

**CITY OF MIAMI**  
**OFFICE OF THE CITY ATTORNEY**  
**LEGAL OPINION – 16-001**

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**TO:** Members of the Charter Review and Reform Committee  
**FROM:** Victoria Méndez, City Attorney  
**DATE:** January 15, 2016  
**RE:** Question regarding whether a conflict exists between Sections 36 and 52 of the City Charter

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You have asked (1) who is subject to Section 52(C) of the City of Miami Charter, and (2) whether Section 52(C) of the City Charter conflicts with any right to appeal a disciplinary action under Section 36 of the City Charter.

**ANALYSIS**

**Question 1**

Section 52(C) of the City Charter contains the following pertinent language:

Any public official or employee who is found by the court to have willfully violated this article shall forthwith forfeit his or her office or employment.

The term “public official” is not defined in the Charter or City Code, but the term “public officer” is defined in Section 112.313, Florida Statutes as “any person elected or appointed to hold office in any agency, including any person serving on an advisory body.” The term includes City Commissioners and the Mayor.<sup>1</sup> Therefore, Section 52(C) applies to all elected or appointed officials, members of any City board, and all City employees.

**Question 2**

The second question is whether Section 52(C) conflicts with Section 36. Section 36 of the City Charter establishes the Civil Service Board (hereinafter “Board”), and permits a classified employee to appeal discipline imposed by the City Manager or a Department Director to the Board for independent review.<sup>2</sup> Section 36 states:

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<sup>1</sup> The term also applies to the City Manager, City Attorney, City Clerk, and City Independent Auditor.

<sup>2</sup> Elected officials, appointed officials, executive employees, unclassified employees, probationary employees, temporary employees, and part-time employees do not have any rights under Section 36 of the City Charter. Thus, this analysis is limited to full-time classified employees (i.e., employees who have rights under Section 36 of the City Charter).

Any officer or employee in the classified service may be removed, suspended, fined, laid off, or demoted by the city manager or by the head of the department in which such person is employed, for any cause which will promote the efficiency of the service...

Any employee in the *classified* service who deems that he or she has been suspended, *removed*, fined, laid off, or demoted without just cause may, within 15 days of such action, request in writing a hearing before the civil service board to determine the reasonableness of the action.

Section 36(f)(1), City of Miami Charter (2015) (emphasis added).

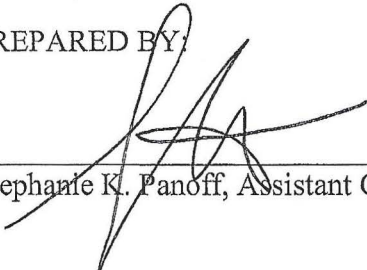
Based on a plain reading of Section 36, unless a classified employee resigns after a Section 52(C) ruling, a classified employee who is *removed* from employment has the right to appeal such removal to the Civil Service Board.

The Federal law in this jurisdiction supports such, finding that an involuntary resignation entitles a Federal employee to review by the Civil Service Commission. *Newberger v. U.S. Marshals Service*, 751 F. 2d 1162, 1167 (11th Cir. 1985) (citing *Gratehouse v. United States*, 512 F. 2d 1104, 1108 (1975)). In *Newberger*, the plaintiff alleged he resigned as a result of pressure from his superiors. *Id.* The Eleventh Circuit held the plaintiff should have appealed his resignation to the Civil Service Commission, finding an involuntary resignation is an adverse employment action that entitles an employee to review by the Civil Service Commission. *Id.* Likewise, a removal based on involuntary forfeiture under Section 52(C) would be akin to an involuntary resignation, entitling a classified employee to review under Section 36.

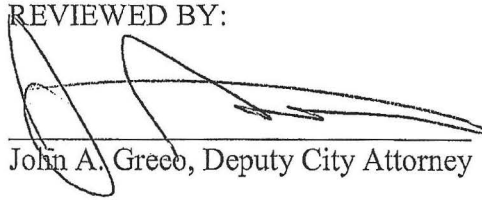
### CONCLUSION

In conclusion, there is no conflict between Sections 52(C) and 36. A full-time classified employee who is deemed to have forfeited his or her employment pursuant to Section 52(C) may appeal his or her removal by the City Manager pursuant to Section 36 of the City Charter. Likewise, there is no conflict between Section 52(C) and 36 for elected officials, appointed officials, executive employees, unclassified employees, probationary employees, temporary employees, and part-time employees because such employees do not have rights under Section 36 of the City Charter.

PREPARED BY:

  
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REVIEWED BY:

  
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cc: Honorable Mayor Tomás Regalado  
Members of the City Commission  
Daniel J. Alfonso, City Manager  
Todd B. Hannon, City Clerk  
Tishria Mindingall, Executive Secretary of the Civil Service Board

  
VM/JAG/SKP