
From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, October 29, 2015 2:03 PM
To: Sanchez, Rodzandra (COE)
Subject: FW: Rafael Cabrera, Senior Land Surveyor, WASD; Outside Employment; INQ 15-240
Attachments: EthicsCommissionletter10132015.pdf; Ethicsresponseletter10262015.pdf

INQ 15-240 Cabrera

From: Perez, Martha D. (COE)
Sent: Thursday, October 29, 2015 2:00 PM
To: Cabrera, Rafael (WASD)
Cc: Ferguson, James (WASD); Centorino, Joseph (COE); Diaz-Greco, Gilma M. (COE)
Subject: Rafael Cabrera, Senior Land Surveyor, WASD; Outside Employment; INQ 15-240

Dear Mr. Cabrera,

You inquired whether a conflict of interest would exist where you have requested to engage in outside employment through your privately-owned company, Cabrera Consulting Services, as a land surveyor/ plat reviewer for the City of Miami Gardens and the Town of Miami Lakes (client municipalities), reviewing and certifying platting documents which have been submitted by private land surveyors and developers to municipalities for review and approval.

As background, you are employed as a Senior Land Surveyor for the Engineering and Design Division of the Water & Sewer Department for Miami-Dade County. Your job responsibilities include: managing the Department's land survey section which conducts land survey work for **in-house** engineering design projects, boundary surveys for sanitary pump stations, treatment plants and other properties the department may operate, not related to private developments; and, conducting "as-built" surveys for pipeline installations of **in-house** projects, not related to private developments. Although your division may get involved in the review of "as-built" survey plans for facilities operating within the client municipalities, your division **is not** involved in the oversight, approval or review of plats submitted to the client municipalities or other third parties. To the extent that any review or approval of plat documents related to water & sewer pipeline extensions or pump stations at private developments is required, this oversight is handled by another division in WASD, not the Engineering & Design Division which you manage, and it is limited to ensuring that the proposed subdivision is serviced by WASD. There may be instances when your Department contracts with consultants and contractors to design and install **proprietary** projects but your interaction is limited to the water/sewer installations, not any subdivision platting.

Florida law requires that a Florida licensed surveyor review platting documents submitted to counties and municipalities. See §177.061, Fla. Stat. As you have pointed out, many municipalities outsource this position to private consulting land surveying firms. Both client municipalities have sought your services in conducting plat reviews submitted by private developers or land surveyors to the respective municipalities, to certify that these documents conform to State requirements as they relate to platting. You affirm that the review and/or certification of platting documents submitted by private parties to the municipalities **does not** involve any use of the County's land surveyor reports prepared by your office and it is in fact done for the benefit of the municipality and not for the County. In fact, once you certify the plat documents, they are presented to the client municipality's council/commission and, upon approval, are submitted to the Land Development Section of the County's Public Works Department. You indicate that you do not have any contact with the private developers or private land surveyors preparing and submitting the plat documents and will communicate your

findings directly to the client municipality, without any interaction, consultation or communication with the land surveyor/ developer. You will be performing your outside employment for approximately 2-4 hours on weekends or in the evenings, outside of your employment hours.

In 2004, you requested an opinion from the Ethics Commission on whether there were any limitations on your ability to conduct plat waiver applications for “private clients” while serving as Land Surveyor for WASD. The Ethics Commission opined that you were permitted to submit plat-related work as long as you abided by the limitations set forth in the County Ethics Code under Section 2-11.1(m). *RQO 04-168*. Consequently, you were given permission to engage in outside employment.

WASD has recently given you permission to continue your platting services through your privately-owned land surveying firm, Cabrera Consulting Services, as evidenced by the Request for Outside Employment Form attached to your inquiry . Your basis for this new request is that, in the near future, you intend to perform plat reviews *submitted by private parties to the client municipalities*.

