

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
March 14, 2019**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:10 a.m. Commission members present included Acting Chairperson Corinne Finnerty; Sue Anne Gilroy; Priscilla Keith (telephonically) and Ken Todd (arriving at 10:13). OIG Staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Tiffany Mulligan, Chief Legal Counsel; Heidi Adair, Staff Attorney; Cindy Scruggs, Director of Administration; Special Agent Darrell Boehmer, Special Agent Mike Lepper and Special Agent Jack Bedan.

Others present were Christopher B. Serak, Ethics Officer and Prequalification Director, INDOT; Mary Cline, Case Coordinator, FSSA/VR; Latosha N. Higgins, Managing Attorney & Ethics Officer, FSSA; Rhnea Edwards, Intern, DOR; Sarah Kamhi, Assistant General Counsel, DOR; Beth Green, General Counsel, DWD; Tammera Glickman, Assistant General Counsel, IDOA; Jared Prentice, Ethics Officer, DOR; and Mattheus Mitchel, Compliance and Ethics Specialist, DOR.

II. Selection of Acting Chair

A motion was made by Commissioner Gilroy to appoint Commissioner Finnerty as acting chair for the March 14, 2019, Commission meeting. Commissioner Keith seconded, and the motion passed. (3-0)

III. Adoption of Agenda and Approval of Minutes

Commissioner Gilroy moved to adopt the Agenda and Commissioner Keith seconded the motion which passed. (3-0) Commissioner Gilroy moved to approve the Minutes of the February 14, 2019 Commission Meeting and Commissioner Keith seconded the motion which passed. (3-0)

IV. Request for Formal Advisory Opinion: Conflicts of Interest(s)

**2019-FAO-005 Mary Cline, VR Case Coordinator
 Latosha N. Higgins, Ethics Officer
 Family and Social Services Administration**

Commissioner Todd arrived at this point.

Latosha Higgins, Ethics Officer for the Indiana Family and Social Services Administration (FSSA), requested an advisory opinion on behalf of Mary Cline. Ms. Cline works within FSSA’s

Bureau of Rehabilitation Services (BRS), which is within FSSA's Division of Developmental Rehabilitation Services (DDRS), as a Vocational Rehabilitation Services (VR) case coordinator.

Ms. Cline is also the guardian of an adult child who receives services through FSSA through the Division of Rehabilitative Services (DRS) Family Support Waiver. Ms. Cline is interested in pursuing outside employment with Forte Residential, Inc. (Forte), a company that provides in-home support for individuals receiving Medicaid Home and Community Based Services.

Ms. Cline joined FSSA as a contractor in January 2012 and has held various positions as an employee and contractor. Since 2017, she has been employed as a VR case coordinator for the VR Program. VR provides a wide range of services to individuals with disabilities and provides support needed to help them prepare for, secure, retain, advance in, or regain employment. VR partners with vendors, who may be individuals or businesses, across the State to deliver these services.

The VR program is housed within FSSA's BRS, which is one of the four bureaus within DDRS. The other three bureaus are the Bureau of Quality Improvement Services (BQIS), Bureau of Developmental Disabilities Services (BDDS), and the Bureau of Child Developmental Services (BCDS). BRS oversees the planning and operation of FSSA's vocational rehabilitation programs and services. BQIS monitors BDDS providers of Medicaid in-home waivers services and assists other bureaus in DDRS with quality improvement activities. BQIS also conducts oversight activities for reporting instances of abuse, neglect, and exploitation, and ensures compliance with FSSA's state waiver requirements. BDDS provides and coordinates services for individuals with developmental disabilities receiving Medicaid waiver services.

As a VR case coordinator, Ms. Cline is responsible for processing referrals, scheduling appointments, assisting two VR counselors in their case management, and paying invoices. The VR counselors whom she supports make the decisions regarding when to create, renew, or cancel authorization. Ms. Cline performs the supportive administrative functions at the direction of the VR counselor. If an individual is referred for VR services, Ms. Cline gathers the demographic information from the individuals, assigns a VR counselor, and schedules the individual for an intake appointment. The referrals she processes come from a variety of sources, including the individuals themselves, employment agencies, medical providers, case managers, and family members. If it is a referral for a service, the VR counselor makes the decision regarding the vendor and then Ms. Cline creates the authorization per the VR counselor's request.

VR counselors also have the decision making authority over which invoices to pay. If Ms. Cline notices a discrepancy between an authorization and an invoice, she notifies the VR counselor. The VR counselor then makes the decision whether to pay the invoice and provides direction to Ms. Cline.

