

memo

Miami-Dade Ethics Commission

To: Miriam Singer, Assistant Director, Procurement Management Services (ISD)
From: Victoria Frigo, Staff Attorney
CC: Joe Centorino, Executive Director
Date: 7/2/2012
Re: Frank Zuloaga, Outside Employment (INQ 12-109)

It is the opinion of the Ethics Commission staff that many aspects of Frank Zuloaga's proposed outside employment are likely to impair his independence of judgment in the performance of his public duties—except for training and serving as an expert witness in cases in which the County has no interests. *See* the County Code at Sec. 2-11.1 (j).

Mr. Zuloaga seeks to work for two companies located in the County, SP Consulting, LLC, and Palmer Roof Tech, Inc. Both companies are managed by the same person, Suyapa C. Palmer.

Many of the proposed tasks Mr. Zuloaga anticipates performing for these entities may conflict with his current County position as Construction Manager III:

- **Secondary Qualifier:** Although Mr. Zuloaga does not foresee serving as the primary qualifier for private companies, the unpredictability of scheduling in the construction industry suggests that he may not be able to avoid situations in which his loyalties would be divided. For example, his presence may be needed at a private construction site during the same time that he is working at a County construction site.

Another serious concern is that some of Mr. Zuloaga's work on private construction jobs may require approval by County staff, most probably by personnel at the County Building Department. Even if Mr. Zuloaga were not present at these approvals, it might appear that his private projects were being given preferential treatment because of his position as a County Construction Manager.

The Ethics Commission recently opined that a County employee may not interact with any County personnel on behalf of third parties, even if these interactions are routine and ministerial in nature. *See* RQO 12-10 and County Code at Sec. 2-11.1 (m)(1).

For these reasons, a Public Works employee whose primary duties to the County involved reviewing plans was advised against activating his Public Works Engineering Contractor License to work as a qualifier for a private construction company. *See* INQ 11-179.

Furthermore, two municipal employees who sought to work on behalf of their own private construction companies were required to hire a separate qualifier or assign another private employee as a qualifier rather than perform that role themselves. *See* RQO 08-29 and RQO 08-45.

- **Providing strategic business advice to the roofing industry.** Several concerns are raised by the breadth and ambiguity of this proposed function. Although he may be consulting with private roofing companies that are not County vendors, Mr. Zuloaga is likely to interact in his private capacity with other contractors and subcontractors whom he might work with on County construction projects.

Because it is impossible to predict the array of conflicts Mr. Zuloaga could encounter as a private consultant to roofing companies, we strongly recommend that Mr. Zuloaga not engage in consulting in this industry. This advice is meant to be preventative in nature. “It is concerned with what might happen, with the temptation to dishonor.” Zerweck v. Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982). *See* Fla. Stat. 112.313 (7)(2012).

Again, we refer you to RQO 08-29 and RQO 08-45 in which numerous safeguards were imposed on municipal employees similarly situated in the construction industry. In these cases, their governments were willing to take on onerous monitoring responsibilities in order to employ individuals whom they believed brought unique expertise to their municipal construction projects.

- **Expert witness in construction litigation cases.** Mr. Zuloaga may appear as an expert witness in a court or tribunal on behalf of a third party as long as the party has no adverse interests to the County. *See* County Code at Sec. 2-11.1 (m)(1).
- **Training.** Training is acceptable outside employment, provided that it is approved by Mr. Zuloaga’s supervisor.

As was the case with a County Fire Lieutenant who was certified as a hazardous materials instructor, private training is allowed as long as the County employee is not providing the same training in his County job, he will not use County equipment or County time to engage in private training, and he does not compete with the County for training dollars. *See* RQO 09-16.

If you believe we have misconstrued any of the facts in this matter, please do not hesitate to contact us for further discussion.