



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Nadezda Mashinskaya
Title Analyst
Miami-Dade County Department of Transportation and Public Works

Carlos Socarras
Senior Professional Land Surveyor
Miami-Dade County Department of Transportation and Public Works

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-97, Sections 2-11.1(j), Conflicting Employment Prohibited.

DATE: June 6, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in Ms. Nadezda Mashinskaya’s outside employment.

Facts

An inquiry has been submitted concerning whether a conflict of interest would exist were Ms. Mashinskaya, an employee of the Miami-Dade County Department of Transportation and Public Works (“DTPW”), to continue to engage in outside employment¹ as the owner and operator of Happy Nadia, Happy Life LLC (“HNHL”).² HNHL is a Florida limited liability company that sells handmade soaps and soap-making supplies via the Internet.

¹ Ms. Mashinskaya has previously sought and received approval for her outside employment every year since 2019.

² Ms. Mashinskaya owns/operates two other Florida limited liability companies: Thanks Nature LLC and Sprinklify LLC. Ms. Mashinskaya stated that both businesses are now defunct failed business ventures from which she did not derive a profit. She advised that she is not now seeking approval for outside employment

Ms. Mashinskaya is currently employed by DTPW as a Title Analyst. Her job duties include searching real estate properties/parcels under question, comparing instruments with records from the County Recorder's Office and other sources, analyzing and summarizing data to show the true status of properties/parcels under search, and preparing final title searches of properties under question. Ms. Mashinskaya advised that she is currently on parental leave.

Ms. Mashinskaya advises that neither she nor HNHL are or plan to be a County vendor.

Ms. Mashinskaya further advises that she conducts her HNHL-related responsibilities during the evenings and on the weekends, outside of the times in which she is performing her position with DTPW. She advises that, as part of her outside employment, she is not and will not be required to encounter the same or similar people or entities as in her County position. She advises that her outside employment does not and will not require her to interact with County employees, departments, or board. She advises that no County resources are or will be used for her outside employment. She advises that, as part of her County position, she does not have access to non-public information that is, or could be, relevant to her outside employment. Finally, Ms. Mashinskaya advises that she does not interact with or supervise any County vendors as part of her County position.

Issue

Whether any prohibited conflict of interest may exist between Ms. Mashinskaya's County employment and her outside employment as the owner/operator of HNHL, a Florida limited liability company.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") prohibits a County employee from accepting outside employment, "which would impair his or her independence of judgment in the performance of his or her public duties." Section 2-11.1(j); *see also* section 2-11.1(k). Additionally, Miami-Dade County Administrative Order 7-1 provides that, "[u]nder 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."

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Miami-Dade Commission on Ethics and Public Trust ("COE") regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 21-111; INQ 19-101. Department directors and their subordinate supervisors have the

with these businesses because she is no longer operating these businesses and intends to close them with the Florida Division of Corporations. Accordingly, this memorandum does not further address either Thanks Nature LLC or Sprinklify LLC. **However, if Ms. Mashinskaya does begin to operate these businesses again, or start a new business, she must seek approval for that outside employment from her employing County department.** *See* Miami-Dade Code § 2-11.

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* RQO 16-02; RQO 00-10; INQ 13-28.

Miami-Dade County provides to qualified employees Paid Parental Leave, which “provides leave with pay for the purpose of caring for a newborn, newly-adopted child, or newly-placed foster child or children.” Miami-Dade County Leave Manual § 30.01.00; *see also* Miami-Dade County Leave Manual § 30.02.00; Miami-Dade County Code § 11A-80.³ Paid Parental Leave is provided concurrently with the lengthier leave provided pursuant to the Family Medical Leave Act. *See* 29 U.S.C. § 2601, et al.; Miami-Dade County Leave Manual § 30.04.01. Federal regulation provides that, when an employer has “a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave.” 29 C.F.R. § 825.216(e). Furthermore, an employer may not deny FMLA benefits to an employee if the employer does not have such a policy. *Id.*

The Miami-Dade County Leave Manual does not specifically address outside employment while an employee is on Paid Parental Leave or FMLA parental leave. The COE has addressed the interplay between leave and outside employment on several occasions. County employees may engage in outside employment while on annual leave without violating the County Ethics Code. *See* INQ 18-222; INQ 18-210; INQ 11-57; INQ 11-36; INQ 11-27; INQ 11-25; INQ 06-26. County employees may also engage in outside employment on furlough days or during a leave of absence without violating the County Ethics Code. *See* INQ 14-103 (addressing furlough); INQ 14-41 (addressing leave of absence). In contrast, County employees may not use sick leave to engage in their outside employment. *See* INQ 09-194. Nevertheless, County employees may “assist the Elections Department as poll-workers, troubleshooters and verification specialists and . . . be paid in both capacities,” because the County employees are not receiving a special benefit and County policy permits the dual pay. RQO 02-98.

