

CEO 25-4—June 11, 2025

POSTEMPLOYMENT RESTRICTIONS**DEPARTMENT OF CORRECTIONS EMPLOYEE ACCEPTING
POST-PUBLIC-EMPLOYMENT WITH A VENDOR OF
THE DEPARTMENT***To: Name withheld at person's request (Miami)***SUMMARY:**

Under the circumstances presented, Sections 112.3185(3) and 112.3185(4), Florida Statutes, will not restrict an Assistant Warden with the Department of Corrections from leaving State employment and accepting a position with a vendor that is providing comprehensive healthcare for the Department. However, for two years after leaving State employment, Section 112.313(9)(a)4., Florida Statutes, will restrict him from representing the vendor for compensation before any agency officer or employee within his Departmental region. Referenced are CEO 19-5, CEO 18-18, CEO 18-9, CEO 12-4, CEO 11-24, CEO 09-6, CEO 09-5, CEO 07-16, CEO 07-10, CEO 07-6, CEO 06-3, CEO 05-16, CEO 05-4, CEO 03-8, CEO 00-6, CEO 93-2, CEO 90-27, CEO 89-20, CEO 88-79, and CEO 83-8.

QUESTION:

Would an Assistant Warden with the Department of Corrections be restricted under any post-public-employment provisions in the Code of Ethics from accepting an employment offer from a vendor providing comprehensive healthcare for the Department?

Under the circumstances presented, this question is answered in the affirmative.

In your letter of inquiry and additional information supplied to our staff, you indicate you are one of the Assistant Wardens for the Everglades Correctional Institution with the Florida Department of Corrections. You state your position as Assistant Warden is classified as Selected Exempt Service (SES) and that you have served in that capacity since March 2017. You relate your role as Assistant Warden largely pertains to overseeing the security operation of the Everglades Correctional Institution, and you have provided a job description for your position that indicates you also assist in supervising "the day-today functions of the [I]nstitution and monitor[ing] daily operations."

Your inquiry stems from a post-public-employment job offer that you have received from a Department vendor (hereinafter, "the vendor"). The vendor is currently contracting with the Department of Corrections to provide comprehensive healthcare for the inmate population at all the Department's correctional institutions. It has offered you the position of Health Services Administrator at the Dade Correctional Institution, which you indicate would require you to be physically placed at the Dade facility and would entail regularly interacting with Department staff. You have provided the vendor's job description of the Health Services Administrator position, which indicates this position is responsible for—among other duties—directing and supervising the work of the medical, dental, mental health, nursing, technical, clerical, and support service teams that the vendor has assigned to the Dade Correctional Institution.

You ask whether you will have a prohibited conflict of interest under any post-public-employment restriction in the Code of Ethics (Part III, Chapter 112, Florida Statutes) were you to accept the vendor's employment offer and serve as the Health Services Administrator at the Dade Correctional Institution. As explained below, under your unique set of facts, it does not appear the restrictions in Section 112.3185, Florida Statutes, will apply were you to accept the employment offer, but you would be prohibited for two years under Section 112.313(9)(a)4., Florida Statutes, from making any type of representation to your former agency on the vendor's behalf.¹

Turning first to Section 112.3185, Florida Statutes, that statute contains several prohibitions of which the most relevant to your inquiry is Section 112.3185(4), Florida Statutes,² which states:

An agency employee may not, within 2 years after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract for contractual services which was within his or her responsibility while an employee. If the agency employee's position is eliminated and his or her duties are performed by the business entity, this subsection may be waived by the agency head through prior written approval for a particular employee if the agency head determines that the best interests of the state will be served thereby.

The provision prohibits you from being employed with any business entity for two years after you resign from the Department when your employment is related to a contract for contractual services that fell within your responsibilities while at the Department. This two-year prohibition is contract specific; it does not prevent you from working on programs or subject matter related to the Department, but only from working on contracts for contractual services that were within your responsibilities. See CEO 07-10 and CEO 06-3, n.6.

Certain statutory criteria in Section 112.3185(4) are present in your situation. From what you indicate, the contract between the Department and the vendor is for "contractual services"—as you relate it requires the vendor to provide healthcare to incarcerated patients at the Department's correctional institutions—and it appears your potential position with the vendor will be "in connection" with the contract as it will require you to work at a particular correctional institution to ensure all patients are receiving adequate care. The question remains whether the contract with the vendor falls "within your responsibility" as a current Department employee.

The phrase "within responsibility" is not defined in the Code of Ethics. See CEO 11-24. In the past, we have found a contract to be within a public employee's responsibility when he or she—or a subordinate—has monitored or managed the contract, or when a public employee has ultimate authority over a contract. See CEO 19-5, CEO 18-18, CEO 03-8 and CEO 93-2. If the employee merely has incidental contact with a contract, meaning they do not have a substantive role concerning it, then the prohibition in Section 112.3185(4) does not apply. See CEO 18-9, n.5, CEO 06-3 and CEO 93-2.

