

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 Consequently, the analysis reflected in the opinion may be outdated.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

Some of DMH's Developmental Disability Division Client Services section staff expressed an interest in serving as mediators in a program the DOE was in the process of establishing for assisting clients and families of special education students in case conference settings. SEC found there were no ethical or conflict of interest problems with the proposal, provided the staff followed the guidelines as established by the DMH Commissioner and the Director of the Division on Developmental Disabilities.

No. 5 Conflict of Interest, Moonlighting

FACT SITUATION

The Department of Education is establishing a mediator program for assisting clients and families of special education students in case conference settings. Some of the Developmental Disability Division Client Services section staff of the Department of Mental Health have expressed an interest in being mediators.

The Client Services Office provides services to Indiana residents of all ages who are considered to be Developmentally Disabled. Indiana considers mental retardation, cerebral palsy, epilepsy or autism to be a developmental disability if the condition began before age 18 and poses a substantial handicap to a person's day-to-day functioning.

The Client Services Office provides a variety of services to individuals and their families, community agencies, and professionals in each area. Case Managers assist families in making application for the Family Subsidy Program.

To deal with ethical problems, the Commissioner of the Department of Mental Health and the DD Division Director set forth the following guidelines for mediators:

1. No work time is to be used for mediation activities.
2. If approved, you may occasionally use vacation and/or personal time, but you will attempt to schedule mediation activities for evenings and weekends.
3. You may receive reimbursement from the mediation service only for your travel expenses as well as the flat-fee mediator's compensation.
4. You are not to provide any additional paid or non-paid services to the family or school as a part or a consequence of a mediation activity.
5. You are not to use any DMH resources, equipment, supplies, etc., as a part of mediation activities.
6. You will not participate in any mediation cases involving any of the following characteristics:
 - school or family located in your Client Services District,
 - case involves a DMH-funded service provider regardless of location,
 - student referred to DMH Client Services regardless of location,
 - student is or may be supported by Rule S-5, or,
 - student is transitioning from or to a DMH funded program.

QUESTION

Would the staff of the Developmental Disability Division Client Services Section of the Department of

Mental Health, who have been asked to participate as Special Education Mediators for the Department of Education, be in a conflict of interest situation if they were to receive remuneration from the Department of Education.

OPINION

The State Ethics Commission found no ethical or conflict of interest problems with the proposal as submitted to the Commission for staff participation as special education mediators, provided they follow the guidelines as established by the Department of Mental Health Commissioner and the Director of the Division on Developmental Disabilities.

The relevant rule, 40 IAC 2-1-8, 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 judgement 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."

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