

## Sanchez, Rodzandra (COE)

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Friday, March 01, 2019 3:37 PM  
**To:** Sanchez, Rodzandra (COE)  
**Subject:** INQ 19-24, Brent Latham, Mayor, North Bay Village, (Voting Conflict  
**Attachments:** INQ 19-24 Latham.pdf; INQ 19-24 Latham- Cover ltr.pdf; Latham Request.pdf

INQ 19-24 Lathan

Opinion Attached

Gilma (Mimi) Diaz-Greco  
Staff Attorney



Miami-Dade Commission on Ethics and Public Trust  
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## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130

Phone: (305) 579-2594 · Facsimile: (305) 579-0273

Website: [ethics.miamidade.gov](http://ethics.miamidade.gov)

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### MEMORANDUM

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**TO:** Honorable Brent Latham  
Mayor, North Bay Village

**FROM:** Jose Arrojo, Executive Director  
Commission on Ethics

**SUBJECT:** INQ 19-24, Voting Conflict, Section 2-11.1(d)

**DATE:** February 25, 2019

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding a potential voting conflict.

Facts: Carlos Noriega was formerly employed by North Bay Village as its Police Chief. Chief Noriega was terminated from his position and in response he filed a civil action against North Bay Village. The case is described as a whistleblower action alleging wrongful termination because the Chief was investigating alleged criminal acts by North Bay Village elected officials or their family members.

North Bay Village is considering a negotiated settlement of the action and it is due to be voted upon by the Commission.

Mayor Brent Latham was present for a widely attended Christmas party in December 2018 during which he was photographed in a group setting with Chief Noriega and several other guests.

Issue: Does a prohibited voting conflict exist that would prevent Mayor Latham from participating or voting on the potential settlement of the civil action brought by Chief Noriega against North Bay Village because he and Chief Noriega may have socialized in the past and on at least one occasion both attended a holiday social function and were photographed together as members of a larger group?

Discussion: Section 2-11.1(d) of the County Ethics Code, *Voting Conflicts*, prohibits an elected official from voting and/or participating in a matter presented to the elected body if he or she has any prohibited relationship with a person or entity that would be or might be, directly or indirectly affected by the action of the Commission. The relationships listed in the ordinance include: officer,

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director, partner, of counsel, consultant, employee, fiduciary, beneficiary, creditor and debtor. The ordinance also prohibits the official from voting if he or she “would or might, directly or indirectly, profit or be enhanced by the action of the [board]...”

This conflict voting prohibition is stricter than the state law standard codified in Section 112.3143 (1)(d), Florida Statutes, which provides that “No county, municipal or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss...” (See INQ 14-86). The County standard does not require a definite or measurable private gain or loss and may apply where there is a reasonable possibility or expectation of such an effect. (See RQO 15-04)

Given the enhanced conflict voting prohibition contained in the Ethics Code, circumstances that do not meet the State standard for a voting conflict could still create a voting conflict under the County ordinance in instances where an official might, directly or indirectly, profit or be enhanced by a vote.

We have repeatedly opined in the past that the issue of voting conflict for elected officials is narrowly described as whether the official might, directly or indirectly, profit or be enhanced by the item in question. Put another way, the analysis should focus on whether the proposed Commission action will present any likelihood that the official would, personally or professionally, be affected in any way by the item in a manner distinct from the public generally.

From the fact pattern that you have provided, you do not have a prohibited financial or employment relationship with Chief Carlos Noriega, the party that would be affected by the Commission action. Additionally, you will not, directly or indirectly, profit or be enhanced by the item nor is there any likelihood that you will, personally or professionally, be affected in any way by the action.

Opinion: The voting conflict provisions contained in Section 2-11.1(d) of the Miami-Dade Ethics Code do not create a prohibited voting conflict scenario regarding your participation or vote on the matter relating to settlement of a claim made by former Chief Carlos Noriega against North Bay Village.

This opinion is limited to the facts as you and County staff presented them to the Commission on Ethics and is limited to an interpretation of the County 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.

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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EXECUTIVE STAFF

Jose J. Arrojo  
EXECUTIVE DIRECTOR  
Michael P. Murawski  
ADVOCATE

February 26, 2019

Via U.S. Mail and Electronic  
Mail Transmittal: BLatham@nbvillage.com

The Honorable Brent Latham  
Mayor of North Bay Village  
1666 Kennedy Causeway, Suite 300  
North Bay Village, Florida 33134

Re: Request for Ethics Opinion

Dear Mayor Latham:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust (Ethics Commission) and requesting guidance regarding an upcoming vote of the North Bay Village Commission. Enclosed you will please find a responsive ethics opinion that suggests that the Section 2-11.1. (d) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance (Ethics Code) does not prohibit your participation or vote in the matter relating to settlement of civil litigation brought against North Bay Village by Chief Carlos Noriega. (INQ 19-24)

