

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
December 13, 2018**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:02 a.m. Commissioner members present included James Clevenger, Chairperson; Sue Anne Gilroy; Priscilla Keith, and Corinne Finnerty. OIG Staff present included Jennifer Cooper, Ethics Director; Lori Torres, Inspector General; Tiffany Mulligan, Chief Legal Counsel; Kelly Elliott, Staff Attorney; Heidi Adair, Staff Attorney; Cindy Scruggs, Director of Administration; Darrell Boehmer, Director of Investigations; and Chuck Coffin, Special Agent.

Others present were Major Nila Miller-Cronk, ISP; Captain Jay Nawrocki, ISP; Lt. Brad Hoffeditz, ISP; Sarah Kamhi, AGC and Director ?, DOR; Latasha Higgins, Attorney and Ethics Officer, FSSA; Fred Madren, Chaplain/Educator, FSSA; Krysten LeFavour, Attorney, Worker’s Compensation Board; Matt Savage, Dep. General Counsel, DWD; Beth Green, General Counsel and Ethics Officer, DWD; Manda Clevenger, Attorney and Privacy Officer, ISDH; Chris Kulik, Staff Attorney, ISDH; Deana Smith, Attorney and Ethics Officer, ISDH; Tamera Glickman, Asst. General Counsel, IDOA; Jared Prentice, Ethics Officer, DOR; Chelsea Smith, ALJ and Ethics Officer, DHS; Zach Niceley, Special Assistant, Office of Attorney General; Mattheus Mitchel, Compliance and Ethics Specialist, DOR; Dhiann Kinsworthy-Blye, Controller, IPSC; Cyndi Carrasco, Dep. General Counsel, Office of the Governor; and Joe Heerens, General Counsel, Office of the Governor.

II. Adoption of Agenda and Approval of Minutes

Commissioner Finnerty moved to adopt the Agenda, and Commissioner Gilroy seconded the motion which passed (3-0). Commissioner Finnerty moved to approve the September 2018 meeting minutes, and Commissioner Gilroy seconded the motion which passed (3-0). (Commissioner Keith arrived at the meeting just after this vote).

III. Inspector General’s Report

Inspector General Torres provided her Inspector General’s report to the Commission including the number of informal advisory opinions issued and the number of investigations opened, closed and worked on during the third quarter of the year. IG Torres also reported on the OIG’s KPIs for the third quarter. KPI #1 – number of informal advisory opinions requested – was 87. KPI #2 – average number of business days to provide an informal advisory opinion – was 1.23. KPI #3 – number of recommendations made to reduce waste, inefficiency, fraud and improve integrity – was 4. IG Torres also reported that Phase 3 of the Ethics Officer is underway and almost complete. IG Torres also reported that the Legal and Ethics Conference took place on November 13, 2018.

IG Torres informed the attendees that Chairman Clevenger was retiring from the Commission effective December 31, 2018. She provided him with a certificate recognizing his fourteen years of service to the Commission. The Governor’s Office, represented by Deputy General Counsel

Cyndi Carrasco and General Counsel Joseph Heerens presented Chairman Clevenger with the Distinguished Hoosier Award for his service to the State of Indiana.

IV. Request for Formal Advisory Opinion: Conflict of Interest

**2018-FAO-0018 Capt. Jay Nawrocki, Logistics
Maj. Nila Miller-Cronk, Ethics Officer
Indiana State Police**

Major Nila Miller-Cronk is the Ethics Officer for the Indiana State Police (ISP). Maj. Miller-Cronk is requesting an advisory opinion on behalf of Captain Jay Nawrocki, who serves in ISP's Logistics Section.

In his position with ISP, Capt. Nawrocki administers the day-to-day management of ISP's vehicle fleet. He gathers information and makes recommendations to his commanding officer and primary staff on new vehicle needs. He also makes recommendations on the number of vehicles ISP should purchase based on their current and anticipated needs.

