

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-38

Approved: December 13, 2022

Re: Rebecca Elsing, MA CAGS QMHP

QUESTION PRESENTED:

The Petitioner, a Supplemental Block Grant Planner for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, a state employee position, requests an advisory opinion regarding whether the Code of Ethics prevents her from working part-time to provide counseling services to members of local municipal police departments.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a Supplemental Block Grant Planner for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, a state employee position, is not prohibited by the Code of Ethics from working part-time to provide counseling services to members of local municipal police departments, consistent with the representations set forth herein, and provided that all of the work is performed on her own time and without the use of public resources or confidential information obtained as part of her state employment and, further provided, that the Petitioner does not use her public employment to advertise or promote her private work or to recruit or obtain clients.

The Petitioner is currently employed as a Supplemental Block Grant Planner (“Grant Planner”) for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (“BHDDH”). She has worked at the BHDDH since August 29, 2022, and her work hours are Monday through Friday, 8:00 am – 3:30 pm. The Petitioner states that, in her capacity as a Grant Planner, she assists with the oversight of Substance Abuse and Mental Health Services Administration (“SAMHSA”) Grants from the Federal Government that are distributed to qualified behavioral health agencies in Rhode Island to provide substance abuse and mental health services to those in need (“Block Grant Program”). She describes among her duties the following: organize, coordinate, and analyze specific programs, services, and resources with a cost-benefit lens to increase the efficiency and effectiveness of the Block Grant Program; assist in the development of programs, short and long-term goals and objectives, management plans and operating plans, and to oversee their implementation and evaluation; provide strategic and technical support to meet the goals and objectives of the Block Grant awards; and ensure accurate and detailed budgets in order to maximize the effectiveness of RI Block Grant Funding. The Petitioner emphasizes that she has no decision-making authority regarding which agencies receive SAMHSA Grant funding. She explains that the Federal Government posts the grants and determines the grant requirements, and

that the state advertises the grants, collects the bids, and awards the grants – all without decision-making involvement from the Petitioner.

The Petitioner represents that, prior to starting her work at the BHDDH, she worked as a clinical supervisor for the HOPE Initiative, a program coordinated through the Rhode Island State Police in partnership with municipal police departments throughout Rhode Island. She further represents that she was contracted to the HOPE Initiative through her then private employer, CODAC Behavioral Healthcare. The Petitioner states that she would ride with local police officers and knock on doors to find people in need of clinical support for substance abuse. She explains that she performed this work for 2.5 years and left to accept her current position with the BHDDH.¹

The Petitioner states that she has been contacted by the Rhode Island Police Chiefs' Association ("RIPCA"), the members of which are familiar with her and her previous work for the HOPE Initiative, and has been requested to provide one-to-one counseling services on a part-time basis to members of local municipal police departments ("clients" or "police officers"). The Petitioner states that, subject to an advisory opinion from the Ethics Commission that accepting this particular secondary employment would not be a violation of the Code of Ethics, she would like to do so. She represents that this would be a pilot program in which she would provide counseling to clients by telephone from an office in her home. She further represents that she would do this on various evenings during the week after 5:00 pm and on weekends. She explains that she would have no face-to-face contact with her clients, who would be given only her first name and be told nothing about her primary employment. Highlighting the importance of confidentiality for her clients, the Petitioner states that she would perform this work alone and, in the event that one of her clients required a referral for additional treatment outside of the telephone counseling, the Petitioner would make referrals only to out-of-state providers.

The Petitioner represents that the RIPCA would pay for the Petitioner's phone that she uses to conduct counseling sessions and that the RIPCA would also inform municipal police departments in Rhode Island about the opportunity for confidential counseling. The Petitioner further represents that she would invoice the RIPCA for the cost of the sessions that she provides to clients, adding that the RIPCA would pay for her services with monetary donations from private corporations and individuals. The Petitioner explains that the RIPCA has not applied for or received grant funding from the BHDDH, nor does she anticipate that it would. She states that, in the unlikely event that the RIPCA were to apply for grant funding from the BHDDH, she would recuse from any participation in the matter, regardless of the task. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may accept secondary part-time employment providing confidential counseling services to municipal police officers referred to her by the Rhode Island Police Chiefs' Association.