Here, you state you are not the monitor or manager on the Department's contract with the vendor. You indicate a separate Department employee, over whom you have no supervisory authority, monitors the vendor's performance of the contract in Region 4 of the Department, where the Everglades Correctional Institution and the Dade Correctional Institution are located.³ You also state you have no "contractual oversight" or "decision-making authority" regarding the Department's contract with the vendor, and that your interaction with the vendor "is strictly operational and site-based[,] meaning you interact with vendor staff only "in the context of [the] day-to-day institutional management and coordination" of your correctional facility. In other words, your involvement with the vendor is not because you have managerial responsibilities concerning the contract, but simply because, as an Assistant Warden, you oversee the general operation of your facility.

It is worth emphasizing that simply because you have no authority to make decisions concerning a contract does not mean you have no responsibilities concerning it. For instance, if your duties as Assistant Warden included evaluating the work performed by the vendor or collaborating with the vendor in providing services, Section 112.3184(4) could apply, even if you were not involved in making overall decisions concerning the contract.

However, the information that you have provided—particularly the information provided while this advisory opinion was being prepared—indicates you do not have the substantive responsibilities concerning the contract that Section 112.3185(4) is meant to address. As described above, you have no role in monitoring the contract. Nor do you review any work performed by the vendor pursuant to the contract. You do indicate the vendor's employees report security-related issues to you concerning Department employees. And you also indicate you are involved in inspecting the medical area of the facility for safety, security, and sanitation, which presumably is the area where the vendor's employees are working. But simply because you receive information from the vendor about security matters or inspect areas of the facility where the vendor may be present does not mean you have responsibilities concerning the vendor's contract. Indeed, you state the contract does not even create a duty on the part of the vendor to maintain the medical area of the facility.

In short, in your role as Assistant Warden, it appears any contact that you have with the vendor is by necessity and relates only to the general management of your correctional institution. You have no specific duties or role concerning the performance of the vendor's contract with the Department. For this reason, the two-year prohibition in Section 112.3185(4) will not apply were you to accept the vendor's employment offer.

That being said, regardless of Section 112.3185(4), another statute will be applicable were you to begin serving as a Health Services Administrator at the Dade Correctional Institution. This statute is Section 112.313(9)(a)4., Florida Statutes, which states:

An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

Essentially, Section 112.313(9)(a)4. places a two-year prohibition on former agency employees representing persons or entities for compensation before their former agencies. For purposes of this prohibition, Section 112.313(9)(a)2.a.(I), Florida Statutes, defines an "employee" as "[a]ny person employed in the executive or legislative branch of government holding a position in the . . . Selected Exempt Service . . ." Because your position as Assistant Warden is classified as SES, you will be subject to the two-year prohibition in Section 112.313(9)(a)4. if you leave that position and enter the private sector.

An initial matter to consider in applying Section 112.313(9)(a)4. is what your "agency" will be for purposes of the statutory prohibition. Past Commission opinions have clarified that your "agency" will be Region 4 of the Department, as that Region encompasses the Everglades Correctional Institution where you are currently employed. See CEO 90-27, CEO 89-20, and CEO 88-79 (finding for purposes of Section 112.313 that the "agency" of a former Department employee will be the region in which his or her correctional institution is located). The Dade Correctional Institution, where the vendor intends to place you, is also located in Region 4. Considering this, the question becomes whether—if you accept the vendor's offer to serve as its Health Services Administrator at the Dade Correctional Institution—you will be required to make any "representations" before Region 4 personnel on the vendor's behalf within two years of leaving your position.

The term "representation" is defined in Section 112.312(22), Florida Statutes, as:

Actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

This definition is very broad, precluding almost all contact between you and Region 4 officers and employees during the two-year period. See CEO 07-16, n.5 and CEO 05-4 (both opinions emphasizing the breadth of the definition). Examples of prohibited representations include attending agency meetings on behalf of a new employer, even without speaking (see CEO 07-6, Question 1), as well as communicating with agency personnel orally or in writing. In the past, the Commission has recognized that actions needed to carry out the terms of a contract may not always constitute "representation" within the meaning the prohibition. See, for example, CEO 09-6 and CEO 05-16. However, those opinions are confined to rote, mechanical contact where there is no discretion on the part of the agency that can be influenced (e.g., the mere conveyance of information to agency personnel). See CEO 11-24, n.10, CEO 09-5, and CEO 00-6. If the contact is intended to have the agency or its personnel take or not take some discretionary action, the prohibition will apply. See CEO 12-4, n.6.

