
IN THE MATTER OF	:	STATE ETHICS COMMISSION
CAROLYN REVERCOMB, M.D.,	:	
ASSISTANT STATE MEDICAL	:	
EXAMINER,	:	Commission Case No. 18-17
DEPT. OF LAW & PUBLIC SAFETY	:	

BACKGROUND

Carolyn Revercomb, M.D. (“Dr. Revercomb”) appealed the decision of the Department of Law & Public Safety (“L&PS”) denying her request for approval to engage in outside employment as an expert for a criminal defense attorney in New York, and to appear on the “expert roster” list with the City of New York Assigned Counsel Plan (“Assigned Counsel Plan”).

Section VI of the Uniform Ethics Code prohibits State officers or employees from engaging in outside employment unless they submit an Outside Activity Questionnaire (“OAQ”) and obtain the prior approval of the Ethics Liaison Officer (“ELO”) for the agency that employs them. A State officer or employee may appeal an agency ELO’s decision to disapprove an outside activity to the State Ethics Commission by submitting an appeal to the Commission within sixty days of receiving the agency’s decision.

APPLICATION

Dr. Revercomb is an Assistant State Medical Examiner for the Southern Regional Medical Examiner’s Office in Woodbine. The New Jersey Office of the State Medical Examiner (“OSME”), which supervises the State’s Northern and Southern Regional Medical Examiner Offices, is established within L&PS’s Division of Criminal Justice (“NJDCJ”). The OSME is responsible for the administration and enforcement of State laws and regulations relating to the medical examiner system and medicolegal death investigations in New Jersey.

Dr. Revercomb is a forensic pathologist who has been employed as an Assistant State Medical Examiner since February 2016. Dr. Revercomb conducts autopsies and determines the cause and manner of death for cases in the southern region of the State. While her State position may require that Dr. Revercomb testify in court on behalf of the State, as of the date of the appeal she has not been called to testify as an expert in any State matter since joining the OSME.

In or around November 2016, Dr. Revercomb submitted an OAQ seeking approval to engage in secondary employment as an expert witness in a criminal matter located in Brooklyn, New York through the Assigned Counsel Plan. Her role in the criminal matter would be to serve as a forensic expert witness on behalf of an indigent defendant. Dr. Revercomb indicated on her OAQ that the work was unlikely to exceed seven hours and that she would be compensated as an independent contractor for her work. Dr. Revercomb maintains that she would have no contact with any L&PS employees or New Jersey State agencies through her expert services in the matter.

The criminal defense attorney who contacted Dr. Revercomb seeking her assistance in the Brooklyn matter also encouraged her to apply to appear on the expert roster list with the Assigned Counsel Plan. The Assigned Counsel Plan provides legal counsel to indigent persons charged with a crime in New York. It not only provides legal counsel, but support for investigative, expert and other services necessary for an adequate defense. The Expert Roster is the list of authorized professionals who offer these investigative and expert services. Dr. Revercomb seeks to be listed as a forensic expert on the Expert Roster for the Assigned Counsel Plan.

In January 2017, Dr. Revercomb was notified that her request for approval to engage in secondary employment as an expert witness in the Brooklyn matter, and more generally as a consultant through the Assigned Counsel Plan, had been reviewed by L&PS and was denied pursuant to Section VI, paragraph B of the L&PS Supplementary Code of Ethics, which, among other things, prohibits L&PS officers and employees from engaging in outside activities that would interfere with the operation of the Department.

Dr. Revercomb requested approval to engage in compensated outside activity as an expert witness on at least two prior occasions and both requests were approved by L&PS with certain conditions. In October 2016, she was authorized to engage as an expert witness in a legal matter in Fairfax County, Virginia on the condition that she would avoid referring to her status as an employee of L&PS, and that if circumstances were such that she was to be identified as an employee of L&PS, she was to declare that the views she expressed were hers and did not reflect the views of the Attorney General, NJDCJ, L&PS, or any other New Jersey State agency. She was also instructed not to divulge any confidential information, and that she was expected to perform this secondary activity in a manner which did not interfere with her primary responsibilities with the NJDCJ. Finally, she was also instructed to engage in this secondary activity on her own time, without the use of State time or resources. In December 2016, she was also authorized to serve as an expert witness for a law firm in Maryland, subject to similar conditions, and her testimony was limited to a specific case that she was involved with in 2011 when she worked in Washington D.C.

