

# Ethics and Professionalism in Government Contracts Practice

*(Virginia Ethics and Professionalism CLE Credit in Process)*

**The Boards of Contract Appeals Bar Association (BCABA)**

*and*

**The George Washington University Law School,  
Government Procurement Law Program**

*are pleased to present a colloquium on:*

# Ethics and Professionalism in Government Contracts Practice

*(Virginia Ethics and Professionalism CLE Credit in Process)*

This year's Board of Contract Appeals Bar Association and George Washington Law School Government Procurement Law Policy Colloquium will focus on government ethics, attorney responsibility, and best practices in professional conduct and courtesy in dealings with other parties and the Boards of Contract Appeals.

- We are pleased to host Hon. Tom Davis as our keynote speaker who will provide some opening remarks and thoughts on the current state of the relationships between federal agencies and their contractors.
- Our first speaker, Mr. Stuart Bender, Director, Office of Ethics, U.S. Dept. of Agriculture will address the often-overlooked issues relating to the interplay between federal post-government employment rules (e.g., 18 U.S.C. §207) and related State Bar rules (e.g., Model Rules 1.6, 1.9, and 1.11).
- Thereafter, a panel moderated by Terry L. Elling, Partner, Holland & Knight, will discuss a variety of Government Ethics issues confronted by practitioners from the public and private bar.
- Then, a panel moderated by Abigail Stokes, Counsel, Miller & Chevalier, will engage in a discussion of practical challenges to maintaining high standards of professionalism and courtesy in the course of Government Contracts Practice.

We welcome your attendance and participation in this event, and ask that you come prepared to share your questions and experiences.

**December 3, 2019**

**8:00 a.m. – 12:00 p.m.**

*8:00 – 8:30 a.m. Registration & Continental Breakfast*

**The George Washington University Law School  
Faculty Conference Center**

**2000 H Street, NW, Washington, DC**

**RSVP to Cassandra Crawford, [ccrawford@law.gwu.edu](mailto:ccrawford@law.gwu.edu), tel. 202 994 8689**

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**TAB 1**

# Ethics and Professionalism in Government Contracts Practice

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# Ethics and Professionalism in Government Contracts Practice


*(Virginia Ethics and Professionalism CLE Credit in Process)*

- 8:00 – 8:30 Registration and Continental Breakfast
- 8:30 – 8:40 Welcome and Administrative Remarks - **Prof. Chris Yukins and Karen Thornton, GWU Law School; Laura Semple, Esq., AECOM**
- 8:40 - 9:00 Keynote Address – **Hon. Tom Davis**
- 9:00 – 10:00 **Stuart Bender**, Esq., Director, U.S. Dept. of Agriculture Office of Ethics, Navigating Post-Government Employment Rules without Losing Your Bar License
- 10:00 – 10:15 Break
- 10:15 – 11:15 **Identifying and Resolving Government Ethics Issues in Government Contracts Practice**  
**Terry Elling**, Holland & Knight (Moderator); **Stuart Bender**, U.S. Dept. of Agriculture;  
**Danica Irvine**, Senior Attorney/Deputy Designated Ethics Official, DoD; **Dismas Locaria**, Partner, Venable LLP.
- 11:00 – 12:00 **Maintaining Professionalism in Government Contracts Practice**  
**Abigail Stokes**, Miller & Chevalier (Moderator); **Raymond Saunders**, Chief Trial Attorney, U.S. Army; **Luke Meier**, Blank Rome LLP.

**TAB 2**



**Navigating the Job Search and Post-Employment Rules without Going to Jail or Losing Your Bar License: An Essential Guide to the Revolving Door Rules for Attorneys.**



Stuart Bender  
Director  
USDA Office of Ethics  
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(202) 720-2251

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### Disclaimer

- **Important Note:** This educational training focuses on certain Federal criminal laws and certain provisions of the American Bar Association (ABA) Model Rules of Professional Conduct (the Model Rules) for government lawyers leaving Federal employment.
- For individual State Bar rules, attorneys should always comply with the specific rules of the State Bar(s) for the jurisdiction(s) in which you are licensed. State Bar Counsel are generally available to answer attorneys questions on specific State Bar rules.



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### First, A Word About 18 U.S.C. § 208

- **THE RULE IN BRIEF:** While you are a Federal employee, the Conflict of Interest statute requires you to immediately stop working on any official government matter that could have an effect upon a potential employer with which you are seeking future employment.
- This recusal requirement applies to all employees (career and non-career).
- This is a Criminal Statute.



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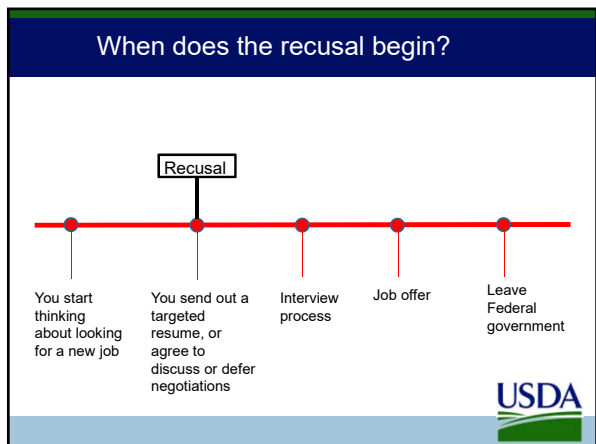
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- ### The Post-Employment Rules:
- Arise once you leave Federal employment,
  - Are complex,
  - Are in addition to the Rules of Professional Responsibility for your State Bar.
- USDA

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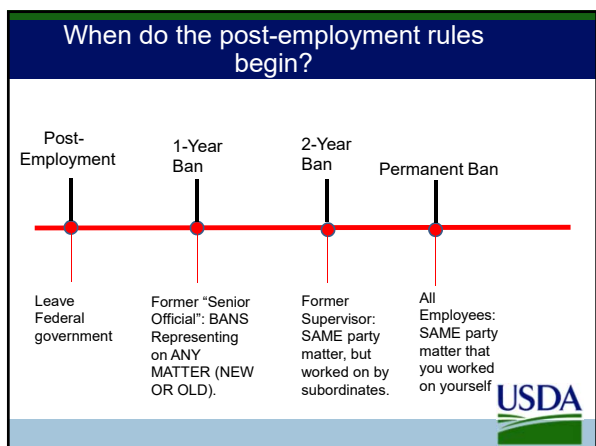
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**The Post-Employment Rules: After Leaving Federal Service**

- For ALL Former Employees (18 USC 207(a)(1)):
- **Permanent Ban** on REPRESENTATIONS (communications/appearances) before Executive Branch agencies.
- Affects representations made with the “intent to influence” an Executive Branch official on behalf of a third party.
- ONLY applies to “particular matters between specific parties” if they are THE SAME matters you worked on at while in Federal Service.



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**The Post-Employment Rules: After Leaving Federal Service**

For Former Supervisory Employees (18 USC 207(a)(2)):

- TWO year ban on representations to Executive Branch agencies.
- Representations with an “intent to influence” an official on behalf of a third party.
- Applies to the SAME specific matters under your responsibility (supervision) in your last year, *EVEN IF YOU DID NOT PERSONALLY WORK ON THE MATTER.*



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**The Post-Employment Rules: After Leaving Federal Service**

Former “Senior” Employees (18 USC 207(c)):

- One year “Cooling Off” period on ANY REPRESENTATIONS back to employing agency.
- Affects communications made with the “intent to influence” an agency official on behalf of a third party.
- Applies BROADLY to any matters before the agency.



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The Post-Employment Rules: After Leaving Federal Service

- For ALL Former Employees (18 USC 207(b)):
- One Year Restriction on Aiding or Advising on Senate Ratified TRADE or TREATY NEGOTIATIONS, that you worked in your former Federal position.



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The Post-Employment Rules: After Leaving Federal Service

- **Are there any “safe harbors”?**
- Yes, for most restrictions, “behind-the-scenes advice” to clients or private sector co-workers is permitted.
- Exception: There is no “behind-the-scenes” safe harbor for trade or treaty negotiations.



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If You are a Federal Attorney . . .

- The Federal Post-Employment Rules (18 USC 207 and 5 CFR Part 2641) are just one aspect,
- You must also comply with applicable State Bar rules governing the duty of confidentiality owed to your former client (for former Federal employees, the employing agency and the United States Government are your former client.)



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**ABA Model Rules – Rule 1.6**

*The Client-Lawyer Relationship*

**Rule 1.6: Confidentiality of Information**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent . . . .

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.




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**ABA Model Rules – Rule 1.7**

*The Client-Lawyer Relationship*


**Rule 1.7(a) Conflict Of Interest: Current Clients**

(a) . . . [A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest.

**A concurrent conflict of interest exists if:**

(1) Representing one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of a client will be materially limited by the lawyer's responsibilities to . . . **a former client** . . . . of the lawyer.




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**ABA Model Rule – Rule 1.9**

**Rule 1.9 Duties To Former Clients**

(a) A lawyer who has formerly represented a client in a matter shall not thereafter **represent** another person in the **“same or a substantially related matter”** in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.




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**ABA Model Rule – Rule 1.9**

**Rule 1.9 Duties To Former Clients**

*What is "a substantially related matter"?*

In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, **knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation.**

See, D.C. Rules of Professional Conduct, Rule 1.9, Comment 3.  
<http://www.dcbbar.org/bar-resources/legal-ethics/amended-rules/rule1-09.cfm>.




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**What is a substantially-related mater?**

In *United States v. Philip Morris Inc.*, 312 F. Supp. 2d 27 (D.D.C. 2004), the Government had brought a fraud and RICO suit against nine cigarette manufacturing companies and two tobacco trade associations.

A former Department of Justice attorney, who had provided legal advice to the FDA and HHS during the Youth Tobacco rulemaking proceeding and then participated on behalf of the government in defending the regulation in court, filed a motion to intervene on behalf of an Australian affiliate of British American Tobacco in the fraud and RICO case.




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**What is a substantially-related mater?**

*United States v. Philip Morris Inc.*, 312 F. Supp. 2d 27 (D.D.C. 2004)

In ruling on the government's motion for disqualification, the court was persuaded that **information** obtained by the former government attorney in the FDA litigation would **assist him in developing strategy and arguments** to rebut the Government's claims, and the court refused to accept that the risk of misusing Government information was nonexistent. **Instead, the court said that any case involving close questions about whether particular confidences would be pertinent require disqualification of former government lawyers.**




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### What is a substantially-related mater?

*United States v. Philip Morris Inc.*, 312 F. Supp. 2d 27 (D.D.C. 2004)

- The court held that under Rule 1.11(b) **not only was the former government attorney disqualified from the case, but his employing law firm was also disqualified from the case.**
- Imputed disqualification was required because the disqualified attorney failed to notify his former government agency and all parties to the case of his disqualification, and that he will be screened off from any participation in the litigation. Such notice of disqualification and screening must be issued **before** the current representation begins. See D.C. Bar Legal Ethics Committee Ethics Opinion 279 (1998); *In re Asbestos Cases*, [514 F. Supp. 914](#) (E.D.Va.1981).




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### ABA Model Rule – Rule 1.9

#### Rule 1.9 Duties To Former Clients

(c) A lawyer who has formerly represented a client in a matter . . . shall **not** thereafter:

- (1) **use information** relating to the representation to the disadvantage of the former client except as these Rules would permit . . .

OR

- (2) **reveal information** relating to the representation except as these Rules would permit or require with respect to a client.




