
INQ 16-36 Meyers

From: Centorino, Joseph (COE)

Sent: Friday, February 05, 2016 2:42 PM

To: 'Robert Meyers' <RMeyers@wsh-law.com>

Cc: Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>;

Richard Jay Weiss (RWeiss@wsh-law.com) <RWeiss@wsh-law.com>

Subject: INQ 16-36 Robert Meyers, Esq., Weiss Serota Helfman Cole Bierman (Reverse Two-Year Rule)

Robert,

You have inquired on behalf of Jorge M. Gonzalez, Village Manager for the Village of Bal Harbour, regarding whether a proposed arrangement involving the hiring of Suramy Cabrera as Chief Building Official for the Village, under certain conditions to be imposed by the Village Manager, would comply with the Reverse Two-Year Rule, Section 2-11.1(x), of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance, where Ms. Cabrera would serve in that position while her former employer, C.A.P. Government, Inc. (CAP) would continue to provide building inspection and plan review professional consultant services to the Village of Bal Harbour during the wind-down period of its existing contract with the Village.

Ms. Cabrera currently works as a Structural Engineer/Structural Plans Examiner and Inspector for CAP in connection with CAP's existing contract with Bal Harbour. It is my understanding that, pursuant to that contract, there is another employee of CAP who is currently designated as the Chief Building Official for the Village for the purpose of granting final approval on projects requiring a permit. It is the intent of the Village Manager to terminate the existing contract with CAP and to hire Ms. Cabrera as full-time Chief Building Official. This will result in a gradual wind-down of the work being performed by CAP in completing ongoing projects, for which the company has already been paid. It would not be feasible or cost-effective to immediately terminate all services by CAP since the practice since the contract provides for CAP to be pre-paid for its work on projects that remain uncompleted. It is my understanding that no further permitted building projects will be assigned to CAP following termination of the contract, and that its future work in Bal Harbour will be limited to completing projects already under way in which the company has been involved.

Although a full-time Chief Building Official would ordinarily be involved in supervising the work of various inspectors on Village projects, it is understood that Ms. Cabrera could not supervise work performed by employees of her former employer for at least two years, pursuant to the Reverse Two-Year Rule in Section 2-11.1(x) of the Code. That provision bars a former employee of a municipal contractor from performing any "contract-related duties" regarding the former employer, where the employer is a bidder, proposer, service provider, contractor or vendor for the two-year period. "Contract-related duties" include, without limitation, "service as a member of a [Village] 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."

Ms. Cabrera's prospective employment as Chief Building Inspector would still require her to grant final approval on final building permits and certificates of occupancy for all Village projects following completion, even though CAP's inspectors would have been involved in at least those projects commenced before her hiring. This duty would be required by the Florida Building Code, and is non-delegable. It is the intent of the Village Manager to temporarily assign other Village

employees to cover duties concerning contract enforcement, oversight, and administration, which ordinarily fall within the purview of the Chief Building Official. It is an important condition of this arrangement that those Village employees, who will perform these temporary duties, not perform them under Ms. Cabrera's supervision or control. Ms. Cabrera's involvement would be limited to signing off on the final approvals for the project as Chief Building Official, a ministerial act that would not materially benefit CAP. Based on information provided by Mr. Gonzalez, her role would be confined to the certification that the required inspections had been completed and passed by the inspectors in the relevant disciplines.

In reviewing the ethical conflict issues raised by this proposal, I have considered that the model that the Village is working toward would be an improvement over the current contractual arrangement, under which a CAP employee acts part-time as the Village's Chief Building Official. I am of the opinion that Ms. Cabrera may serve as Chief Building Official for the Village of Bal Harbour under the proposed conditions. I am concerned, however, that there may be occasions when some input or opinion may be sought from Ms. Cabrera in connection with an inspection issue involving CAP. I would caution that she refrain from contact with CAP or its employees in connection with any such issue, and that provisions be made for an adequate decision-making chain of command, one that does not involve Ms. Cabrera in any way, to deal with unanticipated problems or issues that may arise involving CAP's inspection work.

Sincerely,

Joseph M. Centorino

Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
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Miami, FL 33130
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From: Robert Meyers [<mailto:RMeyers@wsh-law.com>]
Sent: Wednesday, February 03, 2016 1:25 PM
To: Centorino, Joseph (COE) <CENTORI@miamidade.gov>
Subject: FW: Bal Harbour - Letter to Joseph Centorino attached.

Hi Joe:

Per our discussion earlier today, attached is a letter regarding the hiring of the Bal Harbor Village Building Official. Please contact me should you wish to discuss. I would appreciate if you would respond to this letter in writing. Can you give me an idea when you might be able to compose a response and send it to me? The Village Manager wants to meet with CAP, but doesn't want to do so without your approval of the arrangement set forth in the letter.

