

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
December 14, 2023**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present were Corinne Finnerty, Acting Chair; John Krauss; and Sue Anne Gilroy. Office of Inspector General (OIG) staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Mark Mitchell, Director of Investigations; Doreen Clark, Staff Attorney; Mark Mader, Staff Attorney; Hope Blankenberger, Staff Attorney, Mike Lepper, Special Agent; Jason Fajt, Special Agent; and Nathan Baker, Legal Assistant.

Others present were Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Tamera Glickman, Deputy General Counsel, Indiana Department of Administration; Matthew Gerber, Ethics Officer, Family and Social Services Administration; Monique Prezzy, former employee, Family and Social Services Administration; Rachael Ehlich, Operations Director, Office of the Governor; Josh Brandle, Legal Analyst, Department of Revenue; Claire Szpara, Ethics Officer, Department of Insurance; Beth Green, General Counsel, Department of Workforce Development; Amie Durfee, Deputy General Counsel, Department of Workforce Development; Elliott Anderson, Ethics Officer, Department of Corrections; and, General McPherson, Correctional Captain, Department of Corrections.

**II. Selecting Acting Chair, Adoption of Agenda and Approval of Minutes**

Due to the absence of Commission Chair Noel, Commissioner Krauss moved to appoint Commissioner Finnerty to serve as Acting Chairperson for the December 2023 meeting. Commissioner Gilroy seconded the motion which passed (3-0).

Commissioner Krauss moved to adopt the agenda. Commissioner Gilroy seconded the motion, and the Commission passed the agenda (3-0).

Commissioner Krauss moved to approve the Minutes of the November 16, 2023, Commission Meeting, and Commissioner Gilroy seconded the motion, which passed (3-0).

**III. Request for Formal Advisory Opinion**

2023-FAO-013

Monique Prezzy

Family & Social Services Administration

Monique Prezzy is a former state employee, having previously served as the Director of Learning and Development at the Family and Social Services Administration's (FSSA) Division of Family Resources (DFR). Ms. Prezzy's last day of state employment was March 17, 2023.

In her previous role at FSSA, Ms. Prezzy participated in an advisory capacity for the Request for Proposals (RFP) process through which FSSA selected a learning and development vendor, Conduent. Through the learning and development contract, Conduent assists with the development of training content and provides training to FSSA eligibility staff to process Medicaid, TANF and SNAP benefits. Ms. Prezzy was involved in monitoring the budget, work product/deliverables and compliance with the contract.

A separate FSSA vendor, Briljent, provided support staff to Conduent in the training classrooms. Ms. Prezzy also monitored performance of this contract. According to FSSA's Ethics Officer, who testified before the Commission, Ms. Prezzy did not sign FSSA's contract with Briljent, and she was not involved in the negotiation of this contract. FSSA's Ethics Officer also stated that Ms. Prezzy had no discretionary decision-making authority involving Briljent's contract with FSSA and she could not have taken action regarding this contract without her supervisor's approval. He further provided that as an FSSA employee, Ms. Prezzy was not involved in any regulatory or licensing decisions involving Briljent.

FSSA is set to release a new RFP later this year or early next year for a new learning and development contract. Ms. Prezzy would like to provide part-time consulting services to Briljent to assist with Briljent's response during the RFP process. Ms. Prezzy would not engage in lobbying in her role with Briljent.

Ms. Prezzy requests the Commission's advisory opinion as to the Code's applicability to her proposed post-employment consulting arrangement with Briljent.

Ms. Prezzy's request for a FAO invokes consideration of the provisions of the Code pertaining to post-employment and confidential information. The application of these ethics rules to Ms. Prezzy's proposed post-employment activities supporting Briljent in the RFP process is analyzed below.

#### *A. Post-employment*

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Ms. Prezzy from accepting employment from an employer for 365 days from the date that she left state employment under various circumstances.

First, Ms. Prezzy is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

Based on the information provided, Briljent has in the past, and may continue to provide services to FSSA under a contract, and as Briljent appears interested in pursuing future business with FSSA under the soon to be released RFP for a new learning and development contract, there is likely to be continued coordination between FSSA and Briljent. Ms. Prezzy stated that she would not be engaging in activity that would constitute executive branch lobbying in her proposed consultant role at Briljent. To the extent that Ms. Prezzy does not engage in executive branch lobbying for one year after leaving state employment, the Commission finds that her post-employment opportunity at Briljent would not violate this provision of the post-employment rule.