L&PS denied Dr. Revercomb's OAQ based on concerns that her providing an expert opinion as a consultant in a criminal matter in New York could potentially interfere with the Department's operations. First, L&PS indicates that expert witnesses are subject to challenge and critique as to their training, experience, performance, methodologies and opinions, and if Dr. Revercomb were to provide expert services in a criminal matter in New York, she could be subject to challenge and critique as to her work for the Department. This could include a critique of her experience at L&PS, as well as L&PS's policies, procedures, methodologies and medical conclusions in matters that she handled for the State. In these instances, L&PS would be unable to rebut such critiques that could come from counsel, other experts or a judge in New York. L&PS is concerned that such criticism would not only be used against Dr. Revercomb, but against L&PS in future L&PS matters.

Second, L&PS expressed concern that in Dr. Revercomb's role as an expert in New York matters, her experience, training and/or opinion may be criticized and her opinions would "reflect her professional qualifications generally and any critique could damage her professionally regardless of her employer or the context in which she is providing the opinion." Any criticism could be used against her in her work for the State even if she asserts that the critiqued opinion

was not provided in her capacity as a State employee. Any criticism of Dr. Revercomb in a New York matter could therefore damage a jury's assessment of her credibility or qualifications in a State matter and, therefore, interfere with L&PS's operations.

Finally, L&PS expressed concern that Dr. Revercomb's status as a State employee could lead to the appearance that her official status as well as the State's training and protocols support her personal private expert opinion.

Dr. Revercomb contests L&PS's assertion that her secondary employment in New York might interfere with operations of L&PS or pose a conflict with a position taken by NJDCJ. She knows of no connection between L&PS and the Assigned Counsel Plan or the case venued in Brooklyn. Her assessments and opinions in any case in New York would be her own, based on standard forensic knowledge and practices and her offering them in a matter outside New Jersey would not imply any endorsement by the State. Dr. Revercomb asserts that her requested outside employment should be approved subject to conditions similar to those imposed with respect to her involvement in the Virginia and Maryland matters. Finally, Dr. Revercomb is willing to submit a new OAQ for review and approval by L&PS each time she is selected to provide expert services through the Assigned Counsel Plan.

As part of the review process when considering appeals of secondary employment decisions at the department level, the Commission considers numerous factors, including:

- Does the activity require representation before a State agency?
- Does the activity involve contracting with a State agency?
- Is the activity licensed or regulated by the State?
- Is there a significant overlap in the duties and responsibilities of the two positions?
- Does the agency have control, supervision, or jurisdiction over the outside entity?
- Does the outside entity receive grants from or contract with the agency?
- Will decisions or guidelines made in the outside position influence actions taken in the State position?
- Are there individuals, organizations or entities that can reasonably be expected to deal with the State official in both positions?

In this matter, the outside position would not require Dr. Revercomb to have any contact with any State agency because the work would be limited to matters venued in New York. The main issue is whether her activity as an expert witness in out-of-State pathology cases will have a negative impact on her duties as a State employee or on L&PS's defense of pathology matters in the future and if so, whether that concern is significant enough that it creates a conflict of interest that cannot be eliminated through other methods, such as recusal.

In this case, the factors supporting denial of outside employment are not present. While the responsibilities in serving as an expert pathologist in death cases in New York may be similar to Dr. Revercomb's responsibilities as a medical examiner in New Jersey, there is no evidence of any overlap between the position in New York and her State employment. In New York, she would serve an entirely different population and it is extremely unlikely that she would encounter the same individuals in both positions.

L&PS's primary concern is that Dr. Revercomb's work experience and credentials may be challenged as an expert in New York and that this may result in her revealing confidential information or providing testimony that may be harmful to her or the Department in New Jersey matters, which could negatively affect the operations of L&PS. These concerns can be addressed, however, by providing Dr. Revercomb with an approval subject to the conditions provided to her when her OAQs to provide expert work in Virginia and Maryland were approved. This would include: (1) cautioning Dr. Revercomb that she cannot disclose confidential or non-public State information and materials; (2) instructing her to avoid referring to her status as an employee of L&PS, Division of Criminal Justice, and if circumstances are such that she must provide biographical information concerning her current State position, she should declare that the views expressed are hers and do not reflect the views of the Attorney General, NJDCJ, L&PS, or any other agency of State government; and (3) instructing Dr. Revercomb that she should perform this outside expert work in a manner which does not interfere with her primary responsibilities with the NJDCJ and that this secondary activity must be performed on her own time without using State time or resources. Moreover, Dr. Revercomb should be required to complete a new OAQ for review by L&PS in each case in which she considers serving as an expert witness.

DECISION

The Commission grants Dr. Revercomb's appeal and approves her outside employment as an expert witness for the criminal matter in New York identified in her November 2016 OAQ, and her inclusion on the expert roster list with the City of New York Assigned Counsel Plan, subject to the same conditions placed on her outside employment by L&PS for her previously approved outside employment as an expert witness in the Virginia and Maryland matters.

DECISION RENDERED BY THE
STATE ETHICS COMMISSION ON
THE 12th DAY OF JULY, 2017