

Sanchez, Rodzandra (COE)

From: Perez, Martha D. (COE)
Sent: Wednesday, February 15, 2017 8:04 AM
To: Sanchez, Rodzandra (COE)
Subject: FW: Deborah Margol, Deputy Director, MDC Dept. of Cultural Affairs, Conflict of interest, INQ 17-41

GM Rodzandra,
Please add this to INQ 17-41.
Thank you.

From: Margol, Deborah (CUA)
Sent: Tuesday, February 14, 2017 5:27 PM
To: Perez, Martha D. (COE) <perezmd@miamidade.gov>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Spring, Michael (Office of the Mayor) <Michael.Spring@miamidade.gov>; Sanfilippo, Amanda (CUA) <Amanda.Sanfilippo@miamidade.gov>
Subject: RE: Deborah Margol, Deputy Director, MDC Dept. of Cultural Affairs, Conflict of interest, INQ 17-41

Martha:

Thank you so much for providing this opinion. It is extremely helpful.

Solely in the interest of maintaining an exact record of the facts regarding our program, I offer the few minor points of clarification highlighted below to what has been written. In no way is this intended to challenge your considered opinion – it is simply to ensure that all of the information contained therein characterizes and documents our process precisely.

Our thanks again,

**Deborah J. Margol, Deputy Director
Miami-Dade County Department of Cultural Affairs**

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From: Perez, Martha D. (COE)
Sent: Monday, February 13, 2017 1:27 PM
To: Margol, Deborah (CUA) <DEBO@miamidade.gov>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: Deborah Margol, Deputy Director, MDC Dept. of Cultural Affairs, Conflict of interest, INQ 17-41

Dear Deborah,

Thank you for supplying me with additional information regarding this request. You inquire whether there may be a conflict of interest in connection with an employee's involvement with South Florida Cultural Consortium's (SFCC's) Visual Arts & Media Artists Program (Visual Arts Program), a program administered by the County's Department of Cultural Affairs, when one of the applicants selected for the program's award (the recipient) is the County employee's domestic partner.

Background

I will incorporate your rendition of the facts as provided herein, with the additional following observations:

- The SFCC is comprised of local cultural agencies from five counties, Miami-Dade County (MDC) being one of them.
- MDC has entered into an agreement with SFCC for inter-county cooperation for the enhancement, encouragement and public expenditures in support of the culture and the arts within the five-county members, and specifically, to provide programmatic and financial administrative services to SFCC programs, including the Visual Arts Program.
- The County's Department of Cultural Affairs (DOCA) administers the Visual Arts Program and serves as the fiscal agent for the SFCC's contributed funds from the member counties for the Consortium's programs which benefit South Florida (funds contributed from each of the participating counties are allocated in accordance with their respective awards).
- In addition to the fellowship award of grants to eligible local artists, the Visual Arts Program gives the fellowship recipient artists the opportunity to exhibit their work at a specified museum/ institution host.
- There is basically what amounts to a six-step process involved in the awards of the Visual Arts Program grants: applications are received and examined for qualification and eligibility requirements; submissions are presented to a regional panel which conducts an initial ~~interview~~ **review of work samples** and submits a **shortened list of recommendations to applicants for consideration by** a national panel; the national panel is convened to recommend the final recipients of the awards to the SFCC; the SFCC reviews and ratifies the national panel's recommendations; the recommendations are presented to the BCC in a resolution authorizing grant awards for the SFCC's Visual Arts Program's recipients; and an award agreement is executed between MDC's DOCA and the artist recipient of the funds.
- MDC's DOCA is charged with the authority to execute the contracts for these grants, amending and exercising all provisions contained in the contracts, and monitoring the contracts on behalf of the SFCC.
- MDC's DOCA issues the award agreements for execution by the recipients of the awards, subject to BCC approval.

Sanfilippo's duties & responsibilities at DOCA are as follows:

- Makes recommendations, in conjunction with the Department Director, Michael Spring, **the members of the South Florida Cultural Consortium**, other staff and arts experts, on the selection of the regional and national panelists;
- **Prior to the application deadline, conducts pre-application workshops and telephone consultations** for the artist applicants, **to de-mystify the process and to provide "tips" for optimizing consideration of an application, such as emphasizing that work samples submitted should demonstrate an established and recognized body of work completed within the three years prior to the date of application, and that there should be consistency in the submitted body of work** (SFCC has specific criteria for award eligibility);
- Prepares eligible submissions received for panel review. Her role in this instance is ministerial rather than supervisory, consisting of checking every application submitted to verify each applicant has correctly uploaded the work submitted for review and has provided ~~adequate~~ proof of residency . ~~You advise that her interaction with the applicants at this stage, if any, is limited to communicating to the artist applicant that his or her work may not represent a contiguous body of work as required by SFCC standards (SFCC has specific criteria for award eligibility);~~