Here, certain contact that you might have with Region 4 personnel as the Health Services Administrator at the Dade Correctional Institution might be mechanical or rote in nature. For example, you indicate the Health Services Administrator is responsible for passing along information to facility administration on security issues, such as if an inmate is working in the medical area without being assigned there or if Department personnel are not properly escorting nurses around violent or aggressive inmates. In these situations, it appears the Health Services Administrator merely conveys information about security matters to Region IV personnel. There is no

indication that the Health Services Administrator is involved in deciding whether to respond or what actions to take.

Similarly, you relate the Health Services Administrator is responsible for investigating complaints by inmates about the medical care being provided by vendor employees. You indicate the Health Services Administrator investigates each complaint to ensure that the vendor's employees are "conducting their duties and responsibilities as required." Conceivably, such an investigation may involve interviewing or discussing the matter with Region IV personnel, but only to collect information so that the vendor—not the Department—can make an informed decision.

These types of interactions do not appear to involve the Health Services Administrator attempting to influence discretionary decisions of Region IV personnel. In themselves, they do not appear to constitute the type of "representations" that Section 112.313(9)(a)4. prohibits. However, not all interactions between the Health Services Administrator and Region IV personnel may be categorized as this type of rote, mechanical contact.

One area of concern is the potential interactions that the Health Services Administrator may have if issues arise during medical inspections. You state the medical areas of each correctional institution are inspected "[c]ontinuously by staff and at least weekly by [institution] administration." If issues arise during an inspection, you indicate it is the responsibility of the Health Services Administrator assigned to that facility to coordinate "a plan of action [with institution administration] to resolve those issues." Presumably then, if you are employed as the Health Services Administrator at the Dade Correctional Institution, and if issues arise following an inspection, you will be responsible for working with Institution personnel in deciding what action(s) to take.

In addition, you relate the Health Services Administrator at the Dade Correctional Institution works with facility administration to resolve conflicts between Institution staff and vendor employees, such as when Institution staff is not cooperating, is hindering patient care, or is violating the Health Insurance Portability and Accountability Act (HIPAA). Some of these interactions may simply involve the Health Service Administrator reporting a conflict and leaving the matter with facility administration to address, which would not be a prohibited "representation." However, it is conceivable that more serious conflicts will require increased involvement by the Health Services Administrator, and that involvement, in turn, may influence personnel-related decisions by Region 4 administration.

These examples are not an exhaustive list, but they at least indicate the Health Services Administrator at the Dade Correctional Institution likely will have much more than rote, mechanical contact with Region IV officers and staff. This is of particular concern as you indicate the Health Services Administrator at the Dade Correctional Institution is required to be physically present and on-site, which increases the risk of you making a prohibited "representation" to a Region IV officer or employee. Any comment to Dade Correctional Institution personnel in your capacity as the Health Services Administrator beyond the mere conveyance of information—even your attendance in that capacity at an Institution meeting or workshop—will violate the statute. Essentially, while the two-year restriction in Section 112.313(9)(a)4. does not preclude you from accepting the employment offer from the vendor, it will limit the amount and type of communication that you may have with Institution personnel on the vendor's behalf.

In summary, the prohibitions in Section 112.3185 will not apply were you to accept the position of Health Services Administrator at the Dade Correctional Institution. However, you will be subject to the restriction in Section 112.313(9)(a)4., which will limit the types of communications that you may have with Region 4 personnel for two years after leaving public employment.

Your question is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on June 6, 2025, and **RENDERED** this 11th day of June 2025.

Luis M. Fusté, *Chair*

^[1]Commission staff provided letters to you concerning your inquiry on April 4, 2025, and April 15, 2025. This advisory opinion is based on the information that you initially provided during the drafting of those letters, as well as on further information that you subsequently

provided during the preparation of this opinion. The guidance in this opinion supersedes any earlier recommendations provided in the letters.

^[2]Section 112.3185(3), Florida Statutes, which is a separate subsection of the statute, prohibits you from accepting any employment or contractual relationship with a business entity that is "in connection with any contract in which [you] participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, or investigation while an officer or employee." The Commission has limited its interpretation of this list of activities to the procurement process. See CEO 00-6 and CEO 83-8. Here, from what you indicate, you were not involved in procuring the Department's contract with the vendor. Accordingly, Section 112.3185(3) will not apply were you to accept the vendor's employment offer.

^[3]The Department's website indicates these Correctional Institutions are both in Region 4. See <https://www.fdc.myflorida.com/institutions/institutions-list/region-4-office>.

