****

**Miami-Dade Commission on Ethics & Public Trust**

**Investigative Report**

Investigator: Nesmith Case No.: C20-34-09

Subject: NMB Commissioner Michael Joseph

Date Opened: 9/11/2020 Date Submitted: 1/29/21

**Allegation(s)**

North Miami Beach Commissioner Michael Joseph exploited his position by threatening not to vote to use the law firm Weiss Serota on an interim basis if the attorneys there did not give him a new legal opinion indicating that Mayor Anthony DeFillipo was term-limited and could not run for reelection.

**Relevant Law**

**Sec. 2-11.1** (g)Exploitation of official position prohibited. 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 special 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.

**Investigation**

On Oct. 6, 2020, Dan Espino, of Weiss Serota, gave a sworn statement in which he said he met with Com. Joseph, along with Brett Schneider, before the first North Miami Beach meeting at which the proposal to have Weiss Serota serve as an interim city attorney when then-City Attorney Sarah Johnston’s contract expired. At the meeting with Com. Joseph, Mr. Espino said the commissioner said he would support Weiss Serota for interim city attorney if Mr. Espino and Mr. Schneider could get Weiss Serota to “reconsider” an opinion issued by Robert Myers. The opinion, which interpreted North Miami Beach’s term limits provision, advised that Mayor Anthony DeFillipo could run for reelection. For more details, see the recording of Mr. Espino’s statement.

On Oct. 21, 2020, Mr. Schneider gave a sworn statement regarding the same meeting with Com. Joseph. He also said that Com. Joseph said he would support Weiss Serota for interim city attorney if Weiss Serota would change the opinion on whether Mayor DeFillipo could run for reelection. Mr. Schneider said he thought the commissioner was joking because he had read the opinion and thought the question was clear-cut, and also because Com. Joseph is himself an attorney. For more details see the recording of Mr. Schneider’s statement.

On Oct. 28, 2020, Sarah Johnston, former North Miami Beach city attorney, now working for Weiss Serota, gave a sworn statement. She said that Mr. Espino told her back in the summer of 2019 that Com. Joseph had asked him to change the Myers opinion and offered to support Weiss Serota as interim city attorney in exchange. For more details, see the recording of Ms. Johnston’s statement.

On Nov 2, 2020, North Miami Beach City Manager Esmond Scott gave a sworn statement. He said that Mr. Espino told him that Com. Joseph had asked Mr. Espino to change the Myers opinion in exchange for his vote. For more details, see the recording of Mr. Scott’s statement.

On Nov. 4, 2020, Steven Zelkowitz was interviewed via phone regarding the solicitation for North Miami Beach City Attorney. He said he was already serving as the attorney for the North Miami Beach CRA and one of his partners wanted to put in a proposal to do all of the city’s legal work. He said he did not recall speaking with Mr. Joseph either during the solicitation period or before it. He said Mr. Joseph had at no time asked him for an opinion regarding the city charter.

On Nov. 5, 2020, attorney Michael Garcia was interviewed via phone. He confirmed that he participated in the solicitation for a city attorney in North Miami Beach. He said that he did not have any contact with Michael Joseph regarding the solicitation either during or before it. He said he had only met Mr. Joseph once. He said Mr. Joseph did not ask him for any opinion on the North Miami Beach charter or on the mayor’s ability to run.

On Jan. 29, 2021, Com. Joseph gave a sworn statement. He was accompanied by his attorney, Stephen Hunter Johnson. Com. Joseph said that he never asked Mr. Espino and Mr. Schneider to change the Myers opinion in exchange for his support. He said he met with both Mr. Espino and Mr. Schneider before the issue of whether the city would hire the firm as an interim city attorney.

Com. Joseph said that Mr. Espino was the one who brought up the Myers opinion when he was discussing the municipal experience of Weiss Serota.

“I didn’t know that Bob Myers was working at Weiss,” he said.

“I never got a copy of it. I didn’t know who did it,” he said, referring to the Myers opinion.

He said the meeting, which took place at a restaurant that used to be open near his office, was the first time he had met Mr. Espino. He said he had talked to Mr. Schneider on a labor relations issue once before, but had never met with him one-on-one.

Com. Joseph said he did not have any correspondence with either attorney during the period when they were the proposed interim attorney, or later when the city put the city’s legal work out to bid. He also said he had “no intentions” of running for mayor in the 2020 election.

Com. Joseph said several other firms were also interested in being the city’s interim attorney, including Gray Robinson. He said he never met with any attorneys from the other firms.

**Documents/Exhibits**

The video and minutes of the July 16, 2019 meeting in which the Commission discussed appointing Weiss Serota on an interim basis when Sarah Johnston’s contract ran out in October. The Commission did not vote on the matter.

(The video was accessed here:

https://citynmb.granicus.com/player/clip/227?view\_id=1&redirect=true)

The minutes and video of the Aug. 20, 2019 Commission meeting in which the Commission discussed hiring Weiss Serota on an interim basis. The measure failed on a 3-4 vote. The Commission then voted to hire Johnson Anselmo to review the proposal from Weiss Serota to serve as interim City Attorney while the city put out an RFQ for a permanent legal services contract.

(The video was accessed here:

<https://citynmb.granicus.com/MediaPlayer.php?view_id=1&clip_id=284>)

Minutes and video of the Sept. 17, 2019 meeting of the North Miami Beach Commission. During the mayor’s comments at the end, Mayor DeFillipo said that the city will hold a special meeting to discuss the procedure they would use to review the attorneys and firms who had expressed an interest in filling the City Attorney role. There was no discussion of the city attorney situation at this meeting, presumably because a motion to extend the meeting past midnight failed. The Commission voted unanimously, apparently to have a special meeting to discuss the process.

(The video was accessed here:

https://citynmb.granicus.com/MediaPlayer.php?view\_id=1&clip\_id=300)

Minutes and video of the Sept. 26, 2019 Commission meeting. At this meeting, the Commission voted to censure Com. Joseph for distributing copies of public records (an email regarding the city attorney) before a prior meeting.

(The video was accessed here:

<https://citynmb.granicus.com/MediaPlayer.php?view_id=1&clip_id=313>)

Minutes and video of the Oct. 7, 2019 Commission Workshop. At this meeting the Commission voted unanimously to authorize the manager to create an evaluation panel and put out an RFQ for a new attorney or contracted firm.

(The video was accessed here:

<https://citynmb.granicus.com/MediaPlayer.php?view_id=1&clip_id=317>)

Minutes and video of the Feb. 25, 2020 Special Commission Meeting at which the three highest ranked firms at the conclusion of the RFQ process made presentations to the Commission. Com. Joseph was in attendance and the Commission voted unanimously to authorize the manager to negotiate a contract with Weiss Serota, the highest ranked firm.

(The video was accessed here:

https://citynmb.granicus.com/player/clip/422?view\_id=1&redirect=true)

Minutes of the March 5, 2020 Special Commission Meeting at which the Commission unanimously approved the contract the administration had negotiated with Weiss Serota.

(The video was accessed here:

https://citynmb.granicus.com/player/clip/429?view\_id=1&redirect=true)

Emails provided by Sarah Johnston regarding the Myers opinion.