



governmentattic.org

"Rummaging in the government's attic"

Description of document: Ethics opinions issued by a Federal Mediation and Conciliation Service (FMCS) ethics officer, 2004-2013

Requested date: 09-November-2013

Released date: 09-January-2014

Posted date: 03-February-2014

Source of document: FOIA Program
FMCS
2100 K Street, NW
Washington, DC 20427
Email: foia@fmcs.gov
Fax: 202-606-5345
[Online FOIA Request Form](#)

The governmentattic.org web site ("the site") is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.

**FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, DC 20427**

January 9, 2014

Re: FOIA "Ethics" Request

This is in response to your Freedom of Information Act (FOIA) request of November 9, 2013, which seeks all ethics opinions issued by a Federal Mediation and Conciliation Service ethics officer from January 1, 2005 to date.

The records you requested are enclosed. The names of the persons subject to the ethics opinions and other personal identifiers have been redacted in accordance with the personal privacy interests protected by FOIA Exemption 6.

Since a "redacted records" response is considered an "adverse decision," you have the right to appeal this determination. The attached regulation describes the procedures for filing any such appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Bartlett". The signature is fluid and cursive, with a horizontal line extending from the end.

Michael J. Bartlett
Chief FOIA Officer

Enclosures

Federal Mediation and Conciliation Service

29 CFR §1401.35 Appeals from denials of request.

(a) Whenever any request for records is denied, a written appeal may be filed with the Deputy Director, FMCS, 2100 K Street, NW. Washington, DC 20427, within 30 days after requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. The appeal shall state the grounds for appeal, including any supporting statements or arguments.

(b) Final action on the appeal shall be taken within 20 working days from the time of receipt of the appeal. Where novel and complicated questions have been raised or unusual difficulties have been encountered, the Deputy Director may extend the time for final action up to an additional 10 days, depending upon whether there had been an extension pursuant to §1401.34(c) at the initial stage. In such cases, the applicant shall be notified in writing of the reasons for the extension of time and the approximate date on which a final response will be forthcoming.

(c) If on appeal the denial of the request for records is upheld in whole or in part, the Deputy Director shall notify the applicant of the reasons therefore, and shall advise the requester of the provisions for judicial review under 5 U.S.C. 552(a)(4) and (6).

To:

CC:

Date: November 20, 2008

Subject: LERA – Interim Treasurer

You asked if you can serve as an unpaid interim Treasurer for your local LERA Chapter which is in transition and may be closed in the near future. The Chapter has \$2600, and needs an interim Treasurer to manage the money until a decision is made regarding the future of the organization.

We determined that you can be the interim LERA treasurer, and that you can pursue this outside activity in an unofficial capacity. You should disclose if the organization currently has an FMCS grant. You should also consult with our Designated Ethics Officer and General Counsel, Dawn Starr, if you are going to participate in fundraising activities.

Please fill out the attached form for our records.

FMCS
REQUEST FOR APPROVAL OF OUTSIDE EMPLOYMENT

1. EMPLOYEE
2. LOCATION/OFFICE Boston, MA Field Station
3. NAME OF SUPERVISOR DMS Jack Sweeney
4. PROPOSED OUTSIDE EMPLOYMENT teaching
5. ADDRESS OF OUTSIDE EMPLOYMENT Harvard Kennedy School, 79 JFK Street, Cambridge, MA 02138
6. DESCRIPTION OF PROPOSED JOB/POSITION/BUSINESS teach graduate students in a section of the MLD-221 course, the school's traditional flagship "introduction to negotiation analysis" course for fall 2013 semester only
7. TELEPHONE NUMBER (617) 216-6004
8. DURATION OF PROPOSED EMPLOYMENT Fall semester 2013 (9/5/13 thru 12/6/13)
9. FREQUENCY OF EMPLOYMENT/# OF HOURS PER WK./TENTATIVE SCHEDULE course meets most Tuesdays and Thursdays, 8:40am - 10:00am
10. FIRST DAY OF EMPLOYMENT Sep 05, 2013; will continue full mediation schedule on all Tuesdays & Thursdays (which typically includes afternoon & evening work anyway)
11. PAY AND OTHER REMUNERATION \$20,000
12. LIST ANY OTHER OUTSIDE EMPLOYMENT PRESENTLY ENGAGED IN none

This outside employment will not interfere with my job responsibilities at FMCS. I will not use government time or resources for my outside employment. In my opinion, there is no conflict of interest or appearance of impropriety in this outside activity. I will always ensure adequate backup to cover my outside employment and I will use annual and/or comp leave to cover the course meeting times listed above (item #9).

Joshua Flax (signed)
SIGNATURE OF EMPLOYEE

6/14/2013
DATE SIGNED

X RECOMMEND APPROVAL
RECOMMEND DISAPPROVAL

XX APPROVED
DISAPPROVED

John Sweeney
SIGNATURE OF THE IMMEDIATE

Scot L Beckenbaugh
SIGNATURE OF THE REGIONAL
SUPERVISOR DEPUTY DIRECTOR

6/14/2013
DATE SIGNED

06/14/2013
DATE SIGNED

APPROVED BY THE DESIGNATED AGENCY ETHICS OFFICIAL (DAEO)

Dennis Stearns
SIGNATURE

6/14/13
DATE SIGNED

CC: EMPLOYEE
SUPERVISOR
PERSONNEL OFFICE

**FEDERAL MEDIATION & CONCILIATION SERVICE
REQUEST FOR APPROVAL OF OUTSIDE EMPLOYMENT OR ACTIVITY**

Employee Information

EMPLOYEE NAME (Last, First)

DUTY STATION W-8, Glendale

SUPERVISOR (Last, First) Gonzalez, Linda

Proposed Outside Employment / Activity Detail

NAME OF EMPLOYER / ORGANIZATION / ACTIVITY Arroyo Seco Neighborhood Council

ADDRESS P.O. Box 42254, Los Angeles 90042

PHONE (323) 418-2762

NATURE OF BUSINESS / ACTIVITY

The Arroyo Seco Neighborhood Council was certified in 2002 under Los Angeles City Charter to advise L.A.'s elected officials and departments regarding local and citywide governmental issues on behalf of the stakeholders of Hermon, Montecito Heights, Monterey Hills, Mount Washington and Sycamore Grove on a broad range of important issues: the delivery of city services, public safety, land use and open space, economic development, the environment, arts and culture, and more.

DESCRIPTION OF JOB / POSITION

Serve as a board member

FIRST DATE OF EMPLOYMENT / ACTIVITY 11/12

EXPECTED DURATION 2 year term of office

FREQUENCY OF EMPLOYMENT / ACTIVITY monthly meetings

ESTIMATED HOURS (Indicate per WK / MO / YR) 3-5 hours per month

PAY AND OTHER REMUNERATION (If Volunteer or Pro Bono, State "None") None

Existing Outside Activities

LIST ANY OTHER OUTSIDE EMPLOYMENT / ACTIVITY PRESENTLY ENGAGED IN None

EMPLOYEE
SIGNATURE
& DATE

This outside employment or activity will not interfere with my job responsibilities at FMCS. I will not use government time or resources for my outside employment or activity. In my opinion, there is no conflict of interest or appearance of impropriety in this outside employment or activity.

Approvals

RECOMMENDATION Approved

RECOMMENDATION

IMMEDIATE
SUPERVISOR
SIGNATURE
& DATE

Digitally signed by
Linda G. Gonzalez
Date: 2012.10.30
17:11:35 -07'00'

DEPUTY
DIRECTOR for
FIELD PROGRAMS
(If applicable) &
DATE

Scot L
Beckenbaugh
2012.11.05
11:04:08 -05'00'

cc: Employee
Employee Supervisor
Human Resources Office
General Counsel's Office

DESIGNATED
ETHICS
OFFICIAL (DAEO)
APPROVAL & DATE

Digitally signed by Dawn E. Starr
Date: 2012.11.05 13:23:40
-05'00'

**FEDERAL MEDIATION & CONCILIATION SERVICE
REQUEST FOR APPROVAL OF OUTSIDE EMPLOYMENT OR ACTIVITY**

Employee Information

EMPLOYEE NAME *(Last, First)*

DUTY STATION National Office

SUPERVISOR *(Last, First)* Beck, Allison

Proposed Outside Employment / Activity Detail

NAME OF EMPLOYER / ORGANIZATION / ACTIVITY George Washington University

ADDRESS 413 John Carlyle Street, Alexandria, VA

PHONE (703) 299-0297

NATURE OF BUSINESS / ACTIVITY

Guest Speaker on Instructional Design at Masters HRD weekend cohort program

DESCRIPTION OF JOB / POSITION

Guest Speaker on Instructional Design at Masters HRD weekend cohort program

FIRST DATE OF EMPLOYMENT / ACTIVITY 07/07/2012

EXPECTED DURATION 2 hours

FREQUENCY OF EMPLOYMENT / ACTIVITY One time

ESTIMATED HOURS *(Indicate per WK / MO / YR)* 2 hours total

PAY AND OTHER REMUNERATION *(If Volunteer or Pro Bono, State "None")* \$150.00

Existing Outside Activities

LIST ANY OTHER OUTSIDE EMPLOYMENT / ACTIVITY PRESENTLY ENGAGED IN

EMPLOYEE
SIGNATURE
& DATE

This outside employment or activity will not interfere with my job responsibilities at FMCS. I will not use government time or resources for my outside employment or activity. In my opinion, there is no conflict of interest or appearance of impropriety in this outside employment or activity.

Approvals

RECOMMENDATION Approved

RECOMMENDATION

IMMEDIATE
SUPERVISOR
SIGNATURE
& DATE

**Allison
Beck**

Digitally signed by Allison Beck
DN: cn=Allison Beck, o=FMCS,
ou=Deputy Director,
email=abeck@fmcs.gov, c=US
Date: 2012.06.28 14:39:37
-04'00'

DEPUTY
DIRECTOR for
FIELD PROGRAMS
(If applicable) &
DATE

cc: Employee
Employee Supervisor
Human Resources Office
General Counsel's Office

DESIGNATED
ETHICS
OFFICIAL (DAEO)
APPROVAL & DATE
Digitally signed by Dawn E. Starr
Date: 2012.06.28 14:46:36
-04'00'

FMCS
REQUEST FOR APPROVAL OF OUTSIDE EMPLOYMENT

1. EMPLOYEE
2. LOCATION/OFFICE DETROIT MI
3. NAME OF SUPERVISOR: JOHN PINTO
4. PROPOSED OUTSIDE EMPLOYMENT: TEACHING DISPUTE RESOLUTION COURSE (PLEASE DESCRIBE)
5. ADDRESS OF OUTSIDE EMPLOYMENT: WAYNE STATE UNIVERSITY, 4231 FAB BLDG DETROIT MI 48226
6. DESCRIPTION OF PROPOSED JOB/POSITION/BUSINESS: TEACHING
7. TELEPHONE NUMBER 313 577 3453
8. DURATION OF PROPOSED EMPLOYMENT 15 WEEKS
9. FREQUENCY OF EMPLOYMENT/# OF HOURS PER WK./TENTATIVE SCHEDULE: ONCE A WEEK ,6 TO8.30 PM
10. FIRST DAY OF EMPLOYMENT: 01/09/2013 ending 04/24/2013
11. PAY AND OTHER REMUNERATION (IF VOLU/NTEER/PRO BONO, STATE NONE): \$4869.00
12. LIST ANY OTHER OUTSIDE EMPLOYMENT PRESENTLY ENGAGED IN - NONE

THIS OUTSIDE EMPLOYMENT WILL NOT INTERFERE WITH MY JOB RESPONSIBILITIES AT FMCS. I WILL NOT USE GOVERNMENT TIME OR RESOURCES FOR MY OUTSIDE EMPLOYMENT. IN MY OPINION, THERE IS NO CONFLICT OF INTEREST OR APPEARANCE OF IMPROPRIETY IN THIS OUTSIDE ACTIVITY.

SIGNATURE OF EMPLOYEE

DATE SIGNED 12/08/2012

X RECOMMEND APPROVAL

X APPROVED

RECOMMEND DISAPPROVAL

DISAPPROVED

John W. Pinto, Jr.

Scot L Beckenbaugh

SIGNATURE OF THE IMMEDIATE SUPERVISOR

SIGNATURE OF THE REGIONAL DIRECTOR/DEPUTY DIRECTOR

12/09/2012

12-19-2012

DATE SIGNED

DATE SIGNED

APPROVED BY THE DESIGNATED AGENCY ETHICS OFFICIAL (DAEO)

James J. [Signature] 12/20/12
SIGNATURE DATE SIGNED

CC: EMPLOYEE SUPERVISOR PERSONNEL OFFICE GENERAL COUNSEL'S OFFICE

MEMORANDUM

To:

From: Michael J. Bartlett

Subject: Ethics Advice

April 5, 2011

Enclosed are sample ethics advice memos prepared by the FMCS Office of Ethics. The vast majority of issues requiring a written opinion have tended to involve conflict of interest issues based upon the duty of a mediator to maintain strict neutrality and confidentiality (and the appearance thereof) in conducting his/her mediation functions. This type of conflict can arise in a wide variety of contexts, including the unusual example of a FOIA request, where release of data would disclose confidential information (a conflict of interest for the Agency and the mediator) necessary to maintain the confidence and trust relied upon by the parties to the mediation process. See, Letter Bartlett to Hurtgen, January 19, 2007, et seq.

From: Starr Dawn
Sent:
To: All Employees
Subject: Hatch Act

During this election season, you may choose to participate in political activities. As an employee of the Federal Government, however, you are subject to the Hatch Act, which places restrictions on your political activities.

Violation of the Hatch Act is a serious matter. Penalties can include removal from employment or suspension without pay.

The Hatch Act prohibits federal employees from sending emails that advocate for a political party or candidate for partisan public office while on duty or in a federal building. Sending or forwarding political messages through the email system can be a violation of the Hatch Act.

Under the Hatch Act, generally speaking:

You may not engage in political activity while on duty.

You may not engage in political activity while in any government office or while in a government vehicle.

Please review the Hatch Act training that appears on the FMCS Intranet site. <https://www.fmcs.gov/secure/2007HatchAct/1.htm>

If you have any questions about the Hatch Act, you can call the U.S. Office of Special Counsel at 202-254-3650 or 800-854-2824, or this office.

Thank you for your careful attention to this matter.

Dawn E. Starr
Designated Agency Ethics Official

Bartlett Mike

From: Bartlett Mike
Sent: Tuesday, November 27, 2012 4:01 PM
To:
Cc:
Subject: SHRM Foundation Scholarship

Dear

In your capacity as Director of Mediation Services and mediator supervisor, you have asked for an opinion as to whether there is any ethical prohibition to her acceptance of a \$2000 scholarship awarded by the SHRM Foundation to help offset the cost of her enrollment in a master's degree program in Human Resource (HR) management. On the basis of the facts, and for the reasons, set forth below, and in consideration of the comments of management, I have concluded that there is no ethical bar to Poole's acceptance of this scholarship aid. Further, I have discussed this matter with Cheryl Kane-Piasecki of the U.S. Office of Government Ethics, and she concurs in this determination.

BACKGROUND

Prior to joining FMCS in August 2012 as a mediator in the Louisville, Kentucky office, was employed as the Human Resources Manager (Manufacturing) for the. was a member of the Society for Human Resource Management (SHRM), a professional society of HR managers with a national office in Washington, DC and chapters throughout the US and internationally, while employed by

has also been enrolled in a master's degree program in HR management at Villanova University and has completed about 40% of her course work.

The SHRM Foundation is a non-profit 501(c)(3) affiliate of SHRM, engaged in research and education related to workforce issues. In addition, the Foundation awards substantial scholarship aid to SHRM members who are pursuing degrees in HR and various other business-related fields. applied for a Foundation scholarship while still employed by and, in accordance with the predetermined schedule, was awarded the \$2000 grant in mid-October after her employment commenced with FMCS.

ANALYSIS

The propriety of the scholarship aid at issue here is principally governed by 5 CFR Part 2635, Subpart B-Gifts from Outside Sources (5 CFR 2635.201-.205). Subpart B prohibits employees from soliciting or accepting "gifts" from "prohibited sources," given because of the employee's official position, or where the organization's interests will otherwise be substantially affected by the employee's official position. The term "gift" includes nearly anything of market value and, hence, includes the Foundation scholarship. The term "prohibited source" includes anyone seeking business with or official action by an employee's agency and anyone substantially affected by the performance of the employee's duties.

It is clear that neither the Foundation, nor its affiliated parent SHRM (a society of HR managers), will be a party to FMCS labor-management mediation or otherwise be affected by mediation activities. Indeed, the Foundation, which is three entities removed from mediation activities—Member of SHRM, SHRM, SHRM Foundation—is too attenuated from her regular duties to be either a prohibited source or otherwise affected by her official position. Based on the same rationale, I perceive no reasonable basis for claiming the "appearance" of a conflict of interest due to the acceptance of the scholarship award. Further, she applied for the scholarship while still employed by I and there is

no evidence that the award granted according to a predetermined schedule after joining FMCS was based on her official position. Nor is there any suggestion that she has a disqualifying financial interest in either SHRM or the Foundation (5 CFR 2635.401-.403), or that in accepting the scholarship she would be using her public office for private gain (5 CFR 2635.702). There does not appear to be any other statutes or regulations applicable to this case.

Under these circumstances, I see no ethical basis for prohibiting [redacted] from receiving the SHRM Foundation scholarship.

If you or [redacted] have any questions regarding this opinion, please feel free to call me at the number given below.

Regards,

Mike

Michael J. Bartlett|Deputy General Counsel|Federal Mediation & Conciliation Service|(202) 606-3737|mbartlett@fmcs.gov

This email is intended only for the recipient to whom it is addressed and may contain information that is sensitive, confidential or privileged by law. If you have received this message in error, any review, use, dissemination or copying is prohibited. In case of such error, please contact the sender immediately and delete the material from your computer system.

Bartlett Mike

From: Bartlett Mike
Sent: Tuesday, February 26, 2013 2:56 PM
To:
Subject: RE: Raffle Prize

This is in response to your email below, in which you raise the issue of whether you can accept the TV given by LMHCC in a random drawing among participants at the organization's annual meeting. As explained in our telephone conversation earlier today, and for the reasons given below, you are prohibited from accepting the TV and must return it, or reimburse LMHCC for its fair market value, if it is now in your possession.

The issue presented is governed generally by the Standards of Ethical Conduct for Executive Branch Employees—Gifts from Outside Sources (5 CFR 2635, Subpart B). It is axiomatic that acceptance by an FMCS employee of a substantial gift from a customer (a prohibited source under the foregoing regulations) would create a prohibited conflict of interest. LMHCC, while it no longer has a direct business relationship with FMCS, is a membership organization that does not exist (as I understand it) independent of its members. Hence, for our purposes, LMHCC and its members are considered one and the same. Some of its members are current FMCS customers and others are potential customers. Under these circumstances, the acceptance of a gift from LMHCC, by random drawing, raffle (not open to the public) or otherwise, by an employee of FMCS would create a conflict of interest and, therefore, would be prohibited. Viewed another way, acceptance of a gift would create a conflict, or, at the very least, the appearance of a conflict, in a collective bargaining case involving a LMHCC member and a non-member. Any gifts provisionally accepted under these circumstances must be returned, or, in the alternative, you must reimburse LMHCC for the fair market value of the TV.

Feel free to contact me if you have any further questions regarding the above advice.

Mike.

Michael J. Bartlett|Deputy General Counsel|Federal Mediation & Conciliation Service|(202) 606-3737|mbartlett@fmcs.gov
This email is intended only for the recipient to whom it is addressed and may contain information that is sensitive, confidential or privileged by law. If you have received this message in error, any review, use, dissemination or copying is prohibited. In case of such error, please contact the sender immediately and delete the material from your computer system.

From:
Sent: Friday, February 22, 2013 12:55 PM
To: Bartlett Mike
Subject: Raffle Prize

Mike,

As per our brief conversation earlier this morning, yesterday I attended an Labor/Management Healthcare Coalition of the Upper Midwest Annual Meeting (LMHCC). LMHCC is an organization that was created over 13 years ago, with FMCS Grant Assistance. This organization has continued to have parties work together through education, cooperation and outreach, to assist Taft-Hartley and public health and welfare funds in the upper Midwest to provide quality healthcare for participants and beneficiaries of Coalition members at an effective cost. The Labor/Management Health Care Coalition of the Upper Midwest is governed by both Labor and Management representatives of the Coalition's membership. In addition, the LMHCC's Executive Committee includes its Executive Director and Legal Counsel. FMCS Minneapolis Office has not had regular

meaningful involvement for over 10 years (FMCS Grant Assistance Ended). Although, some members of this organization are FMCS customers, this organization doesn't currently utilize FMCS services and is unlikely in the future to utilize FMCS Services. While attending this Annual meeting, Attendees are entered into a door prize random drawing. Numerous gifts are donated to this organization and a random drawing is held near the end of the Annual Meeting. As an Attendee, my name was randomly selected for 32" TV prize.

Please advise at your earliest convenience.

Federal Mediation and Conciliation Service
Broadway Place West
1300 Godward Street, Suite 3950
Minneapolis, MN 55413

MEMORANDUM

TO: Dawn E. Starr

FROM: Jeannette Walters-Marques

DATE: November 19, 2009

SUBJECT: Ethical Considerations Arising from Gifts to Federal Employees

I. Gifts from Outside Sources

Generally, an executive branch employee may not accept a gift from a prohibited source¹ or a gift given because of the employee's official position. An employee may accept, however, some gifts under certain exceptions and exclusions.

There are a number of exceptions to the ban on gifts from outside sources. These exceptions allow an employee to accept:

- a gift valued at \$20 or less, provided that the total value of gifts from the same person is not more than \$50 in a calendar year;
- a gift motivated solely by a family relationship or personal friendship;
- a gift based on an employee's or his spouse's outside business or employment relationships;
- a gift provided in connection with certain political activities permitted by the Hatch Act Reform Amendments;
- gifts of free attendance at certain widely attended gatherings, provided that the agency has determined that attendance is in the interest of the agency;
- modest refreshments (such as coffee and donuts), greeting cards, plaques, and other items of little intrinsic value;
- discounts available to the public or to all Government employees, rewards and prizes connected to competitions open to the general public;
- awards and honorary degrees; and
- attendance at certain social events, meals, refreshments, and entertainment in foreign countries.

These exceptions are subject to some limitations on their use. For example, an employee can never solicit or coerce the offering of a gift or accept a gift in return for being influenced in the performance of an official act. Nor can an employee use exceptions to accept gifts on such a frequent basis that a reasonable person would believe that the employee was using public office for private gain.

¹ Prohibited sources include persons (or an organization made up of such persons) who are seeking official action by, are doing business or seeking to do business with, or are regulated by the employee's agency; or have interests that may be substantially affected by performance or nonperformance of the employee's official duties.

If an employee has received a gift that cannot be accepted, the employee may return the gift or pay its market value. If the gift is perishable (e.g., a fruit basket or flowers) and it is not practical to return it, the gift may, with the approval of the agency's ethics officer, be given to charity or shared in the office.

Reference: 5 C.F.R. §§ 2635.201-205.

A. The Widely Attended Gathering (WAG) Exception to the Gift Ban
(Where the Gathering is not Sponsored by a Lobbyist)

A widely attended gathering (WAG) is defined as a gathering expected to have a large number of persons in attendance, with those persons representing diverse views or interests. The WAG exception to the general ban on accepting gifts has several key elements: first, the event must be widely attended; second, an agency designee (generally the ethics officer) must determine that the employee's attendance at the event is in the interest of the agency because it will further agency programs and operations. 5 CFR§ 2635.204(g)(3).

If the donor has interests that may be substantially affected by the performance of the employee's official duties, or if the donor is an organization a majority of whose members have such interest, the agency designee (generally, the ethics officer) must make a written decision finding that the agency's interests outweigh any concern that the gift of free attendance may appear to influence the employee's performance improperly. If the cost of the employee's attendance is provided by someone other than the sponsor of the event, it can be accepted only if more than 100 attendees are expected and the cost of the employee's attendance does not exceed \$335. 5CFR§2635.204(g)(2).

Employees attend WAGs in their personal capacity. An employee may, however, be authorized to attend on excused absence or otherwise without charge to the employee's leave account pursuant to any applicable guidelines.

B. General Guidelines Regarding Certain Events as WAGS

1. Educational events – Conferences and seminars fall generally within the WAG exception.
2. Social events – Some social events may qualify as WAGS if they afford the employee the opportunity to meet with a variety of persons in a less formal setting than official working meetings. When a social event is widely attended, the agency still must make a determination that the employee's attendance is in the interest of the agency. Small dinner parties are not widely attended and are not WAGs.
3. Charity Fundraisers – Fundraisers may or may not be WAGs. To qualify, agencies must determine that attendance by an employee furthers the agency's interest. Also, concerns about appearances and preferential treatment should be taken into consideration in evaluating the agency's interest.
4. Sporting Events – Such events are typically not WAGS.

5. Theatrical and Music Events – Such events are typically not WAGs.
6. Company Parties – Attendance at private companies' parties, such as law firms' holiday season parties or government contractors' parties, may be a WAG if the expected attendance includes individuals from a variety of organizations with a diversity of viewpoints such as clients, legislative branch employees, executive branch employees from different agencies, employees of non-Governmental organizations, suppliers, customers, and others. However, if the activity is limited to the company's employees and a few executive branch employees from the same agency, the Office of Government Ethics (OGE) will not consider this activity a WAG.
7. Contractor-Sponsored Seminars and Similar Events – These events may be WAGs if the attendees represent diverse points of view. If the event is primarily focused on promoting a given's company's product and services to current or prospective customer, the event is not a WAG.
8. Board Meeting – OGE considers that these meetings are not sufficiently diverse to be WAGs. That does not mean that attendance at such meetings is precluded. In some cases, attendance at a board meeting will not involve a gift at all, for example, if no entertainment or food is provided, other than modest refreshments. Also, attendance at a board meeting could be covered by the exception of meals and other benefits resulting from an employee's outside business activities.
9. University event - Symposia and similar activities sponsored by universities often are attended by members of the public or the larger academic world, and generally qualify as WAGs. However, narrower events that are limited almost exclusively to the internal university community, i.e., administrators, faculty, and students are generally not WAGs.
10. Events Focused on Federal Officials – An event that is largely devoted to promoting the sponsor's products to a Federal audience is not a WAG. However, an event that bring together representatives from various agencies to share their experiences, where the attendees represent different agencies and perspectives, and a few scholars or experts are invited, may constitute a WAG.