CEO 19-5—March 13, 2019

POSTEMPLOYMENT RESTRICTIONS**DCF FORMER ASSISTANT SECRETARY EMPLOYED BY DCF CONTRACTOR***To: Name withheld at person's request (Odessa)***SUMMARY:**

A former employee of the Department of Children and Families (DCF) would not be prohibited under Section 112.3185(3) or (4), Florida Statutes, from accepting employment with a company that has DCF contracts, through application of Section 112.316, Florida Statutes, to the particular facts presented. CEO 12-20, CEO 07-16, and CEO 01-6 are referenced. ¹

QUESTION:

Would Section 112.3185, Florida Statutes, prohibit your holding employment or a contractual relationship, after you leave public employment with the Department of Children and Families, with a company in connection with contracts for which you were not personally and substantially involved in procurement, but which are among several legislatively-mandated Community-Based Care contracts with which your Department subordinates were somewhat involved in oversight?

Under the circumstances presented, your question is answered in the negative.

In your letter of inquiry, additional information supplied to our staff, and telephone conversations between you and our staff, you relate that since 2002, you have been employed with the Department of Children and Families (DCF). You further relate that, in recent years, you have served in several roles, including as General Counsel (June 2014-December 2017) and Interim Secretary (September 2018-January 14, 2019). From December 2017 through August 2018, you served in your current role as Assistant Secretary of Operations—recently resuming this role when a full-time Secretary was named. You relate that in your role as Assistant Secretary of Operations, as well as while previously serving as Interim Secretary, you managed six Regional Managing Directors (RMDs),² who not only sign the contracts held with legislatively-mandated Community-Based Care (CBC) lead agencies³, but also work on the specific performance of these same contracts.⁴ You further relate that your present DCF responsibilities include supervision of agency operations for approximately 7,000 employees and programs in all 67 Florida counties under an annual agency budget of approximately 3.2 billion dollars.

You relate that the lead CBC agency for the Sixth and Thirteenth Judicial Circuits, Eckerd Connects (Eckerd), has offered you a position as Vice President (VP) of Community-Based Care at Eckerd. As VP, you relate that you would be assisting the chief of the CBC (an Eckerd employee) in the coordination, integration, and management of child protective services in both Circuits, as well as his overall efforts to improve the system for the children in care. You further relate that the position at Eckerd would include responsibilities in connection with the company's contracts for contractual services with DCF in both Circuits.

With respect to the Thirteenth Judicial Circuit, you relate that the original contract between DCF and Eckerd took effect on July 1, 2012, was renewed in June of 2017, and will expire in June of 2020.⁵ You relate that although you were serving as legal counsel for the DCF SunCoast Region—where the Eckerd contract exists—when the original contract took effect, you did not participate, directly or indirectly, in the solicitation, procurement, approval or signing of the contract. You further explain that in 2011, when the contract was originally awarded, you were not working in the SunCoast Region. Rather, you were serving as Assistant Region Legal Counsel in the DCF Northwest Region (Tallahassee) and were specifically assigned to handle only matters in the Northwest Region, whereby you were unaware of the existence of Eckerd and any contractual relationship that it had with DCF. You also relate that you did not participate, directly or indirectly, in the solicitation,

procurement, approval or signing of the present contract, which took effect while you were serving as General Counsel for DCF.

With respect to the Sixth Judicial Circuit, you relate that Eckerd originally became a contracted lead agency with DCF in July 2008, when you were an Assistant General Counsel, and it subsequently renewed its contract with DCF on or about July 1, 2014, shortly after you began your role as General Counsel for DCF, and that the renewed contract will expire on June 20, 2019. You explain that you had no involvement with the July 2008 contract nor oversight of any employees who had involvement. Regarding the July 2014 contract renewal, you also relate that you did not participate, directly or indirectly, in the solicitation, procurement, approval or signing of the contract, and that the contract would have been reviewed by the legal department prior to you becoming General Counsel in June of 2014.

Two provisions of the Code of Ethics for Public Officers and Employees are relevant to your inquiry. The first is Section 112.3185(3), Florida Statutes, which states:

An agency employee may not, after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract in which the agency employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, or investigation while an officer or employee. When the agency employee's position is eliminated and his or her duties are performed by the business entity, this subsection does not prohibit him or her from employment or contractual relationship with the business entity if the employee's participation in the contract was limited to recommendation, rendering of advice, or investigation and if the agency head determines that the best interests of the state will be served thereby and provides prior written approval for the particular employee.

Section 112.3185(3) contains a restriction, that is unlimited in duration, on former public employees holding employment or a contractual relationship with a business entity in connection with any contract in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, or investigation while an employee. However, because you relate that you did not have *any* involvement with the procurement, development, award, or approval of the existing contracts between DCF and Eckerd, your prospective employment with the contractor (Eckerd) would not be restricted by this statute. In CEO 12-20, we opined that a similarly-situated DCF Assistant Secretary would not be subject to Section 112.3185(3) where he had not participated in the procurement of a DCF contract with his prospective new employer—a CBC lead agency.

