

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-43

September 11, 2002

RE: May a state social worker perform private custody evaluations for a family court?

DECISION: Yes, but appointing authority should consider potential for conflict.

This opinion is in response to your July 17, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 11, 2002, meeting of the Commission and the following opinion is issued.

You state the following relevant facts. You are employed by the Cabinet for Families and Children (the "Cabinet") in the Department of Community Based Services (the "Department") as a Social Service Clinician. Your position involves primarily Interstate Compact for Placement of Children relative to home evaluations, but you do occasionally conduct local custody evaluations for the Cabinet when requested by the Jefferson County Family Court (the "Court"). Additionally, you are requesting to perform private custody evaluations for the Court as self-employment. This would involve your evaluating the home environment of individuals involved in a custody dispute, including home visits, gathering information, and drafting a report with recommendations regarding custody. You propose to draft your own questionnaires, reports, and forms on a home computer, and perform visits after work hours or on weekends. No state resources would be used by you in this regard. Payment would come directly from the parties involved in the custody dispute, though you would be appointed by the Court for this task. You ask if this arrangement would be a conflict of interest with your state employment.

In your request, you state that you do not feel it would be a conflict of interest as custody evaluations and disputes handled by the Cabinet are low income or involve abuse or neglect allegations and the Cabinet only receives approximately one such case per month. The cases that you would handle for the Court are not low income and do not involve abuse or neglect.

KRS 11A.020(1)(a) and (b) provide:

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(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

You are proposing to work essentially as an independent contractor to the Court. Although you are not required by KRS Chapter 11A to obtain approval for your self-employment, it appears the Cabinet has an in-house policy requiring you to obtain approval by your appointing authority. Furthermore, whether or not you need approval, you do need to determine if the proposed arrangement may be a conflict of interest.

The Cabinet does not regulate nor do business with the Court. However, the parties involved in a custody dispute may ultimately be subject to the jurisdiction of the Cabinet, even if the Cabinet is not currently exercising its authority because, as you say, the custody dispute does not involve allegations of abuse or neglect, or because the parties are not indigent. If the situation were to change, and allegations of abuse or neglect were made, then the Cabinet would likely become involved in determining custody. Although this may be unlikely, if such happened, then you could be in the position of being called as a witness by the Cabinet in the custody dispute regarding the custody evaluation you perform privately. This potential for a conflict between what the Cabinet may need to do and what you would have to testify to regarding your private evaluations is not so remote as to be discounted. In this situation, the parties involved in the custody dispute clearly are subject to regulation by the Cabinet. With these factors in mind, the Commission finds that what you propose may create a potential for conflict of interest between your public duty (the interest of the Cabinet) and your private interest. Thus, the Commission recommends that the Cabinet's appointing authority consider this potential for conflict before approving your self-employment for the Court.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY VICE CHAIR: Joseph B. Helm, Jr.