

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

TWO- YEAR RULE (Post-Employment Restrictions)

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The County Ethics Code at Section 2-11.1(q), commonly referred to as the “Two-Year Rule” or the Post-Employment Restriction ordinance, provides that,

No person who has served as an elected County official...departmental personnel or employee shall, for a period of two years after his or her County service has ceased, lobby any County officer, departmental personnel or employee, in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge or accusation in which Miami-Dade County or one of its agencies or instrumentalities is a party or has an interest whatever, direct or indirect.

This ordinance is designed to limit a former official’s or employee’s ability to use his or her former County service and contacts for personal benefit or to benefit private clients and business interests through *lobbying*, during the two years after leaving public service. The two- year period begins to run from the official date of termination. Be mindful that, the date of resignation may not coincide with the official date of termination from County employment.

Activities considered to be *lobbying* under Section 2-11.1(q) of the County Ethics Code are more extensive than those in Section 2-11.1(s) - the general Lobbying ordinance. Whereas the general Lobbying ordinance characterizes *lobbying* as advocating for actions or decisions that will foreseeably be decided by the Board of County Commissioners, Mayor or County boards, the Post-Employment Restriction ordinance includes advocating for actions or decisions that may be made at the sole discretion of any County departmental personnel or employee and not just a voting body. Hence, the post-employment restriction applies as follows:

- 1) A former official, personnel or employee
- 2) for two years after ceasing service or employment
- 3) cannot arrange, represent, participate or be publicly identified as part of a lobbying team
- 4) in any meetings, negotiations, presentations, interactions or other discussions
- 5) with County officials, staff or employees
- 6) with the purpose or intent to influence that official, staff or employee to take any type of official action or decision.

Exception: The post-employment restriction *shall not* apply to former officials, personnel or employees who become *employed* by government entities, 501(c)(3) non-profit entities or

educational institutions or entities and who *lobby* on behalf of these entities in an official capacity.

Permissible activities for former officials and employees under the “Two-Year Rule”

The Ethics Commission has issued several opinions regarding actions of former officials and employees within the ambit of activities *not* considered *lobbying* or which may otherwise be permitted under the “Two-Year Rule”. The following is a list of examples of these permitted activities. This list is non-exclusive and it merely serves as a guide. **These activities are permissible provided they are not undertaken with any purpose or intent to lobby or otherwise influence, persuade or encourage the County official or employee in any action, decision or recommendation:**

- 1) Contracting with the County
- 2) Working for a County vendor or service provider
- 3) Advising a client seeking to do business with the County
- 4) Representing, without compensation, a neighborhood association
- 5) Representing, without compensation, a not-for-profit community-based organization solely to request a grant
- 6) Performing ministerial tasks such as, completing and submitting routine administrative requests or applications; requesting procedural information; confirming receipt of plans or applications; or, inquiring on status of permits or applications
- 7) Including name and qualifications (resumé) in applications or proposals submitted to the County on behalf of clients
- 8) Merely sitting in the audience of a publicly-noticed meeting
- 9) Appearing in one’s individual capacity for the purpose of self-representation, without compensation or reimbursement
- 10) Attending an informational meeting with County staff *solely* to discuss County practices and procedures
- 11) Providing expert testimony at a publicly-noticed meeting
- 12) Meeting with County staff and appearing before County boards and committees when the meeting or appearance is related to an *awarded* contract, without any intention to amend, modify or renew the contract
- 13) Providing management or oversight of a County project related to an *awarded* contract (including providing support staff and the coordination of activities between County, outside agencies, contractors/sub-contractors)
- 14) Imparting institutional knowledge and history of the County’s programs to the current employer and its team
- 15) Submitting applications for business certifications

Publicly noticed quasi-judicial proceedings: Attorneys or other representatives retained or employed solely to represent individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where ex-parte communications are prohibited are

excluded from the definition of lobbyists under the County Ethics Code. Consequently, their representations would not be restricted by the Two- Year Rule. This exception for quasi-judicial representation is under the County Ordinance. Certain municipalities such as Miami Beach may not have this exception due to the inclusion of such activity within the definitions of lobbying in its respective municipal lobbying ordinance.

Lawyers-Lobbyists

Although a law degree is not a requirement for lobbyists, a large percentage of lobbyists are also lawyers serving or representing private clients. It can become confusing at times for lawyers to determine which hat they are wearing in any given situation. However, it is important to recognize that being a lawyer does not insulate one from engaging in lobbying activities prohibited by the “Two-Year Rule.” Whereas a former government attorney’s representation of a client during a procurement process would generally be considered lobbying, a former government attorney who meets with current County attorneys to discuss litigation matters such as settlement negotiations or pending legal actions would be engaged in the practice of law. Since the line can be easily blurred, it is recommended that, prior to agreeing to provide outside representation in a quasi-judicial public meeting or other legal matter, a former government attorney should seek an ethics opinion on the particular facts and circumstances surrounding his or her activity to determine whether it is considered lobbying, prohibited by the “Two-Year Rule.”

County officials, staff or employees may inquire about the post- employment status of any person and may not meet with any former employee if they believe they will be lobbied.

Confidential information

Section 2-11.1(h) of the County Ethics Code provides that, “*No person...shall disclose confidential information...gained through his or her official position with the County, nor shall he or she ever use such information, directly or indirectly, for his or her personal gain or benefit.*” Therefore, former employees should be mindful that if the service they provide to their new employer is related to the work they performed for the County, the former employee should consider whether he or she has access to confidential information through his or her County service which may provide an advantage to the new employer’s dealings with the County.

Any questions or concerns regarding whether a specific activity is considered lobbying and/or whether an activity is prohibited under the County’s “Two-Year Rule” or a municipal post-employment ordinance with more stringent requirements, please contact the Ethics Commission at (305) 579-2594 or ethics@miamidade.gov