

Biscayne Building
19 West Flagler Street
Suite 220
Miami, Florida 33130
Phone: (305) 579-2594
Fax: (305) 579-2656

Miami-Dade County Commission on Ethics and Public Trust

Memo

To: Mike Murawski, independent advocate
From: Karl Ross, ethics investigator
Date: Aug. 10, 2006
Re: K06-076 Antonio Rubi

Background: The ethics commission opened an investigation into Mr. Rubi's employment status at the Public Health Trust/ Jackson Health Systems at the request of Jackson's internal auditing department. During a July 31, 2006, meeting, auditors raised questions as to whether Mr. Rubi had violated internal hiring policies by working as a consultant with Jackson's Management Information Systems (MIS). Rubi had entered into a voluntary workforce reduction program the previous year. Under the terms of that program – the Voluntary Resignation Incentive Program – trust/ JHS employees are not allowed to be re-hired for a period of two years. Rubi's resignation took effect Feb. 22, 2005. Auditors were concerned that, less than two years later, Mr. Rubi was effectively working full-time with his previous employer, MIS, as an independent contractor/ consultant. They also asked COE to look into whether Mr. Rubi's history with that office provided him an unfair advantage in obtaining contracts, or possibly violated the county's ethics ordinance.

Findings: Mr. Rubi, through his company Xtriims Consulting Inc., has received two contracts with MIS, the office that previously employed him. The first was awarded on Aug. 15, 2005, and was capped at \$4,950. The purpose of that contract was to complete work on an employee evaluation form for the JHS Intranet. Mr. Rubi's supervisor, Benjamin Lee, told COE that he was awarded that job on a no-bid basis because MIS needed somebody to complete the project after the programmer who had been working on it was transferred. He said the project was 99 percent complete, and only required testing and final implementation. He said it was more "cost-effective" to hire Rubi than to seek an outsider with no prior knowledge of

Jackson's operating systems. The second contract was awarded to Xtriims on Jan. 26, 2006, following an invitation to bid (ITB) that was overseen by Jackson's procurement office. The procurement officer in charge of the ITB, Andrea Garland, said the ITB was posted for 20 days on Jackson's official Website and ads were taken out in the Miami Daily Business Review. She said that at least 10 firms were contacted regarding the ITB, including Xtriims. She said only two firms submitted bids, and that, of the two, Xtriims was the most qualified. The contract (sealed bid No. 06-6027) calls for a contract programmer to work 24 hours a week over the course of one year, for a total of 1,248 hours. Mr. Rubi's supervisor, Ben Lee, said he is currently working five days a week and has an office on-site at MIS. At that rate, his hours will run out after about 32 weeks, requiring the contract to be renewed.

Ms. Garland also advised that Xtriims submitted a bid for a second contract with MIS that was also posted from Jan. 6, 2006, to Jan. 26, 2006. That contract (sealed bid No. 06-6026) was for a 60-day project to develop a cash receipt printing system for cash registers at Jackson. Xtriims and Spherion, again, were the only two firms to submit bids. Spherion was selected, despite lacking the requisite experience in the healthcare field. This was done in consultation with MIS and procurement. Spherion's bid of \$47 an hour was slightly less than Xtriims' rate of \$50 per hour.

Discussion: It does not appear that Mr. Rubi violated the county's ethics ordinance in obtaining contracts to work for his former employer as an independent contractor, through Xtriims Consulting. The justification for hiring Xtriims to complete the employee evaluation form for Jackson's Intranet seems justified, given Rubi's knowledge of Jackson's systems and ability to complete the job quickly. The process that led to his subsequent award as a "contract programmer" also seems to have been conducted in a fair and impartial manner, overseen by Jackson's procurement office, which notified a number of other companies in addition to Xtriims. That Mr. Rubi is working at MIS on a full-time basis does raise other issues, however.

Mr. Rubi's contract with MIS calls for him to work as a programmer for "24 hours a week for one year." But as his supervisor, Ben Lee, acknowledged, Mr. Rubi is back at his office on a full-time basis. Mr. Lee said he attempted to obtain a waiver for Mr. Rubi to return as a full-time employee, but the application was denied by Jackson's vice president of human resources, Trummell Valdera. He said Ms. Valdera cited the terms of the VRIP program that Mr. Rubi had agreed to follow. As a result of his participation in VRIP, Mr. Rubi is entitled to payment of 25 percent of his regular salary, plus healthcare benefits for a period of two years. The program was enacted as a way to reduce Jackson's payroll without resorting to layoffs. Mr. Lee said he did not seek an opinion as to whether he could retain Mr. Rubi as an independent contractor, saying he believes this is a separate classification. He said he has been forced to seek outside assistance because three of his five full-time staffers had their positions eliminated. He said it is more efficient to bring in somebody like Mr. Rubi, who has ample knowledge of Jackson's operating systems.

COE attempted to reach Ms. Valdera, but she was on vacation. Jackson's director of Employee Labor Relations, Danny L. Curry, said he did not feel it was necessary to consult Ms. Valdera to interpret her decision regarding Mr. Rubi. Curry stated that the present arrangement with Mr. Rubi working full-time as a contractor is "a back-door way" of defeating the intent of VRIP. He said he did not believe Ms. Valdera would approve of this arrangement because it serves to keep an employee on Jackson's payroll, when that employee had entered into a voluntary retirement program and, moreover, was drawing benefits from that program at the same time the employee was working as a contractor. Mr. Curry said he felt that Mr. Rubi's situation was improper and contrary to the intent of VRIP. It should also be noted that COE spoke to Assistant County Attorney Lee Kraftchik, who said it is ultimately up to Jackson whether it wants to enforce the terms of VRIP. He said Jackson could waive the restrictions if it felt the services provided were vital.

Conclusion: There does not appear to be a violation of the county's ethics ordinance, therefore the ethics investigation should be closed. It does appear that Jackson officials need to determine whether Mr. Rubi's present arrangement as a de-facto employee serves the best interests of that institution.