



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Captain Antonio Hernandez
Miami-Dade County Fire Rescue Department

Assistant Chief Jason Fernandez
Miami-Dade County Fire Rescue Department

FROM: Etta Akoni, Staff Attorney
Miami-Dade County Commission on Ethics & Public Trust

SUBJECT: INQ 2024-84, Conflicting/Outside Employment §2-11.1(k)(2) and (j), County Ethics Code

DATE: May 6, 2024

CC: All COE Legal Staff; Ivonne Villar, Chief Legal Liaison, Miami-Dade County Fire Rescue Department

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts:

You, Antonio Hernandez, are employed by the Miami Dade County Fire Rescue Department (“MDFR”) as a Captain in the Aviation Operations Division at Miami International Airport. In this role, you are responsible for supervising a group of three (3) to seven (7) firefighters during your assigned duty days, overseeing station responsibilities, overseeing fire tactics for each foam truck, and supervising various emergency and administrative functions related to running a single operations unit or station including recommendations regarding training and discipline of subordinates.

You were previously approved for and would like to continue to engage in outside employment with the American Medical Academy (“AMA”) as an EMS Administrator. The American Medical Academy is a Florida for profit corporation owned by Angie Gutierrez, who is not a county employee. You are not listed as an owner or a board member for AMA on the corporate filing listed with the Florida Department of State, Division of Corporations, and you affirm that you are not an owner of AMA. In 2023, AMA signed an Affiliation Agreement with MDFR pursuant to Miami Dade County Board of County Commissions Resolution No. R 389-23, which approved the Miami-Dade Fire Rescue Rider Program for students enrolled in state-approved emergency

medical technician and paramedic educational and training programs. According to Assistant Chief Jason Fernandez, the students in the Rider Program are never assigned to the Miami International Airport station, where you are assigned.

As EMS Administrator for AMA, you are responsible for student Title IX¹ issues, student discipline matters, and you serve as the student parent liaison. As the student parent liaison, you arrange meetings when requested by a student and/or parent, when parents have concerns about AMA's curriculum or school policies, and you relay said concerns and information to the AMA's EMS Director and AMA's owner. The Student Title IX portion of your position with AMA includes orientations for all new students, initiating the investigation process, documenting, and reporting said investigations to the owner(s) of AMA. Not all investigations are handled by you, in an effort to avoid potential conflicts with your County position as various Miami-Dade County employees are also employed by or attending classes at AMA. To facilitate this separation of responsibilities, AMA has on staff an assistant Title IX coordinator, Mr. Josh Reeves, who also handles incidents when you are not at AMA, or when a conflict of interest should arise. Moreover, you can't recall any County employee ever being investigated for title IX issues by AMA.

You indicate that you maintain a Florida Paramedic license² as required for your work with and that is paid for by MDFR, said license is not required for your work at AMA. Additionally, You also advise that AMA provides you with the resources necessary to perform your role within their company. You indicate that your AMA duties occur outside of your County hours of employment. You advise that you do not have access through your County position to non-public information that is or could be relevant to your outside employment, and your position as Captain does not include any contractual issues and work for MDFR. You do not use the same or similar resources in your outside employment as you use in your County position. However, as some County employees, specifically MDFR employees, are also independent employee instructors at AMA, you do encounter those county employees while working for AMA.

You advise that you are not aware of any Aviation Operations Division personnel attending AMA at this moment, but you cannot conclusively confirm if any Aviation Operations Division personnel have previously attended AMA. However, you believe the AMA Bursar would have that information. You also advised that you do not recommend AMA to any individual regardless of whether they work for Miami-Dade County, as recruitment is not part of your job functions at AMA.

Issue: Whether any prohibited conflicts of interest may exist between your County employment and your outside employment as an EMS Administrator for American Medical Academy.

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

¹ Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.

² Florida Department of Health Paramedic license number PMD17228, Active Until December 1, 2024.

of judgment in the performance of his/her official duties thereby creating a conflict between the employee's public duties 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 13-28; INQ 19-101.

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 that it is contrary, detrimental, or adverse to the interest of the County and/or the employee's department. *See* RQO 00-10; RQO 16-02; INQ 12-49; INQ 13-28; INQ14-104; INQ 15-22; INQ 16-121.

In consideration of your inquiry, we must look to several factors, one of which is whether there is similarity in your duties as a Captain for MDFR and your outside employment as EMS Administrator for AMA. In this instance, your specified work responsibilities as EMS Administrator Director of Operations do not overlap with your work responsibilities for MDFR given the limited scope of your student interaction at AMA, the lack of authority over or involvement with contracts/agreements entered into by AMA at MDFR and AMA, as well as the fact that AMA students in the MDFR Ryder program are generally not assigned to the Aviation Operations Division of MDFR. However, your duties as EMA Administrator may have some similarities in that both positions require you to investigate or review misconduct of staff and may cause some overlap in the functions of your public and private duties. *See* INQ 22-10.

