

# MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



## REPORT OF INVESTIGATION

#K12-156  
C12-040A & C12-040B

Date Opened: 10/16/12

Date Closed: 2/1/13

Investigators: Sylvia Batista

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The COE received ethics complaints from JaNene Church (Church), Director of the Corporate Business Office (CBO) at the Public Health Trust (PHT), and Norma Linares, Associate Administrator of the CBO, against Stephen Nuell (Nuell). Nuell is a member of the Financial Recovery Board (FRB) of the PHT. The complainants allege that Nuell called and verbally abused them for what he described as the poor communication and processes of the CBO that has resulted in inadequate follow-up on settlement negotiations, incorrect billing, and improper routing of calls to the Legal Liaison Staff. The ethics complaints allege that Nuell, as a member of the FRB, has a conflict of interest in that he is a partner in a personal injury law practice that pushes for settlements for his law firm, and other personal injury lawyers, for patients who owe money to the PHT.

The COE's issue relates to a possible violation of the Conflict of Interest and Code of Ethics Ordinance Sections 2-11.1(j) *Conflicting employment prohibited*, 2-11.1(n) *Actions*

*prohibited when financial interest involved, and 2-11.1(g) Prohibition on exploitation of official position.*

**Investigation:**

Research was conducted on the FRB. The FRB was created by vote of the BCC on May 3, 2011. The purpose of the FRB is to assume the governing body authority for the PHT in leading the Jackson Health System (JHS) at a time when its estimated deficit exceeded \$90 million.

The FRB is a seven-member board, with four members appointed by county commissioners. At the time that the FRB was created, it was anticipated that it would be disbanded in two years. Members of the 2012 FRB were Joe Arriola, Michael Bileca, Joaquin del Cueto, Mojdeh L. Khaghan, Marcos Jose Lapciuc, Darryl Sharpton, and Nuell.

**10/19/12 – Eugene Shy, Jr., Miami-Dade County Attorney’s Office –**

Eugene Shy, Jr. (Shy) is one of five attorneys assigned to represent the PHT. Shy was asked about Nuell’s law practice. Shy advised that Nuell is a partner in a law practice engaged in personal injury matters. Shy explained the relationship between a hypothetical client of Nuell’s law firm who receives medical services at JHS:

Assume Nuell’s firm has a client who injures himself and goes to JHS for medical services. JHS provides medical services to the patient/client and issues a bill for those services. When the plaintiff’s attorney files the lawsuit against the tortfeasor, he will try to come to a settlement agreement which seeks a reduction of the sum owed to JHS.

Shy said that sometimes the county could be the tortfeasor. In those cases Nuell has come downtown to take the deposition of a county defendant. Shy concluded that, as a

practicing personal injury lawyer, Nuell would probably run across more conflicts than anyone else on the FRB.

**10/31/12 – Norma Linares, Associate Administrator, CBO –**

Norma Linares (Linares) is identified in the complaint filed by Church as the person who speaks to attorneys on settlements and brings settlement offers to her. Linares advised that she also filed an ethics complaint against Nuell alleging conflict of interest for placing the interests of his law firm over those of the PHT.

Linares provided this investigator with a copy of her ethics complaint against Nuell. Linares said that in addition to being involved in settlement negotiations with the PHT on behalf of his own law firm, Nuell intervenes on behalf of other personal injury law practitioners in order to expedite their settlement negotiations with the PHT. Linares provided the following e-mails in support of her allegation.

**10/31/12 – E-mail string provided by complainant –**

The first e-mail dated **04/24/12** is to Nuell from Michael Elyanow (Elyanow) on the subject of the law firm's JMH cases. Elyanow is the Chief Operating Officer of Robert Rubenstein, P.A. Elyanow informs that he is following up on Nuell's recent discussion with Robert Rubenstein, Esq. (Rubenstein). Elyanow explains in his e-mail to Nuell that the firm has "many hundreds" of JHS cases, and in order to expedite the process of settling the cases, they would like to propose a formula-based payment plan for cases with \$10,000 policies, and requests that JHS relinquish its lien on the insurance proceeds to be distributed. Elyanow advised that they had recently forwarded their proposal to Linares and Church, but received no response. The same e-mail was delivered again to Nuell on **05/03/12** at Nuell's request and forwarded on the same day to Mark Knight (Knight), Executive Vice President and CFO of JHS.

