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President

**AMERICAN BAR ASSOCIATION**

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November 14, 2011

Office of Government Ethics  
Suite 500  
1201 New York Avenue, NW  
Washington, DC 20005-3917  
Attention: Richard M. Thomas, Associate General Counsel

Re: Proposed Amendments to Part 2635  
Standards of Ethical Conduct for Employees of the Branch  
RIN 3209-AA04, 76 Fed. Reg. 56330 (September 13, 2011)

Dear Mr. Thomas:

On behalf of the American Bar Association, a nonprofit professional association of nearly 400,000 members, I submit these comments on the above-referenced rule proposed by the Office of Government Ethics (OGE) and published in the Federal Register on September 13, 2011 (the Proposed Rule). These comments, representing the views of the ABA, are separate from the comments that are being submitted by the ABA Section of Administrative Law and Regulatory Practice, which reflect the views of that Section only.

Although the ABA takes no official position on whether lobbying organizations in general should be precluded from providing gifts and opportunities for interaction with agency employees, we would have serious concerns if this blanket prohibition were extended to nonprofit professional associations. Therefore, should the Proposed Rule and its broader prohibition on gifts be adopted, the ABA strongly supports that portion of the proposal that would exclude nonprofit professional associations from the definition of “registered lobbyist or lobbying organization” under new § 2635.203(h)(4) of 5 CFR Part 2635, which would allow government employees to accept certain gifts from such entities when they are made in connection with educational or professional development activities.

Under current law, government employees may accept free attendance at widely attended gatherings when it is determined that such attendance “is in the interest of the agency because it will further agency programs and operations.” 5 CFR 2635.204(g)(2). It is well recognized that the government and its employees, the public, and professional associations all benefit from the kind of professional interchange fostered at these gatherings, such as training sessions and professional development events. More specifically, these kinds of events enable lawyers to fulfill their professional responsibility to stay abreast of important legal developments, maintain and improve their professional competency and skills, and improve the law. They also enhance the

professional development of government lawyers, thereby increasing their value to agency employers.

The private bar benefits from the participation of government attorneys as well. Government attorneys provide the private bar with the government's perspective on a myriad of important topics, as well as a better understanding of how the government conducts its business. These interactions also provide the government with an additional means of communicating its perspective on issues of concern to the legal community and an opportunity for an exchange of views with private sector lawyers, judges, and academics on matters of law and public policy.

If the existing lobbyist gift ban is to be extended beyond political appointees, it is appropriate to retain the exception for professional associations, scientific organizations, and learned societies. As recognized by OGE in its comments, "certain widely attended events provide legitimate educational and professional development opportunities that may further agency interests, even if the offer of free attendance is extended by an organization that is registered under the LDA." (*See* Proposed Rule, 76 Fed. Reg. at 56337.)

The ABA has long stressed the importance of encouraging and facilitating participation by all executive branch employees, both lawyer and non-lawyer, in professional associations. Towards that end, the ABA Board of Governors adopted a resolution in August 1991 opposing proposed limitations and restrictions on the ability of executive branch employees to participate in professional associations. The ABA subsequently adopted even more focused resolutions opposing efforts to curb government lawyer participation in professional bar association activities.

In June 1996, the ABA Board of Governors created a Task Force on Government Lawyer Participation, charged with conducting an "in-depth examination of all matters relating to government lawyer participation in professional associations including a review of the status of the Office of Government Ethics Standards of Conduct for Employees of the Executive Branch and the provisions of 18 U.S. §205 and related statutes and agency rules." The Task Force issued its final report in January 1997, and then in 2001, it issued specific guidance on ways in which participation by government lawyers in professional bar association activities could be encouraged. Subsequently, the ABA adopted additional policy in August 1998 expressing its belief that "it is in the government's and the legal profession's interests, and that it would enhance the work of bar associations, to have government lawyers at all levels—federal, state, territorial, tribal and local, including those in judicial positions—participate in professional development and justice system improvement activities sponsored and conducted by bar associations."

The support we express today for the Proposed Rule's exclusion of nonprofit professional associations is consistent with the ABA's existing policies discussed above and with our previous correspondence to OGE on June 20, 2005, in response to a request for input on the review of sections 203, 205, 207, 208 and 209 of title 18. At that time, we noted:

OGE is urged to recognize that involvement of government employees in professional organizations is of substantial public value. Employees' ongoing contact with their peers

in the scientific, technical and legal communities can serve to update skills and otherwise enhance professional development; it also creates a sense of professional connection and support that improves morale. This directly benefits the government as employer and is thus in the government's interest. In addition, the public indirectly benefits when professional organizations, whose positions on public policy initiatives may have a powerful impact on legislative and executive decision makers, reflect the insights and experience of members who work in government as well as in the private sector.

The substantive work of the ABA and the many state and local bar associations around the country—including development of reports and publications, Continuing Legal Education programs, and other conferences and events—covers almost all areas of interest to government lawyers: criminal justice and law enforcement, tax, antitrust, litigation, alternative dispute resolution, banking, securities, consumer protection, energy, environment, public contracts, administrative law, disability, civil and equal rights, constitutional law, and many more.

Government lawyers should be encouraged, not discouraged, from taking advantage of the many educational and professional development opportunities provided by the ABA and other bar associations that involve not only attending conferences, programs and other meetings, but also interacting with other lawyers and legal professionals at social events held as an integral part of those meetings.

For all these reasons, while the ABA takes no position on the broad new prohibitions contained in the Proposed Rule, the Association strongly supports the rule's exception for nonprofit professional associations and urges you to retain this important provision in any final rule that may be adopted.

We appreciate the opportunity to file these comments. If you have any questions regarding the ABA's views on this important matter, please contact ABA Governmental Affairs Director Thomas M. Susman at (202) 662-1765.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wm. T. Robinson III", enclosed within a large, loopy circular flourish.

Wm. T. (Bill) Robinson III