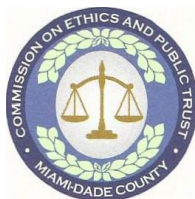


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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January 31, 2024

Al Cruz
Former MDFR employee
Delivered via email to: 305consultinggroup@gmail.com

Re: INQ 2024-20 (v), (n), (m), (p),

Dear Mr. Cruz,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding your potential appointment to the Fire Prevention and Safety Appeals Board and any possible conflict with your work as a permit expeditor and consultant assisting clients with building inspections, code compliance and zoning issues.

Facts

You advised that you retired from the Miami-Dade County Fire Rescue Department in October of 2021. You currently work for Fire Consulting Group, LLC, which is owned by your wife.¹ Your work involves consulting for private clients, including architects, about building inspections, code compliance and zoning issues and you also perform permit expediting services for clients. You are considering an appointment to the Miami-Dade Fire Prevention and Safety Appeals Board (“Board”).

The Board hears appeals of decisions by the fire officials in Miami-Dade County, including the Miami-Dade County Fire Marshal, as well as municipal fire marshals in the municipalities that have their own fire departments. *See* Section 14-35, Miami-Dade Code. Board members are appointed by the Board of County Commissioners. In addition to appeals of violations issued by fire officials, the Board can make recommendations to the County Commission and is the exclusive

¹ The Florida Department of State, Division of Corporations, records show the company was originally incorporated by you and your wife in 2023, with the incorporation documents amended later that year.

venue for any challenge to local amendments made to the Florida Fire Prevention Code. The Board is a quasi-judicial board, as defined in Section 2-11.1(b)(3) of the Ethics Code.

You advise that you have never had a client who appeared before the Board, but if, in the future, a client of yours did so, you will recuse yourself and not participate in the hearing.

Issue

Whether a prohibited conflict of interest would arise from your private employment were you to accept an appointed position to the Miami-Dade Fire Prevention and Safety Appeals Board.

Analysis

Your circumstances require an analysis of potential voting and representative conflicts you may face while serving on the Board, due to applications submitted on behalf of your clients to the County.

The potential for a voting conflict is the easier of the two analyses. Section 2-11.1(v) provides clear direction:

No person included in the terms defined in subsections (b)(3) (quasi-judicial personnel) and (b)(4) (advisory personnel) shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board:

- (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or
- (ii) stockholder, bondholder, debtor or creditor.

The Ethics Code includes other restrictions on members of quasi-judicial boards. They are prohibited from participating in any official action that directly or indirectly affects a business in which the board member or “any member of his immediate family has a financial interest.” *See* Section 2-11.1(n).

As you noted, you would be required to recuse yourself and not participate in any proceeding involving a client of your wife’s company, even if you did not personally perform any work on the client’s application or appeal.

The Ethics Code also prohibits members of quasi-judicial boards from representing third persons before the board or agency on which the member serves, either directly or through an associate, “with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person” *See* Section 2-11.1(m)(2). The same section prohibits members of quasi-judicial boards from receiving compensation “directly or indirectly or in any form” from third parties who are applying for or seeking some benefit from the board or agency on which the member serves.

This provision would not restrict you from appearing on behalf of clients before other County boards. *See* INQ 21-12 (a member of one quasi-judicial board may represent a client before a

different quasi-judicial board, with certain restrictions). You cannot, however, transact any business with any County or municipal department that is subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the Board you serve on. *See* RQO 18-04 (a Community Council member could contract with a County department that was not subject to the oversight of the member's particular Community Council). *See also* 18-03 (a member of two advisory boards could contract with the County public housing department, because the boards he sat on did not have oversight over that department).

While opinions of the Florida Ethics Commission are not binding on the Miami-Dade Ethics Commission, they are often instructive. In CEO 11-06, the state Ethics Commission found that members of a quasi-judicial board could be employed by a firm whose clients have matters that might come before the board at some point in the future. However, the Florida Ethics Commission found that a prohibited conflict would arise if the member's firm did any work on a matter once it became an issue before the board, "through original filing, 'appeal' from City staff decisionmaking, [sic] or other mechanism." *See* CEO 11-06.

The concern in your situation would be the work your wife's company does for any client on issues that may be decided by a County or municipal fire official in Miami-Dade County, even if those decisions are not appealed to your Board. These would include, for example, a review of fire safety plans.

Additionally, the Ethics Code bars members of quasi-judicial boards from recommending the professional services of anyone "to assist in any transaction involving the County or any of its agencies." *See* Section 2-11.1(p). This means that you would be unable to recommend architects, private inspectors, general contractors or "any other person or firm, professional or otherwise" to assist the clients of your wife's company in their zoning, permitting, code compliance or *any other* transaction involving Miami-Dade County or any of its agencies. This prohibition is broad and goes beyond matters involving MDFR or the Board.

Finally, the Ethics Code prohibits quasi-judicial board members from exploiting their position to obtain a benefit for themselves or another and also prohibits the same members from revealing confidential information they have access to as a result of their County service. *See* Section 2-11.1 (g) and (h). What this means in practice is that you should be cautious not to use your position on the Board to unfairly influence any other County board or agency. You should not reference your Board membership or title in any written or oral communications with County staff when you are representing private clients. *See* INQ 21-12.

Opinion

Given your current employment, you may serve on the Board, but will have to recuse yourself from any Board decision involving a current or former client of your wife's company. *See* Section 2-11.1(v) and (n). Additionally, if you accept an appointment to the Board, you and the company you work for will be required to observe certain restrictions in your private dealings going forward: 1) you and your wife's company cannot perform work on an application for any permit, permission or approval from a County or municipal fire official in Miami-Dade County; and 2) you and your private company cannot recommend to your private clients any other contractors or professionals to assist them with any transaction or application for approval involving the County. *See* Section

2-11.1(m)(2) and (p). Finally, you must be cautious in your private dealings with County staff and other County boards to not reference your County board service, in order to avoid the perception that you are attempting to exploit your position to obtain a benefit for yourself or another. *See* Section 2-11.1(g).

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the below-named Staff Attorney.

Other conflicts may apply based on directives from the City Commission or under state law. Questions regarding possible conflicts based on City Commission directives should be directed to the City Attorney's Office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

Sincerely,

Susannah Nesmith

Susannah Nesmith

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 Commission on Ethics 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 this is an informal opinion, 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.