

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
August 10, 2023**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present were Katherine Noel, Chair; Corinne Finnerty; Sue Anne Gilroy; Rafael Sanchez; and John Krauss. Office of Inspector General (OIG) staff present included David Cook, Inspector General; Sean Gorman, State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Mike Lepper, Special Agent; and Sam Stearley, Special Agent.

Others present were Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Beth Green, General Counsel, Indiana Department of Workforce Development; Julie Heath, former employee of the Indiana Economic Development Corporation; Erin Elam, Ethics Officer, Indiana Department of Health; Robert Paglia, Chief Administrative Officer, Indiana Economic Development Corporation; Andrew Lang, Deputy General Counsel, Indiana Economic Development Corporation; Blaire Viehweg, Deputy Director of Legislative Affairs, Indiana Department of Health; Amy Kent, Deputy Health Commissioner, Indiana Department of Health; Timothy McFarlane, Chief Data Officer, Family and Social Services Administration; Matthew Gerber, Ethics Officer, Family and Social Services Administration; Jessica Keyes, General Counsel, Family and Social Services Administration; Amie Durfee, Deputy General Counsel, Department of Workforce Development; and Tammera Glickman, Deputy General Counsel, Indiana Department of Administration.

**II. Adoption of Agenda and Approval of Minutes**

Commissioner Krauss moved to adopt the agenda, Commissioner Gilroy seconded the motion, and the Commission passed the agenda (5-0).

Commissioner Gilroy moved to approve the Minutes of the May 11, 2023, Commission Meeting, and Commissioner Krauss seconded the motion, which passed (5-0).

**III. Consideration of Waiver of Post-Employment Restrictions for Julie Heath**

Robert Paglia, Chief Administrative Officer for the Indiana Economic Development Corporation, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Waiver, and Commissioner Gilroy seconded the motion, which passed (5-0).

#### **IV. Consideration of Waiver of Post-Employment Restrictions for Blaire Viehweg**

Amy Kent, Deputy Health Commissioner and Chief Strategy Officer for Indiana Department of Health, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Waiver, and Commissioner Gilroy seconded the motion, which passed (5-0).

#### **V. Request for Formal Advisory Opinion**

2023-FAO-006

Dr. Timothy McFarlane, Chief Data Officer

Matthew Gerber, Ethics Officer

Family and Socials Services Administration

Matthew Gerber is the Ethics Officer and Deputy General Counsel for the Indiana Family and Social Services Administration (FSSA). Mr. Gerber requested the Commission's FAO on behalf of Dr. Timothy D. McFarlane, FSSA's Chief Data Officer. Specifically, Mr. Gerber is requesting an opinion from the Commission regarding Dr. McFarlane's proposed post-state employment opportunity with Delineate, LLC (Delineate), a data and analytics consulting firm.

Mr. Gerber previously sought an informal advisory opinion on behalf of Dr. McFarlane from the Office of Inspector General (OIG) and has provided the OIG's confidential guidance as an attachment to this FAO request.

As Chief Data Officer at FSSA, Dr. McFarlane's responsibilities include supporting enterprise data warehouses for the Supplemental Nutrition Assistance Program (SNAP)/Temporary Assistance for Needy Families (TANF) and Medicaid data analytics; designing, developing and implementing data governance strategy to support data-driven culture; conducting research studies and program evaluation to measure and improve service delivery and policy implementation; overseeing components of state and federal reporting for the Office of Medicaid Policy and Planning; collaborating with state agencies to improve the use of health data in support of operation performance monitoring; and providing technical assistance to FSSA divisions for data initiatives.

Dr. McFarlane has an offer for a post-state employment position at Delineate. Delineate currently provides three employees to aFit Staffing, Inc. (aFit) for the purpose of temporary staffing at FSSA through Indiana's Managed Service Provider, CAI. The contract between aFit and CAI for the three Delineate staff workers is for the performance of specific data related projects at FSSA and is set to expire in six months; however, the contract may be extended or renewed based on FSSA's needs.

