

STATE OF NEW YORK: COUNTY OF SUFFOLK  
SUFFOLK COUNTY BOARD OF ETHICS

-----X

In the Matter of the Inquiry of [REDACTED]  
In her official Supervisory Capacity for the  
Suffolk County [REDACTED]  
[REDACTED]

**ADVISORY OPINION**  
No. AO-2016-8

-----X

NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL. Applications requesting its modification, clarification, or withdrawal must be made in accordance with Suffolk County Board of Ethics rules unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Nothing shall prohibit the Suffolk County Board of Ethics, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time.

**ADVISORY OPINION REQUEST**

**1. Opinion Request:** 1) Can a Suffolk County employee engage in activity which was the basis for an outside employment denial? 2) Can a Suffolk County [REDACTED] perform [REDACTED] interviews without Departmental approval including topics of the employee’s job and duties, confidential County information, disparaging statements towards [REDACTED], racially descriptive language and disparaging statements towards the Department?

**Summary:** 1) A denial for outside employment is indicia of a transaction that interferes with the proper discharge of duties (Section 77-3(B)). The facts presented before the Board hold that a [REDACTED] filmed out of state, requiring multiple leaves of absences, interferes with the proper discharge of County duties. As such, the outside activity of a County employee filming the subject [REDACTED] is not permitted under Section 77-3(B). 2) A Suffolk County [REDACTED] may not perform unauthorized interviews in [REDACTED] disclosing confidential County information, use their official job duties for outside financial gain, disparage [REDACTED] and the Department, and disseminate images of County [REDACTED] facilities and equipment for private gain. Additionally, a County [REDACTED] may not use their County job in [REDACTED] for private financial gain. The [REDACTED] engaging in [REDACTED] interviews are not permissible under Suffolk County Code Chapter 77, Section 77-3(B), Section 77-3(C), Section 77-3(D), Suffolk County [REDACTED] “Code of Conduct” and “Prohibition on Social Media” policies.

### APPLICABLE LAWS AND COUNTY PROCEDURES

2. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions, Suffolk County Code Chapter 77, Section 77-3(B), Section 77-3(C), Section 77-3(D), Suffolk County [REDACTED] Code of Conduct” and “Prohibition on Social Media” policies.

### PROCEDURAL HISTORY

3. This Advisory Opinion was requested 3/3/2016.
4. Fact finding concluded on 4/4/2016.
5. The Board voted on this Advisory Opinion on 4/6/2016.

### INFORMATION PRESENTED TO THE BOARD

6. The Requestor is a Supervisory Official to Suffolk County [REDACTED] (SCBE Exhibit #1).

7. In [REDACTED], a County [REDACTED] who works in [REDACTED], [REDACTED], submitted an outside employment form to film a [REDACTED] in [REDACTED] (SCBE Exhibit #1). Upon consultation with Labor Relations and Law Department, the outside employment request was denied in [REDACTED]. (SCBE Exhibit #1, SCBE Exhibit #11, SCBE Exhibit #12, SCBE Exhibit #13). [REDACTED] was advised of the denial and informed the Department that she wanted to confer with Labor Relations to “clear up any questions”. Subsequently, she did not meet with Labor Relations and informed the Department that it was unnecessary because she would not be paid therefore it was not employment. [REDACTED] used [REDACTED] paid vacation in [REDACTED] to film the [REDACTED]. A leave of absence was requested and granted in [REDACTED] to film the [REDACTED] from [REDACTED] – [REDACTED]. A second leave of absence was requested in [REDACTED] and denied (SCBE Exhibit #1). Within the past year, [REDACTED] has begun a twice weekly [REDACTED] called “[REDACTED]”. These [REDACTED] consist of interviews discussing confidential County information, official job duties, disparagement of [REDACTED] and the Department, and an [REDACTED] cover shows a photograph of [REDACTED] at a County [REDACTED] facility wearing County equipment. (SCBE Exhibit #1, SCBE Exhibit #2, Exhibit #3, Exhibit #5, SCBE Exhibit #6, SCBE Exhibit #10). These [REDACTED]



to the Requestor's position as a current Supervisory Official of the Department [REDACTED] employed by Suffolk County. (*Suffolk County Administrative Code §A30-1, Suffolk County Code Chapter 77, §77-1*).

