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June 24, 2009

Joseph H. Serota, Esq.
Weiss Serota Helfman
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134

Via First Class Mail and email at jserota@wsh-law.com

Re: RQO 09-14
Prohibition on recommending professional services
County Code § 2-11.1 (p)

Dear Mr. Serota:

The Commission on Ethics & Public Trust considered a question posed by you, on behalf of a client, at a public meeting held on June 23, 2009, but declined to render an ethics opinion on this matter.

In correspondence dated March 15, 2009, you asked the following:

Does Section 2-11.1. (p) of the county Code of Ethics permit a city attorney to recommend a specific private attorney or list of attorneys to a management-level city employee who is challenging a disciplinary action of the city without doing so in a public meeting and where the city attorney receives no fee, remuneration or benefit whatsoever in return for the recommendation.

After discussing this question at length over a four-month period, the Commission on Ethics declined to respond to your query. This decision was made after careful consideration of the legislative intent of the ordinance and the specific facts of this case.

In reaching their decision, the Ethics Commissioners reasoned as follows:

1. An ethics opinion based on the unique and uncharacteristic circumstances presented will be of limited precedential value. Two facts in particular are highly unusual—first, the recommendation was made to an individual with a matter potentially adverse to the government-employer; second, although the city attorney believed it was within her duty to offer a

recommendation to a managerial-level employee, her recommendation was unsolicited.

2. Providing an ethics opinion in this matter is ill-timed. The Ethics Commission is not bound to provide an opinion on past events, and offering advice to an attorney who has already engaged in the behavior has minimal instructional benefit.
3. The intent of subsection 2-11.1 (p) of the ethics code is to prevent cronyism that might otherwise tolerate the funneling of work by government officials and employees to nongovernmental cohorts. Subsection 2-11.1 (p) helps ensure that individuals with transactions before their government are being heard on a level playing field and are not disadvantaged because they lack “insider information” about who can best represent them.

Consequently, until amended or reinterpreted, the Ethics Commission will apply the current law literally, as written.

In conclusion, the Ethics Commission declines to respond to the facts you presented, but the Commission encourages city attorneys and others in government to seek ethics opinions regarding subsection 2-11.1 (p) of the ethics code, prospectively, based on their typical circumstances.

This opinion construes the Miami-Dade Conflict of Interest & Code of Ethics Ordinance, but is not applicable to any conflict under State law. Inquiries regarding possible conflicts under State law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact or me or Staff Attorney Victoria Frigo if we can be of further assistance in this matter.

Sincerely,



ROBERT MEYERS
Executive Director