Maj. Miller-Cronk provides that ISP does business with and makes purchases from Fiat Chrysler Automobiles (FCA) relating to ISP commission vehicles. The Indiana Department of Administration (IDOA) also purchases vehicles from FCA for ISP's vehicle fleet. ISP is currently using Dodge Chargers as their primary patrol vehicle. Capt. Nawrocki has had three meetings in three years with FCA representatives regarding engine and power steering problems with ISP vehicles.

Maj. Miller-Cronk provides that FCA has invited Capt. Nawrocki to serve as a member on their Police Advisory Board (the Board). It is Capt. Nawrocki's understanding that he would serve as a representative for ISP on the Board. Maj. Miller-Cronk provides that the driving force behind the Board is a desire to continue to make improvements in safety and technology to law enforcement products. The goal of the Board is to facilitate discussions between police fleet professionals and FCA fleet representatives regarding sales, engineering, support and service.

The Board is a board of advisors only, and Capt. Nawrocki's position on the Board would be only advisory in nature. Board members provide open and honest input and feedback regarding matters before the Board. They also bring forth issues and concerns that they or their agency may be experiencing and discuss future products. Capt. Nawrocki would not have the ability to cast a vote on any matters before the Board.

Maj. Miller-Cronk explains that Capt. Nawrocki's membership on the Board would be considered part of his official state duties. He would not receive any additional compensation from FCA for serving on the Board. Maj. Miller-Cronk provides that the Board meets once per year, and FCA offers to cover travel expenses to the meeting for Board members; however, Maj. Miller-Cronk states that should Capt. Nawrocki's membership on the Board be approved, ISP will pay for his travel expenses to the yearly Board meeting.

Maj. Miller-Cronk is seeking a formal advisory opinion from the Commission to determine whether, under the Code of Ethics (Code), it would be acceptable for Capt. Nawrocki to serve on the Board.

The advisory opinion stated the following analysis:

Maj. Miller-Cronk's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to conflicts of Interests, gifts, and confidential Information. The application of each provision to Capt. Nawrocki is analyzed below.

A. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Capt. Nawrocki 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)(3) prohibits Capt. Nawrocki from participating in any decision or vote, or matter relating to that decision or vote, if he or a business organization in which he serves as a member has a financial interest in the outcome. In addition, the rule requires a state employee who recognizes a potential conflict of interests to notify his agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission or (2) file a written disclosure form with the Office of Inspector General.

Capt. Miller-Cronk provides that ISP does business with and makes purchases from FCA relating to ISP commission vehicles. IDOA also purchases vehicles from FCA for ISP's vehicle fleet. In Capt. Nawrocki's position with ISP, he administers the day to day management of ISP's vehicle fleet and makes recommendations regarding the number of vehicles ISP should purchase. As such, it appears that Capt. Nawrocki is in a position to participate in decisions or votes, or matters related to those decisions or votes, in which FCA would have a financial interest in the outcome. As a member of the Police Advisory Board of FCA, Capt. Nawrocki is a "member" of FCA.

The Commission finds that Capt. Nawrocki has an identified potential conflict of interests under IC 4-2-6-9(a)(3) as he would be in a position at ISP to participate in decisions or votes, or matters related to those decisions or votes, in which FCA would have a financial interest in the outcome. Accordingly, Capt. Nawrocki must notify ISP's appointing authority of the potential conflict of interests, and ISP will need to screen him from participating in all decisions or votes in which FCA would have a financial interest. The Commission confirmed with Maj. Miller-Cronk that ISP is prepared to implement such a screen. ISP shall be provide the proposed screen to the State Ethics Director for approval via filing the Conflict of Interests-Decisions and Voting disclosure form with the Office of Inspector General.

B. Gifts

Capt. Nawrocki also will want to be aware of 42 IAC 1-5-1, which is the gift rule. The gift rule states, in part, that a state employee shall not knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, drink, travel expenses, or registration fees from: (1) a person who has a business relationship with the employee's agency; or (2) a person who is seeking to influence an action by the employee in his official capacity.

