

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2024-13

Approved: April 9, 2024

**Re: Brianna Dixon**

### **QUESTION PRESENTED:**

The Petitioner, a social caseworker with the Rhode Island Department of Children, Youth, and Families, a state employee position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from accepting secondary employment as a clinician with The Inner You Counseling Center, a private entity, where she would provide therapeutic services to adolescents.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a social caseworker with the Rhode Island Department of Children, Youth, and Families, a state employee position, is not prohibited by the Code of Ethics from accepting secondary employment as a clinician with The Inner You Counseling Center, a private entity, where she would provide therapeutic services to adolescents, provided that she follow the guidelines outlined below relative to the proper management of any conflicts of interest that might arise as result of her secondary employment.

The Petitioner has been employed as a social caseworker with the Rhode Island Department of Children, Youth, and Families (DCYF) since December 28, 2023. She identifies her work hours as 8:30 a.m. until 4:00 p.m., Monday through Friday. The Petitioner describes among her duties the performance of casework within DCYF's Division of Family Services with the goal of family preservation and/or reintegration. She states that efforts to preserve families often include providing referrals for intensive services for children and families facing physical, behavioral, and/or emotional challenges. The Petitioner further states that these services are sometimes provided by DCYF's Support and Response Unit, and sometimes provided by DCYF vendors, and can occur in a client's own home, in congregate care, or in foster care placement. The Petitioner represents that her duties include transporting clients to services, visits, and school. She adds that she could be tasked with helping a child to achieve permanency with a forever family through adoption.

The Petitioner states that she is currently a licensed clinical social worker (LCSW), which is the first of two levels of licensing for social workers practicing in Rhode Island. She further states that she is pursuing her second level of licensing as a licensed independent clinical social worker (LICSW). The Petitioner explains that, in order to become an LICSW, she must first complete 3,000 hours of clinical work under the supervision of an LICSW in Rhode Island. She further

explains that she has completed close to the required 3,000 hours and that she must finish the rest of them within approximately the next 24 months. The Petitioner states that she has been offered a fee for service position as a clinician for adolescents with The Inner You Counseling Center, a private entity that offers mental health treatment to those in need. She further states that accepting this position would allow her to complete the clinical work hours necessary to become an LISCW in Rhode Island. The Petitioner represents that her work for Inner You would occur outside of her normal work hours for DCYF and without the use of public resources. She further represents that she would keep confidential all information acquired during her public and private employment. The Petitioner states that Inner You is not currently under contract with DCYF to provide vendor services. She explains that, while Inner You might appear on a list of providers that she distributes to a client in need of mental health services, it would be the client who selects a provider from that list, without the exercise of any discretion or decision-making on the part of the Petitioner.

The Petitioner represents that, if allowed to accept the position with Inner You, she would see three to four clients per week. She states that, during an Inner You initial intake interview in which the Petitioner would not participate, a new client would be asked whether they are currently open to DCYF services or had previous DCYF involvement. If the client were to respond in the affirmative, the client would not be assigned to the Petitioner for counseling services. The Petitioner represents that, in the event that one of her clients at Inner You were to become open to DCYF services during the course of their treatment with the Petitioner, the client would immediately be reassigned to a different clinician at Inner You. The Petitioner states that she would then inform her DCYF supervisor of a conflict of interest on the Petitioner's part with regard to the assignment of her former Inner You client to the Petitioner's DCYF caseload. The Petitioner states that her superiors at DCYF have informed her that, if not prohibited by the Code of Ethics from doing so, the Petitioner may accept the fee for service position with Inner You. It is in the context of these representations that the Petitioner seeks guidance regarding whether she is prohibited by the Code of Ethics from accepting secondary employment as a clinician with Inner You.<sup>1</sup>

The Code of Ethics provides that 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 in the public interest. R.I. Gen. Laws § 36-14-5(a). A public employee has an interest which is in substantial conflict with the proper discharge of her duties 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 which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. R.I. Gen. Laws § 36-14-7(a). Additionally, the Code of Ethics provides that a public employee shall not use her public office or confidential information received through her holding public office to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. § 36-14-5(d). The Code of Ethics also provides that a public employee shall not accept other employment which will either impair her independence of judgment as to her official duties

