



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Odon Diaz, Fire Plans Processor  
Miami-Dade County Fire Rescue

Alain Iglesias, Deputy Fire Marshall  
Miami-Dade County Fire Rescue

**FROM:** Susannah Nesmith, Staff Attorney  
Commission on Ethics and Public Trust

**SUBJECT:** INQ 2023-138 Conflicting/Outside employment, Sections 2-11.1(k)(2) and (j),  
County Ethics Code

**DATE:** October 16, 2023

**CC:** All COE Legal Staff, Carlos Penin, President, C.A.P. Government

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Thank you for again contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your outside employment.

Facts:

You are employed as a Fire Plans Reviewer for Miami-Dade County Fire Rescue (“MDFR”). You would like to engage in outside employment as a zoning plan **and** fire safety plan reviewer for C.A.P. Government, Inc.

You are employed at MDFR as a Fire Plans Processor in the Department’s Fire Prevention Division. Your County job duties include reviewing life safety plans as part of the County’s fire prevention building permitting process administered by MDFR to ensure compliance with the Miami-Dade County Fire Prevention Code<sup>1</sup>. The State Fire Code designates to local governments the fire permitting function, provided that the local governments follow the minimum standards set out in the state statute, though local governments may set stricter standards.<sup>2</sup>

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<sup>1</sup> Chapter 14 of the Miami-Dade County Code adopts the State of Florida Fire Code at Chapter 633, as amended by the state periodically.

<sup>2</sup> See Fla. Stat. §633.118. The Miami-Dade fire ordinance adopts the State fire code, provides for

Miami-Dade County develops, constructs, and administers County-wide public work projects such as transportation hubs, hospital facilities, and water treatment facilities, among others. The facilities may be County-wide or may be located both in unincorporated Miami-Dade County as well as within Municipal boundaries. These projects generally require fire safety permits. Although permitting within a municipality would normally be performed by the municipality, it is our understanding that for most, but not all, County projects built within municipal boundaries, the practice by the County is to enter into inter-local agreements between the County and municipality stipulating that these County projects will be permitted by the County rather than the municipality. However, some County buildings within municipalities require permitting from the municipalities when major work is done.

You inquire regarding the application of the County Ethics Code to your outside employment with for C.A.P. Government, Inc. (“CAP”), a Florida for profit company that provides administrative and technical support to Building Departments in municipalities throughout the state, including supervision, planning, secretarial support, plans review, inspections, etc. CAP is currently a County vendor, contracting with the Structural Plan Review Section of the Department of Regulatory and Economic Resources. CAP does not contract with MDFR.

You advise that your supervisors at CAP initially tasked you with reviewing zoning plans, with no work reviewing fire safety plans. You requested and received an opinion from this office that your work on zoning plans for CAP did not present a conflict of interest with your County position. *See* INQ 23-123. Subsequently, you contacted the Ethics Commission and requested another opinion after CAP asked you to also work on fire safety plans. The plans you have been assigned to review are for the Miami-Dade County Public Schools (“MDCPS”), Miami-Dade College (“MDC”) and Florida International University (“FIU”). You are also reviewing zoning and fire safety plans for municipal and state construction projects outside of Miami-Dade County.

We have consulted with your supervisor at MDFR, Deputy Fire Marshall Alain Iglesias, and he advised that zoning is a different County department with completely different codes and services unrelated to MDFR as it pertains to plans review. He noted that there would be no occasion where a zoning review would be in conflict with a fire safety plan review by MDFR or the services provided by MDFR.

On further consultation, your supervisor advised that MDFR does not have fire permitting authority over MDCPS, or any state entities, including MDC and FIU. However, he advised that MDFR conducts annual fire safety inspections of MDCPS facilities that fall under County jurisdiction. These facilities do not include MDCPS facilities in Hialeah, Key Biscayne, Miami, Coral Gables or Miami Beach, where those municipal fire departments have jurisdiction to conduct annual fire safety inspections.

Violations found on the annual inspections are referred to the state for correction. Annual inspections conducted by MDFR are completed by a bureau within MDFR Fire Safety Division that employs you. Although your supervisor described these inspections as a courtesy extended to MDCPS, they are

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additional requirements, and specifies that for projects within unincorporated Miami-Dade, the County will administer and issue fire permits; fire permits for projects within municipal boundaries in municipalities that have a fire department, are administered, and permitted by the municipality. *See* Miami-Dade Code §14-39.

provided for under state law, which states that annual fire safety inspections by municipal departments “may” be conducted and require school district personnel to cooperate with these inspections. *See Fla. Stat. § 1013.12 (3)(b)*. The Florida Administrative Code provides the standards and reporting requirements for municipal fire safety inspections. *See Fla. Admin. Code § 69A-58.004*. Additionally, though MDFR may not conduct fire safety inspections of MDC or FIU, the reports of fire safety inspections conducted by those institutions are required to be submitted to MDFR annually. *See Fla. Stat. § 1013.12 (2)(c)*. Therefore, MDC, and FIU are required to submit their annual reports to MDFR, but MDFR has no authority over their annual inspections.

We have also contacted authorities at FIU and MDC and confirmed that the annual fire safety inspections at those facilities are conducted by the State Fire Marshall.

Furthermore, we have contacted Carlos Penin, the president of CAP, who advised he could tailor your assignments to incorporate any restrictions this office deemed advisable, and that a restriction on your reviewing MDCPS fire safety plans under MDFR jurisdiction would not be problematic for your continued employment at CAP. Your supervisor at CAP verified that it is his understanding that annual inspections at MDC and FIU, the state entities, are not conducted by MDFR.

