



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jeffrey Bowen
Forensic Evidence Technician
Miami-Dade Medical Examiner's Office

LaTishia Gardner
Morgue Bureau Operations Manager
Miami-Dade Medical Examiner's Office

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2023-102, Section 2-11.1(j), Conflicting employment prohibited.

DATE: August 15, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your proposed outside employment as a funeral attendant.

Facts

You are employed by the Miami-Dade Medical Examiner's Office ("ME") as a forensic evidence technician. Your primary job duties involve collecting evidence during autopsies, releasing decedents to funeral homes and releasing evidence to police departments. You would like to engage in outside employment as a funeral attendant for Paradise Memorial Funeral Home ("Paradise"). Your primary role at Paradise will be to assist with embalming and funerals.

Your supervisor, LaTishia Gardner, advised that your outside employment will be performed outside of County work hours and you will not be using any County-owned equipment or resources in your outside employment. She further advised that in your County employment you do not have contact with family members of decedents, and you do not have any decision-making authority that would affect any aspect of the experience funeral homes have in their interactions with the ME's office. Additionally, she stated, you have been specifically instructed not to share any confidential ME information about decedents or their families with anyone outside of the ME.

Paradise is not a County vendor and is not intending to become a County vendor. Moreover, as a forensic evidence technician, you do not have oversight or authority over any County vendors or contracts.

Issue

Whether any prohibited conflict of interest may exist between your employment at the ME and your proposed outside employment with the Paradise.

Analysis

Sections 2-11.1(j) and (k) of the Miami-Dade County Ethics Code prohibit County employees from engaging in outside employment which would impair the County employee's independence of judgment in the performance of his/her official duties, thereby creating a conflict between the employee's public responsibilities and private interests. The County's Administrative Order 7-1 reiterates the general principle that County employees must conduct the public's business without even an appearance of conflicting loyalties: "Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one's official or public duties is possible."

Miami-Dade County employees are required to obtain approval from their department directors/supervisors prior to engaging in outside employment. *See* County's Administrative Order 7-1. Directors/Supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment. *See* INQ 22-22; INQ 19-101; INQ 13-28. The County's Administrative Order No. 7-1 gives a County department director/supervisor the discretion to deny outside employment if he or she finds, at any time, that the outside employment is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 23-15; INQ 12-49.

Several factors are considered to determine whether a potential conflict of interest exists between an individual's County position and his or her outside employment, including: the nexus between the public duties and the outside employment; whether the official has decision-making authority over the same subject matter that the outside employment concerns; whether the official solicits business or customers in the same area over which he or she has jurisdiction; whether the official will come into contact with the same or similar people or entities in both his or her public position and outside employment; and whether the public entity with which the official serves funds or has a contract with his or her outside employer. *See* RQO 17-01; INQ 21-66.

Outside employment is more likely to conflict with County employment "when the two pursuits overlap or are closely related." INQ 16-89 (citing RQO 12-11, INQ 12-159). However, "a similarity between an employee's County duties and his or her outside employment duties does not indicate, *by itself*, the existence of a conflict of interest." INQ 22-07; *see also* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (concluding that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations).

In the past, forensic technicians with the ME were permitted to engage outside employment with private funeral homes because in their county jobs, they did not have any contact with members of the public they might refer to their outside employer and they did not have any oversight or authority over their outside employers or their employers' interactions with the ME. INQ 23-81; INQ 23-82; INQ 23-83. Similarly, the Commission has found a Police Officer working for the Homestead Police Department could engage in outside employment with a private towing company contracted to provide towing services to the City of Homestead, provided that he avoid involvement in any disputes that might occur between citizens whose cars have been towed by the towing company unless public safety is endangered, and provided that he abide by certain other restrictions. *See* RQO 05-95. Additionally, a Juvenile Assessment Counsellor working for the Miami-Dade County Juvenile Services Department was permitted engage in outside employment as a Youth Advisory Committee Facilitator for The Children's Trust Youth Advisory Committee without giving rise to a prohibited conflict of interest, provided she abided by certain restrictions. *See* INQ 20-102.

Here, based on the information provided to us at this time, **it appears to be unlikely that the type of outside employment you are seeking to engage in would impair your independence of judgment as a Forensic Evidence Technician at the ME.** This is because there is no overlap between your public duties and your outside employment: your outside employment will be performed outside of your County hours; you will not come into contact with the same persons or entities involved in her County work; and you will not use the same resources in your outside employment as used in your County work. Additionally, you have been advised that **you cannot share non-public information you have access to as part of your County employment** with anyone outside of the ME, including your outside employer. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); RQO 16-02; INQ 20-102.

Opinion

Based on the facts presented here and discussed above, you would not have a conflict of interest in your outside employment as a funeral attendant for Paradise.

However, the Commission on Ethics strongly recommends that the following limitations be imposed on your supervisor's permission for you to engage in outside employment with Paradise:

- You may not engage in activities that relate in any way to your outside employment during your scheduled work hours (including phone calls, text messages, e-mails, or other communications) and you may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with her outside employment, even after work. *See* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.
- You may not exploit your County position to secure special privileges or exemptions for himself and/or for Paradise or its clients. *See* County Ethics Code 2-11.1(g). **Specifically,**

you may not offer funeral services to anyone during County working hours, including members of the public, co-workers, and other County employees. *See* INQ 19-101.

- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County employment to derive a personal benefit, or for the benefit of Paradise or its clients. *See* County Ethics Code Section 2-11.1(h).
- You may not represent Paradise before any County board or agency. *See* County Ethics Code Section 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of your potential activities as a funeral attendant, it is important to note that you would be prohibited from doing any such activities on behalf of Paradise or its clients.
- You must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director, and **you must file an Outside Employment Statement¹ with the County’s Elections Department by noon on July 1st of each year for the prior year’s outside employment regardless of whether she made a profit or not in her outside employment.** *See* County Ethics Code Section 2-11.1(k)(2).

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply based on directives from the ME or under state law. Questions regarding possible conflicts based on ME directives should be directed to ME or the Mayor’s Office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <https://ethics.state.fl.us/>.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Commission on Ethics or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.

¹ The required form can be found online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.