

In a public meeting on 9/12/13, the Ethics Commission declined to accept the interpretation of the term "professional employees" to include all County employees. If the requester needs clarification regarding this matter in the future, she was advised to seek another opinion and to accompany her request with a complete record of her professional responsibilities.

MIAMI-DADE COMMISSION ON ETHICS MEMORANDUM

TO: Miami-Dade Commission on Ethics
FROM: Victoria Frigo, Senior Staff Attorney
SUBJECT: **RQO 13-09** Martha Baker, Nurse Manager
Jackson Health System (JHS)
Re: Professional Staff Covered under Cone of Silence
See County Code at Sec. 2-11.1 (t)
DATE: Sept. 12, 2013

I. ISSUE

While the Cone of Silence is in effect, are *all* County employees, regardless of title, position, or designation, considered the "County's professional staff" and, consequently, prohibited from engaging in oral communications with potential vendors, service providers, bidders, members of the selection committee, County Commissioners and their staffs, and the Mayor and his/her staff?

II. Brief Answer

YES. Because the legislative intent of the Cone of Silence ordinance is to shield the procurement process from undue influence, *all* County employees, regardless of title, position, or designation, are considered the "County's professional staff" and, consequently, as potentially interested parties, are barred from communicating orally while the Cone of Silence is in effect.

References made in the County Ethics Code to County personnel are applicable to Jackson Health System (JHS) and Public Health Trust (PHT) personnel who serve in comparable capacities to the County personnel.¹

III. BACKGROUND

JHS is managed by the PHT, a County governmental entity that is subject to the Cone of Silence found in the County Ethics Code at Sec. 2-11.1 (t).²

¹ Miami-Dade County Code at Sec. 25A-3 (c).

² Miami-Dade County Code at Sec. 25A-3 and Public Health Trust of Miami-Dade County Procurement Regulation, Sec. XVI B., p. 30 (Oct. 29, 2012).

In the spring of 2012, JHS laid off or eliminated approximately 10 percent of its workforce, including almost 600 nurses, and began a solicitation process to hire part-time or contract employees.

On August, 20, 2012, JHS issued a request for proposals (RFP) to supply the hospital with emergency-room contract staff. The Cone of Silence went into effect on the day the RFP was issued.

On September 6, 2012, while the Cone of Silence was in effect for the emergency room contract, Martha Baker emailed one of the bidders to request a meeting. Ms. Baker is a nurse manager at JHS and President of Service Employees International Union Local 1991. The bidder declined to meet with Ms. Baker, and, unrelated to this incident, the RFP was cancelled.

Ms. Baker contacted the bidder under the assumption that she did not fall within the definition of the "County's professional staff" because she did not serve on the selection committee in this instance and had not been designated to participate in any way in the RFP process.

If a similar situation were to occur in the future, Ms. Baker asks if she is considered part of the County's professional staff that is prohibited from engaging in oral communications with potential vendors, service providers, bidders, members of the selection committee, board members of the PHT, and the chair of the PHT while the Cone of Silence is in effect.

IV. LEGAL ANALYSIS

A. The "County's professional staff" is not expressly defined.

The Cone of Silence prohibits oral communications between the "County's professional staff" and potential vendors, service providers, bidders, members of the selection committee, County Commissioners and their staffs, and the Mayor and his/her staff.³

The "County's professional staff" is not defined in the ordinance, but reference is made to the "County's professional staff" as "including, but not limited to, the County Manager [Mayor] and his or her staff."⁴

B. The legislative intent of the Cone of Silence is to shield the County's procurement process from undue influence by interested parties.

The Board of County Commissioners adopted the Cone of Silence "to protect the professional integrity of the County's competitive bid process by shielding County staff involved in the procurement process from undue influence and overreaching by interested parties."⁵

³ Miami-Dade County Code at Sec. 2-11.1 (t)1.(a).

⁴ Id.

⁵ Miami-Dade County Ordinance No. 98-106 (July 31, 1998).

According to the Assistant County Attorney who drafted the Cone of Silence legislation in 1998, the “County’s professional staff” has always meant *all* County employees. The Assistant Director of Procurement in the Internal Services Department (ISD) the former Executive Director, Commission on Ethics, corroborated the long-standing practice of including *all* County employees within the definition.⁶

Furthermore, as practical matter, any County employee, regardless of status, may have a personal or family interest in a given County contract that could induce him/her to interfere with the procurement process. Because *all* County employees must execute their public duties professionally, without undue influence in County procurement matters, *all* County employees should be included within the definition of the “County’s professional staff.”

Therefore, the legislative intent of the County Commissioners and the justifiable concern over the conduct of County staff in this matter, the prohibition on oral communications under the Cone of Silence extends to *all* County employees, regardless of the individual’s specialized rank, professional status, or designation, because *all* County employees are potentially interested parties whose private communications with bidders may interfere with the County’s procurement process.

V. CONCLUSION

Based on the foregoing, *all* County employees, regardless of title, position, or designation, are considered the “County’s professional staff” and, consequently, as interested parties, are barred from communicating orally with potential vendors, service providers, bidders, members of the selection committee, County Commissioners and their staffs, and the Mayor and his/her staff while the Cone of Silence is in effect.

References made in the County Ethics Code to County personnel are applicable to JHS/PHT personnel who serve in comparable capacities to the County personnel.

⁶ Interviews were conducted on Sept. 4, 2013, with Assistant Director Miriam Singer and former Executive Director Robert Meyers.