The Ethics Commission has previously opined that 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. *See* INQ 18-54 (citing RQO 00-10, RQO 04-168, and RQO 12-07, which note that outside employment with similar duties and functions can avoid a conflict when abiding by certain limitations). Outside employment that shares some of the knowledge base used in your County work – but does not involve an overlap of duties or involve administration or oversight of County personnel, projects, or processes – would not generally create conflicting employment. *See* RQO 10-01 (the Commission found that a County elevator contract specialist for Transit may perform outside employment as an elevator inspector but he may not perform inspections on work done by vendors that he supervises in his public capacity because doing so may impair his independence of judgment in his public capacity); *see also* INQ 14-163; INQ 20-43; INQ 21-95.

In INQ 23-147, the Ethics Commission opined that a Lieutenant with the Miami-Dade Fire Rescue Department could engage in outside employment as an administrator and practical skills instructor with Emergency Training Academy (ETA), a company that provides students with the necessary training and instruction needed to obtain a firefighter certification and has an affiliation agreement with MDFR that allows ETA students to ride along as part of the EMT or paramedic training. However, he could not have any oversight of the affiliation agreement with ETA or any other

MDFR training vendor, he may not instruct any class or group that contains County employees under his supervision at MDFR, and he may not recruit or solicit County employees to enroll as ETA students. *See also* RQO 09-16 (the Ethics Commission opined that an MDFR lieutenant could engage in outside employment, through his privately owned company, training County firefighters in HazMat because in his capacity as a County firefighter, he was not involved in the training of county employees, his company did not contract with his department, he did not use County equipment or County time to engage in private training, and he did not compete with the County for training dollars).

In INQ 22-10, the Ethics Commission opined that a lieutenant for MDFR and partial owner of a for-profit college offering educational programs in the allied health, emergency medical and fire service professions, diploma programs, associate degree programs, and bachelor's degree programs could serve as the college's Vice President of Admissions and Compliance, with certain limitations. Specifically: the college could not contract with MDFR; the MDFR lieutenant could not authorize, approve, or disapprove any agreements for services between MDFR and the college; the MDFR lieutenant could not have any oversight or administration of MDFR training vendors; and, *in the event that MDFR staff decided to attend the college, their attendance could not have any effect on their County assessments and promotions within MDFR. See id.*

Opinion:

Based on the information provided during this review, it appears to be unlikely that the type of outside employment that you, Captain Antonio Hernandez, are seeking to continue to participate in would impair your independence of judgment in the continued performance of your County duties as a Captain in the Miami Dade County Fire Rescue Department.

This is because there is no overlap between his public duties and his outside employment; his outside employment will be performed outside of his County hours; he will not come into contact with the same persons or entities involved in his County work; he will not use the same resources in his outside employment as is used in his County work; and, is he does not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment. *See* RQO 17-01; RQO 16-02.

However, your outside employment with AMA must adhere to the following conditions in order to avoid the creation of a conflict of interest: you may not in your County position have any authority over or involvement with the agreement between AMA and MDFR; you cannot be authorized to approve or disapprove any agreements for services between MDFR and AMA; you cannot have any oversight or administration of MDFR training vendors; in the event that MDFR employees decide to attend AMA, their attendance should not have any effect on their County assessments and promotions within MDFR; and lastly, you may not handle or be involved any investigations or matters at AMA that involve any MDFR employees who attend or work for AMA, especially MDFR employees under your supervision (i.e. the firefighters at your station). *See* INQ 16-13; INQ 16-288; INQ 17-232; INQ 22-10; INQ 23-147. To ensure the mitigation of the appearance of a conflict of interest and solidify your independence of judgment, you must abide by certain additional limitations and cautions outlined below:

- 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 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* Sections 2-11.1(g) and (j), Miami-Dade County Ethics Code; INQ 05-29; 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 AMA or AMA students or alumni. *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 or AMA, its students or alumni. *See* Section 2-11.1(g), Miami-Dade County Ethics Code. This restriction includes the recruitment or solicitation of MDR employees to become AMA students.
- You may not represent AMA, lobby for AMA, or contact anyone employed by Miami-Dade County, or on a County board or agency, in an attempt to influence a decision about any contract related to AMA. Miami-Dade Code 2-11.1(m)(1), RQO 04-173, INQ 19-32.
- You must obtain permission to engage in outside employment on an annual basis by declaring your outside employment and filing a Request for Outside Employment with your department director through INFORMS. Additionally, **you must file an Outside Employment Statement³ disclosing all income earned, or the lack thereof, from your outside employment on a yearly basis with the Miami Dade County Elections Department by noon on July 1st of each year.** *See* Section 2-11.1(k)(2), Miami-Dade County Ethics Code.
- **You must file a sworn statement disclosing your outside employment with the Clerk of the Board** in accordance with Section 2-11.1(f) of the County Ethics Code.

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

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.

³ You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.