Second, Ms. Prezzy is prohibited from accepting employment for 365 days from the last day of her state employment from an employer with whom 1) she engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

Ms. Prezzy monitored Briljent staff performance and reviewed and approved Briljent invoices to FSSA under Briljent's contract with FSSA; however, she did not have discretionary decision-making authority over Briljent's contract with FSSA. Based on the information provided, the Commission finds that this provision does not prohibit Ms. Prezzy's post-employment opportunity with Briljent.

Third, Ms. Prezzy is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Ms. Prezzy was not involved in any regulatory or licensing decisions involving Briljent while with FSSA; therefore, this provision does not prohibit Ms. Prezzy's post-employment opportunity with Briljent.

Fourth, Ms. Prezzy is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in her official capacity as a state employee. Ms. Prezzy is a former state employee and nothing in the information presented to the Commission suggests that Briljent has extended an offer for her prospective new role in an attempt to influence her prior to her separation from state employment.

Finally, Ms. Prezzy is subject to the post-employment rule's "particular matter" prohibition in her prospective post-employment. This restriction prevents Ms. Prezzy from representing or assisting

a person on any of the following twelve matters if she personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Ms. Prezzy would be prohibited from representing or assisting Briljent, or any other person, in a particular matter in which she personally and substantially participated as a state employee.

Based on the information provided, the new RFP set to be released by FSSA later this year or early next year for a new learning and development contract is a new contract; thus, it is not a particular matter that Ms. Prezzy personally and substantially participated in as a state employee.

The Commission finds that the new RFP is not subject to the particular matter restriction under IC 4-2-6-11.

*B. Confidential information*

IC 4-2-6-6 prohibits Ms. Prezzy as a former state employee from accepting any compensation from any employment, transaction or investment that is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as Briljent. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Ms. Prezzy has acquired or maintains access to such confidential information obtained in her previous role at FSSA, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including Briljent, in any manner.

Commissioner Gilroy moved to approve the Commission’s findings, and Commissioner Finnerty seconded the motion, which passed (3-0).

**IV. Request for Formal Advisory Opinion**

2023-FAO-014

Elliott Anderson, Chief of Staff and Ethics Officer

Captain Geneva McPherson, Correctional Captain, Reception Diagnostic Center

Indiana Department of Correction

Elliot Anderson serves as the Chief of Staff and the Ethics Officer for the Indiana Department of Correction (DOC). Mr. Anderson requests the Commission's formal advisory opinion on DOC employee Captain Geneva McPherson's proposed outside employment with Ivy Tech Community College (Ivy Tech) while maintaining her position at DOC.

Captain McPherson serves as a Correctional Captain at DOC's Reception Diagnostic Center, a maximum-security intake facility for adult male state prison inmates. She has worked for DOC for thirty-one years. In her role as Correctional Captain, Captain McPherson supervises a staff of approximately forty correctional officers, sergeants and lieutenants. She does not have contracting authority and does not participate in any contracting processes in her DOC position.

Captain McPherson is seeking to accept an outside employment opportunity with Ivy Tech. Pursuant to IC 21-22-2-2, Ivy Tech is a state educational institution. Ivy Tech currently maintains a contract with DOC to provide education services to individuals incarcerated in DOC facilities. According to Mr. Anderson and Captain McPherson, Captain McPherson's role at DOC does not involve working with Ivy Tech.

In her proposed outside role, Captain McPherson would supervise students in a classroom as a substitute teacher and would proctor test sessions at DOC's Plainfield Correctional Facility. This position would be performed part-time outside of her DOC position work schedule and would be done at a different DOC facility than the DOC facility at which she serves as a Correctional Captain. Captain McPherson does not have any financial interest in Ivy Tech beyond the hourly pay she would receive from her part-time work with Ivy Tech.

Mr. Anderson explains that one of the biggest challenges faced by DOC is attracting and retaining sufficiently qualified staff to meet the needs of Indiana's highest security prisons, several of which are currently operating with staffing vacancy rates exceeding thirty percent. DOC competes with other law enforcement entities and correctional service providers for a limited number of qualified applicants. Further, the distance of many of DOC's facilities from major metropolitan areas presents an additional challenge to meeting staffing needs.

Mr. Anderson explains that DOC would benefit greatly from Captain McPherson's part-time work at Ivy Tech and her custody background would help to enable a safe and secure environment in which students can learn. For these reasons, DOC believes her outside employment would further DOC's mission to provide meaningful, effective opportunities for successful reentry. Mr. Anderson explains that DOC supports Captain McPherson's request to engage in this outside employment with Ivy Tech not only because she is a valued employee that DOC desires to retain, but also because her outside employment would benefit DOC operations and administration of programming to those who DOC was established to serve.