The second provision of the Code of Ethics that is relevant to your inquiry is Section 112.3185(4), Florida Statutes, which states:

An agency employee may not, within 2 years after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract for contractual services which was within his or her responsibility while an employee. If the agency employee's position is eliminated and his or her duties are performed by the business entity, this subsection may be waived by the agency head through prior written approval for a particular employee if the agency head determines that the best interests of the state will be served thereby.

Section 112.3185(4) sets out a two-year restriction on former public employees holding employment or a contractual relationship with any business entity in connection with any contract for contractual services which was within the employee's responsibility. You do not dispute that the contracts between DCF and Eckerd are apparently contracts for contractual services, as defined in Section 287.012(8), Florida Statutes.⁶ You further acknowledge that your responsibilities as VP of Community-Based Care at Eckerd would be "in connection with" the present DCF contracts. Therefore, as in CEO 12-20, the remaining issue is whether the relevant contracts were "within your responsibility," as an employee of DCF. We have previously determined that "within

responsibility" includes situations in which you personally monitored or managed a contract and situations in which your subordinates monitored or managed. See CEO 07-16 and CEO 01-6.

You relate that although you see the performance reports of every CBC lead agency, you are not personally responsible for the oversight and performance of the associated contracts and you have never signed or made decisions regarding either Eckerd contract.⁷ Notwithstanding that the present contracts between Eckerd and DCF were signed by the RMDs *prior to your* becoming Assistant Secretary of Operations, based upon you being within the ultimate chain of supervision above the RMDs and DCF contract monitors and that, as part of your duties, you are informed of serious issues that may occur related to CBC contractors, including Eckerd, we find that the relevant contracts fall within your responsibility. As a result, upon leaving DCF, you would be restricted by Section 112.3185(4)—if applied in isolation—from working for your prospective employer on these contracts.

However, the particular circumstances of your inquiry include the following facts: The relevant contracts were negotiated, entered into and signed by persons other than you. When the Eckerd contracts were signed, you did not manage or monitor any DCF employee—including a RMD—who had oversight or signatory authority over the contracts. Unlike your former colleague, the Assistant Secretary in CEO 12-20, you have *never* served as a Managing Director of any DCF Region, whereby you would be directly responsible for subordinates who monitored quality and operations related to all DCF contracts within the particular region.⁸ However, like your former colleague (the requestor of CEO 12-20), you similarly represent that since becoming Assistant Secretary for Operations in December 2017, you have not routinely reviewed corrective action plans or related information regarding the contracts or matters related to your prospective employer. You also relate that the relevant contracts are primarily monitored within DCF by a Contract Oversight Unit, which reports to the DCF Contracted Client Services Director and a Fiscal Monitor Unit, which reports to DCF's Chief Financial Officer, and that both units ultimately report to the Assistant Secretary for Administration. Therefore, as we found in CEO 12-20, these factors lend themselves to the application of Section 112.316, Florida Statutes, which states:

CONSTRUCTION.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

Based upon the foregoing, and in light of the remarkably similar circumstances presented in CEO 12-20, *vis-à-vis* the circumstances presented in your inquiry, we believe that it is appropriate to apply Section 112.316 to negate the restriction that would arise in your situation via the literal language of Section 112.3185(4).

Accordingly, under the specific circumstances of your inquiry, we find that you are not restricted by Section 112.3185, Florida Statutes, from working after you leave DCF employment in connection with the contracts between Eckerd and DCF.⁹

Your question is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on March 8, 2019, and **RENDERED** this 30th day of January, 2019.

Guy W. Norris, *Chair*

^[1]Prior opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us).

^[2]You relate that these six RMDs are responsible for all 67 counties in the state.

^[3]You explain that DCF holds contracts with entities to operate as lead CBC agencies in each of the Judicial Circuits.

^[4]During conversations with our staff, you indicated that DCF's Secretary, not the RMDs, has the ultimate authority over the contracts.

^[5]During conversations with our staff, you indicated that the "[u]pon renewal in 2016" reference in the second paragraph of your letter dated January 14, 2019, is a typographical error.

^[6]"Contractual service" means the rendering by a contractor of its time and effort, rather than the furnishing of specific commodities. The term only applies to those services rendered by individuals and firms who are independent contractors. [Section 287.012(8), Florida Statutes.] See also, Section 287.012(8), for specific examples.

^[7]During conversations with our staff, you related that the RMDs make recommendations regarding contract renewals for the CBC lead agencies to the Secretary.

