

## Sanchez, Rodzandra (COE)

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Tuesday, February 12, 2019 11:00 AM  
**To:** Sanchez, Rodzandra (COE)  
**Subject:** INQ 19-04 Dolores Holley, Manager, Multifamily Compliance and Monitoring Unit, PHCD (Limitations on Contracting and Prohibition on Exploitation of Official Position)  
**Attachments:** INQ 19-04 Holley.pdf

INQ 19-04 Holley

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Tuesday, January 29, 2019 12:01 PM  
**To:** Holley, Delores (PHCD) <Delores.Holley@miamidade.gov>  
**Cc:** Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Smith, Terrence (CAO) <Terrence.Smith@miamidade.gov>; Vanegas, John (PHCD) <John.Vanegas@miamidade.gov>; Dana, Jacqueline (PHCD) <Jacqueline.Dana@miamidade.gov>  
**Subject:** Dolores Holley, Manager, Multifamily Compliance and Monitoring Unit, PHCD (Limitations on Contracting and Prohibition on Exploitation of Official Position)

Dear Mr. Holley,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance. Attached is INQ 19-04 addressing your questions. Please do not hesitate to contact me if you need further assistance.

Best regards,

Gilma (Mimi) Diaz-Greco  
Staff Attorney



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MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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**MEMORANDUM**

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**TO:** Delores Holley, Manager  
Community and Housing Management Division, Multifamily  
Compliance and Monitoring Unit, Miami-Dade Public Housing and  
Community Development Department

**FROM:** Gilma Diaz-Greco, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 19-04

**DATE:** January 28, 2019

**CC:** All COE Legal Staff; Terrence Smith, Assistant County Attorney; John  
Vanegas, Accountant III, PHCD; Jaqueline Dana, Compliance Manager,  
PHCD

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding whether the County Ethics Code prohibits your family members or family members of the staff you supervise from contracting as tenants in County funded private affordable rental developments (developments) monitored by the Miami-Dade Public Housing and Community Development's (PHCD) Multifamily Compliance and Monitoring Unit (MCMU). It was a pleasure to discuss this matter with you over the phone to obtain all of the relevant details. Please see our discussion and opinion below.

Facts:

You are a County employee working as the manager of PHCD's MCMU division. Your niece is seeking to reside at a multifamily affordable rental development which is privately-owned and operated but is funded by the County and is monitored by MCMU and PHCD inspection staff. MCMU monitors these County funded private affordable housing developers to ensure that they comply with the terms of the restrictive covenant, the rental regulatory agreement (RRA), which is an integral part of the loan agreement between the County and the private developer. In addition, you advise that it is likely that family members of other MCMU, and PHCD inspection staff who

monitor these County funded private affordable housing developments, will also apply to reside or reside in these developments.

Issues:

Your inquiry raises several issues:

Issue 1: Whether, given your position as manager of PHCD's MCMU division, the County Ethics Code would prohibit your immediate family members (defined in the County Ethics Code as "spouse, domestic partner, parents, stepparents, children and stepchildren"), or other family members (nieces and nephews, brothers and sisters, etc.) from contracting as tenants in private affordable housing rental developments funded by the County, which are monitored by MCMU.

Issue 2: Whether the County Ethics Code would prohibit the "immediate" or other family members of other MCMU staff or PHCD's inspection staff, which supports MCMU's monitoring function, from contracting as tenants in these County funded private affordable rental developments

Issue 3: Whether you or other MCMU or PHCD inspection personnel responsible for monitoring the RRA, may perform these oversight duties in County funded private affordable housing developments if a family member of the employee (including family members not listed in the County Ethics Code) resides in a development overseen by the employee.

Discussion:

As background, you are the manager of PHCD's MCMU division. MCMU is responsible for monitoring over 238 multifamily affordable rental housing developments funded by Miami Dade County. PHCD awards loan funding to developers for the cost of land acquisition, site development, new construction, rehabilitation, and/or other costs associated with the development of affordable rental housing units. The developments that MCMU monitors are not owned or operated by the County; they are privately-owned and operated and located throughout Miami-Dade County.

Miami-Dade funds private affordable rental projects through an array of loans, including affordable housing development loans administered by PHCD.<sup>1</sup> Private developers may apply for affordable housing loan funding administered by PHCD, and if the loan is approved, the developers agree to a 20 or 30-year RRA, a restrictive covenant agreement, and a 20 or 30-year affordability period

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<sup>1</sup> PHCD's affordable housing development loans are funded by Federal and State of Florida sources such as the Documentary Surtax Program (Surtax), State Housing Initiatives Programs (SHIP), HOME Investment Partnerships Program (HOME), Community Development Block Grants (CDBG), and Housing Development Grant (HODAG) Programs.

