



# THE ETHICS REVIEW

## A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

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### Determining your former agency after a reorganization

The post-employment restrictions contained in the Public Officers Law include a “two-year bar,” which generally prohibits former State employees from appearing or practicing before their former agency or working behind the scenes on matters involving their former agency, for two years after leaving State service. However, State agencies occasionally reorganize or merge units or departments. How do we apply the two-year bar when a former State employee’s former unit or department is now part of a different agency, where the employee never worked?

Consider this real-life example: In 2019, the Metropolitan Transportation Authority (MTA) consolidated the capital construction-related functions at New York City Transit (NYCT), Long Island Railroad, Metro-North Railroad, and other subsidiary agencies into a brand new agency called MTA Construction and Development (MTAC&D). A former employee of the capital programs unit at NYCT recently contacted JCOPE’s Attorney of the Day, as his former unit was transferred to MTAC&D. He asked how the post-employment restrictions might affect his future employment in the private sector. Which would be his former agency – NYCT or MTAC&D? Could MTAC&D be considered his former agency even if he never actually worked there?

In advising this employee, JCOPE staff looked at when Medicaid-related functions at the

Department of Social Services (DSS) were transferred to the Department of Health (DOH) in 1996. In that case, the former State Ethics Commission determined that barring a former DSS employee from appearing before the entire DOH, where he had never actually worked, would not make sense. Instead, the Ethics Commission decided that, for two-year bar purposes, the individual’s “former agency” was DSS and the new Medicaid unit within the DOH, and the former employee would not be prohibited from appearing or rendering services on matters before any unit of the DOH other than the Medicaid unit.

Applying this analysis to the NYCT employee in the example described above, the employee’s former agency, for two-year bar purposes, will be both NYCT and the unit within MTAC&D that has assumed the responsibilities of the former NYCT capital programs unit. The two-year bar will not apply to the other units within MTAC&D that do not manage NYCT projects.

Although this example focuses on actual recent changes within the MTA, a transfer of functions could happen at any State agency and could affect your post-employment plans. Should you encounter similar circumstances leading up to or after your retirement or transition from State service, reach out to JCOPE’s Attorney of the Day to discuss your post-employment questions.

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## Dear JCOPE

As an employee in the Medicaid Management Office of the Department of Health (DOH), I learned a lot about how health care providers can maximize the Medicaid reimbursements they receive from the DOH. I am about to retire, and I have been offered a consulting job at a firm that advises health care providers how to maximize their Medicaid reimbursements.

Although the private consulting job will not include preparing documents for submission to the DOH on behalf of clients, it will encompass training and educating the firm's clients on recent Medicaid reimbursement rate reforms. Can I perform that work without violating the Public Officers Law?

Signed, "*Can I do it?*"

### Answer:

The answer is **yes**, you can take the job.

Part of JCOPE's core mission is to help current and former State employees navigate the post-employment restrictions in the Public Officers Law. We spend a lot of time advising people what they cannot do when they leave State employment, but we also provide guidance to former State employees about what they **can** do in their post-State careers.

**Remember:** the two-year bar generally prohibits a former State employee from appearing or practicing before their former agency or working behind the scenes on a matter that is before their former agency, for two years after leaving State service. The lifetime bar restricts a person who has left State service from working on a matter or project that is "in relation" to a specific project

or matter they were substantially involved with as a State employee. So, when thinking about a new job, you have to consider whether the job will require you to work on a matter "before" your former agency or "in relation" to a matter you worked on for the State. But what about using the general knowledge and experience you acquired about your agency and its functions? The two-year bar does not prohibit you from rendering all services to all entities appearing before your former agency, and the lifetime bar will not prohibit you from ever again working on matters relating to Medicaid.

More specifically, your understanding of the laws and regulations your former agency enforces, and its general policies and procedures, is considered general knowledge, and the two-year bar allows you to use your general knowledge to provide general advice to entities appearing before your former agency, provided that you do not advise them on any specific matter pending before, or application that will be submitted to, the agency for official action. Similarly, the lifetime bar does not prohibit you from using your general knowledge, even when it relates to a matter or project on which you worked.

These issues are challenging to resolve on your own. They require a very careful review of your duties as a State employee and the exact nature of the work you propose to do with a new private-sector employer. Don't forget that your agency's Ethics Officer or JCOPE's Attorney of the Day is available to guide you through these thorny issues as they arise.

### Questions about Ethics rules?

Contact JCOPE at [legal@jcope.ny.gov](mailto:legal@jcope.ny.gov) or  
800-87-ETHICS (873-8442) – press 2

## **Enforcement Actions**

### **OUTSIDE ACTIVITIES AND FINANCIAL DISCLOSURE**

A Baruch College professor admitted to engaging in outside activities—without considering conflicts of interests and reporting outside income earned from those activities—for years. The professor agreed to pay \$6,000 to settle the violations of Public Officers Law § 73-a and acknowledged that he failed to disclose income he received, between 2012 and 2018, from his publishing business which published his own material and that of other Baruch professors. In addition to the financial penalty, he was required both to follow procedures outlined in the Commission’s outside activity regulations for obtaining approval from both his employer and JCOPE for his outside business and abide by any necessary recusal plan, to ensure that he would avoid potential conflicts of interest going forward.

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