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### ABA Model Rules – Rule 1.11

#### Rule 1.11 Special Conflicts Of Interest For Former And Current Government Officers And Employees

(a) . . . [A] lawyer who has formerly served as a public officer or employee of the government:

- (1) is **subject to Rule 1.9(c)**; and
- (2) shall not **otherwise represent** a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, **unless** the appropriate government agency gives its informed consent, confirmed in writing, to the representation.




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**ABA Model Rules – Rule 1.11**

**The Leading Case:**  
**IN RE: Abraham SOFAER, D.C. Court of Appeals**  
**(No. 97-BG-1096)(Decided: April 22, 1999)**

- While serving as the State Department’s Legal Advisor, Mr. Sofaer took part in legal activities related to the government’s investigation of the 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland. After leaving Federal Service to join a private law firm, he violated Rule 1.11 by undertaking to represent the government of Libya in connection with litigation arising from the bombing.



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**ABA Model Rules – Rule 1.11**

**IN RE: Abraham SOFAER, D.C. Court of Appeals**  
**(No. 97-BG-1096)(Decided: April 22, 1999)**

- The D.C. Court of Appeals noted that Mr. Sofaer elected not to solicit the views of his former agency nor did he consult with the Legal Ethics Committee of his Bar.
- The Court affirmed the Board’s conclusion that respondent violated Rule 1.11(a) and upheld his reprimand.



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**ABA Model Rules – Rule 1.11**

- **IN RE: Lucille WHITE, D.C. Court of Appeals**  
**(11 A. 3d 1226)(Decided January 20, 2011)**

- A D.C. Government employee, Ms. White was the supervisor overseeing the investigation of a claim by a claimant. After leaving D.C. Government, Ms. White became co-counsel for the same claimant (who was now suing in D.C. Court) and participated in reviewing and editing court filings and attended a deposition.



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**ABA Model Rules – Rule 1.11**

- **IN RE: Lucille WHITE, D.C. Court of Appeals (11 A. 3d 1226)(Decided January 20, 2011)**
- Ms. White telephoned D.C. Bar Ethics Counsel's office to inquire about engaging in this representation; however, she provided only a partial description of the relevant facts during that call and specifically omitted her involvement with the claim while she was employed by DC Government.
- The Court ordered that she be **disbarred**.




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**ABA Model Rules – Rule 1.11**

**Rule 1.11 Special Conflicts Of Interest For Former And Current Government Officers And Employees**

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

- > (1) the disqualified lawyer is **timely screened** from any participation in the matter **and is apportioned no part of the fee therefrom;** and
- > (2) **written notice** is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.




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**ABA Model Rules – Rule 1.11**

**To comply with Model Rule 1.11 private law firms will need to implement screening mechanisms to ensure that their new attorneys are in compliance with confidentiality requirements.**

See, D.C Bar Legal Ethics Opinion 312 (2002) "*Information That May Be Appropriately Provided to Check Conflicts When a Lawyer Seeks to Join a New Firm.*" <http://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion312.cfm>




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**Post-Employment Case Study**

**“You’ll Look Great in Pinstripes”**

The Case of the Law Firm Partner  
(and Former Federal Lawyer) who  
Forget to Call Her Former Agency’s  
Ethics Official.



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**Post-Employment Case Study**

- Short Summary of the Case:

A former FCC supervisory attorney, who went to work for a law firm, unwittingly violated 18 U.S.C. 207(a)(2) when she signed her name to a legal document which she submitted back to her former agency concerning the **same** party matter that was pending under her official supervision.

Source: <http://www.oge.gov/OGE-Advisories/Legal-Advisories/DO-99-032--1998-Conflict-of-Interest-Prosecution-Survey/>



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**Post-Employment Case Study**

- We start with a large private sector DC law firm.
- The attorney – who was the Chief of the Common Carrier Bureau of the Federal Communications Commission (FCC) – left FCC and joined the law firm as a partner.



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**Post-Employment Case Study**

- During the attorney's time at the FCC, Company A filed an **Application** with the FCC.
- In opposition, Company B filed a Petition to Deny the Application, and the law firm responded on behalf of the Applicant (Company A).
- The Application was pending under the official responsibility of the attorney prior to her departure from the FCC.



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**Post-Employment Case Study**

- While employed at the FCC, she **recused herself from matters involving the Application** when she began negotiating for employment with the law firm.
- **NOTE: 5 C.F.R. 2641.202(j)(5) provides: "Official responsibility for a matter is not eliminated through self-disqualification. . ."**
- OGE Legal Advisory 04 x 11a provides: "An employee's recusal from, or other non-participation, in a matter does not remove it from his official responsibility." *OGE 04 x 11a: Attachment to 04 x 11, Summary of Post-Employment Restrictions of 18 U.S.C. § 207, P. 6*



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**Post-Employment Case Study**

- Several months after she left, the FCC issued an Order granting Company A's application. Shortly after, Company B filed a Petition for Reconsideration of the Order.
- So the Petition was filed within the two-year ambit of Section 207(a)(2).



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**Post-Employment Case Study**

- Now, in her new position, serving as an attorney with the law firm, she **participated in the preparation of certain pleadings** in connection with the Applicant's response to the **Petition for Reconsideration**.
- **A question arose: Could she sign the pleadings being submitted to her former agency?**



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**Post-Employment Case Study**

- Trying to be careful, the attorney “**consulted with another partner in the law firm, who had knowledge of the conflict of interest laws.**” That partner informed her that she could sign pleadings filed with the FCC.
- **Based on the advice of the other partner at the law firm,** the attorney **signed pleadings** on behalf of the Applicant.



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**Post-Employment Case Study**

- The attorney **did not contact** the FCC's Ethics Officials for guidance. Instead she sent the pleadings, under her signature, to the FCC.
- The FCC received the signed pleadings and notified her that her actions were in violation of 18 U.S.C. § 207.
- The FCC referred the matter to the U.S. Department of Justice for investigation and further legal action.



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**Post-Employment Case Study**

- Once notified of the 18 U.S.C. Section 207 problem, the attorney **arranged for substitute signature pages** to be submitted to the FCC.
- The law firm **notified all opposing counsel** about the matter.



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**Post-Employment Case Study**

- The law firm was charged with a civil violation of 18 U.S.C. § 207(a)(2) and 18 U.S.C. § 2(a), **aiding and abetting** a former employee's violation of § 207(a)(2).
- Pursuant to a settlement agreement the firm agreed to pay the United States a monetary settlement in exchange for dismissal.
- Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division.



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**Post-Employment Case Study**

- What could the former FCC supervisor have done differently?
  - Contact the Ethics Office at her former agency,
  - Contact her State's Bar Counsel,
  - Research her former agency's Ethics website,
  - Research the OGE website,
  - Research her State Bar's website.
  - Contact the law firm's professional liability provider.
  - Contact her own professional liability provider.



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**A Final Word**

What can you do to make sure you know the State Bar requirements that apply to YOU:

***For State Bar rules governing the duty of confidentiality you owe to former clients, you should always comply with the specific rules of the State Bar(s) for the jurisdiction(s) in which you are licensed.***

***State Bar Counsel are generally available to answer attorneys' questions on specific State Bar rules.***




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**Presenter Bio:**

Stuart Bender serves as the Designated Agency Ethics Official (DAEO) and Director of the Office of Ethics at the Department of Agriculture (USDA). Mr. Bender reports directly to USDA's General Counsel. Mr. Bender's work in Federal Ethics was recognized with a Presidential Rank Award in 2016. In 2017, Mr. Bender created the USDA Ethics App, the Federal government's first multi-media Ethics App. In 2019, Mr. Bender upgraded the USDA Ethics App to include new features including an interactive Ethics Game.

Before joining USDA, Mr. Bender was the Designated Agency Ethics Official and Assistant General Counsel at the Office of Management and Budget (OMB). He also served as the General Counsel and Ethics Officer for the U.S. Holocaust Memorial Museum during its first decade. He has served as a procurement law attorney and ethics official in the Office of Administration of the Executive Office of the President and as a civilian procurement attorney in the U.S. Navy. Mr. Bender received his J.D. degree, *cum laude*, from the George Washington University School of Law and his B.A. in Political Science, *cum laude*, from Brandeis University. Mr. Bender is a member of the Maryland State Bar.




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**Questions?**

**Contact:**  
**Stuart Bender**  
**Director**  
**Office of Ethics**

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Office of Ethics Website: [www.ethics.usda.gov](http://www.ethics.usda.gov)




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**TAB 3**

# **Federal Ethics Laws and Professional Conduct Rules for Government Attorneys:**

## **A Guide for Successfully Navigating the Revolving Door.**

Presented by Stuart Bender  
Director, USDA Office of Ethics

### **OVERVIEW:**

A discussion of the interplay and applicability of the Federal Conflict of Interest statute (18 U.S.C. § 208), the Federal Post-Employment statute (18 U.S.C. § 207), the STOCK Act, the Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. Part 2635) and the ABA Model Rules of Professional Conduct governing Confidentiality and Conflicts of Interest (Rules 1.6, 1.9, and 1.11).

Important Note: This training focuses on Federal Criminal laws and the American Bar Association (ABA) Model Rules of Professional Conduct for lawyers leaving Federal employment. For individual State Bar rules, attorneys should always comply with the specific rules of the State Bar(s) for the jurisdiction(s) in which you are licensed. State Bar Counsel are generally available to answer questions on specific State Bar rules.

### **OUTLINE:**

A Lawyer Moving from a Government Position to a Non-Government Position

Seeking/Negotiating for Employment – 18 U.S.C. § 208

When you are looking to leave Federal service and you are negotiating with persons or entities whose financial interests would be directly and predictably affected by particular matters in which you are participating personally and substantially in your government position, you must immediately disqualify (recuse) yourself from participation in the matter. 18 U.S.C. § 208, 5 C.F.R. §§ 2635.601, .602 and .604.

“Seeking Employment” occurs when you directly or indirectly (i.e., through a “headhunter”) make an unsolicited communication regarding employment (such as sending a resume or application); engage in negotiations regarding possible employment; receive a positive response to a job application, or make a response, other than rejection, to a communication regarding employment. 5 C.F.R. § 2635.603(b)(1).

“Seeking Employment” ends when you or the prospective employer rejects the possibility of employment and discussions end, or you have not received any interest after two months. 5 C.F.R. § 2635.603(b)(2).

However, a response that defers discussions does not end your status of “seeking employment.” 5 C.F.R. § 2635.603(b)(3).

If you file a Public Financial Disclosure Report (OGE Form 278) (generally SES, S/L, Political Appointees and ALJs), you must file a STOCK Act notice within 3 business days of “commencing” employment negotiations or discussions with the outside person or entity.

“Commencing” employment negotiations or discussions begins as early as when the person or entity contacts you to arraign an interview or to communicate with you about the position.

STOCK Act, Section 17, Pub. L. No. 112-105 (2012). A copy of USDA’s STOCK Act Notice form can be found at:

[http://www.ethics.usda.gov/rules/STOCK%20Act%20Files/USDA%20Notification%20of%20PostEmployment%20Negotiation%20Form%20\(May%202014\)\\_vers2.pdf](http://www.ethics.usda.gov/rules/STOCK%20Act%20Files/USDA%20Notification%20of%20PostEmployment%20Negotiation%20Form%20(May%202014)_vers2.pdf)

#### Federal Post-Employment Rules (18 U.S. Code § 207)

Since its enactment in 1962, 18 U.S.C. § 207 has served as the primary source of restrictions limiting the activities of individuals after they leave Federal Government service.