- **Convenes the panels;**
- **Answers procedural questions from panelists;**
- Prepares and presents the final recommendations of the national panel to SFCC;
- ~~Convenes the panels;~~
- ~~Answers procedural questions from panelists;~~
- Communicates with the exhibition host curatorial staff & selected artists. The selected recipients are automatically considered for the exhibition show and Ms. Sanfilippo does not exercise discretion on the artists' participation in any specific show, rather, it is automatic.
- Upon the BCC's approval of the recommended award recipients, issues the agreements to each artist for review and execution and routes them to various County offices for signatures and execution;

You have indicated that one of the six Visual Arts Program artists selected by the national panel for an award is the domestic partner of Amanda Sanfilippo (Sanfilippo), the Curator & Artists Services Manager for DOCA and the Program Administrator for SFCC's Visual Arts Program. You further advise that Sanfilippo does not have any involvement with the interlocal agreement between the County and SFCC or the grant funding for the SFCC; does not have any decision-making role in the competitive process outlined herein; does not exert any influence over the regional or national panels; and, does not participate in the panels' evaluations of the artist applicants, hence did not have any active role in the selection of her domestic partner as an applicant recommended for the award.

Analysis

As the domestic partner of Sanfilippo, the recipient falls under the definition of "immediate family member" as contemplated by the County Ethics Code. See Section 2-11.1(b)(9). Therefore, Sanfilippo's domestic partner is subject to the jurisdiction of the County Ethics Code as it applies to immediate family members of County employees who are transacting business with the County, including receiving grants from the County. See Section 2-11.1(c)(1), County Ethics Code; INQ 13-90

The County Ethics Code at Section 2-11.1(c)(2) allows immediate family members of County employees to contract with the County in certain circumstances and if the following criteria are met: (1) *entering into the contract will not interfere with the full and faithful discharge of the County employee's duties to the County;* (2) *the County employee will not participate or be involved in the contract award or requirements;* (3) *the County employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination or forbearance;* and, (4) *the County employee will not be working in the County department that enforces, oversees or administers the subject grant or contract.*

While determining any potential conflict involved in the recipient's participation in the Visual Arts Program, we pay special attention to the duties and responsibilities Sanfilippo performs for the Visual Arts Program, to wit: she is the Program Administrator; she convenes the panels; she communicates with applicants and conveys to them any problems with the eligibility requirements; she transmits recommendations to the panel in charge; she communicates with panel members who may have procedural questions; and, although she is not involved in the selection of the recommended recipients, she has contact with those panelists charged with recommending the awards. Furthermore, *Sanfilippo works in the County department that oversees the interlocal agreement with SFCC and issues and administers the award agreements with all recipients on behalf of the County and SFCC.* Consequently, pursuant to Section 2-11.1(c) and (d) of the County Ethics Code, Sanfilippo's domestic partner may not enter into the Visual Arts Program award agreement for the receipt of County funds because the criteria is not met and Sanfilippo works in the County department that oversees and administers the agreement.

Additionally, while recognizing the ministerial duties Sanfilippo has engaged in during the selection process, her role as Program Administrator for the Visual Arts Program creates an appearance of impropriety because of the *perception* that she could use her influence, knowledge and contacts to benefit the recipient. Even though the initial stages of the competitive process have already been concluded, Sanfilippo remains the administrator of the program

“sponsoring” the award recipients, therefore, she is intrinsically a part of the program’s overall initiatives and goals. Section 2-11.1(g) prohibits a County employee from using his or her official position to secure special privileges and/or exemptions for herself or to hers. Taking any action that specifically benefits a program associated with the County employee or her immediate family member could be perceived as a form of exploitation. See INQ 16-123. The national panel recommendation phase has been completed and Sanfilippo’s partner has been selected as one of the applicants to be recommended by the SFCC as a final recipient of the award. It is important to recognize that the final recommendations have not been presented to the BCC for approval and any prospective agreement between the artist recipient and MDC has not been executed, therefore, the transaction has not been concluded. However, in order to avoid a conflict of interest, it is strongly recommended that Sanfilippo’s domestic partner/recipient abandon the process at this time and/or decline any ultimate award of funds connected to DOCA and the Visual Arts Program.

Please note that, pursuant to Section 2-11.1(c)(4) of the County Ethics Code, Sanfilippo may request a waiver from the BCC within ten (10) days from receipt of this response by filing a notice of appeal to the Ethics Commission, which in turn, will forward this matter to the BCC. The BCC may grant a waiver upon a 2/3 affirmative vote after a finding that the requirements pertaining to the exclusion have been met and the *proposed* transaction (grant award) would be in the best interest of the County.

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
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From: Margol, Deborah (CUA)
Sent: Thursday, February 02, 2017 2:07 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Cc: Sanfilippo, Amanda (CUA) <Amanda.Sanfilippo@miamidade.gov>; Spring, Michael (Office of the Mayor) <Michael.Spring@miamidade.gov>
Subject: Request for Opinion concerning a competitively selected award to a local artist

Hello Joe:

We are seeking your counsel and opinion regarding a circumstance related to the South Florida Cultural Consortium’s Visual and Media Artists program.

