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Description of document: US Commission On Civil Rights (USCCR)Ethics  
Opinions, 2004 - 2010

Requested date: 01-August-2010

Released date: 07-December-2010

Posted date: 14-February-2010

Date/date range of document: 17-February-2004 – 07-December-2010

Source of document: FOIA Officer  
U.S. Commission on Civil Rights  
Suite 620  
Washington, DC 20425  
Fax: (202) 376-1163  
E-mail: [foia@usccr.gov](mailto:foia@usccr.gov)

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UNITED STATES COMMISSION ON CIVIL RIGHTS

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624 NINTH STREET, NW, WASHINGTON, DC 20425

[www.usccr.gov](http://www.usccr.gov)

December 7, 2010

Re: Freedom of Information Act Request Dated August 1, 2010, File No. 2010-33

We received your request under the Freedom of Information Act ("FOIA") seeking copies of "ethics waivers" provided at the U.S. Commission on Civil Rights ("Commission") since January 1, 2001. We have located 51 pages of responsive documents, which you will find enclosed.

As we discussed in our e-mail exchange on October 13, 2010, the Commission does not use the term "ethics waiver" in its regular practices. To clarify your request, you provided an example of a series of U.S. Department of Energy memoranda granting waivers pursuant to 18 U.S.C. § 208. Based on this clarification, we performed a search for similar documents in our agency's files, in which our ethics officers granted or denied permission for agency employees to engage in activities, such as outside employment, or to accept gifts. It is our understanding that these are the kinds of documents that you are seeking in your request.

Please be advised that it has been the practice of our ethics officers to provide ethics opinions in one of two formats: through formal memoranda or via informal e-mail exchanges. In an effort to be of assistance, we have included both types of ethics opinions in our response. Please note, however, that we do not consider any e-mails in a given e-mail exchange other than the actual ethics opinion to be responsive, and we have redacted the e-mail exchanges to reflect this determination.<sup>1</sup> Responsiveness notwithstanding, in those instances where we have determined that it would be difficult to understand an informal opinion without its context, we have used our

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<sup>1</sup> Any redactions due to non-responsiveness are labeled "N/R."

December 7, 2010

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discretion to voluntarily disclose additional e-mails within the e-mail exchange to better assist you.

In addition, please note that several of the documents have been partially redacted pursuant to Exemption 6 of the FOIA, which exempts federal agencies from disclosing files that would constitute a "clearly unwarranted invasion of personal privacy." *See* 5 U.S.C. § 552(b)(6). To protect the personal privacy interests of agency employees and others, we have redacted personal identifier information, including names, unique business titles, e-mail addresses, contact information, or other information that can easily be used to determine individuals' identities.<sup>2</sup>

Please feel free to contact me if you have any questions regarding our response.

If you consider our response to be a denial of your request you may appeal within 90 days of this letter by filing a written request for review addressed to the Staff Director of the U.S. Commission on Civil Rights, 624 Ninth Street, NW, Washington, D.C. 20425, by certified mail, including a copy of the written denial. You may include a statement of the circumstances, reasons or arguments advanced in support of disclosure. *See* 45 C.F.R. § 704.1(g). Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



David B. Snyder  
Attorney-Advisor  
Office of the General Counsel  
U.S. Commission on Civil Rights  
624 Ninth Street NW  
Washington, DC 20425  
202/376-2890/p  
202/376-1163/f  
[dsnyder@usccr.gov](mailto:dsnyder@usccr.gov)

Enclosures

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<sup>2</sup> Any redactions due to Exemption 6 are labeled "(b)(6)."

David Snyder

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From: Monroig, Emma  
Sent: Friday, March 19, 2004 4:46 PM  
To: Sun, Alex  
Cc: Jin, Les R.  
Subject: RE: Ethics question on participation in National Press Club event

March 19, 2004

MEMORANDUM FOR ALEX SUN

Assistant to the Staff Director

FROM: EMMA GONZALEZ-JOY  
DAEO

SUBJECT: Luncheon Invitation

You requested an ethics opinion concerning an invitation by one of the Commission's vendors, U.S. Newswire (press release service) to the [REDACTED] for an event at the National Press Club on April 5, 2004. At (b)(6) the event, Tim Russert, host of NBC's Meet the Press will be the guest speaker. I called the National Press Club and the person who answered told me they do not have the event scheduled yet, so she was unable to tell me the speaker's topic and if this is an event sponsored by the U.S. Newswire. That person did tell me that, though the price of the luncheon for members is less than \$20, the price for their guests and individuals who are not members, is greater than \$20. Copy of the calendar from the web site of the National Press Club showing that this event is not scheduled is attached.

The statutory prohibition says that executive branch officers and employees may not, directly or indirectly, solicit or accept gifts from a prohibited source, or which are given because of the employee's official position, other than pursuant to exceptions promulgated by the Office of Government Ethics (OGE).

The Office of Government Ethics (OGE) regulation that governs the acceptance of gifts by Commission employees says that a Commission employee may accept a gift except: (1) a gift from a prohibited source; or (2) a gift given because of the employee's official position. A "prohibited source" is any person who: (1) is seeking official action by the employee's agency; (2) does business or seeks to do business with the employee's agency; (3) conducts activities regulated by the employee's agency; (4) has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or (5) is an organization, such as a trade association, a majority of whose members are described in (1) through (4) above. A "person" is an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity.

A gift is given because of an employee's official position if it is solicited, or accepted, because of the employee's official position from a person other than an employee, and would not have been solicited, offered or given had the employee not held the status, authority or duties associated with his/her Federal position.

Despite this general prohibition, there are certain circumstances under which an employee may accept a gift from a prohibited source:

1. Gifts based on a personal relationship. An employee may accept a gift given under circumstances that make it clear that the gift is motivated by a family relationship or personal friendship, and not because of

the position of the employee. Relevant factors in making such a determination include the history of the relationship, and whether the family member or friend personally pays for the gift;

2. Discounts and similar benefits. An employee may accept opportunities and benefits: (1) offered by members of a group or class in which membership is unrelated to government employment; or (2) offered to members of an organization, such as an agency's credit union, in which membership is related to government employment, if the same offer is broadly available to large segments of the public through organizations of similar size. In addition, an employee may accept free, or discounted, or free legal services that are offered to the public at large, or to a class consisting of all federal employees;
3. Gifts based on outside business or employment relationships. An employee may accept benefits resulting from the non-Commission business or employment activities of the employee, or the employee's spouse, when it is clear that such benefits have not been offered, or enhanced, because of the employee's official position or status;
4. Honorary degree or award, other than cash, with an aggregate market value of less than \$200. may be accepted, even if the award is for meritorious public service or actions taken in an official capacity. If the award is cash, or exceeds \$200 threshold, it may be accepted with advance approval. It must be determined that the award is given on a regular basis and pursuant to selection standards or chosen by a committee;
5. Generally, acceptance of free attendance from a "prohibited source" at a widely attended event is prohibited when the value of the free attendance exceeds \$20 per event, and the Commission for the same calendar year did not receive any other gift from that source, that together are worth more than \$50. The value of the attendance is measured by the cost to the employee of a similar event at the retail market. The only exceptions to this prohibition are as follows:
  - A. The source of the employee's free attendance is the sponsor of the event and the employee will participate as a speaker, panelist or exhibitor at the event and will present information on behalf of the Commission at the event, or the attendance of the employee at this event will be in the interest of the Commission because it will further the Commission's programs and operations. There must be a determination that it is in the interest of the employee's agency to have the employee attend the event because it furthers agency program and operations.
  - B. The event is a widely attended gathering, and the source of the employee's free attendance is not the sponsor of the event. The employee's free attendance is valued at \$250 or less, and more than 100 persons are expected to attend the gathering. Other factors to be considered are: the source of the invitation and whether the persons have an interest that may be substantially affected by the performance, or non-performance, of the employee's official duties; and, the number and identity of other participants expected to attend. The Commission's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may appear to improperly influence the employee in the performance of her official duties.

