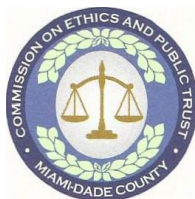


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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February 16, 2024

Shalisa Hernandez
Spouse of Albert Hernandez, Corrections Officer
Miami-Dade Corrections and Rehabilitation Department
Delivered via email to: shalisaofmiamievents@gmail.com
Copied to: Albert.Hernandez2@miamidade.gov

Re: INQ 2024-31, Section 2-11.1(c), Limitations on Contracting with the County, and
Section 2-11.1(j), Conflicting Employment Prohibited

Dear Ms. Hernandez,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust requesting an opinion regarding potential conflicts of interest between your husband’s employment at Miami-Dade Corrections and Rehabilitation Department (“MDCR”) and your plans to apply for a County small business grant and bid on County solicitations.

Facts

You advised that you own an events and party planning company, Shalisa of Miami Events, with your husband, Albert Hernandez, a Corrections Officer with MDCR. Your husband is assigned to the Hospital Services Division, working with inmates receiving medical care. You advise that your husband assists you with the business and is listed in its corporate registration with the Florida Department of State, Division of Corporations as a vice-president of the business. You advise that he is not compensated for the help he provides your business.

You would like to apply for a Minority Small Black Business Capitalization Program grant, which is administered by the Miami-Dade Economic Advocacy Trust (“MDEAT”). The Program will award \$10,000 grants to qualifying businesses to invest in business equipment, marketing, technology and other tools for business expansion. You also plan to apply to register Shalisa of Miami Events as a County vendor to bid on a variety of solicitations for services involving event planning, decorating and interior design. You do not have a specific solicitation in mind at present, but anticipate bidding on solicitations issued by the Strategic Procurement Department.

Issue

Whether a prohibited conflict of interest would arise between your husband's employment with the County and your business contracting with the County.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance ("County Ethics Code"), each of which is analyzed below:

A. Contracting with the County

Generally, sections 2-11.1 (c) and (d) of the County Ethics Code permit County employees and their immediate family members¹ to transact business with the County, so long as the contract does not interfere with the full and faithful discharge of the County employee's duties, the County employee does not participate in negotiating or awarding the contract, and the County employee's job duties will not require him or her to be involved with enforcing or overseeing the contract. However, the County Ethics Code prohibits a County employee or the employee's immediate family members from transacting business with the County department for which the employee works. Specifically,

[the limited exclusion from the general prohibition on County employees contracting with the County] shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

County Ethics Code § 2-11.1(c)(2).

For example, a Corrections Technician for MDCR who also had an outside business providing event planning was permitted to apply for a Mom and Pop Grant for small businesses funded by the County because MDCR had no role in oversight or administration of the grant program and none of her job responsibilities required her to be involved in the grant in any way. *See* INQ 22-28. In contrast, a Corrections employee who owned a food truck was prohibited from participating in the Friday Food Truck events held by MDCR because the participating food trucks had a contract with MDCR which entailed providing the Department with 10 percent of their sales. *See* INQ 18-157. Immediate family members of County employees are, like the employees themselves, prohibited from contracting with the Department where the employee works. *See* RQO 17-05.

¹ Section 2-11.1(b)(9) of the Ethics Code defines "immediate family" members of an employee as "the spouse, domestic partner, parents, stepparents, siblings, half-siblings, step-siblings, children, and stepchildren" of the employee.

In this case, it appears unlikely that your husband's employment with MDCR would present a conflict of interest if you were to apply for a grant from MDEAT because his County employment responsibilities do not involve any oversight, administration or other involvement in the MDEAT grant program.

Similarly, you are permitted to respond to solicitations issued by Miami-Dade County, as long as the contract does not involve MDCR. Each time you seek to respond to a solicitation, you are required to get an opinion from the office regarding that specific solicitation. You are cautioned that the Strategic Procurement Department issues solicitations for the various County departments, including MDCR.

B. Outside Employment

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. "County employees are considered to be engaging in outside employment when they are running a business whether incorporated or not and regardless of whether it is generating any income . . ." RQO 16-01. Thus, work that your husband, Albert Hernandez, engages in for your privately-owned business, constitutes outside employment.

Section 2-11.1(j) of the Miami-Dade County Ethics Code prohibits 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 duties and private interests. "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.

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.

From the facts you provided, it appears unlikely your husband's outside employment with your private company will impair his independence of judgment in the performance of his County duties with MDCR because the services provided by your event planning business does not overlap with his employment at MDCR working with inmates who require medical treatment, and your company will not contract with MDCR.

However, he must abide by certain limitations and cautions outlined below to avoid a conflict:

- He cannot use County time or resources in his outside employment for your business. *See* RQO 17-01
- He shall not engage in activities that relate in any way to your private company during his 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 vehicles, in connection with your outside employment, even after work). *Id.*

- 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, for the benefit of Shalisa of Miami Events, or for the benefit of Shalisa of Miami Events clients. *See* Section 2- 11.1(h), Miami-Dade County Ethics Code.
- He may not represent Shalisa of Miami Events before any County board or agency. *See* County Ethics Code Section 2-11.1(m)(1); RQO 04-173.
- 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 noon on July 1st of each year. *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.

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; INQ 13-28. Accordingly, **this memorandum does not grant your husband permission to engage in outside employment. Your husband must obtain permission to engage in outside employment yearly from his department director.**

Opinion

Based on the facts that you provided, it does not appear that a conflict of interest arises from your husband's employment with MDCR and your application for a small business grant from MDEAT. Furthermore, your business is permitted to contract with County departments and participate in bid solicitations, so long as your company does not contract with MDCR or engage in any business with the County in which your husband, as part of his County employment, is required to be involved in any way. Finally, your husband's work for your private party planning company does not appear to create an impermissible conflict of interest with his County employment with MDCR, but he must abide by the restrictions detailed above.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the below-named Staff Attorney.

Other conflicts may apply based on directives from the City Commission or under state law. Questions regarding possible conflicts based on City Commission directives should be directed to the City Attorney'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/>.

Sincerely,

Susannah Nesmith

Susannah Nesmith

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.