

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

#K12-149

Date Opened: 10/11/12

Date Closed: 12/14/12

Investigator: Sylvia Batista

A story appeared in the October 2012 blog "*The Straw Buyer*" regarding City of South Miami Commissioner Valerie Newman's (Newman) apparent altering of an e-mail from the City of South Miami Assistant Clerk, Nkenga "Nikki" Payne (Payne). Newman allegedly made the change to the e-mail before forwarding the altered version to several area activists. The subject of the e-mail is "Mr. Davidson Schmidts Case."

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

Investigation:

10/11/12 – Nkenga "Nikki" Payne, Assistant Clerk –

Payne was asked about her e-mail to Newman dated 09/21/12. She was given a copy of her e-mail which she confirmed was written and sent by her to Newman in response to a public records request from the Commissioner. Payne was given a copy of the e-mail as it appeared after it was forwarded by Newman to multiple recipients. She

said that she did not write the additional paragraph which appears on the version of the e-mail that was forwarded by Newman.

A public records request was submitted to the Clerk's office requesting copies of the e-mail as delivered by Payne and of the same e-mail as forwarded by Newman. Payne advised that the e-mail from Newman was delivered from Newman's personal e-mail account and for this reason the City cannot provide a copy of it.

The version of Payne's e-mail as forwarded from Newman's personal e-mail account on 09/21/12 contained the following paragraph followed by Payne's signature block:

"During public remarks Eda Harris followed by Antoinette Fisher reading from statements prepared by Eda Harris made serious accusations regarding the police department and Mr. Schmitt's supposed dismissal. She also indicated that this was being prosecuted to the fullest because of the Chief's relationship with the State's Attorneys office.

It is unfortunate that Ms. Harris did not report the facts quite accurately.

It appears that claims that Mr. Schmitt was abused were also false since he never filed a complaint and the bruises were more than likely from his throwing his body against the doors in the back seat."

By way of background, a council meeting was held on 09/18/12, in which Eda Harris (Harris) and Antoinette Fisher (Fisher), area activists, made the remarks referred to in Newman's inserted discourse involving the Davidson Schmich case. Newman's paragraph discounts the remarks made by the activists as inaccurate and offers information to disprove their claims.

A review of the 09/18/12 meeting reflects that Harris and Fisher made remarks criticizing the manner in which Michael Davidson Schmich was treated by South Miami Police claiming that he had been physically abused and later lied to as he tried to find closure to the matter.

Davidson-Schmich Case -

Michael Davidson Schmich (Schmich) is a language arts teacher at the University of Miami and a resident of South Miami. On June 21, 2012, while riding his bicycle, Schmich saw a South Miami Police officer commit a traffic infraction. Schmich told the officer that he should set an example for other drivers and waived his forefinger. Schmich was taken off his bicycle and arrested for Disorderly Conduct. As an explanation for the arrest, Officer A. Perez reported that he witnessed Schmich give him the middle finger as he drove out of the police station to answer a 911 hang-up at Larkin Hospital. As further justification for the arrest, the officer described that Schmich followed him to the dispatch location (Larkin Hospital) and shouted profanities as a crowd of people began to gather at the scene. The officer said he asked Schmich to leave several times and he refused.

Subsequent to his arrest, Schmich was told by Chief Orlando Martinez de Castro (Martinez de Castro) that the case against him would be dismissed if he did not press charges against the City of South Miami Police Department. Schmich agreed. However, Martinez de Castro proceeded to contact the SAO and requested that they prosecute the case. The COE was provided a copy of a letter dated 07/02/12 written by Schmich to Martinez de Castro in which he asked for his support in dismissing the case against him and expressed his desire that the matter be concluded as soon as possible. Two weeks later, on 07/16/12, Martinez de Castro wrote a letter to the State Attorney's Office requesting that they prosecute the matter to "its end" and not have it considered for dismissal. As reason for his position, Martinez de Castro cited the controversy within the community as reaching a "political level."

COE met with Newman and her attorney, Jorge Piñon. Newman was asked about the e-mail from Payne that she altered and forwarded to several recipients. Newman said that she added the paragraph to Payne's e-mail because she is technically challenged and erred when she inserted her comments into the forwarded message from Payne. Newman explained that because she forwarded Payne's e-mail on her cellular, she did not see that she had placed her comments inside the forwarded e-mail. Newman said that she did not intentionally insert her comments and remove the attachment that was on Payne's e-mail to her before sending it out. Newman explained that there would be no point in attributing her comments to Payne. Newman said that she did not deliberately remove the attachment from Payne's e-mail. She said that when she discovered her mistake, she forwarded the attachment to the e-mail recipients. Newman said that her comments were meant to be a rebuttal of the comments made by Harris and Fisher at a recently held commission meeting. She provided a copy of her subsequent e-mail sending the subject attachment.

Conclusion:

There is insufficient evidence to sustain any violation of the ethics code by Commissioner Newman, therefore, this matter can now be closed without further action.