

Note: Among other changes to the Standards of Conduct effective August 15, 2024, the “catch-all” scenario describing what employees should do if there are circumstances other than those specifically covered in 2635.502 is now discussed in 2635.502(a)(3); previously, it was set out in 2635.502(a)(2). See 89 FR 43686 and LA-24-06.

## **Office of Government Ethics**

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### **Letter to an Alternate Designated Agency Ethics Official dated February 13, 1995**

You have asked whether the steps taken by [the head of your agency] are sufficient to address conflicts of interest, or appearances of conflicts, that have arisen because of [the agency head's] marriage to [her spouse]. [The spouse] is a partner in [a] law firm. His clients include major institutions, some of which appear before the [agency].

As I understand it, [the spouse] has agreed that he will not represent any clients before the [agency] during [the agency head's] term of office. Additionally, upon your advice, [the agency head] has disqualified herself from participating in any matter in which her spouse's firm represents a party before the [agency]. You now ask whether these actions adequately address conflict of interest concerns that a reasonable person might have. In particular, you ask whether we agree with your conclusion that no appearance of a conflict would arise if [the agency head] participates in [agency] matters involving clients of [her spouse's law firm] in cases where the law firm is not representing the firm's clients in those specific matters.

As you know, 18 U.S.C. § 208 prohibits an employee from participating in any particular Government matter if the matter would have a direct and predictable effect on the employee's financial interests, or on the financial interests of certain other persons specified in the statute, including the employee's spouse. Therefore, you properly advised [the agency head] to disqualify herself from particular matters involving her husband's law firm since those matters are likely to have a direct and predictable effect on her spouse's interests as a principal in the firm.

On the other hand, where the clients are not being represented by [the firm] in a particular [agency] matter, the matter usually would not have a direct and predictable effect on the law firm's or [the spouse's] financial interests. Of course, in unusual cases, there may be certain particular matters that are of such significance that section 208 would be implicated. For example, if the outcome of an [agency] matter would literally put a client [of the law firm] out of business and the client would no longer need the legal services provided by [the law firm], it could be said that the matter would have a direct and predictable effect on [the spouse's] financial interest. In the unlikely event that such a matter would arise at the [agency], [the agency head] should disqualify

herself from participating.

Even in cases where section 208 would not bar participation in a particular matter, an employee should consider whether circumstances would cause a reasonable person to question her impartiality if she participated in a particular Government matter. The Standards of Ethical Conduct for Employees of the Executive Branch require an employee to consider whether her impartiality would be questioned if she participates in a particular matter involving specific parties where a person with whom she has a "covered relationship" is a party, or represents a party, to the matter. 5 C.F.R. § 2635.502(a). If an employee decides that her impartiality would be questioned, she cannot act in the matter without receiving authorization from an agency designee. The same process of weighing appearance considerations should be used by an employee in any case where she is concerned that her impartiality may be questioned. *Id.* at § 2635.502(a)(2).

An employee has a "covered relationship" with a person for whom the employee's spouse serves, or seeks to serve, as attorney. See 5 C.F.R. § 2635.502(b)(1)(iii). Therefore, [the agency head] must consider whether her impartiality would be questioned if she acts in a particular [agency] matter involving her spouse's current clients, and any persons her spouse is seeking as clients. We believe that, in many such cases, an employee might properly determine that her impartiality would be questioned and would therefore disqualify herself.

An employee does not have a "covered relationship" with clients of her spouse's employer or her spouse's partners. However, nothing precludes an employee from disqualifying herself from Government matters involving these clients if the employee is concerned about appearances of conflicts of interest.

Please do not hesitate to contact my staff, if you have further questions.

Sincerely,

F. Gary Davis  
General Counsel