



To: Commissioner Jorge Fors, for the City of Coral Gables

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding representing a private client, who is a commercial tenant in Coral Gables, against his or her landlord

Date: September 24, 2020

In my opinion, you may represent a private client, who is a commercial tenant in Coral Gables, against his or her landlord. There is no scenario in which the City would be involved in this dispute or its resolution and no occasion in which the matter would appear before the City Commission. The law is well-settled that an elected official has the right to make a living and you have noted that these individuals were your clients before you became an elected official which serves to illustrate that the relationship has nothing to do with the fact that you are an elected official. It is important, however, that your elected position not be mentioned or used in any way during the negotiations.

With regard specifically to your concern over “undue pressure,” the appropriate analysis is under a provision of the State Ethics Code and the corresponding provision of the Miami-Dade Ethics Code (which is mirrored in the City’s Ethics Code). Section 112.313(12), F.S., Misuse of Public Position, states:

No public officer...shall *corruptly* use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

The inclusion of the word “corruptly” is significant and defined in section 112.312(9) as an action:

...done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

Accordingly, the State Ethics Code requires proof of wrongful intent in order to find a violation under the “Misuse of Public Position” provision. The very fact that you have made this inquiry serves as proof that you possess no wrongful intent to misuse your public position.

Under the Miami-Dade Ethics Code, the corresponding provision is found in section 2-11.1(g), Miami Dade County Code, Exploitation of official position prohibited, which states:

No [Commissioner] shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others...

This provision does not require corrupt intent but would require that you actually affirmatively use (or attempt to use) your elected position to gain a benefit or advantage in the negotiations. Absent an affirmative act of this nature, your representation of this client in this case would not violate section 2-11.1(g).

This opinion is issued pursuant to section 2-252(e)(1) and (8) and section 2-300 of the City Code.

From: [Ramos, Miriam](#)
To: [Paulk, Enga](#)
Cc: [Suarez, Cristina](#)
Subject: FW: Ethics Question
Date: Thursday, September 24, 2020 12:12:05 PM
Attachments: [image001.png](#)

Enga, please publish.

Thanks,

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

Board Certified by the Florida Bar in City, County, and Local Government Law

City of Coral Gables

405 Biltmore Way, 2nd Floor

Coral Gables, FL 33134

(305)460-5084 direct dial



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From: Ramos, Miriam
Sent: Thursday, September 24, 2020 12:12 PM
To: Jorge Fors <jfors@coralgables.com>
Cc: Suarez, Cristina <csuarez@coralgables.com>
Subject: RE: Ethics Question

Commissioner Fors,

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tenant in Coral Gables, against his or her landlord. There is no scenario in which the City would be involved in this dispute or its resolution and no occasion in which the matter would appear before the City Commission. The law is well-settled that an elected official has the right to make a living and you have noted that these individuals were your clients before you became an elected official which serves to illustrate that the relationship has nothing to do with the fact that you are an elected official. It is important, however, that your elected position not be mentioned or used in any way during the negotiations.

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Miriam Soler Ramos, Esq., B.C.S.

City Attorney

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From: Jorge Fors <jfors@coralgables.com>

Sent: Thursday, September 24, 2020 9:25 AM

To: Ramos, Miriam <mramos@coralgables.com>; Suarez, Cristina <csuarez@coralgables.com>

Subject: Ethics Question

Good morning!

Can I represent a commercial tenant in Coral Gables in a dispute against their landlord? If not, can my law firm represent them?

More specifically: I wouldn't be concerned with potential issues if I was representing someone in an adversarial litigation against a Coral Gables property owner. But this probably won't be litigation. This is assisting a distressed tenant with negotiating an exit from the lease or rent concessions due to COVID hardships. In litigation, we would just duke it out and let the adversarial system play itself out. But in a negotiation setting on behalf of a distressed tenant, the dynamic is such that I would be coming to a Coral Gables property owner to ask for concessions on behalf of the client. Unlike a litigation scenario, does this pose a risk that the landlord may feel unnatural pressure to oblige if they are aware of my public office?

By the way, I don't usually do this kind of work and did not go looking for it. I do a lot of commercial landlord-tenant work, but rarely on the tenant-side, usually landlord. These people have been clients of mine long before I was elected and I have represented them in connection with various other business locations. So we are not talking about someone who sought me out because I am a commissioner and the lease in question is in the city.

And any distinction at all if I do it pro-bono vs. my usual rates?

Regards,

JORGE L. FORS, JR.

Commissioner

City of Coral Gables

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