COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CAPITAL COMPLEX EAST
1025 CAPITAL CENTER DRIVE, SUITE #104
FRANKFORT, KY 40601
(502) 564-7954
FAX: (502) 696-5091
HTTPS://ETHICS.KY.GOV/

Executive Branch Ethics Commission
ADVISORY OPINION 26-01
July 15, 2026

RE: Questions presented by the Department of Public Advocacy:

1. "Whether an executive branch employee serving in a DPA leadership position may continue to serve as Executive Director of LJCPD after DPA assumed responsibility for LJCPD's former public defender functions?"
2. "Whether the employee's continued service with LJCPD creates an actual conflict of interest, appearance of impropriety, or divided loyalties under the Executive Branch Code of Ethics?"
3. "Whether LJCPD's continued status as a legal entity maintaining contractual, financial, and operational obligations to DPA, including obligations arising from its prior public defender services contract and the memorandum of understanding governing transition and dissolution, affects the permissibility of the employee's continued dual service under the Executive Branch Ethics Code?"

DECISION:
1. Qualified Yes.
2. Qualified No.
3. Qualified No.

This opinion is issued in response to a request from the Department of Public Advocacy (DPA) for an advisory opinion from the Executive Branch Ethics Commission (the Commission") as to the propriety of a DPA employee continuing to voluntarily serve as the non-compensated Executive Director of the Louisville Jefferson County Public Defender

Corporation during its corporate dissolution. This matter was reviewed at the July 15, 2026, meeting of the Commission and the following opinion is issued.

Until June 30, 2024, the Louisville Jefferson County Public Defender Corporation ("the Corporation") was a county-funded corporation that for many years operated the public defender services in Jefferson County. In 2023, House Bill 568 and in 2024, House Bill 277 transferred the responsibility for the provision of public defender services in Jefferson County to the Department of Public Advocacy ("DPA"), effective July 1, 2024. The employees and assets of the Corporation were also transferred to DPA by the statutory changes and by a Memorandum of Understanding executed between DPA and the Corporation.

Pursuant to statute, the Corporation ceased operations effective July 1, 2024 and began finalizing the process for the transfer of its assets and the dissolution of its corporate status. The Corporation obtained outside counsel for the dissolution process and the Executive Director of the Corporation, along with its other employees, were transferred to positions within DPA on July 1, 2024.

Initially DPA approved the "outside employment" with the Corporation of two of the newly transferred employees. During the transition, those two employees continued to serve as the Corporation's Executive Director and its Ombudsman. DPA now questions whether this continued service with the transition of the Corporation by a DPA employee presents a violation of the provisions of KRS Chapter 11A.

1.

"Whether an executive branch employee serving in a DPA leadership position may continue to serve as Executive Director or as an officer of LJCPD after DPA assumed responsibility for LJCPD's former public defender functions?"

The Department of Public Advocacy first questions whether its new employee may continue to serve as Executive Director or as an officer of the Corporation during the time of transition. It should be noted that while DPA initially approved this service as "outside employment," it now intends to withdraw such approval. We will first address the issue of whether the employee's unpaid volunteer service constitutes outside employment under KRS 11A.040(10). While the approval of outside employment rests with the employee's appointing authority under KRS 11A.040(10), this is not such a situation. As outlined in the statement by DPA, the Executive Director position is now an unpaid, voluntary position with a non-profit corporation that is in the process of dissolution. We cannot broadly say that such unpaid volunteer service with a non-profit corporation constitutes "other employment" for purposes of KRS 11A.040(10).

KRS 11A.040 (10) provides:

"(a) Without the approval of his or her appointing authority, a public servant shall not 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 or she supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.

(b) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.

(c) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

(d) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each."

While the language of the statute clearly prohibits state employees from accepting outside employment with businesses doing business with or regulated by their state agency, it is not applicable where the state employee serves in a volunteer capacity and is no longer "employed" by the outside entity. From the facts presented here, the state employee is not employed by the Corporation but rather appears to be volunteering to provide special knowledge of the subject matter needed to ensure the effective functioning of the executive branch during this time of transition. Such service is clearly contemplated by KRS 11A.030(4).

2.

"Whether the employee's continued service with LJCPD creates an actual conflict of interest, an appearance of impropriety, or divided loyalties under the Executive Branch Code of Ethics?"

The second question posed by DPA is whether the employee's continued service with the Corporation creates a conflict of interest prohibited by KRS 11A.020, or the appearance of such. Public servants are prohibited from using or attempting to use their influence in any matter which involves a substantial conflict between their personal or private interest and their duties in the public interest. KRS 11A.020(1)(a). Here there is no substantial conflict between the employee's personal or private interest and his duties in the public interest. 9 KAR 1:025 provides further guidance as to what constitutes prohibited conduct and conflicts of interest- none of which are applicable to this situation. By statute and by the Memorandum of

Understanding executed between DPA and the Corporation, it has been determined that it is in the public interest for those parties to "cooperate to effectuate the smooth transition of the control of Assets from LJCPDC to DPA…" Memorandum of Understanding-Agreement-Section 3(d) p. 3. As all parties have a duty to work toward the furtherance of that end, it cannot then be said that the employee's continued volunteer service with the Corporation creates a substantial conflict with his duties in the public interest. The further question as to whether the employee's actions on behalf of LJCPDC create a possible appearance of impropriety or divided loyalties is not a matter to be addressed by the Executive Branch Ethics Commission.

3.

"Whether LJCPD's continued status as a legal entity maintaining contractual, financial, and operational obligations to DPA, including obligations arising from its prior public defender services contract and the memorandum of understanding governing transition and dissolution, affects the permissibility of the employee's dual service under the Executive Branch Code of Ethics?

The Commission is not unmindful that disputes may arise during this time of transition between DPA and the Corporation. These matters are controlled by the applicable statutes and the Memorandum of Agreement executed by the parties. If a specific and substantial conflict is presented related to the employee's duties in the public interest, such may be addressed by recusal at that time.

EXECUTIVE BRANCH ETHICS COMMISSION

Crit Luallen

By Chair: Crit Luallen