



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Sonia Grice, Director
Miami-Dade Community Action and Human Services Department

Jose Montoya, Construction Manager
Miami-Dade Community Action and Human Services Department

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-101, Section 2-11.1(j), Conflicting employment prohibited

DATE: June 7, 2024

CC: All COE Legal Staff, Adrian Frazier (CAHSD)

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the proposed outside employment of Jose Montoya, a construction manager at Miami-Dade Community Action and Human Services Department (“CAHSD”) and any potential conflicts it may pose with his County position.

Facts

Mr. Montoya is employed as a Construction Manager for the Energy Division of CAHSD. His primary responsibilities include managing a team involved in the repair and construction of various CAHSD facilities and also the maintenance and repair of low-income houses.

Mr. Montoya is also the owner of Modiste Architects, LLC (“Modiste”) an architectural design office specializing in providing comprehensive design and construction document services to private clients. He reports that the core focus of Modiste is to offer design and construction document service to private clients and that his company does not currently have any contracts with the County or any of the municipalities and has no intention of becoming a County vendor in the future.

Mr. Montoya does not have any oversight as a County employee over his private firm, its employees or its contracts with clients. He indicated that his standard contract with private clients explicitly outlines that he does not handle permits with any municipality, including Miami-Dade

County, and that he does not get involved in the construction phase of any private projects. He also indicated that he does not use any County resources in his private endeavors, including databases, equipment and design programs. He further indicated that his private company does not require him to disclose any non-public information and that he has no opportunity in his County job to recruit clients for his private company.

He has already requested and received approval for this outside employment from his supervisor in prior years for this outside employment. Mr. Montoya's division director, Adrian Frazier, was consulted and indicated that does not see any potential problems with Mr. Montoya's outside employment.

Issues

Whether Mr. Montoya's private business poses a conflict of interest with his County employment.

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*." (Emphasis added).

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. While directors/supervisors may request an opinion from the Miami-Dade County Ethics Commission regarding conflicts of interest in outside employment, 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.

Outside employment is more likely to conflict with County employment "when the two pursuits overlap or are closely related." INQ 16-89 (citing RQO 12-11, INQ 12-159). However, "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." INQ 22-07; *see also* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (concluding that outside employment with similar duties and functions can avoid conflict when abiding by certain limitations).

In practice, a Construction Manager for the Miami-Dade Public Library System was permitted to engage in outside employment for his private company, which provided architectural drawings and designs for private residential clients, because there was no overlap between his County responsibilities and his outside employment and he was not seeking to contract with his County

department. *See* INQ 22-114. Similarly, a Home Care Aide at CAHSD was permitted to engage in outside employment as a nurse at a private nursing home because her County employer did not contract with or regulate the private nursing home and she was not in a position to refer clients to her private employer. *See* INQ 20-88.

Here, based on the information provided to us, **it appears unlikely that the type of outside employment Mr. Montoya is seeking to engage in with his private business, Modiste, would impair his independence of judgment as a County employee, because the two endeavors do not overlap and he has taken specific steps to ensure that his private clients do not expect him to perform any work that might overlap with his County duties at CAHSD.**

Opinion

Based on the facts presented here and discussed above, Mr. Montoya's proposed outside employment does not pose a prohibited conflict of interest with his county responsibilities, as long as he ensures that his private work does not intersect in any way with his County position and he does not accept compensation, *in any form*, for consulting with private clients on any issue that involves a County license, permit, grant, contract or other County benefit.

Nevertheless, he must continue to abide by certain limitations outlined below to avoid a conflict:

- He shall not appear before any County board or meet with any County staff on behalf of a third party. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173; RQO 12-10. Additionally, he may not accept compensation, directly, indirectly **or in any form**, to assist clients who are applying for a County license, permit, grant, contract or other County benefit, either from his own department, **or any other County department or agency**. *See* County Ethics Code Section 2-11.1(m)(1).
- He shall not engage in activities that relate in any way to his 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 his 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.
- He is prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of his County employment to derive a personal benefit or for the benefit of his private company or its clients. *See* County Ethics Code Section 2-11.1(h).
- He shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with his department director and shall file an Outside Employment Statement with the County's Elections Department by July 1st of each year, to cover the prior year's outside employment. *See* County Ethics Code Section 2-

11.1(k)(2).¹ The Outside Employment Statement requires him to disclose “the source of the outside employment, the nature of the work being done pursuant to same and any amount or types of money or other consideration” that he receives for the outside employment. *Id.*

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 the County Mayor or under state law. Questions regarding possible conflicts based on the Mayor’s directives should be directed to 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 this is an informal opinion, covered parties who 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 The form is available online at <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.