Nuell informs Knight that the subject firm has hundreds of cases related to JHS bills. Knight reaches out to Elyanow the following day and tells him that Nuell has advised that his firm is having difficulties in reaching settlements with JHS on PIP and other types of accounts. Knight then requests that Elyanow forward to him any outstanding items for his review to determine whether “we can expedite the process.” Knight asks that Elyanow contact him directly to resolve all “go forward” items.

Elyanow replies to Knight’s e-mail on **05/14/12** in which he discusses the status of their \$10,000 policy cases and offers to bring their files in for Knight’s team to review. Knight does not immediately respond and Elyanow sends a follow-up on **06/06/12**.

The next e-mail communication dated **06/11/12** is from Knight to Church where he asks Church to verify the accuracy of the balances and other information. Church replies on the same day to Knight that “by the close of business tomorrow,” they will have released liens on accounts in the attached listing and execute the proposed settlement agreements. Church informs that they will look at the accounts with large balances and see what can be done.

**11/05/12 – JaNene Church, Director of CBO and  
Norma Linares, Associate Administrator of CBO –**

Church and Linares explained that the CBO is responsible for increasing the collections for PHT patient services revenue paid to PHT. The CBO works on settlement negotiations with personal injury attorneys, one of whom is Nuell. Nuell is the only attorney that they negotiate with who is a member of the FRB. The purpose of the FRB includes procurement, approval of vendor agreements, including contracts with collection lawyers, approval of budgets, and review of monthly operating results and strategic plans. The FRB does not make decisions on individual cases of patients indebted to JHS.

Church and Linares were asked about the allegations in their respective ethics complaints. Church said that in the situation described in their complaints, Nuell's initial contact was with her. Church said that the meeting requested by Nuell did not take place. Church said that after reprimanding her, Nuell stated that he wanted to speak with Linares. Church said she told him to contact her directly and not Linares. Instead, Nuell called Linares while on the line with an outside attorney, D. Baron, asking for an explanation as to why his partner's case had been neglected for so long and to discuss Attorney Baron's case. Linares said that she told Nuell she would investigate why the case had not been settled, and would also look into Attorney Baron's case.

Linares said that the next day, she left a message for Nuell's partner, Attorney Plotsky, requesting a copy of the settlement offer. Linares said that Nuell, and not Plotsky, returned her call, again asking about what she was doing about Attorney Baron's case. Linares said that again she told Nuell that she needed a copy of the settlement statement on his law firm's case. Linares explained that she was asked by Church not to call Nuell on Attorney Baron's case since this was not Nuell's client and would in fact be a HIPAA violation. Linares said that she subsequently located the original settlement statement from August of 2011 and spoke to the collection attorney at the time handling the case for the PHT, who confirmed that the CBO had rejected the offer in August 2011 and requested a counteroffer from Plotsky. Linares and Church said that they have found no record that anyone from Plotsky's and Nuell's firm ever followed-up with either the collection attorneys or a member of the CBO.

Church and Linares explained that when a person is injured and they go to JHS for medical services, the total of the bill generated will be negotiated between the attorney for the plaintiff and the CBO on behalf of the PHT. Church advised that settlement negotiations of an

outstanding bill usually take place before a law suit actually goes to trial. In a scenario where an injured person incurs a bill for \$100,000 at JHS and the person has a lawyer who offers JHS \$15,000, plus whatever the PIP amount is, Church said that Linares brings the settlement offer to her and they determine whether to accept or reject it by applying a pro-rata formula. If the offer is rejected, a counter-offer from plaintiff's attorney is the next step in the process. Linares said that they may confer with one of the County Attorneys for additional input when a particular offer is large, or if they are having difficulty coming to terms with the plaintiff's attorney.

Church explained that when they have a third party liability case, they place a lien on the patient in the hope that the PHT will receive funds from a potential monetary award, settlement or final judgment, if the case goes to court, and thereby protect the interest of the PHT. Church advised that the attorney for the plaintiff should not distribute funds from a monetary award without including the PHT when a lien has been placed on a patient, since otherwise the PHT would not release the lien. Church said that the filing of PHT liens is now handled by Hammel & Kaplan who are collection attorneys. The CBO continues to be responsible for releasing liens on settled accounts.