As a VR Case Coordinator, Ms. Cline is not responsible for the negotiation or administration of any contracts for FSSA. In addition, Ms. Cline is not responsible for making any licensing and regulatory decisions; her role is strictly administrative in nature.

On February 12, 2019, Ms. Higgins met with Ms. Cline to discuss whether it would be a conflict of interests for her to obtain outside employment with Forte. Prior to inquiring about conflicts of interests, Ms. Cline met with a representative of Forte on February 7, 2019. Ms. Cline has not had any further meetings or discussion with Forte since that date. Ms. Cline decided to pursue a formal advisory opinion regarding outside employment with Forte before applying or interviewing for a position with Forte.

Ms. Cline is interested in pursuing part-time employment as direct care staff with Forte so that she can be compensated for providing Participant Assistance Care services to her adult child. As direct care staff for Forte, she would be responsible for providing care, companionship, and support to her son and possibly other children and adults with developmental disabilities in a variety of home and community settings. She would be paid \$10.00 per hour by Forte for hours worked and compensated for her mileage. Ms. Cline would work evenings and weekends outside of her state work hours.

As a Medicaid waiver provider, Forte's business relationship with FSSA is governed by a BDDS provider agreement and the Indiana Health Coverage Programs (IHCP) Rendering Provider Agreement and Attestation Form. Neither provider agreement is signed by a representative from FSSA. Forte is the only signor on the agreements. Under both provider agreements, Forte agrees to provide services to Medicaid waiver recipients, such as Ms. Cline's adult child, and to submit claims for reimbursement for services rendered by the company or its employees to FSSA. The services Forte and its employees provide are those that are outlined on a waiver recipient's individualized support plan developed by their support team.

As a guardian for her adult child, Ms. Cline is a member of her child's support team. The support team is responsible for assisting with the development of her child's individualized support plan. Under 460 IAC 6-3-32, the individualized support plan is designed and agreed upon by an individual's support team. The individualized support plan sets forth the paid and unpaid supports and strategies that will be used to help an individual accomplish their short and long term goals. In addition to Ms. Cline, her child's support team currently consists of her child's case manager and recreational therapist. As the guardian, Ms. Cline makes decisions regarding what is added to or removed from her son's individualized support plan.

Ms. Cline's position with FSSA does not include any involvement with the BDDS waiver program or Forte. The prospective employment with Forte would be of a different nature than her duties for FSSA, and she does not anticipate that working for Forte would require her recusal from her official responsibilities to the extent that her ability to perform them would be materially impaired. Furthermore, Ms. Cline has confirmed that she would not be required to use any confidential information in her prospective employment with Forte. Additionally, she understands that she is prohibited from using her FSSA position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside of state government.

Ms. Cline is not in a position to participate in any decisions or votes or other matters related to a decision in which Forte would have a financial interest in the outcome. Ms. Cline has informed

Ms. Higgins that she understands and agrees to abide by the ethics rules governing conflicts of interests, ghost employment, use of state property and confidential information.

The advisory opinion stated the following analysis:

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his or her official duties that his or her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

A written advisory opinion issued by the Commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

Based on the information provided, Ms. Cline's duties in her position at Forte would be very different from her state responsibilities with FSSA and she does not anticipate that she would have to recuse herself from her official state duties to avoid any conflicts of interests. The agency's ethics officer, Latosha Higgins, testified that FSSA did not foresee any reason why Ms. Cline would have to recuse herself, and felt that she could perform this outside work without materially impairing her ability to perform her full time state job. Further, Ms. Cline has confirmed that she will not be required to use any confidential information in her prospective employment with Forte. In addition, she understands that she is not to use her FSSA position to secure unwarranted privileges or exemptions that are of substantial value and not properly made available to similarly situated individuals outside state government.

The Commission finds that Ms. Cline would not have a conflict of interests under this particular rule as her two positions at FSSA would not overlap. However, the Commission is not able to formally approve this outside position because of conflict of interests concerns under IC 4-2-6-10.5 (see analysis below).

B. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Ms. Cline from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Cline from participating in any decision or vote, or matter relating to that decision or vote, if a business organization with whom she is serving as an employee or is negotiating employment has a financial interest in the matter.

Ms. Cline currently works as a VR case coordinator for FSSA and is seeking outside employment with Forte. As she is negotiating employment and if she begins working for Forte, she would be prohibited from participating in any decisions or votes, or matter relating to those decisions or votes, in which Forte would have a financial interest in the outcome.

Based on the information provided, Ms. Cline is not in a position at FSSA to participate in any decisions or votes, or other matters related to such decisions or votes, in which Forte would have a financial interest in the outcome. Accordingly, the Commission finds that Ms. Cline does not have a potential conflict of interests under this rule.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The definition of “financial interest” in IC 4-2-6-1(a)(11) includes, in part, “an interest arising from employment”. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition, however, does not apply to an employee that does not have contracting responsibility for the contracting agency, provided certain statutory criteria are met.

