

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Via First Class Mail
and email at val@miamidade.gov

March 25, 2015

Valerie Sandoval
Personnel Specialist 3
Human Resources Division
Miami-Dade County
Public Works and Waste Management
2525 NW 62 St., 5th floor
Miami, FL 33147

Re: RQO 15-01

A County employee who serves as a family foster home provider for a foster child does not engage in outside employment. *See* Miami-Dade County Code §§ 2-11 and 2-11.1 (k).

Dear Ms. Sandoval:

IN A PUBLIC MEETING on March 11, 2015, the Miami-Dade Ethics Commission opined that a County employee who serves as a volunteer foster parent for one to five children (including the foster parent's own children), is not engaging in outside employment.¹

BACKGROUND

You inquired whether foster parenting is considered outside employment requiring a County employee to submit a "Request for Outside Employment"² to the County's Human Resources Department and an "Outside Employment Statement"³ on a yearly basis. The employee in this case is a foster parent for one child under the age of nineteen and has provided a home for this child for approximately four months.

¹ For purposes of this opinion, the terms "family foster home" and "foster parent" refer to what the general public would consider a typical foster home, where a foster child or children would be placed in a family foster home for a period of time. It does not refer to other types of foster care placement such as, *inter alia*, emergency foster care, therapeutic foster care, group home placement, etc. These other types of foster care placements have additional requirements and different payment structures under Florida law. *See, e.g.*, FLA. ADMIN. CODE ANN. r. 65C-13-030 (1)(c) (2006); FLA. ADMIN. CODE ANN. r. 65C-14 (2014).

² *See* Miami-Dade County Code § 2-11.

³ *See* Miami-Dade County Code § 2-11.1(k)(2).

A licensed family foster home⁴ is made up of individuals or families (foster parents)⁵ who have requested to be able to take a dependent child (foster child)⁶ or children into their home.⁷ The licensing process for foster parents in Florida is administered by the Department of Children and Families (DCF) and local community-based care organizations (CBOs).⁸ Foster parents, as described here, are not employees of the CBOs or the State.⁹ Foster parents are expected to provide a family environment for the foster child, rather than an institutional one; accept the foster child or children into their families and provide the same nurturing and commitment to the foster child that they would provide to their own child; and be financially able to support themselves and their family.¹⁰ Foster parenting is not a paid position; however, foster parents receive a stipend.¹¹ This stipend is intended for the care of the foster child rather than as a payment to the foster parents.¹²

⁴ See FLA. STAT. § 409.175(2)(e) (2014) (defining a “[f]amily foster home” as a “private residence in which children who are unattended by a parent or legal guardian are provided 24 hour care.”).

⁵ A foster parent has been through a rigorous interview process to determine if they can safely care for abused and neglected children in their home. See *Fostering Definitions*, FOSTERING FLORIDA’S FUTURE, <http://fosteringflorida.com/fosteringdefinitions.shtml> (last visited Mar. 5, 2015) (defining the term “foster parent”).

⁶ “A foster child is a dependent child who is [sic] has been removed from their parent or guardian and is living in a licensed foster home.” See *id.* (defining the term “foster child”).

⁷ Generally, a licensed family foster home may not have more than five (5) children in the home, including the foster parent’s children. See FLA. ADMIN. CODE ANN. r. 65C-13.030(1) (2014) and FLA. STAT. § 409.175(3){a)-(b) (2014). Although foster care licensing rules allow a family foster home to house up to 5 children, in practice, DCF staff advises that a majority of foster homes are licensed for 1-2 children because of limitations and restrictions set out in the rules regulating physical standards of family foster homes. See FLA. ADMIN. CODE ANN. r. 65C-13.030(3) (2014), and e-mail from Javier A. Ley-Soto, Esq., Chief Legal Counsel, Florida Department of Children and Families, to Gilma Diaz-Greco, Staff Attorney, Miami-Dade County Commission on Ethics and Public Trust (Mar. 4, 2015, 10:38 a.m. EST) (on file with Ethics Commission Staff Attorney).

