



**CASE
CLOSED**

Miami-Dade Commission on Ethics & Public Trust
Investigative Report

Date: 11-18-19

Investigator: Nilda Olmo
Complainant: R. Aristilde
Date Opened: 08/22/2019

Case No.: PI 19-34
Subject/Case Name: Sarah Johnston
Date Submitted: 10/18/19

Allegation(s):

On August 21, 2019, the COE received an email from R. Aristile (Aristile) requesting an investigation into alleged violations of the Conflict of Interest and Code of Ethics by North Miami Beach (NMB) City Attorney Sarah Johnston (Johnston).

Aristile alleged that Johnston is exploiting her official position by attempting to secure employment with the law firm of Weiss Serota Helfman Cole & Bierman (Weiss Serota) by "advocating" a contract for them to take over the City Attorney role upon expiration of her [Johnston's] contract. Aristile said this conflict prevents Johnston from "offering sound legal advice to the benefit of the City and residents."

Aristile alleged Johnston advocated for Weiss Serota, while meeting with Commissioners individually and continued to offer her opinions of the outsourcing matter from the dais on two Commission meetings held on July 16, 2019 and August 20, 2019.

Relevant Law:

Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Sec. 2-11.1 (g)
Exploitation of official position prohibited states:

No person included in the terms defined in Subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

Background and Investigation/Interviews:

Johnston started with NMB as Assistant City Attorney in June 2014. After the previous City Attorney, Jose Smith, left the office in June 2018, the Commission appointed Johnston as Interim Attorney, subsequently becoming City Attorney in November 2018.

The Legal Department's full staff dwindled down to one attorney after Assistant City Attorney Valerie Vicente (Vicente) left in May 2019. Johnston's contract expires at the end of September 2019 and there was speculation in the City that instead of staying with an in-house City Attorney, the Commission might consider out-sourcing the City Attorney position to a law firm.

At the July 16th, 2019 Commission meeting, a discussion item was added to the agenda by Commissioner Fortuna Smukler. The item pertained to the hiring of Weiss Serota as Interim City Attorney to perform legal services for the City.

During a Workshop on July 22, 2019, the Commission was provided with material regarding upcoming Policies, Procedures and Protocols, as well as material pertaining to the City Attorney's Office item regarding Weiss Serota, which was set as a discussion item at the August 20th, 2019 Commission meeting.

On August 20th, 2019, the Commission met to discuss and consider Weiss Serota as Interim City Counsel and Johnston's contract expiring in October 2019. Lawyers from Weiss Serota, Dan Espino (Espino) and Bret Schneider (Schneider) were present during the meeting as well as COE Executive Director José Arrojo (Arrojo). Johnston indicated she had been in contact with the Director of the Ethics Commission for guidance, to make sure she was "abiding by the rules", and there was no conflict.

Schneider addressed the Commission stating he had the pleasure of working for the City and City Commission further expressing his respect for Sarah. He said, "Notwithstanding whether you retain our firm, we would have a great interest in hiring Sarah at some point in time, regardless."

Schneider mentioned having contacted Arrojo as well as Robert Meyers (Meyers), former Executive Director of the COE, currently a Partner in Weiss Serota in order to ensure the process was "completely ethical and above board."

During the discussion, Commissioner Michael Joseph (Joseph) expressed his concern regarding a possible conflict, indicating Arrojo might be able to clarify and address his concerns. In response, Schneider indicated the first issues to consider was to determine whether to hire or not to hire Weiss Serota, "we think that if you are interested in outsourcing, it would be in Weiss Serota's best interest, and in your best interest, to bring Sarah in. So, this is not Sarah Johnston advocating for anything, this is...we believe, it would be best for the City to hire us, and we believe if you do hire us, Sarah would be an asset to our representation of this City and to other cities. We think Sarah is an asset in our representation to a number of our Municipal clients."

At the Commission's request, Arrojo addressed the Mayor and Commission. Arrojo clarified that the COE had no opinion as to the City's decision regarding the process/decision to hire Weiss Serota or go with an open competitive process. Arrojo further indicated his previous interaction and communication with City Attorney Johnston.¹

Arrojo stated that Johnston was, at that meeting, acting in compliance with ethics guidance he had provided and not in violation of subsection (g) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, inasmuch as she declined to advocate one way or the other regarding the appointment of WS.