Here, based on the information provided to us at this time, it appears to be unlikely that Ms. Mashinskaya's outside employment would impair her independence of judgment in the performance of her County duties as a Title Analyst with DTPW. This is because there is no overlap between her public duties and her outside employment: her outside employment is and will be performed outside of her County hours; she does not and will not come into contact with the same persons or entities involved in her County work; she does not and will not use the same resources in her outside employment as used in her County work; and, she does not and will not have access to non-public information as part of her County employment that is, or could be, relevant to her outside employment. *See* RQO 17-01; RQO 16-02.

³ The Collective Bargaining Agreement between Miami-Dade County and the American Federation of State, County and Municipal Employees (“AFSCME”), Local 199, of which Ms. Mashinskaya is a member, addresses Paid Parental Leave and provides for substantially the same leave as provided in the Miami-Dade County Leave Manual. *See* Collective Bargaining Agreement between Miami-Dade County Florida and AFSCME A.F.L.-C.I.O. General Employees, Local 199, Art. 32.8 (effective 10/1/2020-09/30/2023), available at <https://www.miamidade.gov/humanresources/library/labor-relations-afscme-199.pdf>.

Furthermore, under the circumstances discussed above, Ms. Mashinskaya may continue her outside employment while on parental leave, whether pursuant to the County's Paid Parental Leave or the lengthier FMLA parental leave. The County's stated policy for providing such leave – to care for a newly arrived child – could be undermined if that child's parent were to be required to wind down or cease all outside employment activity, particularly where that outside employment is of the type seen here – a privately owned and operated business – and is a revenue source for that new parent. Miami-Dade County Leave Manual § 30.01.00. Additionally, there is no explicit County policy prohibiting County employees from engaging in outside employment while on parental leave. COE precedent only prohibits the use of sick leave to engage in outside employment. *See* INQ 18-222; INQ 09-194. Thus, in the absence of an explicit County policy to the contrary, Ms. Mashinskaya may engage in her outside employment with HNHL without violating the County Ethics Code.

Opinion

Based on the facts presented here and discussed above, Ms. Mashinskaya would not have a conflict of interest in her proposed outside employment as the owner of HNHL.

However, the COE notes that County Department Directors and their subordinate supervisors retain the discretion to deny outside employment requests, and further strongly recommends that the following limitations be imposed on Ms. Mashinskaya's permission to engage in her outside employment:

- She may not engage in activities that relate in any way to her outside employment during her scheduled work hours (including phone calls, text messages, e-mails, or other communications) and she may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with her outside employment, even after work. *See* County Ethics Code § 2-11.1(g); AO 5-5; AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.
- She may not exploit her County position to secure special privileges or exemptions for herself or HNHL. *See* County Ethics Code § 2-11.1(g) **Specifically, she may not use sick leave to engage in her outside employment. *See* INQ 18-222; INQ 09-194.**
- She may not disclose and/or use any confidential and/or proprietary information acquired because of her County employment to derive a personal benefit, or for the benefit of HNHL. *See* County Ethics Code § 2-11.1(h).
- She may not contract, either individually or through HNHL, directly or indirectly, with DTPW. *See* County Ethics Code §§ 2-11.1 (c), (n).
- She may not represent HNHL before any County board or agency. *See* County Ethics Code § 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of her potential activities as the owner of HNHL, it is important to note that she would be prohibited from doing any such activities on behalf of HNHL or its clients.

- She must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with her department director, and she must file an Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. *See* County Ethics Code § 2-11.1(k)(2).

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.

Other conflicts may apply based on directives from DTPW or under state law. Questions regarding possible conflicts based on DTPW directives should be directed to DTPW 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 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 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.