The County Ethics Code at Section 2-11.1(j) prohibits County employees from accepting outside employment that would impair the employee’s independence of judgment in the performance of his or her County duties. Given the facts as described herein, your role as Plat Reviewer for client municipalities in your outside employment would not impair your independence of judgment in the performance of your County duties as Land Surveyor for the Engineering & Design Division of WASD, **with the following limitations:**

- 1) You shall not work on plat preparations, reviews and approvals if the outside work performed for the client municipality requires you to interact with County officials or County personnel. *INQ 15-193; INQ 05-121*
- 2) You shall not take actions or make recommendations to the County as a County employee on any matters involving third parties (including client municipalities) with whom you are affiliated as a plat reviewer consultant. *INQ 15-193; INQ 05-121*
- 3) You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with outside employment, even after work). See §2-11.1(g), County Ethics Code; AO 5-5, AO 7-1 ; *INQ 13-57; INQ 05-29*
- 4) Any research of public records recorded by the County’s Clerk of the Courts and/or any communication with the client municipality (included in your duties as plat reviewer), cannot be performed during regular business hours or with the use of any County resources. Such activity may constitute an “exploitation of official position”, in violation of Section 2-11.1(g), County Ethics Code; AO 5-5, AO 7-1
- 5) **In your County employment, you shall not be involved in the oversight of ANY County project that you work on with the client municipality, or any County project where the consultant surveyor or developer has submitted plat documents to the client municipality for your review.** See §2-11.1(j), County Ethics Code; *INQ 05-29*
- 6) You shall not interact with County staff on behalf of your client municipality or any other third-party client, even if these interactions are routine, ministerial or clerical in nature. See §2-11.1(m)(1), County Ethics Code; *RQO 12-10*
- 7) You shall not appear before any County board or agency and make a presentation on behalf of your client municipality with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise or other benefit sought by the client municipality. See §2-11.1(m)(1), County Ethics Code

We remind County employees that, pursuant to the County Code at Section 2-11, County employees must request permission for outside employment from their supervisor on a **yearly** basis. Also, Section 2-11.1(k) requires the filing of a financial disclosure form- Outside Employment Statement- with the County Elections Department, on a **yearly** basis by July 1st.

Lastly, it is important that you be aware of Section 2.11.1(h), County Ethics Code, which states that no County employee may accept employment or engage in any business or professional activity which he might reasonably expect would require him to disclose confidential information acquired by reason of his official position with the County. While your purported duties and responsibilities as a plat preparer/reviewer for municipalities may not impair your judgment in the performance of your County duties, WASD has the discretion to deny your outside employment if at any time it determines that it is contrary, detrimental or adverse to the interests of the County or WASD. *RQO 00-10*.

This opinion is based on the facts as presented. If any of these facts change, please contact us.

Sincerely,

Martha D. Perez

Staff Attorney

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

19 West Flagler St. Suite 820

Miami, FL 33130

(305)350-0656

PEREZMD@miamidade.gov

Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure.

Ms. Perez,

The following are my responses to your questions below:

No, I do not review, approve or manage any Municipal projects for which I am involved in my outside employment in so far as any Subdivision Plat. I can be involved at times to review other types of survey documents (e.i.- as-built survey plans related to water and/or sewer facilities that my dept. will operate within such Municipalities) Those plans have no relation to plats other than such plans may reflect roadway right-of-way information of plats already recorded in the public records (basically the geometry involved), that information is for reference purposes only.

No, I do not interact or have contact with private surveyors or developers involved in private development for this department. Again my position is Senior Professional Land Surveyor in the Engineering and Design Division of Miami-Dade County Water and Sewer Dept. This division designs and constructs water and/or sewer facilities for the dept. which are not related to private developments. At times when the department contracts with consultants and contractors to design and install some of our proprietary projects I do interact with those consultants to coordinate and review their work, but only as it relates to the water and/or sewer installations, nothing to do with subdivision platting. In so far as any private developer and/or private land surveyor conducting work that is submitted to my Municipal Client(s), I do not interact, communicate or have any direct relation to such people, as I only interact with the Municipal staff that deal with me to send back and forth the plat documents submitted. Hence, I conduct my reviews and electronically send back my comments directly to the Municipal staff, never directly to the consulting land surveyor. I hope that I have answered your concerns and questions, if you need any further clarifications please do not hesitate to let me know.

I again thank you for your attention to this matter, which is of utmost importance to me,

Sincerely,

Rafael Cabrera, PSM

From: Perez, Martha D. (COE)

Sent: Thursday, October 29, 2015 9:17 AM

To: Cabrera, Rafael (WASD)
Subject: Request Outside Employment

Good morning Rafael,

Would appreciate your responses to these questions:

In your County position, are you **OR** would you ever become involved in the oversight (management, review, approval) of **ANY project with your outside employment client municipality?**

Also, in your County position, are you **OR** would you ever become involved in the oversight (management, review, approval) of **ANY project with a private surveyor or developer who has submitted a plat document to the client municipality which you will be reviewing and certifying for that client municipality?**

Your County position responsibilities are limited to **in-house**.....does that mean that there's no interaction with private developers? If there is interaction, please describe.

