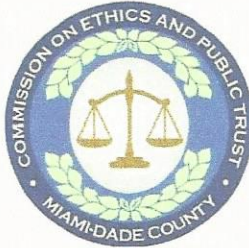


# MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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EXECUTIVE DIRECTOR  
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ADVOCATE

Via email at: [Hilda.Castillo@miamidade.gov](mailto:Hilda.Castillo@miamidade.gov)

May 26, 2017

Hilda Castillo  
Senior Human Resources Manager  
Finance Department  
111 NW 1st Street, 26th Floor  
Miami, FL 33128

### Re: RQO 17-03 Outside Employment

See Miami-Dade County Ethics Code at §§ 2-11.1 (j) and (k)(1)

Dear Ms. Castillo:

IN A PUBLIC MEETING on May 10, 2017, the Miami-Dade Ethics Commission opined that employees who establish a nonprofit and serve as the Executive, Director, President or Manager of that nonprofit on a compensated or uncompensated basis and are actively involved in the administration of that entity, are engaged in outside employment requiring completion of the outside employment paperwork on a yearly basis.

Sections 2-11.1(j) and (k)<sup>1</sup> of the County Ethics Code and Miami-Dade Code Section 2-11<sup>2</sup> prohibit County employees from engaging in other employment that conflicts with the employee's County duties or which would impair the employee's independence of judgment in the performance of his or her public duties. These ordinances also prohibit County employees from using County time or

<sup>1</sup> Miami-Dade Code §2-11.1(j) titled "Conflicting employment prohibited" states:

"No person included in the terms defined in subsections (b)(1) through (6) and (b)(13) shall accept other employment which would impair his or her independence of judgment in the performance of his or her public duties."

Miami-Dade Code § 2-11.1(k)(1) titled "Prohibition on outside employment" states:

"No person included in the terms defined in subsections (b)(5) [departmental personnel] and (6) [employees] shall receive any compensation for his or her services as an officer or employee of the County, from any source other than the County, except as may be permitted by Section 2-11 of this Code of Ordinances."

<sup>2</sup> Miami-Dade Code § 2-11 titled "Outside employment by County employees" states:

"1(a) Generally prohibited. No full-time County employee shall accept outside employment, either incidental, occasional or otherwise, where County time, equipment or material is to be used or where such employment or any part thereof is to be performed on County time. (b) When permitted. A full-time County employee may accept incidental or occasional outside employment so long as such employment is not contrary, detrimental or adverse to the interest of the County or any of its departments and the approval required in subsection (c) is obtained. (c) Approval of department head required."



resources in furtherance of their outside employment. County employees that engage in outside employment are required to file an annual report indicating the source of the outside employment, the nature of the work being done, and any money or other consideration received from the outside employment no later than 12:00 noon on July 1st of each year.

The County Ethics Code does not provide a definition of the term “other employment” or “outside employment.” However, the Miami-Dade Ethics Commission (COE) has generally defined outside employment as “any non-County employment or business relationship in which the County employee provides a personal service to the non-County employer that is compensated or customarily compensated.”<sup>3</sup> Additionally, the COE has found that a County employee is engaged in outside employment if he or she is actively engaged in the management and operations of his or her private company.<sup>4</sup>

With respect to traditional nonprofits, the COE has found that uncompensated volunteer work for a traditional nonprofit entity such as the United Way is not considered outside employment.<sup>5</sup> This serves to promote volunteerism in the local community and serves a County interest of community outreach by assigning County employees to serve on the boards of traditional nonprofit organizations.<sup>6</sup>

With respect to nonprofit entities established and administered by a County employee, the COE staff has determined in previous informal opinions that a County employee engages in outside employment where the employee serves on a compensated or uncompensated basis as an Executive Director, President, or performs some other managerial role in their nonprofit because this involvement is equivalent to providing services to the entity that would be ordinarily compensated.<sup>7</sup> A County employee who establishes and serves as an Executive Director, President or Manager and administers his or her own nonprofit organization could be expected to expend a level of time and effort that would meet the criteria established for outside employment. It would also create the potential for increased conflicts of interest if the nonprofit were to seek to transact business with the County by applying for County grants or entering into contracts to provide services to the County, further justifying County review of such activity.

A County employee working for a nonprofit, even on an uncompensated basis, could be considered to be engaging in outside employment where that involvement includes significant managerial responsibilities or working time commitments that could interfere with one’s County responsibilities. Situations involving the assumption by County employees of substantial managerial

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<sup>3</sup> See RQO 16-01 (2016) and RQO 17-01 (2017). See also INQ 13-236 (2013), and INQ 12-131.

<sup>4</sup> See INQ 09-109 (2009) (County employee who is merely an investor in a company and takes no active role in the company’s management or operations is not considered as engaging in outside employment. However, if employee attends corporate board meetings and is involved in policy setting or management of the company, then such activities constitute outside employment. The distinction the COE generally draws is whether the employee has a passive role or an active one.).

<sup>5</sup> See INQ 14-215 (2014), INQ 13-34 (2013), and INQ 12-131 (2012).

<sup>6</sup> This should, of course, be balanced with the need to prevent such activities from impeding a County employee from performing regular job responsibilities.

<sup>7</sup> The COE has not provided a formal opinion on this matter, but COE staff has addressed this issue in informal opinions. See INQ 13-08 (2013) (County employee who founded and served as Executive Director, on an uncompensated basis, for his nonprofit organization offering afterschool tutoring and basketball instruction, whose duties included administering the nonprofit’s programs and recruiting coaches, was engaged in outside employment because he served as executive director providing services to his nonprofit that are customarily compensated), and INQ 17-107 (2017) (County employee who founded a nonprofit organization for victims of domestic abuse and human trafficking and spent in excess of 20 hours per week, on an uncompensated basis, administering the day-to-day functioning of the nonprofit (working with law enforcement to provide victims of domestic violence and human trafficking; providing support and personal care items and referrals to governmental programs that assist such victims; fund raising, overseeing volunteers, seeking grants, and organizing and presenting workshops), was engaged in outside employment which required completing the outside employment paperwork on a yearly basis).

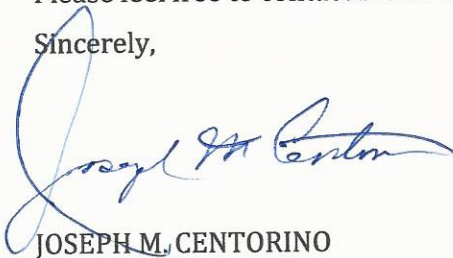
obligations or workloads would merit individual scrutiny to determine whether they should be considered outside employment. The rationale is similar to that used by the Ethics Commission in determining that County employees are engaged in outside employment where they are actively engaged in the management and operations of the employee's private company.<sup>8</sup> Completion of the outside employment paperwork provides a mechanism for review by the County to verify that the employee's work for the nonprofit he or she has established is not conflicting with the employee's performance of his or her County duties.

In conclusion, the COE opined that employees who establish a nonprofit and serve as the Executive, Director, President or Manager of their nonprofit on a compensated or uncompensated basis and are actively involved in the administration of that entity, are providing services to the entity which are customarily compensated and are thus engaged in outside employment requiring completion of the outside employment paperwork on a yearly basis.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me or Gilma Diaz-Greco, Staff Attorney, if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph M. Centorino", is written over a large, stylized blue circular mark.

JOSEPH M. CENTORINO

Executive Director

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<sup>8</sup> *Supra* Note 4.