

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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October 15, 2018

Honorable Jennifer Bailey
Circuit Judge
Miami-Dade Courthouse
73 West Flagler Street, No. 1307
Miami, Florida 33130

Re: INQ 18-228, Cone of Silence, Miami-Dade Code §2-11.1(t); Government in the Sunshine,
Fla. Stat. §286.011 & Civil and Probate Courthouse, RFP No. 00953

Dear Judge Bailey:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and speaking to me about the above referenced Request for Proposals (RFP) relating to the new Civil and Probate Courthouse. The focus of our conversation was communications between the Judges and Court staff (the Courts) as end-users or stakeholders in this process on the one side and the County's retained consultants Perez & Perez and Dan Wiley (Consultants) and the Courts' appointed Technical Advisors to the Selection Committee on the other.

Since our conversation, I have consulted with my colleagues at the Miami-Dade County Office of the Inspector General and additionally reviewed communications from Rita Silva, the Chief of Policy and Legislation for the County's Internal Services Department (ISD).

As we discussed, the Cone of Silence found at Miami-Dade Code §2-11.1(t), limits communications between designated individuals in the procurement process regarding an advertised request for proposals. I do not believe that the Courts and the ISD Consultants are contained in any of the categories of designated individuals whose communications, with each other, would be proscribed by the Cone of Silence.

If the Courts appoint Technical Advisors to the Selection Committee (Technical Advisors), these appointed Technical Advisors' communications with certain categories of designated individuals would be proscribed by the Cone of Silence. However, the Cone of Silence would not limit

communications between the appointed Technical Advisors and the Courts, again because the Courts are not designated individuals whose communications are proscribed by the Cone.

Irrespective of my Cone of Silence opinion, I am aware that ISD has sought to limit communications between the Courts and the Consultants. ISD has also suggested that the appointed Technical Advisors should not thereafter discuss Selection Committee business with the Courts. To be clear, those are policy decisions and suggestions that the Commission on Ethics has no jurisdiction to review or comment upon.

We also discussed the Government in the Sunshine law found at Fla. Stat. §286.011, that limits communications between members of certain public boards and delegation committees. The Miami-Dade Commission on Ethics and Public Trust neither interprets nor enforces state statutes and we have no jurisdiction to provide you with an opinion regarding this matter. The Attorney General of Florida provides advisory opinions regarding the Sunshine Law.

While we do not provide opinions regarding the Government in the Sunshine law, we are charged by ordinance with providing training on the Sunshine Law to certain categories of persons that transact with the County. Because of this, we have some familiarity with the law. It would thus appear to me that appointed Technical Advisors to the Selection Committee would be limited by the Sunshine Law. Two-way communications, oral, written, or electronic between the Technical Advisors about committee business would be prohibited.

Again, with caveat that we are not charged with interpreting or enforcing state statutes, I do not believe that the Sunshine Law would prohibit the appointed Technical Advisors from discussing Selection Committee business with the Courts. I would caution however that if the Courts appoint two Technical Advisors, then communications between the advisors and the Courts could become cumbersome.

In our training, we regularly address prohibited liaison communications. I would caution then about two Technical Advisors being in the same room, even if they are not speaking to each other, when Selection Committee business is discussed with the Courts. I would additionally suggest that you should avoid scenarios where one advisor discusses selection committee business with the Courts and thereafter the same Courts individual restates a portion of that communication with the second advisor, thereby serving as a liaison for prohibited communications between the two.

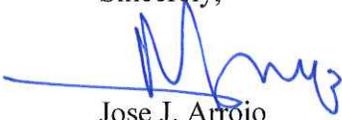
The best practice may be to have two Technical Advisors with different areas of expertise and to have each address the Courts individually. In this way, there is less potential for overlap or liaison communications.

To restate, irrespective of my suggestions, I am once again aware that ISD has asked that the Technical Advisors should not discuss committee business with the Courts. That is a policy decision that the Commission on Ethics has no jurisdiction to review or comment upon.

I hope that this response provides the Courts with some guidance regarding Code of Silence and suggestions regarding Sunshine Law applications to the Civil and Probate Courthouse RFP process.

Thank you again for contacting the Commission on Ethics.

Sincerely,



Jose J. Arrojo
Executive Director

cc: Mary Cagle, Miami-Dade Inspector General
Tara C. Smith, Director, Internal Services Department