Upon conclusion of the item, there was a motion to appoint Weiss Serota as Interim City Attorney effective October 1, 2019 contingent on negotiation and approval of a retainer agreement and subject to the resignation of Sarah Johnston as City Attorney (effective September 30, 2019). The motion was made by Commissioner Barbara Kramer and seconded by Commissioner Fortuna Smukler. The Motion failed by a 3-4 vote.

Subsequently, Commissioner McKenzie Florimond made a motion to review a contract/proposal from Weiss Serota and consider the item at the Special Commission Meeting on August 2019 (seconded by Smukler). Commissioner Michael Joseph suggested an amendment to the motion requesting to hire independent counsel for the purpose of reviewing Weiss Serota's contract/proposal. The motion passed unanimously, and Johnson Anselmo was hired as independent counsel.

On Monday, October 7th, during a special Commission meeting discussing the procedure and qualification process pertaining to the City Attorney, the Commission ultimately decided to issue a Request for Qualifications (RFQ) and discussed the process of selecting the evaluation committee.

On Wednesday, September 18th, 2019, COE investigator Olmo and Advocate Michael Murawski met with NMB Commissioners at 17011 NE 19th Avenue, City Hall.

The Mayor and Commissioners voluntarily agreed to be interviewed regarding the City Attorney's office discussion item on the July 16th and August 20th City Commission meetings as well as the July 22nd, 2019 Workshop.

¹ Johnston contacted Arrojo on August 19, 2019 and sought ethics guidance regarding an item on the agenda the following day, to discuss and consider potentially hiring of WS as City Attorney. Mr. Arrojo advised Ms. Johnston that she should not recommend the abolition of the in-house legal department and the hiring of WS as City Attorney in a non-competitive, unsolicited proposal scenario inasmuch as she had a pecuniary interest in the transaction because her new employer, WS, would be securing NMB as a client whose legal business would be worth between \$500,000 and just under a \$1,000,000 per year, based upon her recommendation *in her official capacity*. An email dated Wednesday, August 21, 2019 containing a synopsis of the conversation between Arrojo and Johnston is attached as part of the exhibits.

McKenzie Fleurimond, Commissioner Group 5

McKenzie Fleurimond (Fleurimond) served as Councilman from 2010 to 2011, subsequently serving on various community boards thereafter, and winning the November 20, 2018 runoff.

December 2018 was Fleurimond's first meeting as City Commissioner. During the lengthy discussion regarding Johnston's employment status, Fleurimond said he expressed his vision on moving NMB forward and "continuity," voicing his opinion and concerns regarding the City Attorney, encouraging the Commission to not take adverse action against Johnston. Furthermore indicating, Johnston had not been given the opportunity of proving herself to the new Commissioners, therefore firing her during that first meeting, "was not responsible."

Fleurimond mentioned Espino and Schneider reached out to him approximately one month prior to the July 16th, 2019 Commission meeting. They met at Vicky Bakery and discussed Weiss Serota's history with the City and what they can offer as a result of the long-standing relationship.

Fleurimond mentioned a subsequent conversation along the same lines and recalled, "they expressed an interest in her [Johnston] whether or not the City chose Weiss Serota. That conversation took place prior to the August 20th meeting.

Fleurimond indicated the Commissioners met with Johnston prior to Commission meetings in order to go over the agenda. When asked if Johnston advocated or pushed for the hiring of Weiss Serota, Fleurimond advised that she [Johnston] "never did", and stated she told him she could not provide particular advice on what to do or not to do."

Michael Joseph, Esq., Commissioner Group 7

Commissioner Michael Joseph (Joseph) won his Commission seat in the November 2018 elections.

Sometime in January 2019, Joseph indicated meeting with Johnston to discuss the Legal Department. Joseph questioned the Legal Department being "understaffed," and did not understand why, particularly because, "there was an interest and a lot of people were applying, but positions were not being filled." Joseph stated that during their conversation, Johnston brought up Weiss Serota and told him they reached out to her, expressing an interest, indicating they would love to have her onboard.

