



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Delores Holley, Director of the Housing Advocacy Division
Miami-Dade Community Action and Human Services Department

Tiffany Crapp, Assistant Director
Miami-Dade Community Action and Human Services Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics and Public Trust

SUBJECT: INQ 2023-122, Section 2-11.1(j), Conflicting employment prohibited.

DATE: September 8, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in Ms. Delores Holley's proposed outside employment.

Facts

Ms. Delores Holley is currently employed by the Miami-Dade Community Action and Human Services Department ("CAHSD") as the Director of the Housing Advocacy Division. Her job duties primarily include providing oversight and supervision of the CAHSD Housing Developing Advocate and the Tenant Advocate, working with stakeholders to develop policies and promote initiatives to expand affordable housing, building the capacity of housing non-profits with an emphasis on preventing resident displacement, overseeing the implementation of major departmental initiatives like the Tenant Hotline, and providing high-level case management support as needed, and helping to identify development opportunities and partnerships for affordable housing in vacant or under-utilized land owned by public or other civic institutions.

Ms. Holley advised that she would like to engage in outside employment as an Associate Realtor with Eagle Realty, LLC, a Florida limited liability company doing business as Keller Williams ("KW"). A record check with the Florida Department of Business and Professional Regulation confirms that Ms. Holley has been a registered real estate broker or sales associate since June 2018. She advised that she is an independent contractor, not an employee, working in association with

KW. Her primary responsibilities include representing buyers and sellers in real property transactions with a commission income earned at closing. Ms. Holley advised that she does not own any portion of KW. A records search indicated that KW is not a County vendor and Ms. Holley also stated that, to her knowledge, KW is not a County vendor.

With regard to her anticipated real estate work, Ms. Holley advised that her outside employment will only occur outside of the times/hours that she is expected to perform her duties as a Director for CAHSD because, as an independent contractor, she has control over her schedule. She further advised that, as part of her proposed outside employment, she will not be required to encounter the same or similar people or entities as in her County position. Ms. Holley advised that her position with CAHSD does not involve the recruitment or management of County vendors or contractors. She also advised that she will not use the same or similar resources for her proposed outside employment as those that are used in her County work. Finally, Ms. Holley advised that, as part of her County position, she does not have access to non-public information that is, or could be, relevant to her proposed outside employment.

Issue

Whether any prohibited conflict of interest may exist between Ms. Holley's County employment and her proposed outside employment as a real estate Sales Associate associated with KW.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") prohibits County employees from accepting outside employment, "which would impair his or her independence of judgment in the performance of his or her public duties." Section 2-11.1(j); *see also* section 2-11.1(k). Additionally, Miami-Dade County Administrative Order 7-1 provides that, "[u]nder 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."

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 21-111; INQ 19-101. Department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 13-28.

In practice, County real estate officers may not engage in outside employment as private real estate agents because of the similarity in their outside employment to their County work and the degree of autonomy given to County real estate agents in conducting County business that is far higher than other County professionals. *See* RQO 12-11. However, the Assistant Director of the Development and Loan Division of the then-extant Miami-Dade Housing Agency could engage in outside employment as a realtor so long as she did not represent any homebuyers or developers who receive construction or mortgage financing from her employing department. *See* RQO 05-65.

Similarly, a Manager of the Miami-Beach Branch Court for the Miami-Dade Clerk of Courts could engage in outside employment as a real estate association for a private realty group so long as he did not perform his outside employment in the City of Miami Beach. *See* INQ 21-60.

Based on the information provided to us at this time, it appears to be unlikely that the type of outside employment that Ms. Holley is seeking to engage in would impair her independence of judgment in the performance of her County duties as the Director of the Housing Advocacy Division for CAHSD **so long as she does not take on any clients or participate in any real estate transactions that involve or relate to her County work identifying vacant or under-utilized property for the development of affordable housing.** There is no prohibited conflict of interest, so long as Ms. Holley abides by this restriction, because there is no overlap between her public duties and her proposed outside employment: her proposed outside employment will be performed outside of her County hours; she will not come into contact with the same persons or entities involved in her County work; she will not use the same resources in her outside employment as used in her County work; and, she will not have access to non-public information as part of her County employment that is, or could be, relevant to her outside employment as a real estate agent. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); RQO 16-02; RQO 05-65; INQ 21-60.

Opinion

Based on the facts presented here and discussed above, Ms. Holley would not have a conflict of interest in her proposed outside employment as an Associate Realtor with KW so long as she abides by the above-referenced restriction.

Furthermore, the Commission on Ethics strongly recommends that the following limitations be imposed on Ms. Holley's permission to engage in her proposed outside employment with KW:

- She may not engage in activities that relate in any way to her outside employment during her scheduled work hours (including phone calls, text messages, e-mails, or other communications) and she 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.
- She may not exploit her County position to secure special privileges or exemptions for herself and/or for KW or its clients. *See* County Ethics Code 2-11.1(g). **Specifically, she may not offer her or KW's real estate services to anyone during County working hours, including co-workers, subordinates, and other County employees.** *See* INQ 19-101.
- She may not disclose and/or use any confidential and/or proprietary information acquired because of her County employment to derive a personal benefit, or for the benefit of KW or its clients. *See* County Ethics Code Section 2-11.1(h); INQ 21-60.

- She may not represent KW 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 her potential activities as an Associate Realtor for KW, it is important to note that she would be prohibited from doing any such activities on behalf of KW or its clients.
- She must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with her department director, and **she must file an Outside Employment Statement¹ with the County’s Elections Department by noon on July 1st of each year 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 CAHSD or under state law. Questions regarding possible conflicts based on CAHSD directives should be directed to CAHSD 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, <http://www.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 Ms. Holley can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.