There is a concern about any appearance of impropriety.....In the event that you do interact with private developers in your County position and, for example, one of the developers or surveyors you are interacting with in the County submits a plat to the Town of Miami Lakes (your client), would you be the only plat reviewer/ certifier for the municipality, or would the municipality be able to engage the services of another land surveyor?

Thank you in advance for your responses.

Martha D. Perez
Staff Attorney
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST
19 West Flagler St. Suite 820
Miami, FL 33130
(305)350-0656
PEREZMD@miamidade.gov

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You're welcome.

From: Perez, Martha D. (COE)
Sent: Monday, October 26, 2015 1:18 PM
To: Cabrera, Rafael (WASD)
Subject: RE: Request

Thank you Mr. Cabrera.

From: Cabrera, Rafael (WASD)
Sent: Monday, October 26, 2015 10:32 AM
To: Perez, Martha D. (COE)
Cc: Ferguson, James (WASD)
Subject: RE: Request

Ms. Perez,

Attached please find my response to your questions. I hope you find my responses adequate and want to thank you ahead for your prompt attention to this matter. If I can be of further help to understand my responses please let me know.

This opinion is required by the Public Works Dept. in order to determine that my outside employment does not create any conflict of interest with the County.

Thank you very much,
Rafael R. Cabrera, PSM
M-DWAD
Survey Section Head
786 236-7606

From: Perez, Martha D. (COE)
Sent: Monday, October 26, 2015 8:47 AM
To: Cabrera, Rafael (WASD)
Cc: Ferguson, James (WASD)
Subject: Request

Dear Mr. Cabrera,

We are in receipt of your letter and attachments. . You have attached a Request for Outside Employment which has been approved by your Supervisor and Department Director. Please note that the Ethics Commission does not issue opinions on prospective conduct. I left a message with your supervisor to clarify the purpose or the need for an Ethics Commission letter, but I have not been able to speak with him. In the event that you may be concerned about conflicting employment, I would appreciate your responses to the following questions:

- 1) Please describe in detail your present duties as a Senior Land Surveyor for the County;
- 2) Will you be engaged in preparing and reviewing plat documents for municipalities (as property owners) OR on behalf of municipalities?
- 3) Will your work for the municipalities involve the use of County land surveyor reports?
- 4) Is your County department involved with the oversight, monitoring, or approval of any plat document prepared, reviewed or submitted by the municipalities you will be representing?
- 5) Will you be required to interact, verbally or written, with County staff? If so, please describe staff or department you would personally have to interact with.
- 6) Can you perform your outside employment, ie., plat preparation/ review outside your County regular business hours? Please describe.

Thank you for your anticipated responses to these questions. As soon as I have this information, I will respond to you accordingly.

Martha D. Perez
Staff Attorney
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST
19 West Flagler St. Suite 820
Miami, FL 33130
(305)350-0656
PEREZMD@miamidade.gov

October 26, 2015

Ms. Martha D. Perez, Staff Attorney, Miami-Dade County

Commission on Ethics and Public Trust

Miami-Dade County, Commission

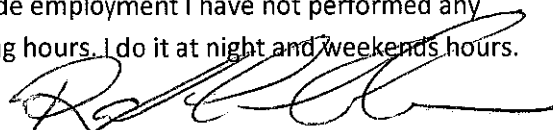
19 W. Flagler Street, Suite 820

Miami, Fl. 33130

Dear Ms. Perez,

This is in response to your email dated 10-26-15 regarding my request for opinion to conduct outside employment work for County Municipalities.

