a municipal pension board where my diverse duties included attending meetings, providing representation at hearings, rendering legal interpretations, advising as to statutory obligations, and advising on the formulation of procedures and policies. In my time as legal counsel to the West Warwick Pension Board I also served as the Board's Access to Public Records Act official. I have also served as chairman of a municipal budget committee. I have also represented the City of Woonsocket, through its insurers, and have also assisted as defense counsel in litigation brought against the Providence Housing Authority. Additionally, I serve on the adjunct faculty at Roger Williams University where I teach courses in administrative law, accounting, and civil litigation.

In addition to my public entity experience, I have experience related to corporate law as well. As a demonstration of my experience related to general corporate issues: (1) I have been certified by the Superior Court and Family Court as a member of the receivership panel, and (2) I have advised many business entities on a range of issues from formation, to litigation, to dissolution. As a receiver, I have an obligation to take possession of assets and to provide an accounting of activity related to the property. As a result of my work, I have also been named to the national professional survey of lawyers called the Super Lawyers Rising Stars list multiple times.

Moreover, members of our firm have the well documented experience and capability to provide all of the services you have advertised. The firm, Olenn & Penza, LLP, is a full-service litigation firm located in Warwick that was formed in 1982. Many of the firm's attorneys regularly handle cases that are in the news. As a firm our partners have been involved in labor matters, including contract negotiation and formation, pension issues, and health care issues for municipal employees for decades. Multiple members of the firm have also been named to the Super Lawyers list over multiple years. In total, the firm currently has nine attorneys, one paralegal, and additional support staff. Each of the firm's accomplished attorneys will be available to me for consultation on any issue that arises if the need presents itself.

There are no known conflicts of interest with the RI EERMC, nor is there any pending litigation. Further, none of our firm members or staff are under investigation by any governmental authority.

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I trust that I have provided the information in this package that you have requested. Enclosed you will find:

1. Personal resume of Michael B. Forte, Jr., Esq. and for Melina J. Trudeau, Esq.;
2. Olenn & Penza, LLP firm resume;
3. Fee proposals.

If you need any further information or have any other need to contact me, I can be contacted by email at mbf@olenn-penza.com or by phone at (401) 737-3700. This proposal was prepared with the assistance of my partner Melina J. Trudeau who can also respond to any questions you may have at mjm@olenn-penza.com and at (401) 737-3700.

I look forward to the opportunity to serve the Council if chosen for the position.
Thank you.

Very truly yours,



Michael B. Forte, Jr.
mbf@olenn-penza.com

MBF:mjt/lml \rfp response\Letters\ TBD to RI EERMC Proposal 8-24-2020 FINAL
Enclosures

BAR ADMISSIONS, CERTIFICATIONS & APPOINTMENTS

Bar Admissions:

State Courts: Rhode Island & Massachusetts
Federal Courts: Supreme Court, First Circuit, Districts of Rhode Island & Massachusetts
Arbitrator Panel: Rhode Island Superior Court
Receivership Panels: Rhode Island Superior Court & Rhode Island Family Court
Bail Commissioner/Justice of the Peace: Rhode Island District Court & Rhode Island Family Court
Certified Fraud Examiner (CFE), Association of Certified Fraud Examiners

EXPERIENCE

City of Cranston: Municipal Court Cranston, RI
Associate Judge 2019-Present

Olenn & Penza, LLP Warwick, RI
Partner 2018-Present
Associate Attorney 2008-2017

- Primary practice areas: civil litigation, professional liability defense, appellate, corporate insolvency/receivership, class actions, civil rights litigation, insurance defense, employment & benefits
- Multiple full briefing cases and oral arguments in the Rhode Island Supreme Court
- Appointed Receiver to take charge of insolvent companies/entities (2013-Present)
- Legal Counsel for the West Warwick Pension Board (2013-2015)
- Examples of cases listed on the attached addendum

State of Rhode Island: Rhode Island Senate Providence, RI
Legal Counsel for the Senate Committee on Rules, Government Ethics & Oversight 2017-Present

Roger Williams University Bristol, Providence & Newport, RI
Practitioner/Adjunct Faculty 2012-Present

School of Justice Studies: Master Level: Public Administration & Leadership Programs
Undergraduate: Legal Studies & Criminal Justice Studies Programs

Gabelli School of Business: Undergraduate: Accounting Program

University College: Master Level: Master of Science in School Finance & Operations
Undergraduate: Paralegal Studies & Public Administration Programs

List of classes taught available upon request

Martin G. Weinberg, P.C. & Robert M. Goldstein, Attorney at Law Boston, MA
Law Clerk 2006-2008

- Assisted with preparation and trial in United States v. Warshak, 1:06 CR 00111, 562 F.Supp.2d 986 (S.D. Ohio 2008), aff'd in part rev'd in part, 631 F.3d 266 (6th Cir. 2010)); Warshak v. United States, 2006 WL 5230332 (S.D. Ohio 2006), aff'd, 490 F.3d 455 (6th Cir. 2007), vacated as not ripe en banc, 532 F.3d 521 (6th Cir. 2008).