None of the statute’s restrictions bar any individual from accepting employment with any private or public employer. Instead, the statute prohibits former employees from engaging in certain activities on behalf of persons or entities.

Two of the restrictions affect any former employee, regardless of salary or position. The restrictions bar a former employee from representing another person or entity by making a communication to or appearance before a Federal department, agency, or court concerning the same “particular matter involving specific parties” (e.g., the same contract, grant or litigation) with which the former employee was involved while serving the Government. If the matter was pending under the employee’s official responsibility during the employee’s last year of Government service, the bar lasts for two years. If the employee participated in the matter “personally and substantially,” the bar is permanent. Below are greater detail on each of these restrictions:

The “Lifetime” or Permanent Ban: You are permanently barred from knowingly communicating with or appearing before any Federal court or Executive Branch agency with the intent to

influence on behalf of a person -- other than the United States – on the same “particular matter involving a specific party or parties” that you “personally and substantially” participated in while a government employee and in which the United States is a party or has a direct and substantial interest. This restriction does not prohibit behind the scenes assistance. 18 USC 207(a)(1), 5 C.F.R. § 2641.201.

This prohibition is based on your prior participation in, or responsibility for, a “particular matter involving specific parties” (also referred to as “party matters”) such as any contract, grant, loan, lease, claim, application, audit, investigation, arrest, accusation, charge, litigation, or judicial or other proceeding. The term does not include broad rulemaking or other particular matters of general applicability.

**The Two-Year Ban:** In addition to the Permanent Ban, there is a two-year restriction on the same “party matters” that were pending under your responsibility during your last year of Federal service. For this ban to apply, it is irrelevant whether you worked on the matter personally and substantially. This restriction applies whenever the party matter was pending in your area of responsibility during your last year of Federal service. Under this ban, it does not matter if you never personally worked on the party matter, so long as it arose under your responsibility during your last year of service. Similar to the Permanent Ban, This ban applies to all Federal courts and all Executive Branch agencies. 18 U.S.C. § 207(a)(2), 5 C.F.R. § 2641.202.

**The One Year Statutory “Cooling Off” Period for Senior Officials:** In addition to the two above bans, certain high-level officials are subject to a “cooling-off” period. For a period of one year after leaving a “senior” position, a former senior employee may not represent another person or entity by making a communication to or appearing before the former employee’s former agency to seek official action on any matter. For former USDA employees this restriction bars, for one year from the date of departure, any communications or representations on behalf of a third party before any agency or office within USDA. 18 U.S.C. § 207(c), 5 C.F.R. § 2641.204.

The statutory threshold to determine which employees are subject to the post-employment conflict of interest restrictions of 18 U.S.C. § 207(c) is provided at 18 U.S.C. § 207(c)(2)(A)(ii). That threshold level is equal to or greater than 86.5% of the annual rate of basic pay for level II of the Executive Schedule. Effective January, 2019, that level is **\$166,340**.

**The Two-Year Ban for Very Senior Officials:** A former “very senior” employee is subject to a similar prohibition, except that the bar lasts for two years and extends to all contacts with the very senior official’s employing Department as well as specified high-level officials throughout



the Executive Branch's departments and agencies. Separately, both former senior and very senior employees are prohibited for one year from representing, aiding, or advising a foreign government or foreign political party with the intent to influence certain government officials. 18 U.S.C. § 207(d).

**Restrictions on Certain Trade or Treaty Negotiations:** A former employee who participated personally and substantially in ongoing trade or treaty negotiations which are subject to Senate ratification, during his or her last year of government service, is prohibited for one year from providing behind-the-scenes advice, as well as representations back to the government on those same negotiations.

### **Confidentiality Requirements**

**Standards of Ethical Conduct, 5 CFR Part 2635:** As a Federal employee, you are prohibited from using any non-public information to further your own private interests or the interests of others. 5 CFR 2635.703. This includes information designated as confidential by the agency, exempt from mandatory disclosure under the FOIA, or which has not been authorized to be publicly disseminated. 5 C.F.R. § 2635.703(b).

**ABA Model Rules of Professional Conduct:** A. lawyer shall not reveal information relating to representation of a client unless the client gives informed consent. This is a broad restriction and is not limited to confidences and secrets. The source of the information not relevant. Model Rule 1.6.

Under the ABA Model Rules, you may disclose attorney-client information under the following circumstances:

- When the client gives informed consent,
- When the disclosure is implicitly authorized to carry out the legal representation, or
- If you reasonably believe that disclosure is necessary to prevent reasonably certain death or substantial bodily harm. Model Rule 1.6(a), (b)(1), or
- To prevent the client from committing a crime or fraud. Model Rule 1.6(b)(2), or
- To secure legal advice about your compliance with these rules, or to comply with another law or a court order. Model Rule 1.6(b)(4).

Rule 1.9 spells out a lawyer's duties to his or her former clients, and prohibits a lawyer who has formerly represented a client in a matter from later representing another person in the "same or a substantially related matter" in which that person's interests are materially adverse to the interests

of the former client unless the former client gives informed consent, confirmed in writing.

The leading case in the District of Columbia regarding the substantial-relationship test is *Brown v. District of Columbia Board of Zoning Adjustment*, 486 A.2d 37 (D.C. 1984) (en banc). In *Brown*, the D.C. Court of Appeals held that in the “revolving door” context, a showing that a reasonable person could infer that, through participation in one matter as a public employee, the former government lawyer “may have had access to information legally relevant to, or otherwise useful in” a subsequent representation, is prima facie evidence that the two matters are substantially related. If this prima facie showing is made, the former government lawyer must disprove any ethical impropriety by showing that the lawyer “could not have gained access to information during the first representation that might be useful in the later representation.” *Id.* at 49-50.

In *United States v. Philip Morris Inc.*, 312 F. Supp. 2d 27 (D.D.C. 2004), the Government had brought a fraud and RICO suit against nine cigarette manufacturing companies and two tobacco trade associations. A former Department of Justice attorney, who had provided legal advice to the FDA and HHS during the Youth Tobacco rulemaking proceeding and then participated on behalf of the government in defending the regulation in court, filed a motion to intervene on behalf of an Australian affiliate of British American Tobacco in the fraud and RICO case. In ruling on the government’s motion for disqualification, the court was persuaded that information obtained by the former government attorney in the FDA litigation would assist him in developing strategy and arguments to rebut the Government’s claims, and the court refused to accept that the risk of misusing Government information was nonexistent. *Id.* at 42-43. Instead, citing the *Brown* decision, the court said that any case involving close questions about whether particular confidences would be pertinent require disqualification of former government lawyers. *Id.* at 45. See, D.C. Bar, Ethics Opinion 343, “Application of the “Substantial Relationship” Test When Attorneys Participate in Only Discrete Aspects of a New Matter.” <https://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion343.cfm>.

iv. Model Rule 1.11 imposes specific restrictions upon former government lawyers. If you obtained confidential government information about a person in your capacity as a government employee and you know the information is confidential, you may not use that information to the material disadvantage of the person in another case. Model Rule 1.11(c).

Private law firms will need to implement screening mechanisms to ensure that their new attorneys are in compliance with the confidentiality requirements in Model Rule 1.11. See, D.C. Bar Legal Ethics Opinion 312 (2002) “Information That May Be Appropriately Provided to

Check Conflicts When a Lawyer Seeks to Join a New Firm” <https://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion312.cfm>.

You cannot participate in a matter (give advice to a client, discuss with other private sector lawyers) that you personally and substantially participated in as a government employee unless you first obtain the consent of the former clients (i.e., the appropriate government officials). Model Rule 1.11(a).

As used in Rule 1.11, the term "confidential government information" means information that has been obtained under governmental authority and which the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public.

Model Rule 1.11(a) imposes a ban against the disclosure of confidential or privileged information that precludes a former government lawyer from sharing information learned during the course of his or her Federal legal career. Model Rule 1.11 incorporates the bans in Rule 1.9(c) against using or revealing information learned with respect to a former client.

This restriction is in addition to the representational restrictions imposed by the Federal post-employment rules. Former government attorneys are well advised to consult the Bar Counsel of the States in which they are licensed as well as the jurisdictions they seek to practice in (such as by pro hac vice).

**Presenter Bio:** Stuart Bender serves as the Designated Agency Ethics Official (DAEO) and Director of the Office of Ethics at the Department of Agriculture (USDA). Mr. Bender reports directly to USDA's General Counsel. Mr. Bender's work in Federal Ethics was recognized with a Presidential Rank Award in 2016. In 2017, Mr. Bender created the USDA Ethics App, the Federal government's first multi-media Ethics App. In 2019, Mr. Bender upgraded the USDA Ethics App to include new features including an interactive Ethics Game.

Before joining USDA, Mr. Bender was the Designated Agency Ethics Official and Assistant General Counsel at the White House's Office of Management and Budget (OMB). He also served as the General Counsel and Ethics Officer for the U.S. Holocaust Memorial Museum during its first decade. He has served as a procurement law attorney and ethics official in the Office of Administration of the Executive Office of the President and as a civilian procurement attorney in the U.S. Navy. Mr. Bender received his J.D. degree, *cum laude*, from the George Washington University School of Law and his B.A. in Political Science, *cum laude*, from Brandeis University. Mr. Bender is a member of the Maryland State Bar.

**TAB 4**

## Post-Employment Case Study

A large law firm has a group of attorneys whose practice focuses on telecommunications law.

The former Chief of the Common Carrier Bureau of the Federal Communications Commission (FCC) joined the firm as a partner.

Previously, during her time at the FCC, an **Application for Authorization to Operate as an International Resale Carrier** ("Application") was filed with the FCC. Company A filed a Petition to Deny the Application, and the law firm responded on behalf of the Applicant. The Application was pending under the official responsibility of the former Chief of the Common Carrier Bureau prior to her departure from the FCC. The former Chief of the Common Carrier Bureau **recused herself from matters involving the Application** when she began negotiating for employment with the law firm.

After she left, the FCC issued an order granting the application. Company A filed a Petition for Reconsideration of the Commission's Order.

Now, serving as an attorney with the law firm, the former Chief of the Common Carrier Bureau participated in the preparation of certain pleadings in connection with the Applicant's response to the **Petition for Reconsideration**.

During that time, the former Chief of the Common Carrier Bureau **consulted with another partner in the law firm, who had knowledge of the conflict of interest laws**. That partner informed the former Chief of the Common Carrier Bureau that she could sign pleadings to be filed with the FCC.

**Based on the advice of the other partner at the law firm**, the former Chief of the Common Carrier Bureau **signed pleadings** on behalf of the Applicant.

The FCC notified the former Chief of the Common Carrier Bureau about a violation of 18 U.S.C. § 207. The former Chief of the Common Carrier Bureau contacted the FCC and **arranged for substitute signature pages to be submitted**. The firm **notified all opposing counsel** about the matter.

The firm was charged with a civil violation of 18 U.S.C. § 207(a)(2) and 18 U.S.C. § 2(a), **aiding and abetting** a former employee's violation of § 207(a)(2). Pursuant to a settlement agreement signed by the parties on September 4, 1998, the firm agreed to pay the United States a monetary settlement in exchange for the dismissal of the United States' claim.

Prosecution handled by the Public Integrity Section of the Department of Justice's Criminal Division.

