

## **Office of Government Ethics**

**90 x 3 -- 03/01/90**

### **Letter to an Employee dated March 1, 1990**

This is in response to your letter of January 18, 1990. You requested guidance as to whether 18 U.S.C. § 207 or any other applicable Federal statute would prevent you from representing employers before [your former agency] or in court against [specific] charges filed with [that agency]. You have also asked to know what other limitations section 207 or any other applicable Federal statute may place on your future practice of law.

In your letter you stated that you have been employed by [the agency] in a non-supervisory trial attorney position as a GS-13 since December 1980. You tendered your resignation to [the agency] effective February 5, 1990, and plan to begin working as an associate for a law firm February 12, 1990. You anticipate being asked by this firm to handle [agency] charges and matters in litigation against [the agency].

There is a total of four proscriptions in section 207, of which two, those in subsections (a) and (b)(i), could potentially apply to you. The remaining two proscriptions, (b)(ii) and (c), do not apply to you as you were not employed by [the agency] in a designated Senior Employee position. Further, in your letter you stated that you were employed by [the agency] in a non-supervisory capacity. Subsection (b)(i), which is directed at the supervising employee, would not therefore pose any actual limitations on your conduct.

In discussing the limitations of 18 U.S.C. § 207(a), we must bear in mind that it is a criminal statute and is meant to be narrowly construed. It bars a former officer or employee of the executive branch from acting as agent or attorney for anyone other than the United States in connection with any "particular matter involving a specific party or parties" in which the United States is a party or has a direct and substantial interest and in which he or she participated personally and substantially when employed by the Government. The phrase "particular matter involving a specific party or parties" refers to a discrete and isolatable transaction between identifiable parties. More specifically, a "particular matter" is "a particular contract, a

particular case, a particular proceeding or a particular claim."  
See OGE Informal Letters 80 x 9, 80 x 10 and 5 C.F.R. § 737.5(a).

Thus, you may not, for instance, after personally working on an [agency] claim during your [agency] employment leave [the agency] and represent any party to [the agency] regarding that claim. We would like to point out that the date that a claim was filed with [the agency] is not determinative of whether you may act in the matter. If you participated in a matter prior to its being filed as a claim, for instance, you provided advice or assistance to the potential claimant on filing the claim, and subsequent to your departure it was formally filed as a claim, you would be barred from representing any private interest in that matter. Thus, in answer to your question, it is possible that you could be barred from appearing in a matter that was filed subsequent to your departure from [the agency].

Another statutory prohibition which applies to you as a former Government employee is found at 18 U.S.C. § 203 which would prevent you from sharing in any fees earned by the law firm for representing clients to or before the United States Government (except Congress) if those representations were made at a time when you were employed by the Federal Government. This restriction would not prohibit you, for instance, from receiving a straight salary from the firm, but it would prohibit you from receiving any partnership distribution or bonus which was calculated in any part based upon the firm's receipt of such fees.

In your letter you asked whether this informal advisory opinion would protect you from any future claims of ethical violations alleged by [the agency] or another interested party against you. The advice contained in this letter is general in nature. It is not meant to address any specific fact situation. If there is a particular circumstance relating to a potential conflict of interest, you may write to [the agency's] Designated Agency Ethics Official to request guidance as to how that situation should be resolved.

In conclusion, you might also consult the bar rules of the jurisdiction in which you are licensed. These rules are often more restrictive than the rule found in section 207(a).

Sincerely,

Donald E. Campbell  
Acting Director