



MEMORANDUM

Agenda Item No. 5(A)

To: Honorable Chairman Esteban L. Bovo, Jr., and
Members, Board of County Commissioners

Date: April 10, 2018

From: Harvey Ruvin, Clerk
Circuit and County Court

Subject: Appeal of Ethics
Commission Opinion
No. RQO 17-05, by
Amanda Sanfilippo,
Department of
Cultural Affairs

Christopher Agrippa, Director
Clerk of the Board Division

Before the Board of County Commissioners is the appeal of Amanda Sanfilippo, who is employed by the Miami-Dade County Department of Cultural Affairs, from a decision of the Ethics Commission (Opinion No. RQO 17-05).

CA:kak
Attachments

COMMISSIONERS

Judge Lawrence Schwartz, CHAIRMAN
H. Jeffrey Cutler, Esq., VICE CHAIR
Nelson Bellido, Esq.
Dr. Judith Bernier
Marcia Narine, Esq.



EXECUTIVE STAFF

Joseph M. Centorino
EXECUTIVE DIRECTOR
GENERAL COUNSEL
Michael P. Murawski
ADVOCATE

October 17, 2017

To:

Amanda Sanfilippo
Miami-Dade County Department of Cultural Affairs
111 NW 1st Street, Suite 625
Miami, FL

Re: RQO 17-05

Request to be placed on agenda of a public meeting of the Board of County Commissioners to seek a waiver from a prohibition in the County Ethics Code at Section 2-11.1(c)(2).

Dear Ms. Sanfilippo,

This letter is being sent to you, with a copy to the Clerk of the Board, to request that your issue be placed on the agenda of a public meeting. You are seeking a waiver from the prohibition in the County Ethics Code at Section 2-11.1(c)(2), which bars your domestic partner, Justin Long, from contracting with the County Department of Cultural Affairs.

You are appealing a decision by the Miami-Dade County Ethics Commission made at a public meeting on October 12, 2017. The Ethics Commission opined that Mr. Long may contract with the County, but you he cannot contract with the County Department of Cultural Affairs because you are employed by the Department of Cultural Affairs.¹

The County ordinance governing these facts is found at Section 2-11.1(c)(2), which states the following:

Prohibition on transacting business with the County.

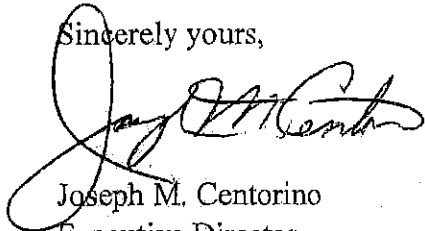
(c)(2) *County employees' limited exclusion from prohibition on contracting with the County.* Notwithstanding any provision to the contrary herein, [this subsection] shall not be construed to prevent any employee...or his or her immediate family...from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or

¹ This decision confirmed an earlier informal opinion given to Ms. Sanfilippo by Ethics Commission staff in INQ 17-41 on February 13, 2017.

any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County, as long as 1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, 2) the employee has not participated in determining the subject contract requirements or awarding the contract, and 3) the employee's job responsibilities and job description will not require him or her to be involved in the contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance. ***However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County if the employee works in the County department which will enforce, oversee or administer the subject contract*** (Emphasis added).

You have satisfied Section 2-11.1(c)(4) of the County Ethics Code by requesting an appeal with the Ethics Commission on October 14, 2017. We are, therefore, forwarding your request for a hearing to the Board of County Commissioners via the Clerk of the Board.

Sincerely yours,



Joseph M. Centorino
Executive Director

Attachments:

Record of your Request

- 10/12/2017: RQO 17-05 Memorandum to the Ethics Commission, affirmed by the Ethics Commission in a public meeting on October 12, 2017 (with attachments, including INQ 17-41).
- 10/16/2017: RQO 17-05 Letter advising that Mr. Long has a conflict under Section 2-11.1(c)(2), County Ethics Code.
- 10/17/2017: Ms. Sanfilippo's email request for an appeal and waiver of the prohibition that Mr. Long cannot contract with the County Department of Cultural Affairs.

MDP/

Cc: Christopher Agrippa, Director, Clerk of the Board of County Commissioners (COB)
Linda Cave, Asst. Director, COB
Keith Knowles, Senior County Commission, COB
Justin Long

Perez, Martha D. (COE)

From: Sanfilippo, Amanda (CUA)
Sent: Tuesday, October 17, 2017 12:38 PM
To: Perez, Martha D. (COE)
Subject: Request Appeal / Justin Long

Dear Martha,

Thank you for your voicemail explaining that the process for appealing RQO 17-05 and waver before the BCC must come from myself, as opposed to what you originally instructed. With this email I make that formal request.