I am not aware of a personal relationship between [REDACTED] and the vendor. The luncheon does not consist of a discount or similar benefit. There is no indication that [REDACTED] has an outside business or employment relationship. The luncheon is not provided as part of a ceremony to give [REDACTED] an honorary degree or award. Though the event is a widely attended meeting, the cost of the luncheon is in excess of \$20. There is no information as to whether U.S. Newswire is the sponsor of the event. (b)(6)

As to the nature of the relationship between the [REDACTED] and U.S. Newswire, the Commission policy is that the [REDACTED]

(b)(6)

It is evident that [REDACTED] is in a position to make a positive or negative evaluation of the services provided by the contractor that might have an impact on the granting of the contract of the Commission. In this situation, U.S. Newswire is a prohibited source because it does business with the employee's agency and because it has interest that may be substantially affected by the performance or non-performance of the employee's duties. There is no indication that [REDACTED] received gifts of this type from the vendor before she became the [REDACTED], so it is reasonable to conclude that the invitation is made because of her official position.

(b)(6)

Lastly, even if the acceptance of a gift were legally permissible, there may be an appearance of impropriety associated with the acceptance of a gift from a vendor dealing with duties that [REDACTED] supervises.

(b)(6)

cc: Les Jin

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

From: Sun, Alex  
Sent: Thursday, March 11, 2004 3:20 PM  
To: Monroig, Emma  
Cc: Jin, Les R.  
Subject: Ethics question on participation in National Press Club event

Emma,

One of the Commission's vendors, U.S. Newswire (press release service), invited the [REDACTED] to an event at the National Press Club. The question presented is whether this Commission employee is allowed to accept this invitation?

(b)(6)

At the event, Tim Russert, host of NBC's "Meet the Press" will talk. The event is Monday, April 5, 2004. Could you please look into this question and provide an answer next week? Thanks.

Alex

David Snyder

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From: Monroig, Emma  
Sent: Friday, April 23, 2004 7:50 AM  
To: [REDACTED]  
Subject: Ethics Question

(b)(6)

In order to make a determination if you may accept this gift, there has to be a threshold determination if the gift is from a prohibited source, or which is given to you because of your official position as [REDACTED] of the U.S. Commission on Civil Rights (USCCR). (b)(6)

A "prohibited source" is any person who: (1) is seeking official action by the USCCR; (2) does business or seeks to do business with the USCCR; (3) conducts activities regulated by the USCCR; (4) has interests that may be substantially affected by the performance or nonperformance of your official duties; or (5) is an organization, such as a trade association, a majority of whose members are described in (1) through (4) above.

A gift is given because of your official position if it is solicited, or accepted, from a person other than an employee, and would not have been solicited, offered or given had you held the status, authority or duties associated with being [REDACTED] of the USCCR. (b)(6)

According to your email, a corporate representative of Walmart asked you at a table bought by Walmart for a fundraiser for the Asian Pacific American Institute for Congressional Studies (APAICS) APAICS was founded in 1995 by the Asian Pacific American Members of Congress and other community leaders as an organization to promote, support and conduct non-partisan education and informational activities, research and programs designed to effectively enhance and increase the participation of the Asian Pacific Islander American (APIA) community in the democratic process at the national, state and local levels. The goal is that more APIA's participate in all facets of government life as elected and appointed officials., an ambitious agenda of political empowerment, candidate training and coalition building.

In order to make a determination the fact that needs to be ascertained is why did this corporate representative think of giving this gift to you. Do you have a personal relationship with a Walmart Executive or the company? Walmart has been sued by illegal immigrants for violating their rights. Will the Commission be involved this type issue? Was your name provided by the sponsor because they are interested in your work at the Commission? If so, was this because a previous position you held with an institution for Asian Pacific Americans? Is the reason why you were invited because APAICS is an organization that is interested in the election of Asian Americans and the Commission is presently undertaking a project on voting rights during 2004. Is this the reason APAICS might be interested in your participation? I raise these issue in order for you to realize it is necessary to document the motivation for the invitation.

If the gift is covered by either prohibition then an examination has to be done to see if the invitation is covered by one of the exceptions. If it is not, then there is no need for further inquiry.

## David Snyder

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**From:** Monroig, Emma  
**Sent:** Tuesday, February 17, 2004 4:26 PM  
**To:** Sun, Alex  
**Subject:** RE: Ethics Opinion-Lunch at Indina Reservation

The meal cannot exceed \$20. in value. The \$50 is cumulative when gifts are provided on several occasions.

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

**From:** Sun, Alex  
**Sent:** Tuesday, February 17, 2004 4:23 PM  
**To:** Monroig, Emma  
**Cc:** Jin, Les R.  
**Subject:** RE: Ethics Opinion-Lunch at Indina Reservation

Well, I'm not sure the site visit is part of the "official" function of the Commission, since it is an informal tour. But, in any event, it seems like under the last scenario, as long as the meal does not exceed \$50 dollars in value (and recipients have not already received \$50 dollars in prior gifts), then employees could accept the lunch meal being offered.

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

**From:** Monroig, Emma  
**Sent:** Tuesday, February 17, 2004 11:13 AM  
**To:** Sun, Alex  
**Cc:** Jin, Les R.  
**Subject:** Ethics Opinion-Lunch at Indina Reservation

You requested an opinion as to whether the Commission can accept an offer of lunch from an Indian reservation for a group of Commission officials that will be touring the reservation.

The regulations of the Office of Government Ethics provide that employees shall not, directly or indirectly, solicit or accept a gift given because of the employee's official position. This regulation only permits government officials to accept gifts from outside sources in certain specified situations. The definition of gift does not include modest items of food and refreshment, such as soft drinks, coffee and donuts, offered other than as part of a meal. Since this situation involves a meal, acceptance of the same is not excluded from the definition of gifts.

Employees can have meals that are received as gifts provided in-kind, when these are accepted under the agency's gift acceptance authority. The U.S. Commission on Civil Rights does not have gift acceptance authority, therefore this exception does not allow acceptance of the meal.

Another possible source of authority to accept this gift is the acceptance of travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. § 1353, in connection with attendance at a meeting or similar function related to the employee's official duties which takes place away from the employee's official duty station. Meeting, as defined in the regulations that implement this statute, does not include a meeting or other event required to carry out an agency's statutory or regulatory functions, such as investigations, inspections, audits, site visits, negotiations or litigation. It is my understanding that the Commission will be making a site visit to the Indian reservation that is part of its official functions. The agency, therefore, cannot accept the lunch on behalf of its employees.

Lastly, an employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate value of individual gifts received from any one person



under the authority of this paragraph shall not exceed \$50 in a calendar year. In order to determine if the gift comes within the permissible boundaries of this section, one has to determine the value of the same based on the definition of market value in the regulations. Market value means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. You should request the Commission employee in charge of this activity to ascertain the value of the meal using the above quoted definition as a guide.

May 19, 2003

MEMORANDUM FOR [REDACTED]

(b)(6)

FROM: EMMA MONROIG  
DAEO

SUBJECT: Ethics considerations of publishing an article that mentions the USCCR

I received your memorandum inquiring about the ethics considerations of your writing an article on the Leadership Conference on Civil Rights. The name of the publisher is unknown. Your concern is whether it is proper to make a reference to the formation of the USCCR while discussing the impact of the civil rights, feminist and environmental movements on this organization. The Leadership Conference, which was founded in 1950, is a civil rights coalition that consists of more than 180 national organizations, representing a large variety of civil rights concerns.<sup>1</sup> I agree with you that the mention of the history of the USCCR appears to be permissible. Since I have not seen the article, or the specifics of the reference, I will provide you with general guidance on this matter.

The Standards of Ethical Conduct, issued under the authority of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 12, 1990) state 14 principles that broadly define the obligations of public service. Section 101 (j) says that employees shall not engage in outside employment or activities that conflict with official Government duties and responsibilities. This means that all executive branch officers and employees are prohibited from receiving compensation, including travel expenses, for writing that "relates to the employee's official duties."<sup>2</sup>

An officer or employee may not accept compensation from an outside source for teaching, speaking or writing based substantially on nonpublic information, or when the activity is undertaken as part of the employee's official duties.<sup>3</sup> Based on your description of the writing in question, it appears that the writing was not undertaken as part of your official duties. Likewise, the information conveyed through the activity does not draw substantially on ideas or official data that are not publicly available.

The most significant limitations are imposed on non-career employees in positions classified above GS-15 in the General Schedule.<sup>4</sup> Such employees are prohibited from accepting compensation for teaching, speaking and writing which deals in a significant

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<sup>1</sup> <<http://www.civilrights.org/about/lccr>>

<sup>2</sup> 5 C.F.R. § 2635.807(a).

<sup>3</sup> 5 C.F.R. § 2635.807(a)(2)(i)(A) and (D).