Joseph said that approximately a week prior to the July 16th Commission meeting, Espino and Schneider contacted him to discuss the upcoming agenda item and their vision regarding the City Attorney process. He stated, "I listened to their pitch." They explained why they were best suited for the job, "the best choice for the City."

Joseph stated that the discussion of the item by the Commission at late hours of the night was not proper, "it made us look bad." He continued by stating he did not understand the "urgency." Joseph expressed his dissatisfaction and concern as to the direction of the meeting and what appeared to

be Johnston's imminent resignation. According to him, "things didn't sit well," so he requested a Workshop in order to obtain additional information and weigh their options. Joseph voiced concern over the fact that Mayor DeFillipo was absent from the July 16th meeting, stating that he thought it was "odd."

As to the Workshop, he was questioned about Johnston advocating one way or another to which he said, "no, she was not lobbying."

At the conclusion of the interview, Joseph provided copies of the following emails:

1. Email dated September 2, 2019 from former NMB Mayor Beth Spiegel to the Mayor and Commission regarding NMB City Attorney. The email pertained to outsourcing the City Attorney's office and referenced an article in the Miami New Times.²
2. Email dated September 3, 2019 from Commissioner Kramer to Beth Spiegel. Cc'd: Johnston; Esmond Scott and José Arrojo.

Barbara Kramer, Commissioner Group 6

Barbara Kramer (Kramer) has served as Commissioner for NMB since 2009.

Kramer indicated that as to Weiss Serota and the hiring of the new City Attorney, she had done her homework and felt confident July 16th in making an informed decision regarding outsourcing the Legal Department, but she was "OK" with having a workshop.

Days prior to the July 16th Commission meeting, Kramer mentioned meeting with Espino and Schneider at Starbucks to discuss questions/concerns about outsourcing the Legal Department. They discussed Weiss Serota's history with the City, their commitment to their clients and long-established relationships in the community.

Questioned as to Johnston advocating for Weiss Serota, Kramer stated "never, never, never." Kramer mentioned she was surprised to hear about Johnston possibly joining Weiss Serota, "it would be amazing to have her join the firm," adding she was very impressed with Johnston's track record, feeling confident about the decision of out sourcing Weiss Serota, more so with Johnston, "it's a bonus."

Referencing the August 20th meeting and a possible conflict or violation, Kramer indicated that after extensive research, and having Arrojo present at the meeting, she felt comfortable, knowing the process was above board and transparent.

Phyllis S. Smith, Commissioner Group 3

Phyllis Smith (Smith) mentioned her dedication and longtime commitment to the City dating back approximately 13 years. She discussed her challenges and history with the City of NMB during her tenure as a Commissioner and the changes in the Legal Department.

² Copy of the email is attached as part of the exhibits.

As to Johnston's upcoming contract expiration and discussion item regarding Weiss Serota, she recalled a phone conversation with Espino, prior to the July 16th meeting, regarding the firm, and their vision for NMB. She indicated that during the conversation, Espino mentioned "they" had an interest in Johnston joining the firm upon her contract expiration. A follow up meeting took place at a nearby bakery also to discuss the process.

Smith praised Weiss Serota, mentioning the firm's positive relationship with the City, litigation experience and established reputation, but indicated she had concerns regarding the firm's availability and presence in the City from a 5-day week to possibly a 3-day week. She mentioned the need for a Workshop in order to explore other options and evaluate/discuss Weiss Serota's proposal prior to deciding.

Smith indicated that prior to the July 16th meeting, she met with Johnston to discuss upcoming agenda items and recalled discussing the Legal Department being under staffed and the process of attempting to staff the department unsuccessfully.

Another concern brought up by Smith regarding July 16th was the need to make the decision and vote that night, "It was the urgency, as if Sarah was leaving tomorrow... I didn't know, I wasn't aware."

Smith mentioned realizing the legal challenges Johnston was facing as a result of being the one City Attorney for the entire Commission, seven bosses," adding to the responsibility of litigation, drafting ordinances and resolutions, and other pending litigation, i.e. the Water Plant, but her concerns stemmed from how things evolved, leading up to the agenda item, even though Johnston was not fired or had resigned.

When questioned as to Johnston advocating for Weiss Serota, Smith indicated Johnston had not.