Mr. Anderson's request for a FAO on behalf of Captain McPherson invokes consideration of the provisions of the Code pertaining to conflicts of interests, outside employment, use of state property, ghost employment, and confidentiality. The application of these ethics rules to Captain McPherson's proposed outside employment activities with Ivy Tech is analyzed below.

*A. Criminal Conflict of Interests*

The criminal conflict of interests statute, which is found in IC 35-44.1-1-4, prohibits a public servant from knowingly or intentionally having a pecuniary interest in or deriving a profit from a contract or purchase connected with an action by the public servant's agency. The statute makes violation of this prohibition a Level 6 felony.

The criminal conflict of interests statute provides several exceptions to the prohibition. Under IC 35-44.1-1-4(c)(1), it is not an offense if "the public servant . . . receives compensation through salary or an employment contract for: (A) services provided as a public servant . . ." Furthermore, under IC 35-44.1-1-4(c)(5), the Commission may provide an employee with "written approval that the public servant will not or does not have a conflict of interest in connection with the contract or purchase under IC 4-2-6. . ." The statute provides that such approval must be either "(A) granted to the public servant before the action is taken in connection with the contract or purchase by the governmental entity served; or (B) sought by the public servant as soon as possible after the contract is executed or the purchase is made and the public servant becomes aware of the facts that give rise to a question of conflict of interest."

The Commission approves Captain McPherson's proposed outside employment with Ivy Tech, so long as Captain McPherson files a disclosure statement with the Commission. Pursuant to state statute, Ivy Tech is a statewide educational institution. Furthermore, the Commission finds that Captain McPherson's outside employment with Ivy Tech is in the public interest because she will be providing a needed service to the population DOC serves. Captain McPherson has no contracting authority at DOC, and she will not hold a management or decision-making role at Ivy Tech. For these reasons, the Commission finds that Captain McPherson does not have a conflict of interests under the criminal conflict of interests statute, so long as she files a disclosure statement with the Commission.

*B. Conflicts of interests - contracts*

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party.

The rule's exception provides that an employee may have a financial interest in a contract made by a state agency, so long as that employee (1) does not participate in or have official contracting responsibility for the contracting agency and (2) files a disclosure form with the Inspector General prior to the contact's execution between the agency and third party.

The Commission finds that Captain McPherson's proposed outside employment with Ivy Tech is not a conflict of interests under IC 4-2-6-10.5, so long as Captain McPherson files a disclosure statement with the Commission. The Commission cites the following factors in determining that Captain McPherson's outside employment would not constitute a conflict of interests under this statute: Ivy Tech is a large, statewide educational institution; Captain McPherson's outside employment with Ivy Tech serves the public interest because she will be providing a needed public service; Captain McPherson does not participate in or have contracting responsibility for DOC; and Captain McPherson will not hold a management or decision-making role at Ivy Tech. For these reasons, the Commission finds that Captain McPherson does not have a conflict of interests under IC 4-2-6-10.5, so long as she files a disclosure statement with the Commission.

### *C. Outside Employment/Professional Activity*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or would require the employee's recusal from matters so central or critical to the performance of her official duties that her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities since these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Based on the information provided by Mr. Anderson, Captain McPherson's employment at Ivy Tech would not create a conflict of interests under this provision. Captain McPherson's employment will not be inherently incompatible with her responsibilities at DOC and would not require her to disclose confidential information gained in the course of her state employment. Mr. Anderson explains that DOC would benefit greatly from Captain McPherson's part-time work at Ivy Tech and her custody background would help to enable a safe and secure environment in which students can learn. For these reasons, DOC believes her outside employment would further DOC's mission to provide meaningful, effective opportunities for successful reentry.

Accordingly, the Commission finds that Captain McPherson's outside employment position at Ivy Tech would not create a conflict of interests for her under IC 4-2-6-5.5.

*D. Conflicts of Interests Related to Decisions and Votes*

IC 4-2-6-9 pertains to conflicts of interests in decisions and voting. This rule prohibits state employees from participating in any decision or vote, or matter related to that decision or vote, if the state employee has knowledge that various persons may have a financial interest in the outcome of the matter, including (1) the state employee him/herself; (2) an immediate family member; (3) a business organization in which the state employee is serving as an officer, director, member, trustee, partner or employee, or (4) an organization with whom the state employee is negotiating or has an arrangement concerning prospective employment.

The Code defines "financial interest" in IC 4-2-6-1(a)(11) to include "an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or involving property or services." The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority and seek an advisory opinion from the Commission or file a written disclosure statement.

