



United States  
**Office of Government Ethics**  
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DO-07-019

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Expert Witness Outline

The Office of Government Ethics (OGE) has received several requests recently for advice about the ethical restrictions on expert witnesses. These questions have involved the OGE rule applicable to current employees, 5 C.F.R. § 2635.805, as well as the criminal statute applicable to former Government employees, 18 U.S.C. § 207(a)(1) and (j)(6).

The attached document, "Expert Witnesses: Ethics in Court," is an outline of cases and issues pertaining to expert witnesses and the relevant ethical restrictions. It was prepared originally for a presentation by one of our attorneys at the 2007 National Government Ethics Conference. We are distributing this outline, slightly revised, for the benefit of those unable to attend the presentation at the Conference.

The outline is designed primarily as a legal research aid for ethics officials and attorneys who must deal with expert witness questions in the context of pending litigation. The document is not intended to resolve specific ethical questions but rather to direct agency officials to relevant legal authorities, including case law. In order to present this information in the most efficient manner, we adopted an outline format. While the document, therefore, is only a summary, we believe it digests a large amount of useful information and can serve as a resource if you encounter an expert witness question at your agency.

A key purpose of the outline is to distill some of the recurring themes, issues, and concerns that appear in the

growing body of judicial opinions in this area. The outline includes practical suggestions for how agency officials can be sensitive to judicial concerns and still uphold the ethical requirements.

As the document emphasizes, OGE encourages ethics officials to coordinate with any trial attorney representing the Government in cases where the expert witness restrictions may be at issue. Agency ethics officials and attorneys also are welcome to consult with OGE if they have questions about the application of the expert witness restrictions in a given case.

[Attachment](#)