

MEMORANDUM

Agenda Item No. 7(C)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: (Second Reading: 2-6-24)
December 12, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to conflict of interest and Code of Ethics ordinance; amending section 2-11.1 of the Code; revising provisions pertaining to prohibition on contracting with the County for certain County employees and their immediate family members; providing additional exception to such prohibition for certain contracts relating to essential human and social services under certain circumstances; making technical and conforming changes

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Senator René García.



Geri Bonzon-Keenan
County Attorney

GBK/uw

MDC001

Memorandum



Date: February 6, 2024

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Fiscal Impact Statement for Ordinance Relating to County Employees Contracting With the County for Essential Services

The implementation of this Ordinance will not have a fiscal impact on the County.



Carladenise Edwards
Chief Administrative Officer

Memorandum



Date: February 6, 2024

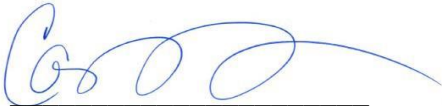
To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Social Equity Statement for Ordinance Relating to County Employees Contracting With the County for Essential Services

This Ordinance amends Section 2-11.1 of the Code by revising provisions pertaining to prohibition on contracting with the County for certain County employees and their immediate family members; providing additional exception to such prohibition for certain contracts relating to essential human and social services under certain circumstances; making technical and conforming changes.

Through these changes, the Ordinance could provide a social benefit by ensuring that county employees and their immediate families have access to essential human services under certain circumstances. Such opportunities should conform to all criteria established by County Code and meet the highest level of ethical standards.



Carladenise Edwards
Chief Administrative Officer



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: February 6, 2024

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 7(C)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(C)
2-6-24

ORDINANCE NO. _____

ORDINANCE RELATING TO CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE; AMENDING SECTION 2-11.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REVISING PROVISIONS PERTAINING TO PROHIBITION ON CONTRACTING WITH THE COUNTY FOR CERTAIN COUNTY EMPLOYEES AND THEIR IMMEDIATE FAMILY MEMBERS; PROVIDING ADDITIONAL EXCEPTION TO SUCH PROHIBITION FOR CERTAIN CONTRACTS RELATING TO ESSENTIAL HUMAN AND SOCIAL SERVICES UNDER CERTAIN CIRCUMSTANCES; MAKING TECHNICAL AND CONFORMING CHANGES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, in 1996, Miami-Dade County residents voted to amend the Home Rule Charter to create an ethics commission; and

WHEREAS, subsequently, the Board enacted Ordinance No. 97-105, establishing the Miami-Dade County Commission on Ethics and Public Trust (the “Ethics Commission”), an independent agency with advice-giving and quasi-judicial powers that is charged with interpreting and enforcing the County’s ethics rules; and

WHEREAS, these ethics rules are set forth in the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (the “Ethics Ordinance”), which is codified in section 2-11.1 of the County Code; and

WHEREAS, among other topics, section 2-11.1 provides rules and prohibitions pertaining to the ability of County officials and employees, and certain members of their families, to enter into contractual and business transactions with the County; and

WHEREAS, for example, section 2-11.1(c)(1) generally prohibits County employees and their immediate family members, individually or through a business in which the employee or immediate family member has a financial interest, from contracting or transacting any business with the County; and

WHEREAS, however, section 2-11.1(c)(2) provides a limited exclusion to the general prohibition, allowing the employee, his or her immediate family members, or business in which the employee or immediate family member has a financial interest, to contract with the County, as long as entering into the contract would not interfere with the employee's full and faithful discharge of his or her duties to the County, the employee has not participated in determining the contract requirements or awarding of the contract, the employee's job responsibilities will not require him or her to be involved in the contract in any way, and the employee is not employed in the County department that will enforce, oversee, or administer the contract; and

WHEREAS, pursuant to section 2-11.1(c)(4), any employee or his or her immediate family member who seeks to avail himself or herself of the limited exclusion to the general prohibition on contracting with the County must seek a conflict of interest opinion in advance from the Ethics Commission; and

WHEREAS, there are County employees and members of their immediate family who may require assistance and qualify for the receipt of certain essential human and social services provided by the County relating to housing, utilities, childcare, healthcare, transit, or other similar matters; and