Mr. Anderson explains that Captain McPherson does not in any way participate in or have contracting responsibility for DOC. He also explains that her role at DOC does not involve working with Ivy Tech. Furthermore, Captain McPherson will be working at a different DOC facility for Ivy Tech than the facility at which she serves as a DOC Correctional Captain.

The Commission finds that Captain McPherson does not have an identified potential conflict of interests under IC 4-2-6-9. Nonetheless, the Commission finds that Captain McPherson should submit a disclosure statement with the Commission and DOC should implement a screen to prohibit Captain McPherson from participating in any decisions or votes, or matters related to decisions or votes, in which Ivy Tech would have a financial interest.

*E. Use of State Property and Ghost Employment*

IC 4-2-6-17, the use of state property rule, prohibits a state officer, employee or special state appointee from using state materials, funds, property, personnel, facilities or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that the Commission has approved.



Likewise, 42 IAC 1-5-13, the ghost employment rule, prohibits a state officer, employee or special state appointee from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

To the extent that Captain McPherson observes these provisions regarding her outside employment, her outside position would not violate these ethics laws.

*F. Confidentiality*

IC 4-2-6-6 prohibits a state employee from accepting any compensation from any employment, transaction or investment that was entered into or made as a result of material information of a confidential nature. Similarly, 42 IAC 1-5-10 and 42 IAC 1-5-11 prohibit a state employee from benefitting from, permitting another person to benefit from or divulging information of a confidential nature except as permitted by law.

To the extent that Captain McPherson possesses information of a confidential nature by virtue of her position at DOC that could be used to benefit any person, including Ivy Tech, Captain McPherson will need to ensure that she complies with these rules.

Commissioner Krauss moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion, which passed (3-0).

**V. Consideration of Agreed Settlement**

In the Matter of Joseph F. Mulinaro  
Case Number 2023-03-0109  
Mark Mader, Staff Attorney  
OIG

Mark Mader presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commissioner Krauss moved to approve the Agreed Settlement, and Commissioner Gilroy seconded the motion, which passed via (3-0).

**VI. Consideration of the Final Report**

In the Matter of Justin A. Breedlove  
Case Number 2021-11-0319

State Ethics Director Sean Gorman presented the Final Report regarding the Agreed Settlement in the Matter of Justin A. Breedlove for approval. The Final Report was signed by Commissioners present at the meeting.

**VII. Ethics Director's Report**

State Ethics Director Sean Gorman provided the following to the State Ethics Commission:

**INFORMAL ADVISORY OPINIONS:**

Since our last meeting, our office has issued 18 IAOs to requestors, mostly for the usual topics regarding post-employment opportunities and part-time outside employment.

**LEGAL & ETHICS CONFERENCE:**

On the afternoon of November 16, 2023, the OIG hosted our annual Legal and Ethics Conference. We kicked off with US 7th circuit court of appeals Judge Thomas Kirsch who offered his thoughts on ethics in public service, much of it drawn from his experience in the Justice department and involvement in northwest Indiana public corruption investigations. The conference featured a session on parallel investigations involving the Office of Inspector General and other agencies, how investigations are coordinated and why some efforts may be duplicated for distinct purposes. We had Judge David Miller from the Marion County Superior Court offer his thoughts on considerations for public service attorneys. I offered a brief review of the Code's political activity rule and the Commission's past rulings interpreting it, and the Inspector General recognized Rachel Russell with his award of excellence for her role as DCS' ethics officer, the attention to ethics that she provides for her agency, and her coordination with OIG on investigations.

**COGEL CONFERENCE:**

I attended the annual Conference for the Council on Governmental Ethics Laws in Kansas City takes place from December 3<sup>rd</sup> through 6<sup>th</sup>. The conference offered opportunities for robust discussions on how ethics programs are administered in other jurisdictions. It was eye-opening to see the size and scope of some of those programs as compared to Indiana's. There were practical things that were discussed, particularly in regard to ethics training that might be scaled to fit within our resources, and which would offer some opportunities to improve awareness and understanding of our ethics rules among state workers.

CONCLUSION:

On behalf of the Office of Inspector General's office and private tax-paying citizens in the state, I thank this Commission for its service in 2023. I hope you all have a wonderful holiday and I look forward to continuing our work in 2024!

**VIII. Adjournment**

Commissioner Krauss moved to adjourn the public meeting of the State Ethics Commission. Commissioner Gilroy seconded the motion, which passed (3-0).

The public meeting adjourned at 10:55 a.m.