In Dr. McFarlane's role at FSSA, he was not involved in the selection or hiring of these contract workers and is not involved in the supervision of their day-to-day activities. Dr. McFarlane directly supervises FSSA's Deputy Chief Data Officer and Data Science Supervisor, who are responsible

for the supervision of the contract workers at FSSA who are ultimately employed by Delineate. Dr. McFarlane retains the authority to make decisions regarding the Delineate contract workers at FSSA but does not anticipate any need to exercise such authority.

Dr. McFarlane is not a signatory on any agency contracts and was not involved in the negotiation or administration of any active contracts for FSSA with one exception: Dr. McFarlane initiated and signed a change order to a contract with Resultant, LLC. Further, Dr. McFarlane does not have regulatory or licensing authority in his current position.

In Dr. McFarlane's prospective role at Delineate, he will guide the technical aspects of solutions developed by the company. Delineate was founded in 2022 by an individual who previously worked at FSSA, and Delineate does not maintain any current or historical contracts with FSSA. Further, Dr. McFarlane provides that he will not participate in executive branch lobbying in his position with Delineate.

Delineate does not and has not maintained a contract with the State of Indiana; its contract with respect to the three contract workers at FSSA is maintained between aFit and CAI.

Dr. McFarlane provides that he understands that he may not assist Delineate or any other person in his post-state employment activities with any particular matters on which he both personally and substantially participated in his role at FSSA. Dr. McFarlane is not aware of any potential future business that Delineate is considering or pursuing with FSSA.

On behalf of Dr. McFarlane, Mr. Gerber sought the Commission's FAO regarding the application of any of the rules in the Code to Dr. McFarlane's proposed post-employment with Delineate.

The analysis stated the following:

Mr. Gerber's request for a FAO invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Post-employment and Benefitting from and Divulging Confidential Information. The application of each provision to Dr. McFarlane is analyzed below.

*A. Conflict of interests - decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Dr. McFarlane from participating in any decision or vote, or matter relating to that decision or vote if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits Dr. McFarlane from participating in any decision or vote, or matter relating to that decision or vote, if the business organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the matter.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority in writing and either seek an advisory opinion from the Commission or file a written disclosure statement.

Dr. McFarlane's offer for employment from Delineate constitutes an arrangement concerning prospective employment. The Commission finds that Delineate has a financial interest in matters regarding the three Delineate employees who work at FSSA under the contract between aFit and CAI. The Commission further finds that a potential conflict of interests exists under this rule and that FSSA shall implement all necessary procedures to screen Dr. McFarlane from participating in any decisions or votes, or matters related to decisions or votes, in which Delineate would have a financial interest for the remainder of Dr. McFarlane's employment at FSSA.

### *B. Post-employment*

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Dr. McFarlane from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, Dr. McFarlane is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration. Based on the information provided, Dr. McFarlane would not be engaging in any lobbying activities in his position at Delineate. To the extent that Dr. McFarlane does not engage in executive branch lobbying for one year after leaving state employment, his post-employment opportunity at Delineate would not violate this provision of the post-employment rule.

Second, Dr. McFarlane is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract. Based on the information provided, Dr. McFarlane has not negotiated or administered a contract with Delineate, as Delineate does not currently and has not previously maintained a contract with FSSA.

Third, Dr. McFarlane is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Mr. Gerber provides that Dr. McFarlane does not have regulatory or licensing authority in his position with FSSA.

Fourth, Dr. McFarlane is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that Delineate has extended an offer for his prospective new role in an attempt to influence Dr. McFarlane in his capacity as a state employee.

Accordingly, the Commission finds that the post-employment rule's cooling off period would not apply to Dr. McFarlane's employment opportunity with Delineate and he may begin such employment immediately after his separation from state employment.

