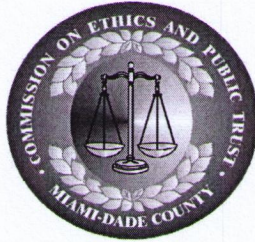


MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

#K11-148

Date Opened: 12/2/11

Date Closed: 2/3/12

Investigators: Sylvia Batista and Breno Penichet

The COE was notified of an investigation being conducted by the Miami-Dade Police Department, Public Corruption Investigation Bureau (PCIB). The investigation arose out of a complaint filed by Kevin Vericker (Vericker), a North Bay Village (NBV) community activist, against NBV Commissioner Paul Vogel (Vogel). According to Vericker, Vogel was assigned two (2) City-owned cellular telephones while being authorized to utilize and bill for only one. Vericker advised that the additional cellular telephone was utilized by the Commissioner's wife.

The COE's issue relates to a possible violation of the Conflict of Interest and Code of Ethics Ordinance Section 2-11.1 (g) *Exploitation of official position*.

Interviews:

Jorge Forte, former NBV City Manager –

Jorge Forte (Forte) was questioned as to the allegations made involving Vogel's City-issued cellular telephones, and stated as follows:

Forte started as a City Manager for NBV in November of 2006. He recalls that shortly after he began working at NBV, some of the newly elected commissioners needed cell phones. Forte explained that he and the Assistant City Manager, Bob Pushkin (Pushkin) talked about telephone plans. Forte said that he asked Pushkin to handle it. Forte does not recall whether they changed carriers, but Vogel ended up with two phones. He does not recall whether Vogel already had one phone and subsequently got the second phone when Forte got there, but he knows that the Commissioner had two phones. Each of the other NBV commissioners had one city-issued cell phone. Forte approved only one phone which is what Vogel was entitled to. Forte does not know why Vogel had two phones. Forte does not remember whether NBV commissioners have expense accounts and Vogel's second phone was to be paid for from there. According to Forte, Pushkin handled the approval of the cell phones.

Commissioner Paul Vogel and Marietta Vogel

Commissioner Vogel and his wife, Marietta, accompanied by City Attorney Nina Boniske (Boniske) and former interim City Manager Robert Daniels (Daniels), rendered verbal statements to the COE.

Mrs. Vogel explained that her husband had a stroke in 2004 which made it difficult for him to communicate. Mrs. Vogel explained that, Forte, the City Manager at the time, suggested that Vogel have a second phone to be used by his wife in order to assist in their communications related to the Commissioner's illness. Mrs. Vogel advised that they had no other cell phones aside from those two phones assigned by NBV. Mrs. Vogel stressed that she had no idea that there was anything improper with the arrangement and that it was "authorized" by the Manager. Mrs. Vogel said that she did not ask for the phone. Daniels

added that sometimes the City needed to contact Mrs. Vogel and could not reach her through the Commissioner. Mrs. Vogel explained this is how they were able to communicate while her husband was in the hospital. Daniels and Boniske said that everyone knew that the Vogels had two City-issued cell phones, but no one thought it was improper because of the circumstances regarding Commissioner Vogel's condition. Daniels said that when he was acting City Manager, he did not try to recuperate the money that the City paid out for Mrs. Vogel's phone. Boniske advised that the money for the second cell phone has not been reimbursed by the Vogels. The cell phone number used by Mrs. Vogel was 786-999-5454 and the cost was \$680.23.

Mrs. Vogel advised that when she found out that there was a complaint about her having the phone, she gave the phone to Pushkin.

Robert "Bob" Pushkin, former Assistant City Manager of NBV –

Pushkin rendered a verbal statement to COE investigator. Pushkin advised that he has worked for NBV at different periods of time and has held a few positions with the City. He said that he worked as a Public Works Superintendent from 1995 to late 1997. In 2003, he was approached by the then mayor of the City, which Pushkin thinks was Al Dorne, who said that they were looking for a part-time Code Enforcement Officer. Pushkin advised that he was certified as a Code Enforcement Officer while working for public works, so he took the post on a part-time basis. Pushkin advised that about a year later he was asked to fill in for the then City Manager. He filled in until the City hired Ms. Good, who was there for one year. Pushkin stayed on as Assistant City Manager and a year later when Ms. Good was released, he filled in again as City Manager. He said that some months later the City hired Forte as City Manager and

he became Assistant City Manager. When Mr. Forte was let go he again filled in as City Manager.