HONORS/AWARDS

Super Lawyers Rhode Island Rising Stars List (2011-2020)
Rhode Island Girls Soccer Officials Hall of Fame (Inducted 2019)

EDUCATION

Suffolk University Law School, Boston, MA (ABA Accredited)

Juris Doctor, *Cum Laude* (2008)

Honor Board Member: Journal of High Technology Law

Jurisprudence Award in Constitutional Law

Best Oral Advocate Award - 2008 American Constitution Society Constance Baker Motley

National Moot Court Competition in Constitutional Law (Regional Round)

Winner - 2006 University of North Carolina J. Braxton Craven, Jr. Moot Court Competition

Winner - Suffolk University Law School McLaughlin Appellate Oral Advocacy Competition

First Year Oral Advocacy Section Award

Suffolk University-Sawyer School of Management, Boston, MA (AACSB Accredited)

Master of Business Administration, Concentration in Taxation (2008)

Beta Gamma Sigma Honor Society

Providence College, Providence, RI

Bachelor of Science, Accountancy Major, Spanish Minor, Finance Minor, (2004)

PUBLICATIONS, QUOTATIONS & ACKNOWLEDGEMENTS

Author: Michael B. Forte, Jr., Spam and Internet Privacy by: B.G. Kutais, 7 J. High Tech. L. 1 (2008).

Quotations: Eric T. Berman, *Negligence Case v. Police Officer Time-Barred*, Rhode Island Lawyers Weekly at 1 (Jul. 23, 2020).

Barry Bridges, *Arbitrability of Pension Dispute Rests on Question of Retirement*, Rhode Island Lawyers Weekly at 1 (Sept. 28, 2017).

Acknowledgements: Tricia L. Forte, Resolving the Circuit Split: Pleading Healthcare Fraud with Particularity, 25 Roger Williams L. Rev. 16 at fn.* (2020).

Susan B. Heyman, Corporate Privilege and an Individual's Right to Defend, 85 Geo. Wash. L. Rev. 1112 at fn.* (2017).

OTHER EXPERIENCE

Rhode Island Bar Association 2020-2021
Member of the House of Delegates

Rhode Island Superior Court Providence, RI
Business Calendar Steering Committee – Receivership Subcommittee 2019

Town of Little Compton Budget Committee Little Compton, RI
Chairman and Member Elected Member 2001 & 2003; Elected Chairman 2003 & 2004

National Collegiate Athletic Association (NCAA) Official
Soccer (NISOA *National Referee* 2012-2017, *National Referee Emeritus Beginning* 2018) 2002-2018
Women's Lacrosse Official (US Lacrosse District Level Umpire) 2007-2015

United States Soccer Federation
Professional Division Referee Clinic 2000-2008

ADDENDUM

Examples of Cases:

Reported:

- Polanco v. Lombardi, ___ A.3d ___, 2020 WL 3494624 (R.I. 2020) (negligence statute of limitations), 209 A.3d 567 (R.I. 2019) (mem. reh'g granted).
- State v. R.I. Troopers Ass'n, 187 A.3d 1090 (R.I. 2018) (defense and indemnity of state trooper).
- DeCurtis v. Visconti, Boren & Campbell, Ltd., 152 A.3d 413 (R.I. 2017) (privileges in malpractice).
- Boyer v. Bedrosian, 57 A.3d 259 (R.I. 2012) (civil rights putative class action).

Unreported:

