



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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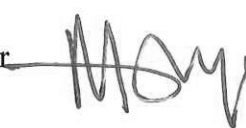
Website: ethics.miamidade.gov

MEMORANDUM

TO: Victor H. De Yurre, Esq.
Special Master, City of Miami (former)

Victoria Mendez, Esq.
Miami City Attorney

George Wysong, Esq.
Assistant City Attorney

FROM: Jose J. Arrojo, Executive Director
Commission on Ethics 

SUBJECT: INQ 19-74, Two-Year Rule, Section 2-11.1 (q), County Ethics Code,
Section 2-162, City Ethics Code, former Special Master

DATE: July 18, 2019

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the two-year ban on representation activity by a former municipal Special Master.

Facts:

Victor H. De Yurre is an attorney and until recently served as a Code Enforcement Special Master for the City of Miami. Mr. De Yurre's engagement as a contracted Special Master was secured pursuant to a professional services agreement that was entered into on or about June 1, 2017. That agreement defines a Special Master as a person:

appointed by the City Commission, or pursuant to City Commission authorization, to preside over code enforcement and other similar hearings and proceedings in accordance with the City Code, in the same capacity as the code enforcement board and other similar boards.

The professional services agreement additionally specifies that Mr. De Yurre is "being engaged as an independent contractor, and not as an agent or employee of the City."

Mr. De Yurre has resigned his position as a Code Enforcement Special Master for the City of Miami and has declared his intention to represent and advocate on behalf of persons or parties before City of Miami boards, including the Code Enforcement Board, employees, department heads, or the City of Miami Commission.

The City of Miami, through its City Attorney, has suggested that Mr. De Yurre is prohibited from such representation activities as a result of the "two-year rule" contained in Section 2-11.1 (q) of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (County Ethics Code) or Section 2-162 of the Code of the City of Miami (City Ethics Code).

The City of Miami reaches this conclusion, in good faith, based upon its comparison of the duties of a Special Master and those of members of its Code Enforcement Board. The duties are nearly identical.

Mr. De Yurre does not agree with the City's suggestion and is intent on engaging in the above described representational activities.

Mr. De Yurre has affirmatively stated that irrespective of this opinion, as a member of the Florida Bar, he would not engage in the representation of any person or party on a matter in which he presided over in his prior position as a Special Master for the City of Miami.

Issue:

Does Section 2-11.1 (q) of the County Ethics Code prohibit Mr. De Yurre from engaging in representational activities in regard to City of Miami Boards, employees, department heads, or the City of Miami Commission, during a two-year period after his separation as a City of Miami Code Enforcement Special Master.

Does Section 2-612 of the City Ethics Code prohibit Mr. De Yurre from engaging in representational activities in regard to City of Miami Boards, employees, department heads, or the City of Miami Commission, during a two-year period after his separation as a City of Miami Code Enforcement Special Master.¹

¹ The City of Miami's Conflict of Interest Ordinance is found in Chapter 2, Article V of the City of Miami Code. Section 2-1072, of the Code of Miami-Dade County, provides that the Miami-Dade County Commission on Ethics and Public Trust is empowered to interpret municipal conflict of interest ordinances.

Discussion:

Section 2-11.1 (q) of the County Ethics Code (the two-year rule) prohibits certain categories of persons from engaging in representational activities as regards the County or a municipality for a period of two years after separation or cessation of engagement.

(q) Continuing application after county service.

(1) No person who has served as an *elected county official, i.e., mayor, county commissioner, or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager, department director, departmental personnel or employee* shall, for a period of two (2) years after his or her county service or employment has ceased, lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether direct or indirect. (*emphasis added*)

Additionally, no person who has served as a community council member shall, for a period of two (2) years after his or her county service or employment has ceased, lobby, with regard to any zoning or land use issue, any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, request for ruling, or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether direct or indirect.

The persons whose conduct is restricted by the two-year rule are enumerated in the definitional section of the County Ethics Code at Section 2-11.1 (b).

(b) Definitions. For the purposes of this section the following definitions shall be effective:

(1) The term "Commissioners" shall refer to the Mayor and the members of the Board of County Commissioners as duly constituted from time to time.

(3) The term "quasi-judicial personnel" shall refer to the members of the Community Zoning Appeals Board and such other boards and agencies of the County as perform quasi-judicial functions.

(5) The term "departmental personnel" shall refer to the Manager, his or her department heads, the County Attorney and all Assistant County Attorneys.

(6) The term "employees" shall refer to all other personnel employed by the County.

As noted above, Mr. De Yurre's professional service agreement defined his duties as a quasi-judicial officer presiding over contested matters presented to him in accords with the City of Miami Code. While his duties are described as similar to a member of a code enforcement board, he is clearly not a member of a board, but rather a single person serving in a quasi-judicial role.

Because Mr. De Yurre's prior engagement with the City of Miami does not include service as a Commissioner (elected official), quasi-judicial board member, departmental personnel (senior administrative staff), or as an employee, then Mr. De Yurre was not engaged with the City of Miami under any of the categories of persons described in Sections 2-11.1 (b), subsections (1) through (6), whose conduct is limited by the County Ethics Code's two-year rule.