I look forward to discussing next steps with you.

Warm regards,

Amanda

AMANDA SANFILIPPO
CURATOR + ARTIST MANAGER
ART IN PUBLIC PLACES
MIAMI-DADE COUNTY DEPARTMENT OF CULTURAL AFFAIRS
111 NW 1st Street, Suite 625
Miami, FL 33128
Ph. 305.375.5436 Fax 305.375.3068
amandas@miamidade.gov
www.miamidadepublicart.org

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Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure.

COMMISSIONERS

Judge Lawrence Schwartz, CHAIRMAN
H. Jeffrey Cutler, Esq., VICE CHAIR
Nelson Bellido, Esq.
Dr. Judith Bernier
Marcia Narine, Esq.



EXECUTIVE STAFF

Joseph M. Centorino
EXECUTIVE DIRECTOR
GENERAL COUNSEL
Michael P. Murawski
ADVOCATE

October 16, 2017

Amanda Sanfilippo
Curator & Artist Manager, MDC Department of Cultural Affairs
111 NW 1st Street, Suite 625
Miami, FL 33128

Re: **RQO 17-05** Transacting Business with the County, Section 2-11.1(c), Miami-Dade County Conflict of Interest and Code of Ethics

Dear Ms. Sanfilippo:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its public meeting on October 12, 2017, and based its opinion on the facts stated in your request and in INQ 17-41.

You requested an opinion regarding whether your domestic partner, Justin Long, may enter into contracts with Miami-Dade County Department of Cultural Affairs (DOCA) which employs you as Curator and Artist Manager.¹

The Miami-Dade Commission on Ethics & Public Trust (COE) opined that Justin Long (Long) is prohibited from transacting business with DOCA, the County department which employs his domestic partner.

Long is a professional visual artist and your domestic partner. You are employed as Curator and Artists Manager for DOCA, which oversees the Art in Public Places and the South Florida Cultural Consortium programs. These programs promote opportunities for artists, such as Long, to transact business with the County by creating artwork for projects aimed at improving public places throughout Miami-Dade County. The selection of the artists is through an open competitive process. If ultimately selected, the recipient artists enter into contracts with the County. These contracts are administered by DOCA. You administer and monitor these programs for DOCA.

¹ Justin Long and Amanda Sanfilippo filed a declaration of domestic partnership with Miami-Dade County and are presently registered as domestic partners under Chapter 11, Miami-Dade County Code.

A County employee or her immediately family member ² is prohibited from entering into a contract or transacting business with the County in which she or her immediate family member has a direct or indirect financial interest. ³ A *limited exclusion* to this prohibition permits a County employee or her immediate family member to transact business with the County as long as the following criteria are met: entering into the contract will not interfere with the full and faithful discharge of the County employee's duties to the County; the County employee will not participate or be involved in the contract award or requirements; and, the County employee's job responsibilities and job description will not require her to be involved with the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination or forbearance. Notwithstanding, this *limited exclusion* shall not be construed to permit a County employee to work in the County department that enforces, oversees or administers the contract (emphasis added).

Accordingly, the Ethics Commission found that the Conflict of Interest and Code of Ethics ordinance prohibits Long from contracting or transacting any business with DOCA. You may request a waiver of this prohibition from the Board of County Commissioners (BCC), which may grant a waiver upon an affirmative vote of two-thirds of the entire BCC, if it finds, after a public hearing, that the proposed transaction(s) will be in the best interest of the County.⁴

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law.

If you have any questions regarding this opinion, please contact the undersigned or Staff Attorney Martha D. Perez at (305) 579-2594.

Sincerely Yours,



JOSEPH M. CENTORINO
Executive Director and General Counsel

Cc: Justin Long

² Pursuant to §2-11.1(b)(9) of the County Ethics Code, a domestic partner is an immediate family member, subject to the jurisdiction of the County Ethics Code as it applies to immediate family members transacting business with the County. See §2-11.1(c)(1)

³ Section 2-11.1(c), County Ethics Code

⁴ Section 2-11.1(c)(4), County Ethics Code

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

MEMORANDUM

TO: Miami-Dade Commission on Ethics & Public Trust

FROM: Martha D. Perez, Staff Attorney

SUBJECT: RQO 17-05: Amanda Sanfilippo, Curator and Artist Manager for Miami-Dade County Department of Cultural Affairs
See County Ethics Code at Sec. 2-11.1(c) (2)

DATE: October 12, 2017

I. ISSUE

May the domestic partner of a County employee enter into a contract and/or transact business with the County employee's department?