"Business relationship" is defined in IC 4-2-6-1(a)(5) to include the dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing (i) a pecuniary interest in a contract or purchase with an agency; (ii) a license or permit requiring the exercise of an agency's judgment or discretion; or (iii) a lobbyist.

The general prohibition on gifts is subject to the eight exceptions outlined in subsection (b) of 42 IAC 1-5-1, or its application in certain circumstances may be waived by the agency's appointing authority as provided for in subsections (c) and (d).

Maj. Miller-Cronk provided that ISP does business with and makes purchases from FCA relating to ISP commission vehicles. IDOA also purchases vehicles from FCA for ISP's vehicle fleet. As such, FCA has a business relationship with ISP and Capt. Nawrocki is prohibited from accepting any gifts from FCA unless an exception applies or he obtains a gift waiver. Maj. Miller-Cronk indicated that ISP is aware of the implications of Capt. Nawrocki accepting any gift, including travel expenses from FCA. Therefore, ISP will pay Capt. Nawrocki's travel expenses to the yearly Board meeting he is expected to attend as a member of the Board.

C. Confidential information

Capt. Nawrocki 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. To the extent that Capt. Nawrocki will possess information of a confidential nature by virtue of his position with ISP that could be used to benefit the Board or FCA, or any other person, he must ensure that he complies with these rules.

The Commission found that Capt. Nawrocki would have a potential conflict of interests under IC 4-2-6-9 if he were to participate in decisions or votes, or matters related to such decisions and votes in matters in which FCA would have a direct financial interest in the outcome of the matter. The Commission further finds that ISP will implement a screening mechanism to ensure Capt. Nawrocki does not participate in any decisions or votes, or matters relating to such decisions and votes, in which FCA has a financial interest.

Commissioner Finnerty moved to approve the Commission's findings. Commissioner Gilroy seconded the motion which passed (4-0).

V. Request for Formal Advisory Opinion: Outside Employment

**2018-FAO-0019 Fred Madren, Jr., Chaplain/Educator
Latosha Higgins, Ethics Officer
Family & Social Services Administration**

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Fred Madren, Jr., M.Div. BCC CPES. Mr. Madren is the Chaplain/Educator at Larue D. Carter Memorial Hospital (Larue Carter), which is overseen by FSSA. Specifically, Ms. Higgins is requesting an opinion from the Commission addressing whether it would be a conflict of interests for Mr. Madren to continue his outside employment as a nationally board certified chaplain educator with the Institute for Clinical Pastoral Training (ICPT), while an FSSA employee.

Mr. Madren joined FSSA, through the Division of Mental Health and Addiction, in May 2018. His responsibilities include directing an participating in a full pastoral care program at Larue Carter. He functions as a staff advisor on all problems involving the spiritual needs of patients and staff. Additionally, his position requires him to direct and/or participate as an educator in an accredited clergy education program. When Mr. Madren accepted his position with FSSA, it was on the condition that he would be able to provide training in clinical pastoral education (CPE).

In addition to his work at Larue Carter, Mr. Madren also works as a contract employee for ICPT as an ICPT supervisor. ICPT offers a standardized and evidenced CPE training program to chaplains and spiritual care providers. As a contract CPE supervisor for ICPT, Mr. Madren receives a set amount of funds for each student that he teaches. He teaches as a CPE supervisor at is home, and outside of his scheduled work hours at Larue Carter. Students pay ICPT \$1200.00 for a twelve week training that is similar to a college course. At the end of the twelve week course, ICPT pays Mr. Madren one-third of the amount it collected from the students he supervised.

CPE is an interfaith experience in a supervised group setting that focuses on the theological, personal, and professional growth of a person. It is based on an action/reflection model. A student experiences 100 hours of education and 300 clinical hours with patients in either a 12 week full-time unit or a 24 week part-time unit.

