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**MIAMI-DADE
COMMISSION ON ETHICS & PUBLIC TRUST**

CLERK OF THE BOARD

2014 JAN 15 PM 2:00

CLERK, CIRCUIT & COUNTY CTS.
MIAMI-DADE COUNTY, FLA.
#1

**In re:
Mitchell Bierman**

C 13-26

PUBLIC REPORT AND FINAL ORDER

Pedro Hernandez (Hernandez), a private citizen, filed the above-referenced complaint against Mitchell Bierman (Bierman), an attorney with the law firm of Weiss, Serota, Helfman, Pastoriza, Cole and Boniske alleging that Bierman violated section 2-11.1(t)(1) (a)(iii) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance referred to as the Cone of Silence. Bierman was the hired lobbyist for CH2M Hill. Both CH2M Hill and AECOM, the company that Hernandez is a principal of, had submitted proposals in response to the County's Waste Water System Priority Project Notice to Professional Consultants (NTPC). Hernandez alleged that Bierman violated the Cone of Silence when he submitted several hundred pages of materials to the NTPC selection committee.

Sec. 2-11.1(t) (1) (a) (iii) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance states, in pertinent part:

“Cone of Silence “is hereby defined to mean a prohibition on: ... (iii) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant and any member of the selection committee therefore;”

(c) Exceptions.

(i) The provisions of this ordinance shall not apply to oral

communications at pre-bid conferences, oral presentations before selection committees ... or communications in writing at any time with any County employee, official or member of the Board of County Commissioners... The bidder or proposer shall file a copy of any written communication with the Clerk of the Board.”

The Ethics Commission has consistently interpreted the Cone of Silence exceptions to include any communication in writing as long as a copy of said communication is filed with the Clerk of the Board. Bierman filed his submission to the selection committee with the Clerk of the Board.

This interpretation is consistent with the exception that “oral” communications made before selection committee members at duly noticed public meetings are permitted. Since the filing of the written communication with the Clerk of the Board renders that communication “public” it is similarly not a prohibited communication.

RQO 13-11 the Ethics Commission opined that even non-County employee members of a selection committee are considered “officials” for Cone of Silence purposes. In addition, RQO 13-11 held that the bid solicitation documents in this instance did not specifically preclude Bierman from submitting the documents in the manner he did. Previously, in INQ 13-59, the Ethics Commission opined that appointed members to a City advisory board are subject to the Conflict of Interest and Code of Ethics when on a selection committee to appoint a City Attorney. Thus, for Cone of Silence purposes, even non-County employee, Citizen experts are considered “officials” once they are appointed to a selection committee. Accordingly, written communication that is also filed with the Clerk of the Board is permissible with non-County employee/Citizen expert selection committee members in the same fashion as with County employee selection committee members.

On December 12, 2013, in closed session, the Ethics Commission’s Advocate recommended that the case be dismissed due to a lack of Probable Cause.

In open session, the Ethics Commission voted unanimously to dismiss the case.

Therefore it is:

ORDERED AND ADJUDGED that COMPLAINT C 13-26 is hereby concluded.

DONE AND ORDERED by the Miami-Dade County Commission on Ethics &
Public Trust in public session on December 12, 2013.

MIAMI-DADE COUNTY COMMISSION ON ETHICS
& PUBLIC TRUST

By:

A handwritten signature in black ink, appearing to read 'Nelson Bellido', is written over a horizontal line.

Nelson Bellido
Chair

Signed on this date: 12/20/2013