



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Darrell McMillan, Social Worker, Office of Housing Advocacy
Miami-Dade Community Action and Human Services Department

Arlette Telfort, Tenants' Rights Advocate, Office of Housing Advocacy
Miami-Dade Community Action and Human Services Department

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

SUBJECT: INQ 2023-166, Section 2-11.1(j) and (k), Conflicting employment prohibited

DATE: November 19, 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 of outside employment as a client services specialist at Chapman Partnership.

Facts

You are employed by the Miami-Dade Community Action and Human Services Department ("CAHSD") as a social worker in the Office of Housing Advocacy. The Office of Housing Advocacy acts as a clearinghouse and coordinator to address issues of affordable housing and landlord/tenant rights, focusing on assisting families and individuals' efforts to obtain housing related resources.¹

You are seeking approval to engage in outside employment as a Client Care Specialist at Chapman Partnership. Chapman Partnership is a nonprofit County vendor that provides comprehensive programs and services in collaboration with others that empower Miami-Dade residents with

¹ For more information on CAHSD's Office of Housing Advocacy, see <https://www.miamidade.gov/socialservices/library/facts-about-oha.pdf> (last accessed on November 13, 2024).

dignity and respect to overcome homelessness and achieve and maintain long-term self-sufficiency.² The majority of the funding Chapman Partnership receives comes from government grants, many of them provided by Miami-Dade County. However, your office at CAHSD has no oversight over these grants. Your duties at Chapman Partnership involve working a late shift at a shelter, monitoring clients and in emergencies providing transportation to the hospital.

While your job duties at CAHSD include referring homeless individuals to the Homeless Helpline, which may refer them to Chapman Partnership for services, you do not make referrals directly to Chapman Partnership. We consulted with your supervisor, Arlette Telfort, who explained that your office does not have long-term clients and does not keep case files on clients or perform any follow-up services after they are referred for services. She said she does not have any concerns about your outside employment.

Furthermore, your County job duties do not include any oversight or authority over any County vendors or contracts and you are not in a position in your County employment to solicit or directly refer customers or clients to your outside employer. You advise that your County duties at CAHSD and your responsibilities in your outside employment would not involve use of the same databases and you would not use any County resources in your outside employment. Additionally, you would only engage in outside employment when you were not working for CAHSD and your hours for the two jobs would never overlap. You would, however, come into contact with some of the same people in both jobs.

Issue

Whether any prohibited conflict of interest may exist between your employment at CAHSD and your proposed outside employment at Chapman Partnership.

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. 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;

² For more information on Chapman Partnership, see <https://chapmanpartnership.org/about/> (last accessed on November 13, 2024).

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.

Several factors are considered to determine whether a potential conflict of interest exists between an individual's County position and his or her outside employment, including: the nexus between the public duties and the outside employment; whether the employee has decision-making authority over the same subject matter that the outside employment concerns; whether the employee solicits business or customers in the same area over which he or she has jurisdiction in his or her public duties; whether the employee will come into contact with the same or similar people or entities in both his or her public position and outside employment; and whether the public entity with which the employee serves funds or has contracts or agreements with his or her outside employer. *See* RQO 17-01; INQ 21-54; INQ 21-72; INQ 17-162.

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).

For example, a Home Care Aide at CAHSD did not have a conflict of interest in her outside employment at a private nursing home because her public and private roles did not overlap, and she was not in a position to refer potential clients to her private employer. *See* INQ 20-88. However, the Ethics Commission has found that the County Ethics Code barred a Miami-Dade Aviation Department employee from engaging in outside employment with a contractor at Miami International Airport, because her County duties were the same as her conflicting employment where she would provide customer services to same personnel and entities that she deals with routinely in her County employment and her conflicting employment would occur at the same facilities where she performs her County duties. *See* INQ 17-162.

In RQO 16-02, the Ethics Commission found that an employee could engage in outside employment with a vendor that contracted directly with his department and provided services that were similar to his county employment **but only if he and the department complied with specific limitations**. In that case, the employee was a security guard for the Internal Services Department and also worked as a security guard for a County vendor. *See* RQO 16-02. The Ethics Commission imposed limitations on his County employment to ensure that he had no contact with his outside employer.

Here, based on the information provided to us, **it appears likely that the type of outside employment you are seeking to engage in would not impair your independence of judgment** as long as you and your County employer continue to abide by certain limitations. To wit:

- You must not be assigned any duties at CAHSD that involve referring clients directly to Chapman Partnership or assisting clients who are already receiving services from Chapman Partnership.
- You must not be supervised by any County official or staff assigned to oversee, negotiate, enforce or otherwise have any involvement with the County contract or agreement with Chapman Partnership.

If your job description at CAHSD changes, you must seek a new Ethics Opinion before your outside employment can be approved. *See* RQO 16-02.

Additionally, you are cautioned that:

- 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 private company or its clients. *See* County Ethics Code Section 2-11.1(h).
- 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 Ethics Commission by July 1st of each year. *See* County Ethics Code Section 2-11.1(k)(2).³
- You will not lobby the County on behalf of your outside employer or anyone else. *See* County Ethics Code § 2-11.1(m)(1).

Opinion

Based on the facts presented here and discussed above, your proposed outside employment poses no prohibited conflict of interest with your county responsibilities.

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.

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

Other conflicts may apply based on directives from Miami-Dade County or under state law. Questions regarding possible conflicts based on County directives should be directed to your supervisor or 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 opinions provided by the legal staff after review and approval by the Executive Director and/or General Counsel. INQs deal with opinions previously addressed in public session by the Miami-Dade Commission on Ethics and Public Trust or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Ethics Commission 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 this opinion may be subject to investigation and a formal Complaint filed with the Ethics Commission.