- 1) My duties in the Miami-Dade Water and Sewer Dept. include managing the dept's land survey section, which is involved in conducting land survey work such as topographic surveys for engineering design projects in-house, boundary surveys for dept's properties such as sanitary pump stations, treatment plants and any other property that the dept. may operate. We also conduct as-built surveys of new pipeline installations for record plans of said in-house projects. I supervise both office and field personnel. My duties do not include the review, approval or process of any platting related documents prepared by others. This dept. does not engage in platting approvals, that is the responsibility of the County's Public Works Dept. in the Land Development Division. They are the once asking for this opinion from you to determine that there is no conflict of interest.
- 2) My involvement in the review of the platting documents is on behalf on the Municipalities, not for the owners nor their private land surveyors that prepare said documents.
- 3) My work does not involve any County Land Surveyor reports. I do have to research public records which may be recorded in the Clerk of Courts public records, but those records are for anyone to access and utilize. I do not involve communicating with any county staff for this research.
- 4) My department only has oversight in plat documents as they relate to establishing any requirements for water and sewer pipeline extensions, pump stations and services to proposed private developments. This type of oversight is not conducted by me or any of my subordinates. It is handled by another division of the dept. that deals with what is referred to as Donations Projects proposed by private development. My division only work on in-house projects with no contact with the private sector.
- 5) I do not interact with any county staff or dept. in order to conduct the work I will do for the Municipalities.
- 6) Yes, all the work I will perform in outside employment will be outside of my county business hours. In all 11+ years that I have been doing outside employment I have not performed any work during my county employment regular working hours. I do it at night and weekends hours.


RAFAEL R. CABRERA

October 13, 2015

Mr. Jopseph Centorino, Executive Director

Commission on Ethics and Public Trust

Miami-Dade County, Commission

19 W. Flagler Street, Suite 820

Miami, Fl. 33130

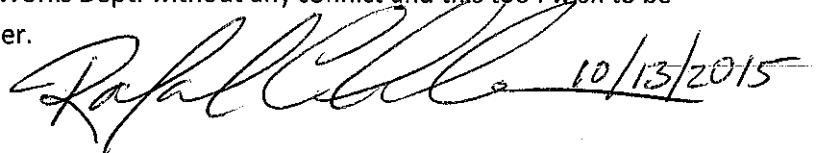
Dear Mr. Centorino,

My name is Rafael R. Cabrera, I am employed by Miami-Dade Water and Sewer Dept., Engineering and Design Division. My title is Senior Professional Land Surveyor. I have been employed here since May 10th 2004 and since the first year I have been approved every year for outside employment to conduct survey related work in the private sector by the dept. Director, see attached copy for this year 2015.

On Sep. 23rd 2004 I was approved for a Request for Advisory Opinion 04-168 to be allowed to prepare subdivision plats that are reviewed and approved by Miami-Dade County Public Works. I was allowed to prepare said survey documents but not submit or process said document personally. To this date I have complied with said Opinion without any conflict. Please refer to attached copy of 04-168 Opinion.

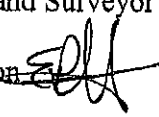
The reason for this request now is that I wish to be allowed to conduct Plat Documents review for the benefit of Municipalities within This County. In the past I have done this work for the City of Hialeah Gardens prior to my employment with the County and now I have the offer to do so for Miami Gardens and the Town of Miami Lakes. My reviews and certifications are done for the benefit of the Municipality and not for the County. My review states that it is for conformity to Florida State Statutes requirement as they relate to Platting. I do not have any contact with the private developers (land owners), private land surveyors preparing the plat documents and communicate my markup comments directly to the Municipality. I am contracted by the Municipality as a Consultant and not as an employee. I conduct this on my own time and does not interfere nor do I conduct this during my county working hours. The fees are paid to my company named Cabrera Consulting Services, which is a State licensed D/B/A to conduct land surveying services.

Please take into consideration that my position at the Water and Sewer Dept. does not include that I review or approve platting documents. I do not meet with any county employee related to this work for the Municipalities and do not attend any county commission or any other committee as it relates to these projects. Therefore I consider that this work does not present any conflict of interest with my employment with Miami-Dade County. For the past 11 plus years while employed by Miami-Dade County I have been allowed to prepare Subdivision Plats for private clients that are reviewed and approved by the Miami-Dade County Public Works Dept. without any conflict and this too I wish to be allowed to continue doing in the same manner.