Fortuna Smukler, Commissioner Group 4

Fortuna Smukler (Smukler) was appointed in May 2018, subsequently winning a seat in the November elections. A newcomer to the Commission, Smukler indicated she had only known Johnston for a short period of time, and throughout the process of deciding which way to go regarding Legal Department, Smukler indicated her number one priority is what's best for the City of NMB.

Although the discussion item regarding the City Attorney's Office was added to the July 16th meeting at her request, Smukler indicated that after a lengthy meeting going into the morning hours, she voted against the meeting continuing past midnight because, "it did not look right."

Smukler mentioned there was a lot of controversy surrounding Weiss Serota and the decision to outsource the Legal Department and the Commission was not in unison. Therefore, after two Commission meetings and a Workshop, a decision had not been made.

At the August 20th meeting, Smukler acknowledged Arrojo's presence, indicating she wanted the residents to know he was present during the meeting and the meeting was transparent, with the Commission doing nothing wrong or unethical.

Other than meeting with Johnston for the purpose of discussing or going over the agenda, Smukler indicated Johnston never advocated to her for the hiring of Weiss Serota.

Paule Villard, Commissioner Group 2

Paule Villard (Villard) expressed admiration for Johnston, describing her as honest, efficient and hard-working. Villard stated Johnston is always readily available. She mentioned meeting with Johnston prior to Commission meetings to go over the agenda. Villard expressed her concern about the Legal Department and how it went from three to one attorney, leaving the Department understaffed.

Villard mentioned Espino and Schneider had reached out to the Commissioners individually prior to the July 16th meeting. In her case, she met them at Starbucks to discuss options, transition, their history with the City, the firm's governmental experience, and to answer her questions or concerns.

During that meeting, Weiss Serota expressed their interest in Johnston, indicating that as a result of their ongoing working relationship with Johnston, recognizing her work ethic, they were interested in bringing her into the firm.

Villard indicated still having questions and concerns regarding the process and transition period at the August 20th meeting and expressing those concerns.

Villard stated that at no time during meetings or otherwise, did Johnston advocate for Weiss Serota.

Mayor Anthony F. DeFillipo

On September 24th, 2019, COE investigator Olmo and Advocate Michael Murawski met with Anthony DeFillipo (DeFillipo) at NMB City Hall.

DeFillipo served 6 years as Commissioner, winning the NMB Mayoral race in November 2018.

DeFillipo stated that although he did not attend the July 16th, 2019 Commission meeting, due to medical reasons, he reviewed the video and was kept abreast of the situation. DeFillipo stated he never met or had a conversation with Johnston regarding this matter and Johnston never advocated for or against Weiss Serota.

During the August 20th meeting, DeFillipo suggested for allowing a probationary period to establish if Weiss Serota "works for the City," explore that possibility and taking into account the firm's interest in Johnston and her institutional knowledge. He mentioned the unsuccessful process of recruiting and retaining staff for the Legal Department and the urgent need to rebuild the Department with professional, knowledgeable individuals.

Sarah Johnston, City Attorney

Sarah Johnston (Johnston) voluntarily agreed to meet with this investigator and COE Advocate Michael Murawski regarding the allegations mentioned herein.

Johnston started with NMB as Assistant City Attorney in June 2014 and was promoted to Deputy City Attorney in 2016. After Jose Smith left the office in June 2018, the Commission appointed

Johnston as Interim Attorney, subsequently becoming City Attorney in November 2018.

Johnston discussed how the Legal Department's full staff dwindled down to one attorney after Assistant City Attorney Valerie Vicente (Vicente) left in May 2019.

Johnston indicated that prior to Vicente leaving, she worked closely with her on City matters. Even though she [Johnston] signed off on monthly payments to Weiss Serota, Vicente was the one who reviewed the invoices.

Johnston mentioned coming to terms with being understaffed, but touched on the difficulties the Department was facing, i.e. legal challenges, pending litigations and several issues making it, "not a sustainable position," a situation discussed with, and familiar to the Mayor and Commissioners.

Johnston explained the process of attempting to staff the Department was difficult even though they ran ads and interviews were conducted. The applicants were few and did not possess the experience or meet the qualifications.