Ms. Higgins provides that FSSA does not currently have a business relationship with ICPT; however, Larue Carter is in the process of restarting its CPE program with the goal of having it active for the move to the NeuroDiagnostic Institute (NDI). FSSA is awaiting the accreditation of ICPT through the United States Department of Education before proceeding. It is anticipated that a decision will be rendered in December 2018. Mr. Madren is not involved in any aspect of the accreditation process, nor is he in a position as Chaplain/Educator to

participate in any decisions or votes or other matters related to a vote in which ICPT would have a financial interest. Furthermore, Mr. Madren does not have any contracting authority on behalf of FSSA.

Based on the information presented to Ms. Higgins, FSSA believes that Mr. Madren's contract employment with ICPT is not currently incompatible with his duties at FSSA, nor does it require recusal from his official responsibilities. Ms. Higgins advises that his outside employment is consistent with his responsibilities as an FSSA employee; his employment with ICPT has equipped him with the relevant skills needed to be successful in his position. If FSSA enters into an agreement with ICPT, as the Larue Carter Chaplain, Mr. Madren would be responsible for reviewing student applications and deciding whether to accept students into the program. He would also be responsible for visiting schools to recruit students and directing students to the ICPT website to register. Further, if FSSA enters into an agreement with ICPT, and Mr. Madren commences performing his duties as the CPE supervisor, he would not accept payment from ICPT for services rendered in his official position with FSSA.

Given that there is the potential for a business relationship to soon be established between FSSA and ICPT, FSSA seeks a formal advisory opinion regarding whether Mr. Madren may continue his contract employment with ICPT as a CPE supervisor if FSSA and ICPT enter into a business relationship.

The Commission agreed to hold the decision and not issue a Formal Advisory Opinion until such time as the requestor produced a screening mechanism and additional information on how FSSA would address the conflict of interests concerns raised by the Commission. Commissioner Finnerty moved to approve the Commission's findings and Commissioner Gilroy seconded the motion which passed (4-0).

VI. Request for Formal Advisory Opinion: Post-Employment

2018-FAO-0020 Krysten Lester-LeFavour Former Member, Worker's Compensation Board

Krysten Lester-LeFavour, a former employee of the Indiana Worker's Compensation Board, is requesting a Formal Advisory Opinion regarding her post-employment as an attorney representing injured workers.

Ms. Lester-LeFavour retired from her position with the State of Indiana on October 19, 2018. Ms. Lester-LeFavour had served as an employee of the Worker's Compensation Board (WCB) since 2004. She was appointed as a board member by then Governor Mitch Daniels in 2007. As a member of the WCB, she was responsible for conducting hearings and making decisions regarding an employee's right to compensation and benefits under the Indiana Worker's Compensation Act. The powers and duties of the WCB are set forth in Ind. Code 22-3-1-1. Ms. Lester-LeFavour, as a board member, was not responsible for and did not engage in the negotiation of any contracts on behalf of the WCB. She notes that the WCB does not make payment of benefits or compensation but rather is a neutral arbitrator of disputes.

Ms. Lester-LeFavour's post-employment position would consist of the private practice of law on behalf of injured workers who have not previously filed a disputed claim with the WCB. Ms. Lester-LeFavour notes that she will not represent injured workers who had a pending claim before the WCB while she was a board member. Additionally, she will not represent employers who had cases before the WCB when she was a member.

Ms. Lester-LeFavour is seeking confirmation through this Formal Advisory Opinion that her planned post-employment practice of law would not violate IC 4-2-6-11.

The advisory opinion stated the following analysis:

Ms. Lester-LeFavour's post-employment opportunity in private law practice implicates the provisions of the Code pertaining to confidential information and post-employment. The application of each provision to Ms. Lester-LeFavour's prospective post-employment law practice is analyzed below.

A. Confidential Information

IC 4-2-6-6 prohibits Ms. Lester-LeFavour from accepting any compensation from any employment, transaction, or investment that was entered into or made as a result of material information of a confidential nature. Based on the information provided, it does not appear that Ms. Lester-LeFavour would utilize confidential information in her private law practice. So long as any compensation Ms. Lester-LeFavour receives does not result from confidential information, her post-employment in her private law practice would not violate IC 4-2-6-6.