II. BRIEF ANSWER

No, the immediate family member of a County employee may not contract with the employee's County department which enforces, oversees and/or administers the immediate family member's contract. See Section 2-11.1(c) (2), County Ethics Code. In the event the Ethics Commission (COE) determines that an immediate family member may not transact business with his or her partner's County department, the decision may be appealed to the Board of County Commissioners pursuant to Section 2-11.1 (c) (4) of the County Ethics Code.¹

III. BACKGROUND

Justin Long (Long) is a professional visual artist who resides in Miami-Dade County. Amanda Sanfilippo (Sanfilippo) is the Curator and Artist Manager for the County's Arts in Public

¹ A County employee may request a waiver from the Board of County Commissioners within 20 days of the COE opinion by filing a notice of appeal to the Ethics Commission. The Ethics Commission shall forward its opinion and pertinent documents to the Clerk of the Board. The Clerk shall place the request on the commission agenda for consideration by the BCC which may grant a waiver upon the affirmative vote of 2/3 of the entire BCC, after a public hearing. If it finds that the requirements of the ordinance pertaining to the exclusion of the County employee from the Code have been met and that the proposed transaction will be in the best interest of the County.

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Places (AIPP) Program and the Administrator of the South Florida Cultural Consortium Visual and Media Artists Award (SFCC) Program, programs overseen by Miami-Dade County Department of Cultural Affairs (DOCA). Long and Sanfilippo are *domestic partners*. Pursuant to Section 2-11.1(b) (9) of the County Ethics Code, a "domestic partner" is an immediate family member, subject to the jurisdiction of the County Ethics Code as it applies to immediate family transacting business with the County. See Section 2-11.1(c) (1), County Ethics Code.

DOCA and its advisory board, the Cultural Affairs Council, create and promote opportunities for artists and cultural organizations for the benefit of cultural facilities and resources for the County's residents and visitors. Two of these opportunities are offered in the AIPP and SFCC Programs.

The AIPP Program is charged with commissioning, curating, tracking, maintaining and promoting the County's art collection and upgrading public buildings, thus improving public spaces throughout the County.² AIPP is overseen by a fifteen-member Art in Public Places Trust appointed by the Miami-Dade County Board of County Commissioners (BCC). Sanfilippo's responsibilities include the administration of the selection process through an open competitive procedure for the artists in the Program. Essentially, any professional artist who wants to be considered for upcoming projects and selections for art commissions, applies to the AIPP Program through a "Calls to Artists, a publicly-noticed process." All the applications are reviewed and the commissions are recommended by the Trust. These recommendations are received by the Professional Advisory Committee for its consideration and approval.

Sanfilippo also directs and administers the SFCC, a program also overseen by DOCA³. This is an annual competitive, merit-based program which operates at multiple levels of independent review. Artists apply by submitting their credentials and work samples through an open application process. These applications are reviewed by two panels: a regional jury of art

² See FY 2016-2017 Cultural Affairs' Department Adopted Budget and Multi-Year Capital Plan.

³ The South Florida Cultural Consortium is comprised of local cultural agencies of five South Florida counties: Martin, Monroe, Palm Beach, Broward and Miami-Dade- operating under an interlocal agreement to coordinate projects and share resources for the growth of cultural development in South Florida.

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professionals reviews and submits recommendations; a separate panel of national arts experts examines those recommendations and provides a final recommendation which is presented for final approval to the SFCC Board. Out of approximately 225 applicants from five member counties, approximately twelve (12) artists are recommended for fellowship awards (approximately six of the recommended artists reside in Miami-Dade County). The BCC votes on the recommendations submitted by the SFCC for the award of these commissions and execution of the contracts awarding fellowships of \$15,000.00 for each artist.

