



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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TO: Mario Morlote  
Assistant Director, Administrative Division, RER

FROM: Martha D. Perez, General Counsel  
Commission on Ethics & Public Trust

SUBJECT: INQ 2022-03 [Conflict of interest, prospective appointment of Interim Assistant Director), Section 2-11.1(g), County Ethics Code

DATE: January 12, 2022

CC: COE Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflict of interest in the appointment of an interim Assistant Director to a division in the County's Department of Regulatory and Economic Resources (RER).

#### Background:

The County's RER Department is charged with several functions including, enforcement of building codes and zoning regulations; review of land development and construction permit applications; promotion of fair competition through consumer protection and consumer education efforts; development and implementation of economic development strategies; and development of resilience initiatives, economic research, and land use planning.<sup>1</sup>

The organizational chart illustrates the different Divisions within RER and their respective supervisory personnel. These Divisions are further broken down into sub-divisions or sections which are supervised by Senior Division Chiefs (and Section Chiefs) and ultimately overseen by their respective Assistant Directors who report to Deputy Director Cueto, who in turn reports to RER's Department Director Gomez. For purposes of this inquiry, we will address the subject division as the Regulatory Division within RER.

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<sup>1</sup> <https://www.miamidade.gov/global/economy/home.page>

You state that the Mayor will be appointing the Regulatory Division's Senior Division Chief to the position of Interim Assistant Director (Int. Asst. Dir.). The Int. Asst. Dir. is tasked with leading the Regulatory Division's program and policies and supervising senior staff which carries the day-to-day operations of the Division through its Senior Division Chiefs and Section Chiefs. The Int. Asst. Dir. reports to RER's Deputy Director.

The Int. Asst. Dir. will soon marry the sister of one of the administrative secretaries in the Regulatory Division (hereinafter Asst. Secy./future sister-in-law).<sup>2</sup> The Admin. Secy. provides clerical and administrative support to her immediate Section supervisor in the Regulatory Division. Although she will be in the "supervisory chain" of the Int. Asst. Dir. (her future brother-in-law), she will not be providing direct support to him; rather, any interaction between the Int. Asst. Dir. and the Admin. Secy. will involve clerical duties such as coordinating meetings, arranging calls, or tracking employees.

You advise that, as supervisor of one of RER's Divisions, the Int. Asst. Dir. will be involved at some level in the performance/evaluation process of all of his Division's employees, *including his future sister-in-law*. As noted, there are several (four) layers of performance evaluation reviews between the Admin. Secy. and the Int. Asst. Dir.: The Admin. Secy. reports to her immediate supervisor and performance evaluator, i.e., the *Coordinator*; the *Section (Division) Chief* reviews her performance which moves through the chain of command to the *Senior Division Chief* and then to the *Int. Asst. Dir.* (followed by RER's Deputy Director and lastly to RER's Department Director). Consequently, although the Int. Asst. Dir. will not be reviewing or evaluating his future sister-in-law's performance, he will be in the review/approval chain.

Finally, you advise that the Mayor is considering the appointment of the Int. Asst. Dir. on a permanent basis.

#### Discussion and Opinion:

Under the facts provided herein, it does not appear that the Int. Asst. Dir. has a conflict of interest under the Conflict of Interest and Code of Ethics ordinance (County Ethics Code) in accepting an interim position as Assistant Director in the Regulatory Division because of his impending familial relationship with an administrative secretary in the same Division.

Nevertheless, the Int. Asst. Dir. is bound by Section 2-11.1(g) of the County Ethics Code which prohibits a County employee from using his official position to secure special privileges or exemptions for himself *or others*. Consequently, consideration must be given by the Int. Asst. Dir. to any discretionary authority exercised or any special treatment or attention given or attempted to be given to matters involving or affecting his future sister-in law. Compare, INQ 17-131(Approval of a sub- contractor when the Project Manager's son has a connection with said firm, could be perceived as an exploitation); INQ 12-180 (The Mayor, who has great discretion

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<sup>2</sup> There is no mention of any other connection, business or financial, between the Int. Asst. Dir. and his future sister-in-law so we will proceed with the assumption that there is no such other relationship between the Int. Asst. Dir. and the Admin. Secy.

over County contracts, should refrain from becoming involved in the award of a contract to a firm where his daughter-in-law is an associate and should delegate his authority to another County administrator and remove himself from the decision-making chain)

Similarly, close attention must be given to situations which may create an appearance of impropriety affecting the public trust in government. See Rule 2.1(b), COE Rules of Procedure (The Commission may also opine on whether particular conduct may result in a breach of the public trust and/or appearance of impropriety). In an informal opinion, we commended the (former) Deputy Director of RER, whose cousin was involved in business transactions involving clients coming before RER divisions, for excluding herself from any decisions where her cousin is involved and instructing personnel to go directly to the Department Director, thus providing a separation between her County role and any prospective activity that her cousin may be involved with in connection with RER. We reasoned that, even though there were no ethical prohibitions directly applicable to the situation, appearances of impropriety must be considered. See INQ 16-76

Consequently, while recusing himself from any involvement in all matters involving personnel-related actions or decisions which affect or relate to his future sister-in-law and delegating such authority to another Assistant Director or supervisor with comparable authority may avoid any suggestions of exploitation of the Int. Asst. Dir.'s official position or appearance of impropriety, Florida law and County policy cannot be ignored.

Pointedly, Florida's Nepotism Law prohibits a public official from appointing, employing, *promoting, or advancing* a relative. See Section 112.3135(2)(a), Fla. Stat.<sup>3</sup>

The Nepotism Law is illustrated in the County's Nepotism Policy which states the following:

*Relatives*<sup>4</sup> of the following cannot be appointed, employed nor *promoted* within their departments:

- a. Department Directors, regardless of who else is delegated employment authority;
- b. *Assistant Directors*, Division Directors, and all Managers who, by department policy or practice, are delegated the authority to make employment or *promotion* decisions;
- c. Managers, Supervisors, and others who, because of their position or customary involvement in personnel decisions, would normally be expected to make an employment or promotion recommendation to others within their departments, regarding a particular appointment or promotion.

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<sup>3</sup> A "public official" for purposes of the Nepotism statute refers to an employee who has the authority or who has been delegated the authority to appoint, employ, *promote or advance (or recommend)* appointment, employment, promotion, or advancement of individuals in connection with their employment in the agency. A "relative" for purposes of this section includes a *sister-in-law*.

<sup>4</sup> The definition of "relatives" in the County policy mirrors the statute's and includes sister-in-law.

This Policy applies to any County employee who has the authority, or is delegated the authority, to appoint, employ or promote, including employees who would normally be expected to recommend such actions.

*This prohibition includes all in chain of command who routinely approve personnel actions. Authority to appoint, employ, or promote cannot be temporarily delegated to someone else to avoid law.*

Lastly, Department Directors are strongly encouraged to refrain from placing relatives within another relative's chain of command or placing or maintaining relatives in close proximity in a departmental subunit.

While the future interaction between the Int. Asst. Dir. and his future sister-in-law does not raise any significant conflict-of-interest concerns as their interaction is limited to purely clerical and administrative tasks, his role in the review of personnel actions and approval of performance evaluations and ratings affecting promotions or advancements of all employees under his supervision, including his future sister-in-law, merits careful consideration to the appointment of Assistant Director on a permanent basis.

Consequently, because the COE does not interpret Florida law, it is strongly recommended that you review this matter with the County Attorney's Office.

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.