

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-30

Hearing Date: October 18, 2022

Re: Katie Alijewicz

QUESTION PRESENTED:

The Petitioner, the former Deputy Director of the Medicaid Program within the Executive Office of Health and Human Services, a state employee position, requests an advisory opinion regarding the application of the revolving door provisions of the Code of Ethics to her current private employment as a Senior Consultant with the Public Consulting Group.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the former Deputy Director of the Medicaid Program within the Executive Office of Health and Human Services, a state employee position, is prohibited by the Code of Ethics from representing herself or others, including her private employer, or from acting as an expert witness, before the Executive Office of Health and Human Services, or any of its departments, offices, sections, programs or divisions, until the expiration of one year following the date of her severance from state employment. The Petitioner is further prohibited from using or disclosing any confidential information she obtained while working as the Deputy Director of the Medicaid Program to financially benefit herself or her private employer.

The Petitioner is the former Deputy Director of the Medicaid Program within the Executive Office of Health and Human Services (“EOHHS”), having been employed in that capacity from February 2018 through August 23, 2022. She states that the general function of the EOHHS is to oversee and strategize the public services provided by each of its departments. Those departments include the Department of Children, Youth and Families (“DCYF”); the Department of Health (“DOH”); the Department of Human Services (“DHS”); and the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (“BHDDH”) (collectively, “departments”). The Petitioner further states that the general function of the Medicaid Program is to administer insurance to eligible Rhode Island residents through the coordination of efforts between the EOHHS and its departments. She identifies among her former duties as Deputy Director the oversight of the development of the EOHHS budget and those of its departments, and the implementation of legislation affecting the EOHHS and each of its departments.

The Petitioner states that she began her current employment as a Senior Consultant with the Public Consulting Group (“PCG”) on September 6, 2022. She describes the PCG as a private company that works with public sector clients (“state agencies”) throughout the United States under contracts

relating to the various missions of those state agencies. The Petitioner, who works in the Aging and Disability Unit of the PCG, describes among her duties the following: drafting responses to Requests for Proposals and, after the PCG is awarded a contract, supporting the solicited work as a project manager and/or subject matter expert on Medicaid policies and processes. She states that project manager duties include providing status updates to state agencies and evaluating options for overcoming obstacles, and that subject matter expert duties include addressing the financial aspects of a particular project undertaken by a state agency. The Petitioner represents that most of the PCG's Rhode Island contracts are with the EOHHS or its departments, but that she is not currently assigned to any Rhode Island contracts. The Petitioner informs that she is not in a position to use confidential information obtained in the course of and by reason of her former employment in her current job, nor would she.

The Petitioner explains that a representative from the PCG has asked her to seek the instant advisory opinion from the Ethics Commission for purposes of determining whether and to what extent the Petitioner might be prohibited from performing on Rhode Island contracts as part of her employment duties at the PCG. It is in the context of these facts that the Petitioner seeks advice from the Ethics Commission regarding the application of the revolving door provisions of the Code of Ethics to her employment with the PCG.

The Code of Ethics prohibits a public employee from representing herself or any other person before any state agency by which she is employed. R.I. Gen. Laws § 36-14-5(e)(1) & (2) ("section 5(e)"). This prohibition extends for a period of one year after the public employee has officially severed her position with the agency. Section 5(e)(4). The "revolving door" language of section 5(e) is designed to both prevent any undue influence that a current employee may have over her agency and colleagues by reason of her employment there, and to minimize any undue influence that a former employee may have over her former agency and colleagues by reason of her past employment there. Under the Code of Ethics, a person represents herself or another person before a state agency if she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in her own favor or in favor of another person. Section 36-14-2(12) & (13); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). A "person" is defined as an individual or business entity. Section 36-14-2(7).