<sup>4</sup> 5 C.F.R. § 2635.807

part with the subject matter area, industry or economic sector primarily affected by the programs and operations of their agencies.<sup>5</sup> Since the highest grade of Commissioner Assistants is GS-13 this prohibition would not apply to you.

An activity can relate to an employee's official duties within the meaning of this prohibition, even though it is undertaken in an employee's personal capacity. For most employees, writing is considered related to duties if the subject of the activity deals in significant part with:

- (1) Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period; [or]
- (2) Any ongoing or announced policy, program or operation of the agency . . . ."<sup>6</sup>

When the writing does not involve non-public information, but the subject matter thereof relates to the programs or operations of the employee's agency, the permissibility of the activity depends upon how closely the subject matter relates to the agency's responsibilities.

Generally, an employee may write on a subject within the employee's inherent expertise based on his or her educational background or experience, even though the subject matter is related to the activities of the employing agency. The employee will be prohibited from receiving compensation only when the activity focuses specifically on the agency's responsibilities, policies and programs, when the employee is perceived as conveying the agency's policies and programs, or when the activity interferes with his or her official duties.

The writing of such an article may run afoul of other standards of conduct, most notably the prohibition against using one's public office for private gain<sup>7</sup> and the prohibition against an outside activity which is so time-consuming that it interferes with the proper discharge of one's official duties.<sup>8</sup> The receipt of compensation in the last of these circumstances is also prohibited by the supplementation of salary bar.<sup>9</sup>

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<sup>5</sup> 5 C.F.R. §2636.303(a).

<sup>6</sup> 5 C.F.R. § 2635.807(a)(2)(i)(E)(1) and (2).

<sup>7</sup> 5 C.F.R. §735.201a(a).

<sup>8</sup> 5 C.F.R. §735.203(a).

<sup>9</sup> 18 U.S.C. § 209.

David Snyder

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From: Monroig, Emma  
Sent: Thursday, November 03, 2005 10:15 AM  
To: [REDACTED]  
Subject: Ethics Opinion

(b)(6)

Attached is the opinion you requested.



Ethics-Gifts from  
Outside Sour...

You requested an opinion as to whether you can accept the book [REDACTED] [REDACTED]. One of the authors is scheduled to be a speaker at a Commission's briefing that will take place before the end of the year. He has sent you this book as a gift.

(b)(6)

The statute that prohibits acceptance of gifts from an outside person says that an officer or employee of the executive branch shall not solicit or accept anything of value from a person--

(1) seeking official action from, doing business with, or conducting activities regulated by the individual's employing entity; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.<sup>1</sup>

The regulation with the standards of conduct at 5 C.F.R. part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, implements the prohibition of 5 U.S.C. § 7343. Subpart B of the Standards contains the prohibitions on the acceptance of gifts from outside sources. According to 5 C.F.R. § 2635(a) gifts may not be accepted in two circumstances (1) when they are from a "prohibited source"; or, (2) if given "because of the employee's official position."

Section 2635.202(a)(1) bars an executive branch employee from accepting gifts from prohibited sources. A "prohibited source" is any person (including any organization more than half of whose members are persons who would be considered prohibited sources) seeking official action by the employee's agency; doing business or seeking to do business with the employee's agency; conducting activities regulated by the employee's agency; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties.<sup>2</sup> In accordance with this definition, the author is a prohibited source since he is appearing at a Commission briefing dealing with discrimination against Jews. At these briefings there is generally nationwide publicity that could further the sale of the author's book.

Section 2635.202(a)(2) prohibits an employee from accepting a gift that is given because of the employee's official position. A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the

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<sup>1</sup> 5 USCS § 7353 (2005).

<sup>2</sup> 5 C. F. R. § 2635.203(d) (2005).

status, authority or duties associated with his Federal position.<sup>3</sup> This gift would appear to be encompassed by this prohibition, however, there are limited exceptions, which permit acceptance of gifts under certain circumstances. Those exceptions are found in 5 C.F.R. § 2635.204.

Specifically, section 2635.204(a, provides a de minimis exception that allows unsolicited gifts that have an aggregate market value of \$ 20 or less "per source per occasion." The cover of the book says it has a market value of \$25. This makes this gift ineligible for the de minimis exception.

In conclusion, it seems that acceptance of this gift would violate the prohibition against acceptance of gifts from outside sources. You should return it as soon as possible.

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<sup>3</sup> 5 C.F.R. § 2635.203(e) (2005).

David Snyder

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From: Monroig, Emma  
Sent: Wednesday, July 05, 2006 9:09 AM  
To: [REDACTED]  
Subject: FW: Ethics Opinion

(b)(6)

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From: Monroig, Emma  
Sent: Thursday, November 03, 2005 12:51 PM  
To: [REDACTED]  
Subject: RE: Ethics Opinion

(b)(6)

Of course you can send [REDACTED] the value of the book and then you do not have to return it.

(b)(6)

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

From: [REDACTED]  
Sent: Thursday, November 03, 2005 9:24 AM  
To: Monroig, Emma  
Subject: RE: Ethics Opinion

(b)(6)

Is return of the book the only ethically appropriate option? Do I have any other options which would be equally ethically appropriate? For instance, could I keep the book but send [REDACTED] (or his organization) a check in the amount of \$25?

(b)(6)

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

From: Monroig, Emma  
Sent: Thursday, November 03, 2005 9:15 AM  
To: [REDACTED]  
Subject: Ethics Opinion

(b)(6)

Attached is the opinion you requested.

<< File: Ethics-Gifts from Outside Sources-2.doc >>

David Snyder

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From: Monroig, Emma  
Sent: Tuesday, October 24, 2006 1:29 PM  
To: [REDACTED]  
Subject: RE: Outside Work

(b)(6)

[REDACTED]

The purpose of the supplemental regulation is to avoid having employees engaging in outside employment that conflict with their official duties. An activity conflicts with an employee's official duties: (a) if it is prohibited by statute; or (b) if it would require the employee's disqualification from matters so central or critical to the performance of his/her duties, that the employee's ability to perform the duties of his/her position would be materially impaired.

I do not think that the subject matter of your proposed outside employment, teaching an aerobics class, conflicts with your employment at the Commission. Naturally this assumes that these classes will not interfere with your doing your duties of working eight hours a day for the federal government.

Look forward to seeing you at the next meeting.

Emma

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From: [REDACTED]  
Sent: Tuesday, October 17, 2006 3:50 PM  
To: Monroig, Emma  
Subject: Outside Work

(b)(6)

Hi Emma --

Just a quick question --- if I start teaching aerobics classes at my gym and get paid \$20 a class to do so, does that fall under the new ethics guidelines for outside employment?

Hope all is well with you.

[REDACTED]

(b)(6)

Do you Yahoo!?  
Everyone is raving about the all-new Yahoo! Mail.



David Snyder

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From: Monroig, Emma  
Sent: Wednesday, January 09, 2008 9:30 AM  
To: [REDACTED]  
Subject: FW: Federalist Papers

(b)(6)

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

From: Monroig, Emma  
Sent: Wednesday, January 09, 2008 9:26 AM  
To: [REDACTED]  
Subject: RE: Federalist Papers

(b)(6)

Dear Commissioner:

I received your inquiry concerning an invitation you received to participate in an annual roundtable conference entitled: [REDACTED]. According to your email, the topic of the conference is not civil rights in the usual sense, although the Bill of Rights will be discussed in one of the sessions. You have participated in this conference for several years before your appointment to the Commission. In order to participate you need to answer a form which asks if your position at the Commission is a Schedule C position. Your position at the Commission is not a Schedule C position because of the following:

(b)(6)

The "excepted service" includes all positions in the executive branch that have been excepted from the competitive service or the Senior Executive Service (SES) by statute, the President, or the Office of Personnel Management (OPM.) Positions excepted from the competitive service by OPM include, among others, Schedules C positions. Schedule C positions are excepted because they have policy-determining responsibilities or require the incumbent to serve in a confidential relationship to a key official. Appointments to Schedule C positions require advance approval from OPM, but appointments may be made without competition. OPM does not review the qualifications of a Schedule C appointee. Final authority rests with the appointing official. Employees in Schedule C positions are subject to removal at the discretion of the administration or appointing official. Agencies may separate Schedule C appointees whenever the confidential or policy-determining relationship between the incumbent and his/her superior ends. Schedule C appointees are not covered by statutory removal procedures and generally have no rights to appeal removal actions to the Merit Systems Protection Board.

