

Criminal Statutes, Negotiating for Non-Federal Employment, and Post Employment Restrictions

STATUTORY PROHIBITIONS

18 U.S.C. § 203

Generally, this statute prohibits a Government employee from receiving or soliciting compensation, for any representational services rendered before a Government agency in connection with a particular matter in which the U.S. is a party or has an interest.

18 U.S.C. § 205

Generally, this statute prohibits a Government employee from representing anyone else before a court or Government agency in a particular matter in which the U.S. is a party or has an interest.

18 U.S.C. § 208

Generally, this statute prohibits a Government employee from participating personally and substantially in his or her official Government capacity in any "particular matter" in which:

- ! he or she,
- ! his or her spouse,
- ! minor child,
- ! general partner,
- ! organization in which he or she is serving as an officer, trustee, partner or employee, or
- ! any person or organization with whom he or she is negotiating for employment has a financial interest.

18 U.S.C. § 209

Generally, this statute prohibits a Government employee from receiving any salary, or any contribution to or supplementation of salary, as compensation for services he or she is expected to perform as an officer in the Executive Branch of the U.S. Government.

Executive Order 12674

Generally, the Executive Order prohibits a Government employee from:

- ! Having a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially with his or her official responsibilities;
- ! Engaging in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her Government employment;
- ! Using public office for private gain;
- ! Giving preferential treatment to any person;
- ! Impeding Government efficiency or economy;
- ! Losing independence or impartiality;
- ! Making a Government decision outside official channels or outside of his or her official authority; or,
- ! Affecting adversely the confidence of the public in the integrity of the Government.

STANDARDS OF CONDUCT

NEGOTIATING FOR NON-FEDERAL EMPLOYMENT

An employee may not negotiate for future or outside employment with any outside party that he or she deals with in their official capacity, without prior approval from a supervisor.

Negotiating has begun when:

- ! You or your representative approach a prospective employer, orally or in writing, regarding future employment and that approach is met with an interest in further discussions; or
- ! A prospective employer approaches you or your representative, orally or in writing, regarding future employment and you agree to begin employment discussions. If you are not interested in negotiating - just say NO.

Note: Negotiation is not limited to discussions of specific terms and conditions of employment in a specific position, it may be general in nature. However, it does not include communication for the sole purpose of requesting a job application.

Negotiating has ceased when:

- ! You or the prospective employer rejects the possibility of employment and all discussions of possible employment have ended; or
- ! Two months have passed after you sent an unsolicited resume or employment proposal, provided you have received no indication of interest in employment discussion from the prospective employees;
- ! A response that defers discussions until the foreseeable future does not mean that the unsolicited employment overture, proposal, or resume has been rejected.

Disqualification while seeking employment

- ! **Obligation to Disqualify.** If you can affect the financial interests of a prospective employer by performing or not performing your official responsibilities, you must disqualify yourself before entering into negotiations.
- ! **Documentation of Disqualification.** You must disqualify yourself by not participating in any particular matter which may affect the prospective employer. You must notify your supervisor of your intent to disqualify yourself, but you do not have to provide a written record of your disqualification unless requested to do so by your supervisor.

STANDARDS OF CONDUCT

Disqualification upon conclusion of negotiations

- ! Offer Accepted. If you are successful in your negotiations and accept a position either as outside employment or as future full time employment, you must continue to disqualify yourself until leaving the government

- ! Offer rejected or not made. If you do not secure outside employment, your disqualification may be discontinued.

- ! A procurement official (one who has become personally and substantially involved in the conduct of a specific procurement) is prohibited from negotiating for future employment with competing contractors during the conduct of that procurement. Further, a procurement official may not disqualify himself/herself from performing the duties required in the conduct of that procurement as a means to avoid the prohibitions against negotiating for outside employment.

STANDARDS OF CONDUCT

POST EMPLOYMENT

Post-employment restrictions are found in 18 U.S.C. § 207 and the Office of Procurement Policy Act Amendments. In no way do they bar any individual, regardless of rank or position, from accepting employment with any private or public employer.

Under 18 U.S.C. § 207, there are six prohibitions which may apply:

! 207(a)(1). Restrictions which apply to all former employees.