**TAB 5**

## **Acceptance of Payment from a Non-Federal Source For Travel Benefits While in Official Capacity**

The Department of Defense (DoD) may accept travel benefits (transportation, lodging, meals, and related expenses), in-kind or by reimbursement, from non-Federal sources (such as organizations, associations, or businesses) for DoD personnel in their official capacities to attend meetings, conferences, seminars, symposia, and other similar functions. 31 U.S.C. § 1353. DoD personnel must be on funded travel orders. This authority to accept payment is not appropriate for permissive TDY. The General Services Administration implemented the statutory authority in the Federal Travel Regulation, 41 C.F.R. Part 304-1, which DoD must follow.

For travel benefits to be accepted from a non-Federal source, the travel approving authority (official who signs travel orders) must usually approve the acceptance **prior** to the travel. The sole exception allows the travel approving authority to approve, within 7 working days after the trip ends, acceptance of transportation, lodging and meals (not any related expenses) within the maximum allowed on the travel authorization if offered on the spot during travel that was already approved in advance. If the employee accepts travel benefits after the Department rejected the offer, the employee is responsible for reimbursing the non-Federal source.

In order to accept the travel payments, either before or after the travel, the travel approving authority must make the following determinations:

- Payment is for attendance at a meeting, conference, seminar, speaking engagement, symposium, training course, or receipt of an award or honorary degree related to official duties. The event cannot be a “widely attended gathering.”
  - This authority does not permit acceptance of payments for promotional vendor training or other events in which the primary purpose is marketing the non-Federal source's products or services.
  - This authority does not permit acceptance of payments for events that are essential or required to carry out an agency's statutory and regulatory functions, such as inspections, audits, site visits, or negotiations.
  - This authority does not permit acceptance of payments for travel by other than coach-class, or in excess of the Government prescribed subsistence allowances unless it is consistent with the exceptions in the Joint Travel Regulation and 41 C.F.R. §304-5.4 and 5.5.
- Payment is for travel related to the employee's official duties, and the employee must be in a travel status. Payments or benefits offered by a non-Federal source may be limited by qualifying acceptance to attend only a portion of the function that is deemed to be in the Government's interest.

- Travel is in the interest of the Government.
- Payment may be accepted only from a non-Federal source that is not disqualified because of a conflict of interest. The approving authority must review the circumstances to determine that acceptance would not cause a reasonable person with knowledge of all the relevant facts to question the integrity of the Government's programs or operations. This consideration should include:
  - the identity of the non-Federal source
  - the purpose of the meeting
  - the identity of other expected participants
  - the monetary value and character of the travel benefits
  - whether there is any matter pending at their DoD component that may affect the interest of the non-Federal source, and if so its nature and sensitivity and the significance (if any) of the proposed traveler's role in the matter
  - any impact the performance or nonperformance of the traveler's official duties might have on the non-Federal source.

### **Procedures:**

These determinations should be in writing. A model memorandum is included as Attachment A. The acceptance of travel benefits **should be approved by the employee's travel approving authority before being forwarded to a DoD ethics counselor for concurrence.** To the extent possible, the report referred to below should be completed and attached to the memorandum prior to the signatures.

Benefits in kind (*e.g.*, plane tickets, prepaid hotel reservations) are preferred. **Cash may not be accepted by DoD employees.** If benefits are provided by reimbursement of expenses, checks must be made payable to the U. S. Treasury or the DoD Component, not to the employee.

Since these travel benefits are provided to the Government, they should not be listed as gifts on the financial disclosure reports (OGE Forms 278e or 450) of the affected Government employee.

### **Reports:**

After the travel is complete, if the total value of the payments exceeds \$250, a report (Attachment B) must be forwarded to the ethics counselor for inclusion in the semi-annual report to the Office of Government Ethics. SF 326, "Semiannual Report of Payments Accepted from a Non-Federal Source," and SF 326A, "Semiannual Report of Payments Accepted from a Non-Federal Source-Continuation," may be found at the following web sites: <http://www.gsa.gov/portal/forms/download/116238>, and <http://www.gsa.gov/portal/forms/download/116242>.

Forms and questions should be submitted to your local ethics counsel.



Attachments

A - Memorandum for Record: Acceptance of Travel Benefits

B - Report of Payments

# **ATTACHMENT A**

Date:

MEMORANDUM FOR RECORD

SUBJECT: Acceptance of Travel Benefits In Accordance With 31 U.S.C. 1353

Travel benefits have been offered by [non-Federal source] to accommodate the participation of [employee name] in [name of meeting or similar event] on [date of meeting] in [place of meeting]. This meeting is not essential to DoD Component's mission and is not promotional vendor training or other marketing. The travel is related to the employee's official duties and the employee will be participating in an official capacity. This travel is in the interest of the Government and travel authorization has been issued. Travel benefits will be provided in kind or by check or similar instrument made payable to the "U.S. Treasury."

I have considered the identity of [non-Federal source], the purpose of the meeting, the identity of other expected participants, and the monetary value and character of the travel benefits. I have also considered whether there is any matter pending at [DoD Component] that may affect the interest of [non-Federal source], and if so its nature and sensitivity and the significance (if any) of [employee name]'s role in the matter. I have considered any impact the performance or nonperformance of [employee name]'s official duties might have on the non-Federal source. Based on these considerations, I find that [non-Federal source] is not disqualified due to a conflict of interest and make the following determinations:

- Acceptance of these travel benefits would not cause a reasonable person with knowledge of all the relevant facts to question the integrity of the [DoD Component]'s programs or operations; and.
- Acceptance of these travel benefits is permissible under applicable travel regulations.

Acceptance of these travel benefits is approved, subject to Ethics Counsel review and concurrence. This memorandum will be coordinated with Ethics Counsel prior to acceptance.

Travel Approving Authority

Traveler's Point of Contact: \_\_\_\_\_  
Phone: \_\_\_\_\_

Ethics Counselor Coordination: Concur \_\_\_\_\_

Non-concur \_\_\_\_\_

# **ATTACHMENT B**

Date:

MEMORANDUM FOR: Ethics Counselor

SUBJECT: Report of Payments for Travel Benefits from a Non-Federal Source  
Pursuant to 31 U.S.C. 1353

Name of Traveler:

Grade or Rank:

Position:

Office Address:

Point of Contact (if any)/Telephone:

Event:

Sponsor(s) of Event (include any significant co-sponsors, e.g., "University of Texas, in conjunction with, Longhorn Defense Corporation"):

Location of Event:

Date of Event:

Travel Dates:

Nature of Participation ("speaker", "attendee", etc.):

Non-Federal Source of Payment (who actually pays):

Nature of Payment:  Check  In-kind payment  Both

Total Value of Benefits Received (estimated before travel; actual amounts upon return):

Lodging:

Transportation:

Meals:

Miscellaneous:

Attachment: Travel Approving Authority Determination

**TAB 6**

## HOLIDAY GUIDANCE



**FOR: Department of Defense Personnel**  
**FROM: DoD Standards of Conduct Office,**  
**Office of the General Counsel**

The holiday season is traditionally a time of parties, receptions, and gift exchanges. However, ethics rules still apply! To ensure you do not inadvertently violate the ethics rules, or other related laws and regulations, a brief summary of the applicable rules and some common situations you might encounter is set out below.

If you have any questions, please contact your organization's Ethics Counselor.

**Best wishes from SOCO for a wonderful holiday season!**

### QUICK REFERENCE

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- Office Parties:
  - Contributions must be voluntary. Don't have a boss solicit for contributions.
  - Special considerations apply if a contractor's employees will be invited. See the examples below and consult with your contracting officer and Ethics Counselor.
- Holiday Parties Outside the Office
  - Personnel generally may attend holiday parties hosted personally by their superiors or subordinates.
  - There is *not* a "holiday party exception" to the ethics rules for accepting free attendance at events hosted by contractors and other non-Federal organizations.
    - Read the examples below. Some events may require written approval. Check with your Ethics Counselor if you have questions.
- Gifts
  - Gifts from contractors and other prohibited sources are generally limited to non-cash items worth less than \$20.
  - Gifts from subordinates are generally limited to non-cash items worth less than \$10.

- Traditional hospitality or hostess gifts may exceed \$10 when the boss is hosting a party at his/her home (e.g. flowers, a bottle of wine). However, good judgement and reason apply to avoid any appearance of currying favor.
- There is no limit on the value of a gift a supervisor may give to subordinates, but the good taste and avoiding any appearance of favoritism should be taken into account.
- The President's Ethics Pledge further limits political appointees from accepting most gifts offered by a lobbyist or lobbying organization.

## **GENERAL PRINCIPLES**

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- You may not solicit outside sources (which includes contractor-employees working in your office) for contributions to your party. This includes solicitations for funds, food, and items.
- Holiday parties are unofficial events, and you may not use appropriated funds to pay for them.
- You may not use appropriated funds to purchase and send greeting cards.
- DoD regulations prohibit gambling in the Pentagon and on Federal property or while in a duty status. GSA regulations ban gambling in GSA-owned or controlled buildings. Door prizes or drawings where individuals purchase a chance to win something constitute gambling.
- As a general rule, participation at holiday social events is personal, not official, and therefore use of Government vehicles to/from such events would not be authorized. There may be limited circumstances that justify the use of a Government vehicle, such as when a senior official is invited to attend the event because of his/her official position and where the official will be performing an official function. Note that it would be difficult, if not impossible, to justify the use of a Government vehicle when a function involves one's immediate staff/office or events comprised of personal friends. All requests for use of a Government vehicle to attend holiday social events should be reviewed on a case-by-case basis.
- Many contractors have ethics rules and policies that are similar to the Federal rules. Consider these rules before offering contractor-employees gifts or opportunities that they may not be able to accept.

## **GIFTS**

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**General Rule:** Federal personnel may not accept gifts offered because of their official positions or offered by a “prohibited source.” A prohibited source is anyone who:

- Seeks official action by the employee’s agency;
- Does business or seeks to do business with the employee’s agency;
- Conducts activities regulated by the employee’s agency;
- Has interests that may be substantially affected by the employee’s performance of duty; or,
- Is an organization composed of members described above.

**Gifts Defined:** Gifts include any item of value. Examples of gifts include free attendance at dinners and other meals, receptions, sporting events, and widely attended gatherings.

**Lobbyist Gift Ban (Political Appointees Only):** Except in very limited instances, *civilian political appointees may not accept gifts from registered lobbyists or lobbying organizations.* Political appointees are all full-time non-career Presidential appointees, non-career Senior Executive Service (SES) appointees, and non-career appointees excepted from the competitive service by reason of being of a confidential or policymaking character (e.g., Schedule C, politically appointed term SES or equivalent). Most of the gift exceptions to the general prohibition on gift acceptance do NOT apply for gifts to political appointees from a lobbyist/lobbying organization, unless the organization is a 501(c)(3) non-profit.

**Gift Exchanges Between Supervisors and Subordinates:** Absent an applicable exception, supervisors may **not** accept gifts from subordinates or Federal personnel who receive less pay. Below are exceptions that may apply for holiday gifts and events:

- Exception #1: On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, supervisors may accept gifts (other than cash) valued at **\$10 or less** from a subordinate.
- Exception #2: Supervisors may accept food and refreshments shared in the office and may share in the expenses of an office party.
- Exception #3: When a supervisor invites a subordinate to a social event at the supervisor’s residence, the subordinate may give the supervisor a hospitality gift of the type and value customarily given on such an occasion.

**Gifts and Gift Exchanges Between Peers and Coworkers:** There are no legal restrictions on gifts given to peers or subordinates. However, common sense (and good taste) should apply, and supervisors should avoid any appearance of favoritism toward a particular subordinate.

