

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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July 13, 2021

Vanessa Joseph, Esq.
Elected North Miami Clerk
776 Northeast 125th Street
North Miami, Florida 33161

Re: INQ 2021-104, Section 2-11.1(j), Conflicting employment prohibited, Miami-Dade Ethics Code

Dear Ms. Joseph:

Thank you so much for speaking to me and for seeking ethics guidance regarding possible grant funding of your nonprofit employer by the City of North Miami.

Facts:

The City of North Miami, Florida (North Miami) is a municipality located within Miami-Dade County. North Miami operates under a council-manager form of government. The city's charter provides for a mayor that is a voting member of the city's council. The council serves as the policy-making body of the city. The manager oversees the daily operations of the city and ensures that the policies, directives, resolutions, and ordinances adopted by the city council are implemented and enforced. North Miami is also one of a few cities in Florida that still has an elected city clerk. The clerk does not have legislative or executive duties and is not a voting member of the council.

North Miami has a significant lower income refugee and immigrant population. Accordingly, as a matter of public policy, North Miami has made support of refugees and immigrants a central component of the municipality's social safety net and justice initiatives.

Catholic Legal Services, Archdiocese of Miami, Inc. (CLS) is a 501 (c)(3) non-profit organization established under the auspices of the Archdiocese of Miami. CLS represents low-income immigrants. CLS receives grant funding to support its various immigrant representation services.

The Vera Institute of Justice (Vera) is a 501 (c)(3) non-profit national organization that partners with impacted communities and government leaders that seeks to reduce the number of persons in jails, prison, and immigration detention facilities. One of Vera's initiatives is the Immigration Court Helpdesk (ICH) program that educates non-detained respondents in removal proceedings about the court process.

As part of ICH, Vera works with five nonprofit legal service providers that offer sessions about the immigration court process generally and potential defenses from removal. The program, funded by the United States Executive Office for Immigration Review (EOIR) and administered by Vera, operates at five immigration courts across the country. In Florida, Vera partners with CLS to provide immigration legal services under the ICH.

Earlier this year, the American Rescue Plan Act of 2021 (Rescue Act) was signed into law. The Rescue Act is a nearly \$1.9 trillion-dollar federal bill that in-part provides funding to local governments.

North Miami has received or will receive funding under the Rescue Act. North Miami may spend a portion of its allotted Rescue Act monies to provide grant funding to local non-profits that provide services for refugees and immigrants that are in need. CLS may be a Rescue Act grant recipient from North Miami. CLS may in turn utilize this grant award to seek additional matching funding from Vera as part of the ICH. (collectively “new grant funding”)

You are the elected clerk for North Miami, Florida. You are also a practicing attorney licensed in the State of Florida and your professional expertise is in immigration law. You are a salaried employee of CLS. In that capacity you represent members of the refugee and immigrant community, particularly low-income clients, in immigration related matters, including but not limited to client representation before immigration authorities including the United States Citizenship and Immigration Services (USCIS).

You advise that the new grant funding may bring additional North Miami area refugee and immigrant clients to CLS for immigration related legal services. You may in your capacity as a lawyer employed by CLS provide legal services to these clients.

However, you have confirmed that no new grant funding will be used by CLS to pay your salary or benefits and that your compensation is fully funded from a separate grant.

Discussion:

Section 2-11.1(j) of the County Ethics Code prohibits a local government elected official or employee from accepting outside employment which would impair his or her independence of judgement in the performance of their public duties.

However, that section does not operate as a general bar on your employment with a nonprofit. The Commission on Ethics has repeatedly opined that elected officials in Miami-Dade County, including those with voting rights on legislative councils and commissions, may hold employment positions with nonprofits. *See generally* INQ 17-235; INQ 18-126; INQ 19-44. Even if the official’s employer is a recipient of federal government pass-through funding from their city, the official is not otherwise prohibited from employment with the nonprofit as long as there is no impairment in the performance of public duties. INQ 2021-10 (A County Commissioner may be employed by a nonprofit that may receive grant funding from the County as long as the official

does not vote on a matter that might directly or indirectly affect the nonprofit and he or she does not use their official position to secure special privileges for the nonprofit employer.)¹

From the description of your public duties as the elected clerk for North Miami, a ministerial position without legislative council voting rights, and your employment with CLS as an immigration attorney serving lower income refugees and immigrants, there does not appear to be a prohibited conflict under Section 2-11.1(j) of the Ethics Code. Your continued work for CLS, even if it receives federal pass-through funding from North Miami, would not impair your independence of judgement in the performance of your public duties.

Section 2-11.1(g) of the Ethics Code prohibits public officials and employees from using their official position to secure special privileges for himself or herself or others. Also, Section 2-11.1(m)(1) of the Ethics Code prohibits public officials and employees from appearing before any municipal board or agency to make a presentation on behalf of third party with respect to any benefit sought by the entity.

Thus, if North Miami decides to provide funding to CLS, then you should be cautious not to use your position as the municipal clerk to secure or encourage this grant funding. In abundance of caution, because of the prominent and public nature of your elected position, you should not be involved formally or informally in advocating for new grant funding for CLS. INQ 2021-89

Opinion:

Under the facts provided to me concerning your current position as the elected Clerk for the City of North Miami, Florida, and your described employment with CLS as an immigration attorney serving lower income refugees and immigrants, I do not believe that you are prohibited by Section 2-11.1(j), of the Ethics Code from this outside employment. Your continued work for CLS, even if it receives federal pass-through funding from North Miami, would not impair your independence of judgement in the performance of your public duties.

However, because you are an elected official you should not use your public position to influence the award of new grants funding from North Miami to CLS and you should not be involved in advocating for the award.

This opinion is based upon the facts as you have provided them. If the facts change, you are encouraged to contact me for further guidance as appropriate. Also, while this opinion may cite to Florida Statutes, for guidance regarding the application of the State Ethics Code, you may wish to consult with the Florida Commission on Ethics. This agency is not authorized to provide opinions interpreting the State Ethics Code.

Thank you again for engaging with the Miami-Dade Commission on Ethics and Public Trust.

¹ *But see* Florida State Commission on Ethics COE 14-02, (The State Ethics Code at Sec. 112.313(7)(a), Florida Statutes, prohibits a commissioner from having an employment relationship with a business entity doing business with his government agency.)

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Arrojo".

Jose J. Arrojo
Executive Director

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.

cc: All COE Counsel