Thanks,

Robert

From: Linda Brewley
Sent: Wednesday, February 03, 2016 1:13 PM
To: Robert Meyers
Subject: Bal Harbour - Letter to Joseph Centorino attached.

Robert Meyers



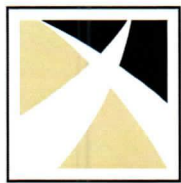
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WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

ROBERT MEYERS

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February 3, 2016

Joseph M. Centorino, Executive Director
Miami-Dade Commission on Ethics & Public Trust
19 West Flagler Street, Suite 820
Miami, FL 33130

Re: Employment of Building Official (Bal Harbour)

Dear Joe:

Per our conversation last month, you requested that I draft correspondence to you summarizing a situation in the Village of Bal Harbour relating to Section 2-11.1(x) of the Miami-Dade County Code. Based on our discussions, you concluded that the prohibition set forth in this section would not be applicable to the Village's hiring of Suramy Cabrera, a former employee of a Village contractor, provided the Village takes the necessary steps to isolate her from any responsibilities connected to the oversight or administration of her former employer's work while the contractor finalizes its assignments pursuant to its contract with the Village. Although she will be removed from any contract-related duties with her former employer, she would be permitted to exercise her statutory duty as the Village's Building Official to sign off on the inspections performed by the company during this wind down period.

By way of background, Bal Harbour Village entered into an agreement for building inspection and plan review professional consultant services with C.A.P. Government, Inc. ("CAP") on March 1, 2013. At the time the agreement was reached, the parties understood that the Village would employ its own Chief Building Official as defined by the Florida Building Code and required by state law. According to the agreement, employees of the consultant would be required to coordinate their work through the Village's Chief Building Official. Per the agreement, CAP was entitled to receive a percentage of the building fees collected by the Village. It should be noted that the services provided by CAP occur only after permit fees have been collected and there are specified service standards to which

the company agreed to follow under this agreement. This agreement can be terminated by the Village upon ten days' notice with or without cause. The Village Manager wishes to extend an offer of employment to Ms. Suramy Cabrera to serve as the Village Building Official. Ms. Cabrera currently works for CAP as a Structural Engineer/Structural Plans Examiner and Inspector.

As stated above, Section 2-11.1(x) establishes limitations on employees accepting positions with local government after having a prior relationship with a business entity and subsequently performing contract-related duties for the governmental employer regarding said business entity. As we discussed, this section of the ethics ordinance does not preclude Ms. Cabrera from working in the capacity as the Village Building Official concurrently with CAP as it winds down its operations in the Village. Ms. Cabrera will not be involved in any "contract related duties" as defined by this section during the CAP's "wind down" period. The only set of duties that could even conceivably apply encompass contract enforcement, oversight or administration, as the other duties mentioned in the ethics code are either connected to the award of an agreement – which will have predated her employment with the Village or relate to an amendment, extension or termination of the contract, which falls outside of her duties as the Village Building Official. Those duties, which could be described as enforcement, oversight, or administration, will be temporarily assigned to other Village employees until such time as CAP wraps up its relationship with the Village, which is tied to outstanding building permits issued at the time CAP served as a Village contractor. Once the agreement is terminated, CAP will not be authorized to provide services for any new building permits issued by the Village.

The other point to stress is that the abovementioned ethics code section is an attempt to bar a former employee from performing contract-related duties for a former employer. However, per the Florida Building Code, each local government is required by statute to identify a person who can serve as the government's building officials for purposes of granting final approval to a project that required a permit. Only a person with proper licensing and credentials can assume this position. This amounts to a non-delegable duty as only the Chief Building Official can exercise such authority and other Village employees, who can interact with CAP with respect to other issues instead of Ms. Cabrera, are not permitted by statute to act as the Building Official. Consequently, any sign-off by Cabrera linked to work performed by CAP or other parties performing similar work, is imposed by state statute and cannot be assigned to other employees.

Joseph M. Centorino, Executive Director
Miami-Dade Commission on Ethics & Public Trust
February 3, 2016
Page 3 of 3

The Village is requesting that you confirm in writing that you agree with the conclusion that Section 2-11.1(x) does not bar Ms. Cabrera from serving as the Village Building Inspector while CAP finalizes its obligations to the Village under building permits previously issued by the Village. Finally, as stated above, the Village will limit her participation in CAP matters to her sign-off authority as Village Building Official.

Please contact me should you have any questions or wish to discuss.

Sincerely,



Robert Meyers

RM:jm

0027.001

cc: Jorge M. Gonzalez, Village of Bal Harbour Manager



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