^[8]In CEO 12-20, one of the factors that we considered in applying Section 112.316, Florida Statutes was that the employee's oversight of supervisors of the relevant contract as Central Region Managing Director was limited to a ten-week period (prior to him becoming Assistant Secretary of Operations in September 2011), and nearly half of the two-year limitation period (which would have ended in September 2013) related to that position under Section 112.3185(4) had already lapsed by the time we considered the matter in August 2012. Here, the requestor of the instant opinion had no time period of involvement as a Managing Director (or any other position) where she would have had similar oversight of supervisors of the relevant contracts.

^[9]You have indicated you understand that Section 112.313(9)(a)4, Florida Statutes, would prohibit you from personally "representing" your employer for compensation before DCF for two years following the vacation of your DCF position. "Represent" is defined in Section 112.312(22) as "actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client." Note that this definition is very broad, including almost all contact on behalf of your prospective employer with DCF or its personnel for the two-year period, unless the contact is limited to rote, mechanical contact necessary to deliver or perform a contract, and is not made in an effort to get DCF or its personnel to do or not do something. Also note that Section 112.313(8), Florida Statutes, which prohibits the use of "inside information" gained by virtue of public position, remains applicable even after you leave public employment. See CEO 12-20, footnote 12.

CEO 14-31 – December 17, 2014

POSTEMPLOYMENT RESTRICTIONS

FORMER ADMINISTRATIVE LAW JUDGE REPRESENTING CLIENTS BEFORE DOAH

To: Mr. John Van Laningham, Administrative Law Judge (Tallahassee)

SUMMARY:

A former administrative law judge would not be prohibited under Section 112.313(9)(a)4, Florida Statutes, from representing clients before the Division of Administrative Hearings. CEO 10-14 is referenced.¹

QUESTION:

Would Section 112.313(9)(a)4, Florida Statutes, prohibit your representation of clients before the Division of Administrative Hearings after you leave your position as an administrative law judge?

Your question is answered in the negative.

You write that from October 2000 to the present you have been employed by the Division of Administrative Hearings (DOAH) as an administrative law judge.² You ask whether, if you were to leave your public employment at DOAH and return to private law practice, you would be subject to the two-year representation restriction in Section 112.313(9)(a)4, Florida Statutes.

Section 112.313(9), Florida Statutes, provides in relevant part:

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. “Employee” means:

(I) Any person employed in the executive . . . branch of government holding a position in the Senior Management Service as defined in s. 110.402 or any person holding a position in the Selected Exempt Service as defined in s. 110.602

. . . .

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

4. An agency employee . . . may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

Section 112.313(9)(a)4 prohibits a defined “employee” from representing³ another person or entity for compensation before the agency with which he was employed for a period of two years following vacation of his position. Section 112.313(9)(a)2.a., Florida Statutes, defines “employee,” in pertinent part, as a person holding a position classified as Senior Management Service (SMS) as defined in Section 110.402, Florida Statutes, or holding a position classified as Selected Exempt Service (SES) as defined in Section 110.602, Florida Statutes, or having the power normally conferred upon the positions referenced. We previously have not had occasion to consider whether an administrative law judge is an “employee” as defined in Section 112.313(9)(a)2.a.

In Section 110.2035, Florida Statutes, the Legislature provided the framework for a system classifying State government positions for purposes of determining responsibility levels and compensation in categories designated as Career Service, Selected Exempt Service (SES), and Senior Management Service (SMS). Under Section 110.205(1), the default category known as Career Service “includes all positions not specifically exempted by this part.” Turning to the relevant exemptions, we note that Section 110.205(2)(g) provides that “judges, referees, and receivers,” without defining those positions, are exempt from the Career Service category and, therefore, classified as SES. However, we find that this provision would not apply to an administrative law judge because of express exceptions in Sections 110.205(2)(r) and 110.205(2)(w) providing that State government attorney positions and supervisory positions are classified as SES except “any attorney who serves as an administrative law judge” pursuant to Section 120.65, Florida Statutes. We find that Sections 110.205(2)(r) and 110.205(2)(w) each contain an express exception to an exemption which exception operates to designate the position of administrative law judge as a Career Service position. Thus, we find that the position of administrative law judge is designated as within Career Service and not within Senior Management Service or Selected Exempt Service.