The prohibitions within section 5(e) are absolute and apply to the entire agency, including all of its offices, sections, programs or divisions. See, e.g., A.O. 2020-7 (opining that the Chief Civil Engineer of the Transportation Planning Division of the Rhode Island Department of Transportation ("RIDOT") was prohibited by the Code of Ethics from preparing plans to be submitted by a private client to RIDOT, including any separate divisions thereof or entities therein, while he was employed by RIDOT and for a period of one year thereafter). Therefore, for purposes of this advisory opinion and the Ethics Commission's determination of the applicability of the relevant sections of the Code of Ethics, the Petitioner's former public employment with the EOHHS will also encompass each of the departments, offices, sections, programs or divisions within that state agency.

The Ethics Commission has issued numerous advisory opinions interpreting section 5(e)(4)'s requirements with respect to former state employees interacting with their former agencies during

the one-year period following the severance of their state employment. For example, the Ethics Commission issued Advisory Opinion 2020-32 to the former Senior Projects Review Coordinator for the Rhode Island Historical Preservation & Heritage Commission, opining that he was prohibited from representing himself or others, including his private employer, or from acting as an expert witness, before the Rhode Island Historical Preservation & Heritage Commission until the expiration of one year following the date of severance from his state employment. That petitioner was further prohibited from using or disclosing any confidential information he obtained while working as the Senior Projects Review Coordinator to financially benefit himself or his private employer. See also A.O. 2020-27 (opining that the former Administrator of Project Management for the Rhode Island Department of Transportation (“RIDOT”) was prohibited from representing himself or his private employer, or from acting as an expert witness, before the RIDOT until the expiration of one year after he had officially severed his position with that agency, and that the petitioner was further prohibited from using any confidential information he obtained while working as the Administrator of Project Management to financially benefit himself or his private employer); A.O. 2017-34 (opining that a former Principal Civil Engineer in the Bridge Design Section of the Rhode Island Department of Transportation (“RIDOT”), while not prohibited from working for a private engineering firm upon his retirement, was prohibited by the Code of Ethics from representing himself or others, including his new private employer, or from acting as an expert witness, before the RIDOT for a period of one year following the date of severance from his state employment, and from using any confidential information he obtained while working for the RIDOT for financial gain).

Activities that would constitute representation and/or acting as an expert generally include the presentation of information or arguments for the purpose of influencing the judgment of the agency on matters concerning the Petitioner and/or her new employer. Such prohibited activities include, but are not limited to, signing any responses to Requests for Proposals issued by the EOHHS or any of its departments, and/or attending and participating at meetings between the PCG and the EOHHS or any of its departments relative to the award of a Rhode Island contract to the PCG. The Petitioner is cautioned that prohibited interactions are not limited to business meetings, and could occur at a restaurant, on the phone, in an email or at any social or political gathering. It is the content of a discussion, rather than its venue, that is most relevant in applying the Code of Ethics’ post-employment revolving door restrictions. On the other hand, contacts involving purely personal or ministerial matters that do not involve discretion or decision-making on the part of the EOHHS or any of its departments are not prohibited.

Here, in consideration of the Petitioner’s factual representations, the applicable provisions of the Code of Ethics, and consistent with our past advisory opinions addressing this issue, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing herself or others, including her new private employer, or from acting as an expert witness, before the EOHHS and any of its departments, offices, sections, programs or divisions for a period of one year following the severance of her employment with that agency. Further, the Petitioner may not use any confidential information she obtained while working for the EOHHS to obtain financial gain for herself or her new employer. Lastly, until the expiration of one year following the date of her departure from state service, the Petitioner is advised, when in doubt, to seek further guidance from the Ethics Commission regarding the Code of Ethics’ potential application to her interactions with state agencies.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-2(7)

§ 36-14-2(12)

§ 36-14-2 (13)

§ 36-14-5(e)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5006)

Related Advisory Opinions:

A.O. 2020-32

A.O. 2020-27

A.O. 2020-7

A.O. 2017-34

Keywords:

Revolving Door