Lifetime bar which prohibits a former employee from serving as another person's representative to the Government on a case, contractual matter, or other similar application or proceeding in which he or she participated personally and substantially while a Government employee.

- There are two important limitations to this prohibition which attack "switching sides." First, the former employee is not restricted unless the matter in which he previously participated was (1) a "particular matter involving specific parties" and (2) is the matter in which he or she now attempts to represent another before the Government.
- This bar requires that the employee had been personally involved in the matter in a substantial way.
- The kind of representation that is restricted includes not only acting as another's attorney or agent, but any other kind of representative or communication with intent to influence the United States. This includes promotional and contract representative.

! 207(a)(2). Two year bar - restrictions which apply to former managers and supervisors.

Two year bar which prohibits former employees from serving as another person's representative to the Government on a case, contractual matter, or other similar application or proceeding which was under his or her management authority in the last year of government service.

- If a former employee is in doubt as to whether a matter was under his or her official responsibility, whether it is the same "particular matter" as that with which he was involved, or whether the United States still has an interest in the matter, he or she should consult with the appropriate ethics office for guidance.

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! 207(b). One year bar - restrictions which apply to all former employees.

One year bar which prohibits former employees from aiding, advising or serving as another person's representative, on the basis of covered information, concerning any ongoing trade or treaty negotiation in which he or she had participated personally and substantially during the last year of government service.

! 207(c). One year bar - restrictions which apply to former "senior employees."

Senior employee means those who occupied any position paid under the Executive Level (EL) pay scale and all Senior Executive Service Employees paid at the ES-5 or ES-6 pay level.

For one year after government service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one-year period prior to termination from "senior" service, if the communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by the employee.

- This one-year "cooling-off" ban does not require that the former employee have ever been involved in the matter that is the subject of the communication or appearance.
- It only prohibits communications to or appearances before employees of any department or agency in which he or she formerly served in any capacity during the one-year period prior to his or her termination from senior service.
- The matters covered are broader; they needn't involve specific parties, so the former employee could not, for example, attempt to influence general rulemaking, general policy issues or general legislation.

! 207(f). One year bar - restrictions which apply to all former "senior and very senior employees."

- Senior and very senior employees are prohibited from knowingly aiding, advising or representing a foreign

entity, with the intent to influence the official actions of any employee of any U.S. agency or department

STANDARDS OF CONDUCT

! **207(d). One year bar - restrictions which apply only to "very senior employees."**

- Very senior employee means an employee at the Executive Level I. Includes the Secretary and certain other very senior employees in the Executive Office.
- Former very senior employees are prohibited from knowingly making, with the intent to influence, any communication to or appearance before:
 - ! Any individual appointed to an Executive Schedule position or,
 - ! Any employee of a department or agency in which the former very senior employee served during the one-year period prior to termination from Government service.
- The type of communication or appearance prohibited is one made on behalf of any other person (except the United States), in connection with any matter concerning which the former very senior employee seeks individual action by the individual or employee contacted.
- The one-year period is measured from the date when an employee ceases to be a senior or very senior employee, not from the termination of Government service, unless the two occur simultaneously.

Exceptions

Exception to all post-employment statutes.

! An exception is provided to all of the post-employment statutes when the post-employment activities are performed:

- in carrying out official duties on behalf of the United States or,
- in carrying out official duties as an elected official of a state or local Government.

! An exception is provided to all the prohibitions of 18 U.S.C. 207 for former employees employed by a recognized Indian tribe when communicating for the tribe. This applies to ALL former employees, not just Bureau of Indian Affairs employees. In order for this exception to apply, the former employee must provide written notification to the head of the department, agency, court, or commission with which he or she is dealing or appearing on behalf of the tribe of any personal and substantial involvement he or she may have had as an employee of the United States in connection with the matter involved. See 25 U.S.C. § 450i(j).

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Exception for former senior and very senior employees.

! An exception is provided to former senior or very senior employees for the one-year bans of 18 U.S.C. § 207(c) or (d) when the communication or appearance is made in carrying out official duties as an employee of and is made on behalf of:

- an agency or instrumentality of a State or local Government,
- an accredited degree-granting institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965, or
- a hospital or medical research organization exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986.