

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

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In the Matter of the Inquiry of

██████████ on behalf of the
Suffolk County ██████████

ADVISORY OPINION
No. AO-2016-2

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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 ██████████ ██████████ employee to work part time at a Nassau County Law firm organizing and arranging documentation for ██████████ applications in Nassau County and New York City?

Summary: No, based upon the information presented to the Board, it is not a conflict of interest for a Suffolk County ██████████ ██████████ employee to work part time at a Nassau County Law firm organizing and arranging documentation for ██████████ applications in Nassau County and New York City.

GOVERNING AUTHORITY

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

PROCEDURAL HISTORY

3. This Advisory Opinion was requested 1/19/16.
4. Fact finding was concluded on 2/11/16.
5. The Board voted on this Advisory Opinion request on 2/17/16.

INFORMATION PRESENTED TO THE BOARD

6. The Requestor submitted a statement of the employee's job duties (*Requestor's Exhibit #1*).
7. The Requestor submitted the employee's SOP-A15 outside employment form (*Requestor's Exhibit #2*).
8. The Requestor submitted a statement of client conflicts check from the outside employer law firm (*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, outside employment of a [REDACTED] employee 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 [REDACTED] 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

13. 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.

14. 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

15. The Law States in pertinent part:

§ 77-1 Definitions

“**AGENCY SERVED BY A PUBLIC OFFICIAL**” A. In the case of a County employee, the agency employing such employee.

“**APPEAR**” To make any communication, for compensation, other than those involving ministerial matters.

“**MINISTERIAL MATTER**” An administrative act, including the issuance of a license, permit or other permission of the County, which is carried out in a prescribed manner and which does not involve substantial personal discretion.

“**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;

§ 77-3 (H).

H. No public servant shall, for compensation, represent private interests before any County agency or appear directly or indirectly on behalf of private interests in matters involving the County. For a public servant who is not a County employee, this prohibition shall apply only to the agency served by the public servant.

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).

16. 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 indicia that the Requestor is deferring this decision to a Board Opinion by seeking Board advice prior to department assessing the appearance of potential conflict.

17. As applied, the Board finds that absent statutory exceptions, under § 77-3 (H) no public servant shall, for compensation, represent private interests before any County agency. Such appearance would not be permitted under § 77-3 (B), as it would interfere with proper discharge of his official County duties. In the request before the Board, the Board finds the departmental supervisor's statement and the outside law firm's statement credible that the employee will not be appearing before Suffolk County.

CONCLUSION AND DIRECTIVES

18. As such, the Board directs that the Requestor, a current County employee, in her outside employment, may not appear² in person, on the phone, or by way of a document submission at any County Department or Agency, while working at his outside employment. The Board further directs that the all employee lifetime ban of working on a particular matter which the employee participated personally and substantially as a County employee applies to all employees. Additionally, the Board directs that no confidential County information pursuant to 77-3(D), be disclosed by the Requestor in any capacity.³

19. The Board finds that under the information presented, and in following the above directives, the requested outside employment is permissible under § 77-3 (B) and § 77-3 (H).

20. 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.

21. The forgoing is the opinion of the Board.

Dated: Great River, New York
2/17/2015

Linda A. Spahr, Esq. – Chair

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

² Pursuant to Chapter 77 section 77-1 “Definitions,” the statute defines an appearance as “. . . any communication, for compensation, other than those involving ministerial matters;” ministerial matters is defined as, “. . . an administrative act, including the issuance of a license, permit or other permission of the County, which is carried out in a prescribed manner and which does not involve substantial personal discretion” (*see NYC COIB Advisory Opinion 94-15*).

³ § 77-3. PROHIBITED CONDUCT.

D.

No public servant shall disclose any confidential information concerning the property, affairs or government of the County which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public or use such information to advance any financial or private interest of the public servant or of any person associated with the public servant;