As a result of the issues faced by the department, Weiss Serota was brought in to assist/back up. Schneider was brought in on or about November 2018 on limited capacity to work on employment litigation and a couple of other cases. Although Weiss Serota had contact with City staff and Legal Department on a regular basis, the subject of a possible job opportunity with the firm was not a topic they discussed.

Johnston indicated meeting Espino for the first time in January 2018, at the Miami Shores Country Club in a social setting. They talked about commonalities in their professions. Espino mentioned Weiss Serota is always interested in recruiting good attorneys, but that was the extent of the conversation.

In addition to the Mayor and Commissioners, Schneider and Espino were also aware of the situation and challenges with the Legal Department. Johnston indicated meeting with the Commissioners individually to discuss the Legal Department situation, with the conversation revolving around the options and possible direction of the department, always having the City's best interest in mind, while taking into consideration the struggles the City was facing. The talks were informative and amicable, although she experienced resistance from Joseph and recalled a meeting with him at her office in which he wanted to discuss a previous opinion issued by Weiss Serota regarding "term limits" and Charter changes.³ Johnston indicated Joseph was not in agreement with the opinion and was troubled by the term limit issue with the Mayor.

Johnston stated Espino brought up Weiss Serota's interest in municipal attorneys and expressed an interest in her. The topic was also brought up by Schneider and the substance of the conversation revolved around her current situation and the prospect of a possible job opportunity with Weiss Serota.

³ Provided by Johnston and attached as part of the exhibits are copies of the Legal Opinion regarding term limits by Jean Olin, Esq., and Robert Meyers; text messages between Jose Smith and Jean Olin; emails which discussing term limits/charter changes; emails with WS regarding the opinion [term limits].

In May, Johnston met with Serota at an informal meeting in which they briefly discussed her current situation, salaries, benefit packages etc., but there was no contract in place, no offers, “no numbers were discussed or agreed to.”⁴

In addition to Weiss Serota, Johnston also met with Joe Geller from Greenspoon Marder. Johnston mentioned her interest in moving to California, and Greenspoon Marder is a national full-service law firm with a branch office in Los Angeles.

Johnston said she proceeded cautiously, making sure not to opine or suggest anything that might be perceived as going one way or another regarding Weiss Serota. In both the July and August meetings, she did not advocate for or against Weiss Serota.

Johnston indicated that she put together the City Attorney Discussion package handed out to the Commission for the July 22, 2019 Workshop. The Chief Procurement Officer and Director of Human Resources were available to answer questions regarding the process. Johnston was present to answer questions relating to her role as City Attorney, but never advocated for or against Weiss Serota.

Johnston provided the COE with a copy of the package provided to the Commission at the workshop.⁵

Due to the ongoing issues, Johnston reached out to the COE Director for ethics guidance. COE Executive Director Arrojo was present during the lengthy discussion in the August meeting where the Commission discussed the hiring of Weiss Serota versus the Request for Qualifications process. Arrojo addressed the Commission answering questions pertaining to the process and Johnston’s role.

Brett J. Schneider, Member, Weiss Serota Helfman Cole & Bierman

Brett Schneider (Schneider) was interviewed telephonically and provided information concerning the allegations brought forth by Aristile.

Schneider indicated Weiss Serota was initially retained by NMB in November/December 2018 on a limited capacity, essentially to review and work on a couple of employment litigation matters. Shortly thereafter, joined by Espino, Weiss Serota worked closely with Johnston becoming a backup office to the Legal Department.

Schneider was aware of the politically volatile environment the Legal Department was facing, and the difficulty and dissatisfaction Johnston experienced with the level of job applicants while attempting to staff the department.

⁴ Joe Serota was present during the April 25th, 2019 Commission meeting when a discussion item pertaining to the National Day of Prayer was on the agenda. Shortly thereafter, Johnston said Serota reached out to her, praised her execution, and they discussed the City Attorney’s process and her future, expressing an interest in having her become part of the firm.

⁵ Attached as part of exhibits is the City Attorney Discussion package that included Sunny Isles Beach RFP with Responses, Opa Locka RFP with responses, North Bay Village RFP with responses and Plantation RFQ with ranking and agreement; Memo to Mayor /Commissioner regarding the use of outside counsel (October 16,2018 Commission Meeting); List of matters handled by outside counsel.

