

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 95-44

December 19, 1995

RE: May employee have private part-time psychology practice with associate who receives agency referrals?

DECISION: No.

This opinion is in response to your October 10, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 19, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Cabinet for Human Resources (CHR), Department for Social Services as a Psychiatric Hospital Liaison and Acting Child Protective Services Specialist. As such, you have no direct responsibility for cases, but you do serve as an advisor to social workers and their supervisors, and you apprise the district manager on current issues. Occasionally, you may have direct contact with clients. You share the responsibility with your district office staff for responding to a client's formal complaint. In addition, you may be asked to conduct child protective services investigations involving sensitive matters, such as allegations against a Social Services worker. As an Acting Child Protective Services Specialist, you review all high risk cases to insure comprehensive investigations and plans for protection of children. Your responsibilities include:

- Maintaining the list of children in psychiatric placements;
- Reviewing child assessments and meeting with social workers;
- Locating resources;
- Conferring with treatment foster care workers and treatment foster homes during the placement of a child and identifying needed services;
- Attending staffings at psychiatric hospital and conferring by telephone with out-of-district hospitals;
- Assisting Social Services staff with decertification hearings;
- Assisting communication between psychiatric hospital and Social Services staff in other districts; and
- Maintaining communication with the district manager and the Family Services Program supervisors regarding problems with psychiatric hospitalizations.

You wish to re-enter private practice on a part-time basis and associate with another psychologist who receives referrals for psychological evaluations and psychotherapy from social workers whom you may advise. Your future associate has never had a contract with

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CHR, nor have you ever been in a position to influence any contracts he has sought. However, in your previous employment with CHR (in the early 1980's) you occasionally referred clients to him. Prior to June 1995, your position involved making referrals for testing or psychotherapy, but you did not include referrals to your future associate. You believe your current position involves only assisting workers in determining the types of services and treatment placements needed, and does not involve recommendations for specific psychologists.

You ask whether you may engage in part-time private practice with an associate who receives referrals for psychological evaluations and psychotherapy from social workers whom you may advise, and avoid a conflict of interest. Both you and your associate have agreed that you would not accept any clients who are served by Social Services, and would refer any clients who ultimately become involved with Social Services to another therapist.

KRS 11A.020(1)(a) provides:

- (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;

The Commission believes a conflict of interest would exist if you were to associate your part-time private practice with an individual who receives referrals for psychological evaluations or psychotherapy from social workers whom you may advise in your state position. Even if you abstain from any involvement in your private job with those clients who were served by Social Services, your involvement in your state job with social workers who refer clients for treatment to your associate creates a conflict of interest for you between your private interest and your duties in the public interest.

You are not prohibited from engaging in private practice in addition to your state job. However, you or anyone with whom you are associated in your private practice should not receive referrals from the department for which you work. In addition, you are subject to the following provisions in KRS 11A.040(9) pertaining to outside employment:

- (9) Without the approval of the commission, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to

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the receipt of entitlement funds. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer.

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BY: MARTIN J. HUELSMANN, CHAIRMAN