



MIAMI-DADE COUNTY  
COMMISSION ON ETHICS & PUBLIC TRUST

September 6, 2013

Hans Ottinot, City Attorney  
City of Sunny Isles Beach  
18070 Collins Ave.  
Sunny Isles Beach, FL 33160

Re: INQ 13-207 **REVISED**

City employees are prohibited from appearing before the City on behalf of third parties. *See* Sunny Isles Beach Code at Sec. 33-3 L.

Mr. Ottinot:

You have asked several questions regarding the hiring of an individual to serve as a part-time or full-time City employee to assist in the development of a City-created nonprofit organization.

The questions have arisen because one of the candidates being considered for the position is an attorney with a private law practice who currently represents a developer in the City.

**QUESTION NO. 1: May the City Manager hire an attorney who currently works for a developer in the City as a full-time or part-time employee for the City where the attorney may still be representing the developer on matters before the City?**

**ANSWER NO. 1:** NO. A City employee may not appear before any city board or agency and make a presentation on behalf of a developer with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the developer. Furthermore, if the attorney has law-firm associates, he/she may not receive any compensation, directly or indirectly, through services provided to the developer by law-firm associates related to any benefit the developer may be seeking from the city. *See* County Ethics Code at Sec. 2-11.1 (m)(1) and Sunny Isles Beach Code at Sec. 33-3 L.

**QUESTION NO.2: May the City Manager hire an attorney who currently works for a developer in the City as a full-time or part-time employee of the City where the attorney has verbally informed the City that she/he will not represent the developer**

**on the matters involving the City but where the attorney or the developer has not provided the City with any written document confirming the termination of the representation?**

**ANSWER NO. 2:** As long as the candidate withdraws his/her representation of the developer on matters involving the City *prior to accepting City employment*, the candidate will not violate the “appearance” provisions<sup>1</sup> or the “conflicting employment” provisions<sup>2</sup> of the County and City ethics codes. Additionally, to avoid an appearance of impropriety, the candidate should not be assigned tasks in his/her public capacity that would require him/her to engage in contract-related duties associated with his/her former client.<sup>3</sup>

The “appearance” provisions of the ethics codes prohibit the City employee from appearing on behalf of a developer before the City and also prohibit him/her from receiving compensation, either directly or indirectly, through services provided to the developer by associates related to any benefit the developer may be seeking from the city. Assuming that, prior to employment with the City, the candidate withdraws from representing the developer and the candidate has no law-firm associates who will represent the developer before the City, the “appearance” provisions of the ethics codes are not violated. *See* County Ethics Code at Sec. 2-11.1 (m)(1) and Sunny Isles Beach Code at Sec. 33-3 L.

The “conflicting employment” provisions prohibit a city employee from accepting other employment that would impair his/her independence of judgment in the performance of his/her public duties. Assuming that, prior to employment with the City, the candidate withdraws from representing the developer before the City, the “conflicting employment” provisions of the ethics codes will not be violated because the candidate will have eliminated any private duties he/she may have had to the developer within the City that might have conflicted with his/her public duties. *See* County Ethics Code at Sec. 2-11.1 (j) and Sunny Isles Beach Code at Sec. 33-3 I.

The prohibition on performing contract-related duties prevents a City employee from dealing, in his/her public capacity, with his/her former private employer or an entity in which he/she held a controlling financial interest. In the facts presented in this case, the private attorney has not been employed by nor did he/she hold a controlling financial interest in the developer’s company. However, to avoid the appearance of impropriety, for a period of two years following termination of his/her prior relationship with the developer, the City employee should not perform any contract-related duties regarding the developer. Typical duties to be avoided include, but are not limited to, service as a member of a certification, evaluation, selection, technical review, or similar committee; approval or recommendation of award of contract; contract enforcement, oversight, or administration; amendment, extension, or termination of contract; or forbearance regarding any contract. *See* County Ethics Code at Sec. 2-11.1 (x).

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<sup>1</sup> County Ethics Code at Sec. 2-11.1 (m)(1) and Sunny Isles Beach Code at Sec. 33-3 L.

<sup>2</sup> County Ethics Code at Sec. 2-11.1 (j) and Sunny Isles Beach Code at Sec. 33-3 I.

<sup>3</sup> County Ethics Code at Sec. 2-11.1 (x).

**QUESTION NO. 3: May the City Manager hire an attorney who currently works for a developer in the City as a full-time or part-time employee of the City where the attorney continues to represent the developer or other developers on matters outside the boundary limits of the City?**

**ANSWER NO. 3:** YES. A full-time or part-time City employee may continue to provide legal representation to a developer or to other developers on matters outside the boundary limits of the City as long as he/she does not represent developers within the City, he/she has no law-firm associates who will represent developers before the City, **and going forward he/she has no reason to believe that this client or future clients will have any matters before the City and/or will be directly affected by any official actions of the City.** See County Ethics Code at Secs. 2-11.1 (m)(1) and (o) and Sunny Isles Beach Code at Secs. 33-3 L and 33-3 N.

Additionally, the City employee will not be engaged in conflicting outside employment as long as the following apply:

- In his/her private capacity, he/she does not represent developers or any other third parties before the City.
- In his/her public capacity, he/she does not deal with issues related to developers or other persons or entities that he/she represents privately.

See County Ethics Code at Sec. 2-11.1 (j) and Sunny Isles Beach Code at Sec. 33-3 I.

Finally, going forward, the City employee must not represent a private client when he/she believes, or has reason to believe, that the private client will have matters before the City and/or will be directly affected by any official actions of the City. See County Ethics Code at Sec. 2-11.1 (o) and Sunny Isles Beach Code at Sec. 33-3 N.

**QUESTION NO.4: May the attorney who currently works for a developer in the City provide pro bono service to the City on an unrelated matter to his or her representation of the developer in the City?**

**ANSWER NO. 4:** A volunteer who provides pro bono services to the City does not fall within the jurisdiction of the County or City ethics codes; only volunteers who serve as appointed members of City advisory and quasi-judicial boards are subject to the County and City ethics codes. See County Ethics Code at Sec. 2-11.1 (a) and Sunny Isles Beach Code at Sec. 33-3 A.

However, to avoid appearances of impropriety and maintain the public trust, volunteers who stand in the shoes of government workers should avoid conflicts between their private employment and their volunteer duties. For example, a volunteer providing pro bono services to the City should avoid involvements in any pro bono services that could reasonably be perceived as inuring to the special private benefit of a private client.

**QUESTION NO. 5: If the attorney who currently works for the developer is hired by the City as a full-time or part-time employee, is the attorney subject to the ethics regulations adopted by Miami-Dade County and the City with respect to disclosure of other employment?**

**ANSWER NO. 5:** Only full-time City employees are subject to disclosure of other employment under the Sunny Isles Beach Code at Sec. 33-3 J (2). Disclosure requirements under the County Ethics Code at Sec. 2-11 apply only to full-time County employees, not to city employees.

However, in the circumstances of a part-time City employee maintaining a private law practice, we strongly recommend that, to avoid conflicts of interest, the employment contract between the City and the part-time employee contain adequate disclosure provisions, to the extent permissible under the Rules Regulating The Florida Bar.

**This opinion construes the Miami-Dade County Ethics Code and the City of Sunny Isles Beach Ethics Code and is not applicable to other conflicts under County or State laws. Inquiries regarding possible conflicts under State ethics laws should be directed to the State of Florida Commission on Ethics.**

If you have additional questions, please feel free to contact me.

Sincerely,



VICTORIA FRIGO  
Senior Staff Attorney

Copy: Fernando Amuchastegui, Deputy City Attorney