II. The Lobbyist Gift Ban

The lobbyist gift ban, set forth in Executive Order 13490 (January 21, 2009), and incorporated into the Ethics Pledge taken by PAS appointees, is very broad and has only a few exceptions. The exceptions are ones that do not undermine the purpose of the ban. The Lobbyist Gift Ban Guidance letter from OGE, dated February 11, 2009, indicates that the only exceptions to the ban are the following:

- gifts based on a personal relationship, 5 CFR §2635.204(b);
- discounts and similar benefits, 5 CFR § 2635.204(c);
- customary gifts/gratuities provided by a prospective employer, 5 CFR 2635.204(e)(3);
- gifts to the President or Vice President, 5 CFR §2635.204(j);

- gifts authorized by an OGE-approved supplemental regulation, 5 CFR §2635.204(k); and
- gifts accepted under specific authority, 5 CFR §2635.204(1)

The following exceptions to the general ban on gifts are not exceptions to the lobbyist gift ban:

- \$20 de minimis value, 5 CFR § 2635.204(a);
- Awards and honorary degrees, 5 CFR §2635.204(d);
- Gifts resulting from an employee's outside business or employment, 5 CFR §2635.204(e)(2);
- Gifts from political organizations in connections with political participation, 5 CFR §2635.204(f);
- Widely attended gatherings (WAG), 2635.204(g)(2), (3);
- Social invitations from non-prohibited sources, 5 CFR §2635.204(h); and
- Food, refreshments, and entertainment from persons other than a foreign government in a foreign area.

The Lobbyist Gift Ban Guidance letter specifically addresses widely attended receptions sponsored by lobbyists and states that PAS appointees cannot accept WAG gifts from registered lobbyists.

The ban does not apply to gifts from charitable or not for profit organizations that are exempt from taxation under Section 501(c)(3) as long as the gift could otherwise be accepted under the Standards of Conduct.

III. Gifts Between Employees

An executive branch employee may not give a gift to an official superior nor can an employee accept a gift from another employee who receives less pay than the recipient, except in certain circumstances.

On an occasional basis, the following individual gifts to a supervisor are permitted --

- gifts other than cash that are valued at no more than \$10;
- food and refreshments shared in the office;
- personal hospitality in the employee's home that is the same as that customarily provided to personal friends;
- gifts given in connection with the receipt of personal hospitality that is customary to the occasion; and
- transferred leave, if it is not to an immediate superior.

On certain special infrequent occasions a gift may be given that is appropriate to that occasion. These occasions include:

- events of personal significance such as marriage, illness or the birth or adoption of a child, or
- occasions that terminate the subordinate-official superior relationship, such as retirement, resignation, or transfer.

Employees may solicit or contribute, on a strictly voluntary basis, nominal amounts for a group gift to an official superior on a special infrequent occasion and occasionally for items such as food and refreshments to be shared among employees at the office.

Reference: 5 C.F.R. §§ 2635.301-304.

This is in response to your inquiry regarding prospective part-time temporary employment with the Prince Georges County Board of Elections. This is a preliminary opinion subject to final approval based on your submission of the required information set forth below.

I have reviewed the statutes, regulations, Office of Government Ethics opinions and FMCS Directives regarding the issue of outside employment. Based on the information you have provided to date, the proposed outside employment does not appear to conflict with your official duties as an FMCS employee, other prohibited conflicts of interest or give the appearance of such. Indeed, I see no relationship between your official duties with FMCS and the proposed employment for Prince Georges County. In addition, no Hatch Act prohibitions appear applicable here.

Notwithstanding the above, FMCS regulation 29 CFR 1400.735-12(a)(4) provides as follows:

(4) The Service, as a matter of policy, does not look upon any outside employment or business activity, including concurrent employment by the Federal Mediation and Conciliation Service and any other Governmental political subdivision or agency, as being consistent with the best interests of the Service.

I view this provision as discouraging but not absolutely prohibiting outside employment. Accordingly, I suggest you submit a formal request containing the information called for in FMCS Directive 5804 7.a.(2) below so that a final determination can be made on your request.

c. Procedure for Approval.

Approval shall be requested by the employee in writing and may be granted by the Executive Director or District Directors. (See Attachment 2 to this Directive.) Requests for approval must contain at least the following information:

- (1) The name, address, and phone number of the employer, activity, or other outside source.
- (2) The exact nature of the work, business or activity, and the exact nature of any relationships to clients, or potential clients, of FMCS.
- (3) The hours that are involved, and the expected duration.
- (4) The amount and kind of compensation.

Additional information may be requested, if clarification is necessary in order to make a decision.

Requests submitted by field mediator personnel shall be through the District Director to the District Director. Requests submitted by National Office personnel shall be through appropriate supervisors to the Executive Director.

The granting of approval is subject to later withdrawal if circumstances relating to the performance of the service change, and the change results in a conflict with the general or specific policies stated in paragraphs 7. a. or b. of this section.

Disregard the reference to Attachment 2 above. Submit your request by email or memo to Maria and myself with a copy to your supervisor. In light of timing related to the prospective outside employment, we will do all we can to expedite this matter.

Mike

MEMORANDUM

TO:

FROM: Michael J. Bartlett

RE: Conflict of Interest

DATE: September 24, 2010

You have requested an opinion as to whether [redacted] Field Office and former official of the UAW, has a conflict of interest, or an apparent conflict, with his FMCS duties by his continued participation in two outside organizations. I have prepared this memorandum because of the complexity of the issues presented and as a guideline for future cases raising similar issues. In analyzing this case, I have relied upon the data provided by [redacted] and forwarded in your August 5, 2010 email, as well as extensive information provided by him in several telephone conversations.

I have concluded that [redacted] continued participation in both outside organizations constitute conflicts of interest, and that participation in one organization is most likely violative of the Hatch Act. Accordingly, he should resign from both activities.

My conclusion regarding the first organization is based on two separate considerations below and is supported by the following principles: White House Memorandum, "Standards of Official Conduct," January 20, 2001, No.10: "Employees shall not engage in outside ... activities... that conflict with official Government duties and responsibilities;" and No. 14: "Employees shall... avoid any actions creating the appearance that they are violating... ethical standards...."

Work Force Development Institute of Central New York (WFDI)- [redacted] serves on the Executive Board of WFDI, which is composed exclusively of officials of area labor organizations. WFDI solicits grant funds from NYSDOL and uses those funds to make grants to (for the benefit of) employees for the purpose of, for example, up grading their computer skills. Those WFDI grants are made exclusively for employees at unionized facilities—never for employees of non-union operations.

1) There is a clear conflict of interest between [redacted] service on the WFDI Executive Board, composed entirely of union officials, and the requirement that he maintain a position of strict neutrality as an FMCS mediator. Even if his WFDI service were not deemed an actual conflict, it most certainly would give the appearance of a conflict to many employers (based on the composition of the Board's membership), participating in or contemplating participation in FMCS mediation, with a resulting loss of confidence in his neutrality. 2) Funds solicited by WFDI are distributed as grants for the purpose of upgrading the skills of employees solely at unionized facilities. The rigid preference of the Board, of which [redacted] is a member, for only union facilities/employees is incompatible with his duty to maintain neutrality as an FMCS mediator, and clearly would be perceived as a pro-union bias by employers engaging in or considering FMCS mediation.

Analysis of the second organizational participation requires consideration of the Hatch Act, 5 U.S.C. 7321-7326 (which governs the political conduct of Federal employees), as well as conflict of interest principles found at White House Memorandum, "Standards of Official Conduct," January 20, 2001, No. 4: "Employees shall not...solicit or accept any...item of monetary value from any person or entity...doing business with...the employee's agency...;" and No. 14, "Employees shall...avoid any actions creating the appearance that they are violating...ethical standards...."

Central New York Chapter of the Working Families Party (Chapter) is Co-Chair Elect of the Chapter, which is composed of about 100 members predominantly drawn from the ranks of organized labor, but which also includes others with, what referred to as, a "liberal" orientation such as environmentalists. The primary purpose of the Chapter is to make recommendations to the State Working Families Party for endorsement of candidates for local and state-wide office. Only the State Party can make endorsements, although it endorses the candidates recommended by the Chapter about 90% of the time. The Chapter encourages its members to support endorsed candidates by speaking on their behalf, posting lawn and poll signs, participating in phone banks and door-to-door canvasses, etc.. The Chapter does not solicit or receive funds for distribution to any candidate or political party. Based upon these facts, the Chapter is a political party within the meaning of the Hatch Act, since its "activities are directed toward the success...of particular...candidate[s] for partisan office. 5 CFR 734.101. And on the basis of this factual predicate, participation constitutes permissible political activity. However, the Chapter also conducts an annual fund raiser dinner, in support of which it notifies its members, other political parties, labor unions, employers and other organizations and solicits their financial support in exchange for attendance. The funds collected are used to pay for the operational expenses of the Chapter.

Due to this fund raising activity, continued participation as Chapter Co-Chair Elect is incompatible with his responsibilities as an FMCS mediator, and his resignation is required on two separate bases. (1) As stated above, the Chapter is a political party, and, hence, the dinner is a political fund raiser. Since it is reasonable to infer that Scott as Co-Chair or Co-Chair Elect would be involved in soliciting the organizations' contributions as well as being deemed a dinner host, his participation would be prohibited by the Hatch Act. White House Memorandum, "Political Activity Guidance," January 11, 2009, paras. I.A. "Employees may not...(2) knowingly solicit, accept, or receive a political contribution from any person;" II.C. "Employees...may...(12) participate in political fundraisers, so long as such participation does not constitute solicitation of political contributions...it is permissible to (a) attend but not host a political fund raiser." Although not entirely clear, I have presumed for purposes of paragraphs I.A. and II.C. above that, given position and title in the Chapter and the size of the membership, contributions to the Chapter or to its Co-Chair Elect are interchangeable, and he would be considered a dinner host under the circumstances. (2) Further, although was of the view that neither he nor the Chapter he serves as Co-Chair Elect (soon to be Co-Chair) solicits or discourages political activity from anyone with whom FMCS does business, it would appear that his probable solicitation for the fund raiser of, or his position in the organization which otherwise solicits, employers and unions who are, or may in the future be, parties to FMCS mediation constitutes a

patent conflict of interest as well as the appearance of a conflict. "Standards of Official Conduct," supra, Nos. 4, 14. For the solicitation of funds from a party to mediation may well suggest that the mediator is no longer neutral, and that favorable treatment must be purchased at the price of accepting the solicitation.

If you have any questions pertaining to this analysis or the conclusion reached in this memorandum, please do not hesitate to contact me.

SUMMARY

EMPLOYEE SERVING IN OFFICIAL CAPACITY AS AN OFFICER IN AN OUTSIDE ACTIVITY

If serving in an official capacity:

- Employee may not serve as an officer or member of a governing board of a non-standard setting organization.
- Employee may not participate in internal organizational matters.
- The Agency assigns the employee (employee does not select).
- Employee is prohibited from engaging in activity which might interfere with impartiality, e.g., where mediating a dispute involving member(s) of the outside organization.
- Contrary to the general rule, FMCS Directives prohibit engaging in activity during normal office hours.
- Absent approval (see below), it appears an employee should resign the non-federal position and serve as agency liaison or in personnel capacity as appropriate.

Agency prior approval for outside activities is necessary where the Agency supplemental regulations require. NOTE: FMCS has no supplemental regulations. Therefore, technically the Agency has no authority to grant approval of outside employment either consistent or inconsistent with the above. Stephanie Nonluecha, our OGE desk officer, advises that we nevertheless follow our own internal rules regarding prior approval until we have a supplemental regulation in place.

Per FMCS Directives and a Beckenbaugh interpretive memo, all outside activities that have the potential to create a conflict of interest, or otherwise raise any of the above issues, require prior Agency approval. Since we are following our own internal Directives, no other or further approvals or waivers are required (per Stephanie Nonluecha).

MEMORANDUM

To:

DRAFT

From: Michael Bartlett

Cc: Dawn Starr;

Re: Employee Outside Activity

Date: February 4, 2011

Pursuant to 29 CFR 1400.735-12, all employees are required to file for and obtain approval of their participation in any outside employment or activity (with certain designated exceptions not applicable here). At my request, [redacted] is filing the attached Request Form pertaining to his position as a Director of the Society of Federal Labor and Employee Relations Professionals, a non-profit professional association whose members pay a membership fee.

I raised the following concern with [redacted] which had previously arisen with another employee who was an officer of the DC LERA Chapter. If [redacted] name appears on SFLEPP letterhead soliciting new members who must pay a fee to join (or on other financial solicitations), this would appear to pose a conflict with his FMCS employment in that those solicited may feel obliged to pay the fee in order to keep on [redacted] "good side" in future mediations. [redacted] has assured me that his name as a Director, or as an FMCS employee, does not appear on any SFLEPP membership or other financial solicitations. Accordingly, I will provide the ethics approval to his Request Form if you will sign-off as recommending approval.

August 14, 2013

DRAFT

Ms. Irma Robins, University Counsel
Office of the University Counsel
University of Maryland
14th Floor, Room 03-111
220 Arch Street
Baltimore, MD 21201

Re: v. University of Maryland School of Law (DOE OCR #03-13-2319)

Dear Ms. Robins:

Deputy Director Allison Beck has asked me to respond to your letter of August 8, 2013, in which the University of Maryland Frances King Carey School of Law (University) raises issues of confidentiality and conflict of interest regarding the referral of the above-captioned age discrimination case to mediation.

As you note, the complainant in the case, [REDACTED] is a student at the University and has been an extern with the Federal Mediation and Conciliation Service (FMCS or Agency). While at the FMCS, he performed assignments in support of mediation and training offered by the Agency's Office of ADR Services\International Affairs. [REDACTED] ceased work in the ADR Washington Office on August 9, 2013, after ten weeks of unpaid, for credit service. He was classified as a non-federal, non-employee student volunteer at all times while at the FMCS. The Student Volunteer Agreement between the FMCS and the University (Section 6.--Confidentiality) is intended to address issues related to an extern's relationship *vis-à-vis* customers and potential customers of the Agency, including the protection of customer-related information obtained in the course of an externship. However, the FMCS recognizes that any party to mediation has the right to raise and act upon any confidentiality and/or conflict of interest considerations.

In addition to what the FMCS views as an attenuated relationship with [REDACTED] the Agency represents that he has not obtained any confidential information from the FMCS relative to his complaint. Moreover, the FMCS is prepared to take the following steps to further address the University's concerns: (1) the case will be assigned to a mediator outside the Washington-Baltimore area who has had no prior contact with [REDACTED]; (2) during the pendency of the mediation, mediators and other employees assigned to the ADR Office will be instructed to refer any contacts from [REDACTED] to the ADR supervisor, who will advise him, as necessary, that she cannot discuss matters related to his mediation; and (3) all paper records pertaining to the mediation will be destroyed upon completion of the process, and access to retained electronic records will be restricted on a need-to-know basis to the mediator, his supervisor,

the ADR supervisor and selected IT personnel. We also will consider any additional steps the University may wish to suggest.

By its very nature, mediation is a consensual process. Accordingly, after considering all of the above, please advise me whether the University's confidentiality and conflicts concerns have been satisfied, in which case the FMCS will process this case through mediation with the protections outlined above, or whether these concerns remain at a level which precludes the University from proceeding to mediation in this matter.

Meanwhile, feel free to contact me if you have any questions or wish to discuss this matter.

Sincerely,

Michael J. Bartlett
Deputy General Counsel

Cc: Rhasheda S. Douglas
Allison Beck

FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, D.C. 20427

OFFICE OF THE GENERAL COUNSEL

Date: May 16, 2006

MEMORANDUM

TO:

FROM: Maria A. Friedl *MAF*
Designated Agency Ethics Official

SUBJECT: Pre and Post Employment Rules

As an employee who is departing or may depart the agency, you are subject to certain restrictions. *It is vitally important that you understand these restrictions and that you follow them closely.* As a part of this notification, please acknowledge receipt by signing and dating this document in the acknowledgement at the end and fax it to me at 202-606-5345.

Post Employment Restrictions

The primary post-employment restrictions are in 18 U.S.C. 207 which sets out a *lifetime ban* against making, with the intent to *influence*, any *communication to or appearance before* an employee of the U.S. on behalf of any other person in a *particular matter* involving a *specific party* in which the employee *participated personally and substantially* as an employee, and in which the U.S. *is a party or has a direct and substantial interest*. This is a lifetime restriction that commences upon an employee's termination from federal service.

The purpose behind this restriction is summarized as follows:

When a former Government employee who has been involved with a particular matter decides to act as the representative of another person on the same matter, the "switching of sides" undermines the public's confidence in the fairness of Government proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

18 U.S.C. does not bar any former employee, regardless of grade or position, from accepting employment with or representing a public or private employer after they end Government service, but it does prohibit former Government employees from engaging in certain activities on behalf of these persons or entities. The restrictions are as follows:

- 18 U.S.C. 207 (a)(1) a *lifetime ban* against making with the intent to *influence any communication to or appearance before* their former agency or persons in that agency or other agencies in *particular matter* involving *specific party (ies)* in which the employee participated *personally and substantially* as an employee, and in which the government has a *direct and substantial interest*. For the purposes of the FMCS, particular attention should be given to the definition of "particular matter" which includes any investigation,

application, and request for ruling, or other proceeding. It is limited however, to the same party or parties at the time of the former employee's participation.

EXAMPLE: A former commissioner goes to work for employer X as director of Human Resources. He is immediately involved in an ongoing collective bargaining dispute between X and ABC Union who are in FMCS mediation. He often was the substitute mediator in this case. He cannot participate in any mediation sessions before the FMCS in this particular matter; however, he is not prohibited from giving "behind the scenes" advice to his assistant who can be at the mediation sessions.

- 18 U.S.C. 207 (a)(2) sets out a very similar ban, except that it is of shorter duration (only *two years* following the employee's termination of service) and applies only to those who had *official responsibility* for a matter that was *actually pending* during the employee's *last year* of Government service. In other words, even though the employee was not "personally and substantially" involved in a particular matter, if the matter fell within his official responsibility during the last year of service, the employee is barred from communicating (with the intent to influence) with any Government employee on the same issue.
- 18 U.S.C. 207 (b) a restriction which is unlikely to involve former FMCS employees, bars a former employee, for *one year* after her Government service ends, from knowingly *representing, aiding or advising* on the basis of *covered information*, any other person concerning any *ongoing trade or treaty negotiation* which, in the *last year* of Government service, the employee *participated personally and substantially*. The term "covered information" refers to agency records which were accessible to the employee and were exempt from disclosure under the Freedom of Information Act. If this restriction applies, it applies to all representation even to "behind-the-scenes" assistance.

I am also enclosing some Office of Government Ethics brochures addressing and further explaining the same issues addressed above. If you need further information or have any questions, whatsoever, about the employment restrictions, please contact me immediately.

I acknowledge that I received and reviewed this memorandum.

MAY 23, 2006

Date

**RETURN ACKNOWLEDGEMENT VIA FACSIMILE TO
MARIA FRIED AT 202-606-5345.**

Enclosures

TO: Arthur Pearlstein
FROM: Maria A. Fried
RE: Mr. Wagner's Employment with the Agency Post-Retirement

This is in response to your question of whether the Federal Mediation and Conciliation Service can hire Mr. Wagner, currently retired from the FMCS, to work on a project involving the Environmental Protection Agency (EPA). I will address this question in two-parts: 1) Does hiring Mr. Wagner create an ethics violation; and 2) Do we have proper authorization to use appropriated funds for employing Mr. Wagner?

1. Does hiring Mr. Wagner create an ethics violation?

As we discussed, if the hiring agency is the FMCS, I don't see any violations stemming from 18 U.S.C. 207 (representation bans). This is because he would be a contractor working for us and not another entity against FMCS's interests.

The seeking employment regulations at 5 C.F.R. 2635 Subpart F, prohibit a federal employee from discussing prospective employment with an entity while performing work with that entity as a federal employee if his participation would directly and predictably affect the financial interests of a prospective employer. An employee is considered to have begun seeking employment when he has directly or indirectly engaged in negotiations for employment with any person. The term "negotiations" means discussion or communication with another person, or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. It is not limited to discussions of specific terms and conditions of employment. Also, the term "seeking employment" refers to the unsolicited communication to any person regarding employment with that person except when the communication is limited to a request for a job application or the submission of a resume. Unless the employee's participation is authorized by a waiver from the agency designee, the employee shall not participate personally and substantially in a particular matter that to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment. There is no evidence that Mr. Wagner negotiated for employment while engaged in the project involving FMCS and EPA. Moreover, it is unclear whether he would have had any knowledge of whether his participation would directly or predictably affect the financial interests of the EPA. In fact, it is difficult to determine what, if any, EPA financial interests could be affected by Mr. Wagner's involvement.

2. Do we have proper authorization to use appropriated funds for employing Mr. Wagner?

Yes. FY 2003 appropriations languages states that the FMCS can use appropriated funds "[f]or expenses necessary for the Federal Mediation and Conciliation Service to carry out the functions vested in it by the Labor Management Relations Act, 1947 (29 U.S.C. 171-180, 182-183)... for expenses necessary for the Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a); and for expenses necessary

for the Service to carry out the functions vested in it by the Civil Service Reform Act, Public Law 95-454 (5 U.S.C. ch. 71.) Thus, the purpose requirement of fiscal law is satisfied.

The vehicle to use in hiring [redacted] should be a nonpersonal services contract. As you know, the Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. One of these civil service laws addresses the reemployment of annuitants. 5 C.F.R. 837. What distinguishes the employment relationship governed by the civil service laws and nonpersonal contracts is the level of supervision involved. To avoid creating the appearance of an employer-employee relationship with [redacted] within the purview of 5 U.S.C. 8344 restricting the pay an annuitant may receive if employed by the government, I recommend utilizing a nonpersonal services contract.

If [redacted] is hired as an independent contractor using a nonpersonal services contract, the civil service rules will not apply. As an independent contractor, [redacted] will not be subjected to the continuous supervision and control that one might expect with a government employee. On the otherhand, given the fact that Mr. [redacted] has knowledge of the project, he is capable of performing the tasks and services required. Because no employer-employee relationship is established in a nonpersonal services contract, the contractor's independence can not be nullified. As such, we avoid running afoul of the rules involving the reemployment of annuitants. 5 C.F.R. 837. His salary will not be capped by the Classification Act nor will there be a set-off with his annuity payments. 53 Comp. Gen. 702 (1974).

CONFIDENTIAL MEMORANDUM

To: Adam Ramsey, Director of Human Resources
From: Dawn E. Starr, General Counsel
Michael J. Bartlett, Deputy General Counsel
Re: ---
Date: March 16, 2012

Bartlett Mike

From: Bartlett Mike
Sent: Thursday, May 30, 2013 1:46 PM
To: Starr Dawn (dstarr@fmcs.gov)
Subject: FW: OGE Letter re: FDR Advisory Board

This resolves the issue, although apparently never sent a letter to LRP requesting this action as I requested of her.

Michael J. Bartlett|Deputy General Counsel|Federal Mediation & Conciliation Service|(202) 606-3737|mbartlett@fmcs.gov
This email is intended only for the recipient to whom it is addressed and may contain information that is sensitive, confidential or privileged by law. If you have received this message in error, any review, use, dissemination or copying is prohibited. In case of such error, please contact the sender immediately and delete the material from your computer system.

From: Bartlett Mike
Sent: Thursday, May 30, 2013 1:43 PM
To: '
Subject: RE: OGE Letter re: FDR Advisory Board

Thanks for keeping me up to date.

Michael J. Bartlett|Deputy General Counsel|Federal Mediation & Conciliation Service|(202) 606-3737|mbartlett@fmcs.gov
This email is intended only for the recipient to whom it is addressed and may contain information that is sensitive, confidential or privileged by law. If you have received this message in error, any review, use, dissemination or copying is prohibited. In case of such error, please contact the sender immediately and delete the material from your computer system.

From:
Sent: Thursday, May 30, 2013 12:07 PM
To: Bartlett Mike
Subject: Fw: OGE Letter re: FDR Advisory Board

From: Daniel Gephart [<mailto:dgephart@lrp.com>]
Sent: Thursday, May 30, 2013 11:55 AM Eastern Standard Time
To: Marrone, Ana <AMarrone@osc.gov>; Delia Johnson <djohnso@bbg.gov>; sharon.hall@opm.gov <sharon.hall@opm.gov>; eric.howard@fhfa.gov <eric.howard@fhfa.gov>; McKenney Denise; Miron, Deborah <Deborah.Miron@mspb.gov>; Steve Muir <smuir1950267@gmail.com>; Names, Donald CIV OCHR, OOE <donald.names@navy.mil>; Mina Raskin <MRaskin@bop.gov>; Eddy, David <DEddy@flra.gov>; Villalobos, Veronica <Veronica.Villalobos@opm.gov>; jackie.hoffman@dhs.gov <jackie.hoffman@dhs.gov>; stenzelt@gao.gov <stenzelt@gao.gov>; mary.ryan@navy.mil <mary.ryan@navy.mil>; JOLINDA JOHNSON <JOLINDA.JOHNSON@EEOC.GOV>; mary.mcgoldrick@dhs.gov <mary.mcgoldrick@dhs.gov>; Robert.L.Woods@navy.mil <Robert.L.Woods@navy.mil>
Cc: Ed Chase <echase@lrp.com>; William Bransford <wbransford@shawbransford.com>
Subject: OGE Letter re: FDR Advisory Board

Hi everyone. I've attached a letter that we received from the Office of Government Ethics late yesterday. I wanted to give you a heads-up before you heard about it from your own ethics offices. I also wanted to let you know that we're immediately taking action. Per OGE's letter, we are currently removing any references to your official title and agency name on our advisory board list. We are going a step further and adding a disclaimer on the web site that states "Volunteer service on the FDR advisory board should not be construed to imply that any agency condones or endorses

any employee's service in, or activities of, the FDR Conference." I really appreciate your service on the board and apologize for any stress due to this situation.