As to the issue of whether an administrative law judge position has the power normally conferred upon any SES or SMS position and thus is within the provision in Section 112.313(9)(a)2.a.(VI) applying the representation limitation in Section 112.313(9)(a)4 to “any person . . . having the power normally conferred upon the positions referenced in this sub-subparagraph,” we find that the position of administrative law judge is not equivalent to an SMS or SES position. In this regard, your inquiry is much like that of the requestor in CEO 10-14 (former assistant state attorney representing clients in litigation involving the state attorney’s office), in which we found that an assistant state attorney, while neither SMS nor SES, also did not have the power normally conferred upon any other SES or SMS employee. While Section 110.205(2)(g) exempts “judges, referees, and receivers” from Career Service and places them in SES, we recognize that an administrative law judge does not have the power normally conferred upon a District Court of Appeal judge, a Circuit Court judge, a County Court judge (all within the Judicial Branch of government), or a Judge of Compensation Claims, primarily due to the types of cases, procedures, and final order authority assigned by law to those judges,⁴ and we recognize that an administrative law judge, as an employee of DOAH, is within the Executive Branch, not the Judicial Branch.⁵ See Section 20.22(2)(f), Florida Statutes.

Accordingly, we find that you would not be restricted under Section 112.313(9)(a)4, Florida Statutes, from representing clients before DOAH after you leave employment with your agency.

ORDERED by the State of Florida Commission on Ethics meeting in public session on December 12, 2014, and **RENDERED** this 17th day of December, 2014.

Linda McKee Robison, *Chair*

^[1]Prior opinions of the Commission on Ethics are available at www.ethics.state.fl.us.

^[2]Section 120.65(4), Florida Statutes, states that DOAH “shall employ administrative law judges to conduct hearings required by this chapter or other law. Any person employed by the division as an administrative law judge must have been a member of The Florida Bar in good standing for the preceding 5 years.”

^[3]“Represent” or “representation” is defined in Section 112.312(22) as “actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with officers or employees of any agency on behalf of a client.”

^[4]A hearing officer within the Public Employees Relations Commission (PERC) is classified as Career Service and a PERC hearing officer, like an administrative law judge, decides cases under Section 120.57, Florida Statutes. Also, under the Florida Retirement System (FRS), an administrative law judge is Regular Class, while a judge of compensation claims is Senior Management Service Class, and a judge in the Judicial Branch of government is Elected Officers’ Class, according to the *FRS Investment Plan: Summary Plan Description (July 1, 2014)*.

^[5]Section 110.205(2)(c), Florida Statutes, exempts “members, officers, and employees of the judicial branch” from Career Service and designates them as holding SES positions.

CEO 10-14 -- April 21, 2010

POSTEMPLOYMENT RESTRICTIONS

FORMER ASSISTANT STATE ATTORNEY REPRESENTING CLIENTS IN LITIGATION INVOLVING THE STATE ATTORNEYS OFFICE

To: Ronald S. Frankel, Assistant State Attorney (St. Petersburg)

SUMMARY:

An Assistant State Attorney is not prohibited by Section 112.313(9), Florida Statutes, from representing parents in dependency cases after retiring from the State Attorney's Office, where the State Attorney's Office represents the State in such cases.

QUESTION:

Will you, upon your retirement from the State Attorney's Office, be prohibited by Section 112.313(9), Florida Statutes, from representing parents in dependency cases, where the State Attorney's Office represents the State in such cases?

Your question is answered in the negative.

You advise that you are currently employed as an Assistant State Attorney in the Sixth Judicial Circuit. Your job responsibilities include representing the State in child dependency cases. You write that the parents in such cases typically are represented by the Regional Counsel, or, in cases of conflict, by a private attorney through a contract with the Justice Administration Commission. You expect to retire later this year, and inquire whether Section 112.313(9) will prohibit you from taking such cases as a private attorney.

Section 112.313(9), Florida Statutes, provides in relevant part::

...

POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. 110.402 or any person holding a position in the Selected Exempt Service as defined in s. 110.602 or any person having authority over policy or procurement employed by the Department of the Lottery.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

4. No agency employee shall personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

Section 112.313(9)(a)4 prohibits a former agency employee from representing another person or entity for compensation "before the agency with which he was employed" for a period of two years following vacation of his position. As your work in representing parents in dependency cases would necessitate personal communications with employees of the State Attorney's Office—your former agency—if you are an "employee" as the term is defined in the statute, you would be precluded from taking these cases for two years after your retirement. See, CEO 06-1 (Selected Exempt Service attorney employed by the Florida Department of Transportation would be prohibited by Section 112.313(9)(a)4 from personally representing another person or entity for compensation against the Department in eminent domain proceedings, presuit negotiations for same, or in an inverse condemnation lawsuit or negotiations prior to such a lawsuit against the Department for two years following vacation of his position). We have not previously had occasion to consider whether Assistant State Attorneys are "employees" as defined in Section 112.313(9)(a)2.a.

