



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Lieutenant David Nunez de Villavicencio  
Miami-Dade County Fire Rescue  
  
Mark Benitez, Chief Fire Officer  
Miami-Dade County Fire Rescue  
  
Shanti Hall, EMS Division Chief  
Miami-Dade County Fire Rescue

**FROM:** Loressa Felix, General Counsel  
Commission on Ethics and Public Trust

**SUBJECT:** INQ 2023-147 Conflicting/Outside employment, Sections 2-11.1(k)(2) and (j),  
County Ethics Code

**DATE:** November 3, 2023

**CC:** All COE Legal Staff; Dr. Abid Chaudhry, Emergency Training Academy

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

Facts: You are employed as a Lieutenant for Miami-Dade County Fire Rescue (MDFR). You would like to engage in outside employment as an administrator and practical skills instructor for Emergency Training Academy.

As a Lieutenant for MDFR, you serve as the supervising officer for a fire engine, supervising a crew of three firefighters assigned to your station engine during a specific shift. You supervise the crew and station engine dispatched to emergency scenes, including fires, medical calls, auto accidents, hazardous materials incidents, etc. You are also responsible for patient care and emergency response. You have no responsibilities that include administration over or involvement with the department's contracts/agreements or procurement and no authority over the administration of contracts/agreements entered into by the department. You also have no responsibilities regarding promotions, firing, or hiring of those employed by MDFR. Firefighters working on your engine are under your supervision to the extent that you report performance information to command staff responsible for hiring, firing, and promotions.

Urgent Response Training, LLC is a Florida for profit company doing business as Emergency Training Academy (ETA). ETA was founded in 2000, providing students with training and instruction necessary to complete their firefighter certifications to advance their careers as firefighters. After completion of ETA courses, students receive a certification that complies with state and national standards. ETA previously held an affiliation agreement with MDR, which allowed ETA students to ride as part of their emergency medical technician (EMT) and paramedic (PMD) certification training. The Emergency Medical Services Division of MDR coordinates the Rider Program to provide students enrolled in Florida state-approved education and training programs for emergency medical technicians and paramedics the opportunity to obtain field experience required for state certification. The affiliation agreement is currently being reviewed for renewal.

You currently serve as an independent contractor for ETA in the role of Director of Operations. Your primary responsibilities include operational management such as licensure, accreditation, managing supplies, maintenance, daily operations, and scheduling instructors. On rare occasions, you may be asked to stand in as a practical lab instructor for EMT, paramedic, and CPR courses when instructors are unavailable. In your role as a practical lab instructor, you would have no control over student grades but are responsible for both student lectures and practical skills training. It is your duty to ensure that students have mastered the skill and report that information to the assigned lead instructor responsible for the course and grades. You receive a salary as your compensation, but you do not receive any company shares, return on investment, or other compensation. Your spouse and daughter both work for ETA, as the office manager and receptionist, respectively, but neither have any ownership or financial interest in the company.

It should be noted that you took on the role of Director of Operations as of August 23, 2023. Prior to that time, you were an owner of ETA. However, after becoming aware that such an arrangement may create a conflict of interest, you resigned your position and relinquished any and all ownership of ETA. You, nor any of your family members, hold any ownership interests in ETA, own any shares of the company, nor have any authority over contracts or financial decisions regarding the company. This information was confirmed by Dr. Abid Chaudhry, the current Medical Director and sole managing member of ETA.

You also advise that ETA would provide you with the resources necessary to perform your role with the company. Your duties would occur outside of your County hours of employment. You will not have access through your County position to non-public information that is or could be relevant to your outside employment. You admit that ETA may provide services to firefighters that currently work for MDR, but because your primary duties do not include instruction, your interaction with these students would be limited. Furthermore, while there is a possibility that you could be asked to stand in as a practical lab instructor to MDR employees enrolled in an ETA course, you note that you would not be the lead instructor with overall authority for the course or grading.

Issue: Whether any prohibited conflicts of interest may exist between your County employment and your outside employment as a Director of Operations for ETA.

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 13-28; INQ 19-101.

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 interest of the County and/or the employee's department. See RQO 00-10; RQO 16-02; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

In consideration of your inquiry, we must look to several factors, one of which is whether there is similarity in your duties as a Lieutenant for MDFR and your prospective outside employment as Director of Operations and/or a practical lab instructor for ETA. In this instance, your specified work responsibilities as Director of Operations do not overlap with your work responsibilities for MDFR given the lack of student interaction and the lack of authority over, or involvement with, contracts/agreements entered into by ETA. However, your duties as an occasional practical lab instructor may have some similarities in that both positions require you to utilize a similar knowledge base involving EMT or paramedic training and may cause some overlap in your public and private duties. See INQ 22-10.