You also requested guidance regarding the prospective actions of two of your fellow Commissioners. Respectfully, the rules of procedure that govern the Ethics Commission provide that opinions may only be provided upon request to parties covered by the Ethics Code about their own future conduct. We may not opine on the prospective actions of third party non-requesters. (See Section 2-1074 (y) of the Code of Miami-Dade County; INQ 18-161)

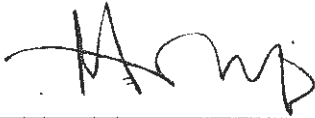
You may wish to review two of several ethics opinions that have issued from the Ethics Commission regarding prohibited voting conflicts created by the likelihood that the elected board's action might impact a voting member's spouse. We have opined that Section 2-11.1 (d) would create a prohibited voting conflict for an official considering an alternative code enforcement

system because the official's spouse was the municipal code compliance director. Therefore, the reorganization of the code compliance department, including the use of special masters, could impact the spouse's job duties, work performance measurements, and salary. (See INQ 13-92) We have also suggested a prohibited voting conflict would exist precluding a Commissioner from voting or otherwise participating in the selection of the next City Manager because his spouse is a municipal employee and a direct report to the City Manager. (See INQI 18-251)

These two opinions related to the potential impact on the spouse's employment and financial well-being and thus the concurrent likelihood that the official would, personally or professionally, be affected in any way by the item in a manner distinct from the public generally.

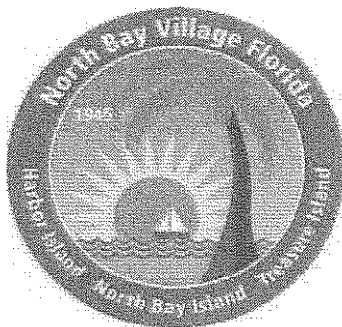
Thank you again for seeking guidance from the Commission on Ethics.

Sincerely,



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JOSE J. ARROJO  
Executive Director



# North Bay Village

Administrative Offices

1666 Kennedy Causeway, Suite 300 North Bay Village, FL 33141 Tel: (305) 756-7171 Fax: (305) 756-7722 Website: [www.nbv1](http://www.nbv1.com)

Dear Mr. Arrojo

I am writing to seek an opinion on a matter of proper determination of recusal from official proceedings.

Some of the circumstances surrounding this particular case are as follows:

North Bay Village up until approximately April 2018 employed Mr. Carlos Noriega as Police Chief. In or around April 2018 Mr. Noriega was terminated by North Bay Village. Mr. Noriega has since filed a whistleblower suit against the village alleging wrongful termination due to the fact that he was leading investigations into wrong doing by the previous Mayor and some Commissioners of the village. Most other details of the case are matters of public record.

The current Commission, elected in November of 2018, must now make decisions related to the case. Specifically, Mr. Noriega has offered to settle his lawsuit for back pay plus reinstatement. The Commission has been advised in a so-called shade session that allowing litigation to continue may result in a large settlement against the village.

The Commission is in the process of deciding how to handle that claim.

In the process, the village attorney has suggested that I must recuse myself from the deliberations. He bases this conclusion solely on the fact that I appear in the background of a photo taken of Mr. Noriega at a widely attended Christmas party here in North Bay Village last December. I would like an opinion as to whether this constitutes legitimate and ethical grounds for recusal.

Further, I believe that two other commissioners, Mr. Jose Alvarez and Ms. Andreama Jackson, may have cause to recuse themselves. Both were Commissioners during the time Mr. Noriega was Police Chief. In initial meetings, both Commissioners seem to have expressed clearly that under no circumstances would they consider reinstating Mr. Noriega.

Of note, before his termination, Mr. Noriega had commissioned, among other activities, an investigation into possible wrong doing and/or alleged illegal activity by Commissioner Alvarez's spouse. During the course of initial deliberations on the matter of potential settlement, Commissioner Jackson expressed openly her opinion that if Mr. Noriega were reinstated, he would resume the investigation of Mr. Alvarez's spouse, for which reason neither herself nor Commissioner Alvarez could be in favor of reinstatement or settlement. Mr. Alvarez seemed to agree with this opinion.

Mayor	Vice-Mayor	Commissioner	Commissioner At Large	Commissioner
Brent Latham	Marvin Wilmoth	Jose Alvarez	Julianna Strout	Andreama Jackson

Regardless of the any outcome, I have questions as to whether such a position represents a conflict of interest which would preclude these two commissioners from reaching an opinion in the best interest of the village on this matter, and therefore am also requesting your ethical opinion on grounds for recusal in the matter.