WHEREAS, to access such essential human and social services provided through County programs, County employees and their immediate family members could only permissibly contract with the County by way of the limited exclusion in the Ethics Ordinance to the general prohibition on contracting with the County, assuming they qualify for that limited exclusion; and

WHEREAS, the Ethics Commission, in interpreting and enforcing compliance with the Ethics Ordinance, has had to advise certain County employees and immediate family members in need, and who otherwise would qualify for essential human and social services provided through County programs, that they may not receive the services because they are employed, or their family member is employed, in the County department that enforces, oversees, or administers the particular program, thereby making them ineligible for the above-mentioned limited exclusion and thus preventing them from receiving such basic human and social services; and

WHEREAS, this issue was highlighted by a County employee's recent appeal to the Board of an Ethics Commission advisory opinion that concluded the employee could not enter into a contract with the County for certain financial assistance with paying her electricity bills because she worked in the department that enforces, oversees, and administers the particular program; and

WHEREAS, County employees and their immediate family members in need should not be denied access to essential human and social services provided through County programs simply because of employment in a County department that enforces, oversees, or administers the particular program; and

WHEREAS, the Ethics Commission has adopted a resolution recommending that the Ethics Ordinance be amended to permit County employees and their immediate family members in need to access essential human and social services through a County program, irrespective of the fact that the employee works in the County department that will enforce, oversee, or administer the program and contract, provided that certain mitigation measures are formulated, implemented, and followed for the duration of the contract; and

WHEREAS, a copy of the above-referenced Ethics Commission resolution is attached hereto as Exhibit 1; and

WHEREAS, accordingly, this Board wishes to amend the Ethics Ordinance to permit under certain circumstances such employee contracts with the County relating to essential human and social services,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. The foregoing recitals are hereby approved and incorporated herein.

Section 2. Section 2-11.1 of the Code of Miami-Dade County is hereby amended to read as follows:¹

Sec. 2-11.1. Conflict of Interest and Code of Ethics Ordinance.

* * *

(c) Prohibition on transacting business within the County.

- (1) >>General prohibition.<< 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)(7)<< ~~[(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<< ~~[[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

¹ Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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) >>except as provided in subsection (c)(6) below,<< 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, >>except as provided in subsection (c)(6) below,<< 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<< [[~~county~~]] department >>that<< [[~~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 >>the County<< [[~~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) >>Requirement to seek ethics opinion; appeal to County Commission.<< 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.

>>(1)<< 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.

>>(2)<< 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.

>>(3)<< 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)(7)<< [~~(e)(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.

>>(4)<< 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.

>>(5)<< 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.

>>(6)<< The County Manager is directed to include language in all solicitations for >>County<< [[~~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.

- (5) >>Permissible contracts and business transactions<<
 Nothing herein shall prohibit or make illegal >>any of the following contracts or business transactions:<<
- (1) the payment of taxes, special assessments or fees for services provided by County government;
 - (2) the purchase of bonds, anticipation notes or other securities that may be issued by the County through underwriters or directly from time to time;
 - (3) the participation of the persons included in the terms defined in subsection (b)(1) through (6), except for employees of the general services administration and their "immediate family" as defined in (b)(9), in the public auction process utilized by the County for the disposal of surplus motor vehicles;
 - (4) the purchase of surplus personal property, pursuant to administrative order, by persons defined in subsection (b)(1) through (6) and (9);
 - (5) an application for direct assistance from the Miami-Dade County Department of Housing and Urban Development or an application to participate in a program administered by the Department of Special Housing has been submitted by an applicant who is a County person as defined in subsection (b) and who would but for this section be eligible for such assistance from said department; provided, however, that the exception provided in this >>subparagraph<< ~~[[paragraph]]~~ shall not extend to an employee of the Miami-Dade County Department of Housing and Urban Development or the Department of Special Housing who participates in the administration of said programs>>, except as provided in subsection (c)(6) below<<; ~~[[¶]]~~
 - (6) >>an<<~~[[and]]~~ application to participate in a single-family mortgage loan program sponsored by the Housing Finance Authority of Miami-Dade County, has been submitted by a County person as defined in subsection (b), and would but for this section be eligible for participation in said program; provided, however, that the exception provided in this >>subparagraph<< ~~[[paragraph]]~~ shall not extend to

