

## Sanchez, Rodzandra (COE)

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Thursday, March 16, 2017 3:37 PM  
**To:** Sanchez, Rodzandra (COE)  
**Subject:** Request for an Opinion- Commission on Human Rights, Michael Joseph, Esq., MDC Commission on Human Rights (CHR), Voting Conflicts (v) & Prohibited Appearances (m)(2), INQ 17-76

INQ 17-76 Joseph

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**From:** Perez, Martha D. (COE)  
**Sent:** Thursday, March 16, 2017 3:27 PM  
**To:** 'mjoseph@galbutwalters.com' <mjoseph@galbutwalters.com>  
**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:** RE: Request for an Opinion- Commission on Human Rights, Michael Joseph, Esq., MDC Commission on Human Rights (CHR), Voting Conflicts (v) & Prohibited Appearances (m)(2), INQ 17-76

Dear Mr. Joseph,

You inquire whether your employment as an attorney representing a client before the Miami-Dade Commission on Human Rights (CHR) would create a conflict of interest for you under the County Ethics Code where you are a board member of the CHR. If so, you further inquire as to the procedure for mitigating such conflict(s).

### Background

You are a current board member of the CHR. The CHR is a quasi-judicial as well as an advisory board presently comprised of 17 members (9 vacancies), charged with the enforcement of Miami-Dade County's civil and human rights ordinance, codified as Chapter 11A of the Miami-Dade County Code, as amended. Pursuant to Sec. 11A-5 of the Miami-Dade County Code, the CHR may among its duties, compel by subpoena the attendance of witnesses and production of evidence for investigation or hearings; adopt, promulgate, rescind or amend rules and regulations; issue final orders; award relief to a prevailing complainant; and, advise the County Commission. The CHR is a section of the Human Rights and Fair Employment & Practices Division of the Human Resources Department (HR-FEP) which provides administrative, technical and clerical support to the CHR for the proper performance of its duties. See Sec. 11A-4(8), Miami-Dade County Code.

You are also an associate at the law firm of Galbut Walters and Associates where you handle cases involving police misconduct, *employment discrimination* and criminal defense. You wish to know whether you may represent a client who has filed a discrimination complaint with the CHR. The CHR complaint process involves the following:

- 1) A discrimination complaint is filed with the CHR. At this stage, a complainant may retain legal counsel, who files a Notice of Representation on the case. An investigation into the allegations is conducted by the HR-FEP. The investigation involves review of documentation, subpoena of witnesses, interviews. The complainant, *by and through his or her attorney*, has an opportunity to rebut the respondent's defense and reach a settlement agreement. There is also a mediation option offered by the CHR as an alternative to the investigative or litigation process. It is important to note that the complainant's counsel is an integral part of this process and becomes the sole source of communication with HR-FEP personnel.
- 2) Once part 1 is completed, the CHR Director makes a determination (a probable cause finding).

- 3) The Director’s determination may be appealed to the CHR sitting in its appellate capacity which is comprised of 3 or 4 of the current 17 board members. The quasi-judicial hearing is conducted and a final order is entered by the CHR.
- 4) The Final Order is presented to the entire CHR board for approval/ratification.
- 5) The Final Order is appealable to the Circuit Court.

Your service on the board may subject you to reviewing the Director’s determination (Part 3) and/or approving final orders (Part 4). Your first inquiry relates to whether you and/or your law firm may represent a complainant before the CHR during the appeal of the Director’s determination and/or approval of a final order.

Analysis

Conflict of interest under Section 2-11.1(v) of the County Ethics Code

Under Section 2-11.1(v) of the County Ethics Code, an advisory board member may not vote on matters if he will be “directly affected by the action of the board on which he sits and...has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.” You satisfy the second prong since you are an employee of the law firm appearing before the board. You are also “directly affected by the action” in instances where your vote would give a special financial, professional or personal benefit to yourself, your employer or a client of your employer, a benefit not shared with similarly situated members of the public. See INQ 14-65.

Therefore, while you are not prohibited from serving on the board, you would not be permitted to vote on matters coming before the board that involve you or your law firm and its clients. See RQO 98-07; INQ 03-76 ; INQ 13-07. Consequently, you would be required to recuse yourself from participating and voting on such matters where your law firm/employer is seeking action from the CHR. This recusal may be accomplished by following the same procedures as are outlined in the County Ethics Code Chapter 112, Fla. Stats., by: announcing publicly at the meeting the nature of the conflict before the item is heard; leaving the room during the discussion and vote; and, filing State Form 8B with the County Clerk within 15 days after the vote. See Section 112.3143, Fla. Stat.; Section 2-11.1(d), County Ethics Code; INQ 16-97; INQ 14-244

Conflict of interest under Section 2-11.1(m)(2) of the County Ethics Code

Notwithstanding the prohibition under Section 2-11.1(v) of the County Ethics Code, of more concern is your second inquiry, to wit: whether you, as a private attorney and member of the CHR, may represent a client during the investigation and “pre-appeal” phase of a discrimination complaint filed with the CHR.

