

**42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)**  
**42 IAC 1-5-10 Benefiting from confidential information**  
**42 IAC 1-5-11 Divulging confidential information**

A DCS Family Case Manager purchased a rental home from her father that was occupied by a tenant who was a Client of the local DCS office at which the FCM works. Upon learning of this situation, DCS assigned the Client to another local DCS office and prohibited the FCM from accessing any of the Client's information. The FCM then sought advice from the SEC to ensure compliance with IC 4-2-6-9(b). SEC determined that the implementation of the screening procedures established by DCS, whereby the FCM was screened from having access to the Client's records and the Client has been assigned to another local DCS office, was appropriate to avoid a conflict of interest under IC 4-2-6-9 and should remain in place for as long as the Client is a tenant of the FCM's rental property.

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The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning the State Code of Ethics ("Code") pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

**BACKGROUND**

A state employee is employed as a Family Case Manager ("FCM") by the Indiana Department of Child Services ("DCS"). The Family Case Manager purchased a rental home from her father that is occupied by a tenant who is a current client ("Client") of the local DCS Office at which she works. Earlier this year, the Family Case Manager conducted an assessment of the Client, but she does not currently have any work-related need to contact or work with the Client; the Client is not part of her current caseload assignment. The Family Case Manager does not have a rental or lease agreement with the Client. Instead, the Client's mother pays the Family Case Manager rent as part of a month-to-month rental arrangement.

The Family Case Manager disclosed this situation to DCS and requested guidance. In response, DCS transferred the Client's case to another county and required that the Family Case Manager not access any information about the tenant going forward. DCS also requested an informal advisory opinion from the Office of Inspector General. The informal opinion determined that a potential conflict of interest could arise for the Family Case Manager and recommended that she be screened from decisions or votes involving the Client. The Family Case Manager now makes this request for an advisory opinion pursuant to IC 4-2-6-9(b)(1) to ensure compliance with this rule.

**ISSUE**

Would a conflict of interest arise for the Family Case Manager under IC 4-2-6-9? If so, would a screening procedure be appropriate to prevent a conflict of interest from arising for the Family Case Manager?

## RELEVANT LAW

### **42 IAC 1-5-10**

#### **Benefiting from confidential information**

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

### **42 IAC 1-5-11**

#### **Divulging confidential information**

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

### **IC 4-2-6-9 (42 IAC 1-5-6)**

#### **Conflict of economic interests**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
  - (2) A member of the immediate family of the state officer, employee, or special state appointee.
  - (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.
  - (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.
- (b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
- (1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
  - (2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
- (c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

## ANALYSIS

The Family Case Manager's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to confidential information and conflicts of interest. The application of each provision to the Family Case Manager is analyzed below.

### *A. Confidential Information*

The Family Case Manager is prohibited under 42 IAC 1-5-10 from benefitting from, or permitting any other person to benefit from, information of a confidential nature except as permitted or required by law. Similarly, 42 IAC 1-5-11 prohibits the Family Case Manager from divulging information of a confidential nature except as permitted by law. In this case, it is possible that the Family Case Manager has access to confidential information, though it is unclear if such information could be used to her benefit. While it would be a violation of 42 IAC 1-5-10 for the Family Case Manager to benefit personally or permit a person to benefit from information of a confidential nature to which she has access, it would also be a violation under 42 IAC 1-5-11 for her to even divulge any such information, regardless of whether it is used to that person's benefit. So long as the Family Case Manager does not divulge confidential information or allow any other person to benefit from confidential information, she would not be in violation of these rules.

### *B. Conflicts of Interest*

IC 4-2-6-9(a) prohibits a state employee from participating in any decision or vote if she has knowledge that various persons may have a "financial interest" in the outcome of the matter, including the employee. "Financial interest" is defined in IC 4-2-6-1(a)(11) as "an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person or an interest involving property or services."

In this case, it appears that the Family Case Manager could potentially have a financial interest in decisions or votes involving any services DCS is providing to the Client as such decisions could possibly impact the Client's living situation and/or ability to pay rent. Accordingly, a conflict of interest would arise if the Family Case Manager participates in a decision or vote regarding the Client.

To prevent the Family Case Manager from engaging in any such decisions or votes, DCS has implemented a mechanism whereby she will be screened from having access to the Client's records and the Client has been assigned to another local DCS office in order to mitigate any potential conflicts of interest. The Commission is satisfied with this screen and as long as DCS continues to have this procedure in place for the time that the Client remains a tenant, the Family Case Manager would not be in violation of this rule.

## CONCLUSION

Subject to the foregoing analysis and the implementation of the screening procedures established by DCS, a conflict of interest would not arise for the Family Case Manager as a result of her owning a rental property that is occupied by a DCS Client.