## Sanchez, Rodzandra (COE)

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Friday, June 29, 2018 9:14 AM  
**To:** Sanchez, Rodzandra (COE)  
**Subject:** INQ 18-161 Jose Smith, City Attorney, City of North Miami Beach (Advisory Opinions)  
**Attachments:** image001.png; ATT00001.htm; Memo Response June 21 2018.pdf; ATT00002.htm; email to Joe Centorino and Tim VanderGiesen.pdf; ATT00003.htm; Fbi e-mails.pdf; ATT00004.htm; Charter discussion-Miami Herald.pdf; ATT00005.htm; Resolution R2017-29.pdf; ATT00006.htm; Commission on Ethics Public Reprimand Pierre.pdf; ATT00007.htm

INQ 18-161 Smith

**From:** Centorino, Joseph (COE)  
**Sent:** Thursday, June 28, 2018 4:32 PM  
**To:** 'Smith, Jose' <Jose.Smith@citynmb.com>  
**Cc:** 'jean olin' <jeanolin.munilaw@gmail.com>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>  
**Subject:** INQ 18-161 Jose Smith, City Attorney, City of North Miami Beach (Advisory Opinions)

Dear Jose,

You requested an advisory opinion from this office in connection with an anticipated vote this evening by the North Miami Beach City Commission regarding your continued employment as City Attorney for the City of North Miami Beach. You have raised a number of specific issues that you believe may create a voting conflict of interest on the part of Commissioner Frantz Pierre, who is a current sitting member of the Commission, and who you anticipate will be voting on the matter of your continued employment.

Under Section 2-3.1 of the North Miami Beach Code, the City Attorney is appointed by the City Commission and serves at the pleasure of the City Commission. Your position is, therefore, subject to the direct authority and oversight of the Commission, and you are accountable directly to the Commission.

I have carefully reviewed your request and the grounds that you have raised in good faith in an attempt to determine whether there is a legal conflict of interest on the part of Commissioner Pierre. In addition, I have conferred with attorneys in this office as well as others, including Jean Olin, Esq. and Stephen Johnson, Esq. You have made it clear that you believe that Commissioner Pierre has a deep-seated animosity toward you based on a number of issues and confrontations that have occurred during your tenure as City Attorney. Commissioner Pierre has been involved in law suits against both you and the City of North Miami Beach, and has also encountered legal issues with this agency, in which you provided useful information, all of which you believe to have created this animosity toward you. It is clear that you have genuine and justified concern that you may be terminated from your position as City Attorney based upon the upcoming vote of the Commission members, including Commissioner Pierre, an individual with whom you admittedly have a hostile relationship.

This agency has authority to provide advisory opinions on ethics issues such as voting conflicts, which derives from Section 2-1074 (y) of the Miami-Dade County Code. That section provides in pertinent part that, "Any person within the Ethics Commission's jurisdiction, when in doubt about the applicability or interpretation of any provision within the



Ethics Commission's jurisdiction, to himself or herself in a particular context, may submit in writing the facts of the situation to the Ethics Commission with a request for an advisory opinion to establish the standard of public duty, if any..." This provision was intended to limit the use of advisory opinions to prospective issues where the requester is the person whose own actions may be subject to relevant provisions of the Code. This means that we respond to requests for advisory opinions received from persons who may have issues under the Code, or from suitable surrogates who ask for opinions on behalf of persons subject to the Code. We have regularly extended to municipal attorneys, such as yourself, the courtesy of responding to such requests made on behalf of members of their governing bodies, as well as members of other municipal boards and municipal employees. I believe that there have even been occasions when we have provided such opinions where there was a disagreement between the municipal attorney and the affected individual.

The circumstances of your request, however, raise a serious concern regarding whether the requested opinion is an appropriate use of our advisory authority. It is my interpretation of Section 2-1074(y) that it is intended to limit the issuance of advisory opinions to situations where there is concern by the requester about his or her own conduct in connection with ethics requirements. It is not intended to be used by individuals seeking legal opinions to utilize as a means of constraining the acts of others in order to serve purposes unrelated to the requester's need for guidance. To do so would open the door to use of that authority by political or personal adversaries of individuals under our jurisdiction, in connection with the advancement of their own agendas.

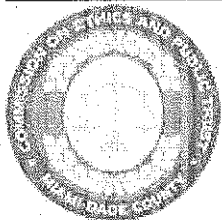
I have no doubt that you have a genuine belief that Commissioner Pierre has a voting conflict of interest in voting on your continued service as City Attorney. However, we have yet to receive a request for an advisory opinion from Commissioner Pierre or a representative on his behalf. Moreover, the existence of your own personal interest in the matter is clear. That interest, in itself, may be reasonable and understandable. However, the issuance of an advisory opinion to you, requested primarily for the purpose of supporting your interests rather for the purpose of clarifying an issue in doubt expressed by an affected member of your governing body, appears to me to be outside of the permissible scope for our issuance of such an opinion under Section 2-1074(y).