(“affordability period”). The RRA specifies that during the affordability period, the developer/owners must adhere to local, state, and/or federal guidelines that are designed to keep rents restricted, to ensure that rents at the units remain affordable, and that the rental units be made available to extremely-low, very-low, low, and moderate-income persons.<sup>2</sup>

MCMU's primary oversight responsibility is to ensure that the private developers/owners comply with the RRA. MCMU is charged with: verifying that residents are given equal access to the affordable rental opportunities; that rents are restricted to the targeted income population; that the units are made available in accordance with local, state, and federal guidelines; and with conducting annual housing quality standards (HOS) inspection which focuses on the impact of residents' life, health, and safety. MCMU also monitors the rents charged by the affordable housing developer/owner to low income renters and ensures that developers provide refunds to renters who have been charged rents in excess of that enumerated by the income level standards set by HUD and the other funding sources. After a monitoring visit is completed, the results are sent to the corresponding owner and if any violations are found, the owner is required to address all concerns/violations. If the owner fails to cure the violations, a notice of default of the loan may be recorded.

MCMU is supported by a PHCD Inspection Unit which performs annual physical inspections of a covered development's structure and systems. Inspectors conduct housing quality standards inspection on selected units and all the common areas of these developments. MCMU and PHCD inspection personnel monitor the covered developments by randomly selecting 10 to 20 percent of the total number of restricted units and reviewing the tenant files for those units. The number of restricted units MCMU monitors in each private rental property depends on many factors including the type of funding source, the amount of subsidy invested by the County and the terms negotiated during the loan closing.

With respect to Issues 1, 2, and 3 of your inquiry, County Ethics Code Sections 2-11.1(c)(2) and (g) (“Section 2-11.1(c)(2), and “Section 2-11.1(g)”) are relevant to the analysis of this matter. Section 2-11.1(c)(2) prohibits County Employees and their immediate family members from contracting with Miami-Dade County “or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject

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<sup>2</sup> PHCD posts the list of County funded properties on its website at <http://www.miamidade.gov/housing/library/affordable-housing-resources/affordable-housing-rental-housing-properties-in-miami-dade-county-order-by-project-name.pdf>.

contract.”<sup>3</sup> Section 2-11.1(g) prohibits County employees from using their official position to secure special privileges or exemptions for themselves or others.<sup>4</sup>

Regarding issues 1 and 2, Section 2-11.1(c)(2) is relevant but does not apply. The County Ethics code defines the term “immediate family member” as the “spouse, domestic partner, parents, stepparents, children and stepchildren”) of a County employee. Nieces and nephews or other family are not included in the definition of “immediate family member” and therefore the prohibition in Section 2-11.1 (c)(2) would not apply to them. Furthermore, Section 2-11.1(c)(2) only limits County employees and their immediate family members from transacting business with a County **department or an agency acting for** the County. In this instance, the family members would contract with a private affordable housing developer/owner which is neither a County department nor agency.

With respect to issue 3, Section 2-11.1(g) must be considered. Pursuant to this section, MCMU and PHCD inspection employees are prohibited from using or attempting to use their County positions to secure special privileges or exemptions for themselves or others, which would include any of their family members. Consequently, PHCD must ensure that no MCMU employee or PHCD inspection staff be assigned to inspect any private affordable rental development funded by County loans if a family member of that employee resides or is seeking to reside in that development. In that case, another supervisor, MCMU employee, or PHCD inspection Staff should be assigned to monitor and/or inspect the building where the family member of the MCMU employee resides or is seeking to reside.

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<sup>3</sup> Miami-Dade Code 11.1(c)(2) states:

“County employees’ limited exclusion from prohibition on contracting with the county. Notwithstanding any provision to the contrary herein, subsections (c) and (d) shall not be construed to prevent any employee as defined by subsection (b)(6) [excluding departmental personnel as defined by subsection (b)(5)] or his or her immediate family as defined by subsection (b)(9) from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County, as long as (1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, (2) the employee has not participated in determining the subject contract requirements or awarding the contract, and (3) the employee’s job responsibilities and job description will not require him or her to be involved with the contract in any way, including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance. However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, **if the employee works in the county department which will enforce, oversee or administer the subject contract.** (Emphasis added).

<sup>4</sup> Miami-Dade Code 2-11.1(g)

(g) Exploitation of official position prohibited. No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

## Opinion

Issue 1: The County Ethics Code does not prohibit your immediate family members (defined in the County Ethics Code as “spouse, domestic partner, parents, stepparents, children and stepchildren), or other family members (nieces and nephews, brothers and sisters, etc.) from contracting as tenants in private affordable housing rental developments funded by the County which are monitored by MCMU. This is because Section 2-11.1(c)(2) only limits County employees and their immediate family members from transacting business with a County **department or an agency acting for the County**. In this instance, the family members would contract with a private affordable housing developer/owner which is neither a County department nor agency.

Issue 2: The County Ethics Code does not prohibit the “immediate” or other family members of other MCMU staff, or PHCD’s inspection staff, which supports MCMU’s monitoring function, from contracting as tenants in these County funded private affordable rental developments. This is because Section 2-11.1(c)(2) only limits County employees and their immediate family members from transacting business with a County **department or an agency acting for the County**. In this instance, the family members would contract with a private affordable housing developer/owner which is neither a County department nor agency.

Issue 3: No MCMU or PHCD inspection personnel responsible for monitoring the RRA may perform these oversight duties in County funded private affordable Housing developments if a family member of the employee (including family members not listed in the County Ethics Code) resides in a development overseen by the employee. Another supervisor, MCMU employee, or PHCD inspection staff should be assigned to monitor and/or inspect the building where the family member of the any of MCMU or PHCD inspection staff resides or is seeking to reside.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.