Sanfilippo's duties and responsibilities as administrator of SFCC consist of the following:

- a) Makes recommendations, in conjunction with Department Director Michael Spring, members of the South Florida Consortium, staff and arts experts, on the selection of the regional and national panelists;
- b) Conducts pre-application workshops and phone consultations for the artist applicants, in order to de-mystify the application process and ensure specific criteria for eligibility is met;
- c) Prepares eligible submissions for panel review by checking every application submitted and verifies that each applicant has correctly uploaded the work and provided proof of residency;
- d) Convenes the panels and coordinates meeting dates;
- e) Answers procedural questions posed by panelists;
- f) Prepares the panel's final recommendations for SFCC;
- g) Upon the approval of the Board of County Commissioners, issues the agreements to the artists for their review and execution and routes them to County staff;
- h) Once agreements are executed, communicates with the exhibition host curatorial staff and the selected artists;

Sanfilippo does not have any decision-making role in the competitive process outlined herein; does not exert any overt influence over the panels; and, does not participate in the evaluations or selections or recommendations of applicants. She is, nevertheless, entrusted with the administration and monitoring of both of the aforementioned DOCA programs. Long wishes to apply for the AIPP and SFCC Programs. If selected, he would be entering into contracts with

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the County through DOCA, the department charged with administration, monitoring, enforcement and oversight of these agreements.

Prior to Sanfilippo's employment with DOCA, Long had been eligible for and, in fact, was recommended for open competitive opportunities with the AIPP Program and the SPCC Program. However, on February 13, 2017, INQ 17-41 was issued by COE staff recommending that Long abandon the process of applying for the SFCC Program.⁴

IV. LEGAL ANALYSIS

A County employee or his/ her immediate family member is *prohibited* from entering into any contract or transacting any business with the County in which he/she or his/her immediate family has a direct or indirect financial interest. See Section 2-11.1(c) (1), County Ethics Code. There is a limited exclusion of this *prohibition*. Under Section 2-11.1(c) (2) of the County Ethics Code, a County employee or the immediate family of a County employee *may* transact business with the County by entering into a contract with the County **as long as** the following criteria are met: entering into the contract will not interfere with the full and faithful discharge of the County employee's duties to the County; the County employee will not participate or be involved in the contract award or requirements; the County employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination or forbearance; and, the County employee will not be working in the County department that enforces, oversees or administers the subject contract, agreement or grant (**emphasis added**). The *prohibition* may only be waived by a two-thirds vote of the Board of County Commissioners (BCC). See Section 2-11.1 (c) (4)⁵

⁴ See INQ 17-41 attached herein and made part of this Memorandum. Inquiries are informal opinions issued by staff which have not been reviewed by the Ethics Commission. See INQ 13-02.

⁵ Pursuant to §2-11.1(c) (4), a waiver may be granted upon a finding that the requirements of the ordinance pertaining to the exclusion of a County employee have been met and the proposed transaction will be in the County's best interest (**emphasis added**).

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

The County Ethics Code prohibits Long from entering into an agreement with DOCA because his domestic partner and County employee, Sanfilippo, works in DOCA, the department that enforces, oversees and administers the AIPP and SFCC artist award contracts, unless a waiver is granted by a majority vote of the BCC. See RQO 11-03 (the father of a County employee may contract with the County but his company may not contract with the Public Works Dept. because his son is employed by that department, and it may also not contract with DERM because his wife is employed by DERM); INQ 02-10 (the spouse and children of a County employee are barred from purchasing vehicles from GSA, because the employee is employed by GSA but the Commission can grant a waiver of this rule); INQ 10-08 (as long as the wife of a former County employee works in the Transit Dept., the former County employee is prohibited from entering into contracts with Transit unless he seeks a waiver of this prohibition); INQ 12-117 (the mother of a County employee may not enter into a contract with her daughter's County department); INQ 14-12 (the mother of a County employee working in the Human Community Services and Human Services Dept. is prohibited from entering into a contract with that department); INQ 15-76 (the spouse of an employee of the Aviation Dept. is prohibited from being contracted to perform art-related services for a future project, regardless of his unique qualification, because the Aviation Dept. will oversee and administer the subject contract. The only alternative would be to seek a waiver from the BCC); INQ 15-142 (the domestic partner of a County employee shall not enter into a land surveying contract with WASD where her domestic partner works as a plant electrician; the employee shall not participate in the contract requirements or award or be involved in the contract in any way).

It is well established that the domestic partner of a County employee is prohibited from transacting any business with the County department which employs his domestic partner unless a waiver is granted by the BCC. In addition, a strong appearance of impropriety would be created in this situation due to the perception that Sanfilippo could use her influence, knowledge and contacts to benefit Long in the recommendation, selection and contractual phase of these programs.⁶ Section 2-11.1(g) of the County Ethics Code prohibits a County employee from using

⁶ There is no indication that Sanfilippo has exerted any influence or intends to exert any influence in the selection of Long for the aforesaid programs.