We will also discuss this further at the next advisory board meeting on **June 11**. However, in the meantime, if you have any questions, thoughts, or concerns, please email me or call me at (561) 622-6520, ext. 8709.

Thank you.

Daniel J. Gephart

Editorial Director, Federal Group

LRP Publications

dgephart@lrp.com

(561) 622-6520, ext. 8709

(561) 313-3381

Twitter: @PhillyGep

Bartlett Mike

From: Bartlett Mike
Sent: Friday, May 24, 2013 12:55 PM
To:
Cc: Ditillo Bob (rditillo@fmcs.gov); Starr Dawn (dstarr@fmcs.gov)
Subject: RE: Potential Conflict of Interest

The interests of your son in an internship of the kind you describe and your interests in maintaining your neutrality as an FMCS mediator are so attenuated from each other as to preclude any conflict of interest.

While it is not possible to identify all situations which may present a conflict in the future, there are two circumstances which would appear to create a disqualifying conflict.: 1) Where your son is a member of or holds a position with a party to a mediation to which you are assigned. Examples would include a collective bargaining mediation between a school board and a teachers' union, where your son is a teacher/union member or where your son is employed as a union official. 2) Where your son attains such a high level position with, e.g. the city of Toledo, such as Mayor, Councilman or General Counsel, that he can be perceived as an interested party in any mediation affecting any entity (police, water and sewer department, parks and recreation, etc.) of the city.

Where you, in conjunction with your DMS, determine there is an actual conflict, you should recuse yourself from that mediation. Where there is a distant connection, such as your son's internship, it might be desirable to disclose this to the parties at the outset and give them an opportunity to object. In any event, you should feel free to raise the conflict issue with this office again in any new situation where you would like additional guidance.

Mike

Michael J. Bartlett|Deputy General Counsel|Federal Mediation & Conciliation Service|(202) 606-3737|mbartlett@fmcs.gov

This email is intended only for the recipient to whom it is addressed and may contain information that is sensitive, confidential or privileged by law. If you have received this message in error, any review, use, dissemination or copying is prohibited. In case of such error, please contact the sender immediately and delete the material from your computer system.

From:
Sent: Wednesday, May 22, 2013 8:24 AM
To: Bartlett Mike
Cc: Ditillo Bob
Subject:

Mike

As you may recall I spoke with you recently regarding my son. My son is a 21 year old about to enter his senior year in college with a political science major. This summer he is exploring internship opportunities in his area of interest, public administration. One opportunity which came up was to work in the campaign of a Toledo city councilman running in the primary for mayor. The contact was made through the University Internship Program, as far as I know my son has no previous contact with the councilman. I guess my question would be when his work now or in the future could create a conflict with my work. In Ohio we do overlap into the public sector and it is possible he might someday work for a unionized public entity in the Toledo area or get involved with area political candidates running for election to public entities with unions. What are your thoughts?

Commissioner

Federal Mediation & Conciliation Service
Box 865
Perrysburg Ohio 43552-0865
(419)931-4320

Bartlett Mike

From: Beckenbaugh Scot
Sent: Wednesday, May 22, 2013 2:59 PM
To: Bartlett Mike
Subject: RE: UW podcast authorization

Thank you

From: Bartlett Mike
Sent: Wednesday, May 22, 2013 11:33 AM
To: Beckenbaugh Scot
Subject: FW: UW podcast authorization

Scot, fyi.

From: Bartlett Mike
Sent: Wednesday, May 22, 2013 11:31 AM
To:
Subject: RE: UW podcast authorization

I see no objection to signing this release. Problems only arise when an organization seeks to obtain exclusive rights to your presentation or to use it commercially for profit in subsequent podcasts, publications, etc..

Mike

From:
Sent: Tuesday, May 21, 2013 6:19 PM
To: Bartlett Mike; Beckenbaugh Scot
Subject: FW: UW podcast authorization

Good afternoon,

Thursday I am speaking at the UW Law School for a Negotiations class. I'm speaking about the role of mediation and giving them a short scenario to practice with. Nothing controversial. They have asked to have the attached release signed so they can make the class available to students who are not in attendance via podcast.

I would like your approval on the release form before moving forward.

Thanks,

From: Larry Schwerin [<mailto:schwerin@workerlaw.com>]

Sent: Tuesday, May 21, 2013 12:31 PM

To:

Cc: schhabra@uw.edu; forde@uw.edu

Subject: UW podcast authorization

Attached is the authorization form the UW requires to podcast your presentation. Please review and sign it if its OK with you. You can bring it with you on Thursday.

Thanks

Larry

Bartlett Mike

From:
Sent: Monday, April 15, 2013 11:00 AM
To: Bartlett Mike
Subject: RE:

Mike:

That is what I thought; I appreciate it.

CONFIDENTIALITY NOTE

This e-mail contains confidential information from and is intended solely for the use of the individual named on this transmission. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. If you are not the intended recipient of this e-mail, to prevent future transmissions like this, please notify by forwarding this e-mail to the following address:

From: Bartlett Mike
Sent: Monday, April 15, 2013 10:58 AM
To:
Cc: Starr Dawn
Subject: RE:

As a Federal employee, you are not able to take a position with respect to questions 9 and 10. Since these questions are the critical parts of the survey, and since I would advise against starting down the path of partial responses, I suggest you advise the law student that your position as a Federal employee precludes you from responding to the survey,

Let me know if you have further questions.

Mike

Michael J. Bartlett|Deputy General Counsel|Federal Mediation & Conciliation Service|(202) 606-3737|mbartlett@fmcs.gov
This email is intended only for the recipient to whom it is addressed and may contain information that is sensitive, confidential or privileged by law. If you have received this message in error, any review, use, dissemination or copying is prohibited. In case of such error, please contact the sender immediately and delete the material from your computer system.

From:
Sent: Friday, April 12, 2013 3:53 PM
To: Bartlett Mike
Subject: FW:

Mike:

I received this survey request today; please advise if FMCS mediators can respond.

Thanks,

CONFIDENTIALITY NOTE

This e-mail contains confidential information from _____ and is intended solely for the use of the individual named on this transmission. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. If you are not the intended recipient of this e-mail, to prevent future transmissions like this, please notify by forwarding this e-mail to the following address:

From: Caryl A. Maniscalco [<mailto:camaniscalco@student.phoenixlaw.edu>]
Sent: Friday, April 12, 2013 3:39 PM
Subject:

My name is Caryl A. Maniscalco and I am a law student at Phoenix School of Law in Phoenix Arizona.

As part of a writing assignment for my Alternative Dispute Resolution course, I have put together a ten question survey that I have included/attached in the email for your convenience.

My paper discusses the current "requirements" for arbitrators and mediators, and whether there should be some form of certification process for this field of practice, either on the state or national level.

You were included in this survey because your name was listed on a least one website for mediators and arbitrators. I understand that some of you might not want to respond, but I am hoping you remember your law school days and will give a future advocate a helping hand.

Thank you for taking the time to read this far, and I hope to get your survey response.

Please note: 1) no names will be used in my paper, only the answers to the questions. 2) for ease of use, once you answer the questions directly in the email or on the attachment (please save before forwarding), you can forward the responses to camaniscalco@student.phoenixlaw.edu 3) only one hundred emails were sent out in this 1st request, I am hoping for better than a 2% return, but that is up to all of you.

Once again, THANK YOU.

Respectfully,

C. A. Maniscalco

Phoenix School of Law, Juris Doctorate Candidate, May 2015

SURVEY QUESTIONS:

- 1) 1) How many years have you been a practicing mediator or arbitrator? _____
- 2) 2) Are you a practicing attorney? _____ 3) If yes, how many years? _____
- 4) 4) Are you a member of an organization/association specific to mediation or arbitration? _____
- 5) 5) How many mediator or arbitrator organizations/associations are you a member of? _____
- 6) 6) How many of those organizations/associations are within the state that you practice? _____
- 7) 7) How many are national organizations/associations? _____
- 8) 8) How often, in a 12 month period, do you attend a course or seminar regarding mediation or arbitration? _____

9) 9) Would you be opposed to your state or state bar mandating certification for mediators or arbitrators? _____

If yes, please give the **major** reason for your opposition.

1 10) Would you be opposed to the American Bar Association / Federal Government developing a board certification process for mediators and arbitrators? _____

If yes, please give the **major** reason for your opposition.

Please feel free to add any other comments you might have regarding this field of practice. Thank you for your participation.

Thank you,

C. A. Maniscalco,

Bartlett Mike

From: Bartlett Mike
Sent: Tuesday, February 26, 2013 2:56 PM
To:
Subject: RE: Raffle Prize

This is in response to your email below, in which you raise the issue of whether you can accept the TV given by LMHCC in a random drawing among participants at the organization's annual meeting. As explained in our telephone conversation earlier today, and for the reasons given below, you are prohibited from accepting the TV and must return it, or reimburse LMHCC for its fair market value, if it is now in your possession.

The issue presented is governed generally by the Standards of Ethical Conduct for Executive Branch Employees—Gifts from Outside Sources (5 CFR 2635, Subpart B). It is axiomatic that acceptance by an FMCS employee of a substantial gift from a customer (a prohibited source under the foregoing regulations) would create a prohibited conflict of interest. LMHCC, while it no longer has a direct business relationship with FMCS, is a membership organization that does not exist (as I understand it) independent of its members. Hence, for our purposes, LMHCC and its members are considered one and the same. Some of its members are current FMCS customers and others are potential customers. Under these circumstances, the acceptance of a gift from LMHCC, by random drawing, raffle (not open to the public) or otherwise, by an employee of FMCS would create a conflict of interest and, therefore, would be prohibited. Viewed another way, acceptance of a gift would create a conflict, or, at the very least, the appearance of a conflict, in a collective bargaining case involving a LMHCC member and a non-member. Any gifts provisionally accepted under these circumstances must be returned, or, in the alternative, you must reimburse LMHCC for the fair market value of the TV.

Feel free to contact me if you have any further questions regarding the above advice.

Mike.

Michael J. Bartlett|Deputy General Counsel|Federal Mediation & Conciliation Service|(202) 606-3737|mbartlett@fmcs.gov
This email is intended only for the recipient to whom it is addressed and may contain information that is sensitive, confidential or privileged by law. If you have received this message in error, any review, use, dissemination or copying is prohibited. In case of such error, please contact the sender immediately and delete the material from your computer system.

From:
Sent: Friday, February 22, 2013 12:55 PM
To: Bartlett Mike
Subject: Raffle Prize

Mike,

As per our brief conversation earlier this morning, yesterday I attended an Labor/Management Healthcare Coalition of the Upper Midwest Annual Meeting (LMHCC). LMHCC is an organization that was created over 13 years ago, with FMCS Grant Assistance. This organization has continued to have parties work together through education, cooperation and outreach, to assist Taft-Hartley and public health and welfare funds in the upper Midwest to provide quality healthcare for participants and beneficiaries of Coalition members at an effective cost. The Labor/Management Health Care Coalition of the Upper Midwest is governed by both Labor and Management representatives of the Coalition's membership. In addition, the LMHCC's Executive Committee includes its Executive Director and Legal Counsel. FMCS has not had regular

meaningful involvement for over 10 years (FMCS Grant Assistance Ended). Although, some members of this organization are FMCS customers, this organization doesn't currently utilize FMCS services and is unlikely in the future to utilize FMCS Services. While attending this Annual meeting, Attendees are entered into a door prize random drawing. Numerous gifts are donated to this organization and a random drawing is held near the end of the Annual Meeting. As an Attendee, my name was randomly selected for 32" TV prize.

Please advise at your earliest convenience.

Bartlett Mike

From: Starr Dawn
Sent: Wednesday, December 12, 2012 2:56 PM
To: All Employees
Subject: Ethics Rules and Holiday Gifts

Dear Colleagues:

As the holiday season is here, I am sending this reminder about the Office of Government Ethics (OGE) rules governing gifts.

Gifts between FMCS employees

You may not give your supervisor (one with whom you have an official subordinate-superior relationship) any gift valued over \$10.

You may not accept a gift valued over \$10 from any other employee who receives less pay than you do unless you do not supervise the employee and there is a personal relationship that would justify the gift.

Gifts of food and refreshments shared in the office are not included in these restrictions. Coworkers who receive equal pay may exchange gifts among themselves as they choose.

Gifts from outside sources

You may not accept a gift from a "prohibited source," with some exceptions. Anyone doing or seeking to do business with FMCS and any entity that is served by FMCS is a prohibited source.

Under the exceptions, you may accept certain gifts from prohibited sources:

You may accept a gift valued at \$20 or less from a prohibited source as long as you do not receive in excess of \$50 in gifts per calendar year from the same source.

You may accept a gift from a prohibited source if it is motivated solely by a family relationship or personal friendship.

You may accept modest refreshments, greeting cards, and like items from a prohibited source.

If you receive a gift that cannot be accepted, you may return the gift or pay its market value. If the gift is perishable (such as a fruit basket or flowers) and it is not practical to return it, the gift may be given to charity or shared in the office.

If you have any questions about these guidelines, please contact Mike Bartlett at mbartlett@fmcs.gov, Jeannette Walters-Marquez at jwmarquez@fmcs.gov, or me. Thank you for your attention and best wishes for a happy holiday season.

Dawn Starr
Designated Agency Ethics Official

6/10/13 CW Lullaba Mike re:

members of ND Council for Dispute Resolution
she assesses mediator performance of
ND mediators (already approved).

new org: International Mediation Institute
has asked ND CDR to review +
certify that mediators qualified
for ND CDR also qualify to be certified
by IMI.

To get IMI cert, need a # of mediations.

RB wants to give exit interview @ name
to her mediation clients to act as
referral for her work, to qualify to
be in IMI ~~group~~ group.

— Problematic. Confusion for customers,
Auhward.

RB will check w/ LG + AB

5/29/13 TF

Mediator's involvement in
fund raising for leukemia.

→ request to U or Co do contribute
to leukemia fund raiser, in private
company.

scope of what he wants to do
- who can be solicited?

→ checks written to org, NOT mediator
Speranza will research up tomorrow
name will call, afternoon.

JWM speaks to
him, invited to training. 5/30/13, advised

10/10/12 CW JWM

no ethics case.

some issue that we are doing what GW
could do on its own.

could encourage us to believe they could
promote other organizations

→ have we had a request from GW
to forward this invitation?

do we want to do anything at the
behest of Barrett?

we don't know what the
exhibit will express →

this is certainly an
advertisement?

"endorsement" is something we
do not do.

could be an exception.

SPA says no endorsement of product or service.

4/5/13

CW

~~etc~~ creates a c/i w/ her official duties?

conflict w/ private bar as mediators
to allow our mediators to
do pro bono mediation work

called to testify?

mediator for DC Multi Door program +
MD Council for Dispute Program.

→ \$ domestic matters ————— \$60 stipend,
for expense.

part of certification committee for private
mediators

Never attempted to call to testify.

CW

concern w/ lack of confidentiality

concern one lawyer is in lawyer bar.
obligated to advise you no protection of mediator
confidentiality - testimony possibly could impact on your neutrality

MANSTEIN v. MANSTEIN

I received a call a month or so ago from the mother of a classmate of my son telling me she suggested me as a mediator and after the fact thought she should tell me. She said her husband was being sued by his brother regarding their medical practice. They are plastic surgeons in a medical practice about a block from my home. This is a "family business", started by their retired father. I know both of them since their children were in pre-school with my son through 6th grade. They live in my neighborhood and I see them through their synagogue and in the neighborhood.

She suggested me to her attorney who, according to her, responded that I was an excellent choice. The attorney is Steve Ludwig @ Fox, Rothchild - 215-299-2000, 2000 Market St. I believe Steve primarily does employment work, since in 20+ years I only had 1 case with him in the 1990's. Steve's client is Mark Manstein, they live on Barrowdale Rd in Rydal, PA. The name of the practice is Manstein Plastic Surgeons, on Huntingdon Pike, in Huntingdon Valley. The other brother is Carl Manstein, living on Fairview Rd. in Elkins Park, PA. I can get the exact addresses and phone numbers if you need them.

I called Steve the next day to tell him I didn't think it fell under FMCS work. At that time he said there was another person suggested by Carl, known and acceptable to both. However, the attorneys hadn't agreed. Apparently, Carl's lawyer, Sid Gold, whom I do not know, didn't want that person. Steve was going to talk to him and impress that if the parties were comfortable that was most important. Since it seemed they already had someone there was no need to continue the conversation. We didn't get into any details about the dispute other than Ludwig saying it was more of a domestic issue. Sid Gold's address: Sidney L. Gold, Assoc., 1835 Market St., 215-569-1999. His website shows there are 4 other lawyers in the office. I do not know any of them.

Surprisingly, Ludwig called me today saying the parties had agreed on me. I told him again I didn't think the Agency would do this but I would ask, and, if not, would be open to doing it on my own, for no pay, but it would have to be done in the evenings or weekends and I would first need to check for approval. He asked me to do so.

When looking at 7(a) 2 (a) through (h), I don't believe this request would conflict with any of these. Certainly (a) through (d), (g) and (h) wouldn't apply.

I don't think (e) or (f) would either. I don't think approval of this activity would interfere with our impartiality or our acceptability. Since there is no union involved, nor would there be in such a small office, I don't think there would be any injury to the relationship to the Service. As far as I know, the practice is one with the 2 doctors and a receptionist. One wife is a nurse and works there sometimes. I think the other wife might do some bookkeeping and billing.

→ I am requesting approval for this one specific situation which, I hope will be resolved within 1 – 3 sessions. These are two brother/doctors, in suburban Philadelphia, who can't resolve their differences, and need help. My impression is they are asking me because they are comfortable with exposing themselves to me, as I have to them when my son was ill, and trusting that they can put this behind them. I would do this primarily because this is another way for me to give back to people who were so supportive of Gabe and my family at our darkest hour. It would also be interesting to me since it is different than what we do day to day and personally, since family means a lot to me, I don't think brothers should be suing each other. They need to find a way to resolve their differences.

If I thought this would interfere with the work of FMCS, I wouldn't ask. I've had situations over the past 20+ years where I have been asked and immediately told the people No. This is a different situation that I don't think would interfere with our work. In fact, since Gold appears to be the "discrimination lawyer" - it could open up ADR work for us. I'm not aware of any labor work that the firm does.

3/26/13 TF

Having a Senate election in MA -
primaries for D + R.

Will be invited to fundraiser for ^{Steve} Lynds
some one candidate for primary
Not sure where it will be held but
public place like hotel.
Ok to attend? y write check? y

- cannot be on duty (don't wear FMCSP pin)
- don't solicit others' contributions

or use official title
while engaged in pub act.

May not invite subordinate see
to attend OR any other to attend.
(no soliciting of contributions.)

do not use email to forward

MAY attend fundraising function + give ~~\$~~.

OK
OK
OK

8/18/11 au Nulre
I ~~was~~ provisions financial attest
not attributed from sister no application
2nd personal ~~relationships~~ Relationships 5 CFR § 2635.502

to avoid appearance of loss of impartiality
Unless you get auth, don't participate
in matter that affects interest of someone
he has a rel ship w/.

① Relative w/ whom he has pers rel ship →
applies here.

② where ee believes a party might be impartial,
treat as where it is covered rel ship

Up to ee to determine wh impartiality
has impartiality wd be OKed.

Here if worked.

So ee must present all facts to his next
Agency determine if disqualified.

Agency should consider

imp of ee's role in process
effect resolution will have on relative
difficultly of reassigning responsibility
adjustments necessary to remove
conflict

Ethics
Considerations.

1/5/11

TF

→ works w/ ~~IATSE~~ in NY
Training on one side of table - U-
only. Coordinator says do
you want to go to front of
line for ~~for~~ TKTS + discount.

→ Does not

Blocky hits released + added to public +
~~IATSE~~ up has access to them + would
~~with~~

Not giving him that.

aw

aw

→ advised NO

8/23/10

CLW

Candidate for mediator
Kathleen C. State ^{U of} Washington +
runs nonprofit for Wash. City.

Requests for outside involvement →

Normally, we don't permit selling what we
provide as a service

July

for 1st year, usually don't have outside
activities etc. no time for it.

Negotiations + Conf R @ U of Wash
FM + Sun.
N 20

Pepperdine

She has 5 courses @ one time

Jan 6 →

5/2/13
advise to
re: email fundraiser

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

Preventing Conflicts of Interest
in the Executive Branch

Fundraising

5 C.F.R. Part 2635: Standards of ethical conduct for employees of the executive branch As explained in the general discussion of outside employment limitations, Subpart H of 5 C.F.R. part 2635 contains a number of provisions governing particular outside activities. One of those provisions concerns fundraising.

Under 5 C.F.R. § 2635.808, an executive branch employee must comply with two rules when fundraising in a personal capacity:

- An employee may not use or permit the use of the employee's official Government title, position, or any authority associated with his or her office to further a fundraising effort. However, this rule does not prohibit an employee from being addressed as "The Honorable" or by a military or ambassadorial rank, if applicable.

Example: Emily may not permit the use of her official Government title in an organization's invitation to a fundraising event, and may not be identified by that title at the event.

- An employee may not request funds or other support from a subordinate or from a person whom the employee knows to be a "prohibited source" (as defined in 5 C.F.R. § 2635.203), even if the employee does not refer to his or her official Government title or position. However, if an employee's request is conveyed through the media or is addressed to a group of many persons in a mass mailing or otherwise, this rule is not violated if the request reaches a subordinate or a prohibited source, unless the employee knew that the request was targeted at subordinates or prohibited sources.

Example: Provided that Jason makes no mention of his official Government title or position, he may help raise funds for an organization by signing a request for donations and mailing it to 300 homes in his community. He may do so even though he knows that some homes are occupied by agency contractors and that a few are occupied by his subordinates. However, even if he omits any reference to his official title or position, he could not sign the letter if he knows it is directed primarily to agency contractors or subordinates.

Note: Section 2635.808 applies differently to special Government employees.

Fundraising activities must also comply with other legal authorities. For example, under Subpart G of 5 C.F.R. part 2635, an employee may not use Government property, nonpublic information, or time (including the time of a subordinate) in support of a private fundraising effort. However, an employee may give an official speech at a fundraiser if the employee's agency determines that the particular fundraiser is an appropriate forum for the speech, and may use Government resources to prepare the speech. The speaker may be identified by his or her official Government title or position, but may not request funds or other support for the sponsor or beneficiary of the event.

Section 2635.808 does not govern fundraising undertaken as part of an employee's official duties, but notes the following:

- An employee may engage in official fundraising only if authorized to do so in accordance with a statute or as otherwise determined by the employee's agency.

- An employee may engage in official fundraising in the Government workplace only in accordance with Office of Personnel Management regulations governing the Combined Federal Campaign, at 5 C.F.R. part 950.

The information on this page is not a substitute for individual advice. Agency ethics officials should be consulted about specific situations.

U.S. Office of Government Ethics 1201 New York Avenue, NW, Suite 500 Washington, DC 20005

Bennett Kimberley

From: Bartlett Mike
Sent: Wednesday, November 06, 2013 3:20 PM
To: Bennett Kimberley
Subject: FW: FMCS Mailing List

For ethics advice file (do you have one)?

From: Bartlett Mike
Sent: Wednesday, November 06, 2013 1:50 PM
To:
Subject: RE: FMCS Mailing List

Hello

As usual your thinking is right on target. In addition, and as a matter of your discretion, this might present an appropriate opportunity to remind Mike and Bill that they cannot hold themselves out, for example on MLMA Executive Board letterhead, as being affiliated with FMCS, since this would imply endorsement of MLMA by FMCS.

Regards,
Mike

From:
Sent: Wednesday, November 06, 2013 11:08 AM
To: Bartlett Mike
Subject: FW: FMCS Mailing List

Mike,

I received the inquiry below and my initial thought process was to just respond indicating that we do not, in the interest of confidentiality, share such requested information. I then had a flash pass through the old cranium and thought I'd run it by you before I get too frisky with a reply. Please review the inquiry and advise if my initial reaction was correct. If not, what steps should Ruthanne take to acquire the requested data.

Thanks in advance for your help with this matter.

From: Okun, Ruthanne (LARA) [<mailto:okunr@michigan.gov>]
Sent: Monday, November 04, 2013 11:26 AM
To:
Cc:
Subject: FMCS Mailing List

Hi John: Hope you are well and (I imagine) keeping busy.

You may be aware that I, along with your Michigan-based mediators, [redacted] are executive board members of the Michigan Labor Management Committee (MLMA) – a group that seeks to create a brighter future for Michigan through labor-management cooperation. I am a member of an MLMA sub-committee that is charged with seeking to expand our membership; a goal of that sub-committee is to ensure that other interested persons and parties are aware of our organization and its mission. To do so, we are seeking to expand our membership lists and thought

that (because our missions run in tandem), we might be able to obtain the names and contact information utilized by FMCS. I have been tasked with inquiring of you whether that might be a possibility.

If you are able, please get back with me in the next week or so. You may be assured that the information will be utilized only to get out our message that we are an organization that seeks to promote labor management cooperation – not for other purposes that may be objectionable to you.

Thank you for your time and for your prompt response.

Ruthanne Okun, Director
Bureau of Employment Relations/MERC
(313) 456-3519

Bartlett Mike

From: Bartlett Mike
Sent: Tuesday, August 06, 2013 11:30 AM
To: Bralley Gene
Cc: Starr Dawn
Subject: Outside Mediation Request

Gene:

You have asked whether [redacted] can mediate a land dispute between [redacted] retired FMCS mediator and friend of Mike's, and the family of his deceased wife, as an outside activity through the courts or individually.

In my view [redacted] is precluded from performing this work on the basis of an actual or perceived lack of neutrality due to his relationship with Dale directly and through FMCS. For example, suppose an agreement mediated by [redacted] is reached and, subsequently, the family seeks to overturn it in court on the basis that the mediator was biased (not neutral). This would reflect adversely not only on [redacted] but also on FMCS even if the work were purportedly done as an outside activity (a distinction certain to be lost among customers and potential customers). Even if [redacted] was eventually found to have acted even handedly, most of the damage to his and FMCS's reputations would have already have been done.