### **PROPOSED FUTURE CONDUCT**

- 13.** The Law States in Pertinent Part:

§ A30-3(B). ADVISORY OPINIONS:

*Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The Board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion.*

**14.** The Requestor seeks guidance regarding the subject future conduct. The Board has determined in prior opinions that future conduct is inclusive of on-going conduct, and the request is within the Board's jurisdiction

### **SECTIONS OF LAW AND COUNTY POLICY ANALYZED**

- 15.** The Law States in pertinent part:

§ 77-3. PROHIBITED CONDUCT

- B. No public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties;
- C. No public servant shall use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal financial benefit to himself or herself, a person or firm associated with the public servant, a customer or client of the public servant or any person from whom the public servant has received a gift or any goods or services for less than fair market value, during the preceding 12 months.
- D. No public servant shall disclose any confidential information concerning the property, affairs or government of the County which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public or use such

information to advance any financial or private interest of the public servant or of any person associated with the public servant; provided, however, that this shall not prohibit any public servant from disclosing information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

Suffolk County Policies State in Pertinent Part,

“Suffolk County [REDACTED] “Code of Conduct (SCBE Exhibit #4)”

IV. CODE OF CONDUCT:

- F. Employees shall maintain and support confidentiality of client and Department information in conformance with the applicable law, regulation and/or the [REDACTED] Departmental Policies and Procedures.
- G. Employees shall not represent themselves as Department spokespersons by preparing talks, demonstrations, or appearances **or granting interviews related to their employment except with prior approval of the [REDACTED]**.
- J. Employees shall not engage in outside employment which is in conflict with their duties and responsibilities or not in the best interest of the Department and shall not engage in any other business or profession without the written authorization of the [REDACTED].
- N. Employees shall not discriminate against clients with regard to race, religion, national origin, sex, sexual preference, handicap or political beliefs, but shall deal with clients in a firm, fair, courteous, consistent and objective manner at all times.
- O. Employees shall at all times conduct themselves in a dignified and respectful manner which does not adversely affect the credibility and integrity of the Department.

T. Employees shall comply with the provisions of all Department Directives and all County Policies and Procedures.”

**Suffolk County [REDACTED] “Social Medial Prohibition” policy (SCBE Exhibit #4)**

“D. Personal Use – Precautions and Prohibitions

Department personnel are free to express themselves as private citizens on social media sites to the degree that their internet activities do not impair the credibility, effectiveness, performance, or ability to fully carry out the responsibilities of a Suffolk County [REDACTED].

1. [REDACTED] should be aware that the content of their social media sites can be subpoenaed and used in criminal and civil trials to impeach the [REDACTED] testimony and to undermine the [REDACTED] character, reputation and credibility.
2. [REDACTED] should recognize that any reference to their employment with the Suffolk [REDACTED] while using social media sites could compromise their safety and the safety of their family.
3. [REDACTED] are prohibited from accessing their personal social media sites while on-duty.
4. [REDACTED] may not represent their opinions or comments as that of the Suffolk [REDACTED] or as an official of the department.
5. [REDACTED] *will not discuss or divulge department business on their social media sites or blogs.*
6. [REDACTED] *are prohibited from posting, broadcasting or otherwise disseminating any sexual, violent, racial or ethnically derogatory material, comments, pictures, artwork, video or other references on their website or through any other means of online communication in such a manner that has potential to bring the department into disrepute or which may reflect discredit upon the [REDACTED].*
7. [REDACTED] shall be judicious in the use and content of any blog or social networking web site and shall not post any image or commentary that reflects negatively on the [REDACTED] department, themselves or violates any standard of conduct related to their employment.
8. [REDACTED] *are prohibited from appearing on internet based sites or other unauthorized media formats while displaying Suffolk [REDACTED] uniforms, insignia, issued equipment, vehicles, facilities owned or accessed by the [REDACTED] department or any other government agency without written authorization from the [REDACTED].*
9. *No [REDACTED] shall engage in online activities that have the tendency to adversely affect, lower, or destroy public respect and confidence in the [REDACTED] Department or its [REDACTED].*
10. *No [REDACTED] shall post images of [REDACTED] department uniforms, vehicles, equipment, facilities, insignia or other property that may be viewed online by the public, or on any social networking site without written authorization from the [REDACTED]. This directive includes images posted to Facebook, MySpace, Twitter, etc.*
11. [REDACTED] are prohibited from communicating with [REDACTED] through social media without the express written consent of the [REDACTED].

**Sanctions for Misuse**

Any employee who violates the provisions of this directive will be subject to disciplinary action up to and including termination.”

**The Suffolk County Standard Operating Procedure A-15 paragraph 5, “Policy for Outside Employment for County Employees” states,**

(5) Employees represented by collective bargaining units are subject to any and all provisions and restrictions relating to outside employment contained in current collective bargaining agreements. These employees should review their collective bargaining agreements and determine whether they contain outside employment provisions and restrictions. Employees represented by collective bargaining units are also subject to current and future County and departmental procedures and policies which are not inconsistent with the terms of the existing collective bargaining agreements. Employees who are excluded from the collective bargaining units are subject to departmental or County policies and procedures regarding outside employment which are now in effect or which may be promulgated in the future.