- Acosta v. Restrepo, 2020 WL 3495777 (D.R.I. Jun. 25, 2020) (Preliminary injunction regarding candidate signature for ballot requirement in light of COVID restrictions).
- Pawtucket Public Safety Retirees Ass'n v. City of Pawtucket, 2019 WL 937345 (D.R.I. 2019) (evidence/proof of damages in certified class action).
- Hawes v. Reilly, NC-2015-250 (R.I. Super. Ct. 2015) (Stern, J.), aff'd, 184 A.3d 661 (R.I. 2018) cert. denied, 584 U.S. ___, 139 S.Ct. 1321 (2019) (personal jurisdiction).
- Testa v. Salvatore Mancini Res. & Activity Ctr., Inc., 2019 WL 2929333 (D.R.I. 2019) (motion to dismiss), adopted by 2020 WL 91554 (D.R.I. 2020).
- Cambio v. Faria, C.A. No. KC-2018-1325 (R.I. Super. Ct. 2019) (appointed special master/receiver), SU-2019-0307-A (R.I. 2019) (Receiver's motion to dismiss appeal granted).
- In re Central Coventry Fire District, No. 14-12785 (Bankr. D.R.I. 2015) (chapter 9).
- Providence Retired Police & Firefighter's Ass'n. v. City of Providence, 2012 WL 338226, 2012 WL 1957737 (R.I. Super. Ct. 2012) (class action public employee pension & health benefits).
- Patterson v. State of Rhode Island, 2011 WL 1884180 (D.R.I. 2011), adopted by 2011 WL 1897398 (D.R.I. 2011) (employment & civil rights).

Small Business Advisor and Litigator

Employment History

Oleyn & Penza, LLP, Providence, RI | Aug. 2004 to Present

Partner. Brought into 10-attorney firm broadening practice from insurance defense to general business consulting and labor law. Practice areas include sales of businesses up to \$8 million, business formation, employment law, compliance, professional malpractice defense, and plaintiffs' medical malpractice with severe injury or wrongful death with damages up to \$10 million.

Business Consulting & Transactions:

- **\$8 Million Sale of Payroll & HR Business:** Helped negotiate and draft all closing documents required for a Small Business Association supported purchase and sale of business.
- **\$1.5 Million Seller Financed Sale of Jewelry Business:** Helped transition buyers from a bank financed loan to a seller financed transaction including an incentive based Earn Out to help close deal.
- Transitioned a family run business from father to son and continue to advise company on acquisitions and new ventures.

Litigation in Federal and State Courts: First-chair all aspects of civil litigation and dispute resolution, from internal / fact investigations through trial, arbitration, and mediation in all levels of Rhode Island state courts, federal district court, and federal bankruptcy court. Well over one hundred arbitrations and mediations, countless hearings and bench trials, and two jury trials through verdict, with additional matters settled on the courthouse steps. Claims include contract disputes, fiduciary duties, negligent supervision, motor vehicle accidents and trip and falls. Insurance policy review and coverage opinions.

- **Appeal of Summary Judgment of Legal Malpractice Claims:** First-chaired defense of attorney against malpractice claims—including breach of fiduciary duty—stemming from acrimonious divorce of high profile, high net worth couple with multiple businesses and proceedings in multiple courts. Argued and won summary judgment on both procedural and substantive law issues, then argued and won appeal to state supreme court. *Cronan v. Iwon*, 972 A.2d 172 (R.I. 2009)
- **Appeal of Summary Judgment of Legal Malpractice Claims:** First-chaired defense of attorney against malpractice claims – including breach of contract defending partially on statute of limitations grounds – stemming from high value estate plan which led to an alleged improper merger of properties. Argued and won summary judgment, then argued and won and lost appeal to state supreme court. *Sharkey v. Prescott*, 19 A.3d 62 (R.I. 2011).
- **Appeal of Rule 11 Sanctions and Fees:** Second-chaired defense of attorney against malpractice grounds – including improper criminal allegations – stemming from a bankruptcy petition. Appeared at full evidentiary hearing, provided testimony and briefing on matter and was awarded Rule 11

Sanctions and Fees against counsel. Argued and defended lower courts imposition of sanctions and fees and won. *Robideau v. Cosentino*, 47 A.3d 338 (R.I. 2012).

Early Career in Rhode Island | 2000 (Left to attend law school.)

One-year exploration of differing types of organizations and communications styles required by varying audiences, often faced with complex problems.

- Warwick School Department: Italian substitute for high school and junior high school kids.
- Rhode Island Attorney General's Office, Criminal Division: Mentored by chief paralegal.

Education

Suffolk University Law School, Boston, MA | JD, *Dean's List*, 2004

- Judicial internships with The Hon. Vincent A. Ragosta, Superior Court and The Hon. Elaine T. Bucci, District Court, Sixth Division.

University of Rhode Island, Kingston, RI | BA, *with honors*, 2000

- Major in Communications and Minor in Italian.
- Semester abroad at Scuola Lorenzo De' Medici in Florence, Italy.

Professional Leadership

Board Appointments, Academia & Association Memberships

- Former Member of Board of Directors, Project Weber Renew a 501(c)3 non-profit (providing support to high risk populations) 2017-2019
- Lecturer, *Business Skills for the Construction Trades*, Roger Williams University
- Justinian Law Society of Rhode Island
- Rhode Island Bar Association
- Founders Chapter of BNI
- Speaker, *What's in a Contract?*, Basement Health Association, Regional Meeting, Fall 2015 – invited to speak by national organization to present at their New England Regional Meeting with over one hundred attendees.

