

Office of Government Ethics
86 x 5 -- 05/23/86

Letter to a DAEO dated May 23, 1986

This is in response to your memorandum of May 13, 1986, by which you ask for advice concerning the off-duty employment as a member of a professional partnership of an employee of your agency. Apparently, the partnership would consist of your employee and one outside individual.

In addition to 18 U.S.C. §§ 203 and 205, which are referred to in the letter ruling you cite, 85 x 3, that aspect of the matter you raise which concerns representational activities is governed by 18 U.S.C. § 207(g) (relating to restrictions on partners of Government officials). Section 207(g) would preclude the outside partner from representational activities with respect to particular matters in which your employee participates or which are the subject of his official responsibility.

Beyond the requirements of statutory law, you have the ability to control the specific appearance exposure that various cases will give rise to under the standards of conduct, 5 C.F.R. § 735.201a. These standards present the minimum restrictions. You may impose stricter guidelines either on a general basis or on a case-by-case basis to reflect the particular facts and circumstances each case presents. In terms of the spectrum of possible restrictions arrayed in your memorandum, the minimum statutory requirement would be to impose the first described restriction (permitting the partnership but precluding any participation as to clients which your employee is not permitted to service directly), except that section 207(g) considerations would impose separate individual restrictions on the outside partner's personal activities. However, a more precise weighing of the facts and circumstances of this case from a standards of conduct perspective might lead you to conclude that the appearances which could be created by a two person partnership require further restrictions to be imposed, as those two individuals would be perceived as having a high degree of adhesion. While we are not in a position to fully evaluate this situation, it may well be from the nature of your employee's duties and the outside partner's proposed activities that, in the two partner setting, it is appropriate to impose the third restriction you have described (permitting the partnership but

precluding the other partner from activities not permitted your employee).

Sincerely,

David H. Martin
Director