**Gifts and Gift Exchanges That Include Contractor Personnel:**

- *Gifts from contractors:* Federal personnel are prohibited from soliciting gifts from contractor employees. Furthermore, as a general rule, Federal employees may not accept unsolicited gifts from contractor-employees. Contractor-employees are considered prohibited sources since their employers currently do business with the Government. The exceptions below may apply for holiday gifts and events:
  - Exception #1: Federal personnel may accept gifts (other than cash) not exceeding **\$20**, as long as the total amount of gifts that the individual accepts from that source (the contractor-employee and the employer) does not exceed \$50 for the year.
  - Exception #2: Federal personnel may accept gifts that are based on a **bona fide personal relationship**. Personal relationships are generally limited to family and close personal friendships arising outside the work place. A key indicia of whether a gift is based on a personal relationship is whether the gift is paid for or reimbursed by the contractor employer. However, if the contractor employer gives a gift or invitation to its employee and the employee, without direction from the company, then re-gifts to or invites a Federal official based upon a family or close personal relationship, the personal relationship exception may still apply.
- *Gifts to contractors:* Check with the contractor, since many contractors have codes of ethics that are similar to Federal rules and, therefore, may preclude the acceptance of gifts.

## **PARTIES, OPEN-HOUSES, AND RECEPTIONS**

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**Raising Funds for Office Holiday Parties:** As a general rule, Federal personnel may not engage in fundraising in an official capacity, unless authorized by statute, executive order, regulation or agency determination. One such exception is “by our own, from our own, for our own” internal fundraisers. Under this exception, you may have a fundraising event (i.e., bake sale) within the workplace to raise funds for the holiday party. You may only hold such a sale in your office area, as opposed to a public area, and everyone who is working in the bake sale must be in a non-duty status (leave or pass, lunch break, etc.). You must also comply with any local policies pertaining to fundraising, which may limit where you may hold the fundraising event, how you may publicize it, and who may authorize it. You may not solicit outside sources for contributions for your party.

**Parties, Open-Houses, and Receptions Hosted by Non-Prohibited Sources:** Federal personnel may attend social events sponsored by non-prohibited sources if none of the guests are charged admission (e.g. most holiday receptions and open-houses).

**Parties, Open-Houses, and Receptions Hosted by Prohibited Sources Including Contractors:** The general rule is that Federal personnel may **not** accept gifts from prohibited sources, including contractors and contractor personnel.

- Exception #1: Federal personnel may generally attend an open-house or reception, and accept any gift of refreshments if an Ethics Counselor determines that the event is a widely attended gathering, and the employee's supervisor determines that it is in the agency's interest that the employee attends. This determination must be in writing.
- Exception #2: Federal personnel may accept invitations to events that are open to the public, all Government employees, or all military personnel.
- Exception #3: Federal personnel may accept invitations offered to a group or class that is not related to Government employment. (For example, if the building owner where your office is located throws a reception for all of the tenants of the building.)
- Exception #4: Federal personnel may accept modest refreshments, such as soft drinks, coffee, pastries, or similar refreshments that are not served as part of a meal.
- Exception #5: Federal personnel may accept gifts based on a spouse's outside business or employment relationship. For example, a Federal employee's spouse works for ABC Corp. The Federal employee may accompany the spouse to the ABC Corp.'s holiday party. The invitation is to the spouse as an ABC Corp. employee, and not to the Federal employee because of his or her Federal position.

*Remember:* Federal personnel may not accept a gift from an outside source, even where one of the exceptions applies, if the gift was solicited or is given in return for being influenced in the performance of an official act.

### **Parties, Open-Houses, and Receptions Hosted by Other Federal Personnel:**

- *Invitation from your subordinate:* You may accept personal hospitality at the residence of a subordinate that is customarily provided on the occasion.
- *Invitations from your boss or a co-worker:* No restrictions. Enjoy!

### **COMMON EXAMPLES**

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1. **Office Party (non-duty time):** Your office is having a holiday party during the non-duty lunch hour or after work and asks each person attending to pay \$5 to cover refreshments and to bring a pot luck dish or dessert. Contractor-employees may attend, pay \$5, and bring food because these contributions are not considered to be gifts or solicitation of gifts, but rather merely an attendee contributing their fair share of the costs of the an event that they are attending. **Remember**, contributions must be voluntary, so soliciting must be done with care to

ensure there is no pressure or appearance of pressure. Also, be sure to verify that the time contractor-employees spend at the party does not get billed to the Government.

2. **Office Party (duty time):** What about a party that cuts into duty hours? In addition to the rules in the example above regarding solicitation and contributions by Federal employees, as a general rule, the Government may not reimburse a contractor for morale and welfare expenses. The contractor has to decide whether to let its employees attend and forego payment for their time, or direct that they continue to work. Consult the Contracting Officer and Ethics Counselor before inviting contractor-employees to a function during their duty hours.

3. **Exchange of Gifts:** Your colleagues, including contractor-employees, want to exchange gifts at the office holiday party. Gift exchanges in which employees purchase gifts for other employees whose names they drew at random may create situations where a subordinate is purchasing a gift for a superior. If contractor personnel participate in the gift exchange, a \$20 limit applies. Where an employee may buy a gift for a superior, a \$10 limit applies. The best practice when organizing the gift exchange is to tell participants to limit gifts to non-cash items with a value of \$10 or less.

4. **Private Parties (Federal Personnel):** One of your Government co-workers is hosting a party at his house and has invited the entire office, which also includes several contractor-employees. Providing food and refreshments to a contractor-employee does not violate Government ethics rules. The contractor-employees may want to check their employer's rules before accepting (since many contractors have similar ethics rules). If the contractor-employee brings a hospitality gift, it may not exceed \$20 (since the contractor is a prohibited source).

5. **Private Parties (Contractor-Sponsored):** If the contractor is sponsoring their employee's party or open-house, and you are invited by the contractor (or an employee of the contractor), you may not attend unless one of the exceptions discussed above applies. For example, under the \$20 rule, if the average cost per guest does not exceed \$20, Government personnel may accept. However, if the cost per guest is \$40 and no other exception applies, the Federal employee would have to pay for the meal in order to attend the event.

**Please remember that this guidance highlights the common ethics issues we encounter during the holiday season. It does not cover every situation. For advice tailored to your particular circumstances, contact your Ethics Counselor.**

**TAB 7**

# Information Paper

## Travel Alternatives When Visiting Contractor Facilities

DoD Standards of Conduct Office (2017)  
Office of the DoD General Counsel

**When may a Federal employee, on an official visit to a work site of a Government contractor, accept transportation provided by that contractor?**

### **I. Easy and Safe Answer: Pay for it!**

**1. Reimbursement.** If the Federal employee uses transportation provided by the contractor, the employee may reimburse the contractor for the fair market value of the transportation. When such travel is in furtherance of official duty, reimbursement by the Government may be appropriate pursuant to regulations.

**2. Use own transportation.** Federal employees may always provide their own transportation in lieu of accepting transportation provided by the contractor. When such travel is in furtherance of official duty, reimbursement by the Government may be appropriate pursuant to regulations.

**3. Even if transportation may be accepted, it may be prudent to decline the offer.** Although it may be permitted by regulation to accept transportation from a contractor, it may be prudent to decline the offer or any gift from a contractor to avoid the appearance of impropriety. In fact, 5 C.F.R. § 2635.204 warns that, “Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.”

### **II. Authority Permitting Acceptance of Transportation**

**1. Transportation for official business.** When transportation is offered to a Federal employee who is conducting official business, it is a gift to the *Government*, not to the employee. It may be accepted only if it complies with gift-acceptance statutes or is provided according to a contract.

**A. Authorization provided by the contract.** Transportation rules can vary depending on the contract type. For situations involving fixed-price contracts where there are no provisions for direct reimbursement of contractor transportation expenses, contractor personnel and government employees should not share transportation, unless another exception applies.

Transportation is acceptable if it is included in a contract between the Government and the contractor. For example, where contractor personnel are reimbursed for costs associated with transportation or the contract includes a requirement for the contractor to provide transportation to government personnel, government and contractor personnel may share that

transportation since the Government is actually paying for the transportation.<sup>1</sup>

**B. Transportation provided by contractor that is integral to the site visit.** If the contractor offers transportation within a single site, it may be acceptable as transportation integral to the site visit. Such transportation is not considered a gift, and there is no explicit regulation or statute authorizing acceptance. Generally, such transportation does not have an independent market value, is not otherwise available, entails unique capabilities, or is of nominal value. Examples include use of a contractor shuttle between buildings or lift in an elevator. Factors also include safety, security, and the lack of alternative travel. When facilities are not contiguous, and transportation is not limited to contractor vehicles, transportation is most likely not integral to the site visit.<sup>2</sup>

**C. Transportation to a meeting or similar function for official business *not essential to an agency's statutory or regulatory function*: 31 U.S.C. § 1353 and 41 C.F.R. § 304-1.1 *et seq.*** For transportation to a meeting or similar function for official business not essential to an agency's function, 31 U.S.C. § 1353, as implemented by 41 C.F.R. § 304-1.1 *et seq.*, applies. Functions that do not qualify under this statute include investigations, inspections, audits, site visits, negotiations, or litigation. The employee may accept such transportation on behalf of the Government if authorized in advance by the employee's travel-approving authority. Two exceptions, however, allow the acceptance of the transportation, under certain conditions, when agency authorization was *not* obtained in advance. *First*, according to 41 C.F.R. § 304-3.13(a), if the employee's agency previously authorized accepting non-Federal payment of *some* travel expenses for the trip in question, the employee may accept the current offer of transportation if (1) the transportation offered is the same in kind or comparable in value to transportation "offered to or purchased by other similarly situated meeting attendees" and (2) the employee's agency did not decline to authorize acceptance of the transportation. (If an agency knew of the travel in question and did not authorize it, it would be likely that it "declined" authorization under this subsection. Clarification may be needed, however, when the lack of authorization was due to an oversight.)

*Second* (and alternatively), 41 C.F.R. § 304-3.13(b) provides that if the employee's agency did *not* previously authorize "acceptance of any payment from a non-Federal source prior to . . . travel," the employee may still accept the "payment" in the form of transportation (payment-in-kind) from the contractor (i) if travel expenses incurred by the employee were authorized on his or her travel authorization, *and* (ii) the value of the transportation offered is of an amount that would not make the employee's travel expenses exceed the travel authorization amount. In this second case of accepting transportation, the employee must request, *within 7*

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<sup>1</sup> Other examples where such transportation is included in the contract include: Contracts for on-site inspections which typically contain a provision requiring the contractor to make available to the Federal employee reasonable assistance for carrying out those official duties. See, e.g., Federal Acquisition Regulation (FAR) § 52.246-2(d), "Inspection of Supplies—Fixed Price" (Aug. 1996) ("If the Government performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties."); FAR § 52.246-4(d), "Inspection of Services—Fixed-Price" (Aug. 1996) (stating a requirement of assistance similar to FAR § 52.246-2(d), above); FAR § 52.246-8(d), "Inspection of Research and Development—Cost Reimbursement" (Mar. 2001) (providing a requirement of assistance similar to FAR § 52.246-2(d), above); FAR § 52.246-14, "Inspection of Transportation" (Apr. 1984) ("The Contractor shall furnish Government representatives with the free access and reasonable facilities and assistance required to accomplish their inspections and tests.").