Forte is a Medicaid waiver provider, and its relationship with FSSA is governed by a BDDS Medicaid provider agreement and the Indiana Health Coverage Programs Rendering Provider Agreement and Attestation Form. Under both provider agreements, Forte is attesting that it agrees to provide services to Medicaid waiver recipients and follow FSSA rules to submit claims for and to receive reimbursement. Neither of these agreements is signed by a representative of FSSA.

If Ms. Cline accepts the prospective position, she would be employed directly by Forte and her wages would be paid by Forte. For providing these services under the Medicaid waiver, Forte would seek reimbursement from FSSA per the provider agreements.

Ms. Higgins confirmed at the Commission’s public meeting that this agreement between FSSA and Forte for the reimbursement for services provided to Medicaid waiver recipients is a contract. Accordingly, the Commission finds that Ms. Cline would have a financial interest in a state contract, which is prohibited under IC 4-2-6-10.5, if she were to accept the position at Forte.

Further, although Ms. Cline does not have contracting authority for FSSA, she is unable to meet all of the disclosure requirements in IC 4-2-6-10.5(b). Specifically, she would not be able to meet the requirement in IC 4-2-6-10.5 (b)(2) of filing a written statement with the inspector general *before* she executes the contract with the state agency.¹ The Commission found that because this contract between Forte and FSSA is already in place, Ms. Cline cannot meet this requirement.

In addition, there could be implications beyond the Code of Ethics if Ms. Cline accepts this position with Forte. Specifically, IC 35-44.1-1-4 is the criminal statute that prohibits any public servant from knowingly or intentionally having a pecuniary interest in or deriving a profit from a contract/purchase connected with an action by the agency served by the public servant. The statute contains certain exceptions in subsection (c). One of these exceptions applies to an individual who obtains written approval from the Commission that the individual will not or does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

The Commission is unable to provide this written approval due to its finding that Ms. Cline would have a financial interest in a contract and cannot meet the exceptions to avoid a conflict of interests under IC 4-2-6-10.5.

D. Confidential information

Ms. Cline 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 Ms. Cline from accepting any compensation from any employment, transaction, or investment which 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. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Ms. Cline is exposed to or has access to such confidential information in her position with FSSA, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including her outside employer, in any manner.

E. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Ms. Cline from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency,

¹ It is not disputed that Ms. Cline is not executing any contract with FSSA. Nevertheless, the statute provides only one exception from the conflicts of interest prohibition. The exception requires the employee to have no contracting authority for the contracting agency, and to file a written statement “with the inspector general before the ... employee ... executes the contract with the state agency.” The statutory exception does not contemplate an employee executing a statement before accepting employment with a contractor.

departmental or institutional policy or regulation. Likewise, 42 IAC 1-5-13 prohibits Ms. Cline from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

To the extent Ms. Cline observes these provisions in any outside employment opportunity she may engage in, such outside professional activity would not violate the use of state property or ghost employment laws.

The Commission found that it is unable to approve Ms. Cline's outside employment opportunity with Forte. Forte's contract with FSSA would create a conflict of interests for Ms. Cline under IC 4-2-6-10.5 as she would have a financial interest in Forte's contact with FSSA if she were to accept this outside employment opportunity.

Chairperson Finnerty moved to approve the Commission's finding and Commissioner Gilroy seconded the motion which passed. (3-0)

**V. Consideration of the Final Report
In the Matter of Adam K. Jones
Case Number 2018-07-0183
Tiffany Mulligan, Chief Legal Counsel
Office of Inspector General**

State Ethics Director Jen Cooper presented the Final Report draft to the Commission for their approval, reminding them that they had approved the settlement agreement in this case at their February meeting and that the Final Report would be the final disposition in this case.

Sue Anne Gilroy made a motion to approve the Final Report. Commissioner Keith seconded the motion which passed. (3-0)

VI. Director's Report

State Ethics Director, Jen Cooper, stated that Governor Holcomb appointed our newest Commission member, Commissioner, Ken Todd and named Commission Katherine Noel as Chairperson. Ms. Cooper reported that the number of informal advisory opinions issued by the Office of Inspector General since the last meeting was 29. Ms. Cooper conveyed that the OIG Financial Disclosure Statements annual filing requirements have been completed.

VII. Adjournment

Commissioner Gilroy moved to adjourn the public meeting of the State Ethics Commission and Commissioner Keith seconded the motion, which passed (3-0).

The public meeting adjourned at 10:47 a.m.