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<sup>1</sup> In her letter requesting this advisory opinion, the Petitioner identified a second fee for service opportunity with St. Mary's Home for Children. Following a telephone conversation with Ethics Commission staff regarding that option, the Petitioner eliminated St. Mary's from consideration after it became clear that she would have a near insurmountable conflict of interest if privately employed there, given her public employment with DCYF.

or employment, or require or induce her to disclose confidential information acquired by her in the course of, and by reason of, her official duties or employment. § 36-14-5(b).

The Code of Ethics further prohibits a public official or employee from representing herself or any other person, or acting as an expert, before a state or municipal agency of which she is a member or by which she is employed. §§ 36-14-5(e)(1)-(3). A person “represents” herself before a state or municipal 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 favor. R.I. Gen. Laws § 36-14-2(12). These prohibitions extend for a period of one year after the public official or employee has officially severed her position with the subject state or municipal agency. § 36-14-5(e)(4). Finally, a public employee must recuse from participation in any matter in which her business associate or employer appears or presents evidence or arguments before her state or municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2). A business associate is defined as “a person joined together with another person to achieve a common financial objective.” § 36-14-2(3). A person is defined as “an individual or a business entity.” § 36-14-2(7).

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 positions, provided that the private employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties, and subject to certain other restrictions. 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 official’s public duties and private employment; whether the employee completes such work outside of her normal working hours and without the use of public resources; whether the employee is to appear before her own agency; whether such work is to be conducted outside of the areas over which the person has decision-making jurisdiction; and whether the employee uses her position to solicit business or customers. See General Commission Advisory No. 2009-4.

In Advisory Opinion 2014-6, in which the facts were somewhat analogous to those of the instant matter, the Ethics Commission opined that another DCYF clinical social worker could provide counseling services in her private capacity at Counseling Services of RI (CSRI), based on her representations that she had not participated, and would not participate, in assessments, paperwork, discussions, or related activities involving any female then under the supervision of DCYF’s Division of Juvenile Probation to which the petitioner was assigned or who previously resided at the Training School where the petitioner worked. That petitioner stated that, before accepting a client at CSRI who was not affiliated with DCYF’s Division of Juvenile Corrections or Probation, she would inform the client and their parent or guardian of the position the petitioner held at the Training School, advise them that should they become incarcerated she would have to withdraw from their treatment and give them the opportunity to request another counselor before commencing treatment. In addition to these representations, the Ethics Commission required that all such work for CSRI on the part of the petitioner be performed on her own time and without the use of public resources or confidential information obtained as part of her public employment. 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 as an independent contractor for a private agency providing supervised visitation services between non-custodial parents and

their children in Rhode Island, provided that the petitioner would not be assigned any families who had a parent currently on probation); A.O. 2019-27 (opining that a motor vehicle operator examiner for the Division of Motor Vehicles (DMV) could accept employment as a course administrator for the Driver Retraining Program at the Community College of Rhode Island, given that the petitioner's proposed private undertaking would neither impair his independence of judgement nor create an interest in substantial conflict with his public duties at the DMV; however, the petitioner was required to perform all of the work for the Driver Retraining Program on his own time and without the use of public resources or confidential information obtained as part of his state employment at the DMV).

Here, the Petitioner states that, if allowed to accept the fee for service position at Inner You, she would not be assigned to any private client who is now or was previously open to DCYF services and that, in the event that a client did become open to services with DCYF during the course of the Petitioner's provision of services to that client, the client would immediately be reassigned to a different clinician.<sup>2</sup> The Petitioner adds that she would then inform her DCYF supervisor of a conflict of interest on the Petitioner's part with regard to the assignment of her former Inner You client to the Petitioner's DCYF caseload. The Petitioner also states that Inner You is not a current vendor of DCYF and that the inclusion of Inner You on a list of potential service providers made available to a DCYF client leaves the selection of a service provider to the client, with no discretion or decision-making exercised on the part of the Petitioner. Thus, providing such a list to a client, rather than referring a client specifically to one of the providers on the list, would be a ministerial act on the part of the Petitioner that would not violate the Code of Ethics. See A.O. 2021-3 (opining that the Director of Social Services in Exeter, who in her private capacity was employed as a grant writer for the Rhode Island Center Assisting Those in Need (RICAN), a private food pantry that received grant funding in part based on the number of people it served, was prohibited from making direct referrals to RICAN to the Exeter residents she served, however, were RICAN to appear on a list of all food pantries available to Exeter residents, and that list was presented in such a manner that the petitioner was neither advocating for nor against a client's selection of RICAN as a food pantry, a violation of the Code of Ethics could be avoided.)

