



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

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
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-135, Section 2-11.1(j), Prohibition on Conflicting Employment.

DATE: August 6, 2024

CC: All COE Legal Staff

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 had the training and certifications required to conduct investigations into the origin and cause of fires. While working in the Fire Investigations Bureau, you maintained the state certification required for fire investigators. You have since let that certification lapse, though you still maintain a certification from the International Association of Arson Inspectors. In your current role as a fire suppression captain, you will respond to fire calls. You will no longer be assigned to investigate fires for MDFR, according to your supervisor, Asst. Chief Jason Richard. Chief Richard said he did not have any concerns about your proposed outside employment.

You seek to engage in outside employment as a fire investigation specialist for as-yet-undetermined private employers, typically insurance companies and attorneys. You would not conduct your private employment while on duty at MDFR, nor would you use county resources of

equipment in your private employment. You also do not anticipate coming into contact with the same persons or entities in your proposed private employment that you encounter in your County employment.

Issue

Whether any prohibited conflicts of interest may exist between your County employment and your 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 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 by the Ethics Commission. *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 13-157 (concluding that a firefighter assigned to the Fire Investigations Bureau would still have a conflict of interest if he worked as a private fire investigator in St. Lucie County).

Similarly, last year you were advised that your proposed outside employment as a private fire investigator would pose a conflict of interest with your County employment as a captain in a fire suppression unit because your supervisor, Chief Jason Richard, said he would periodically assign you to conduct fire investigations when other investigators were unavailable. *See* INQ 23-65.

In contrast, the Ethics Commission concluded that a former fire inspector who no longer conducted fire investigations for MDFR was permitted to engage in outside employment as a private fire

investigator because his private work was unrelated to his work at MDFR once he stopped investigating fires for the County. *See* INQ 13-196.

In this case, you are no longer able to conduct fire investigations for MDFR because you have let the certification required by the State of Florida expire. For that reason, your proposed outside employment as a private fire investigator poses no conflict with your County position.

You are, however, reminded that you must not perform any work for your private employer on County time or using County resources. *See* Section 2-11.1(g), County Ethics Code. Additionally, you are prohibited from sharing any confidential information you receive in the course of your work at MDFR with outside entities, including your private employer. *See* Section 2-11.1(h), County Ethics Code. Furthermore, you are not permitted to lobby County agencies on behalf of any third party, including your private employer. *See* Section 2-11.1(m), County Ethics Code.

Opinion

Your proposed outside employment is not a conflict of interest now that your duties as a fire captain for MDFR will not include investigating fires.

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 this is an informal opinion, 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.