

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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August 8, 2023

Via electronic mail only to expedite delivery:
JHerin@foxrothschild.com

John R. Herin, Jr., Esq.
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2 South Biscayne Boulevard, Suite 2750
Miami, Florida 33131

Re: INQ 2023-95, Section 2-11.1(p), Miami-Dade County Code, Limitations on
Recommending Professional Services

Dear Mr. Herin:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and seeking ethics guidance regarding the application of Section 2-11.1(p) of the Miami-Dade Code relating to recommending professional services.¹

Facts:

You are a partner in the Fox Rothschild law firm and also the contracted Interim City Attorney for the City of North Miami Beach, Florida (NMB). You advise that from time-to-time, it becomes necessary for the City Attorney's Office to engage outside counsel and that the same is contemplated and authorized by the North Miami Beach Charter and Code of Ordinances. Engagement of outside counsel may become necessary for a variety of reasons, including but not limited to, potential conflict of interest, the need for legal subject matter expertise in municipal representation, or the need for subject matter expert testimony.

You inquire as to whether the County Ethics Code obliges you as the North Miami Beach Interim City Attorney to consult with the NMB City Commission regarding the retainer of outside counsel.

¹ Section 2-11.1 of the Miami-Dade Code may also be referred to as the "County Ethics Code."

Issue:

Whether in those instances where a City Attorney deems it necessary to retain outside counsel, there must be a consultation with the municipality's elected body as pertains to the retainer.

Discussion:

You are a partner in a private law firm and also the contracted Interim North Miami Beach City Attorney. Section 2-11.1(a) of the Miami-Dade Code makes the County Ethics Code applicable to municipal personnel who serve in comparable capacities to County personnel. Consequently, the ethics code's provisions apply to you in the same manner as they apply to County "departmental personnel" including the County Attorney, as defined in subsection Section 2-11.1(b)(5) of the Code.²

Section 2-11.1(p) of the Miami-Dade Code provides as follows:

Recommending professional services. No person included in the terms defined in subsections (b)(1) through (6) [including a City Attorney] may recommend the services of any lawyer or law firm, architect or architectural firm, public relations firm, or any other person or firm, professional or otherwise, to assist in any transaction involving the County or any of its agencies, provided that such recommendation may properly be made when required to be made by the duties of office and in advance at a public meeting attended by other County officials, officers or employees.

In two previously issued formal opinions, the Ethics Commission has interpreted Section 2-11.1(p) of the County Ethics Code relating to recommending professional services, as specifically applied to municipal attorneys.

In RQO 10-12, the Ethics Commission opined that city attorneys who augment their own expertise to provide competent legal counsel to their city clients, by hiring specialized attorneys, expert witnesses, and others are not making prohibited "recommendations to assist transactions involving their governments" and consequently, these actions do not fall within the prohibition imposed by Section 2-11.1(p) of the County Ethics Code.

Subsequently, in RQO 19-01, the Ethics Commission clarified that the allowance on retainer of outside counsel is not without restriction and that when the matter under consideration could directly affect the terms and conditions of the attorney's employment, or of a small class of employees that includes the attorney, or the firm's retainer terms, then subsection (p) will apply.³

² See also INQ 14-42 (City Attorney for the City of Doral, a member of a private law firm, advised that he is subject to the County Ethics Code while his firm holds the contract for legal services in that city.)

³ RQO 19-01 (The County Ethics Code's prohibitions on exploitation of public position and on official action when financial interests are involved prohibit a City attorney from opining on a question regarding his or her employment terms, or of a small class of employees that includes the

Consequently, while the City Attorney may recommend or retain conflict counsel, he or she must present the retainer to the city commission or council in a public meeting, as soon as practicable.

Taken together, these two opinions allow City Attorneys to retain outside counsel in spite of the general prohibitions contained in Section 2-11.1(p) but require the involvement and concurrence of a city commission or council when the retainer is in a matter that implicates the City Attorney's financial interest, terms of employment, or firm's retainer.

In your request for guidance regarding the application of the County Ethics Code, you cite sections of the North Miami Beach Charter and Code of Ordinances relating to the retainer of outside counsel. This this agency is not authorized to interpret those provisions.⁴

However, with that caveat, the plain language of the cited Charter and Code of Ordinance provisions do not appear to conflict with Section 2-11.1(p) of the County Ethics Code or the referenced ethics opinions. Conversely, those sections are consistent with terms of subsection (p) of the County Ethics Code inasmuch as they contemplate a city attorney recommending the retainer of outside counsel, and the elected body acting upon such a request.

More specifically, Section 3.3.2 of the Charter relating to outside counsel provides that the city commission may, at the request of the city attorney, retain other counsel in any matter in which the city has an interest, and pay the compensation of such counsel. Similarly, Section 2-3.5 of the North Miami Beach Code relating to the duties of the city attorney provides that the commission may associate other counsel in any matter in which the city has an interest and pay the compensation of such associate counsel.

Opinion:

Section 2-11.1(p) of the Miami-Dade Code allows a municipal attorney to retain outside counsel to augment their own expertise to provide competent legal counsel to their city clients, by hiring specialized attorneys or expert witnesses. When the retainer is on a matter that implicates the City Attorney's financial interests, terms of employment, or his or her firm's retainer, then the conflict appointment requires the involvement and concurrence of a city commission.

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 other local laws or state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

attorney, or of the firm's retainer, and the attorney should refrain from advising the elected body or other municipal employees, and those duties should be performed by another attorney.)

⁴ Section 2-1068, Miami-Dade Code (The Ethics Commission is limited by its enabling ordinance from interpreting the County or various municipal Charters or Codes of Ordinances, except for those provisions included in Code of Ethics Ordinances, Conflict of Interest Ordinances, Lobbyist Registration and Reporting Ordinances, Ethical Campaign Ordinances or Citizens' Bill of Rights.)

Thank you again for requesting ethics guidance from the Miami-Dade County Commission on Ethics and Public Trust and please do not hesitate to contact us again should you require additional assistance.

Sincerely,



Jose J. Arrojo, Esq.
Executive Director



Loressa Felix, Esq.
General Counsel

cc: All Commission on Ethics Legal Staff

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.