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City Attorneys should not advise on their own contracts

A municipal attorney should not opine in his or her official capacity on the terms and conditions of his or her employment and should not recommend an outside attorney to advise elected officials about such matters. That is the conclusion issued today by the Miami-Dade Commission on Ethics and Public Trust in response to a Request for Opinion (**RQO 19-01**) from Sunny Isles Beach Mayor George “Bud” Scholl, who was evaluating the performance of his city’s lawyer. After considering input from several municipal attorneys, the Commission recommended that elected officials choose outside counsel to advise them on interpretation of employment agreements or application of local ordinances related to the city attorney’s position, and that the sitting city attorney should recuse him or herself from those discussions. In the municipalities where the city attorney may contract with outside counsel regarding his or her position, the opinion recommends that the contract be brought before the elected body for approval in a publicly-noticed meeting as soon as possible.

In response to a Request for Opinion (**RQO 19-02**) from Miami-Dade County Commissioner Esteban Bovo, the Ethics Commission determined that he may vote on matters involving the Lasarte Law Firm, where his step-son, who is a law student, works as a legal assistant. However, among the firm’s clients is AECOM, which is engaged in several large infrastructure projects for the County, and the step-son, Oscar de la Rosa, is working on some AECOM matters. The opinion recommends that Commissioner Bovo *not* participate or vote on a specific Board action if de la Rosa has been assigned to work on that issue.

When an elected official asks a city employee for a “personal favor,” she is exploiting her official position. That is the Probable Cause finding by the Ethics Commission against El Portal Mayor Claudia Cubillos, who requested that a Village Code Enforcement Officer use his personal pickup truck to move a piano that was being donated to her private day care center. Because the “favor” occurred after hours and did not involve the use of Village property, Mayor Cubillos stipulated to Probable Cause and agreed to waive a hearing. The COE dismissed the complaint (**C 19-06-02**), but ordered Mayor Cubillos to pay \$500 in investigative costs and accept a Letter of Instruction.

The Ethics Commission approved a Letter of Reprimand following last month’s settlement with a representative of an aircraft company who pled no contest to violations of the County’s lobbying and Cone of Silence ordinances when it competed to sell helicopters to the Fire-Rescue Department. The complaint (**C 16-31**) alleged that Christopher Sirkis, of Augusta Westland, a subsidiary of Leonardo Helicopters, lobbied County personnel without being registered and violated the Cone of Silence. In accordance with the settlement, Sirkis paid a fine of \$4,500 and investigative costs of \$1,500.

The Letter explains the lobbying and Cone of Silence rules and their importance to the integrity of the County's procurement process.

Ethics Commissioners approved a Letter of Instruction for a complaint (**C 18-51-12**) against attorney Jose Smith, who last month agreed not to contest one count of unregistered lobbying while members of the North Bay Village Commission considered replacing their Village Attorney last November. The Letter notes the differences between conversations with elected officials where no specific proposal is before them for action. But, it stated that Smith did know that an agenda item was going before the Village Commission regarding the city attorney post. It counsels him to be more aware of the difference in his future conduct.

A Letter of Instruction was also approved regarding a complaint (**C 19-01-01**) against a Construction Manager in Miami-Dade's Transportation and Public Works Department who rents storefronts at a strip mall in North Miami Beach, but has failed to obtain permission for outside employment or submit the required Source of Income Statements annually. Hossin Habibnejad has since come into compliance, but the Letter reminds him, and other County employees, of the requirements associated with work outside of their fulltime government jobs.

The COE today agreed to settle a three-year-old lawsuit filed by Palmetto Bay Vice Mayor John Dubois against the agency. The legal action was initiated in April 2016 after Dubois called then-COE Executive Director Joseph Centorino to discuss a matter which would be heard by the Village Council. As part of the settlement, both sides agreed to end the time and cost of continued litigation, and include Dubois' rebuttal statement in the final record.

No Probable Cause was found to a complaint (**C 19-07-02**) filed against South Miami City Manager Steven Alexander accusing him of exploiting his official position for directing the principal of Ludlam Elementary School to remove signs affixed to the fence surrounding the property. Alexander did meet with the principal and other school officials about the proliferation of advertising on Sunset Drive and Ludlam Road, which are subject to the South Miami Land Development Code, and enforcement is part of his duties. Furthermore, there is no evidence Alexander did so to gain any personal benefit and so the complaint was dismissed.

Two complaints (**C 19-09-03 & C 19-10-03**) that accused two candidates for North Miami City Council of campaigning for the seats before they were "advertised" on the city's website were found Not Legally Sufficient because they are not within the Ethics Commission's jurisdiction.

Another complaint (**C 19-12-03**) found Not Legally Sufficient accused a Miami-Dade Fire Rescue Marine Services Chief of having incomplete or falsified diving log records making him deficient in dive certifications. The COE determined that is a personnel matter not within the agency's jurisdiction.

Finally, it was announced today that the Ethics Commission's next meeting will be held in the County Commission Chambers in the Stephen P. Clark Government Center, 111 NW First Street in downtown Miami on Wednesday, May 8, 2019.

The Ethics Commission was created in 1996 as an independent agency with advisory and quasi-judicial powers. It is composed of five members, serving staggered terms of four years each. Through a program of education, outreach and enforcement, the Commission seeks to empower the community and bolster public trust.

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