an employee of the Miami-Dade County Finance Department who participates in the administration of said single-family mortgage loan program>>, except as provided in subsection (c)(6) below<< [[-]]>>; or
 (7) an application seeking assistance with costs associated with housing, childcare, utilities, public transit, healthcare, or other basic or essential human or social services from the Miami-Dade County Community Action and Human Services Department, Juvenile Services Department, Public Housing and Community Development Department, Transportation and Public Works Department, or any other County department or agency acting on behalf of the Miami-Dade County, by an applicant who is a County employee as defined in subsection (b)(6) and who would but for this section be eligible for such assistance; provided, however, that the exception provided in this subparagraph shall not extend to an employee who participates in the administration of said programs, except as provided in subsection (c)(6) below.

(6) *Procedure where County employee seeks to contract for essential services and works in department that enforces, oversees or administers such contract; mitigation measures required.* Where a County employee would be eligible for any assistance described in subsection (c)(5) above, but for his or her participation in the administration of said program or programs, such employee may seek the desired assistance notwithstanding the foregoing prohibitions, provided that the employee agrees to appropriate mitigation measures, including his or her removal from participation in the administration of the program as regards his or her application. Any such employee shall seek advice from the Ethics Commission as to the appropriate mitigation measures prior to submitting an application for any assistance. If, after consultation with the employee and proper inquiry, the Ethics Commission finds that specific mitigation measures would be sufficient to abate the potential conflict of interest, then the employee may proceed with his or her application for assistance, provided that such mitigation measures are fully implemented and followed for the duration of the employee's contract.

(7)<< ~~[[6]]~~ *Extension of waiver to >>County Commissioner<< ~~[[county commissioners]]~~, autonomous personnel, quasi-judicial personnel, and advisory personnel. The requirements of this subsection may be waived for a particular transaction only by affirmative vote of two-thirds of the entire Board of County Commissioners, after public hearing. Such waiver may be affected only after findings by two-thirds of the entire Board that:*

- (1) An open-to-all sealed competitive bid has been submitted by a County person as defined in subsection (b)(2), (3) and (4), or
- (2) The bid has been submitted by a person or firm offering services within the scope of practice of architecture, professional engineering, or registered land surveying as defined by the laws of the State of Florida and pursuant to the provisions of the Consultants' Competitive Negotiation Act, and when the bid has been submitted by a County person defined in subsection (b)(2), (3) and (4), or
- (3) The property or services to be involved in the proposed transaction are unique and the County cannot avail itself of such property or services without entering a transaction >>that<< ~~[[which]]~~ would violate this subsection but for waiver of its requirements, or
- (4) That the property or services to be involved in the proposed transaction are being offered to the County at a cost of no more than 80 percent of fair market value based on a certified appraisal paid for by the provider, and
- (5) That the proposed transaction will be to the best interest of the County.

Such findings shall be >>included in<< ~~[[spread on]]~~ the minutes of the Board. This subsection shall be applicable only to prospective transactions, and the Board may in no case ratify a transaction entered in violation of this subsection.

* * *

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is

held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:

James Eddie Kirtley



Prime Sponsor: Senator René Garcia

MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST

RESOLUTION NO. 23-01

RESOLUTION OF THE MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST, IN MIAMI-DADE, FLORIDA, URGING THE MIAMI-DADE BOARD OF COUNTY COMMISSIONERS TO AMEND SECTION 2-11.1(c)(5), MIAMI-DADE CODE, TO FACILITATE COUNTY EMPLOYEES' RECEIPT OF HUMAN SERVICES BENEFITS FROM MIAMI-DADE COUNTY

WHEREAS, pursuant to Section 2-1072(a)(1), Miami-Dade Code, the Miami-Dade County Commission on Ethics and Public Trust is authorized to interpret, render advisory opinions, and enforce compliance with the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1, Miami-Dade Code, ; and

WHEREAS, pursuant to Section 2-1072(c), Miami-Dade Code, the Miami-Dade County Commission on Ethics and Public Trust is required to review the Miami-Dade Conflict of Interest and Code of Ethics Ordinance and report to the County Commission; and