I suggest the parties select an other mediator through the court or through the ADR Section of the local or state bar.

Mike

Michael J. Bartlett|Deputy General Counsel|Federal Mediation & Conciliation Service|(202) 606-3737|m.bartlett@fmcs.gov

This email is intended only for the recipient to whom it is addressed and may contain information that is sensitive, confidential or privileged by law. If you have received this message in error, any review, use, dissemination or copying is prohibited. In case of such error, please contact the sender immediately and delete the material from your computer system.

Bartlett Mike

From: Starr Dawn
Sent: Monday, August 05, 2013 5:51 PM
To: Bralley Gene
Cc: Bartlett Mike
Subject: Re:

Gene

It will likely be tomorrow till Mike or I get back to you, as it is after business hours in DC and close to midnight in my time zone. Talk to you tomorrow. Dawn

On Aug 5, 2013, at 11:34 PM, "Bralley Gene" <gbralley@fmcs.gov> wrote:

> Thanks.

>

> Gene

>

> Sent from my iPhone

>

> Gene Bralley

> Director of Mediation Services

> FMCS W-6

> 2345 Grand Blvd. Suite 625

> KCMO 64108

>

> 816 426 2032 Office

> 816 426 2033 Fax

> 913 484 6557 Cell

> [Gbralley@fmcs.gov](mailto:gbralley@fmcs.gov)

>

>

>

> On Aug 5, 2013, at 4:27 PM, "Starr Dawn" <dstarr@fmcs.gov> wrote:

>

>> No, it does not sound like a matter we can do as an agency, and I agree it would not appear appropriate as an individual's outside activity I am on leave and with this email I am asking Mike Bartlett to review this issue and one of us will get back to you shortly. Thanks. Mike, please give me your thoughts on this. Thank you.

>>

>>

>>

>>

>> On Aug 5, 2013, at 10:01 PM, "Bralley Gene" <gbralley@fmcs.gov> wrote:

>>

>>> Received call from Mike today,

>>>

>>> Retired mediator is involved in a land dispute with his deceased wife family.

>>>
>>> He asked : if he could mediate this as an individual mediator or with an interagency through the courts.
>>>
>>> Dale attorney and deceased wife family attorneys would pay the bill for our services.
>>>
>>> I told I do not think we can do this type of mediation. I was also concerned about the perception of our
neutrality since Dale is a former employee and friend of
>>>
>>> Please provide guidance.
>>>
>>> Gene
>>>
>>>
>>> Gene Bralley
>>> Director of Mediation Services
>>> FMCS W-6
>>> 2345 Grand Blvd. Suite 625
>>> KCMO 64108
>>>
>>> 816 426 2032 Office
>>> 816 426 2033 Fax
>>> 913 484 6557 Cell
>>> Gbralley@fmcs.gov
>>>
>>>

Bartlett Mike

From: Bartlett Mike
Sent: Wednesday, August 03, 2011 10:13 AM
To:
Cc: Starr Dawn; Leonard Fran
Subject: RE: FDR check

You have advised me that each of you (you) will be presenters at the upcoming FDR conference, that FDR will comp certain of your expenses and that you will receive an additional cash payment of \$700 intended to cover additional and miscellaneous expenses. You have signed an "acknowledgement" of some kind as to this arrangement. You have asked how the \$700 should be handled.

First, you should submit any document for which your signature is requested by an outside party to OGC for review before signing it. Second, any expenses incurred by you which are not comped by FDR should be submitted to FMCS for reimbursement in the normal fashion. The \$700 payment should be tendered directly to FMCS. No portion of the \$700 should be used by you for expenses or for any other purpose. You should be aware that retention of any part of the \$700 would be considered prohibited compensation from an outside source and an ethics violation since, as a federal employee, you may not receive compensation from any entity other than the US Government.

Let me know if you have any additional questions.

Mike

Michael J. Bartlett | Deputy General Counsel | Federal Mediation & Conciliation Service | (202) 606-3737 | mbartlett@fmcs.gov This email is intended only for the recipient to whom it is addressed and may contain information that is sensitive, confidential or privileged by law. If you have received this message in error, any review, use, dissemination or copying is prohibited. In case of such error, please contact the sender immediately and delete the material from your computer system.

-----Original Message-----

From:
Sent: Tuesday, August 02, 2011 6:43 PM
To: Bartlett Mike
Cc: 1
Subject: FDR check

Mike

We decided to limit our hand copies to 3 pages, so don't need to deal with Kinkos, but still need to figure out how to handle the \$700.

Thanks

Bartlett Mike

From: Sunoo Jan
Sent: Wednesday, August 03, 2011 4:46 PM
To: 'awilkinson@lrp.com'
Cc: Harragin Valerie; McKenney Denise; Bartlett Mike; Beck Allison
Subject: Re: [QUAR] RE: Audio/Visual Request Form - FDR Conference

That's great, Angela!

We'll let you know the amount (if it's under \$700) and the checks do need to be made out to FMCS.

Thanks

Jan

8/3 - T-

Accept check to FMCS for \$700.

----- Original Message -----

From: Angela Wilkinson <awilkinson@lrp.com>

To: :

Cc: Daniel Gephart <dgephart@lrp.com>

Sent: Wed Aug 03 16:35:34 2011

Subject: RE: [QUAR] RE: Audio/Visual Request Form - FDR Conference

Hi

Regarding your question on the \$700 expense reimbursement, we can make the check payable directly to FMCS if you prefer. Or we can make the check payable to you. It is completely up to you, I just need you to let me know.

Please let me know if you have any additional questions.

Thank you,

Angela Wilkinson
Conference Programs Administrator
LRP Publications
360 Hiatt Drive
Palm Beach Gardens, FL 33418
Phone: (561) 622-6520 ext. 8683
Fax: (561) 622-2876
awilkinson@lrp.com
www.lrpconferences.com

From: :
Sent: Wednesday, August 03, 2011 3:44 PM
To: Daniel Gephart
Cc: Angela Wilkinson
Subject: RE: [QUAR] RE: Audio/Visual Request Form - FDR Conference

Hi Dan,

I got them off the internet where they were posted for the world to see and "share" buttons were on the bottom of some of them. One was from an author pushing a book, and others were from discussion threads...I think the intention was obviously for public use and comment.

I even edited several of them.

I'll write for permission right now, but if they are unusable, don't post them, and I'll just have to share their sites with the class...

Bartlett Mike

From: Bartlett Mike
Sent: Friday, August 31, 2012 3:51 PM
To: Starr Dawn (dstarr@fmcs.gov)
Subject:
Attachments: _0830082241_001_001.pdf; SKMBT_C36012083111410_001.pdf;
SKMBT_C36012083111411_001.pdf

Dawn:



S: Friday, July 29, 2011

Dear

Ref:

I am serving as an Employee Advocate for [redacted] in the matters that relate to her Progressive Discipline and EEO Complaint with [redacted] and its affiliates.

It is my understanding, and that of [redacted] that you have placed her on notice of a Step 3, Final Discipline with a "special separation plan." Further, it is our understanding that the notice provides [redacted] with 21 days to seek legal/advisement with an effective date of 13 July 2011, and matures on 3 August 2011 as the date of separation. Additionally, your notice provides [redacted] an opportunity for extension, should she seek assistance/legal advisement.

Currently, [redacted] has requested copies of her official personnel record, the final copy of the special separation plan, and other documents that are the basis for the discipline. As of today's date, July 25, 2011, those promised documents have not been provided to [redacted].

Clearly, these disciplinary actions have been accelerated and progressed rapidly since May 2011. [redacted] has delayed critical information to [redacted] that would afford her an opportunity to address these matters. Therefore, we are requesting an initial 30-45 day extension from 3 August 2011 to address the impending progressive discipline, as well as the pending Federal and State EEO complaint. The initial 30-45 day timeline would be advantageous to all parties.

THE EMPLOYEE ADVOCATE

In closing, please ensure that you copy me and send me advance notice of any meetings, correspondence, and discussions that will include any matters related to the EEO complaint and the disciplinary process. I will respond promptly

Sincerely,

cc:

via facsimile:

- U.S. Equal Employment Opportunity Commission
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203

FMCS Policy on Outside Employment and Activities

TO: All Employees

FROM: Scot Beckenbaugh
Acting Director

SUBJECT: Policy on Outside Employment and Activities

Federal employees have a duty to protect the public trust and to avoid any potential conflict of interests arising from his/her position as a government employee. While the Agency does not seek to prohibit all outside employment and activities, the purpose of this policy is to remind all FMCS employees that certain prohibitions do exist relating to outside employment and activities.

FMCS Directives 5804:7 – 5804:15 provide guidance on outside employment and activities. As a general rule, an employee cannot engage in outside employment or any outside activity if it conflicts with the employee's government position. An outside activity may include serving as an officer (e.g. president, director, chairman, treasurer) for a non-profit organization that provides services similar to FMCS or seeks to further the interests of a union or management entity.

Outside employment or activity conflicts with official duties - -

- if it is prohibited by statute or by regulations of the employee's agency, or
- if the activity would require the employee to be disqualified from matters so central to the performance of the employee's official duties as to materially impair the employee's ability to carry out those duties. This includes engaging in outside employment or activity which interferes, or might interfere, with the impartial performance of official duties, or jeopardize the acceptability of the employee or the Service in regard to the performance of official duties or
- if the outside activity or employment creates an appearance of a conflict of interest with your position as a federal employee or with the mission of FMCS

To ensure compliance with these Directives, all outside employment and activities that have the potential to create a conflict of interest must be preapproved (as required by Directive 5804:14) by the Director of Mediation Services (DMS) and the Designated Agency Ethics Official (DAEO)(Maria A. Fried). If there is any doubt as to whether participation in any activity, employment or organization has the potential to create a conflict of interest, the employee should consult with his/her DMS and the DAEO. Each outside employment or activity request will be evaluated independently to determine if there is a conflict of interest with the employee's official duties. Requests for approval

should provide enough information to render advice. Information that must be provided includes, name of the organization or group for whom the service/activity is to be performed, the nature of the outside employment or activity, approximate dates and times when work or activity will be performed, and whether the activity or employment will be compensated.

Failure to comply with this policy may result in disciplinary action to include removal and/or criminal penalties.

Outside Activities: Your Life Outside FMCS



- I. [Introduction](#)
- II. [Basic Ethics Review](#)
- III. [Definitions](#)
- IV. [Employment](#)
- V. [Outside Organizations](#)
- VI. [Approval Process](#)
- VII. [Conclusion](#)

Representation Before the Government

There are ethics laws concerning representation before the Government. Let's examine them:



- 18 U.S.C. 203: Prohibits you from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity. ([Here's a link to 18 U.S.C. 203](#)) For more information about compensation for representational services, [here's a link to more information from the Office of Government Ethics](#).
- 18 U.S.C. 205: Prohibits you, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from acting as agent or attorney for anyone, before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest. There are some exceptions to this statute. ([Here's a link to 18 U.S.C. 205](#))

Let's look at some examples to help clarify these statutes...



Outside Activities: Your Life Outside FMCS



Example of Representation

In essence, 18 U.S.C. 205 prohibits federal employees from representing other parties before the Government and 18 U.S.C. 203 prohibits federal employees from receiving any compensation for such representation.



- I. Introduction
- II. Basic Ethics Review
- III. Definitions
- IV. Employment
- V. Outside Organizations
- VI. Approval Process
- VII. Conclusion

Example:

You are an attorney with the FMCS Office of General Counsel. You are contacted by a labor organization to be their paid representative concerning a lawsuit they have against the Department of Labor. You are prohibited by 18 U.S.C. 203 from accepting compensation and by 18 U.S.C. 205 from representing this organization before the Government (even though this representation is to another part of the Government).



Outside Activities: Your Life Outside FMCS



- I. Introduction
- II. Basic Ethics Review
- III. Definitions
- IV. Employment
- V. Outside Organizations
- VI. Approval Process
- VII. Conclusion

The Approval Process for Outside Activities

Now, we'll turn our attention to the process for obtaining approval for outside activities.

FMCS has specific regulations concerning outside employment and activities of FMCS employees. These regulations can be found at 29 C.F.R. 1400.735-12, and, among other things, require that FMCS employees obtain written approval before engaging in any outside employment or activity with or without compensation.



Before you read our current regulations, we want to give you some news.....



Outside Activities: Your Life Outside FMCS



Form and Content Of A Request For Approval

The process for approval will not change under the proposed regulations. Your request for approval of outside activity has to be submitted in writing to your Ethics Officer. The request must be sent through your immediate supervisor and must include:



I. Introduction

II. Basic Ethics Review

III. Definitions

IV. Employment

V. Outside Organizations

VI. Approval Process

VII. Conclusion

1. Your name, location, and name of supervisor
2. Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected
3. The name, address, and telephone number of the outside employer or organization.
4. The estimated time to be devoted to the activity
5. First day of activity or employment
6. Frequency of activity or employment, including hours per week or tentative schedule.
7. A statement that you won't use official duty time or resources for the outside activity
8. Pay and other remuneration (e.g., fee, per diem)



Outside Activities: Your Life Outside FMCS



- I. Introduction
- II. Basic Ethics Review
- III. Definitions
- IV. Employment
- V. Outside Organizations
- VI. Approval Process
- VII. Conclusion

Standard for Approval

So, what's the standard for approval of a request for outside activity?

In general approval is granted upon a determination that the outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 C.F.R. Part 2635.

Don't forget that in your FMCS work, you must act impartially and you may not engage in outside activities or employment that conflict with your official duties.

The decision is made by the Ethics Officer and must be in writing.



Outside Activities: Your Life Outside FMCS

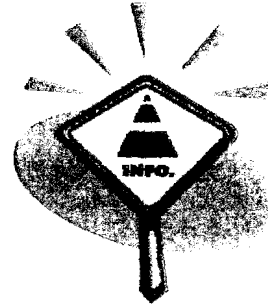


- I. [Introduction](#)
- II. [Basic Ethics Review](#)
- III. [Definitions](#)
- IV. [Employment](#)
- V. [Outside Organizations](#)
- VI. [Approval Process](#)
- VII. [Conclusion](#)

Where To Go For More Information

FMCS employees may wish to contact the Office of Ethics/OGC for ethics advice. Here are FMCS ethics contacts:

- Dawn E. Starr, Designated Agency Ethics Official (DAEO) at (202) 606-5444
- Michael J. Bartlett, Alternate Designated Agency Ethics Official (ADAEO) at (202) 606-3737
- Jeannette Walters-Marquez, Deputy Ethics Official at (202) 606-5488
- Mery Skolochenko, Staff Assistant at (202) 606-5444



You can also go to the web site of the Office of Government Ethics (OGE). This site contains comprehensive information on ethics including OGE's ethics opinions, forms, even more training and other areas of interest.

[\(Here's a link to the OGE web site..another good site to "bookmark."\)](#)



To: Maria Fried
General Counsel

From: Jeannette Walters-Marquez
Attorney-Advisor

Date: October 26, 2005

Subject: Outside activities: AICPR

QUESTION

You have requested advice as to whether _____ a Commissioner for the FMCS International and Dispute Resolution Services, and the Director of the Inter-Organizational Cooperation Program, can serve as FMCS' **official** representative to the Alliance for International Conflict Prevention and Resolution (AICPR), and serve on its Board of Directors.

CONCLUSION

- A. As to the employee's positions as a Board member of AICPR, we determined that (1) _____ can pursue this outside activity in her personal capacity; and (2) that she should disclose any known disqualifying financial interest that the organization may have, including grants.

_____ should be advised that she cannot use her Government employment for a purpose that gives the appearance of using her office for private gain, giving preferential treatment, impeding Government efficiency or economy, making Government decisions outside official channels, losing her independence or impartiality, or adversely affecting the confidence of the public in the integrity of the Government.

- B. If FMCS determines that the service to AICPR furthers the agency's mission or programs or is there a need for exchange of information, then FMCS Director could appoint her to serve as an official agency liaison. This will require her resignation as a AICPR Board member, and to any fiduciary responsibilities she may have with the organization.

BACKGROUND:

AICPR is a non-profit organization formed in 1999. It is an organization of non-governmental and governmental organizations working to promote cooperation within the field of conflict resolution and with related fields, including security, development, humanitarian assistance, human rights and sustainable development. See FMCS website.

AICPR's mission relates to the mission of FMCS Inter-Organizational Cooperation Program.

As we understand, AICPR Board Members of these organizations do not receive compensation for their duties.¹ The disclosure of compensation for duties of an officer of an organization is prohibited under 18 U.S.C. § 203, and requires another type of analysis.

ANALYSIS

I. Outside Activity –Personal Capacity

Federal government employees are not prohibited from participating in professional organizations. However, an employee may not have outside employment or be involved in an outside activity that conflicts with the official duties of the employee's position. An activity conflicts with official duties --

- if it is prohibited by statute or by the regulations of the employee's agency, or
- if the activity would require the employee to be disqualified from matters so central to the performance of the employee's official duties as to materially impair the employee's ability to carry out those duties.

See 5 C.F. R. § 2635.802

In the case of Commissioner Andrea Strimling, we determine that the outside activity is not prohibited by law or regulation, and does not in itself present a conflict with the employee's official duties. The employee should be advised that: (1) she has to clearly explain in her speech engagements or writings that her comments or opinions are made in her personal capacity and do not represent FMCS' views; and (2) that she can not use her Government employment for a purpose that gives the appearance of using her office for private gain; giving preferential treatment; impeding Government efficiency or economy; making Government decisions outside official channels; losing her independence or impartiality; or adversely affecting the confidence of the public in the integrity of the Government.

¹ 18 U.S.C. § 203 would prohibit any Government employee who is also an officer in an organization like AICPR from receiving, directly or indirectly, any compensation for services rendered in relation to any proceeding, application, request for ruling or other determination, contract, claim, controversy, or other particular matter in which the United States is a party or has a direct or substantial interest. Pursuant to 18 U.S.C. § 203, there could be a violation of the statute if the Federal Government employee, as an officer of an organization, is paid to represent the grantee before any Government agency, department, or court, or employee thereof, on any matter in which the Government has an interest.

II. Outside Activity-Official Capacity

If the FMCS Director determines that participation in AICPR furthers FMCS's mission or programs, or that there is a need for exchange of information, FMCS could appoint an employee to serve as an official agency liaison with the organization. As an Agency liaison the employee's sole focus is to represent FMCS for the purpose of exchanging comments, views, or opinions regarding those matters in which FMCS has an interest. This role would exclude service in "administrative roles," "management of non-Federal organizations," or the exercise of "fiduciary responsibilities²."

III. Official Capacity/Official time

The use of official time is regulated by 5CFR § 2635.705 which reads as follows in pertinent:

Use of official time.

(a) *Use of an employee's own time.* Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

It is sound agency policy not to allow employees to serve as officers of organizations in their official capacity because the professional organization's interest may not be FMCS' interest at any given time. That does not mean that FMCS can not pay for the expenses of an employee while he/she is serving as an officer of a professional organization in his/her personal capacity. 5 C.F.R. § 251.202 provides that an agency may provide support services to certain organizations, including professional associations, when the agency determines that "such action would benefit the agency's programs or would be warranted as a service to employees who are members of the

² Fiduciary Responsibility - This means service as an officer of the non-Federal organization (e.g., president, vice-president, secretary, treasurer), or in the role of a member of the board of directors or trustees that includes voting authority for organization matters, or as a general partner in a partnership. This term refers to those persons charged with a legal duty (under State law) to direct or manage the organization. It generally does not include persons who perform advisory roles, or serve in topical committee chair positions.

organization." This regulation specifically provides that an agency may pay for expenses of employees to attend professional organization meetings and permits the use of agency equipment or administrative support services for papers to be presented at conferences. Furthermore, employees may be authorized to take excused absences (otherwise known as administrative leave) to work on certain outside matters if the matter is related to the agency's mission and is in the agency's interest. See OGE letter # 93-6. Thus, the decision to fund participation in professional activities is within the agency's discretion.

II. Fundraising

It is important to explain to all employees that under 5 C.F.R. §2635.808 an employee may engage in fundraising activities for professional organizations in a personal capacity if the employee does not use his official title, position, or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to him to be a prohibited source for purpose of the gift restriction. This provision prohibits managers from fundraising by soliciting funds or support from subordinates.

This document contains information that is attorney privileged and confidential and constitutes attorney work-product prepared in anticipation of litigation, and may be exempt from disclosure.


Disciplinary Action against Mediator for Ethics Violations

2005: A mediator was suspended for thirty (30) days because she misused her position by requesting information about the status of her brother's job application while serving as a mediator for the prospective employer of her brother. FMCS determined that at a minimum her actions created an appearance of a conflict of interest.

2004:

MEMORANDUM

TO: Maria A. Fried
General Counsel

FROM: Arthur Rosenfeld, Director 

DATE:

Re: Screening Arrangement

This memorandum is to provide you with written notification of the screening agreement I have implemented to ensure that I comply with my obligation to recuse myself from certain matters with which I have a financial interest, or a personal or business relationship. These recusal obligations are set forth in the Ethics Agreement I executed on July 29, 2005 (copy attached), prior to my confirmation as Director, Federal Mediation and Conciliation Service.

I am disqualified from participating personally and substantially in any particular matter that would have a direct and predictable effect on Bell South.

Unless I am authorized to participate, I also am disqualified from participating in any particular matter involving specific parties in which Bell South is a party or represents a party.

In order to help ensure that I do not participate in matters relating to any of the entities listed above, I have taken or will take the following steps:

I have instructed Maria A. Fried, General Counsel, to screen all matters directed to my attention that involve outside entities or that require my participation, to determine if they involve Bell South.

If Maria A. Fried determines that a matter involves any of these entities or organizations directly or indirectly, she will refer them to my Deputy Director and/or Chief of Staff for action or assignment, without my knowledge or involvement.

I will provide Maria A. Fried and the Deputy Director and/or Chief of Staff with a copy of this memorandum so that they may fully understand the purpose and scope of my recusal obligations and this screening agreement.

I will provide a copy of this memorandum to my principal subordinates (or advise my principal subordinates of my recusal obligations and screening arrangement, as set forth in this memorandum). I also will instruct my principal subordinates that all inquiries and comments involving any of the entities listed above should be directed to my Deputy Director and/or Chief of Staff, without my knowledge or involvement.

In consultation with an agency ethics official, I will revise and update my ethics agreement and/or this memorandum whenever that is warranted by changed circumstances, including changes in my financial interests, my personal or business relationships, or the nature of my official duties.

In the event of any changes to this screening arrangement, I will provide a copy of the revised screening arrangement memorandum to (or advise) you, Maria A. Fried, my Deputy Director, and/or Chief of Staff, and my principal subordinates.

Attachment

cc: Office of Government Ethics
Deputy Director *343*
Chief of Staff *102*
Bonnie Chernikoff, Executive Assistant *Ba*

TO:

FROM: Maria A. Fried
Designated Agency Ethics Official

SUBJECT: Post-Employment: Representing the .

DATE: May 13, 2005

This is in response to your question of whether you may represent the (AHLA) and further, whether you can represent some of the hotel members of the Association (as a group) in negotiations with the unions. It is my understanding that the AHLA has not had any business nor does it have any business with the FMCS. Based on this information, you are not prohibited from representing the AHLA. However, whether you are prohibited from representing the group of hotels in negotiations with unions depends on whether your representation involves specific matters that you were involved with while with FMCS or whether your participation in that regard, creates an appearance of a conflict of interest if you acquired information in your role as a mediator that the other party (hotel or management) was not privy to. Still, depending on the circumstances, you may be able to provide behind-the-scenes assistance. Below are the statutory prohibitions addressing post-employment matters affecting senior employees.

18 U.S.C. 207 contains seven substantive post-employment restrictions:

1. 18 U.S.C. 207 (a) (1) sets out a **lifetime ban** against making, with the intent to *influence, any communication to or appearance before* an employee of the U.S. on behalf of any other person in a *particular matter involving a specific party* in which the employee *participated personally and substantially* as an employee, and in which the U.S. *is a party* or has a *direct and substantial interest*. This is a lifetime restriction that commences upon an employee's termination from federal service. The target of this provision is the former employee who participated in a matter while employed by the Government and who later "switches" sides by representing another person on the same matter before the United States. The restriction does not apply unless a former employee communicates to or makes an appearance before the United States on behalf of some other person. A former employee is not prohibited from providing behind the scenes assistance in connection with the representation of another person. Moreover, the restriction prohibits only those communications and appearances that are made with the intent to influence. A communication can be made orally, in writing, or through electronic transmission. An appearance extends to a former employee's mere physical presence at a proceeding when the circumstances make it clear that his attendance in intended to influence the United States. An intent to influence the United States may be found if the communication or appearance is made for the purpose of seeking a discretionary Government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which the

employee involved has an appreciable element of dispute concerning the particular Government action to be taken.

A communication to or appearance before the United States is not prohibited unless it concerns the same particular matter involving specific party or parties in which the former employee participated personally and substantially while employed by the government. A former employee's participation may be substantial if his involvement is of significance to the matter. A particular matter includes an investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrests, or judicial or other proceeding. In determining whether two situations are part of the same particular matter, one should consider all relevant factors, including the amount of time elapsed and the extent to which the matters involve the same basic facts, or issues and the same or related parties.

2. 18 U.S.C. 207 (a) (2) sets out a very similar ban, except that it is of shorter duration (only **two years** following the employee's termination of service) and applies only to those who had *official responsibility* for a matter that was *actually pending* during the employee's *last year* of Government service. In other words, even though the employee was not "personally and substantially" involved in a particular matter, if the matter fell within his official responsibility during the last year of service, the employee is barred from communicating (with the intent to influence) with any Government employee on the same issue.

3. 18 U.S.C. 207 (b) bars a former employee, for **one year** after his Government service ends, from knowingly *representing, aiding or advising* on the basis of *covered information*, any other person concerning any *ongoing trade or treaty negotiation* which, in the *last year* of Government service, the employee *participated personally and substantially*. The term "covered information" refers to agency records which were accessible to the employee and were exempt from disclosure under the Freedom of Information Act. If the restriction applies, note that it applies even to "behind-the-scenes" assistance.

