

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Friday, June 29, 2018 9:14 AM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-161 Jose Smith, City Attorney, City of North Miami Beach (Advisory Opinions)
Attachments: image001.png; ATT00001.htm; Memo Response June 21 2018.pdf; ATT00002.htm; e-mail to Joe Centorino and Tim VanderGiesen.pdf; ATT00003.htm; Fbi e-mails.pdf; ATT00004.htm; Charter discussion-Miami Herald.pdf; ATT00005.htm; Resolution R2017-29.pdf; ATT00006.htm; Commission on Ethics Public Reprimand Pierre.pdf; ATT00007.htm

INQ 18-161 Smith

From: Centorino, Joseph (COE)
Sent: Thursday, June 28, 2018 4:32 PM
To: 'Smith, Jose' <Jose.Smith@citynmb.com>
Cc: 'jean olin' <jeanolin.munilaw@gmail.com>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: INQ 18-161 Jose Smith, City Attorney, City of North Miami Beach (Advisory Opinions)

Dear Jose,

You requested an advisory opinion from this office in connection with an anticipated vote this evening by the North Miami Beach City Commission regarding your continued employment as City Attorney for the City of North Miami Beach. You have raised a number of specific issues that you believe may create a voting conflict of interest on the part of Commissioner Frantz Pierre, who is a current sitting member of the Commission, and who you anticipate will be voting on the matter of your continued employment.

Under Section 2-3.1 of the North Miami Beach Code, the City Attorney is appointed by the City Commission and serves at the pleasure of the City Commission. Your position is, therefore, subject to the direct authority and oversight of the Commission, and you are accountable directly to the Commission.

I have carefully reviewed your request and the grounds that you have raised in good faith in an attempt to determine whether there is a legal conflict of interest on the part of Commissioner Pierre. In addition, I have conferred with attorneys in this office as well as others, including Jean Olin, Esq. and Stephen Johnson, Esq. You have made it clear that you believe that Commissioner Pierre has a deep-seated animosity toward you based on a number of issues and confrontations that have occurred during your tenure as City Attorney. Commissioner Pierre has been involved in law suits against both you and the City of North Miami Beach, and has also encountered legal issues with this agency, in which you provided useful information, all of which you believe to have created this animosity toward you. It is clear that you have genuine and justified concern that you may be terminated from your position as City Attorney based upon the upcoming vote of the Commission members, including Commissioner Pierre, an individual with whom you admittedly have a hostile relationship.

This agency has authority to provide advisory opinions on ethics issues such as voting conflicts, which derives from Section 2-1074 (y) of the Miami-Dade County Code. That section provides in pertinent part that, "Any person within the Ethics Commission's jurisdiction, when in doubt about the applicability or interpretation of any provision within the Ethics Commission's jurisdiction, to himself or herself in a particular context, may submit in writing the facts of the

situation to the Ethics Commission with a request for an advisory opinion to establish the standard of public duty, if any..." This provision was intended to limit the use of advisory opinions to prospective issues where the requester is the person whose own actions may be subject to relevant provisions of the Code. This means that we respond to requests for advisory opinions received from persons who may have issues under the Code, or from suitable surrogates who ask for opinions on behalf of persons subject to the Code. We have regularly extended to municipal attorneys, such as yourself, the courtesy of responding to such requests made on behalf of members of their governing bodies, as well as members of other municipal boards and municipal employees. I believe that there have even been occasions when we have provided such opinions where there was a disagreement between the municipal attorney and the affected individual.

The circumstances of your request, however, raise a serious concern regarding whether the requested opinion is an appropriate use of our advisory authority. It is my interpretation of Section 2-1074(y) that it is intended to limit the issuance of advisory opinions to situations where there is concern by the requester about his or her own conduct in connection with ethics requirements. It is not intended to be used by individuals seeking legal opinions to utilize as a means of constraining the acts of others in order to serve purposes unrelated to the requester's need for guidance. To do so would open the door to use of that authority by political or personal adversaries of individuals under our jurisdiction, in connection with the advancement of their own agendas.

