

STATE OF NEW YORK: COUNTY OF SUFFOLK
SUFFOLK COUNTY BOARD OF ETHICS

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In the Matter of the Inquiry of [REDACTED]

on behalf of the Suffolk County Department
of Probation

ADVISORY OPINION

No. AO-2016-10

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NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL. Applications requesting its modification, clarification, or withdrawal must be made in accordance with Suffolk County Board of Ethics rules unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Nothing shall prohibit the Suffolk County Board of Ethics, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time.

ADVISORY OPINION REQUEST

1. Request: Is it a conflict of the ethics laws for a Suffolk County Probation Officer to work part time as a Court Officer in any Court in Suffolk County?

Summary: Based upon the information presented to the Board, it is a conflict of interest under the Suffolk County Code Chapter 77 for a Suffolk County Probation Officer to work part time at the New York State Office of Court Administration as a Court Officer. The Suffolk County Board of Ethics opinion is only as to County employee's position in County government and this opinion does not opine as to an assessment of conflict from the employment position of [REDACTED]. The Suffolk County Board of Ethics reserves its decision as to any other Court in Suffolk County until such time a specific Court position is submitted for review.

GOVERNING AUTHORITY

2. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-3(B).

PROCEDURAL HISTORY

3. This Advisory Opinion was requested 4/21/16.
4. Fact finding was concluded on 5/17/16.
5. The Board voted on this Advisory Opinion request on 6/1/16.

INFORMATION PRESENTED TO THE BOARD

6. The Requestor is a supervisory official in the Department of Probation. (*Requestor's Exhibit #1*).
7. The Requestor asserts that a Suffolk County probation officer has held a Departmental approved outside job as a [REDACTED] Court Officer for [REDACTED] years.
8. The Requestor has asked the Board if this position is in conflict with the County ethics laws. (*Requestor's Exhibit #3*).

OPINION AND ANALYSIS

9. In considering this inquiry, the Board employed the following three-step analysis to determine whether a prohibited conflict of interest would exist:

- a) Does the requestor have standing to obtain an Advisory Opinion from the Suffolk County Board of Ethics;
- b) Is the requestor seeking advice on proposed future conduct;
- c) Whether the potential conflict is prohibited conduct under the County ethics laws?

STANDING

10. The Board determined that standing exists for this Advisory Opinion request due to the requestor's position as a public servant, and as a supervisory official who supervises a public servant employed by the Suffolk County Department of Probation which mandates compliance with the Suffolk

County Ethics Laws¹ (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1, NYC COIB Advisory Opinion 2009-4*).

PROPOSED FUTURE CONDUCT

11. The Law States in Pertinent Part:

§ A30-3(B). ADVISORY OPINIONS:

Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The Board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion.

12. The Board determined that the request is regarding proposed ongoing and future conduct and is within the Board’s jurisdiction.

Sections of Law and County Policy Analyzed

13. The Law States in pertinent part:

§ 77-1 Definitions

“

“SUPERVISOR” Any person having the authority to control or direct the work of a public servant.

§ 77-3(B). PROHIBITED CONDUCT

B. No public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties;

The Suffolk County Standard Operating Procedure A-15 paragraph 5, “Policy for Outside Employment for County Employees” states,

(5) Employees represented by collective bargaining units are subject to any and all provisions and restrictions relating to outside employment contained in current collective bargaining agreements. These employees should review their collective bargaining agreements and determine whether they contain outside employment provisions and restrictions. Employees represented by collective bargaining units are also subject to current and future County and departmental procedures and policies which are not inconsistent with the terms of the existing collective bargaining agreements. Employees who are excluded from the collective bargaining units are subject to departmental or County policies and procedures regarding outside employment which are

now in effect or which may be promulgated in the future.

All outside employment is also subject to the following provisions:

- (1) Outside employment may not involve or appear to involve a conflict of interest or a potential conflict of interest.
- (2) Outside employment may not be undertaken on regularly scheduled work time.
- (3) Outside employment may not be undertaken on sick time.

The Suffolk County Standard Operating Procedure A-15 paragraph 6, “Conflicts of Interest” states,

(6) “Suffolk County employees are prohibited from engaging in outside employment which would conflict, *appear* to conflict or potentially conflict with the proper performance of their official duties. Guidelines for what constitutes a conflict of interest are outlined in the Code of Ethics, Article XXX of the Suffolk County Charter. The Board of Ethics is empowered to render advisory opinions with respect to the Code of Ethics” (italics added).

14. As set forth above, the Board of Ethics, pursuant to Suffolk County Standard Operating Procedure A-15, is empowered to render advisory opinions with respect to the Code of Ethics. It bears important mention that the Board’s statutorily enumerated authority is to render advisory opinions with respect to Chapter 77, Part 1, Article 1 of the Suffolk County Code or other applicable provision of law governing conflicts of interest. *Suffolk Co. Admin. Code A 30-3*. Accordingly, the Board makes no determination and gives no opinion regarding an intra-departmental determination of an appearance of conflict pursuant to the Suffolk County Standard Operating Procedure A-15. However, the Board notes that the department has set forth in its advisory opinion request that this outside employment has been approved as to shift hours. Additionally, compatibility of Probation Officer positions with outside jobs has been addressed by the New York State Attorney General’s office. Specifically, it has been opined that the following positions have been found to be incompatible with a probation officer: police officer, district attorney coroner, and village court clerk (*see New York State Attorney General Informal Opinion 97-14*). As set forth in opinion 97-14, the duties of a probation officer is to make impartial

reports to assist the sentencing of the court and regular contact with the judicial branch, with potential reporting of criticisms of particular justices, made the position of secretary of a county probation department and Town justice incompatible. As applied to the current request, the County employee is scheduled Monday's at the [REDACTED] Court. The Court's calendar reflects that Criminal and Traffic Violations are calendared on Monday, Tuesday, Wednesday at 9:30 a.m. As such, the Board finds that such employment would not be permitted under § 77-3 (B), as it interferes with proper discharge of official County duties inclusive of submitting impartial reports to the Judiciary on criminal matters.

CONCLUSION AND DIRECTIVES

15. The Board finds that under the information presented, and in following the above directives, the requested outside employment is not permissible under § 77-3 (B).

16. Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the Requestor shall have 15 business days from the time this Advisory Opinion has been rendered (excluding Saturday, Sunday, or a legal holiday) to file a request for reconsideration supported by new material facts submitted to the Board.

17. The forgoing is the opinion of the Board.

Dated: Great River, New York

6/1/2016

Linda A. Spahr, Esq. – Chair

¹ N.Y. Gen Mun. Law § 810 (6). Additional definitions; Suffolk County §77-1 definitions