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April 8, 2004

Raymond White
Employee Relations Department
111 NW 1st ST, 20th Floor
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION 04-71

Dear Mr. White:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 7, 2004 and rendered its opinion based on the facts stated in your request.

You requested an opinion regarding possible conflicts when counselors working in the Miami-Dade County Employee Assistance Program seek personal assistance under the program. You indicate that an EAP counselor is in need of psychosocial services and has selected a provider from her County health plan.

According to your letter, you are a Manager in the Employee Relations Department, where you supervise the County's Employee Assistance Program ["EAP"]. This program is designed to provide a confidential service to employees and their eligible dependents, for such matters as mental health, alcohol and drug related problems. The program counselors evaluate employees and their eligible dependent family members and can diagnose their problems and offer guidance in seeking professional help. EAP counselors provide referrals or suggest to the employee resources to treat and resolve their problems. Upon receiving services, County employees must sign a form indicating that they have been given a right to select the provider of their choice. The referrals are covered by the various health plans offered by Miami-Dade County.

The Conflict of Interest and Code of Ethics Ordinance does not prohibit EAP counselors from availing themselves of the services provided under the EAP, services which include provider referrals. Although, the employee counselor has selected a provider who has and presently receives referrals through EPA, this fact alone does not create a legal conflict. As you note, there are approximately 2,000-3,000 providers participating under the EAP; and most referrals are location driven. In other words, participants generally select providers within their geographic proximity.

Moreover, you state that safeguards, such as requiring participants to sign a form indicating that they were not forced to choose a certain provider, ensure that the selection process is fair and free from undue influence. While counselors may recommend providers based upon expertise, experience in a particular area or feedback from the public, you review and evaluate every EAP counselor recommendation as a secondary precaution against undue influence.

Also, the Code of Ethics clearly prohibits employees from using their official position to secure special privileges or benefits and from sharing confidential information, Section 2-11.1 (g) and (h), respectively.

This opinion construes the Miami-Dade County 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 should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers".

ROBERT MEYERS
Executive Director