

## **Office of Government Ethics**

**81 x 23 -- 07/22/81**

### **Letter to a Private Attorney dated July 22, 1981**

This is in response to your letter of June 29, 1981 (with enclosures), which relates to the restrictions on certain representational activities imposed on you by 18 U.S.C. § 207(a) and 5 C.F.R. § 737.5. These restrictions arise by virtue of your previous personal and substantial participation in particular matters while a member of [a Federal Commission] [the "Commission"].

The above-cited provisions generally codify with respect to former Federal employees principles that have traditionally been considered among the fundamentals of legal ethics. The provisions do not prohibit you from serving any party as an attorney. If all the elements of the statute are present with respect to a particular matter involving a specific party or parties, however, you are prohibited from making representational appearances before or communications with the intent to influence any executive branch agency of the Federal Government.<sup>1</sup>

With respect to the case of [a specific individual], we concur with the advice of the Commission in its June 11, 1981 letter and determine, hereby, that each stage of [this individual's] case [before the Commission] involves the same particular matter for purposes of 18 U.S.C. § 207(a). Under the standards of paragraph (c)(4) of 5 C.F.R. § 737.5, this particular matter of [this individual] concerns the continuing existence of an important Federal interest involving the same party in the same underlying [adjudicatory] context. Absent unusual circumstances, we do not foresee that any [such adjudication] would be divisible into separate particular matters for purposes of section 207(a).

Accordingly, you might appropriately include in the preliminary inquiry you make with respect to potential clients who have cases [before the Commission] an analysis of any apparent overlap between their case and your prior service with the Commission. For example, if the initial hearing occurred after October 30, 1978 (your service termination date), the case would not seem to have a possibility of being one in which you had personal and substantial involvement as a member of the Commission. One of the elements of a section 207(a) violation is that the prohibited representational activities be "knowingly" performed. Therefore, in

regard to a case which had a hearing prior to October 31, 1978, if you have a good faith belief that there is little probability of your former personal and substantial involvement, it would appear appropriate for you to proceed in representational activities -- subject to subsequent contrary actual knowledge (such as that obtained from the Commission with respect to the [the specific individual's] case).<sup>2</sup> In closer cases, you should consult with your former agency (See 5 C.F.R. § 737.5(e)).

While the cited statutory provisions apply personally to you, the appearance in a matter by counsel with whom you are associated may be precluded by the Code of Professional Responsibility of the American Bar Association (see, e.g., Canons 5 and 9) or that of the applicable state bar association. Since it is not within this Office's jurisdiction to opine on the specific application of codes of professional conduct which may pertain to you or to counsel with whom you are associated, we suggest that you consult the appropriate bar association office for any further questions along these lines.

We hope this information is helpful to you.

Sincerely,

J. Jackson Walter  
Director

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**1** For a complete list of Federal entities included in this prohibition, see 18 U.S.C. § 207(a)(1)

**2** We note that cases under your "official responsibility" pursuant to 18 U.S.C § 207(b) are not involved here because more than two years have elapsed since you left the Commission. 18 U.S.C. § 207(c) is not involved, either, because your one year "cooling-off" period after leaving the Commission has expired