



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Capt. Douglas Keller  
Miami-Dade County Fire Rescue Department  
  
Assistant Chief Jason Richard  
Chief of Emergency Response  
Miami-Dade County Fire Rescue Department

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

**SUBJECT:** INQ 2023-65, Section 2-11.1(j), Prohibition on Conflicting Employment

**DATE:** June 2, 2023

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your request for approval for outside employment as a private fire investigator.

#### Facts

You are employed by Miami-Dade County Fire Rescue Department (MDFR) as a Captain in a fire suppression unit, based at a fire station in Homestead. You previously worked as the Officer In Charge of the Fire Investigations Bureau and have the training and certifications required to conduct investigations into the origin and cause of fires. In your current role as a fire suppression captain, you will respond to fire calls; if a fire investigation is required, you may be assigned to conduct that investigation, according to your supervisor, Asst. Chief Jason Richard.

You seek to conduct fire investigations for as-yet-determined private employers, typically insurance companies and attorneys. While it is not anticipated these employers would be County vendors, they may require fire investigations for properties in the County and for fires that were responded to by MDFR fire suppression units, including the one on which you currently work. Additionally, they may insure properties or represent property owners involved in fire investigations you conduct as part of your responsibilities for MDFR.

You would not conduct your private employment while on duty at your MDFR job, nor would you use county resources or equipment in your private employment. You may, however, come into contact with the same persons or entities in your proposed private employment that you encounter when you do fire investigations for MDFR, specifically when a property at which you are investigating a fire is insured by an insurance company that employs you privately, or when the owner of a property at which you are investigating a fire retains an attorney who employs you privately.

#### Issue

Whether any prohibited conflicts of interest may exist between your County employment and your proposed outside employment conducting fire investigations for private parties.

#### Analysis

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 responsibilities 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 22-22; 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, at any time, that the outside employment is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 23-15; INQ 12-49.

When providing opinions regarding outside employment, one of the factors the Ethics Commission considers is whether the employee will come in contact with the same people or entities in both the public employment and the outside, private employment.

When MDFR personnel assigned to the Fire Investigations Bureau have proposed obtaining outside employment as private fire investigators for insurance companies and attorneys, that outside employment was deemed in conflict with their County duties, even if they restricted their outside employment to Broward County. *See* INQ 13-132. That opinion noted that the private attorneys and insurance companies the MDFR fire investigators sought to work for may have matters before Miami-Dade County and concluded that "[d]ivided loyalties could arise if the fire investigators, acting in their capacity as County employees, were involved in County matters involving their private employers." *Id.* *See also* INQ 13-196 (MDFR lieutenant who ceased conducting fire investigations when he transferred out of the Fire Investigations Bureau no longer had a conflict of interest when conducting fire investigations for private employers because his

duties in fire operations would be significantly different from the duties of a private fire investigator); INQ 13-157 (MDFR lieutenant assigned to the Fire Investigations Bureau deemed to have a conflict if he conducted investigations for private employers in St. Lucie County because he might come into contact with those same entities while conducting investigations for MDFR).

Furthermore, the Commission has found that County employees had a conflict of interest between their county employment and their private employment if both jobs involved pursuits that overlapped or were closely related *See* RQO 15-03; RQO 12-11; INQ 17-241; INQ 15-49; INQ 12-159. For example, in RQO 15-03, the Commission found an impermissible conflict of interest when a County IT programmer developing transit tracking systems sought outside employment to do similar work for municipalities in Miami-Dade County. In that case, the County and municipal systems were expected to ultimately interface, leaving the County employee with potentially overlapping and divergent interests in his County employment and his proposed work for the municipalities.

While you could conceivably decline assignments from your private employer to investigate fires within the service area of your current fire suppression unit, or even within Miami-Dade County, you would not be able to similarly restrict your duties at MDFR to avoid conducting fire investigations that may, even unbeknownst to you, involve your proposed private employer. You may be called upon by MDFR to investigate the causes and origins of a fire at a property that is insured by an insurance company that has employed you privately. Similarly, you may be called upon to respond to and investigate the causes or origins of a fire involving a property owner who has retained or may in the future an attorney that has employed you privately.

In this case, although you are no longer assigned to the Fire Investigations Bureau, your supervisor has said you will still be called upon to conduct fire investigations, as the need arises, at fires you respond to with your current fire suppression unit. For that reason, your proposed outside employment would present the same conflict considered in INQ 13-132 because it would cause, at the very least, an appearance of a conflict of interest between your county responsibilities and your private financial interests.

### Opinion

Your proposed outside employment conflicts with your duties as a fire captain because you may be assigned by MDFR to investigate fires that involve parties represented by the attorneys for whom you would work privately or properties insured by the insurance companies for which you would work privately, creating a potential conflict of interest.

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.

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.