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his or her official position to secure special privileges and/or exemptions for herself or others, including her immediate family. An action taken by a County employee which results in a special benefit in a County program for an immediate family member could be perceived as a form of exploitation. See INQ 16-123 (The interaction between a municipal chief of staff [through his government position] and FIU officials in an attempt to influence his daughter's application with FIU's Frost Museum "could easily be perceived as an Exploitation of Official position..."); See also INQ 05-119 (AIPP trust member cannot participate or vote on any item involving her artist husband, as such action would create a conflict).

Although Sanfilippo's role in the selection of the artist recipients may be considered ministerial, her role as the County's Curator and Artist Manager as well as the relationships she has developed with the Trust/Consortium members, place her in a position of great influence and discretion in the administration of these programs and any benefit bestowed upon an artist recipient. The perceived influence extends beyond the recommendation and selection of the artists. Even if Sanfilippo is completely removed from the recommendation/selection phase of these awards, she remains an integral part of the programs as administrator and "sponsor" of the award artist recipients. As the County's Curator she has a unique and important role which carries not only distinction but County-wide recognition. She is an integral part of the collection, organization, exhibition and recognition of the recipient artist's work in the selected arts institutions.

V. CONCLUSION

Based on the facts presented, Long should be prohibited from transacting business with DOCA, the County department which employs Sanfilippo, his domestic partner. In the event that the COE affirms this Memorandum, Sanfilippo may request a waiver of this prohibition to the BCC on behalf of Long.⁷

⁷ Procedurally, a notice of appeal based on RQO 17-05 consists of a request to the BCC for a public hearing for a waiver relating to (describe the transaction[s] in question) pursuant to the decision of the Ethics Commission in Opinion RQO 17-05, finding a conflict of interest in an immediate family member of a County employee transacting business with the County.

REQUEST FOR ETHICS OPINION



Carlos A. Gimenez, Mayor

September 1, 2017

Joseph M. Centorino
Executive Director
Miami-Dade Commission on Ethics & Public Trust
19 West Flagler Street, Suite 820
Miami, FL 33130

Dear Mr. Centorino,

Please accept this letter as a request for guidance from the Ethics Commission. I have prepared this request in consultation with Michael Spring, Senior Advisor to the Mayor and Director of the Department of Cultural Affairs, and Deborah Margol, Deputy Director of the Department of Cultural Affairs.

I am the Curator and Artist Manager for Miami-Dade County's Art in Public Places program, under the purview of the Department of Cultural Affairs. Art in Public Places is overseen by a 15-member citizens' Trust appointed by the Board of County Commissioners. My responsibilities include administration of the artists' selection process, which operates entirely through open, competitive procedures. To be considered for upcoming projects and selections for art commissions, professional artists apply to the Art in Public Places program through publicly noticed, open "Calls to Artists." All artist submissions are reviewed and all commissions are recommended by members of a Professional Advisory Committee, a pool of independent fine arts experts identified and designated by the Art in Public Places Trust. The Art in Public Places Trust receives all recommendations of the Professional Advisory Committee for consideration and is the final arbiter for approval, award and execution of contracts with artists.

I also administrate the South Florida Cultural Consortium Visual and Media Artists award program (SFCC), a regional program under the purview of the Department of Cultural Affairs. This annual, competitive, merit-based program operates with multiple levels of independent review. Artists submit their credentials and work samples through an open application process. Applications are reviewed by two separate panels: a regional jury of art professionals reviews all submissions and develops a short list of recommendations; and a separate panel of national art experts examines each of the applications advanced by the regional jury to determine the final recommendations. The recommended artists are presented for consideration and final approval to the SFCC board, which is comprised of representatives from the local arts agencies of Broward, Miami-Dade, Martin, Monroe, and Palm Beach counties. The SFCC operates under an Interlocal Agreement executed by all five member counties.

My domestic partner, Justin Long, is a professional visual artist who resides in Miami-Dade County. Prior to my County employment (which began in June of 2016), Justin, as a qualified working artist, has been eligible to, has competed in and been recommended for open competitive opportunities for APP public art commissions, as well as has competed in the South Florida Cultural Consortium Visual and Media Artists award program.

Such opportunities for professional artists within Miami-Dade County's programs are unique to our Department. In light of our personal relationship, I am seeking guidance to ensure that Justin is able to continue to compete through these and any other artists programs for which he is eligible and duly qualified.

