

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, July 17, 2018 3:51 PM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-174, John Mendez, Assistant Director - Customer Initiatives, WASD (nepotism, exploitation)

INQ 18-174 Mendez

From: Turay, Radia (COE)
Sent: Tuesday, July 17, 2018 3:42 PM
To: Mendez, John (WASD) <John.Mendez@miamidade.gov>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: INQ 18-174, John Mendez, Assistant Director - Customer Initiatives, WASD (nepotism, exploitation)

Dear Mr. Mendez,

You have inquired whether a conflict of interest would exist if Miami-Dade County Water and Sewer Department (WASD) hired the spouse of a current WASD employee.

Background

- WASD has an Engineer 2 position that it is seeking to fill.
- Ms. Suyapa Carbajal applied, was interviewed, and is a top candidate for the position.
- She is married to WASD employee, Mr. Arnaldo Alvarez.
- Mr. Alvarez is currently employed by WASD as an Engineer 2.
- Mr. Alvarez had no input in the interview and evaluation process leading to his spouse's potential hiring.
- Should she be hired, Mr. Alvarez would have no supervision over his spouse, and he would have no input into any performance evaluation or advancement of his spouse.
- We have also been informed by WASD, that should she be hired, they will not work together on any assignments.

Analysis

The County Code of Ethics Ordinance, over which the Commission on Ethics has jurisdiction does not contain a Nepotism provision. There is a Nepotism provision in State law, F.S. 112.3135, which the County also follows through its administrative policies. The County's Nepotism Policy is an administrative matter that should be addressed through the Mayor and appropriate County administrators, in consultation with the County Attorney's Office.

As general guidance, it is our understanding that the policy prohibits appointment, employment, promotion or advancement, of specified relatives by any public official who is vested with or delegated the authority to appoint, employ, promote or advance, or is in a position to recommend an individual for appointment, employment, promotion or advancement. Although it prohibits public officials from employing or promoting their relatives, it does not prevent relatives from working in the same department. See INQ 15-272, INQ 14-106, INQ 06-67.

However, the County's Nepotism Policy also provides that, "Department directors are strongly encouraged to refrain from placing relatives within another relative's chain of command or placing or maintaining relatives in close proximity in a department subunit." As this scenario appears likely to involve relatives working together in close proximity in a

department, as they will have the same position and title, we strongly suggest that you discuss this matter with the Department Director, the County Attorney's Office, or the Mayor's Office, prior to hiring Ms. Carbajal. See Nepotism Policy of Miami-Dade County attached.

Additionally, please be aware that even though the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance does not include a Nepotism section, Section 2-11.1(g) of the Ethics Code, prohibits exploitation of official position.

Section 2-11.1(g), *Exploitation of official position prohibited*, states "No person...shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others...."

In prior ethics opinions this has been interpreted to mean that a County employee must avoid any action to hire, promote, or advocate for the advancement of an immediate family member. See INQ NQ 15-272, INQ 14-106, INQ 06-67. Precedent on this issue exists at Ethics Commission opinion, RQO 99-24, in which the Risk Management Division was allowed to hire a relative of a current employee because the current employee had no input in the selection process. See RQO 99-24, INQ 06-67.

Based on the facts that you have provided, it does not appear that a conflict of interest would exist under Section (g) of the Ethics Code, because Mr. Alvarez had no input in the interview and evaluation process leading to Ms. Carbajal potential hiring; and should Ms. Carbajal be hired, Mr. Alvarez will not work with Ms. Carbajal on any assignments, and he would have no input into the performance evaluation or the advancement of his spouse. Please be advised that Ms. Carbajal must similarly avoid any affirmative action to promote or advocate for the advancement of her spouse, upon her acceptance of a County position.

This opinion is based on the facts presented and is limited to an interpretation of the County Ethics Code. It does not address other state and/or local laws or policies that may be applicable. If any of these facts change, please contact us.

Please contact me if you have any further questions.

Sincerely,

RADIA TURAY

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From: Ethics (COE)
Sent: Friday, July 13, 2018 2:44 PM
To: Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: FW: Relatives (husband and wife) working on projects

Please handle.

From: Mendez, John (WASD)
Sent: Friday, July 13, 2018 2:07 PM
To: Ethics (COE) <ethics@miamidade.gov>
Subject: Relatives (husband and wife) working on projects

Good afternoon: thank you for your time. The WASD Director (Kevin Lynskey) requested that I ask for a opinion from CEO regarding a potential occurrence within WASD whereby a husband (current WASD employee) and wife (prospective WASD employee) may work within the same work unit and are assigned to collaborate on a project/assignment. The department is very aware of Miami-Dade County's nepotism policy and Section 112.3135 of the Florida Statutes. My inquiry is specific to a married couple working together on assignments, under the supervision of a Manager/Director. Neither the husband or the wife would be overseeing the projects or supervising the employees.

The reason I am now asking for an opinion from CEO is because in the past (circa 1998) my wife and I worked in the same county department and the Department Director at that time requested an opinion from the CEO prior to offering the job to my wife. The CEO offered an opinion that my wife and I could not provide supervision (in accordance with Section 112.3135 of the Florida Statutes) nor could we work on projects together.

I am inquiring as to what is the most ethical practice WASD should be taking in a similar case of Spouses collaborating on work projects. Thank you for your consideration.

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