

CLERK OF THE BOARD

2008 JUL 21 PM 3:07

CLERK, CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
#1



FILE COPY

MIAMI-DADE COUNTY
COMMISSION ON ETHICS & PUBLIC TRUST

IN RE: MICHELLE SPENCE-JONES

C 08-06

PUBLIC REPORT & FINAL ORDER ACCEPTING SETTLEMENT AGREEMENT

The ADVOCATE filed the above-referenced COMPLAINT against RESPONDENT Michelle Spence-Jones, City Commissioner in the City of Miami. The COMPLAINT alleged violations of the Miami-Dade County Conflict of Interest & Code of Ethics Ordinance at Section 2-11.1 (e). In pertinent part, Section (e)(1) defines the term "gift" as a transfer of anything of economic value, including legal services, without adequate and lawful consideration; Section (e)(4) identifies the obligations of municipal officials to disclose receipt of gifts.

According to allegations outlined in the COMPLAINT, RESPONDENT violated Section 2-11.1 (e) when she accepted legal services from the law firm of Lydecker, Lee, Behar, Berga & De Zayas, valued at approximately forty-six thousand dollars (\$46,000.00), without either disclosing the services as a gift or without memorializing in writing that the services were a loan.

Pursuant to the Code of Miami-Dade County, Article LXXVI, Section 2-1068, the Commission on Ethics & Public Trust has jurisdiction to enforce the above-referenced ordinance.

On March 26, 2008, the Commission on Ethics found the COMPLAINT to be legally sufficient. On May 29, 2008, the Ethics Commission entered into a SETTLEMENT AGREEMENT with the RESPONDENT in which the RESPONDENT agreed not to contest the charges against her, to pay a fine of five hundred dollars (\$500.00), and to accept a LETTER OF REPRIMAND in full satisfaction of the COMPLAINT.

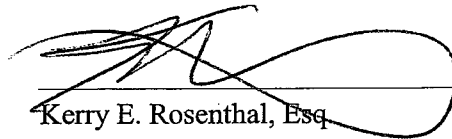
Therefore it is:

ORDERED AND ADJUDGED THAT the Ethics Commission finds the RESPONDENT's plea of no contest, fine of five hundred dollars (\$500.00), and acceptance of a LETTER OF REPRIMAND full satisfaction of the COMPLAINT.

DONE AND ORDERED by the Miami-Dade County Commission on Ethics & Public Trust in public session on July 8, 2008.

MIAMI-DADE COUNTY COMMISSION ON
ETHICS & PUBLIC TRUST

By:

A handwritten signature in black ink, appearing to read 'Kerry E. Rosenthal', is written over a horizontal line.

Kerry E. Rosenthal, Esq
Chairman

CLERK OF THE BOARD

2008 JUL 21 PM 3:07

CLERK, CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
#1



FILE COPY

MIAMI-DADE COUNTY
COMMISSION ON ETHICS & PUBLIC TRUST

LETTER OF REPRIMAND

TO: Michelle Spence-Jones, Commissioner of the City of Miami
FROM: Miami-Dade County Commission on Ethics & Public Trust
RE: Ethics Complaint # C08-06 (In re: Michelle Spence-Jones)
DATE: July 8, 2008

After due consideration, the Miami-Dade Commission on Ethics & Public Trust accepts the NO CONTEST plea of City of Miami Commissioner Michelle Spence-Jones to Section 2-11.1 (e) of the Miami-Dade County Conflict of Interest & Code of Ethics Ordinance.

WHEREFORE, the Miami-Dade County Commission on Ethics & Public Trust issues this PUBLIC REPRIMAND.

Commissioner Spence-Jones violated Section 2-11.1 (e)(4) of the Miami-Dade County Conflict of Interest & Code of Ethics Ordinance by failing to disclose and/or reduce to a written agreement her receipt of legal services over the course of fourteen months and without memorializing her intent to pay for said services.

On or about and between January 2006 through March 2007, Ms. Spence-Jones received legal representation from the law firm of Lydecker, Lee, Behar, Berga & De

Zayas. The representation concerned, among other things, a lawsuit filed against Ms. Spence-Jones by her opponent in the City Commission race and a complaint filed against Ms. Spence-Jones with the Florida Elections Commission. Ms. Spence-Jones's attorney, Richard Lydecker, supplied the Ethics Commission Advocate with client billing records indicating the billable hours, time expended, and various matters worked on by his firm on behalf of Ms. Spence-Jones. Records indicate that Ms. Spence-Jones made no payments at all until the Ethics Commission Advocate began inquiring into the arrangement with Mr. Lydecker, and up until approximately September 2007, she had paid less than \$500 toward the outstanding balance due. Ms. Spence-Jones contends that she paid what she could under her financial circumstances. She also advises the Ethics Commission that she intends to pay the balance due as soon as possible. Mr. Lydecker acknowledged that no written retainer agreement existed between Ms. Spence-Jones and the Lydecker firm. Such a writing could have served as some evidence of the true intent of the parties relative to payment for the legal services rendered.

Section 2-11.1 (e)(1) of the Miami-Dade County Conflict of Interest & Code of Ethics ordinance states, in pertinent part, the following:

The term "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise or in any other form, without adequate and lawful consideration.

Section 2-11.1 (e)(4) of the Code states, in pertinent part, the following:

Disclosure. Any [commissioner] shall disclose as provided herein any gift, or series of gifts from any one person or entity, having a value in excess of one hundred (\$100.00). Said disclosure shall be made by filing a copy of the disclosure form required by Chapter 112, Florida Statutes, for "local

officers” with the Clerk of the Board of County Commissioners simultaneously with the filing of the form with the Secretary of State.