4. 18 U.S.C. 207 (c). For **one year** after their service terminates, senior employees may not knowingly make, with the *intent to influence*, any *communication or appearance* before the *agency in which they served* in the *year prior to their leaving*, if the communication or appearance is made on behalf of any other person and *official action* by the agency is sought.

The purpose of this "cooling off" period is to allow for a period of adjustment for the former senior employee and personnel at the agency served and to diminish any appearance that government decisions are being improperly influenced by the former senior employee. Like the "lifetime bar", this restriction does not apply to "behind-the-scenes" assistance. Unlike the "lifetime bar," this restriction does *not* require that the former senior employee was "personally and substantially" involved in the matter that is

the subject of the communication or appearance. Instead, it applies to any representation back to the agency that the employee just left.

5. 18 U.S.C. 207 (d) provides that for one year after service in a very senior position terminates, no former senior employee may knowingly make, with the intent to influence, any communication or appearance before any individual appointed to an Executive Schedule position or before any employee of a department or agency in which he served as a very senior employee during the one-year period prior to termination from Government service if that 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 that individual or employee.

6. 18 U.S.C. 207 (f). For **one year** after their service terminates, senior and very senior employees may not *represent, aid or advise a foreign government or foreign political party with the intent to influence* the decision of an employee of *any department or agency* of the United States. Note that this prohibition *includes* “behind-the-scenes” assistance, such as drafting a proposal, advising on another’s appearance, or consulting on strategies.

7. 18 U.S.C. 207 (l). Not Applicable. (Relates to termination of assignment from a private sector organization to an agency, under the Information Technology Exchange Program).

MEMORANDUM

TO:

FROM: Maria A. Fried
Designated Agency Ethics Official

SUBJECT: Labor Healthcare Forum

Issue: Whether you can accept Blue Cross Blue Shield Association's offer to attend the Labor Healthcare Forum on July 18-20, 2005, at their expense? Based on our gift acceptance authority, you may accept the gift as it relates to the forum because it is a widely attended gathering and is authorized under our gift acceptance authority. However, I recommend that you accept the basic standard package which includes hotel room for July 19, meals and conference registration fee. I do not believe attending the golf and/or spa activities is appropriate because these "gifts" are not covered under the "widely attended gathering" and because accepting these activities do not aid any function within the Director's jurisdiction as defined by our appropriation language and agency regulation. However, nothing in this memorandum precludes you from paying for the golf or spa activity from your own expenses.

Generally, absent an exception, a federal employee is prohibited from accepting a gift from a prohibited source or a gift that is offered as a result of one's official position. A prohibited source is one that is seeking official action by the employee's agency; does business or seeks to do business with the employee's agency; or conducts activities regulated by the employee's agency. A gift given because of the employee's official position is one that would not have been offered had the employee not held the status, authority, or duties associated with his Federal position.

In this situation, there are two exceptions that permit the acceptance of the gift. First, gifts accepted pursuant to statutory authorization are exempt from this prohibition. Specifically, FMCS has statutory authorization in its Appropriation Act to accept gifts of services and real, personal, or other property in the aid of any functions within the Director's jurisdiction. Second, the exception relating to widely attended gatherings also applies in this case.

As you know, Blue Cross Blue Shield has a contract with our agency and thus, is considered a prohibited source. However, even if the gift offered comes from a prohibited source or is offered because of one's official position, an agency may accept the gift if it is determined that an employee's attendance is in the interest of the agency because it will further agency programs and operations. Relevant factors to consider are the importance of the event to the agency, the nature and sensitivity of the employee's

role in any such matter, the purpose of the event; the identity of other expected participants and the market value of the gift of free attendance.

Based on the itinerary I received from Blue Cross and Blue Shield, it appears that the purpose of the Healthcare Forum is to provide a forum for prominent business and labor leaders to discuss a variety of healthcare bargaining issues. It is my understanding that healthcare issues are critical elements in the collective bargaining arena. Based on representations made by Ms. Wegman, the forum attendees include labor, management and international leaders in the industry. Ms. Wegman indicated that Blue Cross extended the same gift offer to other attendees as well. Additionally, the focus of the forum relates to what labor consumers need to educate and better equip them for healthcare bargaining.

I believe the forum is relevant to FMCS' interests and mission and that the agency's interest outweighs the concern that the acceptance of the gift of free attendance may appear to improperly influence the employee in the performance of his duties. As long as the gift is not being offered with the intent to influence or bribe a federal employee, and was not solicited or coerced by the employee, and not so frequently offered as to give a reasonable person the belief that the employee was using his public office for private gain, the gift may be accepted as it relates to the lodging on July 19 and conference registration fee and meals for July 20. (Basic Package level 2b-Hotel room for July 19, meals, conference registration fee) I do recommend declining the gift as it relates to the golf and spa activities because accepting these gifts gives the appearance of using one's public office for private gain. However, if you wish to participate in the golf or spa activities, you may do so at your own expense.

Fried Maria

From: Fried Maria
Sent: Thursday, March 17, 2005 4:57 PM
To: Pearlstein Arthur
Subject: Draft response

Richard,

This is the advice that OGC is prepared to give the regarding your request to complete several projects while in a leave without pay status.

5 CFR 2635.702 states that an employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the member has or seeks employment or business relations.

Specifically, Richard states that his leave of absence is for the purpose of allowing him "to complete several projects that he had underway" while serving on an IPA at the . These include pursuing a national leadership program and launching pilot projects with two hospitals addressing the cost of conflict in the health care industry with a private sector company; and fulfilling his commitment to assist labor and management organizations affiliated with the Tripartite Initiative of the Building and Construction Trades and the Construction Users Round Table. In this capacity, Richard facilitated national meetings for these organizations and their counterparts and also developed training programs on leadership responsibilities and conflict resolution techniques which he delivered to the IBEW. As a result, he's received three additional requests (which he anticipates will increase to nine) to provide the programs to affiliated Union leadership.

Since was on an IPA from our agency and serving in an official capacity when he became involved in these programs, he can not use the contacts he made while in his official capacity to continue ongoing projects for his personal gain. Approving a leave of absence for him to complete these commitments in a private capacity, at a minimum, gives the appearance that he used his public office for private gain. Also, although he will be on a leave without pay status, this does not affect his status as a federal employee. As such, his private business involvement with these organizations gives the appearance of a conflict of interest because he is still affiliated with FMCS and his business interests may appear to have FMCS endorsement or sanction.

Maria

Fried Maria

From: Fried Maria
Sent: Wednesday, March 02, 2005 8:45 AM
To: Pearlstein Arthur
Subject:

Arthur, the bottom line is that [redacted] will need to tell us what off-duty employment activities he will be engaged in while in a leave status. The status of employee whether in a leave or pay status is unaffected by standards of conduct rules and regulations. If [redacted] plans to engage in any outside employment he needs to seek the approval of the Director before engaging in the activity. If in a leave status, [redacted] must ensure that he is not acting in an official capacity. Additionally, if the agency determines that [redacted] has a financial interest in an activity that represents a conflict of interest to the agency, we can require him to divest himself of that financial interest or terminate his involvement in that activity.

Fried Maria

From: Fried Maria
Sent: Monday, February 14, 2005 11:33 AM
Subject: RE: read this first on the

Arthur, here's some inflight reading for your flying pleasure....
The agency can only be reimbursed for travels or accept in-kind payment only if attendance to the function relates to his official duties (he is on official business) as deemed by the Acting Director. If this is not official business taken on behalf of the agency, 31 USC 1353 doesn't apply and he is not entitled to any reimbursement by the agency nor can he accept in-kind payment. In other words, if is going to be on annual leave, we can't invoke 1353. Also, he is prohibited from receiving any compensation regardless of whether he is on leave or not.

If Scott can deem this to be something that fits into FMCS' mission without creating the appearance of a conflict of interest and if the organization is a tax exempt organization under 26 USC 501(c)(3), then we can invoke 31 USC 1353 and benefit from the rules relating to accepting travel from non-federal sources. Thus, the agency can accept reimbursement for his travel expenses or he can receive in-kind payment directly from the organization (i.e. they pay and arrange for his travel directly) if it is in connection with an employee's attendance to the function relating to his official duties. In other words, can't accept any cash for reimbursement of expenses. Instead, travel benefits must be provided in kind or paid by check made payable to the FMCS (not the employee). It's OK for to pay for travel expenses and have the organization write a check to FMCS and then FMCS pay. Under no circumstances can receive pay/compensation for his training. This of course assumes that Scott has already determined that participation would not create any appearance of conflicts concerns, etc. and is in the agency's interest. Please let know that we'll need break down of the expenses paid for by the nonprofit organization if they exceed \$285.

If not on official business, it becomes very complicated at this point because of his position and depending on whether he still is considered a Presidential appointee to a full-time noncareer position (in which case he can't accept any outside employment or any other outside activity during that presidential appointment) or a noncareer employee (one who occupies a position above a GS-15 or for whom's rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay for a GS-15.) If he is the latter, we need to talk because of the computations involved. -----Original Message-----
From: Pearlstein Arthur
Sent: Monday, February 14, 2005 9:06 AM
To: Fried Maria
Subject: Re: read this first on the

I'll call in a few minutes.

-----Original Message-----
From: Fried Maria <mfried@fmcs.gov>
To: Pearlstein Arthur <apearlstein@fmcs.gov>
Sent: Mon Feb 14 09:03:58 2005
Subject: RE: read this first on the

As long as the reimbursement is to the agency, it will be OK. Otherwise, travel expenses can be absorbed by the management group as like kind expenses but will have to complete an AB 76 so that I can eventually report it to OGE.

---Original Message-----
From: Pearlstein Arthur
Sent: Saturday, February 12, 2005 9:47 PM
To: Fried Maria

Subject: read this first on the Richard series

ria, you can all but ignore the other e-mails on this; just let me know if this arrangement is ok (receipt of reimbursement for travel) provided Scot approves; if so, send the form.

Thanks.

I'll be reachable by blackberry or cell (202-360-2276) Monday

Fried Maria

From: Fried Maria
Sent: Monday, February 14, 2005 9:04 AM
To: Pearlstein Arthur
Subject: RE: read this first on the

As long as the reimbursement is to the agency, it will be OK. Otherwise, travel expenses can be absorbed by the management group as like kind expenses but will have to complete an AB 76 so that I can eventually report it to OGE.

-----Original Message-----

From: Pearlstein Arthur
Sent: Saturday, February 12, 2005 9:47 PM
To: Fried Maria
Subject: read this first on the

Maria, you can all but ignore the other e-mails on this; just let me know if this arrangement is ok (receipt of reimbursement for travel) provided Scot approves; if so, send _____ the form.

Thanks.

I'll be reachable by blackberry or cell (202-360-2276) Monday

Walters-Marquez Jeannette

From: Fried Maria
Sent: Wednesday, March 08, 2006 4:08 PM
To: Walters-Marquez Jeannette
Subject: FW: Speaking Engagement Request on June 14th

Jeannette, can you address this. I see a few issues that need to be looked into. Since this is an union audience only, does this create an appearance of a conflict of interest? We need to make sure if we do participate that it is only factual information that is available to the public with particular emphasis on maintaining neutrality even in your presentation. With respect to travel reimbursement, she may accept travel reimbursement if the presentation relates to her official duties as an FMCS employee but I would have some concern about discussing the NLRB's role with respect to mediation and in relation to her official role as an FMCS employee.

She may be able to do this in her private capacity and accept reimbursement but this could get tricky if she combines it with FMCS business.

-----Original Message-----

From:
Sent: Wednesday, March 08, 2006 3:50 PM
To: Arnold John; Fried Maria
Subject: Speaking Engagement Request on June 14th

John and Maria

BCBSA works in conjunction with the National Labor College (<http://www.georgemeany.org/index.html>) to educate new union-side business representatives, first line supervisors, and BCBSA employees about labor issues. They have asked that I come to DC to give a short 20 minute speech about the NLRB and the FMCS with emphasis on the impact mediation can have. Since I have only 20 minutes, it made sense to me to discuss the economic impact of FMCS on work stoppage duration the savings mediation can provide the economy.

I would like permission to do this event for BCBSA. It is a very short speech and won't require much of my time to prepare remarks. I did ask BCBSA if they wanted higher-level government officials. They did not believe that it was necessary because the class size is relatively small.

BCBSA has offered to pay my airfare to DC and hotel room for the night. I do not know if this is permissible. If it is not, I can easily link this event to other FMCS business (likely to be loading the economic model on the agency's servers).

Please let me know if I am allowed to do this particular speech and what agency policy is regarding acceptance of travel expenses.

From:
Sent: Wednesday, March 08, 2006 3:50 PM
To: Arnold John; Fried Maria
Subject: Speaking Engagement Request on June 14th

John and Maria

BCBSA works in conjunction with the National Labor College (<http://www.georgemeany.org/index.html>) to educate new union-side business representatives, first line supervisors, and BCBSA employees about labor issues. They have asked that I come to DC to give a short 20 minute speech about the NLRB and the FMCS with emphasis on the impact mediation can have. Since I have only 20 minutes, it made sense to me to discuss the economic impact of FMCS on work stoppage duration the savings mediation can provide the economy.

I would like permission to do this event for BCBSA. It is a very short speech and won't require much of my time to prepare remarks. I did ask BCBSA if they wanted higher-level government officials. They did not believe that it was necessary because the class size is relatively small.

BCBSA has offered to pay my airfare to DC and hotel room for the night. I do not know if this is permissible. If it is not, I can easily link this event to other FMCS business (likely to be loading the economic model on the agency's servers).

Please let me know if I am allowed to do this particular speech and what agency policy is regarding acceptance of travel expenses.

Walters-Marquez Jeannette

From: Fried Maria
Sent: Monday, May 15, 2006 11:45 AM
To: Walters-Marquez Jeannette
Subject: FW: Speaking Engagement Request on June 14th

-----Original Message-----

From: Walters-Marquez Jeannette
Sent: Thursday, March 16, 2006 3:03 PM
To: Fried Maria
Subject: RE: Speaking Engagement Request on June 14th

O.K.

-----Original Message-----

From: Fried Maria
Sent: Thursday, March 16, 2006 3:02 PM
To: Walters-Marquez Jeannette
Subject: RE: Speaking Engagement Request on June 14th

Please advise that based on the information provided, you don't see any conflict of interests issues regarding her presentation. I would also let her know that she should complete an AB-76 so that FMCS will be reimbursed for her travel and expenses. You may want to send the form as an attachment to your e-mail. I don't think we should pay because it I don't think it came through official channels so I also don't think we need to offer to send another presenter. If they are willing to pay, she can go. If they are not willing to pay, then we may want to suggest that someone else go who will not have to travel because they are located in DC.

Maria

-----Original Message-----

From: Walters-Marquez Jeannette
Sent: Thursday, March 16, 2006 2:55 PM
To: Fried Maria
Subject: RE: Speaking Engagement Request on June 14th

Maria,

I do not see a problem in terms of neutrality because this is not a union audience only. There is a mix of supervisors, union representatives, and Blue Cross/Blue Shield (BCBSA) labor specialists. I also believe that because she is going to talk about FMCS, this presentation is part of her official duties. My opinion is that FMCS should pay for her trip and combined it with FMCS business. We still have the avenue of being reimbursed for her presentation under our gift authority which only applies to official business. (31 U.S.C. 1353, permits non-Federal sources, such as organizations, associations, or businesses, to pay the Government for travel, subsistence, and related expenses incurred by Government personnel while in their official capacities to attend meetings, conferences, seminars, symposia, and other similar functions.) We also have the option of sending another employee to the presentation. An employee locate in DC, will be less expensive. However, that is a management question: Is there a better and less expensive presenter?

I do not think that this presentation should be done in her private capacity. As I understand she is

Walters-Marquez Jeannette

From: Fried Maria
Sent: Monday, May 15, 2006 11:45 AM
To: Walters-Marquez Jeannette
Subject: FW: Speaking Engagement Request on June 14th

-----Original Message-----

From: Walters-Marquez Jeannette
Sent: Thursday, March 16, 2006 2:55 PM
To: Fried Maria
Subject: RE: Speaking Engagement Request on June 14th

Maria,

I do not see a problem in terms of neutrality because this is not a union audience only. There is a mix of supervisors, union representatives, and Blue Cross/Blue Shield (BCBSA) labor specialists. I also believe that because she is going to talk about FMCS, this presentation is part of her official duties. My opinion is that FMCS should pay for her trip and combined it with FMCS business. We still have the avenue of being reimbursed for her presentation under our gift authority which only applies to official business. (31 U.S.C. 1353, permits non-Federal sources, such as organizations, associations, or businesses, to pay the Government for travel, subsistence, and related expenses incurred by Government personnel while in their official capacities to attend meetings, conferences, seminars, symposia, and other similar functions.) We also have the option of sending another employee to the presentation. An employee locate in DC, will be less expensive. However, that is a management question: Is there a better and less expensive presenter?

I do not think that this presentation should be done in her private capacity. As I understand she is not involved with these organizations in her private capacity, and they are asking her to do her presentation because she woks for us.

After your input, I will write a memo to

Thanks,

Jeannette

-----Original Message-----

From: Fried Maria
Sent: Wednesday, March 08, 2006 4:08 PM
To: Walters-Marquez Jeannette
Subject: FW: Speaking Engagement Request on June 14th

Jeannette, can you address this. I see a few issues that need to be looked into. Since this is an union audience only, does this create an appearance of a conflict of interest? We need to make sure if we do participate that it is only factual information that is available to the public with particular emphasis on maintaining neutrality even in your presentation. With respect to travel reimbursement, may accept travel reimbursement if the presentation relates to her official duties as an FMCS employee but I would have some concern about discussing the NLRB's role with respect to mediation and in relation to her official role as an FMCS employee.

She may be able to do this in her private capacity and accept reimbursement but this could get tricky if she combines it with FMCS business.

-----Original Message-----

Dear

On June 30, 2005, my office sent you a letter regarding post-employment restrictions applicable to senior level officials in the federal government. In that letter you were advised that as a senior level official with the Federal Mediation and Conciliation Service (FMCS) several post federal employment restrictions applied to you regarding your employment activities after leaving FMCS.

It has recently come to my attention that you have approached our agency on more than one occasion requesting mediators to work in conjunction with your private consulting firm to provide training to the IBEW and CURT. In your e-mail dated January 21, 2006 to Director Rosenfeld you indicated that this project with the IBEW (on whose behalf you are acting) is a "continuation of the training arising from a joint labor management initiative entitled CURT Tripartite Initiative which began three years ago while you were the Director at FMCS." In your January 26, 2006 e-mail to our Acting Deputy Director Scot Beckenbaugh, you indicated that you while still employed with the Agency, you anticipated work with the IBEW because of the work you did with the Insulators Union on June 22-25, 2005. Additionally, you told several mediators at that time to hold certain dates, if possible, because you anticipated this work with the IBEW.

As the Designated Agency Ethics Official, I am compelled to remind you that your activity may be in violation of 18 U.S.C. 207 (a)(1) and 18 U.S.C. 207(c). This statute was implemented by Congress to prevent former officials from using "information" – as well as influence and access "acquired during government service at public expense, for improper and unfair advantage in subsequent dealings with their department or agency.

Given the fact that you are now serving as a private consultant to the IBEW, there is at a minimum, an appearance that you have used information obtained in the course of your official duties to the advantage of your client. Additionally, your insistent requests for specific mediators further illustrate an attempt to exert influence on government decisions. Indeed, the fact that you have direct access to our mediators such that you know of their availability is further demonstrative of your influence and access with FMCS.

Although it is not my attention to refer this matter to the Department of Justice, you should know that you may be exposing yourself and the agency to embarrassment.

In short, while we certainly want to accommodate the requests of the IBEW and other FMCS clients to the extent practicable, it is imperative that we act in a matter that does not suggest your former association with our agency influences those decisions.

FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, D.C. 20427

OFFICE OF THE GENERAL COUNSEL

July 5, 2005

MEMORANDUM

TO: Arthur Pearlstein

FROM: Maria A. Fried
Designated Agency Ethics Official

SUBJECT: Post Employment Rules

As an employee who has departed the agency, you are subject to certain restrictions. *It is vitally important that you understand these restrictions and that you follow them closely.*

Post Employment Restrictions

The primary post-employment restrictions are in 18 U.S.C. 207 which sets out a *lifetime ban* against making, with the intent to *influence*, any *communication to or appearance before* an employee of the U.S. on behalf of any other person in a *particular matter* involving a *specific party* in which the employee *participated personally and substantially* as an employee, and in which the U.S. *is a party* or has a *direct and substantial interest*. This is a lifetime restriction that commences upon an employee's termination from federal service.

The purpose behind this restriction is summarized as follows:

When a former Government employee who has been involved with a particular matter decides to act as the representative of another person on the same matter, the "switching of sides" undermines the public's confidence in the fairness of Government proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

18 U.S.C. does not bar any former employee, regardless of grade or position, from accepting employment with or representing a public or private employer after they end Government service, but it does prohibit former Government employees from engaging in certain activities on behalf of these persons or entities. The restrictions are as follows:

- 18 U.S.C. 207 (a)(1) a *lifetime ban* against making with the intent to *influence any communication to or appearance before* their former agency or persons in that agency or other agencies in *particular matter* involving *specific party (ies)* in which the employee participated *personally and substantially* as an employee,

and in which the government has a *direct and substantial interest*. For the purposes of the FMCS, particular attention should be given to the definition of “particular matter” which includes any investigation, application, and request for ruling, or other proceeding. It is limited however, to the same party or parties at the time of the former employee’s participation.

EXAMPLE: A former commissioner goes to work for employer X as director of Human Resources. He is immediately involved in an ongoing collective bargaining dispute between X and ABC Union who are in FMCS mediation. He often was the substitute mediator in this case. He cannot participate in any mediation sessions before the FMCS in this particular matter; however, he is not prohibited from giving “behind the scenes” advice to his assistant who can be at the mediation sessions.

- 18 U.S.C. 207 (a)(2) sets out a very similar ban, except that it is of shorter duration (only *two years* following the employee’s termination of service) and applies only to those who had *official responsibility* for a matter that was *actually pending* during the employee’s *last year* of Government service. In other words, even though the employee was not “personally and substantially” involved in a particular matter, if the matter fell within his official responsibility during the last year of service, the employee is barred from communicating (with the intent to influence) with any Government employee on the same issue.
- 18 U.S.C. 207 (b) a restriction which is unlikely to involve former FMCS employees, bars a former employee, for *one year* after her Government service ends, from knowingly *representing, aiding or advising* on the basis of *covered information*, any other person concerning any *ongoing trade or treaty negotiation* which, in the *last year* of Government service, the employee *participated personally and substantially*. The term “covered information” refers to agency records which were accessible to the employee and were exempt from disclosure under the Freedom of Information Act. If this restriction applies, it applies to all representation even to “behind-the-scenes” assistance.

I am also enclosing some Office of Government Ethics brochures addressing and further explaining the same issues addressed above. If you need further information or have any questions, whatsoever, about the employment restrictions, please contact me at (202) 606-5444.

Enclosures

Note: Disclosure of Procurement Information

If you have had access to certain sensitive procurement information, you may not disclose that information before the award of the contract to which the information relates (unless permitted by some other law).

If Your Government Work Has Related to International Negotiations

If you worked on certain trade or treaty negotiations during your last year of Government service and had access to certain restricted information, you should contact your agency ethics official because you may be barred for one year from aiding or advising anyone (other than the United States) concerning those negotiations.

If You Have Been a High-Level Government Official

Even if you have served in a high-level Government position, you generally may work for any employer — including a foreign government — after you leave Federal service. You are also free to contact any part of the Government solely on your own behalf — by phone, by letter, or in person.

However, if you have served in a "senior" employee position, your future activities may be affected by restrictions in addition to the other restrictions discussed in this pamphlet. These additional restrictions last for one year from the date you leave your senior employee position and apply even if you aren't paid for your work. Specifically:

- ◆ You may not try to influence any department or agency in which you served during your last year of Government service, on behalf of anyone else (including a new employer), concerning any official matter — even if you were never involved with the matter as a Government employee. (Some former senior employees, however, are allowed to contact certain components of their former department or agency.)

- ◆ You may not assist a foreign government or foreign political party in its attempt to influence a decision of any department or agency. You may also be prohibited from representing a foreign entity before Congress.

Your ethics official can determine whether you are a senior employee. In general, "senior" employees include Presidential appointees, flag officers, most members of the Senior Executive Service (and some high-level employees in similar pay systems), and private sector participants in the Information Technology Exchange Program.

Former "very senior" employees, such as cabinet officers, are also prohibited from contacting their former department or agency to seek official action on any matter. In addition, they are prohibited for one year from trying to influence current high-level officials at any other department or agency. As described above, very senior employees are also prohibited from assisting a foreign government or foreign political party in its attempt to influence any department or agency. Very senior employees also may be prohibited from representing a foreign entity before Congress.

If You Participated in the Information Technology Exchange Program

If you are an employee of a private sector organization and have been assigned to an agency under the Information Technology Exchange Program, you may not aid, counsel, or assist in representing anyone (other than the United States) concerning any contract with that agency. This restriction only lasts for one year after the end of your assignment.

Conclusion

This pamphlet is only a brief summary of the post-employment rules. For more guidance about your particular situation, contact your agency ethics official.

June 2004

RULES FOR THE ROAD



U.S. Office of Government Ethics

Introduction

As an executive branch employee, you have learned much about Government policies, programs, and personnel that could be of use to future employers. Even after you leave your Federal job, some of you may still be able to influence Government decisions.

This pamphlet briefly describes Federal laws that restrict what you can do after you leave Government service or when you leave certain Government positions. The laws address the types of activities that are most likely to cause the public to be concerned about the way the Government does its work.

Depending upon the nature of your Government job and what you plan to do in the future, some of these laws may not affect you. Or you may be affected by more than one restriction. Most of the laws do not apply to former military enlisted personnel. However, some of these laws apply even to individuals who worked for the Government only part-time.