Kind regards,

Amanda Sanfilippo

A handwritten signature in dark ink, appearing to read "Amanda Sanfilippo".

Amanda Sanfilippo
Curator and Artist Manager, Art in Public Places
305.375.5436 / amandas@miamidade.gov

Cultural Affairs
111 NW 1st Street • Suite 625
Miami, FL 33128-1994
T 305-375-4634 F 305-375-3068
miamidadearts.org

miamidade.gov

c: Michael Spring, Senior Advisor, Office of the Mayor and Director, Miami-Dade Department of Cultural Affairs
Deborah Margol, Deputy Director, Miami-Dade Department of Cultural Affairs

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INQ 17-41

From: Perez, Martha D. (COE)
Sent: Monday, February 13, 2017 1:27 PM
To: Margol, Deborah (CUA) <DEBO@miamidade.gov>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: Deborah Margol, Deputy Director, MDC Dept. of Cultural Affairs, Conflict of Interest, INQ 17-41

Dear Deborah,

Thank you for supplying me with additional information regarding this request. You inquire whether there may be a conflict of interest in connection with an employee's involvement with South Florida Cultural Consortium's (SFCC's) Visual Arts & Media Artists Program (Visual Arts Program), a program administered by the County's Department of Cultural Affairs, when one of the applicants selected for the program's award (the recipient) is the County employee's domestic partner.

Background

I will incorporate your rendition of the facts as provided herein, with the additional following observations:

- The SFCC is comprised of local cultural agencies from five counties, Miami-Dade County (MDC) being one of them.

- MDC has entered into an agreement with SFCC for inter-county cooperation for the enhancement, encouragement and public expenditures in support of the culture and the arts within the five-county members, and specifically, to provide programmatic and financial administrative services to SFCC programs, including the Visual Arts Program.

- The County's Department of Cultural Affairs (DOCA) administers the Visual Arts Program and serves as the fiscal agent for the SFCC's contributed funds from the member counties for the Consortium's programs which benefit South Florida (funds contributed from each of the participating counties are allocated in accordance with their respective awards).

- In addition to the fellowship award of grants to eligible local artists, the Visual Arts Program gives the fellowship recipient artists the opportunity to exhibit their work at a specified museum/institution host.

- There is basically what amounts to a six-step process involved in the awards of the Visual Arts Program grants: applications are received and examined for qualification and eligibility requirements; submissions are presented to a regional panel which conducts an initial interview review of work samples and submits a shortened list of recommendations to applicants for consideration by a national panel; the national panel is convened to recommend the final recipients of the awards to the SFCC; the SFCC reviews and ratifies the national panel's recommendations; the recommendations are presented to the BCC in a resolution authorizing grant awards for the SFCC's Visual Arts Program's recipients; and an award agreement is executed between MDC's DOCA and the artist recipient of the funds.

- MDC's DOCA is charged with the authority to execute the contracts for these grants, amending and exercising all provisions contained in the contracts, and monitoring the contracts on behalf of the SFCC.

- MDC's DOCA issues the award agreements for execution by the recipients of the awards, subject to BCC approval.

Sanfilippo's duties & responsibilities at DOCA are as follows:

- Makes recommendations, in conjunction with the Department Director, Michael Spring, the members of the South Florida Cultural Consortium, other staff and arts experts, on the selection of the regional and national panelists;

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- Prior to the application deadline, conducts pre-application workshops and telephone consultations for the artist applicants, to de-mystify the process and to provide "tips" for optimizing consideration of an application, such as emphasizing that work samples submitted should demonstrate an established and recognized body of work completed within the three years prior to the date of application, and that there should be consistency in the submitted body of work (SFCC has specific criteria for award eligibility);
- Prepares eligible submissions received for panel review. Her role in this instance is ministerial rather than supervisory, consisting of checking every application submitted to verify each applicant has correctly uploaded the work submitted for review and has provided adequate proof of residency. You advise that her interaction with the applicants at this stage, if any, is limited to communicating to the artist applicant that his or her work may not represent a contiguous body of work as required by SFCC standards (SFCC has specific criteria for award eligibility);
- Convenes the panels;
- Answers procedural questions from panelists;
- Prepares and presents the final recommendations of the national panel to SFCC;
- Communicates with the exhibition host curatorial staff & selected artists. The selected recipients are automatically considered for the exhibition show and Ms. Sanfilippo does not exercise discretion on the artists' participation in any specific show, rather, it is automatic.
- Upon the BCC's approval of the recommended award recipients, issues the agreements to each artist for review and execution and routes them to various County offices for signatures and execution.