<sup>2</sup> See OGE 98 x 8, p. 2; see also Ethics Issues in Government— Contractor Teambuilding, [http://www.defenselink.mil/dodgc/defense\\_ethics/dod\\_oge/partwd.doc](http://www.defenselink.mil/dodgc/defense_ethics/dod_oge/partwd.doc), p. 41, ex. #5 (July 15, 1999).

*working days of end of trip*, authorization from his or her travel-approving authority.

Moreover, if the employee's agency does not authorize the employee's acceptance, either the agency or the employee must reimburse the contractor for the market value of the travel—otherwise the employee may be subject to a penalty (defined at 41 C.F.R. § 304-3.18). 41 C.F.R. §§ 304-3.13(b)(3), 304-3.13(c).

**D. For transportation for official business *essential* to an agency's statutory or regulatory function.** In this case, 31 USC § 1353 does *not* apply. In *rare* instances, other statutory authority may exist for accepting the transportation. One example of such authority is transportation provided by tax-exempt organizations for a Federal employee's training, as follows:

- **Transportation by a tax-exempt organization: 5 U.S.C. § 4111 (Civilian Employees Only).** According to 5 U.S.C. § 4105, the head of a Federal agency may authorize employee training at “non-Government facilities.” 5 U.S.C. § 4111(a) then authorizes acceptance of payment of transportation costs for training at such facilities by a tax-exempt organization (one “determined by the Secretary of Treasury to be an organization described by 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26”). 5 U.S.C. § 4111(b) makes it clear that this “payment” can be “in cash or in kind.”

## **2. Transportation between lodging and contractor facility.**

**A. Transportation provided for official business.** See discussion in II,1, above.

**B. Transportation provided not for official business, but as gift to the Federal employee: 5 C.F.R. § 2635.204 (2003).** If the transportation provided to an employee were not for official business, it may be a *gift* to the *employee*. Such gifts are normally prohibited since they are from a prohibited source (person doing business with the employee's agency) or given because of the employee's official position. The employee may, however, be able to accept the gift of transportation under one of the exceptions to the prohibition, including:

- **Gifts of \$20 or less.** The employee may accept any gift, valued at no more than \$20 per source per occasion, that also, along with other gifts from the same source to the same employee, amounts to no more than \$50 *per calendar year*. 5 C.F.R. § 2635.204(a).



- **Gifts based on personal relationship.** The employee may accept any gift *clearly* motivated by a personal relationship and not because of the employee's Federal position. 5 C.F.R. § 2635.204(b).
- **Gifts based on outside employment.** The employee may accept any gift provided to an employee because of the employee's or the employee's spouse's outside business activities, where it is *clear* that the gift has not been offered or enhanced by the employee's Federal employee status. 5 C.F.R. § 2635.204(e)(1)-(2).

Remember that although the above exception may permit the employee to accept the gift, it may yet be prudent to decline the gift to avoid an appearance of impropriety. *See* 5 C.F.R. § 2635.204. Employees who accept a gift of transportation not authorized by 5 C.F.R. §§ 2635.201-205 or by statutory authority, must repay the donor the market value of that transportation. 5 C.F.R. § 2635.205(a)(3).

### **3. Transportation after work—not for official business (for example, to a restaurant)**

See the discussion at II,2,B, above.

**TAB 8**

**FOR YOUR INFORMATION**  
**Widely-Attended-Gathering (WAG) Requests**  
**from Non-Federal Entities**

The Department of Defense Standards of Conduct Office (SOCO) regularly receives requests from non-Federal entities (e.g., defense contractors, professional associations, charities) for blanket WAG determinations, to permit DoD personnel to accept the gift of free attendance at an upcoming event (e.g., gala, award ceremony, round table, luncheon).

SOCO instituted a policy to no longer provide blanket WAG determinations for most events. See [http://www.dod.mil/dodgc/defense\\_ethics/2008\\_Advisories/ADV\\_0808.htm](http://www.dod.mil/dodgc/defense_ethics/2008_Advisories/ADV_0808.htm). The appropriate DoD Ethics Officials must make a decision for respective Service or DoD Agency clients/invitees. To expedite this process, however, we recommend that any request for a WAG determination to any DoD entity provide at least the following information:

1. Number of people expected to attend.
2. Demographics of expected attendees (e.g., Federal, State & Local government; Congressional; private sector; non-profits) and/or preferably the list of invited attendees.
3. If any portion of the event is a fundraiser, all details about the fundraising efforts (e.g., how are the funds being raised, what are the seating arrangements).
4. Cost of an individual ticket to the event (or if there is no charge, the aggregate fair market value expended for each attendee--e.g., cost for local, food, services).
5. Details (in particular, cost) of any other items of value which an attendee may receive (attendance for a guest/spouse, gift or memento for attendance, free valet parking etc).
6. Provide all information about other sponsors to the event (e.g., can sponsors dictate seating assignment, identify government invitees).
7. Whether the host is a registered lobbying organization or a media or non-profit 501(c)(3) entity.
8. Name and contact information for a point of contact who can provide prompt responses to any concerns or questions.
9. Describe the extent of the opportunity for an exchange of ideas or discussion among attendees (e.g., concerts, golf 4-somes, and attendance at sporting events generally are for observation and do not promote exchange of ideas and would not qualify as a WAG event).

We also suggest the host entity consider including appropriate language in the invitation similar to the following:

**ATTENDANCE BY DOD PERSONNEL**

Please be advised that the Department of Defense (DoD) no longer provides "blanket" Widely Attended Gathering (WAG) determinations for external events. This event may qualify as a WAG pursuant to 5 C.F.R. § 2635.204(g). All personnel are strongly encouraged to consult with their supervisor or ethics advisor prior to attending.

**ATTENDANCE BY POLITICAL APPOINTEES**

Executive Order 13490 of January 20, 2009 prohibits political appointees from accepting gifts from lobbyists or lobbying organizations pursuant to the widely attended gathering exception to the federal gift rules. Since [INSERT HOST/SPONSOR NAME] [is/is not] a lobbying organization, political appointees are [in/eligible] to accept our invitation of free attendance. To ensure compliance with Executive Order 13490, we suggest that DoD political appointees consult with their ethics advisor.

**TAB 9**

## **Standards of Conduct Office DoD Office of General Counsel**

### **Danica Irvine Senior Attorney**

Dani Irvine is currently a Senior Attorney and Ethics & Financial Disclosure Program Manager with the Department of Defense (DoD) General Counsel's Standards of Conduct Office. In addition to providing a wide range of ethics advice to senior and very senior DoD officials, she is responsible for managing the Office of the Secretary of Defense (OSD) ethics and compliance reporting programs and financial disclosure programs and working with ethics officials throughout DoD to develop and disseminate policy and guidance spanning the ethics arena. An experienced acquisition attorney, Ms. Irvine also serves as a focal point for providing advice on matters at the intersection of acquisition and ethics, such as procurement integrity, and serves as a legal representative on Defense Procurement, Acquisition Policy and Strategic Sourcing (DPAP) acquisition peer review panels for high dollar value procurements.

Ms. Irvine has previously served as Senior Counsel for Acquisition & Ethics for Defense Logistics Agency (DLA) Energy and Ethics Program Manager for the Army Office of General Counsel. During her approximately ten years with DLA, Ms. Irvine provided a full range acquisition, ethics, business integrity, and fiscal counsel and litigation services for a variety of procurement and policy programs, as well as serving as an ADR specialist and vice chair of the DLA ADR Working Group. During her tenure with the Army, she served as the Army's Ethics Program manager, where she was responsible for developing and disseminating ethics policy Army-wide and providing ethics advice to clients across the Army Secretariat, including advising senior and very senior Army officials in complying with their financial disclosure reporting and post-Government employment requirements.

Ms. Irvine began her legal career in private practice in Ohio, primarily as outside corporate and commercial litigation counsel. Ms. Irvine subsequently moved to Tennessee, where she joined the Tennessee Department of Commerce and Insurance Office of Counsel. During her tenure with the State of Tennessee, Ms. Irvine served as the Deputy Chief Counsel for Regulatory Boards and as General Counsel for the Tennessee Real Estate Commission.

Ms. Irvine received her B.A in German from the University of Oklahoma in 1992 and her J.D. from DePaul University in Chicago, Illinois in 1996.

**TAB 10**



## **Dismas Locaria** **Partner**

[dlocaria@Venable.com](mailto:dlocaria@Venable.com)

Washington, DC

+1 202.344.8013 +1 202.344.8300

Diz Locaria assists government contractors and grant recipients in all aspects of doing business with the federal government. Diz has extensive knowledge of government contract and grant regulations, enabling him to assist organizations qualify to become federal contractors or grantees. He represents clients in compliance with various federal procurement and grant requirements, including ethics and integrity; mandatory disclosures; False Claims Act; responsibility matters, such as suspension, debarment; small business matters; and General Services Administration (GSA) Federal Supply Schedule contracting. Diz also represents and counsels clients regarding the Homeland Security Act, including obtaining and maintaining SAFETY Act protections.

Diz has extensive experience with Federal Acquisition Regulation and the Uniform Guidance, including their application to prime contractors/grant recipients and subcontractors/subgrantees, enabling him to help both for-profit and nonprofit organizations meet the requirements to become federal contractors or grantees. He interprets regulations, contract, and grant terms as they relate to clients' work and operations, evaluating and advising them on intellectual property issues and contract modifications, among other issues.

His services include training on relevant regulations and contract and grant terms, federal ethics laws and practices, conducting internal audits and investigations, making and implementing improvements and/or remedial recommendations, making appropriate disclosures to federal and state agencies, and defending clients during federal and state audits and investigations, including but not limited to False Claims Act and Procurement Integrity Act allegations.

Diz has represented clients in suspension and debarment matters, and regarding other agency eligibility and responsibility issues, before each of the U.S. defense agencies and civilian agencies, including the General Services Administration (GSA); Health and Human Services (HHS); the Department of Homeland Security (DHS) and its sub-agency, Immigration and Customs Enforcement (ICE); the Environmental Protection Agency (EPA); and several others.

He advises clients on the potential impact of business formation, mergers and acquisitions, and related business activity on a client's existing and future contracts/grants. He has extensive experience working with small businesses to determine their size, 8(a) status, and other socioeconomic factors, including analyzing affiliation issues. He also represents clients in the prosecution and defense of small business size protests before the Small Business Administration (SBA) and Office of Hearings and Appeals (OHA).

Diz is well versed in GSA Federal Supply Schedule matters; in particular, he advises clients on how to structure proposals to avoid price reduction clause and False Claims Act issues, labor qualification matters, Trade Agreements Act (TAA), and other compliance matters post-award.

He represents a number of clients in homeland security-related matters, including drafting guidelines for information handling, such as Sensitive Security Information (SSI), and advises clients on obtaining and maintaining the benefits of the SAFETY Act. He has helped several clients receive SAFETY Act Certification and is a frequent speaker and author on the topic.

