



## Miami-Dade Commission on Ethics & Public Trust

### Report of Investigation

**Investigator:** Sylvia Batista

<b>Case:</b> K 12-142	<b>Case Name:</b> JMH Cone of Silence	<b>Date Opened:</b> 9/10/12	<b>Date Closed:</b> 8/15/13
<b>Complainant(s):</b>	<b>Subject(s):</b> Martha Baker, Nurse Manager at Jackson Health System ER		

#### Allegation(s):

On 9/7/12, the COE received an e-mail from Michelle Romano (Romano), Administrator of the Procurement Management Department at Jackson Health System (JHS). In her e-mail, Romano sought an opinion from the COE regarding a possible Cone of Silence violation in connection with an RFP for Emergency Room Services at JHS. According to e-mails provided by Romano, the Cone of Silence violation involved an e-mail communication from Martha Baker (Baker), Nurse Manager at the Emergency Care Center, to a potential bidder, Phoenix Physicians. In her 9/6/12 e-mail to Phoenix Physicians, Baker requests a meeting to discuss the company's interest in bidding on the RFP. Phoenix Physicians CEO, Rob Scott immediately forwarded the e-mail to Carlos Scull (Scull), Contracting Officer for JHS, advising Scull that he was sending the e-mail in the "interest of full transparency" and stating that he would not be responding to Baker's e-mail.

#### Relevant Law:

Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1(t) *Cone of Silence*.



## **Investigation:**

### *Interviews*

#### **07/29/13 – Michelle Romano, Administrator, Procurement Management Department –**

Romano was asked about the attempted communication by Martha Baker. Romano does not recall whether she ever received an ethics opinion as to whether Baker's e-mail was a Cone of Silence violation. Romano said that Martha Baker, who is against the privatization of Jackson's ER, is the head of one of their unions. Romano advised that the RFP for the privatization of Jackson's ER had been cancelled. Romano suggested that the COE speak to her boss, Rosa Costanzo, for additional information.

#### **07/31/13 – Kathleen Phillips, Esq. –**

Kathleen Phillips (Phillips) responded to the contact e-mail sent to Baker by the COE and informed that she represents Baker on the subject matter. Phillips advised that, in a telephone conversation with Victoria Frigo, they went over the code's specifics to determine whether Baker's attempted communication with a potential vendor was a Cone of Silence violation. Phillips said that during the conversation, they concluded that the Cone of Silence restrictions do not apply to Baker because she does not hold any of the applicable positions prohibited from communicating with potential vendors during the Cone of Silence period. Phillips advised that Baker is president of one of JHS's unions, and an employee of JHS. Phillips said that she did not hear anything further from the COE and assumed that the issue had been resolved during the phone call with Frigo.

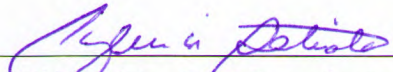
#### **08/01/13 – Victoria Frigo, COE Staff Attorney –**

Frigo said she recalls having a conference call with several people from JHS regarding a Cone of Silence issue. Frigo reviewed her time sheets for the months of September, October and November 2012, and found that she participated in a conference call on 09/10/12 with several people from JHS, including Costanzo from JHS Procurement Management Department, and County Attorney Eugene Shy. Frigo also recalls having a telephone conversation with Phillips about the matter. Frigo questioned whether the Cone of Silence restrictions applied to Baker because she was not connected to the RFP in the procurement process. Frigo said that she did not issue an ethics opinion on this matter.

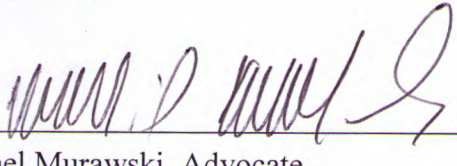
**Conclusion(s):**

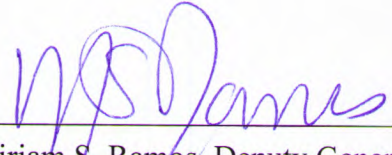
As a primary issue, the only “communication” Baker engaged in was the sending of an e-mail requesting a meeting. The e-mail was not responded to by Phoenix Physicians and the meeting never took place. From a practical standpoint, her “communication” seems, at best, an attempt to communicate with Phoenix Physicians and no actual influence on the RFP process occurred. Thus, even if the sending of the e-mail by Baker were considered to be a Cone of Silence violation, it is of such of *de minimus* nature that it would not warrant the filing of a formal complaint.

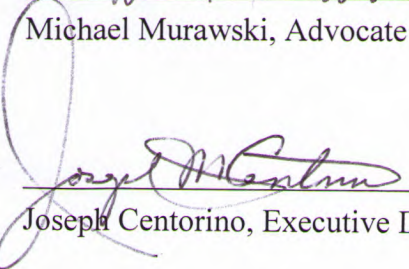
Counsel for Baker has agreed to request a formal opinion concerning the applicability of the Cone of Silence since it is possible that Baker may find herself a similar situation in the future. Accordingly, this matter is closed with no further action pending the receipt of the request for opinion from counsel for Baker.

  
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Sylvia Batista, COE Investigator

Approved by:

 8/26/13  
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Michael Murawski, Advocate

  
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Miriam S. Ramos, Deputy General Counsel

 8/28/13  
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Joseph Centorino, Executive Director