It is evident that your position differs materially from a schedule C position. You were appointed by the [REDACTED] not by an appointing authority at the Commission. You were appointed by the [REDACTED] without advance approval from OPM. Unlike a Schedule C appointment, you have a six year term appointment and cannot be separated at will. As to whether you can participate in the roundtable conference and accept the \$2,000. stipend, the standard of conduct rules allow you to participate and received the stipend. The reason you were asked by [REDACTED] if you were a Schedule C appointee is that the standard of conduct rule for teaching, speaking or writing for Schedule C employees is stricter than for Commissioners because the Commissioners are special Government employees. 5 C.F.R. § 2635.807 (2008) provides that federal employees shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties. Subsection § 2635.807(2)(i) defines what is meant by official duties. This includes activities that deal in a significant part with:

(b)(6)

(b)(6)

1. Any matter to which the employee is presently assigned or to which the employee has been presently assigned during the previous one-year period; 2. Any ongoing or announced policy, program or operation of the agency; or 3. In the case of a noncareer employee this includes if the activity deals in a significant part with the general subject matter, area, industry, or economic sector primarily affected by the programs and operations of the agency. Section 5 C.F.R. § 2636.303(a) (2008) defines what is meant by noncareer employees. This is a stricter rule than for other employees.

As I explained to you in my memo of May 31, 2007 the rule for Commissioners who are special Government employees is less strict. Subsection 2635.807(a)(2)(E) (4) says that subsections § 2635.807(a)(2)(E) (2) and (3) do not apply to special Government employees. Subsection 2635.807(a)(2)(E)(1) only applies during the current appointment of the special Government employee.

This roundtable conference does not deal in a significant part with the subject matter affected by the programs and operations of the U.S. Commission on Civil Rights.

I trust this memo answers your concerns.

Emma Monroig  
Designated Agency Ethics Officer

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

[REDACTED]

N/R

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

David Snyder

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**From:** Monroig, Emma  
**Sent:** Friday, August 15, 2008 9:23 AM  
**To:** [REDACTED]  
**Subject:** FW: Urgent--Vacation & Leave Plan

(b)(6)

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**From:** Monroig, Emma  
**Sent:** Friday, August 15, 2008 9:22 AM  
**To:** [REDACTED]  
**Subject:** RE: Urgent--Vacation & Leave Plan

(b)(6)

The one concern with your receiving reimbursement was whether there was a violation of the gift rules. However, 5 U.S.C. 2635.204(f) provides an exception from the gift rules for those involved in political activities. This subsection provides as follows:

(f) Gifts in connection with political activities permitted by the Hatch Act Reform Amendments. An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e).

I trust this guidance is of assistance to you.

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**From:** [REDACTED]  
**Sent:** Tuesday, August 12, 2008 12:00 PM  
**To:** Monroig, Emma  
**Cc:** [REDACTED]  
**Subject:** RE: Urgent--Vacation & Leave Plan

(b)(6)

(b)(6)

Thank you for your quick response Emma, I appreciate it. At this point I have just two clarification questions that go to your bottom line: "In sum, I have no objection to your outside activities as long as you obtain approval from the state authority to conduct your activities in that state. It is my understanding that these rules vary depending on the state the work will be done. Furthermore, that you do not receive compensation for your activities so that you can return to the Commission and you can do your official duties to the fullest."

First, I am unsure what you mean by "approval from state authority." As I will not be providing legal advice per Indiana bar rules, I will not have to be licensed to practice in that state. Perhaps you are referring to state rules about things like who can appear in polling places? I believe Indiana's rule is that only residents of that county can be pollwatchers inside their precincts. But, regardless, I do not plan to represent the Obama campaign in that or any other capacity that would require permission of state authorities. Is that the kind of thing you were concerned about?

Second, I wonder if reimbursement for expenses while volunteering for the campaign would constitute "compensation" per your decision. I imagine I may be offered compensation for gas/mileage if I am asked to travel around the state, or for cell phone minutes if I have to use my personal cell phone for the job. Would these kinds of reimbursement be okay?

Again, thank you!

(b)(6)

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

**From:** Monroig, Emma [mailto:emonroig@usccr.gov]

**Sent:** Tuesday, August 12, 2008 11:00 AM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Subject:** RE: Urgent--Vacation & Leave Plan

(b)(6)

You notified me of your plans to take annual and unpaid leave to work in a possibly paid position with a presidential campaign in Indiana. You specifically state the following:

- a. Your activities will include conferring with state and local election officials and members of the campaign about voter protection efforts, recruiting and training volunteer attorneys to aid with election protection efforts, and conducting research about election protection activities.
- b. These activities will not include fundraising, use of your title or knowledge of the Commission, legal representation of any person or party, or conduct of business transactions with parties with whom the Commission does business. You state that your activities do not require you to be an admitted bar member in Indiana, and therefore do not appear to be pro bono legal services for purposes of ethics review.
- c. You may or may not receive a stipend or benefits from the campaign for your time; therefore, you request that a review of ethics rules should consider this as a possibly paid position.

The issues are whether these activities are subject to the Commission regulation on outside employment,<sup>[1]</sup> the conflict of interest criminal statutes at 18 U.S.C., and the standards of conduct regulations of the U.S. Office of Government Ethics.

The Commission regulation on outside employment says that "outside employment" excludes participation in the activities of a religious, professional, social, fraternal, educational, recreational, public service or civil organization. It is my considered opinion that participating in the activities of a political party is within the scope of the organizations meant to be excluded from the scope of this regulation. However, there is an exception if the activities constitute professional services or advice, or are for compensation other than reimbursement of expenses. The issue is whether the activities that you describe constitute legal activities or are for compensation other than reimbursement of expenses.

You say that they do not involve representational activities but that is not the sole test since the regulation says it includes professional advice. You would be providing training on voter rights to lawyers. One could argue that since you would not be proving advice on a specific case that is not encompassed by the regulation since you are working

as a teacher not a lawyer. It is difficult to understand how you will be involved for such a long period of time without providing legal advice on situations that will arise. The research you would be conducting would necessarily involve situations that arise implementing an interpretation of a Supreme Court decision. An attorney advisor in the Government that does legal research is no less an attorney than an attorney that does litigation.

According to 5 C.F.R. § 7801.102 (b), the standard for approval of outside employment is that the DAEO shall grant approval only upon a determination that the prospective outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 C.F.R. § 2635.

The Office of Government Ethics regulations prohibit outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment.<sup>[2]</sup> An employee shall not engage in outside employment or any other outside activity that conflicts with his/her official duties. An activity conflicts with an employee's official duties: (a) If it is prohibited by statute or by an agency supplemental regulation; or (b) If, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his employment. The purpose of these rules is ensuring that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties.

Section 2635.402 is the regulatory interpretation of 18 U.S.C. § 208 (2008). An employee is prohibited by this criminal statute from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Subsection (b)(2) says that for purposes of 18 U.S.C. § 208(a) and this subpart, the financial interest of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests:.....(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee. If the federal employee is deemed an "employee" of a political organization, he has a 208 imputed interest while he remains an employee of that organization. You describe your outside activities as interrupted by working with your Commissioner to assist him in preparing for meetings. I thus caution you that if you receive compensation you would, depending on the circumstances, be subject to 18 U.S.C. § 208 and §2635.402.

Section 2635.502 deals with the situation when an employee knows that a particular matter is likely to have a predictable effect on an organization with which he has a covered relationship. Subsection 2635.502(b) (1) (v) says it includes a relationship with "[a]n organization, other than a political party described in 26 U.S.C. § 527 (e), in which

the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. Section 2635.502(b)(1)(v) excludes from the definition of organization a political party as described in 26 U.S.C. § 527(e). The term "political organization" means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function. However, under subsection 2635.502(b)(1)(iv) you can have a covered relationship with any person for whom you have, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee. This subsection does not provide an exception for individuals working for a political party. Since it applies for one year after you have worked you would be subject to it after you cease your employment and return to work for your Commissioner.

One of the bases for Commission jurisdiction is voting rights. During the past two elections the Commission has worked on projects that involve voting rights during the presidential elections. Though there would not be an impact on your job since you are taking vacation while you are doing your outside employment, it is foreseeable that when you return you would be working on voting rights issues. If you do not receive compensation then you need not concern yourself with this prohibition. However, if you participate with compensation you would have to recuse yourself from working on voting rights and you would be doing a disservice to your Commissioner who would not be able to use your services on an issue of such importance.

