


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Cynthia A. Everett, Esq.
Compliance Manager
Public Housing and Community Development

FROM: Jose J. Arrojo, Esq. 
Executive Director

SUBJECT: INQ 2024-13, Section 2-11.1 (j), Outside Employment

DATE: January 19, 2024

CC: COE Legal Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance to your outside employment.

Facts:

You are an attorney licensed to practice in this state.

In your current position as a Compliance Manager in the Public Housing and Community Development Department, you describe your duties as “Developing the agency’s required plans, policies, procedures and other regulatory documents. Performing internal audits, and supervising, planning, organizing, and implementing administrative activities”

In your private capacity, you are the principal in the Cynthia A. Everett, P.A. law firm. The firm is located in Miami-Dade County, and maintains offices located at 11301 South Dixie Highway, Suite 5305, Miami, Florida 33256.

In your private legal practice, you anticipate representing and advising clients that are not County vendors or contractors, not seeking to become County vendors or contractors, that are not parties in litigation adverse to Miami-Dade County, and that are not otherwise seeking any benefit, ruling or decision from the County or any of its agencies. Also, in your legal practice, if retained as an investigator or third party neutral, you will likewise not investigate, mediate, or arbitrate any matters involving the County.

Also, in your private capacity, you are the President and Chief Executive Officer of the Gwen S. Cherry Charitable Foundation, Inc. (GSCCF) The GSCCF is a Florida nonprofit corporation organized for charitable purposes under sec. 501(c)(3) of the Internal Revenue Code. The GSCCF does business as the Cherry Bar Foundation.

The GSCCF describes its mission as “supporting funding of educational programs and the purchase of school supplies for children and youth in need.” It has supported law school fellowships for students interested in working with Legal Services of Greater Miami, but there is currently no commitment to continued or annual funding.

In your role as the President and Chief Executive Officer of the GSCCF, you will preside over directors’ meetings, ensure compliance with the entity’s by-laws, policies, and applicable laws. You will also be engaged in charitable fundraising activities.

The GSCCF is not currently a County grantee, vendor, or contractor nor it is seeking County grant funding or applying to become a County a vendor or contractor.

Moreover, you advise that it is unlikely that you will encounter any persons or entities in your private engagements that you interact with as a Public Housing and Community Development Compliance Manager.

Finally, you advise that any work performed for these entities in your private role will occur outside of your County work hours and will not involve the use of any County resources, to include County support staff.

As regards obtaining authorization from your County employer, you have sought your County supervisor’s permission to commence/continue your involvement with these entities and authorization is pending the issuance and consideration of this ethics guidance.

Issues:

Whether your outside employment is permissible.

Discussion:

Several sections of the Miami-Dade Code of Ethics must be considered in analyzing whether a County employee’s outside employment gives rise to a prohibited conflict of interest.

Principally, Section 2-11.1(j) of the County Ethics Code prohibits outside employment which would impair the employee’s independence of judgement in the performance of his or her public duties. (*See also* Miami-Dade Administrative Order 7-1)

The Ethics Commission has interpreted Section 2-11.1(j) of the County Ethics Code to prohibit outside employment that results in an employee routinely interacting in his or her private role with County staff or persons that are receiving County services; where there is an overlap in county work hours and the outside employment schedule; when the public employment worksite will also be the site of the outside employment; or if the employee, his or her supervisor, or employing

County department, are responsible for oversight or management of the employee's outside employer or clients. (RQO 1602; INQ 11-67; INQ 20-03)

Employees are also cautioned, if they are retained or otherwise contracted by a person or party that has a contract with the County, that Section 2-11.1(u) of the County Ethics Code prohibits an employee on the staff of a County elected official, from entering into business transaction with an entity or person that has a contract with the County, unless the transaction is negotiated at arm's length.¹

While not a restriction on outside employment, Section 2-11.1 (k) of the County Ethics Code requires County employees engaged in outside employment to request permission on an annual basis and also file an annual outside employment financial disclosure form reporting any money received from the employment. This form must include any money earned, even if the business is not profitable.