## Experience

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### Representative Matters

### Investigations and Disclosures

- Represented an international technology company in an internal investigation of the finance unit within the U.S. government-focused subsidiary. Reported findings to management, recommended corrective actions, but concluded that, while improvements were necessary, disclosure to the federal government was not necessary
- Represented small-ESOP in GSA Office of Inspector General (OIG) investigation for fraud. During the course of the investigation, several noncompliance disclosures were made, but ultimately the investigation concluded favorably and noncompliances were resolved for single damages, avoiding any fraud penalties
- Conducted internal pricing audit and disclosed noncompliances with GSA OIG. Resolved the matter with the GSA OIG for a fraction of potential liability. Avoided referrals for further inquiry by DOJ or a suspension/debarment official
- Represented national nonprofit in investigation by Department of Interior (DOI). After performing internal investigation, able to convince DOI investigators that matter was baseless. Shortly thereafter, DOI investigators closed the matter without action

### Audit Defense Work



- Represented a nationally recognized university before DHS auditors seeking to recover more than \$200 million in federal funds. Resolved matter with funding agency by refunding only duplicative payments
- Represented government contractor in GSA OIG audit, notwithstanding numerous findings regarding pricing irregularities, inflated pricing, and other noncompliances. Resolved matter with contracting officer with nominal payment and immaterial contract modifications
- Represented state agency in audits by Housing and Urban Development (HUD) regarding the use of federal funds. Successfully disputed and defended against all cost unallowability claims and resolved audit with relatively minor programmatic changes

## False Claims Act Resolutions

- Represented a subsidiary of a Fortune 50 company before the DOJ stemming from a GSA OIG audit alleging False Claims Act pricing violations. Notwithstanding several million dollars in potential liability, resolved the matter for less than \$1 million and avoided a DOJ press release and a referral for suspension/debarment consideration
- Represented a Fortune 100 company in a Procurement Integrity Act investigation by DOJ. Favorably resolved the matter without any legal action
- Represented a multinational company in a DOJ FCA investigation over labor charges at an overseas U.S. government facility. Resolved the matter for a fraction of potential liability and avoided referral for suspension/debarment consideration

## Suspension and Debarment Matters

- Represented a Fortune 50 company before a joint responsibility review by the USAF and GSA stemming from a criminal indictment. Resolved the matter amicably with both agencies, avoiding adverse action, as well as an administrative agreement
- Represented a national manufacturing company with Clean Air Act (CAA), Clean Water Act (CWA), Occupational Safety and Health Administration (OSHA), and civil and criminal violations to avoid discretionary suspension or debarment; secured voluntary exclusions for certain segments of the company while the matter was under review, and ultimately obtained reinstatement of those facilities subject to a statutory ineligibility
- Assisted a nonprofit, quasi-governmental mass-transit entity in resolution of a statutory ineligibility with the EPA and restoring the entity to full grant eligibility within a matter of days after its conviction
- Represented an international company convicted on several counts of fraud and false statements before DLA, regarding its responsibility and contracting future with the Department of Defense (DoD); secured a compliance agreement for the company that allowed it to continue to contract with the DoD and other federal agencies; also served as liaison with other agencies, such as GSA,

which issued a show cause letter to the company on the same grounds for debarment as DLA

- Represented a multinational company before the Maritime Administration to demonstrate that despite various criminal violations implicating the company's integrity and ethical business practices, the company was, in fact, conscientious; secured a compliance agreement for the company to allow it to contract with, and receive subsidies and other assistance from, the federal government; case also involved a statutory ineligibility issue related to a CWA violation that was handled before the EPA
- Represented several entities, individuals, small businesses, and nonprofit organizations before ICE for immigration-related convictions; in each instance, was able to convince ICE that no action was necessary to protect the public interest

## Insights

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### Thought Leadership

[New Department of Justice Task Force Targets Anticompetitive Conduct in Government Contracts](#)

November 08, 2019

[Legal Developments for Government Contractors to Consider](#)

October 31, 2019

[DOD Finally Issues Long-Awaited Final Rule Restricting Use of LPTA Source Selection](#)

October 29, 2019

### Events

[Ethics and Professionalism in Government Contracts Practice](#)

December 03, 2019

[Cost Accounting Requirements for Nonprofits that Hold Federal Awards](#)

December 17 - 18, 2019

["Post-Award Noncompliance Disclosures," Advanced Training for Experienced Grant Recipients](#)

September 19, 2019

### Recent News

[Venable Attorneys and Practices Recognized in 2019 Edition of \*Legal 500\*](#)

May 30, 2019

[Washington, DC Edition of \*Super Lawyers\* Recognizes 29 Venable Attorneys and Six as Rising Stars](#)

April 19, 2019

[\*Law360\* quotes Dismas Locaria on disaster contractors being warned to mind unique circumstances](#)

November 01, 2018

# Credentials

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## Education

- J.D., *with honors*, University of Maryland School of Law, 2003
  - Articles Editor, *Maryland Law Review*
- B.A., *magna cum laude*, San Francisco State University, 1999

## Bar Admissions

- District of Columbia
- Maryland

## Professional Memberships and Activities

- Hiring partner, Venable DC office
- Member, American Bar Association (ABA); chair, Section of Public Contract Law Committee on Debarment and Suspension; vice chair, Section of Public Contract Law Committee on Grant Law
- Co-author and contributor, *Venable Homeland Security Desk Book*
- Co-author and contributor, *The Practitioner's Guide to Suspension and Debarment*, ABA
- Member, board of editors, and regular columnist, *Government Contracting Law Report*

## Recognition

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- Included in *Washington, DC Super Lawyers*, 2017 - 2019
- Listed in *Legal 500*, Government – Government Contracts, 2018 - 2019

## Community

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### Pro Bono

- Provides pro bono services for various nonprofit organizations

## Volunteerism

- Mentor for law students participating in the Leadership Council on Legal Diversity
- Mentor to law students from his alma mater, the University of Maryland Francis King Carey School of Law

## Related Practices

Government Contracts

Homeland Security

Investigations and White Collar Defense

Government Grants and Contracts for Nonprofits

## Related Industries

Cybersecurity Risk Management Services

Government Contractors

Nonprofit Organizations

Colleges, Universities and Professional Schools

**TAB 11**

# Presenter Bio:

Stuart Bender serves as the Designated Agency Ethics Official (DAEO) and Director of the Office of Ethics at the Department of Agriculture (USDA). Mr. Bender reports directly to USDA's General Counsel. Mr. Bender's work in Federal Ethics was recognized with a Presidential Rank Award in 2016. In 2017, Mr. Bender created the USDA Ethics App, the Federal government's first multi-media Ethics App. In 2019, Mr. Bender upgraded the USDA Ethics App to include new features including an interactive Ethics Game.

Before joining USDA, Mr. Bender was the Designated Agency Ethics Official and Assistant General Counsel at the Office of Management and Budget (OMB). He also served as the General Counsel and Ethics Officer for the U.S. Holocaust Memorial Museum during its first decade. He has served as a procurement law attorney and ethics official in the Office of Administration of the Executive Office of the President and as a civilian procurement attorney in the U.S. Navy. Mr. Bender received his J.D. degree, *cum laude*, from the George Washington University School of Law and his B.A. in Political Science, *cum laude*, from Brandeis University. Mr. Bender is a member of the Maryland State Bar.



**TAB 12**



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#### **PRACTICES**

False Claims Act Litigation  
Government Contracts  
Counseling & Litigation  
Internal Investigations

#### **EDUCATION**

- J.D., University of California, Hastings College of the Law
- B.S., University of California, Davis

## Abigail (Abi) T. Stokes

### COUNSEL

Abigail (Abi) Stokes focuses her practice on all aspects of government contracts-related compliance and litigation. Her significant experience in this area includes advising on complex, high-dollar-value Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement-based acquisitions, as well as non-traditional procurement instruments such as Other Transaction Authority (OTA) agreements and public-private partnerships. Ms. Stokes has counseled extensively on statutory and regulatory compliance issues throughout the procurement lifecycle, including the Competition in Contracting Act (CICA), the Procurement Integrity Act (PIA), the Trade Secrets Act, the International Traffic in Arms Regulations (ITAR), and regulations governing cybersecurity, technical data and computer software rights, requests for equitable adjustments, contract terminations, and suspension and debarments.

Prior to joining Miller & Chevalier, Ms. Stokes was an associate counsel with the Naval Sea Systems Command, Department of Navy, Office of General Counsel. There, she supported Navy programs responsible for developing, procuring, and managing unique systems for Navy vessels. In addition, she led and supported the defense of several successful Government Accountability Office (GAO) bid protests and advised on the establishment of an OTA consortium for undersea and maritime prototyping. Ms. Stokes received an Acquisition Excellence award in 2012 from the Assistant Secretary of the Navy, Research, Development & Acquisition and was a recipient of the Department of Navy Meritorious Civilian Service Award from the General Counsel of the Navy in 2019.

Ms. Stokes also previously served as an associate counsel at the Naval Surface Warfare Center, Indian Head and an attorney advisor at the Naval Air Systems Command. In 2014, she was selected by the Navy General Counsel for the prestigious Harvey J. Wilcox Fellowship, in which she provided direct support to the Navy Secretariat. Ms. Stokes began her legal career as a judicial law clerk to the Honorable Alex R. Munson of the U.S. District Court for the Northern Mariana Islands.

#### **GOVERNMENT EXPERIENCE**

- Associate Counsel, Naval Sea Systems Command, Office of General Counsel, Department of the Navy, 2017 - 2019
- Associate Counsel, Naval Surface Warfare Center, Office of General Counsel, Department of the Navy, 2012 - 2017
- Harvey J. Wilcox Fellow, Office of General Counsel, Department of the Navy, 2014 - 2015
- Attorney Advisor, Naval Air Systems Command, Office of General Counsel, Department of the Navy, 2010 - 2012

#### **RANKINGS AND RECOGNITION**



- Department of Navy Meritorious Civilian Service Award, General Counsel of the Navy, 2019
- Acquisition Excellence Award for Innovation in Acquisition, Assistant Secretary of the Navy (Research, Development & Acquisition), 2012

## **ADMISSIONS**

### **Bar Admissions**

- District of Columbia
- California

## **CLERKSHIPS**

- Judicial Law Clerk, Honorable Alex R. Munson, U.S. District Court for the Northern Mariana Islands

**TAB 13**

# BLANKROME

Luke W. Meier | Partner  
Government Contracts

1825 Eye Street NW  
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[lmeier@blankrome.com](mailto:lmeier@blankrome.com)



Luke Meier is a seasoned litigator and counselor with wide-ranging experience in government procurement law. He represents contractors in contract disputes and claims, bid protests, and False Claims Act litigation. He helps clients establish and refine internal controls, and provides strategic advice on a range of matters, including domestic sourcing requirements, personal and organizational conflicts of interest, and ethics policies and training.

Luke has extensive experience helping clients investigate and defend allegations of fraud. He has managed the response to numerous DCAA and IG audits, and has successfully defended several government contractors from allegations of fraudulent mischarging. Luke's regulatory compliance counseling includes advice regarding the Buy American and Trade Agreements Acts, GSA schedule contracting, and ethics and internal controls requirements. His litigation experience includes complex commercial disputes in federal court and scores of bid protests before the Government Accountability Office and the U.S. Court of Federal Claims.

Prior to law school, Luke worked for a major defense contractor as an on-site consultant at the Department of Homeland Security's Office for Domestic Preparedness.

## Select Engagements

- Successfully defended AECOM/URS from a False Claims Act case brought by the U.S. Attorney for the Middle District of Florida, obtaining summary dismissal of a complaint filed by the Department of Justice.
- Helped an incumbent overturn an award to a competitor of a five-billion-dollar Department of Energy contract, obtaining favorable GAO decision

- leading to a reopened procurement.
- Overturned the Navy’s proposed debarment of an individual alleged to have violated the Procurement Integrity Act.
- Successfully defended an IT contractor from a GSA claim seeking \$20 million in repayment based on alleged mischarging of subcontractor labor.
- Lead counsel for engineering services contractor in successful post-award protest of Navy shipbuilding procurement.
- Lead counsel for contractor in successful post-award protest of GSA procurement for human resources services.
- Represented a state utility in a successful indemnification claim against the Army Corps of Engineers, resulting in an award of \$234 million in costs, plus more than \$100 million in interest.

