



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Officer John Johnson, Executive Officer
Community Services
Miami-Dade Corrections and Rehabilitation

Director Sherea Green
Miami-Dade Corrections and Rehabilitation

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

SUBJECT: INQ 2024-146, Section 2-11.1(j), Conflicting Employment Prohibited

DATE: August 22, 2024

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 between your outside employment and your County employment.

Facts

You are employed by the Miami-Dade Corrections and Rehabilitation Department (“MDCR”) as the Executive Officer in Community Services. Your job duties primarily entail providing oversight of departmental staff that interact with the community and manage internal processes that focus on diversion, rehabilitation and reentry success.

You are seeking outside employment approval involving three employers/clients: (a) as a technical resource provider for the National Institute of Corrections (“NIC”),¹ facilitating trainings; (b) as

¹¹ The National Institute of Corrections is a federal agency that provides training to state and local corrections officers and staff and consults with agencies directly on best practices. More information is available here: <https://nicic.gov/about-nic#mission> (last accessed on August 22, 2024).

an agency coach for out-of-state agencies through the Jails and Justice Support Center (“JJSC”)²; and (c) as an adjunct faculty member of the University of Nebraska, conducting online criminal justice classes on weekends. You state that none of these three employers is a contractor or vendor with Miami-Dade County. You state you would conduct all of your outside employment during your off-duty hours and that you have no access to confidential information at MDCR that would be used in your outside employment. You state that the materials you use are general information related to best practices and not property of Miami-Dade County, and that otherwise you would not use the same resources you use in your County employment. You do not anticipate coming into contact with any of the same people or entities in your outside employment that you encounter in your County role. As a supervisor, you understand that you cannot require people you supervise to get training through your outside employers; you state there are other resources available for training MDCR personnel.

MDCR Director Sherea Green was consulted and she said she did not know of any specific conflicts of interest between your County employment and your proposed outside employment.

Issue

Whether there is a prohibited conflict of interest between your proposed work for NIC, JJSC, and/or the University of Nebraska and your County employment.

Analysis

Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County’s Administrative Order 7- 1. “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.” A.O 7-1.

Section 2-11.1(j) of the Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment which would impair the employee’s independence of judgment in the performance of his or her official duties, thereby creating a conflict between the employee’s public duties and private interests. Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* AO 5-5; INQ 23-87; INQ 20-43; INQ 19-123; INQ 11-162.

For example, the Ethics Commission has previously found an MDCR pre-trial services officer could engage in outside employment as a driving instructor because the work was unrelated to her County employment and would not impair her independence of judgment in the performance of her County duties. *See* INQ 22-42. *See also* RQO 17-01 (discussing multiple factors to consider

² The Jails and Justice Support Center is a federal agency that provides training and technical support to jail administrators around the country, focusing on “creating and sustaining safe, humane, and effective environments for their populations including incarcerated individuals, staff, and visitors.” <https://jailsupportcenter.org/home/> (last accessed August 22, 2024).

when evaluating whether outside employment is conflicting). Similarly, in INQ 16-288, the Ethics Commission opined that an MDCR training officer did not have a conflict of interest due to her work at the Miami-Dade College School of Justice conducting training courses, because the school no longer contracted with MDCR and her outside employment was completely unrelated to her County duties and would not impair her independence of judgment in the performance of her public duties. When it comes to consulting with outside agencies, the Ethics Commission has found that a Miami-Dade Police major did not have a conflict when he worked as an outside consultant to agencies outside of Miami-Dade County because the work would not impair his independence of judgment in the performance of his County duties. *See* INQ 22-156.

It appears unlikely your outside employment with NIC, JJSC or University of Nebraska will impair your independence of judgment in the performance of your County duties at MDCR, based on the information that you have provided to us at this time, including that a) your work will only occur outside of working hours; b) you will not be required to encounter the same or similar people or entities as in your County position; c) you will not use the same or similar resources that you use in your County work beyond best practices guides that are not the property of Miami-Dade County; d) your County position does not provide you with access to non-public information that is or could be relevant to your anticipated outside employment. Additionally, you have acknowledged that **you cannot require MDCR employees to get training through your outside employers.**

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

- You shall not engage in activities that relate in any way to your 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 your 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,
- 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, for the benefit of your outside employers or their clients. *See* County Ethics Code Section 2- 11.1(h).
- You may not exploit your County position to secure special privileges or exemptions for yourself or your outside employers or their clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code. This restriction includes the recruitment or solicitation of MDCR employees to receive training or instruction through your outside employers.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County's Elections Department by July 1st of each year. *See* County Ethics Code Section 2-11.1(k)(2).³

³ The form is available online at https://www.miamidade.gov/elections/library/forms/_outside-employment-statement.pdf.

- You will not lobby the County on behalf of your outside employers or anyone else. *See* County Ethics Code § 2-11.1(m)(1).

County 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* AO 7-1; RQO 16-02; RQO 00-10. Accordingly, **this memorandum does not grant you permission to engage in outside employment**. You must obtain permission to engage in outside employment every year from your department director.

Opinion

Based on the facts presented here, your outside employment for NIC, JJSC and University of Nebraska does not appear to conflict with your County employment because it will not impair your independence of judgment in the performance of your County duties.

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.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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.