 10/13/2015

Memorandum



Date: September 4, 2015
To: Rafael Cabrera
Senior Professional Land Surveyor
From: Elizabeth Perez-Gordon 
Personnel Technician
Subject: Outside Employment

- Your request has been authorized by the Department Director or his designee. Copy of attached Administrative Orders are to be given to the employee.
- Your request has been denied for the following reason(s):
- Your request is pending due to:



REQUEST FOR OUTSIDE EMPLOYMENT

Section 2-11 of the Miami-Dade County Code provides that County employees may accept incidental or occasional outside employment as long as the employment is not contrary, detrimental, or adverse to the interests of the County and as long as no County time, equipment, or material is used. Miami-Dade County Administrative Order 7-1 states that any full-time County employee intending to engage in outside employment must first obtain approval from his/her Department Director using this "Request for Outside Employment" form. These approvals must be renewed on an annual basis. Copies of all outside employment approvals shall be maintained in the centralized personnel files of the Human Resources Department. County Department shall also maintain appropriate records regarding outside employment requests. County employees engaging in outside employment must also file an "Outside Employment Statement" form with the Elections Department by July 1st of each year, in accordance with Section 2- 11.1(k)(2) of the Miami-Dade County Code.

RECEIVED JUN 26 2015

Employee's Name: RAFAEL R. CABRERA

Employee ID Number: 199237

Present County Classification: SENIOR PROF. LAND SURVEYOR

Name of Company/Organization for Proposed Outside Employment: D/B/A CABRERA CONSULTING SERVICES
Bus. Add. 1830 S. OCEAN DRIVE, HALLANDALE, FL
Proposed Outside Employment: 10412 SW 23 TER, MIAMI, FL 33009

Work Schedule for Proposed Outside Employment: 2 TO 4 HOURS PER WEEK WEEKENDS

Total Hours Per Week for Proposed Outside Employment: 2 TO 4

Will your proposed outside employer release you if and when your services are needed by the County? Yes [X] No []

Employee's Signature [Signature] Date 6/9/15 Yes [X] No []

* Immediate Supervisor Signature [Signature] Date 6/9/15 Yes [X] No []

* Chief Signature [Signature] Date 6/9/15 Yes [X] No []

Deputy Director/Assistant Director Signature (As needed) [Signature] Date 8/26/2015 Yes [] No [X]

Department Director's Approval [Signature] Date 9/3/15 Yes [] No [X]

* A justification memo should be attached for approval/denial



ETHICS COMMISSIONERS

Kerry E. Rosenthal, Chairman
Robert H. Newman, Vice Chairman
Gail A. Dotson
Dawn E. Addy
Brenda Rivera

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

September 23, 2004

Rafael Cabrera
Department of Water and Sewer
3071 S.W. 38th Avenue
Miami, FL 33146

RE: REQUEST FOR ADVISORY OPINION 04-168

Dear Mr. Cabrera:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on September 22, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any limitations on your ability to complete work on a plat waiver applications for private clients that began prior to your county employment.

In your letter, you advised the Commission that you served as a Land Surveyor for several plat waivers that are currently seeking approval from the county and the City of Doral. In order to obtain a plat waiver, an applicant must submit 20 copies of the waiver of plat survey, 3 applications signed by the owner and a copy of the recorded Warranty Deed. The survey is distributed to representatives of the various departments that comprise the plat committee. If the plat waiver meets the required criteria, the waiver is forwarded to the Board of County Commissioners. The Board of County Commissioners makes the final determination.

The Commission found you may submit plat surveys and complete survey work as the land surveyor of record as long as you do not meet with any county employees or appear before any county board or agency. Section 2-11.1(m)(1) provides that "no person included in the terms defined in subsections (b)(1), (b)(5) and (b)(6) (Commissioners, departmental personnel and employees) shall appear before any County board or agency and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise or other benefit sought by the third person. Nor shall such person receive compensation, directly or indirectly or in any form for services rendered to a third person who has applied for or is seeking some benefit from the County or a County agency, in connection with the particular benefit sought by the third person. Nor shall such person appear before any administrative tribunal as counsel or legal advisor to a party who seeks legal relief from the County or a county agency through the suit in question." Therefore, Section 2-11(m) permits you to file surveys on behalf of private clients and complete any additional survey work required for approval.

However, in order to avoid the prohibition against appearances and presentations, you may not participate in any face-to-face meetings with staff. Further, you are prohibited from submitting any written documents to staff (excluding amended plans) regarding any plat waivers sought by his private clients. Further, you may accept compensation for your surveys (including any additional information or changes requested by county staff) but you may not accept any compensation related to the navigation of the plat waivers through the county approval process.

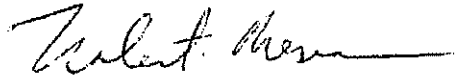
Finally, you are permitted to appear before the City of Doral or other municipalities regarding plat waiver applications as long as

your authority does not extend to the municipality in question.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director