



Miami-Dade Commission on Ethics & Public Trust

Report of Investigation

Investigator: Susannah Nesmith

Case: K18-29	Case Name: NBV Powell	Date Open: 4/26/18	Date Closed:
Complainant(s): Anonymous	Subject(s): Norman C. Powell	CASE CLOSED	

Date: 6/05/18

Allegation(s):

Norman C. Powell continued to serve as a Miami-Dade traffic hearing officer, hearing cases brought to traffic court by North Bay Village officers, after the village had hired him as the Village Attorney.

Relevant Law:

Sec. 2-11.1 (j) Conflicting employment prohibited. No person included in the terms defined in subsections (b) (1) through (6) and (b) (13) shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties.

Investigation:

Interviews:

On May 16, this investigator spoke with Judge Steve Leifman, Associate Administrative Judge for the County Criminal Court. Judge Leifman oversees the traffic hearing officers. Judge Leifman said that a hearing officer probably would not know which municipality wrote a given ticket during pre-trial hearings, simply because the system the hearing officers use only identifies the department by numbers. At the trials, the officer who wrote the ticket is normally present.

Document(s) Reviewed:

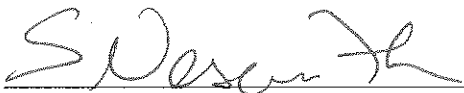
A list of traffic magistrate hearings conducted by Mr. Powell, along with the date of each hearing and which police departments had cases on that docket and whether those cases were set for trial or pre-trial hearings. The list was provided by Patricia Gladson, General Council to the 11th Judicial Circuit, in response to a public records request.

The list begins on Nov. 14, 2017, the day Mr. Powell accepted the job as interim North Bay Village attorney. It shows that Mr. Powell conducted 35 trials and 39 pre-trial hearings on cases filed by North Bay Village officers after he was serving as the Village Attorney.

He also conducted one trial and one pre-trial hearing on cases involving El Portal after he was hired as the village attorney for that municipality.

Conclusion:

Mr. Powell was contacted and discussed the issue with Advocate Michael Murawski. Mr. Powell, who recently assumed the duties of Village Attorney in North Bay Village as well as the Village of El Portal, appeared to be unaware of the possibility of a conflict in connection with his continuation of his traffic magistrate duties in those municipalities, and requested that Mr. Murawski provide an opinion to him in connection with the possible conflict. Mr. Murawski did so in INQ 18-139 (see attached opinion), in which he concluded that it would be a conflict under Section 2-11.1(j) of the Ethics Code for Mr. Powell to continue to act as a traffic magistrate in cases arising in one of those municipalities. It was agreed, with the approval of Judge Leifman, that Mr. Powell's services as a traffic magistrate would be moved from the North Dade Courthouse to another Courthouse, where he is far less likely to encounter cases involving either North Bay Village or El Portal officers. Mr. Powell is specifically instructed to recuse himself should he assigned to any case involving one of the jurisdictions in which he serves as municipal attorney. The conflicting situation having been removed and INQ18-139 issued to Mr. Powell, this matter may now be closed with no further action.

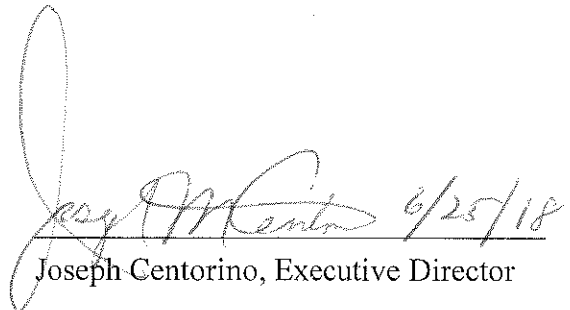


Susannah Nesmith, COE Investigator

Approved by:



Michael Murawski, Advocate



Joseph Centorino, Executive Director

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, June 07, 2018 2:17 PM
To: Sanchez, Rodzandra (COE)
Subject: FW: INQ 18-139. Norman Powell , Village Attorney, North bay Village and El Portal, (Outside Employment)

INQ 18-139 Powell

From: Murawski, Michael P. (COE)
Sent: Thursday, June 07, 2018 1:46 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: INQ 18-139 Norman Powell

From: Murawski, Michael P. (COE) [<mailto:Michael.Murawski@miamidade.gov>]
Sent: Friday, June 01, 2018 12:00 PM
To: Norman Powell
Cc: Nesmith, Susannah (COE)
Subject: conflict issue
Importance: High

Dear Mr. Powell:

As we discussed yesterday, take a look at the link below, specifically the portion under the section marked "What is an "office" for purposes of the dual office holding prohibition?" the paragraph that starts out "Over the years." It references AG opinion 70-13.

<http://myfloridalegal.com/pages.nsf/0/92E25864D475966F85256CC6007B96CB#2>

We are of the opinion that because you serve as the Village Attorney for North Bay Village and for El Portal that your service as a Traffic Magistrate conflicts with your employment with those cities in so far as you adjudicate cases (tickets) issued by officers from those cities.

Section 2-11.1(j) of the Conflict of Interest and Code of Ethics ordinance is entitled "Conflicting employment prohibited" it states that "No person included in the terms defined in subsections (b)(1) through (6) and (b)(13) [which would include City Attorney] shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties."

This conflict is buttressed by the Judicial Ethics Advisory Committee opinion below:

Thus, if the hearing officer in question is working as a city attorney on non-traffic cases, his/her dual employment seems permissible. However, if, in the course of his/her employment, the traffic officer becomes friends, or develops a professional relationship with, someone also working for the city [e.g. a police officer], and this other person then appears in the hearing officer's courtroom, disclosure and/or disqualification may be required. See Fla. JEAC Op. 2017-01

This Committee has previously dealt with questions dealing with disclosure of close personal friendships between judges and attorneys appearing before the judge. In JEAC Op. 2004-35, this Committee recognized that "the question of when a judge must reveal [a] close, personal relationship with an attorney is very difficult to

address.” (quoting Fla. JEAC Op. 93-56). However, the Committee nevertheless, recommended that the judge disclose the existence of the friendship if, in the judge’s estimation, the nature of the friendship is sufficient to warrant reasonable concern over the judge’s impartiality.”

Regards,

Mike Murawski