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February 27, 2020

Via U.S. & Electronic Mail

Honorable Oscar de la Rosa
Councilmember for the City of Hialeah
501 Palm Avenue
Hialeah, Florida 33010

Re: Ethics Inquiry Request, INQ 20-18

Dear Councilmember de la Rosa:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust and seeking ethics guidance regarding the application of the voting conflict provisions of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance ("Ethics Code").

We respond as follows:

I. Background

As a Councilmember in the City of Hialeah ("City") you are a member of the municipality's legislative body and, along with your colleagues on the Council, are also responsible for adopting the annual budget and making all other appropriations necessary for efficient city government. Accordingly, you will be called upon to make final procurement decisions for the City.¹

You have recently become a licensed attorney admitted to the Florida Bar and have established your own law firm ("Firm") operating as a professional association. As an attorney your Firm will be retained to represent persons and parties and may on occasion collaborate or partner with other law firms.

¹ Section 2.02. of the City of Hialeah Code provides in relevant part as follows: (a) *Powers and duties*. The City Council shall have the following powers and duties: (1) To legislate for the city by adopting ordinances and resolutions in the best interests of all the citizens of the city. The city council shall carry out its duties mindful of and with due regard for the laws of God and country. (2) To adopt the annual budget and all other appropriations necessary for efficient city government; to establish financial controls; and to fix the salaries of all elected officials as provided elsewhere in this charter.

You were previously employed as a law clerk with a prior firm (“Prior Firm”) and you have now severed that employment relationship.

You have affirmatively advised that you will not be representing parties in Hialeah nor will you represent parties that are transacting with the City. You may however, on matters outside of Hialeah and not involving the City, collaborate or partner with law firms (“Collaborating Firm”) representing clients that do business in Hialeah or that transact with the City.

You have requested ethics guidance regarding potential prohibited conflicts of interests under the County Ethics Code in your role as a Councilmember, arising from your work as a lawyer and as a principal in your Firm and in collaboration with other firms.²

II. Legal Analysis:

Florida law prohibits an elected official from abstaining from voting unless there is a conflict of interest or the possibility of a conflict. *See* Section 286.012, Florida Statutes.

As a preliminary matter, as a Councilmember you are a covered party under Section 2-11.1 of the Code of Miami-Dade County (“Ethics Code”). Specifically, as a Councilmember you are a covered person pursuant to Section 2-11.1 (b) (1) of the Ethics Code that applies to members of County and municipal elected legislative bodies.³

Because you are a covered party under the Ethics Code, then Section 2-11.1 (d) of the Code likewise applies to you. The second part of Section 2-11.1 (d) of the Ethics Code, relating to voting conflicts, provides that a Councilmember shall not:

(b)(1) ... vote on or participate in any way in any matter presented to the Board of County Commissioners [City Council] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships *or* who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County

² Of course, you yourself cannot appear before the City Council or any City Board or agency and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor can you receive compensation, directly or indirectly or in any form, for services rendered to a third person, who has applied for or is seeking some benefit from the City or a City agency, in connection with the particular benefit sought by the third person. Finally, the you may not appear in any court or before any administrative tribunal as counsel or legal advisor to a party who seeks legal relief from the City or a City agency through the suit in question. *See* 2-11.1 (m)(1) of the Ethics Code.

³ The Ethics Code constitutes the minimum standard of ethical conduct and behavior for all municipal officials and officers. *See* Section 2-11.1 (a), Ethics Code.

Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. (emphasis added)

Section 2-11.1(d) is stricter than the State Ethics Code in providing for a voting conflict where the official “would or might, directly or indirectly, profit or be enhanced by the action...” as opposed to the State standard contained in Section 112.3134 (3) (a), Florida Statutes, that limits the county or municipal public officer from voting upon any measure “which would inure to his or her special private gain or loss.”

By way of example and to provide insight on what might constitute prohibited voting conflicts under Section 2-11.1 (d), we address several likely scenarios that may arise as a result of your prior, current, or future work as an attorney.

