

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 Consequently, the analysis reflected in the opinion may be outdated.

40 IAC 2-1-8 Moonlighting

40 IAC 2-1-9 Conflicts of interest

A supervisor in the DMH Division of Addiction Services and his wife sought to engage in outside employment offering addiction education and assessment services to a court for which employees under his supervision handled certification of both the court-administered alcohol and drug services program and two agencies' outpatient addiction treatment services. SEC found this outside employment presented a conflict of interest and the supervisor and his wife were prohibited from offering such services unless the supervisor could be effectively screened by his agency from duties related to the entities in question.

**91-I-11: Conflict of Interest, Moonlighting
Indiana State Ethics Commission
Official Advisory Opinion
(Decision May 9 and June 13, 1991)**

FACT SITUATION

An employee in the Division of Addiction Services, Department of Mental Health, supervised nine employees who certify agencies that provide outpatient addiction treatment programs. The employee also supervised the staff that certifies the court administered alcohol and drug services programs around the state. The staff determined if programs complied with standards and certified them for two-year periods, issued "intent to deny" certification letters, or denied certification. The supervisor's responsibilities were to oversee the staff to make sure the response was timely and appropriate, to provide training, and to monitor state funding of programs. Each of the staff persons was assigned a geographic area of the state.

The activity outside of state employment for compensation that the supervisor wished to perform was to provide substance abuse education and assessment services to the Marion County Municipal Court Alcohol and Drug Services Program. Others who were part of the group submitting the proposal included the supervisor's wife and a second Department of Mental Health staff member who was not employed in the Division of Addiction Services. Alcohol and Drug Education services were not regulated by the Department of Mental Health. Once a program proposal received approval by the court (there was not a limit to the number of programs that can receive approval), after judicial process, referrals were made to the program by the Marion County Probation Department staff. The clients referred paid fees. Referrals continued to an approved program so long as the court was satisfied with the quality of the services provided. No formal or exclusive contracts were awarded. The program services consisted of an eight and a sixteen hour course and a brief summary to the court upon completion of the courses by the individual which included an assessment of whether referral to a treatment program was recommended. The court then determined whether to refer the individual to one of a number of area outpatient treatment programs.

Two local programs certified by the Division of Addiction Services as addiction treatment programs also provided education services. In addition, the Marion County Municipal Court Alcohol and Drug Services Program was certified as an intervention program by the Division of Addiction Services.

QUESTION

Is a supervisor in the Division of Addiction Services, Department of Mental Health (along with the employee's wife and another state employee), permitted to engage in outside employment offering addiction education and assessment services to a court when certification of the court administered alcohol and drug services program and of two agencies' (who also offer education

services) outpatient addiction treatment services were handled by employees under the employee's supervision?

OPINION

The Commission found that it was a conflict of interest for an employee who is a supervisor in the Division of Addiction Services within the Department of Mental Health and who supervises employees who certify the court administered alcohol and drug services program and agencies' outpatient addiction treatment programs to offer addiction education and assessment services to the court. Although the employee could be permitted to have outside employment for compensation if the employee could be screened effectively (for example, a superior performed the job duties in relation to the three entities which cause a conflict of interest), in the absence of being screened by the agency, the employee and the employee's spouse are not permitted to engage in this outside employment providing addiction education services to the court.

The relevant rules are as follows:

40 IAC 2-1-8, on Moonlighting provides, "A state employee must not engage in outside employment or other outside activity not compatible with the full and proper discharge of his public duties and responsibilities. This outside employment or other outside activity must not impair his independence of judgment as to his official responsibilities, pose a likelihood of conflict of interest or require him or persuade him to disclose confidential information acquired by him as a result of his official duties."

40 IAC 2-1-9, on Conflict of interest provides, "(A) If in the course of the discharge of his official duties as a state officer or state employee he shall find himself in a position where his, or his spouse's or his unemancipated children's economic interest shall be substantial and material and in conflict with the interest of the people of this State, then such state officer or state employee shall be expected to resolve such conflict as provided for in Section 10 (40 IAC 2-1-10).

"(F) No state officer or employee shall participate in any decision or vote of any kind in which he, his spouse, or his unemancipated children have an economic interest."