In sum, I have no objection to your outside activities as long as you obtain approval from the state authority to conduct your activities in that state. It is my understanding that these rules vary depending on the state the work will be done. Furthermore, that you do not receive compensation for your activities so that you can return to the Commission and you can do your official duties to the fullest.

Though the activities you want to do, do not appear to involve representational duties, I include the following rule for your information. 18 U.S.C. § 205 prohibits any officer or employee of the United States from acting, other than in the performance of his/her official duties, as an agent or attorney for prosecuting any claim against the United States, or receiving any gratuity, or any share of or interest in such claim in payment for prosecuting it. It prohibits acting as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military or naval commission, in connection with any covered matter in which the United States is a party or has a direct and substantial interest. This is so, regardless of whether this action is compensated or not. The statute makes a distinction between representing parties against the United States, and assisting such parties.

Obviously the Hatch Act governs the limitations on the federal employee's ability to participate in political activities. Based on your description of your activities they do not seem to be prohibited by the Hatch Act.

Lastly the Commission's regulation on outside employment says that to provide professional services or advice to a program or activity not designated as generally approved, the employee must notify his or her supervisor and submit a written request and justification in advance to the DAEO. In addition, in order to provide pro bono legal services the employee must notify the General Counsel, if the GC is not the employee's supervisor. In this situation, it seems appropriate that you provide notice to the General Counsel, though it is not necessary for you to obtain his approval. I will not forward your memo to him. You should be the one to give him notice.

[REDACTED]

N/R

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

[REDACTED]

N/R

[REDACTED]

N/R

[REDACTED]

N/R

[REDACTED]

N/R

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]



<sup>[2]</sup> See 5 C.F.R. § 2635 (2008).

David Snyder

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From: Monroig, Emma  
Sent: Monday, September 29, 2008 2:39 PM  
To: [REDACTED]  
Subject: RE: Political Work

(b)(6)

You can participate in the political campaign but you should first examine the Hatch Act materials on the Commission's shared drive. There is both a pamphlet and a video that are very useful to understand what are the provisions of the Hatch Act. In addition, your participation should be uncompensated and you should take either annual leave (includes compensatory time) or leave without pay.

The following is a discussion on whether the Commission's regulation on outside employment applies and why your participation should be uncompensated. I trust it is of assistance.

The first issue is whether uncompensated political activities are subject to the Commission regulation on outside employment,<sup>[1]</sup> the conflict of interest criminal statutes at 18 U.S.C., and the standards of conduct regulations of the U.S. Office of Government Ethics.

The Commission regulation on outside employment says that "outside employment" excludes participation in the activities of a religious, professional, social, fraternal, educational, recreational, public service or civil organization. It is my considered opinion that participating in the activities of a political party is within the scope of the organizations meant to be excluded from the scope of this regulation. However, there is an exception if the activities constitute professional services or advice, or are for compensation other than reimbursement of expenses.

Though you might not be subject to the Commission regulation on outside employment, 5 C.F.R. § 7801.102 (b) the Office of Government Ethics regulations prohibit outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment.<sup>[2]</sup> An employee shall not engage in outside employment or any other outside activity that conflicts with his/her official duties. An activity conflicts with an employee's official duties: (a) If it is prohibited by statute or by an agency supplemental regulation; or (b) If, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his employment. The purpose of these rules is ensuring that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties.

Section 2635.402 is the regulatory interpretation of 18 U.S.C. § 208 (2008). An employee is prohibited by this criminal statute from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a

direct and predictable effect on that interest. Subsection (b)(2) says that for purposes of 18 U.S.C. § 208(a) and this subpart, the financial interest of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests:.....(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee. If the federal employee is deemed an "employee" of a political organization, he has a 208 imputed interest while he remains an employee of that organization. If you receive compensation you might be, depending on the circumstances, be subject to 18 U.S.C. § 208 and §2635.402 when you return to work at the Commission.

Section 2635.502 deals with the situation when an employee knows that a particular matter is likely to have a predictable effect on an organization with which he has a covered relationship. Subsection 2635.502(b) (1) (v) says it includes a relationship with "[a]n organization, other than a political party described in 26 U.S.C. § 527 (e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. Section 2635.502(b)(1)(v) excludes from the definition of organization a political party as described in 26 U.S.C. § 527(e). The term "political organization" means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

However, under subsection 2635.502(b)(1)(iv) you can have a covered relationship with any person for whom you have, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee. This subsection does not provide an exception for individuals working for a political party. Since it applies for one year after you have worked you would be subject to it after you cease your employment and return to work for your Commissioner.

One of the bases for Commission jurisdiction is voting rights. During the past two elections the Commission has worked on projects that involve voting rights during the presidential elections. Though there would not be an impact on your job since you would be taking vacation while you are working on the campaign, it is foreseeable that when you return you would be working on voting rights issues. If you do not receive compensation then you need not concern yourself with this prohibition. However, if you participate with compensation you would have to recuse yourself from working on voting rights and you would be doing a disservice to your Commissioner who would not be able to use your services on an issue of such importance.

Even though you are working on an uncompensated basis you might be offered reimbursement for your expenses. The gift rules at 5 C.F.R. § 2635.204(f) provide an exception from the gift rules for those involved in political activities. The subsection provides as follows:

(f) Gifts in connection with political activities permitted by the Hatch Act Reform Amendments. An employee who, in accordance with the Hatch Act Reform

Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation, and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

N/R

David Snyder

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From: Monroig, Emma  
Sent: Thursday, October 16, 2008 8:28 AM  
To: [REDACTED]  
Subject: RE: Use of Title

(b)(6)

The rules concerning the use of your title are as follows:

The regulations of the U.S. Office of Government Ethics (OGE) prohibit the use of public office for private gain.<sup>[1]</sup> They provide that an employee shall not use or permit the use of his Government position or title, or any authority associated with his public office, in a manner that could reasonably be construed to imply that the Government sanctions or endorses his personal activities or those of another.

When teaching, speaking, or writing in a personal capacity, an employee may refer to his official title or position only as permitted by § 2635.807(b) which states that 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 given no more prominence than other significant biographical details.

An example of this is when a biographical sketch of the employee is orally given to introduce the employee, or is in a brochure identifying speakers at an event. The key to this exception is that the reference to a Government title must be included in what amounts to a list of information regarding the employee's background. The listing of the employee's current position as only one of several biographical facts permits important information about the speaker to be revealed in a manner that does not suggest Governmental sanction of the speech or the conference.

It is helpful to examine an OGE opinion concerning a brochure listing speakers for a conference.<sup>[2]</sup> This brochure identified several speakers, many of whom were Government employees whose titles were prominently featured in the brochure. Additionally, the brochure listed separately the employers of the several speakers, including the Government agencies where the employees worked. OGE concluded that there was nothing in the brochure which suggested whether the speech engaged in by the employees was undertaken in an official or unofficial capacity. If the speech was being engaged in by the Government officials in private capacities, then those employees that permitted the use of their Government titles, in a manner that is not part of a biographical sketch, in connection with their unofficial speech it violated the Standards of Ethical Conduct.

Some examples might be useful to make clear the difference. If the press release says: This candidate is supported by X, Commissioner of the U.S. Commission on Civil Rights, the use of the title is improper because it is not part of a biographical data listing. If the press release says:

The candidate is endorsed by the following individual: ....., Member of X law firm, Director of the ABA at X state, Commissioner of the U.S. Commission on Civil Rights, Vice-President of X Corporation etc., the use is permissible because it is part of a biographical enumeration. Of course, it should be clear in the document that you are undertaking the political activity in a non-official capacity.

**From:** [REDACTED]  
**Sent:** Wednesday, October 15, 2008 3:58 PM  
**To:** Monroig, Emma  
**Subject:**

(b)(6)

Emma,

I've agreed to write a blurb for a book that discusses civil rights. Are there any restrictions on my using my title [REDACTED] U.S. Civil Rights Commission)?

(b)(6)

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<sup>[1]</sup> 5 C.F.R. § 2635.702 (2007).

<sup>[2]</sup> OGE, 94 x 1, Letter to an Inspector General dated January 10, 1994.