While you have advised that you will not represent clients in Hialeah or on matters involving the City, to be clear, if a client of your Firm had a matter before the Council, because you are a “principal” and “employee” of your Firm, then you would have voting conflict in that matter. It does not matter that you may not be the actual attorney representing the client. Even if your Firm employed another lawyer to represent the client, there is a “reasonable possibility” that you as the elected official “would or might, directly or indirectly, profit or be enhanced by the action” due to the potential impact on your the Firm.⁴ *See* RQO 15-04; INQ 17-277

The same analysis would apply if your Firm was collaborating or partnering with another firm to represent a client with a matter before the Council. In this scenario, even if an attorney with the Collaborating Firm was actually appearing before the Council, then you would likely be considered “of counsel” to the Collaborating Firm, and again, you would have a voting conflict in that matter.⁵ *See* INQ 19-113

Also, if one of your Firm’s clients is being represented by another firm, including a Collaborating Firm, in a matter before the Council, there may still be a voting conflict of interest for you under Section 2-11.1 (d) that prevents your vote or participation in an item before the City Council. *See* INQ 19-113

Under these latter circumstances, although your Firm is not representing the client on the specific item, it remains that the client is represented by the Firm. Your vote or participation in the client’s matter before the Council could help or hurt the Firm client and thus represents a possible enhancement of your own position. Again, there may be a “reasonable possibility” that you “would or might, directly or indirectly, profit or be enhanced by the action” due to the potential impact of your action on your Firm’s client.

⁴ Please note also that because you are a principal in your Firm, then this would create a prohibited appearance under Section 2-11.1(m)(1) of the Ethics Code and your Firm would be prohibited from appearing before the Council. *See* RQO 07-08

⁵ The Florida Bar defines “of counsel” as: a lawyer who has a regular, continuing relationship with a lawyer or firm in a capacity other than that of partner or associate.

This latter analysis would depend on various factors that would include the importance of the client to your Firm; the size of your Firm and the number of clients it has; the extent of the familiarity that you have with the client; or, the remoteness, geographical and otherwise, of the client from your Firm office and practice in which you are engaged. You should seek specific ethics guidance in this scenario.

Another scenario that merits comment would be if a Collaborating Firm is representing a client before the Council. In this instance, if your Firm is at the time of the vote, engaged on an unrelated matter with the Collaborating Firm, then you may have a prohibited voting conflict. The reasoning behind this opinion is that the Firm's ongoing business relationship with the Collaborating Firm could benefit from the decision made by the Council since there is a possibility that you or your Firm might profit or be enhanced. *See* INQ 14-100.

If your Firm is not engaged with a Collaborating Firm on any matter at the time of that firm's representation of a client before the Council, then I would encourage you to seek an opinion before the vote. This would require a more fact intensive analysis that would consider the extent of your Firm's past and future anticipated engagement with the Collaborating Firm and what percentage of your Firm's business is derived from these collaborations.

Finally, if your Prior Firm is representing a client before the Council that you personally participated in as a law clerk during your prior employment, it is recommended that you refrain from participating or voting on that matter as a Councilmember.

As part of our discussions, we addressed Section 112.313(7), Florida Statutes, relating to recurring conflicts of interest that might impede your public duties as a Councilmember. We specifically discussed your Firm's collaboration or partnering with another firm that represents clients in Hialeah or that involve the City. That section is enforceable by the State of Florida Commission on Ethics and this agency does not have the jurisdiction to interpret or enforce that section.

Nevertheless, as part of this process, you affirmatively relayed that you had conferred with counsel for that agency. You were advised that as regards your Firm's collaboration with other firms on matters outside of and not involving the City that this would not create a recurring conflict of interest as defined in Section 112.313(7), even if the Collaborating Firm represents clients in Hialeah or in matters that involve the City.

We hope that this opinion is of assistance and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,


Jose J. Arrojo
Executive Director


Martha Diaz Perez
General Counsel

cc: All Commission on Ethics Attorneys