



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Justin Espagnol, Non-Voting Chairperson  
Internal Services Department

Phillip G. Edwards, Esq., BCC Research Manager  
Office of the Commission Auditor (OCA)

**FROM:** Radia Turay, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 2021-88 [Voting Conflict of Interest § 2-11.1(v); Appearances of  
Impropriety]

**DATE:** June 3, 2021

**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 the following proposed transaction.

Facts: We have reviewed your memorandum dated May 17, 2021, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade Internal Services Department Request to Advertise for Rehabilitation and Renovation Services of ISD Courthouses and Judicial Facilities – Project No. A20-ISD-04. The memorandum was prepared in connection with Resolution No. R-449-14, directing the Office of the Commission Auditor (OCA) to conduct background checks on members serving on evaluation/selection committees.

The memorandum noted that a member of the selection committee made disclosures on her Neutrality/Disclosure Form and/or resumé that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: “Monica Viener, Aviation Department, indicated on her Neutrality/Disclosure Form that she was previously employed by Wolfberg Alvarez & Partners, Inc., as a Junior Designer, first in 1988 through 1990, and then again from 1993 until 1994. Wolfberg Alvarez & Partners, Inc. is a respondent to this solicitation.”

We conferred with Ms. Viener. She is an Interior Design Specialist at the Facilities Management Division, Miami-Dade Aviation Department (MDAD). Ms. Viener

confirmed that she previously worked for Wolfberg Alvarez & Partners, Inc. (WAP). She stopped working for them in 1994. Ms. Viener stated that her separation from WAP was not amicable. She explained that she did not get along with her supervisor at the time, Shelly Wolfberg. She indicated that the fact that she did not get along with Ms. Wolfberg over twenty-seven years ago would not impair her independence of judgment when she is evaluating all the respondents to this solicitation. She has no other formal business or financial interest in WAP. She does not currently maintain any close social, or other relationship with employees at WAP.

We conferred with Justin Espagnol, the ISD Procurement Contracting Officer for this solicitation. He confirmed that Ms. Shelly Wolfberg is not listed anywhere in the proposal submitted by WAP.

Ms. Viener also stated that she knew three individuals listed in the various proposals, Carlos Jimenez, Jorge Plasencia, and Larry M. Schneider. She explained that she previously worked with Carlos Jimenez and Jorge Plasencia, and she took a continuing education course on ADA Codes and guidelines that was taught by Larry Schneider. She does not maintain any close social, or other relationship with the three individuals. She believes she can be fair and impartial when evaluating the respondents to this project.

Discussion: This agency conducts reviews of these issues under the County Ethics Code, which governs conflicts by members of County advisory and quasi-judicial boards. We also consider whether there is an appearance of impropriety created and make recommendations based on R-449-14 and Ethics Commission Rule of Procedure 2.1(b).

Specifically, Section 2-11.1(v) of the County Ethics Code states that no quasi-judicial personnel or advisory personnel shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary' or (ii) stock holder, bondholder, debtor or creditor.

It does not appear that Ms. Viener has a voting conflict of interest under Section (v) of the County Ethics Code because she will not be directly affected by the vote and she does not currently have any of the enumerated relationships with any entity affected by the vote.

Additionally, Section 2-11.1(x) of the County Ethics Code, commonly referred to as the Reverse Two-Year Rule, which bars County employees from participating in contract-related duties on behalf of the County with a former employer for a period of two years following termination of the employment relations, would not apply to Ms. Viener since she stopped working for WAP over twenty-seven years ago. See INQ 17-174, INQ 17-183, and INQ 18-229.

Further, due to the sensitivity of the procurement process and the need to sustain public confidence in it, this agency also opines concerning whether there may be an appearance of impropriety in a given situation that would justify the removal of a member of an

appointed selection committee. *See* Section 2-1067, Miami-Dade County Code, and 2.1(b) of the COE Rules of Procedure.

As to Ms. Viener's disclosure that her separation from WAP was not amicable in 1994, she was very candid and explained that she did not get along with her supervisor at the time, Shelly Wolfberg. Shelly Wolfberg is not listed on the proposal submitted by WAP. She is not listed as one of the individuals that has a defined role should WAP be awarded this contract, and she is not listed as one of the individuals that will make a presentation before the selection committee.

Based on all the information provided, as Ms. Viener's separation from WAP occurred over twenty-seven years ago, her prior supervisor with whom she had an issue is not listed on WAP's response to this solicitation, and she has no other business, or close social relationship with current employees at the entity, it is our opinion that Ms. Viener separation from WAP would not in any way detract from the County's conducting a fair and objective evaluation for this project. *See* INQ 20-84.

Ms. Viener also mentioned that she knew three individuals that were listed in the various proposals, Carlos Jimenez, Jorge Plasencia, and Larry M. Schneider.

This office has previously considered whether individuals may serve on selection committees, where the representative of one of the recommended proposers, is a close personal friend. We have recommended that ISD should consider withdrawing such an individual from the selection committee due to the possible appearance of impropriety created by their close social/professional relationship with a current employee of a respondent, who was identified by the respondent as a key member of their team, and was also identified as one of the individuals that would make a presentation before the selection committee. *See* INQ 14-246 (An FIU Professor of Architecture will not have a prohibited conflict serving on a County selection committee where she has had professional relationships with some of the bidders to be considered by the selection committee, because the Professor of Architecture would not personally benefit from the vote and she does not have a prohibited relationship with the parties. However, in order to avoid an appearance of impropriety created by the Professor's close professional relationships with some of the bidders, the County is advised to reconsider whether this person is an appropriate appointee for this selection committee); INQ 19-99 (a member of the selection committee for a project, whose spouse previously worked for a respondent to this project, Perez & Perez and Associates, should not serve on this selection committee, due to the possible appearance of impropriety, as she maintains a close social relationship with employees and the owner of the firm); and INQ 20-40 (it is recommended that ISD should consider withdrawing a prospective selection committee member from a selection committee due to the possible appearance of impropriety created by his close social/professional relationship with a current employee of one of the responding firms to a solicitation, who was identified by the respondent firm as a key member of their team, and was also identified as one of the individuals that would make a presentation before the selection committee).

In this matter, Ms. Viener stated that she previously worked with Carlos Jimenez during her employment at WAP, twenty-seven years ago. She worked with Jorge Plasencia,

approximately four years ago, as part of her County employment. Mr. Plasencia was a Miami-Dade Internal Services Department employee. Ms. Viener also stated that she took a continuing education course on ADA Codes and guidelines that was taught by Larry Schneider. She however indicated that she does **not** maintain any close social, or other relationship with the three individuals. Therefore, it is our opinion that the fact that Ms. Viener simply knows three individuals who are listed in the proposals would not in any way detract from the County's conducting a fair and objective evaluation for this project. See INQ 14-246, INQ 19-99, INQ 20-40, and INQ 20-115.

Opinion: Consequently, Ms. Viener does not have a conflict of interest under the Ethics Code that would prevent her from serving on this selection committee, and there does not appear to be any appearance of impropriety created by her service on this committee.

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.