Admissions

- Rhode Island and Massachusetts.
- United States District Court for the District of Rhode Island.

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It is a pleasure to provide you with this information about Olenn & Penza.

We are a full service litigation firm founded in 1982. We have operated in Rhode Island since our founding. We are able, depending upon your need, to give you the best legal representation in our area of practice. For your consideration, we have attached a brief background on our firm and a list of some of our past and present clients.

Our services include but are not limited to:

- Professional liability defense doctors, lawyers, mental health care professionals, accountants and real estate brokers;
- Defense of municipal government, civil rights, employment and related legal matters to police professional liability;
- Municipal employee labor relations including contract negotiation and representation on issues of compensation and benefits (including pension and healthcare);
- Regulatory and administrative services;
- Insurance coverage opinions;
- General liability defense including auto, trucking, busing, maritime and inland marine, construction, premises and products;
- Liquor liability and specialty line defense;
- Litigation review by specialty line (we have a wide array of product, medical and property expert witnesses);
- Product liability defense;
- Admiralty.

To reduce defense costs, we make extensive use of paralegal services and offer wide experience with alternative dispute resolution. We look forward to meeting and serving your needs for the future.

REFERENCES AND REPRESENTATIVE CLIENTS (*past and present*):

Acadia Insurance Company
ACE Insurance Group
Allstate Insurance Company
American International Group
AXIS Insurance
CASCO Indemnity Company
Chubb
City of Cranston
CNA Insurance
Crawford & Company
Empire Fire & Marine
Employers Reinsurance Corporation
GRE Insurance Group
Gilbane Construction Company
Hanover Insurance Company
Hingham Mutual Fire Insurance Company
Lexington Insurance Company
Liberty International Underwriters
Markel Claims
Municipality Defense of Various Communities:
 Cranston
 North Providence
 Pawtucket
 Providence
 Westerly
 Woonsocket
New Hampshire Insurance Company
New London County Mutual Insurance Companies
North American Specialty Ins.
Ocean Marine Underwriters, Inc.
Pawtucket Police Department
Providence Police Department
Rhode Island State Firefighters Association
State Farm Insurance Company
Summit Insurance Company
Sunderland Marine Mutual Insurance Company
Swisse Re
The Hartford
TIG Insurance Company
Travelers
Trident Insurance Company
West Warwick Pension Board

MARTINDALE-HUBBELL:

The firm has received the highest rating by the independent legal rating agency, Martindale-Hubbell.

MEMBERSHIPS:

Our Firm is a member of the Defense Research Institute and International Association of Defense Counsel.

Managerial Capacity/Financial Viability

In total, the firm currently has nine attorneys, two paralegals, and additional support staff. Each of the firm's accomplished attorneys will be available for consultation on any issue that arises within the scope of the proposed services if the need presents itself. Brief resumes of each of the individuals listed in Sections (5) and (6) of Attachment C (Tab 3) are listed below.

Our firm's attorneys regularly handle cases that are in the news. Firm partner Martin DeMagistris has represented the Providence Housing Authority in a class action suit brought by current and former employees related to wage claims. Mr. Penza and Mr. Colucci have been involved in labor matters, including contract negotiation and formation, pension issues, and health care issues for municipal employees for decades. Mr. Penza and Mr. Forte also have been at the forefront of pension litigation over the last decade include cases involving the City of Providence, the City of Pawtucket and the state pension litigation. Multiple members of the firm, including Attorneys Penza, Colucci and Forte, have also been named to the Super Lawyers list over multiple years.

The members of our firm have a great deal of experience in business and legal matters. Attorneys Forte has earned a Master of Business Administration degree and Attorney Penza has a Master of Science in Taxation. Attorney Forte has been certified by the Association of Certified Fraud Examiners as a Certified Fraud Examiner and is listed on the Rhode Island Superior Court and Family Court panel for appointment as a Receiver.

INDIVIDUAL FIRM MEMBERS:

J. Renn Olenn (retired) - Born in Canonsburg, Pennsylvania, December 14, 1944. Heidelberg College, Tiffin, Ohio, B.A., 1966, academic honors. U.S. Army Tank Officer, 1966-1969. Boston University Law School, J.D., 1972. Was admitted to practice before all Rhode Island and Massachusetts courts, United States District Court, and United States Supreme Court. When practicing, gained broad experience in the defense of insurers, institutions and insureds in all phases of first and third-party litigation, and complex litigation. Former Member of The Maritime Law Association of the United States. National authority on swimming pool accidents, liability and design.

