Memorandum

MIAMI-DADE COUNTY

Date: July 27, 2007

To: Honorable Chairman Bruno A. Barreiro and Members,
Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Nepotism Policy Update

In accordance with the requirements of Resolution R-736-07, sponsored by Commissioner Barbara J. Jordan and adopted by the Board on June 5, 2007, this memorandum is to communicate the actions taken to disseminate and communicate the County's Nepotism Policy.

1. A memorandum was sent to all department directors and elected officials on June 11, 2007, which recited the State of Florida's statute on nepotism and clearly articulated the County's Nepotism Policy (Attachment 1). Specifically, it stated that relatives of the following cannot be appointed, employed, nor promoted within their departments:
   a. Department Directors, regardless of who else is delegated employment authority;
   b. Assistant Directors, Division Directors and all Managers who, by department policy or practice, are delegated the authority to make employment or promotion decisions; and
   c. Managers, Supervisors and others who, because of their position or customary involvement in personnel decisions, would normally be expected to make an employment or promotion recommendation to others within their departments, regarding a particular appointment or promotion.

2. The County's Nepotism policy has been incorporated into all applicable County training programs, such as the New Employee Orientation, Executive Employee Orientation, Supervisor Certification Program, and Ethics Awareness Training (Attachment 2).

3. A set of procedures relating to the Nepotism Policy has been drafted for inclusion in the County's Procedures Manual (Attachment 3).

4. Finally, the Human Resources Department (HR) has added a PowerPoint presentation and a resource manual to the HR website to provide employees with convenient online access to the training. A "Statement of Understanding" has been created for employees to sign and will be included in their respective personnel files to document their knowledge of the policy (Attachment 4).

Departments will be notified of the training and other resources through memoranda to Department Directors, announcements on the County's web portal, and through Departmental Personnel Representative and Training Liaison meetings.

Attachments

cc: Honorable Carlos Alvarez Mayor
Denis Morales, Chief, Office of the Mayor
Robert Cuevas, County Attorney
Assistant County Managers
Corinne Brody, Special Assistant/Interim Human Resources Director
Human Resources Senior Staff

Memorandum

MIAMI-DADE COUNTY

DATE: June 11, 2007

TO: Department Directors

FROM: George M. Burgess
County Manager

SUBJECT: Nepotism Policy

Miami-Dade County's personnel system is based on merit principles; all appointments and promotions in the County's merit system are to be made solely on the basis of merit and fitness. Department directors are responsible for ensuring that their departments' appointment and promotion processes are conducted in a non-discriminatory manner without regard to among other factors, familial status. Miami-Dade County's nepotism policy is based upon Section 112.3135 of the Florida Statutes (copy attached) which prohibits the appointment, employment, promotion or advancement of specified relatives by any public official who is vested with or delegated the authority to appoint, employ, promote or advance, or who is in a position to recommend an individual for appointment, employment, promotion or advancement.

Relatives listed in the statute include father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother and half sister.

Officials with the authority to appoint or promote or who are in a position to recommend appointment or promotion cannot avoid the statute's prohibitions by temporarily delegating their authority to others in particular cases. Accordingly, it is important to clarify who, under County policy or practice, has been vested or delegated the authority to appoint and promote employees or to recommend appointment or promotion of employees.

The Personnel Rules for the Classified Service provide that department directors are vested with the authority to appoint or promote employees within their departments. Department directors may, and usually do, delegate hiring decisions to subordinate assistant directors, division directors and managers. The delegation of this authority does not negate the department director as the vested authority. Thus, the nepotism prohibitions will always apply to the appointment or promotions of relatives by department directors, regardless of any administrative delegation of the appointment authority to others. Any delegation of authority has the effect of expanding the prohibitions to those with the delegated authority, but it does not absolve the department director of his or continuing obligation to abide by the statute's prohibitions.

If, by policy or practice, a department director has delegated employment and promotion authority to a lower level executive or manager, the law's prohibitions apply to them as well. They likewise cannot avoid the law's prohibitions by temporarily delegating that authority to others for particular decisions in which a relative is involved. For example, if an assistant director has been delegated the authority to make departmental hiring decisions, the department cannot hire the official's wife, son or daughter, even if the official is temporarily removed from participating in the selection process for the position for which the relative applied. Only if the assistant director's authority to hire or promote is removed permanently and entirely would he or she no longer be subject to the same limitations.

In addition to department directors who are vested with such authority, and subordinate executives and managers who may be delegated such authority, the statute also applies to those who are *in a position to recommend* individuals for employment or promotion. Managers, supervisors and others who, because of the positions they hold or because of their customary involvement in personnel decisions, make recommendations on employment or promotions to a higher authority are subject to the law's prohibitions. As an example, County employees are precluded from serving on any interview panel involving a specified relative.

Thus, relatives of the following cannot be appointed, employed nor promoted within their departments:

a. Department Directors, regardless of who else is delegated employment authority;
b. Assistant Directors, Division Directors and all Managers who, by department policy or practice, are delegated the authority to make employment or promotion decisions;
c. Managers, Supervisors and others who, because of their position or customary involvement in personnel decisions, would normally be expected to make an employment or promotion recommendation to others within their departments, regarding a particular appointment or promotion.

While Florida law prohibits public officials from employing or promoting their relatives, it does not prevent relatives from working together in the same department. The statute also does not prohibit one relative from supervising another. However, to avoid all appearance of favoritism and any potential for violation of State law, as well as operational challenges that may arise, department directors are strongly encouraged to refrain from placing relatives within another relative's chain of command or placing or maintaining relatives in close proximity in a departmental subunit.

I expect departments to take whatever steps are required to comply with Florida law and County policy. Questions regarding this policy clarification should be directed to Donald S. Allen, Director, Employee Relations Department at 305-375-1589. I appreciate your cooperation in addressing this issue.

Attachment

Cc: Honorable Carlos Alvarez, Mayor
Honorable Chairman Bruno A. Barreiro and Members,
Board of County Commissioners
Murray Greenberg, County Attorney
Denis Morales, Chief of Staff, Office of the Mayor
Assistant County Managers

112.3135 Restriction on employment of relatives.--

(1) In this section, unless the context otherwise requires:

(a) "Agency" means:

1. A state agency, except an institution under the jurisdiction of the Division of Universities of the Department of Education;

2. An office, agency, or other establishment in the legislative branch;

3. An office, agency, or other establishment in the judicial branch;

4. A county;

5. A city; and

6. Any other political subdivision of the state, except a district school board or community college district.

(b) "Collegial body" means a governmental entity marked by power or authority vested equally in each of a number of colleagues.

(c) "Public official" means an officer, including a member of the Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals.

(d) "Relative," for purposes of this section only, with respect to a public official, means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(2)(a) A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or

exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member. However, this subsection shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population. This subsection does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide.

(b) Mere approval of budgets shall not be sufficient to constitute "jurisdiction or control" for the purposes of this section.

(3) An agency may prescribe regulations authorizing the temporary employment, in the event of an emergency as defined in s. 252.34(3), of individuals whose employment would be otherwise prohibited by this section.

(4) Legislators' relatives may be employed as pages or messengers during legislative sessions.

History.--ss. 1, 2, 3, ch. 69-341; ss. 15, 35, ch. 69-106; s. 70, ch. 72-221; s. 3, ch. 83-334; s. 1, ch. 89-67; s. 4, ch. 90-502; s. 2, ch. 94-277; s. 1407, ch. 95-147; s. 1, ch. 98-160; s. 42, ch. 99-2.

Note.--Former s. 116.111.