Pursuant to Section 2-11.1(m)(2) of the County Ethics Code:

- No board member shall appear before the County *board or agency* on which he serves, either directly or through an associate, and make a presentation on any license, contract, ruling, decision, opinion, or other benefit sought by the third person;
- No board member shall receive compensation, directly or indirectly or in any form for services rendered to a third party, who is seeking some benefit from the County *board or agency* in which such person serves, in connection with the particular benefit sought by the third party; and,
- No board member shall appear as counsel or legal advisor to a third party who seeks legal relief from the County *board or agency* on which such person serves.

Section (m)(2) specifically prohibits you from representing a third party before your own board or agency, *in any capacity, either directly or through an associate*. “In effect, if your client seeks a benefit from the [CHR and/or the HR-FEP], you cannot sit on this board if the benefit sought by your client is connected to the work you or your firm is expected to perform under the agreement between your firm and the client.” See INQ 03-76. The CHR *board* is part of

the HR-FEP County *agency* that you would be contacting during your representation of the complainant. Additionally, both entities share common staffing, therefore, your representation of a complainant falls under the prohibition of Section 2-11.1 (m)(2). See INQ14-286

During our telephone conversation you cited to INQ 16-181 in support of your actions regarding representation. In INQ 16-181, this office made specific factual findings indicating that Mr. Tisdol was not prohibited from voting as a board member of the CHR unless he was financially benefitting from the decision or had one of the prohibited relationships with the complainant in accordance with Section 2-11.1(v) of the County Ethics Code. That opinion is distinguishable from the facts presented in your case. Mr. Tisdol, an employee of HOPE (the Fair Housing Center), referred a housing complaint to the CHR; had no knowledge that the case he heard on appeal was the case he had referred and there was no HOPE representative appearing on the complainant's behalf. In contrast, you present a situation where you or one of your associates represents a complainant before the very board where you serve as a board member in an attempt to persuade or influence the Director's determination and the CHR's final order for the benefit of the client.

Consequently, pursuant to Sections 2-11.1(v) and (m)(2) of the County Ethics Code, you may not appear directly or through an associate on behalf of a third party or represent a third party who has filed a complaint with the CHR irrespective of the "hat" you wear in CHR while you serve as a member of that board. If you or your law firm expect to represent a large number of complainants before the CHR, you should reconsider service on the board in order to avoid recurring conflicts of interest under the County Ethics Code.

You should also be mindful of other sections of the County Ethics Code applicable to board members, such as:

- \* Section 2-11.1(g) which prohibits the use of one's official position to secure special privileges or exemptions for himself or others; and
- \* Section 2-11.1(j) which would disallow you, as a board member, from having private employment that would impair your independence of judgment in the performance of your public duties.

This opinion is based on the facts as presented and ascertained from additional research. If any of these facts change, please contact us.

Sincerely,

**Martha D. Perez**  
Staff Attorney  
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**From:** Ethics (COE)  
**Sent:** Monday, March 13, 2017 4:15 PM  
**To:** Perez, Martha D. (COE) <[perezmd@miamidade.gov](mailto:perezmd@miamidade.gov)>  
**Subject:** FW: Request for an Opinion- Commission on Human Rights

Please follow up with Mr. Joseph about this.

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**From:** Michael Joseph [<mailto:mjoseph@galbutwalters.com>]  
**Sent:** Monday, March 13, 2017 11:55 AM  
**To:** Ethics (COE) <[ethics@miamidade.gov](mailto:ethics@miamidade.gov)>  
**Subject:** Request for an Opinion- Commission on Human Rights

To whom it may concern:

I am a board member of the Miami Dade Commission on Human Rights (CHR) as well as a practicing attorney in a law firm. I want to request an opinion regarding any potential conflicts I may have, as a CHR board member, to be employed by a law firm that serve as the legal representative of a party in a matter that may come before the CHR on appeal. And if so, what would be the proper procedure to mitigate the potential conflicts?

Regards,

Michael

Michael Joseph, Esq.  
*Associate*

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