I have no doubt that you have a genuine belief that Commissioner Pierre has a voting conflict of interest in voting on your continued service as City Attorney. However, we have yet to receive a request for an advisory opinion from Commissioner Pierre or a representative on his behalf. Moreover, the existence of your own personal interest in the matter is clear. That interest, in itself, may be reasonable and understandable. However, the issuance of an advisory opinion to you, requested primarily for the purpose of supporting your interests rather for the purpose of clarifying an issue in doubt expressed by an affected member of your governing body, appears to me to be outside of the permissible scope for our issuance of such an opinion under Section 2-1074(y).

I regret that I am unable to respond to your request. Commissioner Pierre, as he well knows, is subject to this agency's authority for his actions as a public official should they transgress the bounds of the County Ethics Code.

Sincerely,

Joe Centorino

Joseph M. Centorino

Executive Director and General Counsel
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From: Murawski, Michael P. (COE)
Sent: Friday, June 22, 2018 12:17 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: FW: City Attorney Jose Smith's Response in Accordance with Resolution No. R2016-82

From: Smith, Jose [<mailto:Jose.Smith@citynmb.com>]
Sent: Thursday, June 21, 2018 8:56 PM
To: joecentorino@miamisao.com
Cc: Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>
Subject: Fwd: City Attorney Jose Smith's Response in Accordance with Resolution No. R2016-82

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Hello Joe:

As a follow up to yesterday's email, I am now sending you my memorandum in opposition to Beth Spiegel motion to terminate me. I have a question regarding Frantz Pierre's ability to participate in the vote to fire me. These are the undisputed facts:

- 1). As a result of filing an ethics complaint with the COE (your office) regarding code officer Tasheema Lewis, Pierre sued me personally in Federal Court claiming I violated his civil rights. He wants money damages from me. While Judge Federico Moreno dismissed the case without prejudice, the case is technically still alive.
- 2). The Public Reprimand issued by the COE yesterday arose from the above complaint, and I provided critical information on the case. It could still be appealed so the case is technically still open.
- 3). Early this year, I issued a legal opinion resulting in his temporary removal from office. There is pending litigation to reinstate him which I am resisting. There are also ongoing settlement negotiations coming before the city Commission in July. My recommendations will not favor Frantz Pierre and we will definitely dispute Ben Kuhne's fee request. The litigation has been contentious and his testimony directly conflicts with mine on critical issues.
- 4). I have been assisting the SAO on a public corruption investigation involving Pierre which I am told will conclude in July with his possible removal from office (a plea deal).
- 5). I recently forwarded to the SAO another alleged public corruption matter involving the theft of city property. There is an internal city investigation and we may have to file litigation to recover the property.

In light of all these facts, does Frantz Pierre have a conflict of interest in voting to terminate me? I believe that my termination would inure to his personal private interest or gain and therefore he should file a recusal. What do you think?

Because the vote will take place next Thursday, your prompt response will be greatly appreciated.

Jose

Sent from my iPad

Begin forwarded message:

From: "Smith, Jose" <Jose.Smith@citynmb.com>
Date: June 21, 2018 at 6:10:54 PM EDT
To: "Spiegel, Beth" <beth.spiegel@citynmb.com>, CouncilAll External <CouncilExt@citynmb.com>
Cc: "Garcia, Ana" <Ana.Garcia@citynmb.com>, "Latimore, Pamela" <Pamela.Latimore@citynmb.com>, "Johnston, Sarah" <Sarah.Johnston@citynmb.com>, "Moya Denham, Maria" <Maria.MoyaDenham@citynmb.com>, "Smith, Jose" <Jose.Smith@citynmb.com>
Subject: City Attorney Jose Smith's Response in Accordance with Resolution No. R2016-82

Dear Mayor and Commissioners,

Please see my Response to Mayor Spiegel's agenda item for the June 28 City Commission meeting. My response attaches five (5) separate exhibits highlighting some of the points I make in my response.

I ask City Clerk Pamela Latimore to make my response and Exhibits part of the Agenda as provided in Section 2(b), Resolution R2016-82.

I look forward to discussing all aspects of this matter with all of you.

Jose Smith, City Attorney
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