WHEREAS, Section 2-11.1(c)(1), Miami-Dade Code, the Conflict of Interest and Code of Ethics generally prohibits employees of Miami-Dade County and their immediate family members, individually or through a business in which the employee or immediate family member has a financial interest, from contracting or transacting any business with Miami-Dade County; and

WHEREAS, Section 2-11.1(c)(2), Miami-Dade Code, provides a limited exclusion to the general prohibition, allowing the employee, his or her immediate family members, or business in which the employee or immediate family member has a financial interest, to contract with Miami-Dade County as long as entering into the contract would not interfere with the employee's full and

faithful discharge of his or her duties to the County, the employee has not participated in determining the contract requirements or awarding of the contract, and the employee's job responsibilities will not require him or her to be involved in the contract in any way, and the employee is not employed in the County department which will enforce, oversee, or administer the contract; and

WHEREAS, pursuant to Section 2-11.1(c)(4), Miami-Dade Code, any employee or his or her immediate family member who seeks to avail himself or herself of the limited exclusion to the general prohibition on contracting with the County must seek a conflict-of-interest opinion from the Commission on Ethics and Public Trust; and

WHEREAS, there are County employees and members of their immediate family who need assistance and qualify for the receipt of human services provided by the County relating to housing, utilities, childcare, healthcare, transit, or other related programs; and

WHEREAS, in order to access these human services provided through County programs, these County employees and their immediate family members are required to contract with the County via the limited exclusion to the general prohibition on contracting with the County; and

WHEREAS, the Commission on Ethics and Public Trust, in interpreting and enforcing compliance with the Conflict of Interest and Code of Ethics Ordinance, must advise County employees and immediate family members in need, and who otherwise would qualify for human services provided through County programs, that they may not receive the services because they are employed, or their family member is employed, in the County department which enforces, oversees, or administers the particular program, thereby preventing the receipt of human services; and

WHEREAS, County employees and their immediate family members in need should not be denied access to human services provided through County programs because of employment in a County department which enforces, oversees, or administers the particular program; and

WHEREAS, an amendment to the Conflict of Interest and Code of Ethics Ordinance would allow County employees and their immediate family members in need to access human

services via a County program, irrespective of the employee's working in the County department which will enforce, oversee, or administer the program and contract, while maintaining required standards of ethical conduct.

NOW THEREFORE, BE IT RESOLVED, by the Miami-Dade County Commission on Ethics and Public Trust, that:

Section 1. The Commission adopts the forgoing recitals as if fully set forth herein.

Section 2. The Commission urges the Miami-Dade Board of County Commissioners to amend Miami-Dade Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1(c), Miami-Dade Code, to provide as follows:

Nothing shall prohibit an application to the Miami-Dade County Community Action and Human Services Department, Juvenile Services Department, Public Housing and Community Development Department, Transportation and Public Works Department, or any other County department or agency acting on behalf of the Miami-Dade County, which seeks assistance with costs associated with housing, childcare, utilities, public transit, healthcare, or other basic social services, by an applicant who is a County employee as defined in subsection (b) and who would but for this section be eligible for such assistance, provided, however, that the exception provided in this paragraph shall not extend to an employee who participates in the administration of said programs. A person eligible for such assistance but for his or her participation in the administration of said program, may seek an opinion from the Miami-Dade County Commission on Ethics and Public Trust regarding mitigation of the conflict of interest, by his or her removal from participation in the administration of the program as regards his or her application. If the Ethics Commission, after consultation with the employee and proper inquiry, finds that the conflict of interest has been abated by the employee's removal from participation in the administration of the program as regards his or her application, then the employee may proceed with his or her application for assistance.

Section 3. The Commission directs its staff to communicate this resolution to the Miami-Dade Board of County Commissioners and to advocate for legislative or other action to amend the Miami-Dade Conflict of Interest and Code of Ethics Ordinance in the manner detailed.

The Chair of the Ethics Commission declared this resolution duly **PASSED AND ADOPTED** on this the 10th day of October 2023

DocuSigned by:

229F6B48B9E44EC

Dr. Judith Bernier, Chair

Approved as to form and legal sufficiency:


Loressa Felix, General Counsel