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New Procedures Outlined for Public Officials with Voting Conflicts

Following correspondence and legal review, the Miami-Dade Commission on Ethics and Public Trust (COE) has determined that elected and appointed officials in county and municipal governments must follow both local and state rules when they recuse themselves from voting on a particular issue because of a conflict of interest. As discussed with Ethics Commissioners today, the County Conflict of Interest and Code of Ethics Ordinance requires officials to absent themselves from all discussion and voting on an item in which they have a conflict. State law requires them to announce their conflict prior to a vote and file a written disclosure of the conflict within 15 days. The announced procedure encompasses both rules, and requires an elected official or advisory board member to announce that he or she has a conflict when that item comes up on an agenda, leave that portion of the meeting when the item is discussed and voted upon, and then, within 15 days of the vote, file a written disclosure of the nature of the conflict with the board clerk or whomever is responsible for recording the meeting minutes. A memo explaining the new procedure has been distributed to elected officials and municipal attorneys.

The COE approved two Letters of Instruction stemming from a complaint (**C 12-41**) against Miami City Commissioner Marc Sarnoff related to his travel to Brazil for activities associated with the Volvo Ocean Race at the stop prior to the race's arrival in Miami last May. Sarnoff had not reported that The Greater Miami Convention and Visitor's Bureau reimbursed him for a portion of his trip, related to bureau business, and that race organizers reimbursed Sarnoff for his and his wife's airfare. The Miami City Attorney had opined that, because the commissioner was in his official capacity while on the trip, he did not need to report it as a gift. But in the Letter of Instruction to the City Attorney, the Ethics Commission differentiated between a politician's official appearance at a public event and an all-expense-paid trip to a foreign locale, which provides opportunities for personal enjoyment along with official duties. The other Letter advises Commissioner Sarnoff – and all elected and appointed officials – that a spouse's presence on a trip is a gift to him that should be reported.

The Ethics Commission found No Probable Cause to a complaint (**C 12-38**) filed by a candidate for a Sunny Isles Beach Commission seat in this past November's election against the incumbent. Harvey Busch alleged that Commissioner George Scholl threatened to disclose that Busch filed for bankruptcy protection in 2011 unless he withdrew from the race. The issue was referred to the State Attorney's Office, which determined that there was no violation of Florida law, since the information presented by Scholl was a matter of public record. And, since the information was factual, the Ethics Commission found no violation of the Ethical Campaign Practices Ordinance, so the complaint was dismissed.

A complaint (**C 12-47**) filed by one North Bay Village Commissioner against another was found Not Legally Sufficient. Jorge Gonzalez had accused Dr. Richard Chervony of filing frivolous ethics complaints against him when he was campaigning for office last fall. Chervony sent several e-mails to the COE and other agencies accusing Gonzalez of

property tax violations, but none were filed as formal complaints as required by the Code of Ethics Ordinance and so the complaint was dismissed for lack of legal sufficiency.

Another complaint (**C 12-48**), accusing an attorney involved with the sale of the Versailles Hotel Condominium in 2011 of violating ethical standards of the Florida Bar, was found Not Legally Sufficient for lack of jurisdiction. The complaint was dismissed.

A complaint (**C 12-49**) accusing Miami-Dade County Mayor Carlos Gimenez of exploiting his official position by not increasing early voting days prior to the November 6, 2012, election was found Not Legally Sufficient. A voter alleged that Mayor Gimenez violated several national, state and county laws including the “convenient access” provision of the Citizens’ Bill of Rights by not acting to reduce long lines at the polls. While the voters approved an amendment authorizing the COE to enforce penalties for violating the Bill of Rights, a County enabling ordinance has not yet been put into effect, establishing the penalties. Additionally, the mayor has no authority over early voting for state or federal offices. The complaint was, therefore, dismissed.

In response to a Request for Opinion (**RQO 12-14**), the Ethics Commission determined that the City of South Miami may continue to purchase police equipment from a company that employs the son of the Chief of Police. Lou’s Police & Security Equipment has been a vendor with the city for more than two years and the purchasing contract was most recently approved on Oct. 1, 2012. A month later, Christopher Martinez de Castro, son of Chief Orlando Martinez de Castro, was hired by Lou’s as Vice President of International Sales. Because the son has no direct or indirect financial ownership in the company and will not be involved in the local contract, or profit from it, there is no prohibition from the police department continuing to do business with the firm.

In a similar issue, the Ethics Commission opined that County Commissioner Lynda Bell may participate in hearings and vote on Florida Power & Light’s application to construct additional facilities at its Turkey Point plant even though her daughter is employed by the utility. The daughter serves in an entry-level, temporary position that would not be enhanced or affected by the outcome of the zoning application. In response to **RQO 12-15**, Ethics Commissioners stated that, because Commissioner Bell does not have any of the relationships with FP&L that would directly benefit her, she is not prohibited by the Code of Ethics from voting. However, they also noted that the Ethics Code provides minimum standards of conduct and does not address “appearance of impropriety” issues, which should be considered by all elected officials.

The meeting began with an official welcome for newly appointed Ethics Commissioner Lawrence Schwartz, who was sworn into office by Chief Judge of the 11th Judicial Circuit Court Joel Brown last week. The recently retired judge Schwartz succeeds Judge Seymour Gelber after the former jurist, Miami Beach Mayor and civic activist retired from the board. He was honored with a plaque of special recognition for his eight years of service as an Ethics Commissioner, which was accepted by his son, attorney Dan Gelber.

The Ethics Commission was created in 1996 as an independent agency with advisory and quasi-judicial powers. It is composed of five members, serving staggered terms of four years each. Through a program of education, outreach and enforcement, the Commission seeks to empower the community and bolster public trust.

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