



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: A.J. D'Amico
Prospective Appointee, Miami-Dade Commission on Human Rights
(CHR)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-65

DATE: April 14, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest with your tentative appointment to the Miami-Dade Commission on Human Rights.

Facts:

You were appointed to serve as a member of Miami-Dade Commission on Human Rights (CHR) by Miami-Dade County Commissioner Rene Garcia. The CHR is a quasi-judicial as well as an advisory board comprised of 26 volunteer members who are appointed by the Miami-Dade County Board of County Commissioners (BCC). CHR is charged with the enforcement of Miami-Dade County's civil and human rights ordinance, codified as Chapter 11A of the Miami-Dade County Code, as amended. Pursuant to Sec. 11A-5 of the Miami-Dade County Code, the CHR may among its duties, compel by subpoena the attendance of witnesses and production of evidence for investigation or hearings; adopt, promulgate, rescind or amend rules and regulations; issue final orders; award relief to a prevailing complainant; and advise the County Commission. The CHR is a section of the Human Rights and Fair Employment & Practices Division of the Human Resources Department (HR-FEP) which provides administrative, technical and clerical support to the CHR for the proper performance of its duties. *See* Sec. 11A-4(8), Miami-Dade County Code.

You are also an associate at the law firm of Holland & Knight LLP (HK). You advise that HK represents multiple clients before the Miami-Dade County Commission and has in the past represented clients adverse to Miami-Dade County.

Importantly, neither you nor your employer, HK, represents clients before the board on which you will serve, CHR. You do not receive any compensation, directly or indirectly or in any form, for any services rendered to a third party seeking a benefit from CHR. Your employer, HK, is not engaged in any litigation which involves CHR in any way.

Issue: Whether the County Ethics Code prohibits your service as a board member on the Miami-Dade Commission on Human Rights (CHR), where your employer represents clients in matters adverse to Miami-Dade County.

Analysis and Opinion:

The County Ethics Code at Section 2-11.1(m)(2) provides the following:

- No board member shall appear before the County board or agency on which he serves, either directly or through an associate, and make a presentation on any license, contract, ruling, decision, opinion, or other benefit sought by the third person;
- No board member shall receive compensation, directly or indirectly or in any form for services rendered to a third party, who is seeking some benefit from the County board or agency in which such person serves, in connection with the particular benefit sought by the third party; and,
- No board member shall appear as counsel or legal advisor to a third party who seeks legal relief from the County board or agency on which such person serves.

See County Ethics Code, Section 2-11.1(m)(2); and INQ 17-76.

Thus, Section (m)(2) specifically prohibits you from representing a third party before your own board or agency, *in any capacity, either directly or through an associate*. “In effect, if a client of HK seeks a benefit from the [CHR and/or the HRFEP], you cannot sit on this board if the benefit sought by the client is connected to the work you or your firm are expected to perform under the agreement between HK and the client.” See INQ 17-76 and INQ 03-76.

Section 2-11.1(m)(2) also prohibits you from receiving compensation, directly or indirectly or in any form, for any services rendered to the third party seeking a benefit from his or her board. See RQO 07-12; INQ 15-229. This means that you may not be compensated for any services rendered by your employer, HK, for clients seeking a benefit from CHR.

Further, the prohibition in Section (m)(2) extends to appearances in court or before any administrative tribunal as counsel or legal advisor to a third party who seeks legal relief from the County board or agency on which such person serves through the suit in question. The prohibition covers any litigation which may involve CHR in any way. See RQO 01-102; INQ 18-241, and INQ 17-271. Importantly, you have stated that you do not represent any clients in matters adverse to Miami-Dade County. You have also indicated that while your employer, HK, represents clients on matters adverse to Miami-Dade County, none of the matters relate to/or involve CHR in any way.

Based on the facts that you have presented, it does not appear that Section (m)(2) of the County Ethics Code would prohibit your service as a board member on the Miami-Dade Commission on Human Rights (CHR) because you do not represent third parties before the CHR, *in any capacity, either directly or through an associate*; you do not receive any compensation, directly or indirectly or in any form, for any services rendered to a third party seeking a benefit from CHR; and neither you nor your employer, HK, are engaged in any litigation which involves CHR in any way. *See* INQ 18-241

However, you should also be mindful of other sections of the County Ethics Code applicable to board members, such as:

Section 2-11.1(v), *Voting Conflicts*, provides that a board member may not participate and/or vote on matters where he will be directly affected by the vote and has the following relationships” “officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary” or “stockholder, bondholder, debtor or creditor” of the person or entity appearing before his board. Therefore, while you are not prohibited from serving on the board, you would not be permitted to vote on matters coming before the board that involve you or HK and its clients. *See* RQO 98-07; INQ 03-76; INQ 13- 07.

Based on the facts provided, there is no voting/participation concern at this time since you advised that your employer, HK, does not represent any client before the board on which you will serve, CHR. However, in the event a situation arises where your personal or financial interests may be affected by the board’s action and your relationship with an applicant/client falls into one of the prohibited relationships described herein, we would recommend that you seek an opinion from this office. *See* INQ 20-85 and INQ 16-219.

Section 2-11.1(g), *Exploitation of official position*, prohibits a board member from using his board position to secure special privileges or exemptions for himself or others.

Section 2-11.1(h), *Confidential information*, prohibits a board member from disclosing confidential information acquired by reason of his board position.

Section 2-11.1(n), *Official actions where financial interests involved*, prohibits a board member from participating in any official action affecting a business in which he or any member of his immediate family has a financial interest.

Section 2-11.1(i), *Financial disclosure*, requires board members to file either a County Source of Income Statement, State Form 1 or a copy of their income tax return by July 1st of each year for the preceding calendar year, including the year following the last year of service on the board.

Please also review COE memorandum titled “Ethical issues for potential Advisory Board Members” located on the COE website at: http://ethics.miamidade.gov/library/2015-publications/ethical_issues_for_potential_advisory_board_members_8-15.pdf

Opinion: For the reasons detailed above, the County Ethics Code does not prohibit your service as a board member on the Miami-Dade Commission on Human Rights (CHR).

Notwithstanding, pursuant to Section 2-11.38 of the Code of Miami-Dade County (Membership on boards), “no person shall be eligible to serve on a County board if, at the time of appointment to the County board, the person has filed a lawsuit against the County that is pending at the time of appointment and that challenges a policy set by the Board of County Commissioners, unless the Board of County Commissioners by two-thirds (2/3) vote of its membership waives this requirement. No person sitting on a County board may file a lawsuit against the County that challenges a policy set by the Board of County Commissioners without relinquishing his or her seat on the County board unless the Board of County Commissioners by two-thirds (2/3) vote of its membership waives this requirement.” The Ethics Commission does not have jurisdiction to interpret this section of the County Code. You may wish to consult with the County Attorney regarding the applicability of this section to the facts concerning you or HK’s representation of clients in matters adverse to Miami-Dade County prior to you accepting your appointment to CHR.

This opinion is limited to the facts as you 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.