



MONTGOMERY COUNTY ETHICS COMMISSION

Waiver
09-06-005

Absent a waiver, an employee cannot be employed by any business that negotiates or contracts with that employee's agency. Lynette Brooks, an Addiction Specialist in the Department of Health and Human Services (DHHS), seeks a waiver after learning that her outside employer plans to respond to an open solicitation issued by DHHS to provide substance abuse treatment services. The Commission will grant the request waiver because the outside employment is not likely to create a conflict of interest.

Ms. Brooks works as an Addiction Specialist for Behavioral Health and Crisis Services, Community Case Management. In that capacity, she screens and assesses all Temporary Cash Assistance customers for substance abuse issues in the Silver Spring office of Income Supports. Ms. Brooks also has a part-time job as a clinical supervisor for the Bilingual Counseling Center in Wheaton, a small substance abuse treatment agency. Her duties there include providing clinical supervision for three staff, reviewing treatment plans, and insuring that the program meets the criteria and requirements for state regulations. She has held both positions for the past four years. Recently, DHHS issued an open solicitation to provide substance abuse treatment services. Ms. Brooks has learned that her outside employer, the Bilingual Counseling Center, plans to respond to the solicitation.

Section 19A-12(b)(1) of the ethics law sets out the prohibition against an employee working for an outside employer that does business with that employee's agency:

Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not:

- (1) be employed by, or own more than one percent of, any business that:
 - (A) is regulated by the County agency with which the public employee is affiliated; or
 - (B) negotiates or contracts with the County agency with which the public employee is affiliated;

If Bilingual Counseling Center negotiates or does business with DHHS, Ms. Brooks will need a waiver to continue her work with her outside employer. The appropriate waiver standard is set out in § 19A-8(b) of the ethics law:

After receiving a written request, the Commission may waive the prohibitions of subsection 19A-12(b) if it finds that:

- (1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.

The Commission will grant the requested waiver because the employment is not likely to create an actual conflict of interest. It is the Commission's understanding that there is very little overlap in the client pool Ms. Brooks works with in her DHHS job and the client pool she works with for her outside employer. This waiver is premised upon, and remains valid, under the following conditions:

1. Ms. Brooks has no role in the open solicitation. In other words, she does not draft the solicitation, review the offers DHHS receives, or administer the contract in any fashion;
2. Ms. Brooks cannot refer any of her DHHS clients to her outside employer; and
3. At her outside employment, Ms. Brooks cannot treat anyone referred from DHHS.

In reaching this decision the Commission has relied upon the facts as presented by the requestor.

FOR THE COMMISSION:



June 30, 2009

Date

Antar C. Johnson, Chair