The term "employee" as used in Section 112.313(9)(a)2.a, includes members of the Senior Management Service (SMS) "as defined in s. 110.402" and any person holding a position in the Selected Exempt Service (SES) "as defined in s. 110.602." ¹

In turn, Section 110.402(2), Florida Statutes, states, "The Senior Management Service shall be limited to those positions which are exempt from the Career Service System by s. 110.205(2) and for which the salaries and benefits are set by the department [of Management Services] in accordance with the rules of the Senior Management Service." Section 110.602, Florida Statutes, states Selected Exempt positions "shall include, and shall be limited to, those positions which are exempt from the Career Service System pursuant to s. 110.205(2) and (5) and for which the salaries and benefits are set by the department in accordance with the rules of the Selected Exempt Service." (All emphasis supplied.)

Assistant State Attorneys are specifically exempted from the Career Service System by Section 110.205(2)(x), Florida Statutes. However, it does not appear that their salaries and benefits are "set by the department [of Management Services] in accordance with the rules of the Selected Exempt Service" as is required to meet the definition of a Senior Management or Selected Exempt position established in Section 110.602. This is because pursuant to Section 27.25, Florida Statutes, the State Attorneys are authorized "to employ and establish, in such number as is authorized by the General Appropriations Act, assistant state attorneys and other staff pursuant to s. 29.005" and further

shall jointly develop a coordinated classification and pay plan which shall be submitted on or before January 1 of each year to the Justice Administrative Commission, the office of the President of the Senate, and the office of the Speaker of the House of Representatives. Such plan shall be developed in accordance with policies and procedures of the Executive Office of the Governor established pursuant to s. 216.181.

Thus, the salaries and benefits of Assistant State Attorneys are not "set by the department [of Management Services]." That being the case, as an Assistant State Attorney you do not meet the definition of "employee" in Section 112.313(9)(a)2.a.(I).

We next must determine whether you are brought within the ambit of the restriction by Section 112.313(9)(a)2.a.(VI), which includes in the list of defined employees "[a]ny person . . . having the power normally conferred upon the positions referenced in this sub-subparagraph." We have had little opportunity to construe the meaning of this particular language in the context of the post-employment prohibition, but we have often had occasion to address similar language in the context of the financial disclosure law. In Section 112.3145(1)(b)3., Florida Statutes, the definition of the term "specified state employee" lists a number of specific positions, and then includes, "any person having the power normally conferred upon such persons, by whatever title." In this context, we have found the language applicable where the responsibilities associated with the individual's position made it

comparable to one of the specified positions. For example, in CEO 97-18 we found that a Correctional Assistant Superintendent II with the Department of Corrections was the equivalent of an assistant division director or an assistant bureau chief—positions named in the statute—and was thus required to make disclosure.

That kind of comparison is impossible in this case, because there is no "equivalent" to an assistant state attorney's position, except another assistant state attorney's position. The group is a class unto itself with unique responsibilities not shared by any other agency. Therefore, we cannot say that an assistant state attorney has "the power normally conferred" upon any other SES or SMS employee.

This is consistent with our findings in the few cases where we have considered this language in the context of post-employment restrictions. In CEO 05-1, we dealt with a question from a former OPS (other personal service) employee with the Department of Environmental Protection. Although the individual held a position—Senior Attorney—ordinarily subject to the restriction, we found that the restriction did not apply in that case. Because of the time-limited nature of OPS employment and the fact that agencies cannot use it to fill established positions or assign to it the duties of any vacant, authorized position, it was our view that persons in OPS positions could not possess the "power normally conferred" upon persons in established Selected Exempt Service positions.² Similarly here, since there are no comparable positions to that of an assistant state attorney, it does not seem to us that you are capable of having the "power normally conferred" upon SES or SMS positions.

Accordingly, we find that you will not, upon your retirement from the State Attorney's Office, be prohibited by Section 112.313(9), Florida Statutes, from representing parents in dependency cases, where the State Attorney's Office represents the State in such cases. Please note that this opinion does not address any possible conflicts of interest that may exist under the Rules Regulating the Florida Bar, since we do not administer the standards of conduct applicable to Florida Bar members. For advice about the appropriate standards of conduct under these rules, please contact the Florida Bar.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 16, 2010 and **RENDERED** this 21st day of April, 2010.

Roy Rogers
Chairman

^[1] We are aware that the definition speaks only to persons employed in the executive or legislative branch of government, and are mindful of the argument that the Office of State Attorney is part of the judicial branch. "A state attorney, while being a quasi-judicial officer, also shares some attributes of the executive." *Office of State Attorney, Fourth Judicial Circuit of Florida v. Parrotino*, 628 So.2d 1097, 1099 (Fla. 1993) However, given our resolution of the issue, it is not necessary to reach that question.

^[2] The Legislature subsequently amended Section 112.313(9)(a)2.a to specifically include OPS positions.