



MONTGOMERY COUNTY ETHICS COMMISSION

Susan Beard
Chair

Bruce Romer
Vice Chair

October 5, 2021

Waiver 21-10-015

Pursuant to § 19A-12(b)(1)(B) of the Public Ethics Law, a public employee must not be employed by a business that negotiates or contracts with the County agency with which the public employee is affiliated, unless the Ethics Commission grants a waiver.

Beri Kari-Fonge is a recent hire as a Community Health Nurse II (CHN II) in the Communicable Disease and Epidemiology Section (CDES) of Public Health Services (PHS) Division at Montgomery County Department of Health and Human Services (DHHS). Ms. Kari-Fonge would like to engage in outside employment as a Nurse Case Manager at McFarland & Associates, an entity which has contracts with DHHS.

I. Relevant Facts

At DHHS, Ms. Kari-Fonge fills multiple part-time, temporary duties (as needed), such as conducting mass immunization clinics and mass dispensing clinics; performing health assessments and phlebotomy; interviewing clients concerning health conditions; and providing immunization-related administrative and data entry services. Over the last four months, she has participated in two major clinics providing Covid -19 vaccines to adults and children 12 years and older and approved vaccines for children ages zero to 18 years. At McFarland & Associates, Ms. Kari-Fonge provides basic screenings and community outreach and prepares progress reports, providing patient advocacy as needed. This role with McFarland & Associates is directly related to the contract for which McFarland & Associates receives DHHS funding.

In her role at DHHS, Ms. Kari-Fonge holds no contract monitoring or procurement responsibilities and is not involved in matters affecting the McFarland & Associates contract with DHHS. While her outside employment role with McFarland & Associates is directly funded by the County contract with her proposed outside employer, she has no authority to affect that contract and is merely a minor operative under the contract.

II. How the waiver standard has been met

A waiver may be issued by the Ethics Commission upon a finding of no likelihood of an actual conflict of interest. While Ms. Kari-Fonge's outside employment with McFarland & Associates is paid for through County funds, Ms. Kari-Fonge has no authority to affect the contract between DHHS and her outside employer. Additionally, she is a part time worker for McFarland & Associates.

In concurring in the waiver request, the DHHS agency head designee for review of the request stated that while often the agency does not concur in waiver requests where an employee's position is funded by a contract with DHHS, in this case there are several mitigating factors. The relationship between Kari-Fonge and McFarland predates Kari-Fonge's County employment. As a consequence, there is no personal benefit being imparted by another County employee to Ms. Kari-Fonge or that she is gaining through her County employment. Ms. Kari-Fonge's roles both at DHHS and at McFarland are far removed from contracting. And, in both the County employment and the outside employment, she provides direct service to residents. Also, Ms. Kari-Fonge's roles directly benefit the County's effort to combat COVID-19. During the pandemic, the County has needed as many people as possible working to both provide services in general and especially to provide those services to underserved, hard-to-reach, or at-risk populations. For these reasons, the DHHS concurred in the waiver request.

Pursuant to § 19A-8(b)(3) of the Public Ethics Law, the Ethics Commission may grant a waiver of the prohibition of § 19A-12(b) if the Ethics Commission concludes that the proposed employment is not likely to create an actual conflict of interest. Upon a review of the request and the Department's concurrence in and support for the waiver request, the Commission finds that there is no actual conflict of interest. Pursuant to the standard of § 19A-8(b)(3), the Commission grants the waiver of the prohibition of § 19A-12(b).

The Commission notes that while 19A-12(b)'s prohibition is waived, the other provisions of the ethics law are not, including those prohibiting an employee from working on official matters relating to the outside employer. The approval of this waiver is conditioned on the facts on which the waiver is based remaining unchanged. It is also conditioned on Ms. Kari-Fonge not making referrals as a County employee to McFarland & Associates or soliciting other County employees to make such referrals.

This waiver expires when the outside employment approval with which it is associated expires, unless a continuation request for outside employment is timely filed and subsequently approved by the Ethics Commission. In reaching this decision, the Commission has relied upon the facts as presented by Ms. Kari-Fonge.

For the Commission:



Susan Beard, Chair