PARTNERS:

Joseph F. Penza, Jr. - Born in Providence, Rhode Island, September 23, 1947. University of Rhode Island, B.S. in Business Administration, 1969. Boston University Law School, J.D., 1972, Boston University Law School Master's Degree in Taxation, 1975. He has specialized in defending police and represented constitutional litigants in the United States District Court. Long experience in state court trial and appeal courts. Lecturer for police seminars and guest speaker for the Providence Human Relations Committee Seminar. Chairman Superior Court Bench/Bar Committee 1984-1987. Supreme Court Ethics Advisory Panel 1995-2000 (Chairman 1999-2000). Admitted to practice before all Rhode Island courts, United States District Court, United States Circuit Court of Appeals and United States Supreme Court. Advocate of the American Board of Trial Advocates. Fellow of the American College of Trial Attorneys.

Michael J. Colucci - Born in Providence, Rhode Island, August 18, 1960. Attended Providence College, graduated Summa Cum Laude in 1982. Attended Boston College Law School and graduated in 1985. Admitted in all Rhode Island and Massachusetts courts and United States District Court Bar, and has specialized in defense litigation. Founder of Verdict Shaper, LLC and lecturer in the greater Providence and Boston areas on trial practice techniques in his "Trial - A Path to Victory" series. Fellow of the American College of Trial Attorneys.

Holly R. Rao - Born in Providence, Rhode Island, October 13, 1960. Attended Boston College and graduated in 1982. Attended Franklin Pierce Law Center and graduated in 1986. Admitted to practice before all Rhode Island and Massachusetts courts, United States District Court and United States Court of Appeals for the First Circuit. Practice is the defense of civil litigation with a specialty in defending construction claims, professional liability, providing coverage opinions and litigating declaratory judgment actions.

Michael T. Prew - Born in Cranston, Rhode Island, May 26, 1967. Attended University of Rhode Island and graduated in 1989. Attended New England School of Law in Boston, Massachusetts and graduated in 1993. Admitted in all Rhode Island courts and the United States District Court for the District of RI. Member of the Rhode Island and American Bar Associations. Specializing in civil litigation.

Martin K. DeMagistris - Born in Washington, D.C., October 16, 1972. Attended the University of Rhode Island and graduated 1994. Attended Catholic University Columbus School of Law and graduated in 1998. Admitted to practice law in all Rhode Island, Massachusetts and New York courts. Admitted in the United States District Court for the District of RI. Specializing in the defense of civil litigation, admiralty law and appellate practice.

Melina J. Trudeau - Born in Providence, Rhode Island, November 24, 1978. Attended the University of Rhode Island and graduated in 2000. Attended Suffolk University School of Law in Boston, Massachusetts and graduated in 2004. Admitted in all Rhode Island courts and the Commonwealth of Massachusetts. Admitted in the United States District Court for the District of RI. Specializing in small business issues and civil litigation.

Krista J. Schmitz - Born in Cranston, Rhode Island, November 7, 1978. Attended Northeastern University and graduated Summa Cum Laude in 2000; M.S. in Criminal Justice, 2001. Attended Suffolk University School of Law in Boston, Massachusetts and graduated Magna Cum Laude in 2007. Admitted in all Rhode Island and Massachusetts courts. Admitted in the United States District Court for the District of RI. Specializing in employment matters and civil litigation.

Michael B. Forte, Jr. - Born in Providence, Rhode Island, May 29, 1982. Attended Providence College, graduated in 2004. Attended Suffolk University, Master of Business Administration, graduated Beta Gamma Sigma 2008. Attended Suffolk University School of Law, graduated Cum Laude in 2008. Admitted in all Rhode Island and Massachusetts courts. Admitted in the United States District Court for the Districts of RI and District of Massachusetts, the United States Court of Appeals for the First Circuit and United States Supreme Court. Certified as a fraud examiner by the Association of Certified Fraud Examiners. Certified for court appointment in Rhode Island as Receiver in superior court and family court. Specializing in civil litigation, business litigation and appellate practice.

ASSOCIATE:

Michael R. Ferron – Born in Norwich, Connecticut, September 28, 1991. Attended Boston University, graduated Magna Cum Laude in 2013. Attended Roger Williams University School of Law, graduated Cum Laude in 2016. Admitted in all Rhode Island and Massachusetts courts. Specializing in civil litigation.

*Rhode Island does not have a procedure for the certification of specialization of lawyers.