Commissioner Spence-Jones admitted that the Lydecker firm represented her on several legal matters that arose as a result of her 2005 campaign. She claims that it was never her intention to accept “free” legal representation. She further claims that at the outset of undertaking her case, Mr. Lydecker and she had a verbal agreement ensuring that the legal fees would be paid.

Mr. Lydecker has confirmed that fact, and his partner, Mr. de Zayas, has attested to such fact in a sworn affidavit. However, Florida State law requires that such an “extension of credit with a promise to pay in the future” be reduced to writing; the Ethics Commission holds that we interpret the County gift ordinance to similarly require an “extension of credit with a promise to pay in the future” be reduced to a written instrument at the inception of the arrangement as some proof against the presumption of a gift.

Commissioner Spence-Jones acknowledged, and the Lydecker firm confirmed, that she was extended a line of credit based upon her promise to pay. In August 2007, Ms. Spence-Jones declared as a “debt” the money that she owed to Mr. Lydecker and established a legal defense fund in order to raise money to repay that debt. Commissioner Spence-Jones claims that she was unaware that her failure to make significant payments on her legal fee obligation to Mr. Lydecker within 90 days of the commencement of legal services established a presumptive gift. Similarly, she claims she

was unaware that her promise to pay had to be in writing in order for the legal services received to not be considered as a gift.

The Ethics Commission points out to Commissioner Spence-Jones that claiming ignorance of the law is not an excuse for failing to comply with it. As an elected official, Ms. Spence-Jones has an obligation to seek legal advice on such matters. In fact, to preserved the public trust, she should go above and beyond to ensure that her actions are not only legal but do not create even an appearance of impropriety. The Ethics Commission, however, notes the possibility that Ms. Spence-Jones sought and obtained such advice and, at a minimum, simply misunderstood it. She claims that she did not report the legal fee amount due to her belief that it was subject to the attorney-client privilege.

The Advocate has advised us that he contacted the Lydecker firm to request copies of the legal bills of Ms. Spence-Jones. Mr. Lydecker advised the Advocate that the information about the bills, including the amount thereof, was privileged. The Advocate dispatched legal authority to rebut such claim of privilege and only thereafter obtained a copy of the bills and the total amount owed by Ms. Spence-Jones to the law firm.

This Commission can accept the fact that Ms. Spence-Jones may have relied on erroneous legal advice; however, by the issuance of this PUBLIC LETTER OF REPRIMAND we hope to make crystal clear to all individuals covered by the Conflict of Interest & Code of Ethics Ordinance that the acceptance of legal, or for that matter, any other type of "service," without payment of adequate consideration within 90 days of the of initial receipt of those services, constitutes a "gift" that must be reported. Furthermore,

if the provider of the services and the person receiving the services have agreed to an “extension of credit based upon a promise to pay in the future” (by the person receiving the services), said agreement must be in writing; otherwise, the service is a presumptive gift that must be reported.

The Ethics Commission is of the strong belief that all public officials are responsible for making sure their actions comply fully with the law, are above reproach, and do not create the appearance of impropriety. Any reasonable person receiving in excess of \$40,000 dollars worth of legal services and paying less than \$500 dollars toward that bill, along with an extension of credit to pay such bills sometime in the future, would consider the arrangement a significant benefit that ought to have been reported. Moreover, the County Ordinance clearly indicates that a “loan” or the “transfer of anything of value” is considered a “gift.”

Commissioner Spence-Jones is reminded that it is often the mere appearance of impropriety that shakes the public’s trust in government officials. Thus, every care should be taken to avoid such impressions. That is why the reporting obligation is so important and must be enforced. Commissioner Spence-Jones could have and should have established her legal defense fund in a transparent fashion at the beginning of her legal representation, instead of waiting until inquiry was made as to how her legal bills were being paid. By acting in a responsible and ethical manner from the outset, Commissioner Spence-Jones could have avoided responding to an ethics violation.

One of the functions of the Ethics Commission is to steer public officials to greater transparency and to encourage them to report all instances of benefits they

receive, including, without limitation, any loans. Ms. Spence-Jones erred in not reporting her legal-fee obligation earlier. It is important to note that the violation herein is Ms. Spence-Jones's failure to disclose receipt of legal representation without the obligation to pay or, if she was obliged to pay, to reduce the payment agreement to writing.

The disclosure requirement is intended to increase the transparency of government and reduce the public perception that government officials may be concealing benefits they receive, including, without limitation, a favorable payment plan for legal services. By disclosing that a government official is being extended a "line of credit" or is indebted to a major law firm, the public is fully informed and aware of any possible conflicts or influences that the official might be subject to.

The failure to provide the public with that information violates the trust between public officials and the citizens they serve.

This Commission expects that Commissioner Spence-Jones and other government officials will take heed of this PUBLIC LETTER OF REPRIMAND and guide their behavior accordingly. Every public official, including Commissioner Spence-Jones, is encouraged to seek ethics opinions from this Commission on any matters such as the reporting of arrangements for the receipt of services or other benefits that might trigger a reporting obligation. Had Commissioner Spence-Jones done so, she would not be the subject of this PUBLIC LETTER OF REPRIMAND, assuming she would have complied with the advisory opinion of this Commission.

DONE and ORDERED this day of July 8, 2008, by the Miami-Dade County Commission on Ethics & Public Trust, Kerry Rosenthal, Chairman.