Going before the Commission on July 16th, after having met with the elected officials individually, Schneider addressed the ‘formal process’, described what Weiss Serota planned for the City, mentioning the perfect alignment of factors, and their interest in Johnston coming on board as a member of the firm.

Coming into the Legal Department and working closely with Johnston, he learned she was happy in her prior role as Assistant City Attorney and realizing the difficulties she faced as the City Attorney and the struggles within the Legal Department, he mentioned that Weiss Serota was always looking for good professional talent. After seeing Johnston’s potential, work ethic and “by the book” attitude, he approached her, expressing their interest in hiring upon her contract expiration.

Daniel Espino, Partner, Weiss Serota Helfman Cole & Bierman

On Friday, October 11, 2019, COE investigator and Staff Attorney Martha Perez met with Espino at the Weiss Serota office in Coral Gables, FL.

Espino, a partner with the firm, was questioned regarding the allegations and the firm’s role throughout NMB’s process in deciding whether to outsource their Legal Department. Pointing out that NMB is new to outsourcing, he indicated that since its inception, Weiss Serota has always been upfront and clear about the “process,” advocating transparency and following policies and procedures. Espino described the NMB Legal Department situation as unsustainable. Espino touched on his firm’s experience in government affairs and procurement and government litigation, indicating the firm represents twenty (20) municipalities.

Espino registered as a lobbyist with NMB sometime in January 2019, and met with the Mayor and Commissioners individually, advocating for Weiss Serota to step in on an interim basis.

Espino recalled first meeting Johnston at the Miami Shores Country Club luncheon in January briefly discussing the City, it’s Legal Department and his firm.

Espino indicated that his firm is always looking for qualified, professional, good attorneys and Weiss Serota saw the potential in Johnston, and expressed that interest to her.

Documents/Exhibits:

- Emails:
 1. R. Aristilde
 2. José Arrojo
 3. Commissioner Joseph
- City of North Miami Beach Lobbyist Registration:
 - -Daniel A. Espino, Weiss Serota Helfman Cole & Bierman, P.L.
Specific Issue: City Attorney Services or Contract
 - -Brett J. Schneider, Weiss Serota Helfman Cole & Bierman, P.L.
Specific Issue: City Attorney Services or Contract
- Relevant portion of the NMB July 16, 2019 Commission meeting video viewed by COE staff.

- NMB July 16, 2019 City Commission Meeting Agenda.
- NMB July 22, 2019 Workshop video was viewed by COE staff.
- Workshop Agenda:
 - City Attorney Discussion package handouts to Commission reviewed by COE staff.
 - 1. Sunny Isles Beach RFP/Responses
 - 2. Opa Locka RFP/Responses
 - 3. North Bay Village RFQ/Responses
 - 4. Plantation RFQ with ranking and agreement
 - 5. Memo to Mayor and City Commission regarding the use of outside counsel from October 16, 2018 City Commission meeting.
- Relevant portions of the NMB August 20, 2019 City Commission Meeting video was reviewed by COE staff.
- NMB August 20, 2019 City Commission Agenda.
- NMB October 7, 2019 Special Meeting video reviewed by COE staff.
- October 7, 2019 Agenda.

Conclusion:

After discussion with the Ethics Advocate it was determined that this matter would be closed with no further action. The investigation did not substantiate the allegations made that Johnston was exploiting her official position by lobbying City Commissioners to support the hiring of Weiss Serota as new legal counsel for the City. Based on the two public meetings that were reviewed, Johnston did not say anything during those instances that would in any way support an exploitation of official position. Additionally, not a single NMB Commissioner indicated that Johnston lobbied them to hire Weiss Serota in private meetings.



Nilda Olmo, COE Investigator

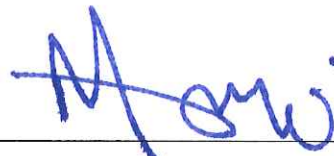
11-18-19

Date

Approved by:



Michael Murawski, Advocate



José Arrojo, Executive Director



Martha Perez, Staff Attorney

10/10/10

10/10/10