David Snyder

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**From:** Monroig, Emma  
**Sent:** Monday, December 22, 2008 9:11 AM  
**To:** [REDACTED]  
**Cc:** Byrnes, Christopher  
**Subject:** RE: Brief Outside Work Project: Ethics Clearance

(b)(6)

I have no objection to your outside activity. Emma Monroig-DAEO

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**From:** [REDACTED]  
**Sent:** Monday, December 22, 2008 9:04 AM  
**To:** Monroig, Emma  
**Subject:** RE: Brief Outside Work Project: Ethics Clearance

(b)(6)

The [REDACTED]

(b)(6)

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**From:** Monroig, Emma  
**Sent:** Monday, December 22, 2008 7:28 AM  
**To:** [REDACTED]  
**Subject:** RE: Brief Outside Work Project: Ethics Clearance

(b)(6)

It is my understanding that you will receive compensation for this work. Is this correct? I think you should disclose the name of the nonprofit.

Emma

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**From:** Blackwood, David  
**Sent:** Friday, December 19, 2008 12:11 PM  
**To:** [REDACTED] Monroig, Emma  
**Subject:** RE: Brief Outside Work Project: Ethics Clearance

(b)(6)

[REDACTED]

Given the nature and parameters of the work, I do not see a problem.

(b)(6)

David

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**From:** [REDACTED]  
**Sent:** Friday, December 19, 2008 12:08 PM  
**To:** Monroig, Emma; Blackwood, David  
**Subject:** Brief Outside Work Project: Ethics Clearance

(b)(6)

Emma and David,

I have been asked to do a small amount of work for a national non-profit engaged in preventing and addressing violence against women. The work would consist of (non-legal) writing describing their work and the projects they propose to do in the coming years. The organization will use what I have drafted in their grant applications. Some of the grants they apply for are federal. My name will appear nowhere on any grant applications they submit, and I will not submit any grants on their behalf. My work will consist solely of factual writing.

The work would occur over a few days in January, and would be performed entirely on the weekends.

Per our revised ethics regulations, I must have David's permission to do any outside work. This is for the purpose of ensuring that any work I perform will not interfere with my work at the Commission.

Please advise if there are any objections to my taking on this work.

Thank you.

[REDACTED]

(b)(6)

[REDACTED]

U.S. Commission on Civil Rights  
624 Ninth Street, NW Suite 620  
Washington, DC 20425

(b)(6)

[REDACTED]

(b)(6)



David Snyder

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From: Monroig, Emma  
Sent: Friday, January 23, 2009 8:23 AM  
To: Robinson, Farella E.  
Subject: RE: Request for advice from DAEO

The situations described by the SAC member do not appear to be prohibited. I am sending you information on various statutes that prohibit lobbying by federal employees, so that he can judge if any of the situations are prohibited by these statutes.

Federal employees are prohibited from lobbying if done in contravention to 18 U.S.C. § 1913 (2009). The purpose of this legislation is to avoid government financial support of organizations intended or designed to influence a member of Congress. Federal officers and employees are not prevented by the statute from communicating to members of Congress on the request of any member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business. For example, an employee is not prohibited from testifying as part of his/her official duties on pending legislation proposals before congressional committees on request; provided, that the relevant provisions of the current OMB Circular A-14 ("Legislation Coordination and Clearance") are complied with.

#### 18 U.S.C. § 1913. Lobbying with appropriated moneys

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.

#### 18 U.S.C. § 377. Agreements or attempts to influence Congressional representatives

Whoever, being an officer or employee of the United States, on behalf of the United States or any federal agency, directly or indirectly makes or enters into any contract, bargain, or agreement with any member of or delegate to Congress, or any Resident Commissioner, either before or after he has qualified, is subject to a fine under the title of the federal code pertaining to crimes and criminal procedure.[73] Furthermore, a federal statute provides that federal officers or employees who violate or attempt to violate the federal prohibition of the use, directly or indirectly, of any money appropriated by any enactment of Congress, in the absence of express authorization by Congress, to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation, are subject to fine, imprisonment or both.. Although the statute contains broad precatory language, it applies only to federal departments or agencies and officers or employees thereof; a state Legal Services Corporation and its personnel are not federal agencies or officers subject to its provisions.

Under 18 U.S.C.A. § 219(a), it is criminal offense for a "public official" to act as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 or as a lobbyist required to register under the Lobbying Disclosure Act of 1995. Section 219(c) defines "public official" to include, as relevant here, "an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof, . . . in any official function, under or by authority of any such department, agency, or branch of Government."

Sec. 219. Officers and employees acting as agents of foreign principals (a) Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act shall be fined under this title or imprisoned for no more than two years, or both.

(b) Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended.

(c) For the purpose of this section "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United

States, or any department, agency, or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government

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**From:** Robinson, Farella E.  
**Sent:** Thursday, January 22, 2009 10:56 AM  
**To:** Monroig, Emma  
**Subject:** FW: Request for advice from DAEO

Emma as the agency's Ethics Officer I as DEO for Central Region is requesting advice to a response below from a potential SAC member concerning potential employment conflict of interest matters. Advisement as soon as possible would be greatly appreciated. Thank you.

*Farella E. Robinson  
Regional Director  
Central Region  
U.S. Commission on Civil Rights  
400 State Avenue  
Gateway Tower II  
Suite 908  
Kansas City, KS 66101  
(913) 551-1400  
(913) 551-1405  
[frobinson@usccr.gov](mailto:frobinson@usccr.gov)*

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**From:** [REDACTED]  
**Sent:** Thu 1/22/2009 9:32 AM  
**To:** Robinson, Farella E.  
**Cc:** [REDACTED]  
**Subject:** Request for advice from DAEO

(b)(6)

Farella: Please pass this message along to the Deputy Designated Agency Ethics Officer. In my practice of law, I represent clients with interests that are or may be affected by enacted or potential federal law and rule making. In this capacity, I sometimes encourage clients to lobby Congress. Infrequently, but occasionally, I have attended meetings with clients and Members of Congress. If this activity is prohibited to those serving on a State Advisory Committee, then I may not be able to accept this appointment. Please give me guidance. Please confirm your receipt of this email message. Thanks in advance.

(b)(6)

[REDACTED]

Federal law regulates written communications regarding federal tax matters, including email, between our law firm and our clients. Accordingly, matters discussed in this email are not intended to be used, and cannot be used, for the purpose of avoiding any tax penalties that may be

subsequently imposed relating to the matters discussed herein. If you would like to rely on written communication to avoid any tax penalties that may be subsequently imposed, you should obtain a formal Opinion letter. If a formal Opinion letter is desired, please contact me to discuss our procedures and the cost of preparing a formal Opinion letter.

NOTICE: This communication is not encrypted and may contain privileged or other confidential information. If you are not the intended recipient or believe you may have received this communication in error, please reply to the sender, indicating that fact, and delete the copy you received. In addition, you should not print, retransmit, disseminate or otherwise use the information. Thank you.

## Lobbying Activities

While the time you spend performing official duties as an SGE is usually brief, please remember that during those periods, you are prohibited from engaging in any activity that directly or indirectly encourages or directs any person or organization to lobby one or more members of Congress. (18 U.S.C. § 1913)

This statute does not bar you, in your official capacity, from appearing before any individual or group for the purpose of informing or educating the public about a particular policy or legislative proposal, or from communicating to members of Congress at their request. Communications to members of Congress initiated by you, in your official capacity while acting as a member of an advisory committee must be coordinated with the Commission's Office of Public Affairs. The purpose of this prohibition is to prevent agencies, acting through their employees or SGEs, from using appropriated funds, or resources secured with appropriated funds, to lobby Congress. This means that while you act officially as a SAC member, for example at a SAC meeting, you cannot coordinate with other SAC members to talk to Congressional representatives about providing funding for SACS.

Government employees are not prohibited from participating in lobbying activities while they are on their personal time. In doing so, you may state your affiliations with the advisory committee, may factually state the committee's official position on the matter (to the extent that non-public information is not used), but may not represent your positions or views as the committee's or the Commission's position on the matter. Moreover, in expressing your private views, as with all other personal (non-Government) activities, you are not permitted to use Government computers, copiers, telephones, letterhead, staff resources, or other government resources.

## **ETHICS GUIDE FOR STATE ADVISORY COMMITTEE MEMBERS TO THE U.S. COMMISSION ON CIVIL RIGHTS (2007)**

### **Introduction**

This Guide is provided to inform you about the rules and standards of conduct that apply to government employees, including special government employees (SGEs).