You have indicated that one of the six Visual Arts Program artists selected by the national panel for an award is the domestic partner of Amanda Sanfilippo (Sanfilippo), the Curator & Artists Services Manager for DOCA and the Program Administrator for SFCC's Visual Arts Program. You further advise that Sanfilippo does not have any involvement with the interlocal agreement between the County and SFCC or the grant funding for the SFCC; does not have any decision-making role in the competitive process outlined herein; does not exert any influence over the regional or national panels; and, does not participate in the panels' evaluations of the artist applicants, hence did not have any active role in the selection of her domestic partner as an applicant recommended for the award.

Analysis

As the domestic partner of Sanfilippo, the recipient falls under the definition of "immediate family member" as contemplated by the County Ethics Code. See Section 2-11.1(b)(9). Therefore, Sanfilippo's domestic partner is subject to the jurisdiction of the County Ethics Code as it applies to immediate family members of County employees who are transacting business with the County, including receiving grants from the County. See Section 2-11.1(c)(1), County Ethics Code; INQ 13-90

The County Ethics Code at Section 2-11.1(c)(2) allows immediate family members of County employees to contract with the County in certain circumstances and if the following criteria are met: (1) *entering into the contract will not interfere with the full and faithful discharge of the County employee's duties to the County*; (2) *the County employee will not participate or be involved in the contract award or requirements*; (3) *the County employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination or forbearance*; and, (4) *the County employee will not be working in the County department that enforces, oversees or administers the subject grant or contract*.

While determining any potential conflict involved in the recipient's participation in the Visual Arts Program, we pay special attention to the duties and responsibilities Sanfilippo performs for the Visual Arts

Program, to wit: she is the Program Administrator; she convenes the panels; she communicates with applicants and conveys to them any problems with the eligibility requirements; she transmits recommendations to the panel in charge; she communicates with panel members who may have procedural questions; and, although she is not involved in the selection of the recommended recipients, she has contact with those panelists charged with recommending the awards. Furthermore, *Sanfilippo works in the County department that oversees the interlocal agreement with SFCC and issues and administers the award agreements with all recipients on behalf of the County and SFCC.* Consequently, pursuant to Section 2-11.1(c) and (d) of the County Ethics Code, Sanfilippo's domestic partner may not enter into the Visual Arts Program award agreement for the receipt of County funds because the criteria is not met and Sanfilippo works in the County department that oversees and administers the agreement.

Additionally, while recognizing the ministerial duties Sanfilippo has engaged in during the selection process, her role as Program Administrator for the Visual Arts Program creates an appearance of impropriety because of the *perception* that she could use her influence, knowledge and contacts to benefit the recipient. Even though the initial stages of the competitive process have already been concluded, Sanfilippo remains the administrator of the program "sponsoring" the award recipients, therefore, she is intrinsically a part of the program's overall initiatives and goals. Section 2-11.1(g) prohibits a County employee from using his or her official position to secure special privileges and/or exemptions for herself or to hers. Taking any action that specifically benefits a program associated with the County employee or her immediate family member could be perceived as a form of exploitation. *See* INQ 16-123. The national panel recommendation phase has been completed and Sanfilippo's partner has been selected as one of the applicants to be recommended by the SFCC as a final recipient of the award. It is important to recognize that the final recommendations have not been presented to the BCC for approval and any prospective agreement between the artist recipient and MDC has not been executed, therefore, the transaction has not been concluded. However, in order to avoid a conflict of interest, it is strongly recommended that Sanfilippo's domestic partner/recipient abandon the process at this time and/or decline any ultimate award of funds connected to DOCA and the Visual Arts Program.

Please note that, pursuant to Section 2-11.1(c)(4) of the County Ethics Code, Sanfilippo may request a waiver from the BCC within ten (10) days from receipt of this response by filing a notice of appeal to the Ethics Commission, which in turn, will forward this matter to the BCC. The BCC may grant a waiver upon a 2/3 affirmative vote after a finding that the requirements pertaining to the exclusion have been met and the *proposed* transaction (grant award) would be in the best interest of the County.

This opinion is based on the facts as presented. If any of these facts change, please contact us.

Sincerely,

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**SECTION 2-11.1 (c) (1-4),
COUNTY ETHICS CODE**

Section 2-11.1(c) (1-4). Prohibition on transacting business within the County.