In addition to the laws described in this pamphlet, you might also have to comply with rules that apply just to former employees of your agency. Also, if you have participated in a procurement or in the administration of a contract or had access to certain sensitive procurement information, some special restrictions or obligations may affect you. Finally, when you leave, you might agree to other limitations in exchange for a separation payment, or "buy-out."

This pamphlet only summarizes the laws. It is not a substitute for counseling. If you have any questions, you should contact your agency ethics official.

Note: Seeking Future Employment

Although this pamphlet focuses on the laws that apply to post-Government activities, there are also laws that may affect you while you are looking for a job. For example, you may have to avoid working on certain official assignments while you are seeking or negotiating for a job. Ask an agency ethics official for advice before you take any steps toward getting a job with someone affected by matters that you are working on for the Government. Also, if you are participating in a procurement, you may have to file a written report if you contact or are contacted by a bidder or offeror about a possible job — even if you immediately reject any offer.

If You Want to Represent Others Before the Government

After you leave your Federal job, you generally may work for any employer. You also may contact any part of the Government solely on your own behalf — by phone, by letter, or in person.

You may not, however, try to influence any Federal agency or court on behalf of anyone else (including a new employer) concerning certain kinds of matters — like contracts, grants, or lawsuits — if you worked on those same matters during your Government service. You do not have to be a "lobbyist" to be affected by the law, and you may be affected even if you are working for a good cause or are not being paid for your work.

Unless you served in a "senior" or "very senior" employee position, you may try to persuade current Government employees to take action concerning matters in which neither you nor any of

your subordinates were involved. You may even be able to try to influence current employees about some of your old assignments that did not involve a "party" or "parties," such as a regulation or legislation that you drafted.

The length of the restriction depends upon how you were involved in the matter while you still worked for the Government. If you were personally and substantially involved in the matter, then the restriction is permanent. If you merely supervised others who did the actual work, then the restriction lasts for two years from the date you leave Government service. The two-year restriction does not apply unless you supervised the matter during your last year of Federal service.

If You Want to Accept Compensation from an Employer that Represents Others Before the Government

After you leave your Federal job, you generally may work for any employer — even one that represents clients before the Government. You may not, however, share in profits that your new employer earned as a result of representing clients — in connection with certain kinds of matters — before any Federal department, agency, or court at a time when you were still a Government employee. The restriction may affect you even though you were never involved in the matter during your Federal service.

This restriction is most likely to affect former employees who join law, accounting, or public relations firms as partners. As time passes, the restriction is less likely to be an issue since firms will eventually collect past due accounts and distribute the related profits to those firm employees who may accept them.

If Your Government Work Has Related to Procurement

Even if you have participated in a procurement or in the administration of a contract, you may be able to work for a contractor that does business or seeks to do business with your former agency.

However, for one year you may not accept compensation from a contractor to serve as an employee, officer, director, or consultant if — while working for the Government — you had certain responsibilities or took certain actions relating to a large procurement involving that contractor. The bar against accepting compensation may apply to you whether you participated in the pre-award or post-award phase of the procurement.

For example, you may not accept compensation from a particular contractor if — in connection with a contract awarded to the contractor for more than \$10,000,000 — you served as the procuring contracting officer at the time of award, or as the program manager or administrative contracting officer for the contract. You also may not accept compensation from the contractor for one year if, for example, you approved a contract payment or payment of a claim to that contractor for more than \$10,000,000.

You may accept compensation from a division or affiliate of the contractor that does not produce the same or similar products or services as the entity responsible for the contract.

United States. Another exception, which often is of interest to former political appointees, in some cases allows former senior and very senior employees to make representational contacts on behalf of a candidate for Federal or state office, or on behalf of national and campaign committees or a political party. Your agency's ethics official can help determine whether an exception applies to your situation.

Additional Restrictions

Depending on your current duties and your future employment, other restrictions may apply. If you will be working for a firm that has represented clients before either the executive branch or any court where the United States had an interest, another criminal law (18 U.S.C. § 203) prohibits you from sharing in the profits earned by the firm for those matters. The restriction applies if the firm's work before the Government occurred while you were employed by the Government.

If you were involved in certain large procurements or in the administration of contracts, you may not be able to accept compensation from certain contractors for one year.

Some agencies also have special laws and regulations with post-employment provisions that may apply to you.

If you are an attorney or other licensed professional, you should consult your local bar rules or similar professional code for any special restrictions on employment following Government service.

Summary for Avoiding Trouble

Understanding the Federal ethics laws that govern your conduct while you are looking for a job and after you terminate Government service can be challenging. If you have any questions, you should seek help from your agency's ethics official. Remembering a few key issues is critical to passing successfully through the revolving door.

Recap on Seeking Employment

◆ You generally cannot work on a matter that will affect the financial interests of someone with whom you are seeking employment. This means that you may need to be disqualified from working on such a matter during your job search, as well as after you accept a job outside Government.

◆ "Seeking employment" is defined broadly. You may be considered to be seeking employment before you are engaged in actual negotiations. For example, you may be seeking employment if either you or a prospective employer has made a contact about possible employment.

◆ Working on certain procurement matters may trigger additional requirements.

◆ Remember not to misuse Government resources while job-hunting.

Recap on Post-Government Employment

◆ If you worked on a matter that had parties (e.g., a contract or lawsuit), you may be permanently barred from representing anyone back to any Federal agency or court on that

matter. If such a matter was only under your official responsibility, a two-year bar may apply.

◆ If you are a senior employee, you are subject to a one-year bar on representational contacts with your former agency.

◆ Very senior employees are also subject to a similar one-year bar, as well as a bar on making representational contacts with any high level executive branch officials.

◆ Senior and very senior employees are subject to a one-year restriction regarding foreign governments or foreign political parties.

◆ Employees who worked on certain trade or treaty negotiations may be subject to another one-year bar.

◆ Employees who worked on certain procurements or contracts may be subject to additional restrictions.

◆ Remember to consult bar rules, other professional codes, and your agency for other potential restrictions.

Conclusion

This pamphlet is only a starting point. You should obtain specific guidance from your agency's ethics official as to how these job-seeking and post-employment rules may apply to you.

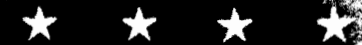
Prepared by
U.S. Office of Government Ethics
June 2004

United States
Office of
Government
Ethics



Understanding the Revolving Door:

How Ethics Rules Apply
to Job Seeking and
Post-Government
Employment Activities



Understanding the Revolving Door:

How Ethics Rules Apply to Job Seeking and Post-Government Employment Activities

If you are planning to leave the current Presidential Administration and return to private employment, you need to know how the Federal ethics laws may affect you, both while you are looking for a job and after you leave the Government. This pamphlet describes the relevant restrictions that apply in these situations. The rules in this area are very complex, so you should consult your agency's ethics official for additional information.

Looking for a Job

This section identifies several issues that can arise when you are looking for employment outside the Government while you are still working in the executive branch. A criminal conflict of interest law (18 U.S.C. § 208) generally prohibits you from working in your Government job on a matter that would affect the financial interests of someone with whom you are discussing possible employment. The Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. part 2635) have a similar rule that applies even before employment discussions begin, and may apply even when you have just sent a resume. If you participate in certain procurement matters, you may be subject to additional rules, including the duty to report employment contacts made by you or a bidder or offeror.

During your job search, you must be careful not to misuse Government resources (such as official time, the services of other employees, equipment, supplies, and restricted information). As you look for a job, you also will want to keep the restrictions that will apply after you leave the Government (discussed below) in mind.

Finally, after you have accepted a job outside the Government, you must continue to refrain from working on matters in your Government job that would affect the financial interests of your prospective employer.

Restrictions on Employment after Government Service

This section briefly highlights the restrictions on your employment activities after you leave executive branch service. Your agency's ethics official is available to provide more specific advice on these "post-employment" restrictions, both before and after you terminate Government employment.

18 U.S.C. § 207

This criminal law does not bar employment with any particular employer. Rather, its restrictions address certain activities that involve, or may appear to involve, the unfair use of prior Government employment.

Some of the restrictions apply to all former executive branch employees, whereas others apply only to former senior officials or those with specified duties.

◆ As an executive branch employee, you are barred permanently from trying to influence

any Federal agency or court, by communications or appearances on behalf of someone other than yourself or the United States (i.e., "representational contacts"), on a matter that has parties (such as a contract, grant, or lawsuit), if you have worked on that matter as a Government employee. If the matter was under your official responsibility during your last year of Government service, even if you did not personally participate in it, you are barred from making representational contacts about that matter for two years.

◆ If you have served as a "senior employee" during your last year of Government service, you are restricted for one year from making any representational contacts to your former agency on any matter, regardless of whether the matter involves parties. Senior employees include people serving at Levels II-V of the Executive Schedule, those whose rate of basic pay equals or exceeds 86.5 percent of the rate of basic pay for Level II of the Executive Schedule (and, for two years after November 24, 2003, those who, on November 23, 2003, were paid at a rate of basic pay at least equal to the rate of basic pay for level 5 of the SES), military officers at O-7 and above, some White House appointees, and private sector participants in the Information Technology Exchange Program. Unless your agency has separate components for post-employment purposes, this restriction on representational contacts generally extends to your entire former agency.

◆ If you have served as a "very senior employee," you are covered by a similar one-year cooling off period with respect to your former agency and also a one-year ban on making representational contacts with any

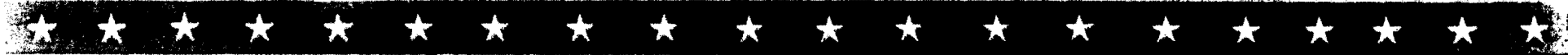
Executive Schedule employee serving in any agency. Very senior employees include people paid at a rate payable for Level I of the Executive Schedule, those serving in the Executive Office of the President and paid at a rate payable for Level II of the Executive Schedule, and certain other White House appointees.

◆ Former senior and very senior employees are restricted for one year after leaving Government service from representing, aiding or advising a foreign government or foreign political party, with an intent to influence any officer or employee of a Department or agency. You may also be prohibited from representing a foreign entity before Congress.

◆ If you worked on certain trade or treaty negotiations during your final year of Government service and have had access to certain restricted information, you are barred for one year from aiding or advising anyone other than the United States concerning those negotiations.

◆ If you were assigned to an agency from the private sector as a participant in the Information Technology Exchange Program, you may not aid, counsel, or assist in representing anyone other than the United States concerning any contract with that agency for one year after the end of that assignment.

There are several exceptions to some of these restrictions. For example, one exception permits former employees to engage in post-employment activities performed in carrying out official duties on behalf of the



FROM: Maria Fried

TO: Arthur Pearlstein

RE: 18 U.S.C. 207 Ethics Opinion

I. This opinion is provided in response to your question of whether upon his retirement from the Federal Mediation Conciliation Service (FMCS), _____ may be employed with the Environmental Protection Agency (EPA) to complete a project he was working on while he was employed by our agency. My understanding is that EPA is considering hiring _____ as an independent consultant or perhaps as a contract employee through another contract EPA has with Mirasco-Newton, a private consulting group. This also addresses whether he can seek post-government employment while employed by the FMCS.

II. Summary of lifetime representation ban. Title 18 U.S.C. Section 207(a)(1) provides that an Executive Branch officer or employee who has, in his or her official capacity, participated personally and substantially in a particular matter (such as a government contract), which involved a specific party or parties (such as a government contractor) at the time of such participation may not, at any time thereafter, knowingly make any communication to, or appearance before, any officer or employee in connection with such particular matter, on behalf of any person other than the United States.

III. Summary of two-year representation ban. Title 18 U.S.C. Section 207(a)(2) provides that an Executive Branch officer or employee who has a particular matter (such as a government contract) actually pending under his or her official responsibility during the one-year period before the termination of his or her government service, which involved a specific party or parties (such as a government contractor) at the time it was so pending, may not, for two years after termination of government service, knowingly make any communication to, or appearance before, any officer or employee of the United States, with the intent to influence such officer or employee in connection with such matter, on behalf of any person other than the United States.

IV. Definitions.

The term "participated" means an action taken as an officer or employee through decision, approval, recommendation, the rendering of advice, investigation or other such action. 18 U.S.C. 207(i)(2)

The term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. 18 U.S.C. 207(i)(3).

An employee can participate "personally" in a matter even though he merely directs a subordinate's participation. He participates "substantially" if his involvement is of significance to the matter. Thus, while a series of peripheral involvements may be

insubstantial, participation in a single critical step may be substantial. OGE Memorandum, "Summary of Post-Employment Restrictions of 18 U.S.C. dated Feb 17, 2000.

Official responsibility is defined as the "direct administrative or operating authority, whether immediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove or otherwise direct Government action. 18 U.S.C. 202(b).

The scope of an employee's official responsibility is usually determined by those areas assigned by statute, regulation, executive order, or job description. All particular matters under consideration of an agency are under the official responsibility of the agency head, and each is under that of any intermediate supervisor having responsibility for the activities of a subordinate employee who actually participates in the matter. An employee's recusal from or other non-participation in a matter does not remove it from his official responsibility. A matter was "actually pending" under a former employee's official responsibility if the matter was referred to under consideration by persons within the employee's area of responsibility. A former employee is not subject to the restriction, however, unless at the time of the proposed representation of another he knows or reasonably should know that the matter had been under his official responsibility during his last year of Government service.

V. The Office of Government Ethics (OGE) has provided guidance on when two situations are part of the same "particular matter." In determining whether two situations are part of the same particular matter, one should consider all relevant factors, including the amount of time elapsed and the extent to which the matters involve the same basic facts or issues and the same or related parties.

VI. Applying these factors, it is my understanding that John Wagner is substantially involved in the project involving FMCS and the EPA. To begin with, if John developed the ADR training program for FMCS, the lifetime representation ban prohibits him from using the training program designed for FMCS for his private gain. Additionally, I am not certain what role John played in obtaining the EPA contract (if any). The impression conveyed to me was that John is substantially involved in providing ADR training to the EPA and it appears that he serves as a project manager of sorts. However, I do not know if he has direct administrative or operating authority. Assuming he has direct administrative or operating authority over the project, at a minimum, the two-year representation ban applies in this case.¹ If John is merely a subordinate employee implementing an FMCS program for EPA, and does not have direct administrative authority to approve, disapprove or otherwise direct government action, then, I do not believe any representation ban applies.

¹ I don't believe the lifetime representation ban applies here because it has not been suggested that he took action on the contract as an officer or employee through decision, approval, recommendation, the rendering of advice, investigation or other such action. However, if facts come to light showing that his participated included decision-making, recommendation, approval, or the rendering of advice, etc., then the issue would have to be revisited to determine whether the lifetime representation ban would apply.

VII. OGE Informal Advisory Opinions 99 x 19 dated October 19, 1999.

This case involves a government employee who was the contracting officer on a 70 million dollar construction contract. The contractor filed a large volume of claims against the government in connection with the contract. The contracting officer retired from government service. Since the contracting officer participated personally and substantially in the construction contract, the lifetime representation ban applied to her regarding the contract. The government agency that had the construction contract also had a contract with a consulting company for technical support of the litigation involving the construction contract. The former contracting officer did not want to go to work for the contractor that had been awarded the construction contract and that had filed the claims. Rather, she wanted to go to work for the consulting company and then help the government resolve the claims. The former contracting officer asked the OGE for advice on whether she would violate 18 USC 207 if she went to work for the litigation support contractor and helped the government resolve the contract claims. She contended that, in making communications and appearances in connection with the contract, she would be acting on behalf of the government, and as a result, her communications and appearances would not violate 18 USC 207.

However, the OGE stated that "any communication and appearances she would be required to make to the Government would also be made to advance her employer's business interests arising from its consulting contract with the agency. For this reason, OGE could not say that the former employee shared an identity of interests with the agency or that her "sole function" as an employee of the consulting company would be to support the agency's interest in the contract claims. Thus, OGE concluded that the proposed employment by the former contracting officer would violate the lifetime representation ban. The consequence of the OGE opinion is that government agencies will sometimes be precluded by 18 USC 207 from obtaining assistance from former government employees who leave government service and take with them valuable knowledge and experience.

VIII. Unfortunately, due to the limited facts provided, it is premature for me to conclusively state what, if any, representation ban applies to
Nonetheless, the following guidance may assist in complying with the representation ban if applicable. The scope of the representation bans are the same. The only difference is their duration.

IX. Guidance on complying with representation bans. The OGE has stated:

a. Moreover, the restriction (i.e. lifetime and two-year bans) prohibits only those communications and appearances that are made "with the intent to influence." A "communication" can be made orally, in writing, or through electronic transmission. An "appearance" extends to a former employee's mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States. An "intent to influence" the U.S. may be found if the communication or appearance is

made for the purpose of seeking a discretionary Government ruling benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which the former employee knows involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or supplying of such information. (OGE Memo, page 3)

- b. Behind- the -scenes assistance. “A former employee is not prohibited by these restrictions (two-year or lifetime ban) from providing ‘behind-the-scenes’ assistance in connection with the representation of another person.” (OGE Memo, page 3)
- c. Prohibited appearances. A former employee may not attend any meeting of contractor and government personnel where the subject of the meeting is a disagreement or dispute between the contractor and the government, where the meeting is adversarial in nature. Further, a former employee may not attend a meeting of contractor and government personnel if the subject of the meeting involves the seeking of any discretionary action by the government.
- d. Prohibited communications. A former employee may not communicate with government employees, present the contractor’s position or act as the contractor’s negotiator, spokesperson or representative, in connection with a disagreement or dispute between the contractor and the government. This applies to all means of communication, including personal conversations with government employees, telephone conversations with government employees, meetings with government employees, and written or electronic correspondence with government employees or agencies.

X. Request for Exemptions: A former employee may be exempted from the restrictions on post-employment practices if the head of an agency concerned with a particular matter, in consultation with the Director, executes a certification published in the Federal Registrar that such former employee has outstanding qualifications in a scientific, technical, or other technical discipline, is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by such former Government employee’s participation. It is unlikely that _____ qualifies for this exemption.

XI. Negotiating/Seeking Post-Government Employment:

The seeking employment regulations at 5 CFR 2635 Subpart F, prohibit a federal employee from discussing prospective employment with an entity while performing work for that entity as a federal employee. This particular regulation has its basis in federal criminal conflict of interest statutes. Because this subpart is based on criminal statutes, the regulation is fairly strict. Seeking employment begins whenever there is an open inquiry from a potential employer and ends

only when the federal employee has terminated all discussion of possible employment. 5 CFR § 2635.603(b).

5 CFR 2635.603 defines employment as any form of non-federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to a Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, consultant, attorney, general partner or trustee.

An employee has begun seeking employment or is considered to have begun seeking employment when he has directly or indirectly engaged in negotiations for employment with any person. The term "negotiations" means discussion or communication with another person, or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. It is not limited to discussions of specific terms and conditions of employment. Also, the term "seeking employment" refers to the unsolicited communication to any person regarding employment with that person except when the communication is limited to a request for a job application or the submission of a resume.

Unless the employee's participation is authorized by a waiver, the employee shall not participate personally and substantially in a particular matter that to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment. Additionally, the employee should not participate if a reasonable person knowing all the relevant facts could question his impartiality.

An employee may participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under 18 U.S.C. 208 (b)(1) or (b)(3). That is, an appointing authority may deem the financial interest to be not so substantial as to be deemed likely to affect the integrity of the employee's services.

XII. At this juncture, it is unclear to me whether _____ is soliciting employment with the EPA. Regardless of who initiates the employment negotiations, unless _____ obtains a waiver, it is recommended that he refrain from negotiating post-government employment with the EPA while still employed with FMCS.

MEMORANDUM

TO: Maria Fried,
FROM: Benetta Mansfield
DATE: June 28, 2005
SUBJECT: Ability to hold a part time teaching position in a secondary institution

has asked for an ethics opinion about accepting a part-time teaching position in a secondary school (a private high school) and continuing to work part-time at the FMCS. As to part-time FMCS employment, that is a human resources question that will not be addressed in this memorandum.

Under 5 CFR § 2635.807(a)(3)(i), a federal employee may accept compensation for a teaching course whether or not it relates to the employee's official duties if the course is offered as part of "(i) the regularly established curriculum of: . . . (C) A secondary school as defined in 20 U.S.C. 2891(21).

Although 20 U.S.C. 2891(21) has been omitted, secondary school is otherwise defined in the education section at 20 U.S.C. 7801(38) as a nonprofit public or private resident or nonresident educational institution up to and including grade 12.

Since is referring to teaching AP Government at a private high school, she is permitted to accept this position and receive compensation for the position, provided it does not conflict with her FMCS obligations.

Fried Maria

From: Fried Maria
Sent: Thursday, January 27, 2005 11:48 AM
To: Pearlstein Arthur
Subject: FW: Professional Writing

FYI: I meant to cc: you on this Arthur.

-----Original Message-----

From: Fried Maria
Sent: Thursday, January 27, 2005 11:41 AM
To:
Subject: RE: Professional Writing

I reviewed the materials you submitted and I don't see a problem with you proceeding to publication. Still, I do want to make you aware of some other ethical concerns that may arise relating to your book:

As you know, a federal employee can not accept compensation for writing that relates to one's official duty. Because you have not undertaken this writing project as part of your official duties or position nor have used information that is not otherwise available to the public and does not involve matters that you are presently assigned or been assigned to within the past year, and does not involve an ongoing or announced policy, program, or operation of the agency, your book does not run afoul of the ethics rules relating to compensation. Having said that, you may not use your public position for private gain. Therefore, you should not refer to your official position or affiliation with FMCS in any context in the book other than biographical details given to identify him in connection with the writing, provided that your title and position are given no more prominence than other significant biographical details.

Please let me know if you have any other questions.
Maria

-----Original Message-----

From:
Sent: Wednesday, December 22, 2004 2:18 PM
To: Fried Maria
Subject: RE: Professional Writing

Thanks for getting back to me so quickly. After the first of the year is fine to meet. The book will have five parts and an introduction. I am still finishing up the introduction and Part 5, and am sending you the rest.
Thanks

-----Original Message-----

From: Fried Maria
Sent: Tuesday, December 21, 2004 4:02 PM
To:
Subject: RE: Professional Writing

I should be back in the office the first week of January. We can discuss then if you like. If it can't wait until then, please give me a call next week (after Monday) as I will be out of town starting tomorrow through Monday. I will probably need to see the finished product before you submit for publication. You can send me the finished chapters in the meantime. Good luck and happy holidays.
Maria

-----Original Message-----

From:

Sent: Tuesday, December 21, 2004 1:46 PM

To: Fried Maria

Subject: Professional Writing

I am touching base with you on an ethics question. I have nearly completed a personal writing project that I will be submitting for an ethics review. The project is a book to be titled "Three Fundamentals to an Interest Based Decision". I would like to submit this book for publication in the very near future.

The book presents my personal model for interest based decision-making. It is not a component of my official duties. The information conveyed in the book does not draw upon ideas or official data that are non-public information. The book is not something to which I have been assigned, nor does it involve any ongoing or announced policy of FMCS. The ideas are my own, and no reference is made to any case or parties to which I am or have been assigned at FMCS.

I would like to discuss this matter with you, in any manner convenient for you. If you like, I can send you some of the finished chapters to read.

Thank you.

Fried Maria

From: Fried Maria
Sent: Monday, November 07, 2005 11:16 AM
To:
Cc: Beg Kimberly
Subject: RE: Journal - please disregard earlier e-mail

By the way, the Directives require that the Director approve all publications and writings. You'll need to run the article by Scot if you haven't done so already. This is true of all publications just to make sure that the publication is what the Director wants to put forward. I can't speak for the Director on this point.

-----Original Message-----

From:
Sent: Thursday, November 03, 2005 4:20 PM
To: 'Fried Maria'
Cc: Beg Kimberly; 'Walters-Marquez Jeannette'
Subject: Journal - please disregard earlier e-mail

Maria,

Please disregard my earlier e-mail about the International Negotiation Journal issue. Here is my final draft article for you review. If you agree, I would like to propose the following way of acknowledging FMCS to the editor, in addition to the acknowledgment of FMCS in my bio and first footnote:

This Issue

Coordination in Conflict Resolution:

Perspectives from Members of the Alliance for International Conflict Prevention and Resolution

Guest Editors

Susan Allen Nan, George Mason University

Andrea Strimling, Federal Mediation and Conciliation Service

Fried Maria

From: Fried Maria
Sent: Monday, November 14, 2005 8:48 AM
To: Strimling Andrea
Subject: RE: Article and Editing

Andrea, I discussed the situation with Scot and he agrees that since some official time went into the project, it should be considered government work. The footnote can state something as follows: This article was written in the course of the author's employment by the United States Government and is not subject to United States copyright laws.

Thanks.

-----Original Message-----

From: :
Sent: Sunday, November 13, 2005 6:57 PM
To: 'Fried Maria'
Cc: Beg Kimberly; Beckenbaugh Scot; Leonard Fran; Chernikoff Bonnie
Subject: Article and Editing

Maria,

Please see response below from the editor of International Negotiation Journal. If we so request, they will not assert copyright to the article I wrote, and I am sure they would accept a statement in a footnote to that effect.

As I explained earlier, all of the research and writing for the article was done as part of a course I took and for which I paid personally. I did not intend or understand that this article would be a product of FMCS or part of my official duties, and it was based on this understanding that I included the copyright information in the footer. However, FMCS authorized a flexible schedule to make it possible for me to take this class (although I missed many classes because I gave precedence to my official duties.) Therefore, some of the work happened during standard business hours. If you determine that it is necessary for legal or ethical reasons, or if it would be otherwise beneficial to do so, I will submit this as an official, as opposed to personal, product. Please let me know whether I should submit this in my personal or official capacity and what language, if any, should be included in the footnotes.

Regarding my work co-editing the special issue of the journal (as distinct from authoring the article referenced above), I did intend to do the editing in my official capacity, my work on the editing was approved by my supervisor, and my intention was that FMCS would receive credit for this work. Nevertheless, if you determine that this work should be done in my personal, as opposed to official capacity, please be aware that because I work very long hours, including many evenings and weekends, I spent many hours of my personal time on this work. If necessary, I can reconstruct the phone calls and scheduled editing time that occurred during business hours and make those up during personal time, keeping detailed records of the time. Please let me know how I should handle this, as well.