You advise that your outside employment would occur outside of your County hours of employment and CAP would provide you with the resources necessary to perform your outside job duties. You further advise that your work may involve same people or similar entities that you currently work with in your County employment, such as architects, engineers, contractors, building owners, or tenants. But you will not interact with the County employees, departments, or boards in your outside employment, nor would you have access to confidential information that would be relevant to your outside employment. Lastly, you do not work in a County position which requires you to recruit vendors, contractors, bidders, or members of the public who could use your outside employment services.

Issue:

Whether any prohibited conflicts of interest may exist between your County employment and your outside employment as a zoning plan and fire safety plan reviewer.

Analysis and Opinion:

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 duties 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 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 that it is contrary, detrimental, or adverse to the interests of the County and/or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 16-121; INQ 15-22; INQ14-104; INQ 13-28; INQ 12-49.

In consideration of your inquiry, we must look at several factors, one of which is whether there is similarity in your duties as a Fire Plans Reviewer for MDRF and your prospective outside employment as a zoning plan and fire safety plan reviewer. In this instance, both positions require you to utilize a similar knowledge base involving plans review; however, there is no indication that a prohibited conflict of interest exists in your review of zoning plans. *See* INQ 22-114; INQ 21-64; and 21-54. The Ethics Commission has found that outside employment that shares some of the knowledge base used in your County work but does not involve overlap of duties or involve administration or oversight of County personnel projects or processes would not generally create a conflicting employment. *See* RQO 10-01; INQ 21-95 and 20-43.

Further, the Ethics Commission has previously held a County Fire Plans Processor for MDRF does not have a conflict of interest involving his employment at the County and his work as a part-time Fire Sprinkler Plans Processor for the City of Hialeah Fire Department. *See* INQ 21-95. While his outside employment as a Fire Sprinkler Plans Processor for the City of Hialeah shares some of the knowledge base he has acquired because of his work at the County, conflicts are unlikely. *See id.* This is because the City does not apply for fire permits at the County and conversely the County does not apply for Fire permits at the City; neither MDRF or Hialeah has any administrative or inspection authority over the other; his outside employment will not require interaction with the same personnel; it will occur outside his County hours; and it will be performed using City of Hialeah resources. *See id.*

Additionally, the Ethics Commission has previously opined that 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. *See* INQ 18-54 (citing RQO 00-10; RQO 04-168; RQO 12- 07, which note that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations) (emphasis added). Therefore, the similarities in the services you would be providing as a County Fire Plans Reviewer and as **a zoning plan reviewer for CAP** do not preclude you from engaging in outside employment, particularly as you have indicated that your outside employer does not contract with your County department; all equipment and resources which you use in your outside employment will be provided by your outside employer; there is no overlap of duties between the two positions that involve administration or oversight of County personnel projects or processes; you will not come into contact during your outside employment with County employees, departments, or boards; and you will work outside your County hours.

However, your proposed work for **CAP reviewing fire safety plans** presents a prohibited conflict of interest when you do so for MDCPS facilities that are inspected by MDRF, because, while MDRF does not have permitting authority the fire safety plans of MDCPS, the MDRF division that employs you does conduct annual fire safety inspections of the same facilities and reviews fire safety plans that you might review. A conflict of interest may arise when an employee's County department has administrative oversight or authority over the employee's outside employment. *See* INQ 22-26. For example, an elevator inspector for the Internal Services Department ("ISD") had a prohibited conflict in his work for a private elevator inspection company, even though he did not witness inspections for the private company in Miami-Dade County, because his department had administrative authority over the company's inspections in the County. *Id.* Here, MDRF conducts inspections at certain

MDCPS facilities and is required to report the results of those inspections and any violations or deficiencies within the fire safety plan, which you may have reviewed, to the state.

Therefore, you may not conduct fire safety plan reviews for MDCPS facilities for which MDRF provides annual fire safety inspections. Please note, this restriction does not include MDCPS facilities that are under the purview of Hialeah, Key Biscayne, Coral Gables, Miami or Miami Beach fire departments. You do not have a conflict of interest with any fire safety plan review in those jurisdictions because MDRF does not conduct those annual inspections.

Similarly, your review of fire safety plans for MDC and FIU does not present a prohibited conflict of interest, because both entities use the state Fire Marshall for their annual inspections; and you have no prohibited conflict of interest in reviewing fire safety plans outside of Miami-Dade County.

Nonetheless, the Ethics Commission strongly recommends that the following limitations be imposed regarding your outside employment conducting zoning plan and fire safety plan reviews (on facilities outside of MDRF jurisdiction) in order to avoid a conflict:

- You may not use County time or resources in your outside employment. *See* Section 2-11.1 (g), Miami-Dade County Ethics Code; INQ 20-43; INQ 19-123.
- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 15-240; and INQ 05- 29.
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, a benefit for CAP, or CAP clients. *See* Section 2-11.1(h), Miami-Dade County Ethics Code.
- You may not exploit your County position to secure special privileges or exemptions for yourself, CAP, or CAP clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You may not represent CAP or CAP clients before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173. Notably, while it does not appear that lobbying activities are a part of your potential duties for CAP, it is important to note that you would be prohibited from doing any such activities on behalf of CAP or CAP clients.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only; it is not intended to interpret state laws. Questions

regarding state ethics laws should be addressed to the Florida Commission on Ethics.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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 Ethics Commission 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.