(1)

No person included in the terms defined in subsection (b)(1) through (6) and in subsection (b)(9) shall enter into any contract or transact any business, except as provided in subsections (c)(2) through (c)(6) in which he or she or a member of his or her immediate family has a financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. Willful violation of this subsection shall constitute malfeasance in office and shall effect forfeiture of office or position.

(2)

County employees' limited exclusion from prohibition on contracting with the county. Notwithstanding any provision to the contrary herein, subsections (c) and (d) shall not be construed to prevent any employee as defined by subsection (b)(6) [excluding departmental personnel as defined by subsection (b)(5)] or his or her immediate family as defined by subsection (b)(9) from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County, as long as (1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, (2) the employee has not participated in determining the subject contract requirements or awarding the contract, and (3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance. However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

(3)

Limited exclusion from prohibition on autonomous personnel, advisory personnel and quasi-judicial personnel contracting with county. Notwithstanding any provision to the contrary herein, subsections (c) and (d) shall not be construed to prohibit any person defined in subsection (b)(2), (b)(3) and (b)(4) from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the board member or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County. However, any person defined in subsection (b)(2), (b)(3) and (b)(4) is prohibited from contracting with any agency or department of Miami-Dade County subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the board of which the person is a member.

(4)

Any person defined in subsections (b)(2) through (b)(4) and subsection (b)(6) shall seek a conflict of interest opinion from the Miami-Dade County Commission on Ethics and Public Trust ("the Ethics Commission") prior to submittal of a bid, response, or application of any type to contract with the County by the person or his or her immediate family. A request for a conflict of interest opinion shall be made in writing and shall set forth and include all pertinent facts and relevant documents. If the Ethics Commission finds that the requirements

of this section pertaining to exclusions for persons defined in subsections (b)(2) through (b)(4) and subsection (b)(6) are not met and that the proposed transaction would create a conflict of interest, the person defined in subsections (b)(2), (b)(3), (b)(4) or (b)(6) may request a waiver from the Board of County Commissioners within ten (10) days of the Ethics Commission opinion by filing a notice of appeal to the Ethics Commission. The Ethics Commission shall forward the notice of appeal and its opinion and any pertinent documents to the Clerk of the Board of County Commissioners (the "Clerk") forthwith. The Clerk shall place the request on the commission agenda for consideration by the Board. The Board of County Commissioners may grant a waiver upon an affirmative vote of two-thirds (2/3) of the entire Board of County Commissioners, after public hearing, if it finds that the requirements of this ordinance pertaining to the exclusion for a County employee from the Code have been met and that the proposed transaction will be in the best interest of the County. The Board of County Commissioners may, as provided in subsection (c)(6), grant a waiver to any person defined in subsection (b)(2) through (b)(4) regarding a proposed transaction. Such findings shall be included in the minutes of the board. This subsection shall be applicable only to proposed transactions, and the Board may in no case ratify a transaction entered into in violation of this subsection.

If the affected person or his or her immediate family member chooses to respond to a solicitation to contract with the County, such person shall file with the Clerk a statement in a form satisfactory to the Clerk disclosing the person's interest or the interest of his or her immediate family in the proposed contract and the nature of the intended contract at the same time as or before submitting a bid, response, or application of any type to contract with the County. Along with the disclosure form, the affected person shall file with the Clerk a copy of his or her request for an Ethics Commission opinion and any opinion or waiver from the Board. Also, a copy of the request for a conflict of interest opinion from the Ethics Commission and any opinion or waiver must be submitted with the response to the solicitation to contract with the County.

Notwithstanding any provision herein to the contrary, the County and any person or agency acting for Miami-Dade County shall not award a contract to any person defined in subsections (b)(2) through (b)(4) and subsection (b)(6) or his or her immediate family individually or through a firm, corporation, partnership or business entity in which the person or any member of his or her immediate family has a controlling financial interest, unless the Ethics Commission has rendered an opinion that entering the contract would not be a conflict of interest or the Board waives the conflict in accordance with the provisions of this ordinance.

The County Manager is directed to include language in all solicitations for county contracts advising persons defined in subsections (b)(2) through (b)(4) and subsection (b)(6) of the applicable conflict of interest code provisions, the provisions of this ordinance, including the requirement to obtain an Ethics Commission opinion and make disclosure, and the right to seek a legal opinion from the State of Florida Ethics Commission regarding the applicability of state law conflict of interest provisions.