

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Via email at: Suzy.Trutie@miamidade.gov

November 8, 2019

Suzy Trutie
Deputy Supervisor of Elections
Administrative Services Division
Miami-Dade County Elections Department
2700 NW 87th Avenue
Doral, FL 33172

Re: RQO 19-05 Electronic Signatures for Outside Employment Statement. Miami-Dade Code § 2-11.1 (k)(2).

Dear Ms. Trutie:

In a Public Meeting on September 11, 2019, the Miami-Dade Commission on Ethics and Public Trust ("County Ethics Commission") opined that the Miami-Dade Elections Department, may accept County Outside Employment Statement forms filed with an electronic signature provided that the system implemented by Miami-Dade County meets the requirements for valid electronic signatures under Florida law. See Miami-Dade County Code § 2-11.1 (k)(2), and Fla. Stat. Chapter 668 (2019).

As background, the outside employment (OE) requirements for County employees involve two parts.¹ First, all employees must seek permission to engage in OE on an annual basis.² Secondly, full-time employees must disclose yearly, under oath, the amount of money or other consideration received from OE using the Outside Employment Statement (OE Statement).³ In order to improve

¹ The administration of the outside employment process is complex. The permission process involves the Human Resources (HR) Department which administers the OE permission process seeking opinions from the Commission on Ethics regarding possible conflicting OE. The Commission on Ethics, the HR Department, and the Elections Department administer the OE financial reporting process, which is accomplished through the OE Statement.

² Miami-Dade Code § 2-11.

³ Miami-Dade Code § 2-11.1(k)(1) and (2) state:

"(1) No person included in the terms defined in subsections (b)(5) [departmental personnel] and (6) [employees] shall receive any compensation for his or her services as an officer or employee of the County, from any source other than the County, except as may be permitted by Section 2-11 of this Code of Ordinances.

(2) All full-time County and municipal employees engaged in any outside employment for any person, firm, corporation or entity other than Miami-Dade County, or the respective municipality, or any of their agencies or instrumentalities, shall file, **under oath**, an annual report indicating the source of the outside employment, the nature of the work being

the administration and reporting of the outside employment process, on April 8, 2019, the HR Department, in collaboration with the Commission on Ethics and the Information Technology (IT) Department, launched a new online outside employment system (OE System) using the business software PeopleSoft.⁴ At this time, the new OE System only covers the outside employment permission process, including requests to the COE for ethics opinions regarding prohibited conflicts of interest under the County Ethics Code. In coming months, the HR department, the IT Department, the Elections Department and the COE will be partnering to develop and launch the second part of the OE employment requirements: the online filing of the OE Statement.

Miami-Dade County Ethics Code Section 2-11.1(k)(2) designates the Elections Department as the records custodian for the Outside Employment Statement. This form is drafted by the COE and is filed with the Elections Department. Currently, the Elections Department pays for the development of the OE Statement form (which is drafted and approved by the COE) as an auto fillable document which may be filed via email or fax with a manually affixed signature.⁵ The Elections Department receives the OE Statements, processes them, compiles a list of County Outside Employment filers, and publishes this list on its website by year.

Your department advises that as of September 3, 2019, it has received 32 percent more OE Statements for the current reporting year than the previous year. Two full-time Elections Department personnel spend half of their work day processing outside employment forms and contacting filers who have submitted forms that are incomplete or incorrect. The increase in the number of filings of the OE Statements recorded since the implementation of the new online OE system attests to significant under-reporting of outside employment by County employees. It can be reasonably inferred from this fact that the Elections Department will have to process even larger numbers of OE Statements leading to a strain on personnel and other departmental resources.

As a result, you have inquired whether the Elections Department may accept County OE Statements filed through the Peoplesoft OE system with an electronic signature, rather than accepting OE forms via email that have a “manually affixed original signature.” The purpose of this would be to facilitate the implementation of the online filing of the OE Statement thereby improving compliance with Miami-Dade Code Section 2-11.1 and reduce County costs without sacrificing confidence in the County procedures

The new online OE System uses login procedures which require entering a unique username and password for each employee in order to authenticate the information entered in the system as attributed to that employee.⁶ In addition, County staff advises that the PeopleSoft software includes

done pursuant to same and any amount or types of money or other consideration received by the employee from said outside employment. Said County employee's reports shall be filed with the supervisor of elections no later than 12:00 noon on July 1st of each year, including the July 1st following the last year that person held such employment. Municipal employee reports shall be filed with the Clerk of their respective municipalities. Said reports shall be available at a reasonable time and place for inspection by the public. The County Manager or any city manager may require monthly reports from individual employees or groups of employees for good cause.” (emphasis added)

⁴ PeopleSoft is a software that allows large entities such as the County to administer HR and other functions. For example, County employees generally complete their timesheets for payroll on PeopleSoft.