Finally, Dr. McFarlane is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Dr. McFarlane would be prohibited from representing or assisting Delineate or any other person in a particular matter in which he personally and substantially participated as a state employee.

Dr. McFarlane has not identified any particular matter on which he personally and substantially participated in his FSSA role on which he may assist others in his post-state employment at Delineate.

The Commission finds that the series of contracts between Delineate and aFit and between aFit and CAI for the Delineate employees performing work at FSSA constitutes a business transaction for the purpose of this rule. As such, Dr. McFarlane would be prohibited from representing or assisting Delineate or any other person in this business transaction if he personally and substantially participated in this particular matter in his role at FSSA. The Commission advises Dr. McFarlane to work with FSSA to seek a waiver of the post-employment rule's particular matter restriction pursuant to IC 4-2-6-11(g) should Dr. McFarlane be in a position to participate in the identified business transaction involving the Delineate workers' work at FSSA in his post-state employment activities.

### *C. Confidential information*

Dr. McFarlane is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Dr. McFarlane from accepting any compensation from any employment, transaction or investment that is entered into or made as a result of material information of a confidential nature. The term "person" is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as Delineate. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent that Dr. McFarlane has acquired or maintains access to such confidential information obtained in his role at FSSA, he is prohibited not only from divulging that information but from ever using it to benefit any person, including Delineate or its clients, in any manner.

Commission Chair Noel moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion, which passed (5-0).

## **VI. Ethics Director's Report**

**Informal Advisory Opinions:** Since the last Ethics Director's Report in April, 33 Informal Advisory Opinions had been issued regarding application of the gifts rule, post-employment issues, outside employment/professional activities issues, and related potential conflicts of interest. There was also an increase in the amount of nepotism rule issues as compared to previous months.

**Rulemaking:** Per HEA 1623 enacted this year, Indiana agency administrative rules must now be readopted every 5 years instead of 7 under the previous sunset provisions of the Administrative Rules and Procedures Act. As such, the Indiana Code of Ethics provisions under 42 IAC 1, which were last readopted in 2018, will expire January 1, 2025 and re-adoption of these rules must be initiated on or before January 1, 2024. The re-adoption process is fairly limited to either keeping or letting outdated rules expire, but we have had some limited internal discussions on potential amendments in a subsequent rulemaking. Most of the rule provisions reference the corresponding statute, but not all of the rules have a corresponding statute, such as the gifts rule which only exists in the administrative code. I plan to solicit suggestions from ethics officers as we consider whether additional rulemaking after re-adoption is something that we would like to pursue. I will keep the Commission informed of this process and invite commissioners to provide any feedback on existing rules.

**Ethics Officer Roundtables:** The next ethics officer roundtable discussion is scheduled for August 22. This is the 3rd of a series of meetings we have been conducting this year to engage ethics officers in discussions on shared challenges and best practices. Our last meeting was May 23 and had approximately 20 attendees, resulting in a robust discussion on a variety of topics. We discussed the OIG's recent report regarding recommendations on remote work and the challenges presented by investigations of complaints alleging ghost employment. Also discussed was the gifts rule and different scenarios that come up for agencies. We have one more meeting after the August 22 date during this calendar year, and I plan to continue hosting these opportunities for discussion.

**OIG Outreach:** The IG has been meeting with various agency heads to offer a refresher on the IG's processes and to let them know how we can work together. This effort has resulted in several agencies recently taking us up on the standing offer to present to staff on ethics issues. We have upcoming presentations for the Lieutenant Governor's office focused on political activity considerations, the Indiana Public Retirement System and the Treasurer's office for a general overview/refresher of ethics in state government, and the Commission for the social status of black males for special state appointees' ethics rules related to conflicts of interest.

## **VII. Adjournment**

Commissioner Krauss moved to adjourn the public meeting of the State Ethics Commission. Commissioner Sanchez seconded the motion, which passed (5-0).

The public meeting adjourned at 11:02 a.m.