⁸ In Miami-Dade County, the organization “OUR Kids” is one such community based organization. According to DCF Staff, both the screening of prospective foster parents as well as the supervision of licensed foster parents is generally performed by a non-profit Administering Foster Parent Agency (AFPA) such as OUR Kids. See *FOSTERING FLORIDA’S FUTURE*, <http://fosteringflorida.com/index.shtml> (last visited Mar. 5, 2015). *Am I Ready to be a Foster Parent?*, *FOSTERING FLORIDA’S FUTURE*, <http://fosteringflorida.com/amiready.shtml> (last visited Mar. 5, 2015).

⁹ *Id.*

¹⁰ See *Am I Ready to be a Foster Parent?* *FOSTERING FLORIDA’S FUTURE*, <http://fosteringflorida.com/amiready.shtml> (last visited Mar. 5, 2015).

¹¹ *Id.* The stipend to cover the foster child’s needs ranges from \$429 to \$515 per month per child depending on the age of the foster child. See FLA. STAT. § 409.145(4) (2014). It is notable that this yields an amount of just \$107.25 to \$128.75 per week per foster child, a sum that generally would not cover all of the expenses of a child in an expensive urban area like Miami-Dade County.

¹² See *Am I Ready to be a Foster Parent?* *supra* note 10.

LEGAL ANALYSIS

The Ethics Commission has not previously addressed whether a County employee who is licensed as a child foster care provider is engaging in outside employment.¹³ In previous opinions, the Ethics Commission 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 eligible to be compensated. In contrast, the Ethics Commission has previously opined that uncompensated volunteer work for a traditional non-profit is not outside employment.¹⁴

There are several factors that indicate that serving as a foster parent is not outside employment, but rather is more analogous to volunteer parenting. These factors include, *inter alia*:

- Foster parents are expected to provide a family environment with the same nurturing and commitment that a foster parent would give to their own child rather than an institutional environment;
- The majority of licensed family foster homes are licensed for a small number of children; and
- Foster parents are screened to ensure that they are financially able to support themselves and their family without the foster care stipend paid by the state.

The only factor that distinguishes foster parenting from purely volunteer work is the fact that foster parents receive a stipend for each foster child placed in their home. However, foster parents are advised that foster parenting is not a paid position and that the stipend is intended for the care of the foster child rather than as a payment to the foster parents. The stipend paid to foster parents per child is a *de minimis* payment. The majority of foster parents house only 1-2 children. Given that this stipend would likely not cover all of the expenses involved in child rearing, and that foster parents would probably have to use their own funds to pay for additional expenses for the foster child, this stipend is not intended to be "compensation" for the foster parents.¹⁵

CONSEQUENTLY, the Ethics Commission found that a County employee who serves as a family foster home provider for a foster child does not engage in outside employment.

¹³ Full time County and municipal employees who engage in outside employment must follow certain requirements. Pursuant to the Miami Dade Code § 2-11, a County or municipal employee that engages in outside employment must request permission to engage in outside employment from his or her supervisor on a yearly basis. Pursuant to the Miami Dade Code § 2-11.1(k)(2), all full time County and Municipal employees engaged in outside employment are required to file a financial disclosure about that outside employment on a yearly basis.

¹⁴ See Miami-Dade County Ethics Commission RQO 14-03 (2014); *see also* Miami-Dade County Ethics Commission, INQ 14-215 (2014), INQ 13-34 (2013), INQ 12-131 (2012).

¹⁵ In further support, it is notable that the Internal Revenue Service (IRS) exempts foster care payments from the income of a parent who fosters up to 5 children in recognition that these payments are made to support the child and not the foster parents. *See* 26 U.S.C. § 131(a) (2014); Notice 2014-7, 2014-4 I.R.B 445.

This opinion construes the Miami-Dade County Ethics Code and is not applicable to other conflicts under County or State laws. Inquiries regarding possible conflicts under State ethics laws 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 black ink, appearing to read "Joe Centorino", written over a large, faint circular stamp.

JOSEPH M. CENTORINO
Executive Director