⁵ See RQO 13-02 (Allowing the Elections Department to receive financial disclosure documents with a manually affixed signature via email, fax, or other devices compatible with the Elections Department system.)

⁶ The PeopleSoft login procedures for County employees to access the online OE System and create a record of the transaction are as follows:

- County employees log into the OE System by entering, as a username, the employee number assigned by the County to each County employee as a Personal Identification (PID). The PID is exclusively assigned to only one employee. Login

security protocols and allows for the development of consent and signature screens that would be uniquely associated to the particular employee who logs into the system with the employee's individual username and password.

IV. Legal Analysis

Miami-Dade Ethics Code and Citizens Bill of Rights

Both the Citizen's Bill of Rights and Section 2-11.1(k)(2) of the County Ethics Code require that employees sign the outside employment statement "under oath"⁷ which means that the document must have a written signature (or an otherwise legally valid signature) to attest to the identity and the information that is disclosed on the statement.⁸ The requirement that the OE Statement be submitted "under oath" ensures that the document and statements provided may be used in an official manner as evidence by the Miami-Dade Commission on Ethics and Public Trust regarding any violation.

Florida Law- Validity of Electronic Signatures

Chapter 668, Florida Statutes (2019), addresses electronic transactions. and the Federal Uniform Electronic Transactions Act ("UETA").⁹ Chapter 668 establishes that e-signatures have the same legal effect as written signatures, except where a law states otherwise, and address the validity of e-signatures and e-records, such as their legal recognition, when electronic versions may be used as substitutes, and transferability.¹⁰ An "electronic signature" is defined as an "electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."¹¹ An "electronic record" is defined as a "record created, generated, sent, communicated, received, or stored by electronic means."¹²

Under Florida law, if a law requires that a signature or record be in writing, an electronic signature or record satisfies such a provision.¹³ A law which requires that information or documents be

also requires the use of a unique password created by each employee. The system prompts employees to change the password periodically throughout the year.

- Employee completes the OE information and disclosure screens.
- Once disclosure process is complete, the system creates a record of each employee's OE information, including the employee's OE disclosure, ethics opinion (if requested), and OE permission or denial, and OE Statement.
- After completing the OE process, the system will provide the employee access to his or her OE information for the current as well as previous years.

⁷ Section (A)15 of the Miami-Dade County's Citizen's Bill of Rights also requires full-time County employees to make a disclosure under oath of any outside employment and the money received therefrom Miami-Dade County Code § Section 2-11.1 (k)(2) requires full-time employees engaged in outside employment to file an OE Statement under oath reporting the money that was received in that outside employment.

⁸ The County Ethics does not define a signature under oath. However, Florida law provides a definition of the term "oath" as an "affirmation or any other form of attestation required or authorized by law by which a person acknowledges that he or she is bound in conscience of law to testify truthfully in an official proceeding or other official matter." Fla. Stat. § 837.011 (2019).

⁹ Fla. Stat. § 668.50 (2019). Pursuant to UETA, a "transaction" is an "action or set of actions occurring between two or more persons" including relations to governmental affairs. Fla. Stat § 668.50(2)(p) (2019).

¹⁰ Through the enactment of Electronic Signatures in Global and National Commerce Act ("E-SIGN") and its recommendation for states to codify their version of the UETA, Federal and State Legislatures have recognized the need to adopt comprehensive legislation concerning the development of technology and transactions. States were given the option to enact UETA substantially as written, or face pre-emption by E-SIGN. E-SIGN implements a uniform standard for validating contracts completed electronically, determines the validity of transferable records completed electronically, and establishes consumer safeguards and protections. Though similar in language, UETA was designed to promote and advance governmental transactions and commerce.

¹¹ Fla. Stat. § 668.50(2)(h) (2019).

¹² Fla. Stat. §668.50(2)(g) (2019).

¹³ Fla. Stat. § 668.50(7)(c) and (d) (2019).

submitted in writing to another person is satisfied when such information is provided electronically and gives the recipient access to retain the e-record upon receipt.¹⁴ Furthermore, Florida Statute Section 668.50 (11)(a) states that if a law requires a signature or record to be made *under oath*, the requirement is satisfied if the electronic signature of the person authorized by applicable law to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Generally, it is accepted that transactions completed through electronic signatures and stored through electronic records are valid and enforceable when certain conditions have been met:¹⁵

[a] Consent to working together electronically. The use and submission of an electronic signature is recognized when the parties, the signer and recipient of the record, agree to conduct the transaction through electronic means.¹⁶