BACKGROUND

The South Florida Cultural Consortium (SFCC), formed in 1985, is comprised of the local cultural agencies of five South Florida counties – Broward, Martin, Miami-Dade, Monroe and Palm Beach. The SFCC operates under an interlocal agreement to coordinate projects and share resources for the growth of South Florida cultural activities, organizations, and artists. The SFCC fosters, creates and sustains inter-county cooperation and cultural development to advance artistic excellence, growth, creative collaborations, programming and activities throughout the region. The SFCC’s governing board is comprised of the executive directors and board chairmen of each of the county arts councils. The executive

directors of the member cultural councils direct its operations, including program conceptualization and design, budget development and implementation. The Miami-Dade County Department of Cultural Affairs provides programmatic and financial administration services for the activities and programs of the SFCC, per the interlocal agreement. As such, the activities of the SFCC are included as part of the Department's annual budget as reviewed and approved by the Board of County Commissioners, and the awards provided through the Visual and Media Artists program are also presented to the BCC for review and approval.

The SFCC's annual Visual and Media Artists program awards \$15,000 and \$7,500 grants to resident visual and media artists from the counties of Broward, Martin, Miami-Dade, Monroe, and Palm Beach. In addition to receiving the grant, the artists take part in an exhibition hosted and organized by a visual arts institution in one of the five counties. All emerging, mid-career and established South Florida professional artists (those residing in Broward, Martin, Miami-Dade, Monroe or Palm Beach Counties) are eligible to apply. Candidates must have resided and worked in one of the participating five counties for at least one year prior to the date of application and must apply from the county of residence. The SFCC awards the grants contingent on proof of residency, which may include one or more of the following: property tax record; lease agreement; voter's registration; or an IRS income tax return for 2015. The SFCC defines a professional artist as a person who has created a recognized body of original works of art within an artistic discipline over a sustained period of time, and who is striving to achieve the highest level of professional recognition. Individuals are not eligible if they are engaging in artwork as a hobby, if they are an employee of the participating County governments or of the South Florida Cultural Consortium's member local arts agencies, or if they are a student pursuing an undergraduate or graduate degree.

In FY 2017, 339 artists who live and work throughout the five counties submitted applications for consideration to the SFCC's Visual and Media Artists program. Submissions are grouped by County, and the numbers of awards to be made are also County-specific, based upon the total funding committed by each County in a given year to this program (in FY 2017: Broward = 3 or 4, Martin/Monroe = 1 or 2, Miami-Dade = 6 or 7, and Palm Beach = 1 or 2; for each county/grouping, the panel has the option to split one award, allowing two at the \$7,500 level). A two-tiered review process is employed – first, a regional panel comprised of visual and media art experts from South Florida is convened to provide an initial review of the submissions and to recommend a final pool of artists for consideration by the national panel. This national panel – with expertise in visual art, film, and media and chosen from a variety of academic and major visual arts institutions from around the country – is given the responsibility of recommending the final recipients. All panelists are required to follow the conflict of interest policy established by the Miami-Dade County Department of Cultural Affairs.

During a day-long deliberation, the submissions are viewed by the national panel in a series of rounds. The panelists then reduce the selection to the final group of awardees. The dynamics of the panel shape the selections from year to year. Merit is determined based on individual accomplishments as evidenced by the work submitted for review which must have been completed within the three prior to the application date, with the highest premium placed on coherent bodies of work. The national panel's recommendations are reviewed and ratified by the South Florida Cultural Consortium, and subsequently by the Miami-Dade County Board of County Commissioners.

QUESTION

This year, one of the six professional, Miami-Dade County-based artists selected by the national panel for award shares a household with Amanda Sanfilippo, the Curator and Artists Services Manager for our Department and the program administrator for the SFCC's Visual and Media Artists program. In her capacity as program administrator, Ms. Sanfilippo has no decision-making role, nor does she have influence over or participate in the evaluation that occurs solely among the regional or national panelists during their respective deliberations. She is responsible for: 1) conducting artists' pre-application workshops in each County to facilitate all applicants to the program in preparing their submissions; 2) preparing all eligible submissions received for panel review; 3) convening each panel and providing them the opportunity to review each application; 4) addressing any questions raised by panelists regarding the process; and 5) preparing and presenting the final recommendations of the national panel to the SFCC board. Upon approval by the SFCC board, Ms. Sanfilippo may also serve as a communication liaison between the curatorial staff of the museum/institution hosting the exhibition of the artists' work and all of the awarded artists.

We respectfully request your opinion as it relates to conflict of interest, given these specific circumstances.

Many thanks,

Debbie

Deborah J. Margol, Deputy Director
Miami-Dade County Department of Cultural Affairs

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