I have copied Scot and Fran on this message, in addition to Kim, to be sure they are aware of the background on these two distinct efforts (authoring the article and co-editing the special issue of the journal) as well the positive response from the journal editor in response to our question about copyrighting.

I will be out of the office leading a training program for the next two days, so please call me on my cell (202-415-7602.) if you need to reach me.

Thanks,

-----Original Message-----

From: Spector, Bert [mailto:BSpector@msi-inc.com]
Sent: Saturday, November 12, 2005 5:15 AM
To: [redacted]
Cc: Green, Samantha; Susan Allen Nan
Subject: RE: INJ snafu

Andrea - Here is the response I just received from the journal's publisher -- It's no problem for them --- they will not take copyright.
Bert
P.S. When do you expect the trimmed back articles from the authors?

=====
Dear Bert,

That will not present any problem at all. It is a generally known fact that US government officials cannot transfer copyright for work prepared in the employer's time. We know it will be public domain and I have no problem with that. It would be pretty difficult to publish US government material at all if we would not obey the rules!

Thanks for bringing this to our attention.

Arthur

Van: Spector, Bert [mailto:BSpector@msi-inc.com]
Verzonden: do 10-11-2005 20:09
Aan: Arthur Koedam
Onderwerp: INER question

Dear Arthur,
I just received a message from one of the author's scheduled for INER 11, 1. She is a US government employee and she wrote the article, in part, on government time. As a result, she has been told that the article must NOT be copyrighted, but be in the public domain.

Would this be acceptable to Nijhoff?
Please let me know as soon as possible.
Thanks,
Bert

Fried Maria

From: Mansfield Benetta
Sent: Monday, March 21, 2005 11:42 AM
: Fried Maria
Subject: RE: A Question Regarding Election Endorsements

This is a pretty easy one, the Hatch Act restrictions only apply to candidates in a "partisan" political election. It would not apply to this race and therefore the endorsement would not violate the Hatch Act. (By the way, it would not violate it even in a partisan election so long as the employee is not using it to fundraise). See definitions at 5 USC Sec. 7322 (2)

-----Original Message-----

From: Fried Maria
Sent: Monday, March 21, 2005 10:21 AM
To: Mansfield Benetta
Subject: FW: A Question Regarding Election Endorsements

Thanks.

-----Original Message-----

From: Fried Maria
Sent: Thursday, March 17, 2005 9:44 PM
To: Fried Maria
Subject: FW: A Question Regarding Election Endorsements

-----Original Message-----

From: Pearlstein Arthur
Sent: Thursday, March 17, 2005 7:52 PM
To: Fried Maria
Subject: FW: A Question Regarding Election Endorsements

-----Original Message-----

From:]
To: Pearlstein Arthur <apearlstein@fmcs.gov>
Sent: Thu Mar 17 19:51:03 2005
Subject: A Question Regarding Election Endorsements

Hi Arthur:

I teach a class in the graduate school at Seattle University on negotiation and mediation skills. Every quarter (I teach two quarters per year) for the past four years, I have had a guest speaker, Sgt. Jim Fuda of the King County Sheriff's Department. Sgt. Fuda is the head of the Department's Special Operations Division, which includes the hostage/suicide negotiations team. He delivers a terrific presentation to the class on negotiating in very difficult circumstances, which is always well received, and is always on his own time.

Sgt. Fuda is planning on running in the November election for the position of King County Sheriff. It is a non-partisan race. He has asked me to do an endorsement for his campaign on his website, not as an FMCS mediator, but as adjunct faculty at Seattle University. If I am not identified as a part of the FMCS, can I (per federal guidelines, etc.) do the endorsement?

I'm pretty sure you didn't go to law school just for such questions, but HEY! I don't want to do anything illegal or inappropriate - so, I'm asking you!

I hope all is going well with you. Next year, you should think about coming out to our IRRRA/LERA (FMCS, PERC, NLRB) collective bargaining and arbitration conference (early March). We can think of some amazing topic on which you can expound, and you can be a presenter! And, I'll take you to the top of the Space Needle!

Fried Maria

From: Fried Maria
Sent: Monday, March 21, 2005 12:12 PM
To:
Subject: Election Endorsements

Hi , Arthur forwarded me your e-mail regarding your endorsement of Sgt Fuda for King County Sheriff's dept in a nonpartisan election. Apparently, Sgt Fuda asked you to do an endorsement for him, not as an FMCS mediator but as an adjunct faculty member for Seattle University. That's fine to do and you would not be running afoul of the Hatch Act rules or ethics rules. Thanks for checking with us.
Maria

Walters-Marquez Jeannette

From: Walters-Marquez Jeannette
Sent: Wednesday, February 15, 2006 3:14 PM
To:
Cc: Fried Maria; Beg Kimberly
Subject: Reimbursement from Alliance

Maria asked me to respond to your e-mail

31 U.S.C. 1353, permits non-Federal sources, such as organizations, associations, or businesses, to pay the Government for travel, subsistence, and related expenses incurred by Government personnel while in their official capacities to attend meetings, conferences, seminars, symposia, and other similar functions.

Because you serve as a Board member for Alliance in your personal capacity, FMCS cannot accept reimbursement from the Alliance for travel expenses associated with your meetings.

Jeannette Walters-Marquez

Maria,

Just following up on our question from last week about accepting reimbursement for travel expenses from the Alliance. You approved my outside activity serving on the Alliance for International Conflict Prevention and Resolution's Board of Directors. Kim has authorized some limited Admin Leave and travel for participation in Alliance meetings. Can FMCS accept reimbursement from the Alliance for travel expenses associated with such meetings?

Thanks

Walters-Marquez Jeannette

From: Fried Maria
Sent: Tuesday, February 14, 2006 10:41 AM
To: Schindler Beth
Cc: Walters-Marquez Jeannette
Subject:

Beth:

Sorry for the delay on this. Jeannette completed this some time ago and I did not send you the information until now. First, Commissioner [redacted] can be a board member to LERA in her private capacity. What follows is a brief discussion for your benefit regarding in what capacity individuals can serve with professional organizations and limitations. I also provided you with a response you can relay to Commissioner [redacted] below. The guidance from OGE is that individuals can be participants of professional organizations or outside activities but there are certain limitations. However, we do not have enough information to opine that her involvement with the Labor Community Agency does not pose a conflict of interest with her duties as a neutral mediator. More information is needed regarding the Labor Community Agency's role with the AFL-CIO and the body of people the Labor Community Agency serves, and information that demonstrates the LCA is not a "pro-union entity."

LERA: Official Capacity: If the FMCS director determines that participation in LERA furthers FMCS' mission or programs, or that there is a need for exchange of information, Commissioner Jorgensen may serve as an official agency liaison with the organization. However, as an Agency liaison, the employee's focus is to represent FMCS for the purpose of exchanging comments, views, or opinions regarding those matters in which FMCS has an interest. Additionally, her role as an official agency liaison excludes service in administrative roles, management of non-federal organizations, board memberships or the exercise of fiduciary responsibilities. It is sound agency policy not to allow employees to serve as officers of organizations in their official capacity because the professional organization's interest may not be FMCS' interest at any given time. That doesn't mean FMCS can't pay for the expenses of an employee while he/she is serving as an officer of a professional organization when the agency deems such action would benefit the agency's programs or would be warranted as a service to employees who are members of the organization. 5 CFR 251.202 provides that an agency may pay for expenses of employees to attend professional organization meetings and permits the use of agency equipment or administrative support services for papers to be presented at conferences. Furthermore, employees may be authorized to take excused absences (administrative leave) to work on certain matters if the matter is related to the agency's mission and interest. Thus, the decision to fund participation in professional activities is within the agency's discretion. Fundraising is not permitted in one's official capacity.

Private Capacity: Employees can be members of professional organizations in their private capacities. If someone serves as an officer of an organization, they may do so only in their private capacity. However, as indicated above, FMCS may pay for expenses of employee's serving as officers of professional organizations when its in the agency's interest and may also provide support as indicated above pursuant to 5 CFR 251.202. If serving in one's private capacity, the employee must make clear that the views and opinions expressed are her own, employee may not use one's Government employment for a purpose that gives the appearance of using ones office for private gain; giving preferential treatment; impeding Government efficiency or economy; making Government decisions outside official channels; losing one's independence or impartiality; or adversely affecting the confidence of the public in the integrity of the Government. An employee may engage in fundraising activities for nonprofit institutions in a personal capacity provided that they do not use their official title, position, or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to him to be a

prohibited source. Prohibited sources include contributions from someone who does business with FMCS or seeks official actions by FMCS (such as grantees) or has interests that may be substantially affected by the employee in the performance of their duties.

Your participation as a Board member of a professional organization such as LERA is not prohibited by law or regulation and does not in itself appear to conflict with your official duties provided that you are acting in a private capacity. You must ensure that (1) you clearly explain in any speeches or engagements or writings with LERA that the views expressed are your own and made in your personal capacity and are not necessarily representative of FMCS. You may not use her Government employment for a purpose that gives the appearance of using your office for private gain; giving preferential treatment; impeding Government efficiency or economy; making Government decisions outside official channels; losing your independence or impartiality; or adversely affecting the confidence of the public in the integrity of the Government. If you engage in fundraising activities for LERA, you must do so in your personal capacity and you must not use your official title, position, or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to you to be a prohibited source. Prohibited sources include contributions from someone who does business with FMCS or seeks official actions by FMCS (such as grantees) or has interests that may be substantially affected by the employee in the performance of their duties.

Finally, you need to provide more information on your involvement with the Labor Community Agency. Information that would be helpful in completing a conflict of interest analysis includes (a) information about the different organizations represented in the Labor Community Agency's board; (2) information about the clientele that the LCA serves; (3) information that shows that the members of the public understand that this is not a "pro-union" organization.

Fried Maria

From: Fried Maria
Sent: Friday, January 27, 2006 3:38 PM
To:
Cc: Manchise Lou
Subject: Off Duty Employment

the more I think about what we discussed, I would not support your outside activity to serve as a mediator. Individuals who may recognize you as a federal mediator will not know that you are doing this in your private capacity and it may raise questions. Additionally, if there is some question regarding your involvement as a mediator even in your private capacity, the Agency will have concerns on how that will impact your ability to perform your official duties. I realize that you are a very able mediator who can avoid certain pitfalls, but it only takes one party to voice a complaint. The Agency won't be able to defend you and then it has a further problem of having to address issues regarding acceptability and neutrality even if the allegations by a party are baseless.

Maria

Fried Maria

From: Fried Maria
Sent: Wednesday, December 14, 2005 12:38 PM
To:
Cc: Manchise Lou
Subject: Language

the statement that needs to be announced at the beginning of your participation and when you are introduced as the facilitator on the outside activity we discussed (with Lou and with Lou's approval) relating to school funding, should state that **you are participating in the facilitation in your personal capacity and not in your official capacity as a federal mediator for FMCS. Any views, comments, or actions expressed by you during the course of your facilitation are your own and do not necessarily represent the views of FMCS.**

Call me if you have any questions or concerns.

Maria

To: Maria Fried
General Counsel

From: Jeannette Walters-Marquez
Attorney-Advisor

Date: October 26, 2005

Subject: Outside activities: AICPR

QUESTION

You have requested advice as to whether _____ a Commissioner for the FMCS International and Dispute Resolution Services, and the Director of the Inter-Organizational Cooperation Program, can serve as FMCS' **official** representative to the Alliance for International Conflict Prevention and Resolution (AICPR), and serve on its Board of Directors.

CONCLUSION

- A. As to the employee's positions as a Board member of AICPR, we determined that (1) Ms. Strimlig can pursue this outside activity in her personal capacity; and (2) that she should disclose any known disqualifying financial interest that the organization may have, including grants.

_____ should be advised that she cannot use her Government employment for a purpose that gives the appearance of using her office for private gain, giving preferential treatment, impeding Government efficiency or economy, making Government decisions outside official channels, losing her independence or impartiality, or adversely affecting the confidence of the public in the integrity of the Government.

- B. If FMCS determines that the service to AICPR furthers the agency's mission or programs or is there a need for exchange of information, then the FMCS Director could appoint her to serve as an official agency liaison. This will require her resignation as a AICPR Board member, and to any fiduciary responsibilities she may have with the organization.

BACKGROUND:

AICPR is a non-profit organization formed in 1999. It is an organization of non-governmental and governmental organizations working to promote cooperation within the field of conflict resolution and with related fields, including security, development, humanitarian assistance, human rights and sustainable development. *See* FMCS website.

AICPR's mission relates to the mission of FMCS Inter-Organizational Cooperation Program.

As we understand, AICPR Board Members of these organizations do not receive compensation for their duties.¹ The disclosure of compensation for duties of an officer of an organization is prohibited under 18 U.S.C. § 203, and requires another type of analysis.

ANALYSIS

I. Outside Activity –Personal Capacity

Federal government employees are not prohibited from participating in professional organizations. However, an employee may not have outside employment or be involved in an outside activity that conflicts with the official duties of the employee's position. An activity conflicts with official duties --

- if it is prohibited by statute or by the regulations of the employee's agency, or
- if the activity would require the employee to be disqualified from matters so central to the performance of the employee's official duties as to materially impair the employee's ability to carry out those duties.

See 5 C.F. R. § 2635.802

In the case of Commissioner , we determine that the outside activity is not prohibited by law or regulation, and does not in itself present a conflict with the employee's official duties. The employee should be advised that: (1) she has to clearly explain in her speech engagements or writings that her comments or opinions are made in her personal capacity and do not represent FMCS' views; and (2) that she can not use her Government employment for a purpose that gives the appearance of using her office for private gain; giving preferential treatment; impeding Government efficiency or economy; making Government decisions outside official channels; losing her independence or impartiality; or adversely affecting the confidence of the public in the integrity of the Government.

¹ 18 U.S.C. § 203 would prohibit any Government employee who is also an officer in an organization like AICPR from receiving, directly or indirectly, any compensation for services rendered in relation to any proceeding, application, request for ruling or other determination, contract, claim, controversy, or other particular matter in which the United States is a party or has a direct or substantial interest. Pursuant to 18 U.S.C. § 203, there could be a violation of the statute if the Federal Government employee, as an officer of an organization, is paid to represent the grantee before any Government agency, department, or court, or employee thereof, on any matter in which the Government has an interest.

II. Outside Activity-Official Capacity

If the FMCS Director determines that participation in AICPR furthers FMCS's mission or programs, or that there is a need for exchange of information, FMCS could appoint an employee to serve as an official agency liaison with the organization. As an Agency liaison the employee's sole focus is to represent FMCS for the purpose of exchanging comments, views, or opinions regarding those matters in which FMCS has an interest. This role would exclude service in "administrative roles," "management of non-Federal organizations," or the exercise of "fiduciary responsibilities²."

III. Official Capacity/Official time

The use of official time is regulated by 5CFR § 2635.705 which reads as follows in pertinent:

Use of official time.

(a) *Use of an employee's own time.* Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

It is sound agency policy not to allow employees to serve as officers of organizations in their official capacity because the professional organization's interest may not be FMCS' interest at any given time. That does not mean that FMCS can not pay for the expenses of an employee while he/she is serving as an officer of a professional organization in his/her personal capacity. 5 C.F.R. § 251.202 provides that an agency may provide support services to certain organizations, including professional associations, when the agency determines that "such action would benefit the agency's programs or would be warranted as a service to employees who are members of the

² Fiduciary Responsibility - This means service as an officer of the non-Federal organization (e.g., president, vice-president, secretary, treasurer), or in the role of a member of the board of directors or trustees that includes voting authority for organization matters, or as a general partner in a partnership. This term refers to those persons charged with a legal duty (under State law) to direct or manage the organization. It generally does not include persons who perform advisory roles, or serve in topical committee chair positions.

organization.” This regulation specifically provides that an agency may pay for expenses of employees to attend professional organization meetings and permits the use of agency equipment or administrative support services for papers to be presented at conferences. Furthermore, employees may be authorized to take excused absences (otherwise known as administrative leave) to work on certain outside matters if the matter is related to the agency’s mission and is in the agency’s interest. See OGE letter # 93-6. Thus, the decision to fund participation in professional activities is within the agency’s discretion.

II. Fundraising

It is important to explain to all employees that under 5 C.F.R. §2635.808 an employee may engage in fundraising activities for professional organizations in a personal capacity if the employee does not use his official title, position, or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to him to be a prohibited source for purpose of the gift restriction. This provision prohibits managers from fundraising by soliciting funds or support from subordinates.

Fried Maria

From: Mansfield Benetta
Sent: Friday, July 22, 2005 9:44 AM
To: Fried Maria
Subject: RE: Advisory Panel

No problem.

-----Original Message-----

From: Fried Maria
Sent: Friday, July 22, 2005 9:38 AM
To: Mansfield Benetta
Subject: RE: Advisory Panel

Yes, preferably for Monday if you can. Thanks!

-----Original Message-----

From: Mansfield Benetta
Sent: Friday, July 22, 2005 9:20 AM
To: Fried Maria
Subject: RE: Advisory Panel

Is it ok if I do this next week?

-----Original Message-----

From: Fried Maria
Sent: Thursday, July 21, 2005 4:13 PM
To: Mansfield Benetta
Subject: FW: Advisory Panel

Benetta, can you do a legal review on this request. Thanks.
 Maria

-----Original Message-----

From: O'Leary Dan
Sent: Monday, July 18, 2005 2:45 PM
To: Fried Maria
Cc: Skolochenko Mery;
Subject: FW: Advisory Panel

Maria and I would like you to take a look at [redacted]; requested participation on the Advisory Board to the Business Section of the South Bend Tribune to see if there are any conflicts with his position as a FMCS mediator. This is an unpaid position. Thank you for your assistance in this matter. Dan.

-----Original Message-----

From: [redacted]
Sent: Monday, July 18, 2005 10:08 AM
To: O'Leary Dan
Subject: Advisory Panel

Dan:

I've been invited to be a member of an Advisory Panel to the Business Section of the *South Bend Tribune* newspaper. It is my understanding

that the purpose of this panel is to provide input to the editors concerning the Business section of the paper, regarding what they are doing right or what they could improve. They want the panel's input concerning some of their ideas for articles.

What are your thoughts about this?

MEMORANDUM

TO: Maria A. Fried

FROM: Benetta M. Mansfield

DATE: July 25, 2005

SUBJECT: Ethics and Membership on Advisory Council of a Newspaper

, a mediator in South Bend, has been invited to be a member of an Advisory Panel to the Business Section of the *South Bend Tribune* newspaper. It is my understanding that the purpose of this panel is to provide input to the editors concerning the Business section of the paper, regarding what they are doing right or what they could improve. They want the panel's input concerning some of their ideas for articles. It is unclear whether this position is paid or unpaid.

I. FMCS Ethics Rules

The FMCS has adopted the Ethics Rules governing outside employment, business activities and interests. The rule at § 1400.735-12 (a)(5) is that FMCS:

Employees may not engage in any outside employment, including teaching, lecturing or writing, which might reasonably result in a conflict of interest, or an apparent conflict of interest, between the private interests of the employee and his official government duties and responsibilities. No employee shall directly or indirectly accept, engage in, or continue in any outside employment or business activity, full- or part-time, paid or unpaid, without advance written approval....

At CFR § 2635.802, the Standards of Conduct provide that an employee may not engage in outside employment or outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties if it is prohibited by statute or by an agency regulation supplementing the Standards of Conduct; or if the activity would require the employee's disqualification from matters so central and critical to the performance of the employee's official duties that the employee's ability to perform the duties of his position would be materially impaired.

II. Conclusion

It is difficult for me to evaluate what impact this would have on Mr. _____ mediator position. At the very least, he would have to recuse himself from mediations involving the *South Bend Tribune*. If that is the extent of it, it seems like he can do it with the additional admonition below. Additionally, his service on this advisory committee must be in his individual capacity and not as an FMCS mediator. With these restrictions, I think it is acceptable if his supervisor agrees to it and there should be a written document acknowledging such an agreement.

However, if the advise goes to the content of other "business" articles which impact employers and employees who are subject to the mediation process, it could present a conflict of interest and such participation would be improper. Therefore, we need additional information as to what the advisory panel does.

Fried Maria

From: Fried Maria
Sent: Wednesday, September 28, 2005 4:19 PM
To: Walters-Marquez Jeannette
Subject: FW: Outside Activities

-----Original Message-----

From: Fried Maria
Sent: Wednesday, September 28, 2005 3:34 PM
To: Delgado Sergio
Subject: Outside Activities

Hi Sergio. Sorry I missed your call. Just so you have it, my direct line is 8090. Mery is out today otherwise she would have sent your message to me from the 5444 number. Anyway, I spoke to Jeannette about what you and she discussed and it sounds like the outside activity does not involve any FMCS matter or business or potential for FMCS business. If that's the case and if they don't have a grant with us (which I can't imagine that they would) I don't see a problem with the outside activity. Feel free to call me or Jeannette to discuss further. I will be in the office tomorrow.

Maria

Fried Maria

From: Fried Maria
Sent: Thursday, September 22, 2005 12:48 PM
To:
Subject: Ethics question

I cut the relevant portion from [redacted] e-mail that asked the same question of whether you can sign a book in your capacity as FMCS Commissioner and pasted it below. As we discussed, you can not use your official title or affiliation with FMCS to sign the book.

You are not permitted to use your official title or position for the private gain of an outside individual or organization. 5 CFR 2635.702 states that an employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain (even if de minimus) of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations. You also are not permitted to make any reference of FMCS because you can't give the impression that FMCS endorses the book.

Hope this helps. Maria

Fried Maria

From: Walters-Marquez Jeannette
Sent: Tuesday, July 19, 2005 1:32 PM
To: Fried Maria
Subject: outside activities

Maria,

Regarding the issue, I suggest that we require him to send his request for outside activity for review to the Ethic Officer. This way we can get all the facts and make a proper analysis. Event though my policy on outside activities is not in effect, we could use it as a tool for evaluating his Mike's requests. Even though Mike is not currently "working" for the outside organization the fact that he intends to affiliate himself with a contractor makes it an outside activity. If it is not an outside activity, and he is not planning to work for the organization, then he is misrepresenting himself.

Let's talk about tomorrow.

Jeannette

Fried Maria

From: Fried Maria
Sent: Monday, May 17, 2004 5:35 PM
To: Pearlstein Arthur
Subject: Off duty employment request

your request has been approved. As you know, according to FMCS directives, an employee shall not either for or without compensation, engage in teaching, lecturing or writing that depends on information obtained as a result of government employment except when that information has been made available to the general public or will be made available upon written request. Keep in mind that an employee engaged in teaching, speaking, or writing as outside employment shall not use or permit the use of his official title or position to identify himself in connection with his teaching, speaking, or writing activity or to promote any book, seminar, course, program or similar undertaking. However, an employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking, or writing, provided that his title or position is not give more prominence than other significant biographical details. Finally, as always, we need to ensure that no conflict of interest can arise from your teaching activities. If you have any questions or concerns, feel free to give me a call at 202-606-8090.

Thanks.

Maria

Tracking:

Recipient

Read

Pearlstein Arthur

Read: 5/20/2004 3:52 PM

Read: 5/31/2004 9:59 AM

To: Maria Fried
General Counsel

From: Jeannette Walters-Marquez
Attorney-Advisor

Date: May 16, 2005

Subject: Outside activities

QUESTION

You have requested advice as to whether an FMCS Mediator can serve as President of LERA without compensation. In addition you requested advice as to whether FMCS executives/managers may serve as unpaid officers for professional organizations like LERA and ALRA.

CONCLUSION

- A. As to the FMCS Mediator elected to be President of LERA, we determined that (1) she can pursue this outside activity in an unofficial capacity; (2) that FMCS has the discretion to fund the employee's activities based on the Agency's budget, funds and policies; and (3) the employee should disclose any known disqualifying financial interest that the organization may have, including grants; and (4) that the employee should not participate in fundraising activities.

The employee should be advised that she cannot use her Government employment for a purpose that gives the appearance of using her office for private gain, giving preferential treatment, impeding Government efficiency or economy, making Government decisions outside official channels, losing her independence or impartiality, or adversely affecting the confidence of the public in the integrity of the Government.

- B. As to executives/managers in general, there is no absolute prohibition as to their participation as officers of professional organizations. Employees should not serve as officers of professional organizations if their participation as officers would require their disqualification from matters so central to the performance of their official duties as to materially impair their ability to carry out those duties. This determination has to be made case by case, and requires the analysis of the employee's official duties.

When FMCS executives/ managers are permitted to participate as officers of professional organizations they should do so in their personal capacities; should report disqualifying financial interests including FMCS grants; and should not participate in fundraising.

- C. FMCS has the discretion to fund these outside activities based on its budget, policies and managerial discretion.

BACKGROUND:

FMCS executives/managers and Mediators have served as officers for professional organizations like the Association of Labor Relations Agencies (“ALRA”), and the Labor and Employment Relations Association (“LERA”). Among other officer positions, employees currently serve as presidents and vice-presidents of local chapters, and officers for the national organizations.

ALRA and LERA are professional organizations interested in labor –management issues. They provide a forum for networking, and promote cooperation among labor management professionals.. FMCS has awarded grants (at least one) to ALRA. In addition, LERA and ALRA have fundraising activities.

As we understand, officers of these organizations do not receive compensation for their duties.¹ The disclosure of compensation for duties of an officer of an organization is prohibited under 18 U.S.C. § 203, and requires another type of analysis.

ANALYSIS

I. Outside Activity

Federal government employees are not prohibited from participating in professional organizations. However, an employee may not have outside employment or be involved in an outside activity that conflicts with the official duties of the employee's position. An activity conflicts with official duties --

- if it is prohibited by statute or by the regulations of the employee's agency, or
- if the activity would require the employee to be disqualified from matters so central to the performance of the employee's official duties as to materially impair the employee's ability to carry out those duties.