As a SAC member, it is important that you be informed of these rules to avoid any potential conflict. In addition, an ethics officer, Deputy Designated Agency Ethics Officer (DDAEO), has been appointed in each regional office to answer questions that you may have about potential conflicts. It is important that you contact your ethics officer prior to participating in a matter that could present a

conflict. As a general matter, violators of these rules may be subject to administrative or criminal sanctions.

Some of text is highlighted in this document because of the importance of the information to state advisory committee members.

#### 1. Request Advice from the Deputy DAEO

If you believe your situation may be affected by any of the rules of the guidance below, please contact the ethics officer in the regional office that provides services to your State Advisory Committee (SAC). See Appendix 1. In most cases, good faith reliance on the advice from an ethics official, will aid you in any potential ethics proceeding (administrative or criminal).

David Snyder

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From: Emma Monroig  
Sent: Wednesday, July 08, 2009 8:05 AM  
To: [REDACTED]  
Subject: RE: Ethics Question

(b)(6)

[REDACTED]  
I consulted with various individuals as to the cost of the item you would receive. According to the librarian though the cost of purchasing the USC volume for Title 42 for 2008 is \$116.00 once the volumes become obsolete they are discarded as having no value. I consulted Michael Erwin of Wausau Awards & Engraving. According to him the average price of an engraving is from \$7.00 to \$10.00. I will forward his email to you. Since the item of the item appears to have a value of less than \$20.00 I have no objection to your receipt of the same.

(b)(6)

Emma

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From: [REDACTED]  
Sent: Wednesday, July 01, 2009 1:30 PM  
To: Emma Monroig  
Subject: Ethics Question

(b)(6)

Emma,

Our GPO account manager is offering me a gift that I want to clear with you before I accept. Apparently whenever the US Code is reprinted, old versions of the leather-bound code are discarded or given away. I was interested in getting Title 42, which they have now reserved for me. He now indicated that he wanted to have it personalized for me.

I know that 5 C.F.R. 2635.204(a) indicates that I can accept a gift of \$20 or less per source per occasion. Do we need to quantify the cost of the out-dated US Code volume? It is nice--leather-bound with a swirl design on the edge--but because it is not the most recent year's code and bound for disposal, I'm not sure how to quantify it. As for the personalizing it, I think it would definitely cost less than \$20 to personalize it given the market value of that service.

I would be happy to accept the gift, but I do not want to break the rules and will follow whatever determination you make.

Thanks,  
[REDACTED]

(b)(6)

[REDACTED]  
U.S. Commission on Civil Rights  
624 Ninth Street, N.W.  
Washington, D.C. 20425  
[REDACTED]

(b)(6)

(b)(6)

David Snyder

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**From:** Emma Monroig  
**Sent:** Wednesday, July 15, 2009 10:46 AM  
**To:** Farella Robinson  
**Cc:** Christopher Byrnes; Peter Minarik  
**Subject:** RE: Ethics Advice

Farella

I looked in my emails but could not find the May 8<sup>th</sup> request. I am forwarding you language on the website of GSA for advisory committees that might be of assistance.

## **Government Payment for Light Refreshments at Advisory Committee Meetings**

### **Clarification of providing light refreshments at government-sponsored conferences**

The Federal Travel Regulation (FTR) allows agencies to pay for "light refreshments" at government-sponsored conferences. A conference is defined as a meeting retreat, seminar, symposium, or event that involves attendee travel.

According to Q&A's on conferences, it states the FTR only covers conferences that involve travel and that the majority of the conference attendees have to be in travel status in order to provide light refreshments at government expense. If a majority is not in a travel status, then the rule doesn't apply.

A 2003 decision of the Comptroller General of the United States (B-288266, January 27, 2003) states that "GSA does not have the authority to authorize agencies to pay for light refreshments for those not in a travel status." The decision further states that "certifying officers should not rely on GSA's travel regulation on conference planning to authorize light refreshments at meetings for employees in nontravel status."

GSA plans to discuss favorable resolution of this issue with the General Accounting Office, which could involve amendment of the affected portions of the FTR and related guidance. Accordingly, until such time as GSA resolves this issue, agencies are advised that providing light refreshments during conference breaks cannot be provided to individuals in a nontravel status at government expense under the authority of the FTR.

(This information was taken from GSA TRAVEL ADVISORY #7, dated January 30, 2003.)

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**From:** Farella Robinson  
**Sent:** Wednesday, July 15, 2009 9:55 AM  
**To:** Emma Monroig  
**Subject:** Ethics Advice

EM some time ago (5.08) I requested an opinion concerning acceptance of donated facilities/refreshments by a SAC. You consulted with the Secretariat at GSA to obtain their comments. Did they provide an opinion? If so, please advise. I need answer as soon as possible. Thx

***Farella Esta Robinson, DFO  
Regional Director  
Central Regional Office  
United States Commission on Civil Rights  
Suite 908  
Gateway Tower II  
Kansas City, KS 66101  
(913) 551-1400  
(913) 551-1413 (FAX)  
[frobinson@usccr.gov](mailto:frobinson@usccr.gov)***



David Snyder

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**From:** Emma Monroig  
**Sent:** Tuesday, April 13, 2010 9:56 AM  
**To:** Ivy Davis  
**Subject:** RE: Ethics Administration - [REDACTED] SAC  
**Attachments:** Ethics-SAC member-politically active.docx

(b)(6)

Ivy

I prepared a memo which refers to the principal rules that might be applicable in this situation. It is not intended to be a comprehensive review of all the rules that might apply. It focuses on some criminal statutes and on the Hatch Act. I trust it will be of assistance to the SAC member.

Emma

**From:** Ivy Davis  
**Sent:** Monday, April 12, 2010 11:12 AM  
**To:** Emma Monroig  
**Subject:** Ethics Administration - [REDACTED] SAC

(b)(6)

Emma,

I have the following query from a newly appointed member of the [REDACTED] SAC:

(b)(6)

"I am the General Counsel of the Republican Party of [REDACTED] (the statutorily recognized State Committee of the Party), and also counsel to a legislative campaign committee and the counsel to candidates for public office, both federal and state and other political party committees and political action committees. In my role as State Party General Counsel, I frequently advise and work with federal and state candidates and elected officials, and this also includes from time to time discussions with them about policy matters as well as general legal matters. As I read the Ethics rules that you sent to me, it appears that there could be situations where I would be prohibited from or limited in performing my duties and services as counsel and an advisor. I also regularly handle matters involving the Federal Election Commission and from time to time the Office of Special Counsel (Hatch Act matters)."

(b)(6)

"In my other practice of health law, I also interact from time to time with federal agencies and departments."

"While I am happy to contribute my time to the SAC, I do not want to be ensnared by rules and regulations, which I may have innocently misinterpreted or inadvertently crossed, especially as there are some ambiguous and broad references that are not that clear in how they are applied and may be subject to numerous interpretations. Not being an expert in that area, I do not want to have to constantly be concerned that I need to obtain outside advice on this, especially as I would be volunteering as a citizen for the public good. Basically, I do not want to guess at the meaning and application of the rules. If there is any guidance your or other members of the Government can share with me on this, I would appreciate it."

I look forward to your guidance.

■ Ivy  
■ 376-7756

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## Criminal Statutes-18 U.S.C. §§ 203, 205, 208

Two criminal statutes, 18 U.S.C. §§ 203 and 205, prohibit Federal employees, including special Government employees (SGEs), from acting as an agent or attorney for private entities before any agency or court of the Executive or Judicial Branches. More specifically, 18 U.S.C. § 203 is a prohibition against an officer or employee receiving compensation from a private source for working of a particular matter in which the Government has an interest and is pending before any Department or agency. 18 U.S.C. § 205 is similar to section 203 and overlaps in some respects. Section 205 prohibits an employee from acting as an agent or attorney for anyone with or without compensation before any Department or agency in any particular matter in which the United States is a party or has a direct and substantial interest.

However, both section 203 and 205 provide an exemption in the case of special Government employees. This exemption precludes special government employees from representing private firms as an agent or attorney only in a matter involving a specific party or parties (i) in which they have participated personally. Two statutes, 18 U.S.C. §§ 203 and 205, prohibit Federal employees, including SGEs, from acting as an agent or attorney for private entities before any agency or court of the Executive or Judicial Branches. More specifically, 18 U.S.C. § 203 is a prohibition against an officer or employee receiving compensation from a private source for working of a particular matter in which the Government has an interest and is pending before any Department or agency. An SGE may however: (1) Represent himself, and, under certain circumstances, represent his parents, spouse, child, or person/estate for whom they are serving as personal fiduciary (with your appointing official's approval); (2) Represent others on work done under a grant or contract with the U.S. or one that benefits the U.S., if the Commission certifies in the Federal Register that it is in the national interest; and (3) Give testimony under oath.