## Admissions

- District of Columbia
- Illinois
- United States Court of Appeals for the Federal Circuit
- United States Court of Federal Claims

## Memberships

- American Bar Association

## Education

- Brown University, BA
- University of Michigan Law School, JD

## Recognitions

- 2019, listed in *Legal 500*
- 2015–2019, “Rising Star” in Government Contracts, listed in *Washington D.C. Super Lawyers*

## Professional Activities

Luke serves as a vice chair of the Bid Protest Committee of the American Bar Association’s Public Contract Law Section.

**TAB 14**

Raymond M. Saunders serves as the Army Chief Trial Attorney, Contract and Fiscal Law Division, U.S. Army Legal Services Agency. Prior to that, he was the Deputy Army Chief Trial Attorney, and before coming to the Army served as a trial attorney with the Commercial Litigation Branch, Civil Division, U.S. Department of Justice. Mr. Saunders is a retired Lieutenant Colonel and former JAG. He received a B.S. from West Point, a J.D. from the University of Denver College of Law, and an LL.M. (Government Contracts) from the George Washington University. Mr. Saunders resides in Northern Virginia with his wife, Mia, a retired ballet teacher. His hobbies are jogging and biking.

**TAB 15**



## Amy Conant Hoang

### OVERVIEW

Amy Conant Hoang is a Washington, D.C.-based member of K&L Gates' government contracts and procurement policy group. Ms. Hoang provides "cradle to grave" counsel to clients in the aerospace, defense, and government services industries. Ms. Hoang concentrates her practice on:

- Bid protests at the Government Accountability Office and Court of Federal Claims
- Corporate ethics and compliance
- Internal investigations
- DCAA audit responses
- Transactional due diligence
- Domestic preference ("Buy American") compliance
- Non-traditional government contracts programs such as the Small Business Innovation Research ("SBIR") and Defense Innovation Unit programs
- Federal contracting requirements and subcontractor flowdown
- Agency and subcontractor disputes, including practice before the Boards of Contract Appeals

Ms. Hoang has been named a Government Contracts "Associate to Watch" by *Chambers USA*, and a Government Contracts "Rising Star" by both *The Legal 500 US* and *Law360*. In 2019 she was also recognized by the American Bar Association as one of 40 young lawyers nationwide "On the Rise."

Ms. Hoang is an officer of the American Bar Association's section of public contract law and also serves as a co-chair of the bid protest committee.

### PRESENTATIONS

- Speaker, "Back to School: Recent Developments in Bid Protests," ABA Bid Protest Committee Meeting (September 2019)
- Speaker, "Bid Protests: A 360 Degree Review," ABA Federal Procurement Institute (March 2018)
- Moderator, "Motions to Dismiss: The Science and the Art," ABA Bid Protest Committee (December 2017)
- Presenter, "Corrective Action Issues in Bid Protests," U.S. Geospatial Intelligence Foundation Legal Working Group (April 2017)
- Program Chair, ABA 2017 Federal Procurement Institute (March 2017)
- Moderator, "Bid Protest Tips and Tricks," ABA Bid Protest Committee (February 2017)
- Moderator, "Tricks, Tips, and Traps - Advice from the Bid Protest Trenches," ABA Bid Protest Committee (November 2014)
- Speaker, "Wake Up and Smell the Cyberattacks: Takeaways from the USIS Investigation," ABA Section of Public Contract Law Fall Meeting, Miami, Florida (November 2014)
- Speaker, "A Civil War Relic Finds New Life: The Civil False Claims Act," NDIA Annual Acquisition Symposium, Norfolk, Virginia (May 2014)

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### PRIMARY PRACTICE

- Government Contracts & Procurement Policy

### SECONDARY PRACTICES

- Investigations, Enforcement and White Collar



## PUBLICATIONS

- DOD Clarifies Contractor Cybersecurity Certification Process, Law360, November 2019
- Government Contractors Beware: DOJ Announces Creation of Interagency Procurement Collusion Strike Force, U.S. Government Contracts & Procurement Policy and Antitrust, Competition & Trade Regulation Alert, 14 November 2019
- New Supply Chain Prohibitions of Certain Telecommunications Equipment and Services Place Additional Requirements on Government Contractors, U.S. Government Contracts and International Trade Alert, 13 August 2019
- Buy American III: How Does The Latest “Buy American” Executive Order Affect Government Contractors And Their Supply Chains?, 19 July 2019
- Policy Changes Highlight Contrasting National Security Acquisition Goals, Public Policy and Law Alert, 22 May 2019
- Real Steps Towards “Buy American” Compliance, Briefing Papers, May 2019
- Assessing the Timeliness Requirements to Protest an Agency’s Corrective Action, The Procurement Lawyer, Winter 2019
- How Agencies ‘Buy Foreign’ Under the Buy American Act, Law360, 5 February 2019
- For Corrective Action Protests, Early Is Not On Time, Government Contracts Law 360, 16 November 2018
- Protesting A Procurement As A Non-Offeror, Government Contracts Law 360, 22 August 2018
- FEATURE COMMENT: Real Steps Towards ‘Buy American’ Compliance—Part IV: What Comes Next?, The Government Contractor, 13 June 2018
- Is Agency “Buy American” Insight In Sight?, U.S. Public Policy and Law, Government Contracts & Procurement Policy, and International Trade Alert, 13 June 2018
- Feature Comment: Real Steps Towards ‘Buy American’ Compliance—Part III: Understanding And Avoiding Common Areas Of Noncompliance That Lead to Enforcement Actions, Thomson Reuters, 25 April 2018
- Feature Comment: Real Steps Towards ‘Buy American’ Compliance—Part II: Demystifying BAA And TAA Requirements, The Government Contractor, 28 March 2018
- Feature Comment: Real Steps Towards ‘Buy American’ Compliance—Part 1: Unpacking FAR Pt. 25 and the Application Of ‘Buy American’ Laws, The Government Contractor, 21 February 2018
- Hold Back the Tiers: The Difficulties and Potential for Misuse of Cascading Evaluations, U.S. Government Contracts & Procurement Policy Alert, 24 January 2018
- You’ve Got Mail Problems: The Safety Net For ‘Late’ Proposals, Law 360, 19 January 2018
- Corrective Action Update: The Expanding Universe of Possible Grounds to Protest Agency Corrective Action, The Procurement Lawyer, Vol. 53, No. 1, Fall 2017
- Compliance With “Buy American” Laws: Agency Reports Due September 15, 2017, Public Policy and Law Alert, 18 July 2017
- Hiring Incumbent Staff: GAO Says You Get What You Pay For, Law360, 22 May 2017
- “Buy American” – President Trump Orders Federal Agencies to Enforce Government Procurement Rules, Public Policy and Law Alert, 4 May 2017
- Global Government Solutions® 2016 Mid-Year Outlook, July 2016
- Corrective (Action) Lenses: Is 20/20 Hindsight Enough for Agencies When Taking Corrective Action in Response to a Protest?, The Procurement Lawyer, Vol 51, No. 4, Summer 2016
- ‘Read My Lips...No More Uncertainty!’: The D.C. Circuit Closes The Book On Qui Tam Relator Barko’s Attempts To Pierce KBR Legal Protections (Feature Comment), The

Government Contractor, 26 August 2015

- Protecting the U.S. Attorney-Client Privilege and Attorney Work Product Doctrine: Internal Investigations in the Wake of *In Re: Kellogg Brown & Root, Inc.*, Co-author, K&L Gates Global Government Solutions 2015: Annual Outlook, April 2015
- Intro to Cybersecurity Framework: New Mandatory NIST Standards for Government Contractors?, U.S. Government Contracts & Procurement Policy Alert, 12 November 2014
- The Fed. Cir. Breathes New Life Into The Government's Contractual Obligation To Observe The Duty Of Good Faith And Fair Dealing (Feature Comment), The Government Contractor, Vol. 56, No. 11, 19 March 2014

## PROFESSIONAL/CIVIC ACTIVITIES

- American Bar Association, Public Contract Law Section
  - Law Council, Young Lawyer Member (2017-19)
  - Annual and Quarterly Program Co-Chair (2017-19)
  - Vice-Chair of the Bid Protest Committee (2016-18)
  - Co-Chair of the Scholarship Committee (2016-18)
  - Program Co-Chair of the Federal Procurement Institute (2016-17)
  - Section Liaison to the Young Lawyers Division (2016-18)
  - Co-Chair of the Young Lawyers Committee (2014-16)
- Women in Government Contracts
- D.C. Bar Foundation
  - Young Lawyers Network Leadership Council (2015-17)
- D.C. Women's Bar Association

## ADMISSIONS

- Bar of District of Columbia
- Bar of Virginia

## EDUCATION

- J.D., Washington and Lee University School of Law, 2013, (Student Bar Association President, Moot Court Executive Board, *Journal of Civil Rights and Social Justice*)
- B.A., Washington and Lee University, 2010, (with honors)

## ACHIEVEMENTS

- ABA "On the Rise - Top 40 Young Lawyers Award" (2019)
- *Chambers USA* "Associate to Watch: Government Contracts" (2019)
- *The Legal 500 US* "Rising Star: Government Contracts" (2019)
- *DCA Live* "Emerging Women Leaders in Private Practice" (2019)
- *Law360* Rising Star in Government Contracts, 2018
- Washington, D.C. *Super Lawyers*, Rising Star in Government Contracts, 2018

## REPRESENTATIVE EXPERIENCE

- Counseled client on Buy American Act and Trade Agreements Act compliance in the context of federal construction contracts.
- Represented client in GAO bid protest challenging Federal Supply Schedule award to industry competitor. Successfully challenged technical acceptability of awardee's solution resulting in reevaluation and ultimate award to client.
- Represented client in GAO bid protest challenging agency failure to perform adequate price realism evaluation in award of contract for VA Community Based Outpatient Clinic resulting in re-evaluation and ultimate award to client.
- Defended client in GAO bid protest challenging client's compliance with organizational conflict of interest ("OCI") requirements resulting in dismissal of protest.
- Represented large defense contractor in a GAO bid protest challenging agency's failure to perform an adequate price realism analysis. Successfully argued that agency performed inadequate analysis of prices proposed in various labor categories.
- Represented technology company providing cloud-based labor and contract compliance reporting in successful protest and post-award intervention defending small business status and award of no-cost contract.
- Successfully protested a Federal Emergency Management Agency procurement for architecture and engineering services contract; protest sustained by GAO on argument that FEMA used unstated evaluation criteria.
- Assisted commercial client in establishing public sector compliance program in order to pursue commercial item sales to the federal Government.
- Filed and pursued multiple contract claims before the Armed Services Board of Contract Appeals and Civilian Board of Contract Appeals.
- Conducted internal investigations and drafted disclosures to the Department of Defense and General Services Administration pursuant to FAR Mandatory Disclosure Rule resulting in no further agency action.
- Conducted defective pricing investigations and drafted responses to DCAA audits on behalf of a large defense contractor.

## **ADDITIONAL INFORMATION**

### Publications

- "Rising Star: K&L Gates' Amy Conant Hoang," *Government Contracts Law360*, (August 2018)
- Contributing Author, "The False Claims Act and Government Contracts: The Intersection of Federal Government Contracts, Administrative Law, and Civil Fraud," *American Bar Association, Section of Public Contract Law* (2017)