



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Mariana Acosta Rigual
Police Officer Trainee
Miami-Dade County Police Department

William Robinson
Police Sergeant
Miami-Dade County Police Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-53, Section 2-11.1(j), Conflicting employment prohibited.

DATE: April 25, 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. Acosta Rigual's outside employment.

Facts

An inquiry has been submitted concerning whether a conflict of interest would exist were Ms. Mariana Acosta Rigual, an employee of the Miami-Dade County Police Department ("MDPD"), to engage in outside employment as an Assistant Behavior Analyst for Baracusa Health Care Corp. ("BHC").

Ms. Acosta Rigual is currently employed by MDPD as a Police Officer Trainee. Her job duties are primarily to complete the Florida Law Enforcement Basic Recruit Training Program and pass the Florida State Law Enforcement Officer Certification Examination in order to become a certified Police Officer. Ms. Acosta Rigual started her position as a Police Officer Trainee on March 20, 2023. Prior to that date, Ms. Acosta Rigual was employed by MDPD as a Real Time Crime Center Specialist. Her primary job duties were to conduct real-time and post-incident investigations, as well as to disseminate real-time investigative information to enhance the safety and situational awareness of on-duty police officers.

Ms. Acosta Rigual advised that she would like to continue to engage in outside employment as an Assistant Behavior Analyst for BHC. BHC is a Florida for-profit corporation that provides medical-related services. A records search indicates that BHC is not registered as a County vendor. Ms. Acosta Rigual also stated that, to her knowledge, BHC is not a County vendor.

With regard to her work for BHC, Ms. Acosta Rigual stated that her primary responsibilities are assisting in the design of behavioral intervention programs for children with developmental disabilities, implementing behavioral intervention programs in therapy sessions, and overseeing and evaluating the effects of behavior-analytic service delivery. Ms. Acosta Rigual further advised that her outside employment will only occur outside of the times/hours that she is expected to perform her duties as a Police Officer Trainee for MDPD. She further advised that, as part of her outside employment, she will not be required to encounter the same or similar people or entities as in her County position. Ms. Acosta Rigual advised that her position with MDPD 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 outside employment as those that are used in her County work. Finally, Ms. Acosta Rigual 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 outside employment.

Issue

Whether any prohibited conflict of interest may exist between Ms. Acosta Rigual's County employment and her outside employment as an Assistant Behavior Analyst with BHC.

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 the past, 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 could 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 that Ms. Acosta Rigual is seeking to engage in impaired her independence of judgment as a Real Time Crime Center Specialist or would impair her independence of judgment in the performance of her County duties as a Police Officer Trainee for MDPD.** This is because there is no overlap between her public duties and her outside employment: her 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 an Assistant Behavior Analyst. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); RQO 16-02; INQ 20-102. **However, insofar as Ms. Acosta Rigual may come into contact with individual clients from her outside employment in the course of her County duties for MDPD, or vice versa, she should avoid involving herself unless public safety is endangered.** *See* RQO 05-95.

Additionally, Ms. Acosta Rigual should be mindful that, while employed by MDPD as a Police Officer, work as an off-duty police officer is considered outside employment only if the third party directly pays the officer. *See* INQ 03-25. Instead, if the employing police department pays the officer for his/her off-duty work, then the off-duty work is not considered outside employment. *See* INQ 03-16.

Opinion

Based on the facts presented here and discussed above, Ms. Acosta Rigual would not have a conflict of interest in her outside employment as an Assistant Behavior Analyst for BHC.

However, the Commission on Ethics strongly recommends that the following limitations be imposed on Ms. Acosta Rigual's permission to engage in her outside employment with BHC:

- 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 BHC or its clients. *See* County Ethics Code 2-11.1(g). **Specifically, she may not offer her or BHC's behavioral services to anyone during County working hours, including members of the public, co-workers, 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 BHC or its clients. *See* County Ethics Code Section 2-11.1(h).
- She may not represent BHC 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 Assistant Behavior Analyst for BHC, it is important to note that she would be prohibited from doing any such activities on behalf of BHC 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 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 MDPD or under state law. Questions regarding possible conflicts based on MDPD directives should be directed to MDPD 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. Acosta Rigual can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.