The Code of Ethics provides that a public employee shall not accept other employment that would impair her independence of judgment as to her official duties or require or induce her to disclose confidential information acquired by her in the course of her official duties. R.I. Gen. Laws § 36-

¹ The Petitioner states that, immediately prior to accepting her current position with the BHDDH, she had accepted a part-time position with Gateway Healthcare ("Gateway") to work part-time as a clinician; however, upon accepting employment with the BHDDH and learning that Gateway receives funding from the SAMHSA Grants that the Petitioner helps to administer, she decided against working for Gateway.

14-5(b). Further, a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity which is in substantial conflict with the proper discharge of her duties or employment in the public interest. Section 36-14-5(a). A public employee has an interest which is in substantial conflict with the proper discharge of her duties or employment in the public interest if she has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed or represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). Finally, the Code of Ethics provides that a public employee may not use her office or confidential information received through her office to obtain financial gain for herself, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding employment that is secondary to their primary public employment or positions subject, however, to certain restrictions and provided that their private employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties. The Ethics Commission examines several factors when considering potential conflicts regarding secondary employment. These factors include, but are not limited to, the nexus between the public official or employee's public duties and private employment; whether the public official or employee completes such work outside his or her normal working hours and without the use of public resources; whether the public official or employee is to appear before, or his or her work product is to be presented to, his or her own agency; whether such work is to be conducted outside of the areas over which the public official or employee has decision-making jurisdiction; and whether the public official or employee uses his or her position to solicit business or customers. See General Commission Advisory No. 2009-4.

For example, in Advisory Opinion 2019-53, the Ethics Commission opined that a Vocational Rehabilitation Counselor for the Rhode Island Department of Human Services ("DHS") was not prohibited from working on her own time as a certified yoga instructor for young children and/or adults with disabilities. After determining that the petitioner's desired secondary employment would not impair her independence of judgment or create an interest in substantial conflict with her public duties at the DHS, the Ethics Commission opined that the petitioner could perform the work, provided that she did so on her own time and without the use of public resources or confidential information obtained as part of her state employment at the DHS. Additionally, the petitioner could not use her public position to promote or advertise her private employment or list her public employment as part of the advertisement of her private work. See also A.O. 2020-1 (opining that a Probation and Parole Officer at the Rhode Island Department of Corrections was not prohibited from working in her private capacity in Rhode Island as an independent contractor providing supervised visitation services between non-custodial parents and their child or children, provided that all of the work was performed on her own time and without the use of public resources or confidential information obtained as part of her state employment); A.O. 2012-32 (opining that the Acting Director of the Department of Planning and Development for the City of Providence was not prohibited from teaching a course at Brown University, provided that all teaching work was performed on his own time and he did not use public resources or confidential information obtained as part of his employment with the City; however, the petitioner was required

to recuse from any matters relating to Brown University that might come before him in his public capacity as Acting Director of the Department of Planning and Development and to refer such matters to his superiors).

Here, the Petitioner describes her proposed duties as a counselor as being separate and distinct from those for which she is responsible as a BHDDH employee. She states that she would perform her part-time counseling work outside of her regular hours as a state employee and outside of the areas over which she has decision-making jurisdiction as a Grant Planner. There is nothing in the facts as represented to suggest that the Petitioner would appear before, or that her work product as a counselor would be presented to, the BHDDH, and the Petitioner represents that the RIPCA would be the sole source of her client referrals.

Based upon the facts as represented by the Petitioner, there is no evidence to suggest that her part-time secondary employment as the provider of counseling services to police officers would either impair her independence of judgement or create an interest that in substantial conflict with her public duties at the BHDDH. Accordingly, the Petitioner is not prohibited by the Code of Ethics from working in her private capacity as a counselor in the manner described herein, provided that all of the work is performed on her own time and without the use of public resources or confidential information obtained as part of her state employment with the BHDDH. Also, the Petitioner shall not use her public position to promote or advertise her private employment, nor shall she list her public employment as part of the advertisement of her private work. Additionally, the Petitioner shall recuse from any matter that comes before her in her capacity as a Grant Planner at the BHDDH that involves the RIPCA or for which the RIPCA or its representative on behalf of RIPCA appears and to refer that matter to her supervisors. Recusal shall be pursuant to section 36-14-6. Finally, the Petitioner is advised to seek further guidance from the Ethics Commission if any changes occur within either her private or public employment that could present a conflict of interest.

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:

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2020-1

A.O. 2019-53

A.O. 2012-32

GCA 2009-4

Keywords:

Secondary Employment