All outside employment is also subject to the following provisions:

- (1) Outside employment may not involve or appear to involve a conflict of interest or a potential conflict of interest.
- (2) Outside employment may not be undertaken on regularly scheduled work time.
- (3) Outside employment may not be undertaken on sick time.

The Suffolk County Standard Operating Procedure A-15 paragraph 6, “Conflicts of Interest” states,

(6) “Suffolk County employees are prohibited from engaging in outside employment which would conflict, *appear* to conflict or potentially conflict with the proper performance of their official duties. Guidelines for what constitutes a conflict of interest are outlined in the Code of Ethics, Article XXX of the Suffolk County Charter. The Board of Ethics is empowered to render advisory opinions with respect to the Code of Ethics” (italics added).

16. As set forth above, the Board of Ethics, pursuant to Suffolk County Standard Operating Procedure A-15, is empowered to render advisory opinions with respect to the Code of Ethics. It bears important mention that the Board’s statutorily enumerated authority is to render

advisory opinions with respect to Chapter 77, Part 1, and Article 1 of the Suffolk County Code or other applicable provision of law governing conflicts of interest. *Suffolk Co. Admin. Code A 30-3*. Accordingly, the Board makes no determination and gives no opinion regarding an intra-departmental determination of an appearance of conflict pursuant to the Suffolk County Standard Operating Procedure A-15. However, the Board notes that the requesting supervisor deferred this decision to a Board Opinion by seeking Board advice prior to assessing the appearance of potential conflict.

██████████ .

17. As applied to the ██████████ interviews, the Board finds that under § 77-3 (B), no public servant shall, shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties as it would interfere with proper discharge of his official County duties. In assessing the proper discharge of official County duties the Board reviewed the Advisory Opinion Request, ██████████ Code of Conduct, Social Media policies, and the ██████████ ██████████. This review finds that ██████████'s unauthorized interviews to be in conflict with the proper discharge of official County duties as to the ██████████ Code of Conduct paragraphs F, G, J, N, O, and T and Social Media Policy paragraphs 5, 6, 8, 9, and 10.

18. Additionally, the Board finds under § 77-3 (C), no public servant shall use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal financial benefit to himself or herself. In assessing the potential personal financial benefit to ██████████, the ██████████ ██████████, which discuss ██████████'s duties and confidential information of the County, generate a \$2.00 per episode financial benefit on the official ██████████ ██████████ website located at ██████████. As such, the Board finds that ██████████'s ██████████ to be a prohibited conflict of interest under § 77-3 (C).

19. In furtherance, the Board finds under § 77-3 (D), *no public servant shall disclose any confidential information concerning the property, affairs or government of the County which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public* or use such information to advance any financial or private interest of the public servant or of any person associated with the public servant. The Board's fact-finding

interview with the Department confirmed that the ██████████ spoken about by ██████████ ██████████ in the ██████████ ██████████ were ██████████ confidential records not available to the public. Additionally, all of the ██████████ ██████████ which concerns the official duties of ██████████ and the affairs of Suffolk County government were used to advance the private interests of ██████████. As such, the Board finds that ██████████ ██████████'s ██████████ interviews are prohibited conflict of interest under § 77-3 (D).

██████████

20. As applied to the ██████████, the Board finds that under § 77-3 (B), no public servant shall, shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties as it would interfere with proper discharge of his official County duties. In assessing the proper discharge of official County duties the Board reviewed the Advisory Opinion Request, ██████████ Code of Conduct, Social Media policies, “██████████” ██████████, and ██████████ outside employment request (SCBE Exhibit #11, SCBE Exhibit #12, SCBE Exhibit #13). This review finds that ██████████'s denial for outside employment to film the ██████████ in ██████████ is indicia of a transaction that interferes with the proper discharge of duties § 77-3(B). The facts presented before the Board hold that the ██████████ filmed out of state, requiring multiple leaves of absences, interferes with the proper discharge of County duties (SCBE Exhibit #1). As such, the outside activity of filming the subject ██████████ creates a prohibited conflict under §77-3(B).

### CONCLUSION

21. The Board finds that under the information presented, the ongoing conduct of the employee filming the ██████████ is in conflict with § 77-3 (B), and the ██████████ interviews are in conflict with § 77-3 (B), § 77-3 (C) and § 77-3 (D).

22. The Board directs that the ██████████ may not conduct unauthorized interviews including ██████████, divulge confidential information, or conduct interviews that interfere with the proper discharge of duty.

23. Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the Requestor shall have 15 business days from the time this Advisory Opinion has been rendered (excluding Saturday, Sunday, or a legal holiday) to file a request for

reconsideration supported by new material facts submitted to the Board.

**24.** The forgoing is the opinion of the Board.

Dated: Great River, New York

4/6/2016

---

Linda A. Spahr, Esq., Chair