Church and Linares said they both recognize that there is a conflict of interest when Nuell, a member of the FRB, attempts to negotiate a settlement with the PHT on behalf of his law firm. Linares said that they do not know how many JHS cases they have negotiated, or are pending for negotiation with Nuell's law firm.

Linares explained that Nuell has also intervened on behalf of personal injury attorneys who wish to expedite settlement of their cases and release of the liens.

**11/26/12 – Robert Rubenstein and Michael Elyanow, Law Offices of Robert Rubenstein, P.A. –**

Rubenstein and Elyanow were informed of the ethics complaints filed against Nuell, and were asked about Nuell's involvement in helping their law firm reach settlements with JMH of personal injury and other types of accounts.

Rubenstein informed that their PIP cases have been pending negotiation for two to three years. Rubenstein explained that he attended a settlement conference with JMH in order to try and settle his cases, to no avail. His firm has been in negotiation with Linares, Church, and a third person possibly named Lisette, for close to 3 years. As part of the negotiating process, a lady who was over Church met with him in his office. A short time later, they came back with outrageous demands. Rubenstein said that this occurred one year ago last summer.

Rubenstein advised that he does not personally know Nuell, and was told about him by someone that he played basketball with who also plays basketball with Nuell. Elyanow said that he found Nuell's name on Jackson's website and gave him a call. Elyanow said that he told Nuell that they had developed a formula that, when applied, can help bring JMH accounts to an expedient and fair settlement with personal injury clients. Nuell asked him to send him the formula and he would get it to the appropriate party. Elyanow sent the formula to Nuell, which he forwarded to Knight. Rubenstein and Elyanow said that they do not know what the FRB does.

Rubenstein said that he has no cases with Nuell, and Nuell did not intervene on behalf of any of his clients. Elyanow and Rubenstein agreed that all Nuell did was forward their e-mail with the formula to Knight. They have had no further contact with Nuell. Elyanow advised that they have settled some of the cases since the e-mail was sent to Nuell, but not by using the formula.

**12/10/12 – Mark T. Knight, Executive Vice President & CFO of Jackson Health System –**

Knight said that he had received a copy of the ethics complaint filed by JaNene Church, but had not seen the one filed by Norma Linares. Knight said that he briefly spoke to Church on the day of the incident, 10/11/12. Church sent him a summary of the incident. Knight explained that the day after the incident, Church was feeling frustrated and angry and said that she wanted to go above and beyond to find a remedy. Knight advised that he told her not to let her emotions override the reality of the situation.

Knight said that Linares would deal with Nuell more often than Church. Knight explained that during the fall of 2011, Church came to him and told him that Nuell was contacting Linares in reference to cases that belonged to his partner and cases that belonged to another attorney. Knight said the other attorney's name is Mary Hamil. Knight said that at that point in time he asked Nuell not to call Linares, Church, or other staff members of the Corporate Business Office to inquire about case settlements. Knight said he asked Nuell to contact him directly.

Knight said that subsequently Nuell asked him to look into a number of cases that were ready for settlement. Knight said that he did not feel pressured regarding settling cases. Knight said that he did not hear from Nuell on the subject cases after that. Knight said that he regularly does not get involved in settling cases unless they exceed a certain threshold.

Knight explained that, on the day following the incident of 10/12/12, he met with Nuell and Steigman. Knight said that Steigman is the COO of the PHT. Knight explained that Nuell is closer to Steigman than he is to him. Nuell engaged Steigman in a conversation about the problem that he was having with staff from the CBO. Knight said that he and Steigman were trying to explain to Nuell that he needed to go through him in order to avoid the appearance of a

conflict of interest. Knight advised that they had a conversation with Nuell where he was told not to contact staff directly. Knight said that Nuell sits on the fiscal committee.

Knight explained that his contact with Robert Rubenstein had to do with a large number of cases that had been pending for settlement for a while. Some of the cases were settled after he received the e-mail from Rubenstein's office, however, they did not apply the formula that they suggested.

**Conclusion:**

The investigative case is closed and turned over for probable cause determination.