18 U.S.C. § 205 is similar to section 203 and overlaps in some respects. Section 205 prohibits an employee from acting as an agent or attorney for anyone with or without compensation before any Department or agency in any particular matter in which the United States is a party or has a direct and substantial interest.

18 U.S.C. § 208 prohibits all employees, including SGEs, from participating personally and substantially in any particular matter that has a direct and predictable effect on their own financial interests or the financial interests of others with whom they have certain relationships. In addition to an employee's own personal financial interests, the financial interests of the following persons or organizations are also disqualifying: spouse; minor child; general partner; organization which the individual serves as officer, director, trustee, general partner or employee; person or organization with which the employee is negotiating or has any arrangement concerning prospective employment. Because SGEs typically have substantial outside employment and other interests, which are often related to the subject areas for which the Government desires their services, issues under section 208 frequently arise.

In certain circumstances, however, SGEs are eligible for special treatment under section 208. SGEs who serve on advisory committees, within the meaning of the Federal Advisory Committee Act (FACA), 5 U.S.C. app., are uniquely eligible for a particular waiver of the prohibitions of section 208(a). Under 18 U.S.C. § 208(b)(3), an SGE serving on a FACA committee may be granted a waiver where the official responsible for his or her appointment certifies in writing that the need for the SGE's services outweighs the potential for a conflict of interest posed by the financial interest involved. 18 U.S.C. § 208(b)(3). Though SGEs are not be subject to the Commission regulation on outside employment, 5 C.F.R. § 7801.102 (b) the Office of Government Ethics regulations prohibit outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. An employee shall not

engage in outside employment or any other outside activity that conflicts with his/her official duties. An activity conflicts with an employee's official duties: (a) If it is prohibited by statute or by an agency supplemental regulation; or (b) If, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his employment. The purpose of these rules is ensuring that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties.

Section 2635.402 is the regulatory interpretation of 18 U.S.C. § 208. An employee is prohibited by this criminal statute from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Subsection (b)(2) says that for purposes of 18 U.S.C. § 208(a) and this subpart, the financial interest of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests:.....(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee. If the federal employee is deemed an "employee" of a political organization, he has a 208 imputed interest while he remains an employee of that organization. If the SAC member receives compensation he/she might be, depending on the circumstances, be subject to 18 U.S.C. §208 and §2635.402.

Section 2635.502 deals with the situation when an employee knows that a particular matter is likely to have a predictable effect on an organization with which he has a covered relationship. Subsection 2635.502(b) (1) (v) says it includes a relationship with "[a]n organization, other than a political party described in 26 U.S.C. § 527 (e), in which the employee is an active participant. Participation is active

if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. Section 2635.502(b)(1)(v) excludes from the definition of organization a political party as described in 26 U.S.C. § 527(e). The term “political organization” means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

However, under subsection 2635.502(b)(1)(iv) an employee can have a covered relationship with any person for whom you have, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee. This subsection does not provide an exception for individuals working for a political party. Even though a SAC member may be working on an uncompensated basis the SAC member might be offered reimbursement for their expenses. The gift rules at 5 C.F.R. § 2635.204(f) provide an exception from the gift rules for those involved in political activities. The subsection provides as follows:

(f) Gifts in connection with political activities permitted by the Hatch Act Reform Amendments. An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation, and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e).

#### Hatch Act 5 U.S.C. §§ 7321-7326

SGEs are bound by the same rules as regular Federal employees; however, the following rules only apply to SGEs on the days they serve as SGEs on behalf of the Agency:

An SGE is prohibited from engaging in political activity while: (1) on duty; (2) on government-paid travel; (3) in any room or building occupied in the conduct of government business; (4) wearing a uniform or official insignia identifying the office or position of the employee; (5) or using any vehicle owned or leased by the government.

Furthermore the SGE may not use official authority or influence to interfere with or affect the result of an election or knowingly soliciting, accepting, or receiving political campaign contributions from any person, unless that person is a member of the same labor organization; not a subordinate employee; and the solicitation is for a contribution to the multi-candidate political committee of the labor organization.

Likewise, the SGE cannot run for a partisan political office or solicit or discourage the political activity of any person who: (1) has any application pending before the Commission; or (2) is a subject or participant in an ongoing audit, investigation, or enforcement action being carried out by the Commission.

An SGE is permitted to campaign, on a partisan basis, for or against partisan candidates or issues by: (1) Distributing campaign literature; (2) Making campaign speeches; (3) Writing or signing letters for publication soliciting votes; (4) Registering voters; (5) Driving voters to the polls in "get-out-to-vote" efforts; (6) Acting for a political party at a polling place; (7) Organizing, managing, or holding office in campaign organizations; (8) Attending or being active at political rallies and meetings; (9) Taking a prominent part in primary meetings or caucuses; (10) Serving as delegates to party conventions; (11) Initiating or signing nominating petitions; (12) Holding office in partisan political clubs or parties; (13) Voting as individuals; (14) Expressing opinion on political subjects and candidates (15) Serving as candidates for election in nonpartisan elections; (16) Serving as nonpartisan candidates for election in partisan campaigns in political subdivisions designated by the Office of Personnel Management; (17) Contributing money to political

organizations; and (18) Attending (but not hosting) political fundraising functions.



David Snyder

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From: Farella Robinson  
Sent: Tuesday, December 07, 2010 1:16 PM  
To: David Snyder  
Subject: FW: NE SAC Meeting Agenda Items

[REDACTED]

N/R

From: Christopher Byrnes  
Sent: Friday, August 27, 2010 2:16 PM  
To: Farella Robinson  
Subject: RE: [REDACTED] SAC Meeting Agenda Items

Revised draft below. Thanks!

(b)(6)

The main financial conflict of interest statute, 18 U.S.C. § 208(a), prohibits the SGE from participating "personally and substantially" in any "particular matter" that affects his or her financial interests, as well as the financial interests of your spouse, minor child, general partner, an organization in which you serve as an officer, director, trustee, general partner, or employee, or an organization with which you are negotiating or with which you have an arrangement for prospective employment. Based on the facts you have relayed to me, the [REDACTED] (b)(6) SAC is undertaking fact-finding with respect to the City of [REDACTED] proposed ban. It does not appear that any (b)(6) decision by the SAC regarding the City of [REDACTED] proposed ban would impact his financial interest or those (b)(6) interests identified above.

There may, however, be other circumstances where even though there is no financial conflict, the participation of the SGE in a particular matter involving specific parties would raise a question about his or her impartiality. While the impartiality rule is quite complex and very broad in scope, there are several triggers. See 5 C.F.R. § 2635.502.

1. Your official duties must involve a particular matter involving specific parties. SACs usually focus on policy-level issues and do not consider particular matters involving specific parties. In this case, the SAC is undertaking fact-finding with respect to the City of [REDACTED] proposed ban. (b)(6)
2. The circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. The facts you have relayed indicate no direct relationship between [REDACTED] and the City [REDACTED]. He has written generally on the need for Congress to clarify the extent to which municipal ordinances addressing the issue of illegal immigrants are not pre-empted by federal law because of the legal confusion facing municipal governments in (b)(6)

this context. At most, this article seems to be written from his perspective as [REDACTED]

(b)(6)

[REDACTED] The article expressed no opinion on the constitutionality or desirability of these ordinances.

3. The matter is likely to have a direct and predictable effect on the financial interests of a (a) member of your household, or (b) someone with whom you have a relationship (relative, business or financial entity, former employer, employer or client of your spouse, or an organization in which you are an active participant) is, or represents, a party to the matter. That does not seem to be at issue here, since the facts you have relayed indicate no financial interest at stake.

Based on the facts you have provided, I believe that [REDACTED] participation in the matters is permitted (b)(6)

[REDACTED]

[REDACTED]

[REDACTED]

N/R

[REDACTED]

[REDACTED]

N/R

[REDACTED]

[REDACTED]

[REDACTED]

N/R

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

N/R

[REDACTED]

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[REDACTED]

[REDACTED]

N/R

[REDACTED]

[REDACTED]

N/R

[REDACTED]

N/R

[REDACTED]

[REDACTED]

[REDACTED]

N/R

[REDACTED]

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