The City of Miami Attorney has suggested that its own municipal ethics code's two-year rule prohibits Mr. De Yurre's prospective representational activities.

The City's two-year rules is contained in Section 2-612, of the City's Ethics Code.

Sec. 2-612. - Transacting business with city; appearances before city boards; post-employment restrictions; participation in the award of certain contracts under the procurement ordinance; penalties, etc.

(a) No person included in section 2-611 shall enter into any contract or transact any business with the city or any person or agency acting for the city, or shall appear in representation of any third party before any board, commission or agency of which such person is a member. No employee shall appear in any capacity on behalf of any third party before any board, commission or agency of the city. Any such contract or agreement entered into or appearance made in violation of this section shall render the transaction voidable. However this section shall not apply to an employee

participating in federal economic development programs, the community development block grant assisted single family rehabilitation loan program, or the various affordable housing programs assisted through the home investment partnership program and state housing initiatives partnership program administered by the department of community development provided that the employee meets all criteria of the program and provided that the city manager approves the participation of the employee and that the employee is identified as being an employee of the city in applicable documents.

(c) The prohibition upon activity which is set forth in subsections (a) and (b) of this section shall remain in effect for a period of two years after the officer, official, or employee has left city service or terminated city employment.

The persons whose conduct is restricted by the two-year rule are enumerated in the definitional section of the City Ethics Code at Section 2-611.

Sec. 2-611. - Applicability of article.

This article shall be applicable to and binding upon *every officer, official and employee of the city, including every member of any board, commission or agency of the city. (emphasis added)*

The same analysis that results in the conclusion that the two-year rule contained in the County Ethics Code does not prohibit Mr. De Yurre's prospective activities may likewise be applied to the application of the City Ethics Code provisions.

As noted above, Mr. De Yurre's professional service agreement defined his duties as a quasi-judicial officer presiding over contested matters presented to him in accords with the City of Miami Code. While his duties are described as similar to a member of a code enforcement board, he is clearly not a member of a board, but rather a single person serving in a quasi-judicial role.²

² The City of Miami does not suggest that an independent contractor whose written terms of engagement specify that he is not an "agent or employee" of the City can be nevertheless categorized as an "officer" or "official."

Because Mr. De Yurre's prior engagement with the City of Miami does not include service as an officer, official or employee of the city, or as a member of any board, commission or agency of the city, then Mr. De Yurre was not engaged with the City of Miami under any of the categories of persons described in Section 2-611, whose conduct is limited by the City Ethics Code's two-year rule.

This is not a matter of first impression for the Commission on Ethics. In a prior opinion provided to the City of Miami Beach, we considered whether a hearing officer or special master was subject to the representational activities prohibited by Section 2-11.1 (m) of the County Ethics Code. That section contains a ban on representational activities by current employees, personnel, or contract staff.

In that opinion, the City Attorney's Office for Miami Beach suggested that a hearing officer or special master might be limited in his or her representational activities while engaged by the City of Miami Beach. In INQ 13-83, We opined that:

Where such personnel are hired by the City to provide an adjudicatory function for a particular board or agency but are not actually appointed as members of the board or agency, then they would not be covered by subsection (b)(3) [2-11.1 (b) (3) of the County Ethics Code]. Independent contractors would not generally be considered as City employees pursuant to subsection (b)(6) [of the County Ethics Code]. Contract staff could be made subject to the Code of Ethics pursuant to subsection (b)(13) [of the County Ethics Code], but that would require that they be designated as such by the Manager in their contracts, subject to the approval of the Executive Director of the Ethics Commission. It is my understanding that no such designation has taken place.

Under the above circumstances, I have concluded that a "hearing officer" or "special master" is not subject to Section 2-11.1 of the Miami-Dade Code of Ethics. This opinion appears to be consistent with INQ - 08-47, attached hereto, and issued by my predecessor to the City of Miami Beach.

Quite simply, in the prior opinion, the Commission on Ethics relied on the plain language of the County Ethics Code and opined that a single person engaged by a city to provide an adjudicatory function is not an appointed member of a board or agency covered the County Ethics Code.

Likewise, in this case, while Mr. De Yurre's functions as a contracted Special Master might have been similar, perhaps almost identical, to those of members of boards in the City, he simply was not an appointed board member. Rather he was a single person engaged by the

City of Miami to “provide an adjudicatory function for a particular board or agency” but not “actually appointed” to a “board or agency.”

Conclusion:

Mr. Victor De Yurre was a contract party engaged by the City of Miami as a Special Master pursuant to a professional services agreement. Mr. De Yurre was not engaged in any of the categories of persons whose prospective representational activities are limited by the two-year rule contained in Section 2-11.1 (q) of the County Ethics Code.

In spite of the City of Miami’s good faith suggestion to the contrary based upon their comparison of the Special Master’s duties to those of a member of a code enforcement board whose post-engagement duties would be limited by the County and City Ethics Code, a Special Master is not a member of a board.

The Commission previously opined that a single person engaged by a city to provide an adjudicatory function is not an appointed member of a board or agency.

Thus, likewise, Mr. De Yurre was not engaged in any of the categories of persons whose prospective representational activities are limited by the two-year rule contained in Section 2-612, of the City’s Ethics Code.

This opinion is limited to the facts as you and City staff presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code and the City of Miami Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.