

"I'm a Lawyer, Not a Lobbyist." You Might be Both.

BY MIRIAM S. RAMOS



As the Deputy General Counsel for the Miami-Dade County Commission on Ethics and Public Trust, I often come across lawyers who

are accused of engaging in unregistered lobbying. Although you do not have to be a lawyer to be a lobbyist, a large percent of lobbyists in Miami-Dade County are also lawyers. Attorneys are often aware of lobbyist registration requirements but believe that they do not need to register because they see themselves as a lawyer, representing their client. Many of these individuals do not consider themselves lobbyists but unwittingly engage in lobbyist activity without realizing that they may be in violation of Miami-Dade County ordinances. This is the "lawyer-lobbyist conundrum." Where to draw the line requires an analysis of the precise activity the individual is engaged in, the stage at which the activity is taking place, who the individual is meeting with, and for what purpose.

Who is a lobbyist in Miami-Dade County?

Miami-Dade County's definition of "lobbyist" is very broad. It encompasses, "all persons, firms, or corporations employed or retained by a principal who seek to encourage the passage, defeat, or modifications of (1) ordinance, resolution, action or decision of the County Commission; (2) any action, decision, recommendation of the County Manager [County Mayor] or any County board or committee; or (3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission, or a County board or committee." Sec. 2-11.1(s), Miami-Dade County Code.^[1] This means that any individual who meets with a County elected/

appointed official and/or employee on behalf of a third party in order to influence that official or employee's decision is a lobbyist, if the decision will be heard or reviewed by the County Commission, or a County board or committee. In fact, it is the policy of Jackson Memorial Hospital that all pharmaceutical representatives are considered lobbyists under this definition and must register as such.

The lawyer who is not a lobbyist.

The Code of Ethics specifically excludes certain individuals from the definition of "lobbyist." Among those exclusions are attorneys who are retained or employed for the sole purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law restricts ex parte communications. This exception is narrow and exempts attorneys only in a very specific situation.

The gray area.

The Code of Ethics provides a broad definition and very narrow exceptions for lawyers in certain circumstances. What about everything in between? This is where the lawyer-lobbyist must tread carefully. Much depends on who the lawyer is meeting with and what is discussed.

In a recent example, an attorney representing a bidder for a County contract met with the contract administrator as well as with the Assistant County Attorney representing the department. The Commission on Ethics found that the meeting with the contract administrator - where the attorney attempted to convince the individual to find that the opposing bidder's submission was non-responsive - constituted lobbying. Therefore, that lawyer had crossed over from the realm of "lawyering" to the realm of "lobbying" and engaged in unregistered lobbying. In contrast, the Commission on Ethics found that the meeting with the Assistant County Attorney, which involved a discussion about the procedure established for

the filing of a bid protest, did not constitute lobbying.

Err on the side of caution.

The example above illustrates how easily the lines can blur. If you are an attorney appearing before any County board, or meeting with a County official or employee regarding a matter that will be going before the Board of County Commissioners or a County board, outside of a quasi-judicial setting, this is likely considered lobbying activity and it is best to register. It is easy for a discussion with a County official/employee regarding a County matter to evolve into a lobbying effort. If your behavior can be interpreted as an effort to influence that individual's decision, you have crossed the line. Conversely, if you are speaking with an Assistant County Attorney during the course of on-going litigation, that is likely not considered lobbying.

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The specifics on how to comply.

Lobbyist registration forms may be found at: <http://www.miamidade.gov/cob/library/forms/annual-lobbyist-registration-2014.pdf>. The cost of registration is \$490. Within 60 days of registering, the lobbyist must take a four-hour Ethics Course offered by the Commission on Ethics. The course registration form is available at ethics.miamidade.gov. The cost of the course is \$100. Failure to take the course within the allotted time period can lead to a suspension of lobbyist privileges. Individuals, who have expenditures relating to the lobbying effort, must file a Lobbyist Expenditure Statement by July 1st of each year. Those who have not incurred expenses,

are not required to file. Failure to register as a lobbyist but engaging in lobbying activity may result in the filing of an Ethics Complaint which carries of a fine of \$500 per count and the potential for suspension or debarment.

Better to ask.

We acknowledge that the line can easily be blurred and that crossing from one realm into the other can easily occur without one taking notice. We encourage lawyers who are meeting with County officials or employees on a matter which foreseeably will be heard or reviewed by the County Commission, or a County board or committee, outside of a quasi-judicial public meeting, to contact our office in order to obtain an Ethics Opinion on the particular facts and circumstances surrounding their situation and whether it is considered lobbying which requires registration. To ask for an Ethics Opinion please e-mail ethics@miamidade.gov. Individuals who intend to lobby in a municipality should check their local lobbying ordinance as the registration process is often different and the requirements are often more restrictive.

Miriam S. Ramos, Esq. currently serves as Deputy General Counsel for the Miami-Dade Commission on Ethics and Public Trust. She has worked for the Commission since 2005 and formerly served as Deputy Advocate. Prior to joining the Commission on Ethics Ms. Ramos was an Assistant State Attorney in Miami-Dade County. She earned a Bachelor of Science from the University of Miami in Communications and Political Science with Honors and her Juris Doctor from the University of Miami in 2002. Ms. Ramos is an active member of the Cuban American Bar Associations and sits on their Pro Bono Committee. She mentored with the Take Stock in Children Program and is a member of the Educational Excellence School Advisory Council. Ms. Ramos also serves on the Professional Ethics Committee of the Florida Bar and on the board of the Children's Home Society, Miami Chapter. She has participated in numerous panel discussions, provided training and has appeared on radio and television discussing ethics in government. Ms. Ramos is also the recipient of the "40 Under 40 Outstanding Lawyers of Miami-Dade County" award for 2013. ■

[1] "Principals" are also considered lobbyists. Therefore, a lawyer-lobbyist should make sure that his/her client is registered should he/she be included in a meeting that involves lobbying activity.



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