In May of 2010, the City hired Mathew Schwartz (Schwartz) as the new City Manager, and when Schwartz was let go and he once again became acting City Manager. Pushkin advised that the last time he was City Manager he stayed until he retired in June of 2011. Pushkin advised that he was Assistant City Manager during the time when the new phones from Verizon were assigned.

He was not aware that Commissioner Vogel had been issued a second phone until much later. Pushkin said that he found out about the second phone after the fact, but it before Vericker brought it out in the open. Pushkin did not think much of it because it was a small sum of money—under \$1,000. He advised that Forte must have issued the second cellular telephone to Commissioner Vogel. He does not know if Forte issued both phones at the same time or added one after the first phone had already been issued. Pushkin said that he was told that the City had been given a number of cell phones under the contract with Verizon. Pushkin said that Vogel was offered a phone by Forte. Pushkin said that whenever there were any changes regarding cell phones, he would get an e-mail about it. He reiterated that when he found out about the second phone, he did not know why it had been done, but he thought it was not a bad idea considering the physical condition of Commissioner Vogel. Pushkin explained that Mrs. Vogel has always kept close watch over her husband who, Pushkin recalled, had a stroke 5 to 6 years ago.

Jorge Forte, former NBV City Manager

Forte rendered a second verbal statement to COE investigator. Forte said that the new phones were issued shortly after he started working for the City in November of 2006. Forte

advised that it is no secret that Pushkin handled all of Vogel's issues because they are friends. He advised that, without a doubt, he did not give Vogel an extra phone.

Forte said that he ultimately approved the phones for everybody, but he did not give Vogel a second phone. He said that he approved 20-25 phones citywide. Forte said that Vogel came back to Pushkin because his phone was having problems. Pushkin handled these issues for Vogel.

Forte explained that after he was hired at some point he started looking at various cost savings. He advised that Pushkin was at NBV when he started. Forte explained that one of the things they looked at for cost saving was the cell phone account. He said that someone did a comparison and they discovered that by changing providers they would save money so they contracted with Verizon. Forte said that ultimately the commissioners got a cell phone and later a lap top, for the meetings. He added that if Vogel ended up with two phones "the buck stops with the City Manager," but he did not set it up that way; he did not knowingly give Vogel two phones. Forte said that he does not remember if Vogel had an expense account. He said that perhaps Vogel asked for a second phone to be deducted from the expense account, but it never was—he does not know what happened. Forte explained that when the Verizon phones were delivered to the City he assumed that all of the people who were supposed to get a phone got one. He said that he did not hand out the phones directly. Forte assumed that the old phones were traded in for the new phones. He said that perhaps Vogel came in afterwards and requested a phone for his wife.

Conclusion:

There is no clear evidence as to how Mrs. Vogel ended up with a City cell phone. It is clear that someone in the City, possibly Forte or Pushkin, arranged for Mrs. Vogel to have a City-issued phone. Everyone interviewed agreed that after Commissioner Vogel had a stroke, the City would often need to contact Mrs. Vogel for various reasons relating to, among other things, transportation for her husband to and from City hall. It may have been generally known throughout the City staff that Mrs. Vogel had a City-issued phone but, by the same token, everyone seemed to recognize the need for her to have a phone given Commissioner Vogel's condition.

There is no evidence that Commissioner Vogel himself requested the second phone or used or attempted to use his position to get a second cell phone. Whether it was Forte's idea or Pushkin's idea, it certainly seems clear that a second city-issued telephone was assigned to Commissioner Vogel for his wife's use because of his incapacitated condition. Whoever authorized this, seems to have been acting under the best of intentions, given the circumstances. In the future, however, we would note that the "best practice" in such a case would have been to have the issuance of the second cell phone approved by the City Commission at a public meeting to insure transparency and head off rumor and speculation.

Having not uncovered any wrongdoing that can be contributed to Commissioner Vogel, this matter is closed.