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, and RQO 12-07, which note that outside employment with similar duties and functions can avoid a conflict when abiding by certain limitations). Outside employment that shares some of the knowledge base used in your County work – but does not involve an overlap of duties or involve administration or oversight of County personnel, projects, or processes – would not generally create conflicting employment. See RQO 10-01 (the Commission found that a County elevator contract specialist for Transit may perform outside employment as an elevator inspector but he may not perform inspections on work done by vendors that he supervises in his public capacity because doing so may impair his independence of judgment in his public capacity); see also INQ 14-163; INQ 20-43; INQ 21-95.

The Ethics Commission has previously reviewed four similarly situated circumstances. In RQO 09-16, the Ethics Commission opined that an MDFR lieutenant could engage in outside employment, through his privately owned company, training County firefighters in HazMat because in his capacity as a County firefighter, he was not involved in the training of county

employees, his company did not contract with his department, he did not use County equipment or County time to engage in private training, and he did not compete with the County for training dollars.

In INQ 16-13, the Ethics Commission opined that a Division Chief in charge of the Construction Division for Miami-Dade County Public Works and Waste Management (PWWM) could engage in outside employment as an independent contractor with a nonprofit organization to conduct training classes in the storm water utility field for certified storm water operators in the Miami-Dade County area, and County PWWM employees could attend the storm water operator certification training, *but only so long as no County employee under the director's supervision attended the training.*

In INQ 17-232, the Ethics Commission opined that a Training Specialist II for the Training Bureau of the Miami-Dade Corrections and Rehabilitation Department (MDCR) could engage in outside employment as an adjunct professor at the Miami Dade College School of Justice without creating the likelihood of a conflict of interest under the specific conditions that: a) Miami-Dade College did not contract with MDCR for the purposes of training MDCR staff; b) the Training Specialist II did not have the authority to approve or disapprove any agreements for services between Miami-Dade College and MDCR for purposes of training MDCR staff; c) the Training Specialist II had no involvement in the selection, oversight, or administration of County training vendors; and d) *in the event that MDCR staff attended a class taught at Miami-Dade College by the Training Specialist II as part of their pursuit of their college education at Miami-Dade College, their attendance would have no effect on their County assessments and promotions within MDCR.* See also INQ 05-143; INQ 10-125; INQ 16-137.

Lastly, in INQ 22-10, the Ethics Commission opined that a lieutenant for MDFR and partial owner of a for-profit college offering educational programs in the allied health, emergency medical and fire service professions, diploma programs, associate degree programs, and bachelor's degree programs could serve as the college's Vice President of Admissions and Compliance, with certain limitations. Specifically: the college could not contract with MDFR; the MDFR lieutenant could not authorize, approve, or disapprove any agreements for services between MDFR and the college; the MDFR lieutenant could not have any oversight or administration of MDFR training vendors; and, *in the event that MDFR staff decided to attend the college, their attendance could not have any effect on their County assessments and promotions within MDFR.* See INQ 22-10.

Based on these prior COE opinions, your outside employment with ETA must adhere to the following conditions in order to avoid the creation of a conflict of interest: you may not in your County position have any authority over or involvement with the agreement between ETA and MDFR; you cannot be authorized to approve or disapprove any agreements for services between MDFR and ETA; you cannot have any oversight or administration of MDFR training vendors; in the event that MDFR employees decide to attend ETA, their attendance should not have any effect on their County assessments and promotions within MDFR; and lastly, you may not instruct any class or group that contains any County employee under your supervision (i.e. the three firefighters on your engine crew). See INQ 16-13; INQ 16-288; INQ 17-232; INQ 22-10. To ensure the mitigation of the appearance of a conflict of interest and solidify your independence of judgment, you must abide by certain additional limitations and cautions outlined below:

- You may not use County time or resources in your outside employment. *See* Section 2-11.1(g), Miami-Dade County Ethics Code; INQ 19-123; INQ 20-43.
- 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(g) and (j), Miami-Dade County Ethics Code; INQ 05-29; INQ 15-240.
- 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 or a benefit for ETA or ETA students or alumni. *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 or ETA, its students or alumni. *See* Section 2-11.1(g), Miami-Dade County Ethics Code. This restriction includes the recruitment or solicitation of MDFR employees to become ETA students.
- You may not represent ETA, lobby for ETA, or contact anyone employed by Miami-Dade County, or on a County board or agency, in an attempt to influence a decision about any contract related to ETA. Miami-Dade Code 2-11.1(m)(1), RQO 04-173, INQ 19-32.
- 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 Statement<sup>1</sup> 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.
- **You must file a sworn statement disclosing your outside employment with the Clerk of the Court** in accordance with Section 2-11.1(f) of the 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 and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

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<sup>1</sup> You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

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.