

Office of Government Ethics

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Letter to an Employee dated March 19, 1984

This letter is in response to your telephone conversation with [a member] of my staff and your letter of February 21, 1984, in which you asked for guidance with regard to the application of Federal conflict of interest and standards of conduct restrictions to your private practice of law as a member of a firm.

First, there is no strict prohibition against the private practice of law by attorneys employed by an executive branch agency. However, certain agencies and Departments, most notably the Department of Justice, have placed, through regulation, fairly comprehensive limits on such a practice by its attorneys. We note that your agency has not. There are, however, a number of provisions within the criminal conflict of interest statutes, 18 U.S.C. §§ 202-209, which may have an impact on your practice. Consequently, we have set them forth below in a general manner. Please refer to the cited statute for specific language.

Basically, 18 U.S.C. § 205 prohibits a Federal employee from acting as an agent or attorney for anyone on a particular matter before a Federal agency or officer or any court, court martial or civil, military or naval commission. The restrictions of section 205 have been interpreted in the past by the Office of Legal Counsel of the Department of Justice to include the District of Columbia government and courts. The statute does not require that the Federal employee be paid for the representation. Therefore, with limited exceptions, you may not represent any clients before any of the Federal agencies or entities specified in the statute or before District of Columbia agencies or courts.¹ This prohibition includes pro bono work.

18 U.S.C. § 203 prohibits a Federal employee from receiving any compensation paid because of the employee's or any other person's services before any department, agency, court-martial, officer or any civil, military, or naval commission.² Since section 205 already prohibits you from making any representation to these same entities, with or without compensation, the real import of this section is that you may not share in any fees generated by your law partners for their representations to these entities. In practical terms, you and the other

members of your firm must maintain a bookkeeping arrangement which segregates funds they receive for such representations from those in which you are eligible to share. They may not make up any resulting disparity so that you do not suffer any economic loss.

18 U.S.C. § 207(g) prohibits a partner of a Federal employee from acting as an agent or attorney for anyone other than the Government on any official matter in which the employee has personally and substantially participated or which is the subject of his or her official responsibility. While this statute would not appear to be a problem for your partners given your statement that they do not represent clients having any business before [your agency], it is relevant to your overall question and we mention it for that reason.

18 U.S.C. § 208 prohibits an employee from taking any official action in a matter in which the employee or his or her partner has a financial interest. This would include not only any matter in which your partner would be representing a client, but also any matter which to your knowledge involves an investment interest of his or hers. While we would assume this is unlikely given your Government responsibilities, this means that if, to your knowledge, a partner of yours holds stock in a company and that company is involved in a matter in which you would otherwise be required to take action, you must recuse yourself in the matter or seek a waiver under 18 U.S.C. § 208(b).

18 U.S.C. § 209 prohibits an employee from accepting and a private party from paying any supplementation of the Government employee's salary. You should be careful to ensure that your agreement with the other members of your firm does not in some way provide for a benefit to you simply because of your Government service.

As you are aware, in addition to these criminal statutes, the standards of conduct of E.O. 11222 would prohibit you from using your Government position and title to secure clients, listing your Government telephone, and using your official time, Government facilities, equipment or secretarial services to carry out your private practice.

Finally, as an attorney you are subject to court imposed standards of professional conduct for those jurisdictions in which you are admitted to practice. We would suggest that you and the members of your firm review those to see if they restrict

you or the firm's activities further.

Sincerely,

David H. Martin
Director

1 There are certain limited exceptions outlined in section 205 for personnel matters and those involving your parents, spouse and children.

2 Again, there are limited exceptions to this restriction and they are found in the text of 18 U.S.C. § 205.