Based on the facts as represented by the Petitioner, there is no evidence to suggest that her performance of counseling duties for Inner You would impair her independence of judgment or create an interest that is in substantial conflict with her public duties at DCYF. Accordingly, the Petitioner is not prohibited by the Code of Ethics from accepting secondary employment as a fee for service clinician at Inner You, consistent with her 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 potential clients for Inner You. Additionally, the Petitioner may not appear before DCYF in her capacity as a clinician for Inner You, including but not limited to reporting to DCYF on an Inner You client who became open to DCYF services following the start of therapy with the

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<sup>2</sup> The Ethics Commission suggests that, prior to their assignment to the Petitioner for counseling services at Inner You, a new client be informed of the Petitioner's employment with DCYF and the possibility of the client being reassigned to a different clinician in the event that the client becomes open to DCYF services while receiving services from Inner You. This would allow the client and/or their parent or guardian to make an informed decision about whether to request a different counselor from the start of treatment.

Petitioner; representing the interests of Inner You; or acting as an expert witness on behalf of an Inner You client or Inner You. This would also include the submission to DCYF of documentation from Inner You that contains the Petitioner's name, or which is identifiable as the Petitioner's work product. Further, for the duration of her fee for service arrangement with Inner You, the Petitioner must recuse from all DCYF matters in which Inner You or its authorized representative appears or presents evidence or arguments and from all matters that will directly financially impact Inner You. All recusals must be made consistent with the provisions of R.I. Gen. Laws § 36-14-6.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise for the Petitioner and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented herein. The Petitioner is encouraged to seek additional advice from the Ethics Commission in the future as more specific questions regarding potential conflicts of interest might arise.

**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(3)

§ 36-14-2(7)

§ 36-14-2(12)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

Related Advisory Opinions:

G.C.A. 2009-4

A.O. 2021-3

A.O. 2020-1

A.O. 2019-27

A.O. 2014-6

Keywords:

Secondary Employment

Hi Ethic Commission,

My name is Brianna Dixon. My official position is Social Caseworker II. I was employed on 12/28/23. My duties include but are not limited to perform casework duties and responsibilities for child and family services and family preservation, family support and/or family reintegration; Preserving families may include providing referrals to intensive services for children and families in their own home, congregate care, foster care placement, to the physically, behaviorally, and/or emotionally challenged, and protective services, or other related services such as adoption and transportation of clients.

My office is located at 101 Friendship Office DCYF Region 4.

My daytime telephone number is 401-598-7211 and email address is bndixonx3@gmail.com

I have been offered a fee for service position at St. Mary's and Inner You as a clinician. Writer is unsure of what agency she is going to accept. However, this position would be working with preferred population which is adolescents that could potentially have DCYF involvement. Employment would occur after DCYF working hours. Writer would be abiding by confidentiality policies with the understanding that any persons is a call away from an DCYF investigation. This writer holds a LCSW. Writer plans to pursue her LICSW, however, to obtain an LICSW writer would need to complete a required number of hours of clinical work supervised by a supervisor with an LICSW license.

An immediate response would be appreciated as writer has been offered the position and for personal financial reasoning. This writer has informed them of DCYF response/concern to potential conflict and they are awaiting DCYF agencies response on how to move forward.

Please let me know if further information is needed.

Sincerely,

Brianna Dixon

*Brianna Dixon*  
1/23/2024

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ETHICS COMMISSION  
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