

## Rule Template: Standards of Ethical Conduct Restrictions on Serving as an Expert Witness

In the absence of specific authorization, an employee shall not represent anyone other than the United States as an expert witness in any proceeding before a court or agency of the United States if the United States is a party or has a direct and substantial interest. 5 C.F.R. § 2635.805(a). The restriction applies even though no compensation is received. A less restrictive standard applies to special Government employees. 5 C.F.R. § 2635.805(b).

Authorization by the Designated Agency Ethics Official (DAEO) is possible when (1) after consultation with the agency representing the Government, the DAEO determines that the employee's service as an expert witness is in the interest of the Government; or (2) the DAEO determines that the subject matter of the testimony does not relate to the employee's official duties. 5 C.F.R. § 2635.805(c). For this purpose, official duties are defined in 5 C.F.R. § 2635.807(a)(2)(i).

An activity can relate to an employee's official duties even though it is undertaken in an employee's personal capacity. First, testifying as an expert relates to an employee's official duties if the invitation to testify is extended because of the employee's position rather than his expertise on the subject matter or by a person or entity substantially affected by the performance of the employee's official duties. Second, testifying as an expert is part of his official duties if the employee's testimony is based substantially on nonpublic information or the activity deals in significant part with any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period, or any ongoing policy or announced policy, program or operation of the employee's agency. 5 C.F.R. § 2635.807(a)(2)(i).