

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

Conflict of interest, Post-Employment Restriction

A former family service case manager supervisor with DFC sought to represent and assist a multi-service agency as a consultant or volunteer. SEC found that it would be permissible for the case manager to act in either of these capacities with a multi-service agency so long as he did not get involved in cases involving persons with whom he had been involved while at DFC.

96-I-11 Post-Employment Restriction

(Decision September 19, 1996)

Fact Situation

A former Family Service Case Manager Supervisor of a county Division of Family and Children (DFC) office had resigned and wanted to know if he could work for a service provider which was a private multi-service children and family support and treatment agency that provided residential care, foster care, and in-home family counseling services. He also wanted to know if he was permitted to represent and assist the service provider as a consultant or as a volunteer.

The former Family Service Case Manager Supervisor had been responsible for the general operations of the Child Protection and Family Service Work Section while employed with the county DFC office. He supervised general operations of the section and numerous projects and committees to identify service needs for children and families. He also developed programs to help fulfill those needs. He chaired a regional child welfare services committee, a committee of the county directors in that region of the state. He worked with the county service providers regarding their agreements with the county and was assigned to work with the Judge of the Family Relations Division of the Superior Court.

In addition to working for the private service provider, he also wanted to start a consulting service. He had gained a reputation throughout Indiana for providing training services to child welfare and residential care staff regarding issues that arose when children were taken from their homes and placed in institutions. He wanted to be able to consult in regard to that training. Additionally, he had been approached by some agencies about serving on their boards of directors which prompted his question about serving as a volunteer.

The private service provider had offered him the position of director of programs. It was a multi-service agency providing intensive in-home clinical counseling; transitional living for homeless females who were wards of the state, many of whom have children; a scattered site independent living program which supervised both male and female clients in their own apartment complexes; a girls group home for sexually victimized young women; a therapeutic foster care program for special needs children that tried to keep siblings together; and a residential boys treatment center dealing with male sexual predators. Each particular program had its own director. The director of programs, the

position the former Family Service Case Manager Supervisor had been offered, oversaw these programs.

On behalf of the county DFC, the former Case Manager Supervisor had been assigned earlier to work with the Judge of the Family Relations Division of the Superior Court. This activity had been referred to as the Circle of Care initiative, an alternative shelter care proposal. A meeting had been held at which the Judge said that he wanted to discuss budget issues and consider alternatives to the current shelter care services. Later that month, the Case Manager Supervisor had his first conversation with the service provider about prospective employment, a conversation with the director.

Later in June, the Case Manager Supervisor and the County Director sent a memo to a select group of providers, inviting them to attend a meeting to learn about plans for shelter care services. Of the nine providers contacted, eight responded and sent representatives to the meeting. At that meeting, the providers were told to submit proposals to the county DFC office and the Case Manager Supervisor was listed as the contact person for questions on the materials given to the providers. No one contacted the Case Manager Supervisor about the Circle of Care initiative after that meeting.

A final meeting was held between the Case Manager Supervisor and the Director of the service provider to discuss the terms and conditions of employment as director of programs. At the end of July, the Case Manager Supervisor delivered his resignation letter to the county DFC personnel officer. The next day, a collaborative proposal was delivered to the county DFC office, identifying a lead agency, another supporting agency, and the agency that the Case Manager Supervisor was going to work for as a second supporting agency. This collaborative proposal was the Case Manager Supervisor's first knowledge of who would be submitting proposals. On the first day of August, the Judge met with the County Director, the Administrative Supervisor of Accounting, and the Case Manager Supervisor and received the materials submitted for the Circle of Care initiative. No assessments or decisions were made at this meeting.

Later the Judge called the Case Manager Supervisor to ask when the private providers could begin to deliver services. The Case Manager Supervisor could not supply the information so telephoned the lead agency. The lead agency said they and the secondary agencies wanted to meet with the Judge before committing to any timetable. A meeting was arranged for approximately a week later which involved the Judge, the Case Manager Supervisor, and the proposers. At that meeting, all parties agreed that the tentative start date would be November 1st.

The former Case Manager Supervisor left the county DFC office three days later and was no longer involved in the initiative. Another three days later, the Judge announced his plans for providing services through the Circle of Care initiative at the county council meeting. No contract was involved in the Circle of Care initiative. The Judge had made it clear, in discussions at the DFC offices and statements made through the local media, that any changes in the shelter care arrangement would be made by court order.

In sum, the former Family Service Case Manager Supervisor's role was to develop the list of possible shelter care providers, to gather information, to hold a meeting of providers, and to deliver information from that meeting to the Judge.

The idea for the collaborative effort of the lead agency and the two supporting agencies was initiated among themselves. All three were nonprofit entities. The three agencies had formed an inter-agency cooperative to plan for managed care in residential services. No other providers made a proposal. Each agency proposed to handle their own billing, but the lead agency would provide the assessment for placement. It would bill only for the services it performed. Besides assessments, the lead agency housed approximately one-hundred children.

The nine vendors originally contacted were all licensed residential providers in county that had adequate staff and building to perform the services. The list included only nonprofits because that allowed higher reimbursement from the federal government. Funding for the three Circle of Care providers would be similar to foster-home situations. There would be no contract cap. The amount of money paid would depend on the number of children involved. The county DFC office had a budget with a per child rate that varied between the three providers. The Judge ordered placements through his court for children in need of emergency services through the Circle of Care rather than the county facility. The county DFC office made the payments to the shelter care service provider as the Judge ordered.

The Case Manager Supervisor said his role in the August 1 meeting with the Judge concerning the proposals submitted by the three agencies was that he and the County Director covered the highlights of the proposals submitted. The Judge then asked questions about the federal funding impact of the proposals, to which the Administrative Supervisor of Accounting responded. But the Judge did not solicit advice or ask for any recommendation. The Judge, the County Director, and the Administrative Supervisor of Accounting all knew that the Case Manager Supervisor had resigned and accepted employment with one of the secondary agencies at the time of that meeting. The ultimate decision to proceed with the program was the Judge's decision.

The County Director responded to a question from one of the Commissioners that the Case Manager Supervisor had played no role in encouraging the proposal of the Circle of Care that he was aware of. The county DFC office made no recommendation to the Judge regarding Circle of Care, although only one proposal was received and submitted to the Judge.

On another topic, the Case Manager Supervisor said he participated in placement of children at the provider agency through serving on the Local Coordinating Council. This council, by statute, made placement decisions monthly for children who needed more than county foster care. The council had several members, including a representative of the county DFC office which was the Case Manager Supervisor. The local coordinating council recommended the type of facilities for placement of a particular child. In prior times, he had participated in the decision to place children in this provider's residential or

foster care, family counseling, or other programs, but he did not know if any of these placements had occurred after the date when he began negotiating for employment with the provider.

In addition to the initial three providers in the Circle of Care Initiative, other providers could be required after that to provide sufficient space for placements.

Question

Is a former Family Service Case Manager Supervisor in the county Division of Family and Children office permitted to represent and assist a multi-service agency and others as a consultant or as a volunteer?

Opinion

The Commission found that accepting employment with the multi-service provider or acting as a consultant or volunteer serving on the board of providers to the county DFC office did not violate the post-employment restriction, because the Commission found no particular matter in which the former Case Manager Supervisor participated personally and substantially. However, the post-employment restriction did prohibit him from representing or assisting the provider in regard to a specific child placed there if he had been involved personally and substantially in the placement. Additionally, while the Commission did not have facts about other specific situations, he would be prohibited from representing or assisting on particular matters involving other agencies for which he was responsible during his employment with DFC and could not represent such agencies in regard to those particular matters through consulting or as a volunteer.