

Frigo, Victoria (COE)

From: Centorino, Joseph (COE)
Sent: Tuesday, April 02, 2013 4:40 PM
To: 'Jean Olin'
Cc: Frigo, Victoria (COE)
Subject: RE: quasi-judicial officer/hearing officer question
Attachments: INQ -- Gongora 08-47.pdf

Ms. Olin,

You have inquired on behalf of the City of Miami Beach regarding whether a "hearing officer" or "special master" is subject to Section 2-11.1(m) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance. It is my opinion that such positions are not subject to the ordinance.

In order to be subject to the Ethics Code, such personnel would have to be included in one of the categories contained in Section 2-11.1(b). The likeliest categories would be either as "quasi-judicial personnel" in subsection (b)(4) or "employees" in subsection (b)(6) or "contract staff" in subsection (b)(13).

To qualify as "quasi-judicial personnel, an individual would have to be a "member" of a board or agency that performs a quasi-judicial function. Where such personnel are hired by the City to provide an adjudicatory function for a particular board or agency, but are not actually appointed as members of the board or agency, then they would not be covered by subsection (b)(3). Independent contractors would not generally be considered as City employees pursuant to subsection (b)(6). Contract staff could be made subject to the Code of Ethics pursuant to subsection (b)(13), but that would require that they be designated as such by the Manager in their contracts, subject to the approval of the Executive Director of the Ethics Commission. It is my understanding that no such designation has taken place.

Under the above circumstances, I have concluded that a "hearing officer" or "special master" is not subject to Section 2-11.1 of the Miami-Dade Code of Ethics. This opinion appears to be consistent with INQ - 08-47, attached hereto, and issued by my predecessor to the City of Miami Beach.

Please feel free to contact me if you have any questions.

Sincerely,

Joseph M. Centorino, Executive Director and General Counsel Miami-Dade Commission on Ethics and Public Trust
305-579-2594

-----Original Message-----

From: Jean Olin [<mailto:jeanolin.munilaw@gmail.com>]
Sent: Saturday, March 30, 2013 5:16 PM
To: Centorino, Joseph (COE)
Subject: quasi-judicial officer/hearing officer question

Dear Joe,

Good afternoon.

Is a County "hearing officer" (akin to a "special master") subject to County Code of Ethics per 2-11.1(m)?

I'm looking into issue of CMB Special Master and applicability of ethics code---seems to me, issue turns upon whether the individual is a "quasi-judicial officer" per 2-11.1(b)(3)--I think he is, but best to check with you.

Thank you,
Jean

Meyers, Robert (COE)

INQ 08-47

From: Meyers, Robert (COE)
Sent: Tuesday, March 25, 2008 3:30 PM
To: 'Gongora, Michael'
Subject: RE: Special; Master Issue

Hi Michael,

I agree with the City Attorney's conclusion but for different reasons. The two year ban only applies to lobbying activities and the County Code specifically exempts appearances in front of quasi-judicial boards from the definition of lobbying. Therefore, you would not be considered a lobbyist if you were to appear before the Special Master, which makes the two year ban inapplicable.

Incidentally, the City Attorney's position that the Special Master is not within the definition of a County/municipal board is probably correct as well. I, however, would prefer to find that you are permitted to represent your clients in front of the Special Master for the first reason I stated.

Thanks,

Robert

From: Gongora, Michael [mailto:MGongora@becker-poliakoff.com]
Sent: Tuesday, March 25, 2008 2:33 PM
To: Meyers, Robert (COE)
Subject: FW: Special; Master Issue

Hi Robert,

I have a question.....the City of Miami Beach Attorney has previously opined that my law firm has no issue representing clients before the Special Master, even when the ruling came down that we couldn't appear before city boards and committees.

I understand that there is a Count Code that says I personally can't appear before the Commission for two years after the term I was in office. The question is, can I appear before the Special Master with regard to code issues? MB City Atty. gave the opinion below that he does not believe it would be an issue but that I should double check with your office.

Please get back to me when you have a chance.

Thanks,

Michael

Please visit our CALL (Community Association Leadership Lobby) website at <http://www.callbp.com> for all of the latest information impacting your community association. You must be a current client to access this site. Please contact CALL@becker-poliakoff.com if you do not know your community's password to log on to the site.

3/25/2008

From: Smith, Jose [mailto:JoseSmith@miamibeachfl.gov]
Sent: Tuesday, March 25, 2008 2:29 PM
To: Gongora, Michael
Subject: Special; Master Issue

Michael:

The issue you raised is covered by Section 2-11.1(q) of the County Code. While I do not believe that the Special Master falls within the definition of "County officer, department personnel or employee", the ultimate arbiter of the County Code is the Miami-Dade County Ethics Commission. I would suggest that you give Robert Myers a call to be sure.

MIAMIBEACH

Jose Smith, City Attorney

OFFICE OF THE CITY ATTORNEY

1700 Convention Center Drive – 4th floor, Miami Beach, FL 33139

Tel:305-673-7000x6425 /Fax: 305-673-7002/ www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

From: Gongora, Michael [mailto:MGongora@becker-poliakoff.com]
Sent: Monday, March 24, 2008 3:59 PM
To: Smith, Jose
Subject: Please call me when you have a chance

Thank you, Michael

 <p>BECKER & POLIAKOFF <small>Legal and Business Strategists</small></p>	<p>Michael C. Gongora Attorney at Law</p>
	<p>Alhambra Towers 121 Alhambra Plaza, 10th Floor Coral Gables, FL 33134</p> <p>Tel 305.260.1014 Fax 305.442.2232 MGongora@becker-poliakoff.com www.becker-poliakoff.com</p>

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3/25/2008

Frigo, Victoria (COE)

From: Jean Olin <jeanolin.munilaw@gmail.com>
Sent: Tuesday, April 02, 2013 5:44 PM
To: Centorino, Joseph (COE)
Cc: Frigo, Victoria (COE)
Subject: Re: quasi-judicial officer/hearing officer question

Dear Joe,

Thank you for below--I understand your analysis.

I do want to point out, however, that the former Executive Director acknowledged that the City's Special Master is a "quasi-judicial" board in your attached INQ 08-47. (See Robert Meyer's email dated March 25, 2008: "...The two year ban only applies to lobbying activities and the County Code specifically exempts appearances in front of quasi-judicial boards from the definition of lobbying. Therefore, you would not be considered a lobbyist if you were to appear before the Special Master, which makes the two year ban inapplicable....".)

Jean

On Apr 2, 2013, at 4:39 PM, Centorino, Joseph (COE) wrote:

- > Ms. Olin,
- > You have inquired on behalf of the City of Miami Beach regarding whether a "hearing officer" or "special master" is subject to Section 2-11.1(m) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance. It is my opinion that such positions are not subject to the ordinance.
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Frigo, Victoria (COE)

From: Centorino, Joseph (COE)
Sent: Wednesday, April 03, 2013 9:42 AM
To: 'Jean Olin'
Cc: Frigo, Victoria (COE)
Subject: RE: quasi-judicial officer/hearing officer question

Jean, I think that Robert meant to say is that appearing before a Special Master is an appearance at a quasi-judicial proceeding, such that an attorney would not be required to register as a lobbyist. That does not make him a board or a member of a board. I did speak with him before opining on your question, and he agreed with my analysis.

Joe

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