



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Ivon Mesa, Assistant Director
Miami-Dade Corrections and Rehabilitation Department

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

SUBJECT: INQ 2023-156, Section 2-11.1(j), Conflicting employment allowed.

DATE: November 28, 2023

CC: All COE Legal Staff

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

Facts

You are currently employed as an Assistant Director for the Miami-Dade Corrections and Rehabilitation Department (“MDCR”). Your job duties primarily involve the creation of victim services programs. This entails creating directories of service providers and the means to direct victims to needed resources. You stated that your County position does not involve the purchase, sale, or negotiation of real property transactions.

You advised that you want to continue to engage in outside employment as a Real Estate Agent with Marbay Real Estate, Inc. (“Marbay”), a for-profit Florida corporation. A records check with the Florida Department of Business and Professional Regulation confirms that you have been registered as a real estate broker or sales associate since May 2006. You advise that you do not own or operate Marbay and that your role with the company is to assist potential clients in finding real estate properties. A records search indicated that Marbay is not a County vendor and you also stated that, to your knowledge, Marbay is not a County vendor.

With regard to your anticipated real estate work, you advised that your outside employment will only occur outside of the times/hours that you are expected to perform your duties as an Assistant Director for MDCR. You further advised that, as part of your outside employment, you will not be required to encounter the same or similar people or entities as you do in your County position.

Additionally, your position with MDCR does not involve the recruitment or management of County vendors or contractors. You also advised that you will not use the same or similar resources for your outside employment as those that are used in your County work. Finally, you advised that, as part of your County position, you do not have access to non-public information that is, or could be, relevant to your outside employment.

Issue

Whether any prohibited conflict of interest may exist between your County employment and your proposed outside employment as a Real Estate Agent with Marbay.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“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, a Special Projects Administrator 2 with the Budget and Finance Bureau at MDCR could engage in outside employment as a realtor without giving rise to a prohibited conflict of interest. *See* INQ 17-96. Similarly, a Director of the Housing Advocacy Division for the Miami-Dade Community Action and Human Services Department (“CAHSD”) could engage in outside employment as a real estate agent so long as she did not take on any clients or participate in any real estate transactions that involved or related to her County work. *See* INQ 23-122. The Ethics Commission has also held that 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.

Based on the information provided to us at this time, it appears to be unlikely that the type of outside employment that you are seeking to engage in would impair your independence of

judgment in the performance of your County duties as Assistant Director of MDCR **so long as you do not take on any clients or participate in any real estate transactions that involve or relate to your County work.** There is no prohibited conflict of interest, so long as you abide by this restriction, because there is no overlap between your public duties and your proposed outside employment: your proposed outside employment will be performed outside of your County hours; you will not come into contact with the same persons or entities involved in your County work; you will not use the same resources in your outside employment as used in your County work; and, you will not have access to non-public information as part of your County employment that is, or could be, relevant to your outside employment as a real estate agent. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); RQO 05-65; INQ 23-122; INQ 17-96.

Opinion

Based on the facts presented here and discussed above, you would not have a conflict of interest in your proposed outside employment as a Real Estate Agent with Marbay so long as you abide by the above-referenced restriction.

Furthermore, the Ethics Commission strongly recommends that the following limitations be imposed on your permission to engage in your proposed outside employment with Marbay:

- 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 your 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 yourself and/or for Marbay or its clients. *See* County Ethics Code 2-11.1(g). **Specifically, you may not offer your or Marbay's real estate services to anyone during County working hours, including co-workers, subordinates, 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 Marbay or its clients. *See* County Ethics Code Section 2-11.1(h); INQ 21-60.
- You also may not work with any clients who are engaged in any real-estate transaction with Miami-Dade County (including leases, purchases, financing, joint developments, and construction) or who are seeking any official action from MDCR. Further, you are prohibited from meeting with County staff regarding any matter involving your private clients. *See* RQO 05-15.
- You may not represent Marbay 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 Real Estate Agent for Marbay, it is important to note that you would be prohibited from doing any such activities on behalf of Marbay 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 regardless of whether you made a profit or not in your 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 MDCR or under state law. Questions regarding possible conflicts based on MDCR directives should be directed to MDCR 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 You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.