[b] Exclusive way to sign or accept terms. An electronic signature must be attributable to the individual who creates the signature.¹⁷ It may be proven in any manner, including through the showing of efficacy by an established security procedure.¹⁸ “Security procedure” is defined as a procedure or method put in place to authenticate that an electronic record, signature or performance is that of a specific person.¹⁹ Governmental agencies are granted the autonomy to decide the means and extent to which an agency will accept, process, generate and store electronic records and signatures and are also authorized to adopt necessary regulations and urged to promote consistency and interoperability in implementation of such regulations.²⁰

[c] Access by Signatory Parties. The signing party must have access to the signed contract, records, or data after signing.²¹ Creation of a record is satisfied by the electronic submission of information so long as the electronic record generated “(1) accurately reflects the information set forth . . . after the record was first generated in final form as an electronic record” and “(2) remains accessible for later reference.”²²

County’s Online OE System and Compliance with Chapter 668

The County Ethics Code and the Citizens’ Bill of Rights require that employees sign the OE Statement “under oath”. Consequently, a legally accepted signature is required to attest to the identity of the filer and the authenticity of the information that is disclosed on the statement. A recent Florida Attorney General’s opinion has confirmed that local governments may accept

¹⁴ Fla. Stat. § 668.50(8) (2019).

¹⁵ Andrei D. Tsygankov, *Navigating E-Signature Laws* (2016).

¹⁶ As a default, an electronic record is considered sent when it is: (a) directed to a processing system that the recipient has designated to receive electronic records and where recipient can redeem the electronic record, (b) in a form or format that the system can process, and (c) transferred from the control of the sender into the control of the recipient or recipient’s processing system. Similarly, an electronic record is received when it is: (a) entered into the processing system designated by the recipient and from which the recipient can redeem the record from, and (b) in a form or format that the system can process. Fla. Stat. §§ 668.50(5)(b) and (15)(2019).

¹⁷ Fla. Stat. § 668.50(9)(a) (2019).

¹⁸ Fla. Stat. § 668.50(18)(b) (2019).

¹⁹ Sandra Norman-Eady, *Uniform Electronic Transaction Act* § 9 (2010). <https://www.cga.ct.gov/2000/rpt/2000-R-1076.htm>

²⁰ Fla. Stat. §§ 668.50 (17)-(19).

²¹ Andrei D. Tsygankov, *Navigating E-Signature Laws* (2016).

²² Fla. Stat. § 668.50(12)(a)(1) and (2). This may be satisfied by using the services of a third party as long as the requirements are met

electronic signatures and maintain electronic records provided that the requirements of Chapter 668 are met.²³

A review of the County's OE System, based upon information provided by County staff, indicates that the system addresses the factors required for compliance with Chapter 668:

[a] Consent to working together. The PeopleSoft hardware can provide a consent screen upon login, or alternatively, a consent statement at the signature screen (for example: "By this signature I consent to submitting this form electronically and I affirm or swear that the information provided here is true and correct.").

[b] Exclusive way to sign or accept terms. County employees log into the OE System by entering, as a username, the employee number assigned by the County to each County employee as a Personal Identification (PID). The PID is exclusively assigned to only one employee. Login also requires the use of a unique password created by each employee. The system prompts employees to change the password periodically throughout the year.

[c] Parties' Access to the Records. The system allows the creation of an electronic record which would be transmitted to the Elections Department which uses an electronic data management system that has been certified as meeting state standards for maintaining master records in an electronic format.²⁴ This record would be accessible to the employee for later reference.

V. Conclusion

Based on the foregoing legal analysis and the information provided by County staff, the County's PeopleSoft OE System addresses the requirements of the Florida electronic signature statutes. Thus, the Elections Department may accept the OE Statement with an electronic signature as meeting the County Ethics Code and Citizens' Bill of Rights requirements of a filing "under oath" provided that the County's OE System, People Soft or any other comparable system selected by the County for this purpose meets the requirements of Chapter 668.²⁵

This opinion is based on the facts presented and construes the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. If the facts change, please contact the Commission on Ethics. The opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

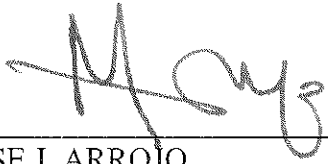
²³ Op. Att'y Gen. Fla. 2018-04.

²⁴ Fla. Stat. § 257.36 (6) (2019).

²⁵ Due to the highly technical and specialized nature of the OE System, it is recommended that the County pursue any additional legal or administrative review to ensure that the system as implemented is in compliance with Florida law.

Please feel free to contact me or Gilma Diaz-Greco, Staff Attorney, if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Arrojo", written over a horizontal line.

JOSE J. ARROJO
Executive Director

A handwritten signature in black ink, appearing to read "Gilma Diaz-Greco", written over a horizontal line.

GILMA DIAZ-GRECO
Staff Attorney