Volunteer engagement with nonprofits, serving in a voluntary position with a nonprofit on a compensated or uncompensated basis, if a County employee is involved in aspects relating to the administration of that entity, may constitute outside employment. (*See generally* RQO 17-03)

Additionally, in abundance of caution, if the County employee is a government executive with significant discretionary authority, then because of the public and prominent nature of these positions, engagements with the non-profits, including those on which the employee serves only as a board or committee member, will be treated as regular outside employment. (*See* INQ 2021-91; INQ 2021-70; INQ 2021-89)

Section 2-11.1(m) of the County Ethics Code prohibits employees from appearing before any County Board or agency when making a presentation on behalf of a third party and also prohibits the receipt of any compensation, directly or indirectly, from any party that is applying or seeking a benefit from the County, in relation to the benefit sought. The Ethics Commission has interpreted this section as prohibiting a County employee that is privately employed as a consultant from appearing *or meeting* with County staff on behalf of private clients. (RQO 05-15; RQO 12-10)

Consequently, if an employee is engaged with a nonprofit that seeks grant funding from the County, then the employee is cautioned against appearing before any County board, or interacting with County staff in any manner, on behalf of the nonprofit.

Even if the grant application, award, or administration occurs without the employee's involvement or that of his or her employee department, the employee cannot be involved *in any manner* with

¹ *See also* Section 112.313(7)(a), Fla. Stat. (No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, with a notable exception of an engagement with a nonprofit that contracts with the agency as provided for in Section 112.313(15), Fla. Stat.)

this process. The County Ethics Commission has interpreted this prohibition very expansively to include any communications, in any form, intended to influence an individual within the County to take an official action. (See INQ 16-48, 16-22, INQ 14-170, INQ 12-13, INQ 11-01, and INQ 10-201)

With respect to fundraising on behalf of any nonprofit, the County Ethics Code prohibits County employees from soliciting any gifts in exchange for an official action. (Section 2-11.1(e)(3)). This obviously means that an employee may not solicit or accept a gift on behalf of the non-profit in exchange for any official action taken as a County employee.

However, outside of a prohibited *quid pro quo* scenario, solicitation of gifts on behalf of a nonprofit organization is not generally prohibited, particularly where an employee is not compensated by the 501(c)(3) entity. (See generally INQ 16-93) Employees must nevertheless avoid direct, targeted solicitations of County vendors and lobbyists on behalf of the non-profits, even if the solicitation is not prohibited, in order to avoid situations where a County vendor or contractor would accede to a request for contribution in exchange for its continued business relationship with the County. (See INQ 16-275)

Opinion:

It does not readily appear that your outside employment with the law firm or nonprofit will create a prohibited conflict of interest as defined in Section 2-11.1(j) of the Ethics Code, inasmuch as you have advised that there is no overlap in your county work hours and your private work, the work locations are separate, and because in your private work you will not interact with County staff or persons that are receiving County benefits.

Your professional experience and qualifications are your own, but the use of County seals or other paraphernalia in your private work should be averted. Moreover, to avoid even the appearance of impropriety, you should never suggest to private clients that your public employment will afford them some special benefit or access that is ordinarily not available to a similarly situated attorney that is not publicly employed.

In your fundraising activities on behalf of the nonprofit, you should also be cautious about direct solicitations from County vendors, and you should of course avoid soliciting contributions from persons or entities that are transacting with your County department.

Also, you are required to request permission to engage in your outside employment on an annual basis and also file an annual outside employment financial disclosure form reporting any money received from the employment.

All of the standard prohibitions that apply to County employees engaged in outside employment would apply to your service with the various nonprofits and for-profits:

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 may not engage in activities that relate in any way to your outside employment during your County work 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 computer programs, computer licenses purchased by the County, County vehicles, in connection with your outside employment, even after work). *See* Sections 2-11.1 (j) and (g), Miami-Dade County Ethics Code; AO 5-5, AO 7-1; INQ 05- 29, and 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 the non-profits or their clients and service recipients. *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, the non-profits or their clients and service recipients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.

You may not represent any of the non-profits before any County board or agency. *See* Section 2-11.1(m)(1), Miami-Dade County Ethics Code; RQO 04-173.

Finally, the County’s Conflict of Interest and Code of Ethics provides the *minimum standard* of conduct for public officials. It does not directly address “appearance of impropriety” issues that should guide the actions of all public servants. Avoiding an appearance of impropriety is even more important given your public employment as a local government compliance manager.

Consequently, you should make all efforts to avoid any overlap between your role as a County compliance manager and your roles with the law firm and the nonprofit so that there is no suggestion that you are using your public position or resources to secure a special privilege or exemption for these entities.

This opinion is limited to the facts as you presented them to the Commission on Ethics, is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. While there may be references to state statutes, questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

<p>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.</p>
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