¹ 18 U.S.C. § 203 would prohibit any Government employee who is also an officer in an organization like ALRA from receiving, directly or indirectly, any compensation for services rendered in relation to any proceeding, application, request for ruling or other determination, contract, claim, controversy, or other particular matter in which the United States is a party or has a direct or substantial interest. Pursuant to 18 U.S.C. § 203, there could be a violation of the statute if the Federal Government employee, as an officer of an organization, is paid to represent the grantee before any Government agency, department, or court, or employee thereof, on any matter in which the Government has an interest.

See 5 C.F. R. § 2635.802

Each outside activity has to be evaluated independently to determine if there is a conflict of interest with the employee's official duties. In the case of the Mediator President-elect of LERA, we determine that the outside activity is not prohibited by law or regulation, and does not in itself present a conflict with the employee's official duties as a Mediator. The employee should be advised that: (1) she has to clearly explain in her speech engagements or writings that her comments or opinions are made in her personal capacity and do not represent FMCS' views; and (2) that she can not use her Government employment for a purpose that gives the appearance of using her office for private gain; giving preferential treatment; impeding Government efficiency or economy; making Government decisions outside official channels; losing her independence or impartiality; or adversely affecting the confidence of the public in the integrity of the Government.

II. Official Capacity/Official time

The use of official time is regulated by 5CFR § 2635.705 which reads as follows in pertinent part:

Use of official time.

(a) *Use of an employee's own time.* Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

We advise that employees should pursue this type of outside activities in their personal capacity. It is very unlikely that an FMCS employee could demonstrate that his/her duties as an officer of a professional organization are part of an honest effort to perform official duties. In addition, it is sound agency policy not to allow employees to serve as officers of organizations their official capacity because the professional organization's interest may not be FMCS' interest at any given time.

That does not mean that FMCS can not pay for the expenses of an employee while he/she is serving as an officer of a professional organization. 5 C.F.R. § 251.202 provides that an agency may provide support services to certain organizations, including professional associations, when the agency determines that "such action would benefit the agency's programs or would be warranted as a service to employees who are members of the organization." This regulation specifically provides that an agency may pay for expenses of employees to attend professional organization meetings and permits the use of agency equipment or administrative support services for papers to be presented at conferences. Furthermore, employees may be authorized to take excused absences (otherwise known as administrative leave) to work on certain outside matters if the matter is related to the

agency's mission and is in the agency's interest. See OGE letter # 93-6. Thus, the decision to fund participation in professional activities is within the agency's discretion.

II. Financial Interests and fundraising

Employees who serve as officers of professional organizations should be advised that they should disclose if the organization has a disqualifying financial interest. See 18 U.S.C. § 208.² An example of a disqualifying financial interest is a grant awarded to the organization by FMCS. Even if the professional organization is a grantee, FMCS can waive the disqualifying financial interest if the financial interest "is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government." See 18 U.S.C. § 208 (b).

The following are some factors that the Ethic Officer will consider when addressing the waiving provisions: (a) Type of financial interest; (b) dollar amount of financial interest; (c) nature and importance of employee's role in the matter; (d) sensitivity of the matter; (e) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that the integrity of the employee's services would be questioned by a reasonable person. See 5 C.F.R. § 2640.301.

High level executives should consider that their appointment as officers for professional organizations may be perceived as preferential treatment to members of competing organizations, and could become a very sensitive matter for the FMCS. There will be an appearance of impropriety if a professional organization receives grants from FMCS while high executives are officers of the organization.

It is important to explain to all employees that under 5 C.F.R. §2635.808 an employee may engage in fundraising activities for professional organizations in a personal capacity if the employee does not use his official title, position, or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to him to be a prohibited source for purpose of the gift restriction. This provision prohibits managers from fundraising by soliciting funds or support from subordinates. If there is a practice of encouraging subordinates to join professional organizations, the practice violates Section 2635.808, and should stop.

² 18 U.S.C. § 208(a) which prohibits any officer or employee of the executive branch from participating as a government official in any "particular matter" in which an "organization in which he is serving as an officer, director trustee, general partner or employee ... has a financial interest." 18 U.S.C. § 208(a). This prohibition against conflicts of interest within the federal government would prevent a government employee from serving on the board of directors of an outside organization in his or her official capacity, in the absence of: (1) statutory authority or a release of fiduciary obligations by the organization that might eliminate the conflict interest, or (2) a waiver of the requirements of § 208(a), pursuant to 18 U.S.C. § 208 (b).

SUGGESTION

We should develop a policy regarding approval of outside activities in accordance with 5 C.F.R. § 2635.801. This policy should include request for approval by Ethics Officer, full disclosure of the financial interest if any, and a written determination by the Ethics Officer.

Fried Maria

From: Fried Maria
Sent: Friday, February 11, 2005 12:15 PM
To: Pearlstein Arthur
Subject: Ethics review

Arthur, here is Eileen's review. If _____ is now serving as a mediator for FMCS and then goes out and accepts \$ for something that is part of his official duties, that money should be returned to FMCS. He can't use his public office for private gain. If he is just teaching the history of mediation, I think that's OK but anything that involves something that FMCS does, he should not be compensated for above and beyond what he gets from FMCS.

FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, D.C. 20427

OFFICE OF THE GENERAL COUNSEL

July 5, 2005

MEMORANDUM

TO:

FROM: Maria A. Fried
Designated Agency Ethics Official

SUBJECT: Post Employment Rules

As a senior employee (SES or presidential appointee (ES)), you are subject to the restriction of other federal service employee and additional restrictions, which apply only to employees at your level. *It is vitally important that you understand these restrictions and that you follow them closely.*

Post Employment Restrictions

The primary post-employment restrictions are in 18 U.S.C. 207 which sets out a *lifetime ban* against making, with the intent to *influence*, any *communication to* or *appearance before* an employee of the U.S. on behalf of any other person in a *particular matter* involving a *specific party* in which the employee *participated personally and substantially* as an employee, and in which the U.S. *is a party* or has a *direct and substantial interest*. This is a lifetime restriction that commences upon an employee's termination from federal service.

The purpose behind this restriction is summarized as follows:

When a former Government employee who has been involved with a particular matter decides to act as the representative of another person on the same matter, the "switching of sides" undermines the public's confidence in the fairness of Government proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

18 U.S.C. does not bar any former employee, regardless of grade or position, from accepting employment with or representing a public or private employer after they end Government service, but it does prohibit former Government employees from engaging in certain activities on behalf of these persons or entities. The restrictions are as follows:

- 18 U.S.C. 207 (a)(1) a **lifetime ban** against making with the intent to **influence any communication to or appearance before** their former agency or persons in that agency or other agencies in **particular matter** involving **specific party (ies)** in which the employee participated **personally and substantially** as an employee, and in which the government has a **direct and substantial interest**. For the purposes of the FMCS, particular attention should be given to the definition of “particular matter” which includes any investigation, application, request for ruling or other proceeding. It is limited however, to the same party or parties at the time of the former employee’s participation.

EXAMPLE: A former commissioner goes to work for employer X as director of Human Resources. He is immediately involved in an ongoing collective bargaining dispute between X and ABC Union who are in FMCS mediation. He often was the substitute mediator in this case. He cannot participate in any mediation sessions before the FMCS in this particular matter, however, he is not prohibited from giving “behind the scenes” advice to his assistant who can be at the mediation sessions.

- 18 U.S.C. 207 (a)(2) sets out a very similar ban, except that it is of shorter duration (only **two years** following the employee’s termination of service) and applies only to those who had **official responsibility** for a matter that was **actually pending** during the employee’s **last year** of Government service. In other words, even though the employee was not “personally and substantially” involved in a particular matter, if the matter fell within his official responsibility during the last year of service, the employee is barred from communicating (with the intent to influence) with any Government employee on the same issue.
- 18 U.S.C. 207 (b) a restriction which is unlikely to involve former FMCS employees, bars a former employee, for **one year** after her Government service ends, from knowingly **representing, aiding or advising** on the basis of **covered information**, any other person concerning any **ongoing trade or treaty negotiation** which, in the **last year** of Government service, the employee **participated personally and substantially**. The term “covered information” refers to agency records which were accessible to the employee and were exempt from disclosure under the Freedom of Information Act. If this restriction applies, it applies to all representation even to “behind-the-scenes” assistance.
- 18 U.S.C. 207 (c). For **one year** after their service terminates, senior employees may not knowingly make, with the **intent to influence, any communication or appearance** before the **agency in which they served** in the **year prior to their leaving**, if the communication or appearance is made on behalf of any other person and **official action** by the agency is sought. The purpose of this “cooling off” period is to allow for a period of adjustment for the former senior employee and personnel at the agency served and to diminish any appearance that government decisions are being improperly influenced by the former senior employee. Like the “lifetime bar”, this restriction does not apply to “behind-the-

scenes” assistance. However, this is an extremely broad restriction and does *not* require that the former senior employee was “personally and substantially” involved in the matter that is the subject of the communication or appearance. Instead, ***it applies to any representation back to the agency that the employee just left.***

EXAMPLE: The Director left the FMCS in January. She joined her former law firm. She is counsel to a corporation and at the bargaining table. They are at an impasse and the Company and the union want to apply for mediation. The Director is barred for one year from January participating or even speaking to the FMCS regarding any matter including the application for mediation.

- 18 U.S.C. 207 (d) provides that for ***one year*** after service in a very senior position terminates, no former senior employee may knowingly make, with the intent to influence, any communication or appearance before any individual appointed to an Executive Schedule position or before any employee of a department or agency in which he served as a very senior employee during the one-year period prior to termination from Government service if that 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 that individual or employee. This ban is very similar to the one above but applies more broadly to ES employees.
- 18 U.S.C. 207 (f). This is unlikely to apply to FMCS employees, but there is a restriction for ***one year*** after their service terminates for senior and very senior employees. Such SES or ES employees may not ***represent, aid or advise a foreign government or foreign political party with the intent to influence*** the decision of an employee of ***any department or agency*** of the United States. Note that this prohibition ***includes*** “behind-the-scenes” assistance, such as drafting a proposal, advising on another’s appearance, or consulting on strategies.

I am also enclosing some Office of Government Ethics brochures addressing and further explaining the same issues addressed above. If you need further information or have any questions, whatsoever, about the employment restrictions, please contact me at (202) 606-5444.

Enclosures

FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, D.C. 20427

OFFICE OF THE GENERAL COUNSEL

Date

MEMORANDUM

TO: Departing Employee

FROM: Maria A. Fried
Designated Agency Ethics Official

SUBJECT: Pre and Post Employment Rules

As an employee who is departing or may depart the agency, you are subject to certain restrictions. *It is vitally important that you understand these restrictions and that you follow them closely.* As a part of this notification, please acknowledge receipt by signing and dating this document in the acknowledgement at the end and fax it to me at 202-606-5345.

Seeking Employment

You are not prohibited from seeking future employment while you are in your FMCS position. However, you must:

- Ensure that the prospect of employment does not affect your performance of your official duties.
- Ensure that you do not communicate “inside” or privileged information to a prospective employer.
- Avoid any activity that would affect the public’s confidence in the integrity of the government or the FMCS, even if the activity is not an actual violation of the law. (Avoid the appearance of impropriety.)

Once you start negotiating with a future or prospective employer, you should immediately report that fact to me as the DAEO. I will maintain your confidences, however, it is vitally important that you immediately disqualify yourself from any particular matter that may have a *direct and predictable effect* on the financial interests of the person (firm, etc.) with whom you are *negotiating* or have *any arrangement with* regarding future employment. To protect yourself and the FMCS, you should draft a written recusal letter addressed to me as the DAEO. Seeking employment is broadly defined under the law and regulations and includes: communicating with another person with a view toward reaching an agreement regarding employment, making an unsolicited communication regarding employment, or not rejecting an unsolicited communication from any person regarding possible employment.

EXAMPLE: The Director's term is ending and she wishes to leave the FMCS. She is in discussions with her former law firm about rejoining after she leaves FMCS. The firm represents 3 clients who FMCS is currently in mediation with. The Director advises the DAEO and drafts a recusal agreement that she will recuse herself from handling or responding to any inquires or mediated sessions, etc. involving those employers (and/or unions).

Post Employment Restrictions

The primary post-employment restrictions are in 18 U.S.C. 207 which sets out a ***lifetime ban*** against making, with the intent to *influence*, any *communication to or appearance before* an employee of the U.S. on behalf of any other person in a *particular matter* involving a *specific party* in which the employee *participated personally and substantially* as an employee, and in which the U.S. *is a party* or has a *direct and substantial interest*. This is a lifetime restriction that commences upon an employee's termination from federal service.

The purpose behind this restriction is summarized as follows:

When a former Government employee who has been involved with a particular matter decides to act as the representative of another person on the same matter, the "switching of sides" undermines the public's confidence in the fairness of Government proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

18 U.S.C. does not bar any former employee, regardless of grade or position, from accepting employment with or representing a public or private employer after they end Government service, but it does prohibit former Government employees from engaging in certain activities on behalf of these persons or entities. The restrictions are as follows:

- 18 U.S.C. 207 (a)(1) a ***lifetime ban*** against making with the intent to *influence any communication to or appearance before* their former agency or persons in that agency or other agencies in *particular matter* involving *specific party (ies)* in which the employee participated *personally and substantially* as an employee, and in which the government has a *direct and substantial interest*. For the purposes of the FMCS, particular attention should be given to the definition of "particular matter" which includes any investigation, application, and request for ruling. or other proceeding. It is limited however, to the same party or parties at the time of the former employee's participation.

EXAMPLE: A former commissioner goes to work for employer X as director of Human Resources. He is immediately involved in an ongoing collective bargaining dispute between X and ABC Union who are in FMCS mediation. He often was the substitute mediator in this case. He cannot participate in any mediation sessions before the FMCS in this particular matter; however, he is not

prohibited from giving “behind the scenes” advice to his assistant who can be at the mediation sessions.

- 18 U.S.C. 207 (a)(2) sets out a very similar ban, except that it is of shorter duration (only *two years* following the employee’s termination of service) and applies only to those who had *official responsibility* for a matter that was *actually pending* during the employee’s *last year* of Government service. In other words, even though the employee was not “personally and substantially” involved in a particular matter, if the matter fell within his official responsibility during the last year of service, the employee is barred from communicating (with the intent to influence) with any Government employee on the same issue.
- 18 U.S.C. 207 (b) a restriction which is unlikely to involve former FMCS employees, bars a former employee, for *one year* after her Government service ends, from knowingly *representing, aiding or advising* on the basis of *covered information*, any other person concerning any *ongoing trade or treaty negotiation* which, in the *last year* of Government service, the employee *participated personally and substantially*. The term “covered information” refers to agency records which were accessible to the employee and were exempt from disclosure under the Freedom of Information Act. If this restriction applies, it applies to all representation even to “behind-the-scenes” assistance.

I am also enclosing some Office of Government Ethics brochures addressing and further explaining the same issues addressed above. If you need further information or have any questions, whatsoever, about the employment restrictions, please contact me immediately.

I acknowledge that I received and reviewed this memorandum.

Signature

Print Full Name

Date

**RETURN ACKNOWLEDGEMENT VIA FACSIMILE TO
MARIA FRIED AT 202-606-5345.**

Enclosures

FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, D.C. 20427

OFFICE OF THE GENERAL COUNSEL

July 5, 2005

MEMORANDUM

TO:

FROM: Maria A. Fried
Designated Agency Ethics Official

SUBJECT: Post Employment Rules

As an employee who has departed the agency, you are subject to certain restrictions. *It is vitally important that you understand these restrictions and that you follow them closely.*

Post Employment Restrictions

The primary post-employment restrictions are in 18 U.S.C. 207 which sets out a *lifetime ban* against making, with the intent to *influence*, any *communication to or appearance before* an employee of the U.S. on behalf of any other person in a *particular matter* involving a *specific party* in which the employee *participated personally and substantially* as an employee, and in which the U.S. *is a party* or has a *direct and substantial interest*. This is a lifetime restriction that commences upon an employee's termination from federal service.

The purpose behind this restriction is summarized as follows:

When a former Government employee who has been involved with a particular matter decides to act as the representative of another person on the same matter, the "switching of sides" undermines the public's confidence in the fairness of Government proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

18 U.S.C. does not bar any former employee, regardless of grade or position, from accepting employment with or representing a public or private employer after they end Government service, but it does prohibit former Government employees from engaging in certain activities on behalf of these persons or entities. The restrictions are as follows:

- 18 U.S.C. 207 (a)(1) a *lifetime ban* against making with the intent to *influence any communication to or appearance before* their former agency or persons in that agency or other agencies in *particular matter* involving *specific party (ies)* in which the employee participated *personally and substantially* as an employee,

and in which the government has a **direct and substantial interest**. For the purposes of the FMCS, particular attention should be given to the definition of “particular matter” which includes any investigation, application, and request for ruling, or other proceeding. It is limited however, to the same party or parties at the time of the former employee’s participation.

EXAMPLE: A former commissioner goes to work for employer X as director of Human Resources. He is immediately involved in an ongoing collective bargaining dispute between X and ABC Union who are in FMCS mediation. He often was the substitute mediator in this case. He cannot participate in any mediation sessions before the FMCS in this particular matter; however, he is not prohibited from giving “behind the scenes” advice to his assistant who can be at the mediation sessions.

- 18 U.S.C. 207 (a)(2) sets out a very similar ban, except that it is of shorter duration (only **two years** following the employee’s termination of service) and applies only to those who had **official responsibility** for a matter that was **actually pending** during the employee’s **last year** of Government service. In other words, even though the employee was not “personally and substantially” involved in a particular matter, if the matter fell within his official responsibility during the last year of service, the employee is barred from communicating (with the intent to influence) with any Government employee on the same issue.
- 18 U.S.C. 207 (b) a restriction which is unlikely to involve former FMCS employees, bars a former employee, for **one year** after her Government service ends, from knowingly **representing, aiding or advising** on the basis of **covered information**, any other person concerning any **ongoing trade or treaty negotiation** which, in the **last year** of Government service, the employee **participated personally and substantially**. The term “covered information” refers to agency records which were accessible to the employee and were exempt from disclosure under the Freedom of Information Act. If this restriction applies, it applies to all representation even to “behind-the-scenes” assistance.

I am also enclosing some Office of Government Ethics brochures addressing and further explaining the same issues addressed above. If you need further information or have any questions, whatsoever, about the employment restrictions, please contact me (202) 606-5444.

Enclosures

FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, D.C. 20427

OFFICE OF THE GENERAL COUNSEL

July 5, 2005

MEMORANDUM

TO:

FROM: Maria A. Fried
Designated Agency Ethics Official

SUBJECT: Post Employment Rules

As a senior employee (SES or presidential appointee (ES)), you are subject to the restriction of other federal service employee and additional restrictions, which apply only to employees at your level. *It is vitally important that you understand these restrictions and that you follow them closely.*

Post Employment Restrictions

The primary post-employment restrictions are in 18 U.S.C. 207 which sets out a *lifetime ban* against making, with the intent to *influence, any communication to or appearance before* an employee of the U.S. on behalf of any other person in a *particular matter* involving a *specific party* in which the employee *participated personally and substantially* as an employee, and in which the U.S. *is a party* or has a *direct and substantial interest*. This is a lifetime restriction that commences upon an employee's termination from federal service.

The purpose behind this restriction is summarized as follows:

When a former Government employee who has been involved with a particular matter decides to act as the representative of another person on the same matter, the "switching of sides" undermines the public's confidence in the fairness of Government proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

18 U.S.C. does not bar any former employee, regardless of grade or position, from accepting employment with or representing a public or private employer after they end Government service, but it does prohibit former Government employees from engaging in certain activities on behalf of these persons or entities. The restrictions are as follows:

- 18 U.S.C. 207 (a)(1) a **lifetime ban** against making with the intent to **influence any communication to or appearance before** their former agency or persons in that agency or other agencies in **particular matter** involving **specific party (ies)** in which the employee participated **personally and substantially** as an employee, and in which the government has a **direct and substantial interest**. For the purposes of the FMCS, particular attention should be given to the definition of “particular matter” which includes any investigation, application, request for ruling or other proceeding. It is limited however, to the same party or parties at the time of the former employee’s participation.

EXAMPLE: A former commissioner goes to work for employer X as director of Human Resources. He is immediately involved in an ongoing collective bargaining dispute between X and ABC Union who are in FMCS mediation. He often was the substitute mediator in this case. He cannot participate in any mediation sessions before the FMCS in this particular matter, however, he is not prohibited from giving “behind the scenes” advice to his assistant who can be at the mediation sessions.

- 18 U.S.C. 207 (a)(2) sets out a very similar ban, except that it is of shorter duration (only **two years** following the employee’s termination of service) and applies only to those who had **official responsibility** for a matter that was **actually pending** during the employee’s **last year** of Government service. In other words, even though the employee was not “personally and substantially” involved in a particular matter, if the matter fell within his official responsibility during the last year of service, the employee is barred from communicating (with the intent to influence) with any Government employee on the same issue.
- 18 U.S.C. 207 (b) a restriction which is unlikely to involve former FMCS employees, bars a former employee, for **one year** after her Government service ends, from knowingly **representing, aiding or advising** on the basis of **covered information**, any other person concerning any **ongoing trade or treaty negotiation** which, in the **last year** of Government service, the employee **participated personally and substantially**. The term “covered information” refers to agency records which were accessible to the employee and were exempt from disclosure under the Freedom of Information Act. If this restriction applies, it applies to all representation even to “behind-the-scenes” assistance.
- 18 U.S.C. 207 (c). For **one year** after their service terminates, senior employees may not knowingly make, with the **intent to influence, any communication or appearance** before the **agency in which they served** in the **year prior to their leaving**, if the communication or appearance is made on behalf of any other person and **official action** by the agency is sought. The purpose of this “cooling off” period is to allow for a period of adjustment for the former senior employee and personnel at the agency served and to diminish any appearance that government decisions are being improperly influenced by the former senior employee. Like the “lifetime bar”, this restriction does not apply to “behind-the-

scenes” assistance. However, this is an extremely broad restriction and does *not* require that the former senior employee was “personally and substantially” involved in the matter that is the subject of the communication or appearance. Instead, *it applies to any representation back to the agency that the employee just left.*

EXAMPLE: The Director left the FMCS in January. She joined her former law firm. She is counsel to a corporation and at the bargaining table. They are at an impasse and the Company and the union want to apply for mediation. The Director is barred for one year from January participating or even speaking to the FMCS regarding any matter including the application for mediation.

- 18 U.S.C. 207 (d) provides that for *one year* after service in a very senior position terminates, no former senior employee may knowingly make, with the intent to influence, any communication or appearance before any individual appointed to an Executive Schedule position or before any employee of a department or agency in which he served as a very senior employee during the one-year period prior to termination from Government service if that 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 that individual or employee. This ban is very similar to the one above but applies more broadly to ES employees.
- 18 U.S.C. 207 (f). This is unlikely to apply to FMCS employees, but there is a restriction for *one year* after their service terminates for senior and very senior employees. Such SES or ES employees may not *represent, aid or advise a foreign government or foreign political party with the intent to influence* the decision of an employee of *any department or agency* of the United States. Note that this prohibition *includes* “behind-the-scenes” assistance, such as drafting a proposal, advising on another’s appearance, or consulting on strategies.

I am also enclosing some Office of Government Ethics brochures addressing and further explaining the same issues addressed above. If you need further information or have any questions, whatsoever, about the employment restrictions, please contact me at (202) 606-5444.

Enclosures

Walters-Marquez Jeannette

From: Beckenbaugh Scot
Sent: Friday, September 23, 2005 6:46 AM
To: All Employees
Subject: Leaderline - Outside Activities
Importance: High

Dear Colleagues

As we approach the beginning of the new fiscal year, I wanted to remind everyone of the importance of keeping the Agency advised of your outside activities which may be job related (serving on Boards and Commissions) as well as reminding those with outside employment, that every employment relationship must be approved in writing prior to the beginning of the compensated activity. Attached you will find a memo outlining the Agency directives on these matters. During sensitive times, it is important that we all remain vigilant with regard to real and apparent conflict of interest issues.

Thank you in advance for your attention to these matters. I appreciate your continued hard work.

Sincerely,
Scot Beckenbaugh
Acting Director

FMCS Policy on Outside Employment and Activities

TO: All Employees

FROM: Scot Beckenbaugh
Acting Director

SUBJECT: Policy on Outside Employment and Activities

Federal employees have a duty to protect the public trust and to avoid any potential conflict of interests arising from his/her position as a government employee. While the Agency does not seek to prohibit all outside employment and activities, the purpose of this policy is to remind all FMCS employees that certain prohibitions do exist relating to outside employment and activities.

FMCS Directives 5804:7 – 5804:15 provide guidance on outside employment and activities. As a general rule, an employee cannot engage in outside employment or any outside activity if it conflicts with the employee's government position. An outside activity may include serving as an officer (e.g. president, director, chairman, treasurer) for a non-profit organization that provides services similar to FMCS or seeks to further the interests of a union or management entity.

Outside employment or activity conflicts with official duties - -

- if it is prohibited by statute or by regulations of the employee's agency, or
- if the activity would require the employee to be disqualified from matters so central to the performance of the employee's official duties as to materially impair the employee's ability to carry out those duties. This includes engaging in outside employment or activity which interferes, or might interfere, with the impartial performance of official duties, or jeopardize the acceptability of the employee or the Service in regard to the performance of official duties or
- if the outside activity or employment creates an appearance of a conflict of interest with your position as a federal employee or with the mission of FMCS

To ensure compliance with these Directives, all outside employment and activities that have the potential to create a conflict of interest must be preapproved (as required by Directive 5804:14) by the Director of Mediation Services (DMS) and the Designated Agency Ethics Official (DAEO)(Maria A. Fried). If there is any doubt as to whether participation in any activity, employment or organization has the potential to create a conflict of interest, the employee should consult with his/her DMS and the DAEO. Each outside employment or activity request will be evaluated independently to determine if there is a conflict of interest with the employee's official duties. Requests for approval

should provide enough information to render advice. Information that must be provided includes, name of the organization or group for whom the service/activity is to be performed, the nature of the outside employment or activity, approximate dates and times when work or activity will be performed, and whether the activity or employment will be compensated.

Failure to comply with this policy may result in disciplinary action to include removal and/or criminal penalties.