I regret that I am unable to respond to your request. Commissioner Pierre, as he well knows, is subject to this agency's authority for his actions as a public official should they transgress the bounds of the County Ethics Code. Sincerely,

Joe Centorino

*Joseph M. Centorino*

Executive Director and General Counsel  
Miami-Dade Commission on Ethics and Public Trust  
19 W. Flagler Street, Suite 820  
Miami, FL 33130  
Tel: (305) 579-2594  
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**From:** Murawski, Michael P. (COE)  
**Sent:** Friday, June 22, 2018 12:17 PM  
**To:** Centorino, Joseph (COE) <[Joseph.Centorino@miamidade.gov](mailto:Joseph.Centorino@miamidade.gov)>

**Subject:** FW: City Attorney Jose Smith's Response in Accordance with Resolution No. R2016-82

**From:** Smith, Jose [<mailto:Jose.Smith@citynmb.com>]

**Sent:** Thursday, June 21, 2018 8:56 PM

**To:** [joecentorino@miamisao.com](mailto:joecentorino@miamisao.com)

**Cc:** Murawski, Michael P. (COE) <[Michael.Murawski@miamidade.gov](mailto:Michael.Murawski@miamidade.gov)>

**Subject:** Fwd: City Attorney Jose Smith's Response in Accordance with Resolution No. R2016-82

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Hello Joe:

As a follow up to yesterday's email, I am now sending you my memorandum in opposition to Beth Spiegel motion to terminate me. I have a question regarding Frantz Pierre's ability to participate in the vote to fire me. These are the undisputed facts: 1). As a result of filing an ethics complaint with the COE (your office) regarding code officer Tasheema Lewis, Pierre sued me personally in Federal Court claiming I violated his civil rights. He wants money damages from me. While Judge Federico Moreno dismissed the case without prejudice, the case is technically still alive.

2). The Public Reprimand issued by the COE yesterday arose from the above complaint, and I provided critical information on the case. It could still be appealed so the case is technically still open.

3). Early this year, I issued a legal opinion resulting in his temporary removal from office. There is pending litigation to reinstate him which I am resisting. There are also ongoing settlement negotiations coming before the city Commission in July. My recommendations will not favor Frantz Pierre and we will definitely dispute Ben Kuhne's fee request. The litigation has been contentious and his testimony directly conflicts with mine on critical issues.

4). I have been assisting the SAO on a public corruption investigation involving Pierre which I am told will conclude in July with his possible removal from office (a plea deal).

5). I recently forwarded to the SAO another alleged public corruption matter involving the theft of city property. There is an internal city investigation and we may have to file litigation to recover the property.

In light of all these facts, does Frantz Pierre have a conflict of interest in voting to terminate me? I believe that my termination would inure to his personal private interest or gain and therefore he should file a recusal. What do you think? Because the vote will take place next Thursday, your prompt response will be greatly appreciated. Jose

Sent from my iPad

Begin forwarded message:

**From:** "Smith, Jose" <[Jose.Smith@citynmb.com](mailto:Jose.Smith@citynmb.com)>

**Date:** June 21, 2018 at 6:10:54 PM EDT

**To:** "Spiegel, Beth" <[beth.spiegel@citynmb.com](mailto:beth.spiegel@citynmb.com)>, CouncilAll External <[CouncilExt@citynmb.com](mailto:CouncilExt@citynmb.com)>

**Cc:** "Garcia, Ana" <[Ana.Garcia@citynmb.com](mailto:Ana.Garcia@citynmb.com)>, "Latimore, Pamela" <[Pamela.Latimore@citynmb.com](mailto:Pamela.Latimore@citynmb.com)>, "Johnston, Sarah" <[Sarah.Johnston@citynmb.com](mailto:Sarah.Johnston@citynmb.com)>, "Moya Denham, Maria" <[Maria.MoyaDenham@citynmb.com](mailto:Maria.MoyaDenham@citynmb.com)>, "Smith, Jose" <[Jose.Smith@citynmb.com](mailto:Jose.Smith@citynmb.com)>

**Subject:** City Attorney Jose Smith's Response in Accordance with Resolution No. R2016-82

Dear Mayor and Commissioners,

Please see my Response to Mayor Spiegel's agenda item for the June 28 City Commission meeting. My response attaches five (5) separate exhibits highlighting some of the points I make in my response.

I ask City Clerk Pamela Latimore to make my response and Exhibits part of the Agenda as provided in Section 2(b), Resolution R2016-82.

I look forward to discussing all aspects of this matter with all of you.

Jose Smith, City Attorney  
City Attorney's Office  
17011 NE 19th Avenue, 4th Floor  
North Miami Beach, FL 33162  
Tel: 305-948-2939  
[josesmith@citynmb.com](mailto:josesmith@citynmb.com)