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 Ms. Lester-LeFavour from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation; therefore, it includes a client or customer of a self-employed individual.

First, Ms. Lester-LeFavour 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 (IDOA).

Ms. Lester-LeFavour does not anticipate engaging in any lobbying activities in her private legal practice. To the extent that Ms. Lester-LeFavour does not engage in

executive branch lobbying for one year after leaving state employment, she would not violate this provision of the post-employment rule.

Second, Ms. Lester-LeFavour is prohibited from accepting employment for 365 days from the last day of her state employment from an employer with whom 1) she 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. Ms. Lester-LeFavour provides that her WCB position did not involve any sort of contracting responsibility.

Based on the information provided, Ms. Lester-LeFavour has never participated in the negotiation or administration of a contract nor was she in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with any potential employer or clients of her potential private practice during the course of her state employment. Accordingly, the Commission finds that this provision would not apply to Ms. Lester-LeFavour's post-employment in her private law practice.

Third, Ms. Lester-LeFavour is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

Ms. Lester-LeFavour's duties with the WCB may have amounted to making "regulatory" decisions; therefore, she may be prohibited from being employed by any parties to such decisions until the lapse of 365 days from the date she left state employment.

Based on the information provided, Ms. Lester-LeFavour would be engaging in private practice as a sole proprietor or join a firm that did not previously handle workers compensation issues that came before the WCB while she was a board member. To the extent that she would not then be an employee of anyone who had a case pending or adjudicated during her time on the WCB until October 19, 2019, she would not be in violation of this rule. Accordingly, the Commission finds that this provision would not apply to her intended post-employment in a private law practice so long as she does not accept compensation from any individuals who were subject to any regulatory decisions she made as a member of the WCB.

Fourth, Ms. Lester-LeFavour is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in her official capacity as a state employee. The information Ms. Lester-LeFavour presented to the Commission does not suggest that any offer of employment she would receive through her law practice would be extended in an attempt to influence her in her official capacity, especially since she is already retired from state employment. Accordingly, the Commission finds that this restriction would not apply to her intended post-employment opportunity.

Finally, Ms. Lester-LeFavour is subject to the post-employment rule's "particular matter" prohibition in her prospective post-employment. This restriction prevents her from

representing or assisting a person on any of the following twelve matters if she 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.

It appears that Ms. Lester-LeFavour personally and substantially participated in claims and determinations as part of her role with the WCB. Thus, the Commission finds that she would be prohibited from representing or assisting a firm or client in the particular matters in which she substantially participated as a state employee. However, she is not prohibited from working on any *new* matters that involve workers compensation claims before the WCB.

The Commission found that Ms. Lester-LeFavour's post-employment plans would not violate the post-employment restrictions found in IC 4-2-6-11.

Commissioner Gilroy moved to approve the Commission's findings and Commissioner Keith seconded the motion which passed (4-0).

**VII. Consideration of Agreed Settlement
In the Matter of Arvin Copeland/Case Number 2017-10-0234
Kelly Elliott, Staff Attorney
Office of Inspector General**

Kelly Elliott presented a brief review of the case regarding the allegations against Arvin Copeland. Thereafter, Ms. Elliott requested that the Commission approve the Agreed Settlement, which fined Mr. Copeland Seven Thousand Dollars (\$7,000.00) for his ethics violations to be paid within sixty (60) days. After the Commission discussed the matter, Commissioner Gilroy moved to approve the Agreed Settlement and Commissioner Keith seconded the motion which passed (4-0).

VIII. Director's Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting (September), the Office of Inspector General had issued 63 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, the use of state property, and gifts.

Ms. Cooper also stated that OIG had held the Legal & Ethics Conference in November and recognized two Ethics Officers (Latosha Higgins of FSSA; Deana Smith of ISDH) for their outstanding efforts as Ethics Officers in 2018.

IX. Adjournment

Commissioner Finnerty moved to adjourn the public meeting of the State Ethics Commission and Commissioner Keith seconded the motion which passed (4-0).

The public meeting adjourned at 11:34 a.m.