

## **Office of Government Ethics**

**92 x 8 -- 03/11/92**

### **Letter to an Individual dated March 11, 1992**

This is in response to your letter of February 12, 1992, requesting a written opinion on whether you should disqualify yourself from representing [a] district [of an employee] union, in a case set for oral argument before [a] Circuit Court of Appeals. We understand from your letter that prior to commencing work at [a law firm] in September, 1984, you worked as a staff attorney at [a regional office of an agency]. During the course of your tenure at the [agency], which was from August, 1980, through August, 1984, [the union] filed a charge against [an entity]. Your letter states that you had "no involvement, direct or otherwise," with this charge or subsequently filed related charges. Based on this statement, we assume you neither participated personally in the case, nor had any official responsibility for the case.

Your letter indicates that a significant portion of your work at [the law firm] has been for [the local union group], but that at all times another partner in your firm has handled the [entity's] matter without your participation. Now that partner is retiring and you would like to assume responsibility for the [entity's] matter. This would include presenting oral argument on behalf of [the local union group] in the appeal to the Circuit [Court] that [the entity] has filed from a ruling of [your former agency] on one of the charges.

Restrictions on the post-Government service employment activities of former Federal employees are codified at 18 U.S.C. § 207. This post-employment statute has recently been amended substantially; as a former employee who terminated Government service prior to January 1, 1991, however, you are subject to former section 207. We have, accordingly, evaluated your proposed representation of [the local union group] under that statute and the applicable regulations, 5 C.F.R. Part 2637. Based on the facts as described in your letter and our stated assumptions based on those facts, our conclusion is that section 207 and the applicable regulations do not prevent you from participating in the [local union group/entity] case or from appearing before the Court for oral argument.

A second issue raised by your letter concerns the impact of

a rule [of your former agency] on your proposed representational activities. That rule provides:

No person who has been an employee of the [agency] and attached to any of its regional offices shall engage in practice before the [agency] or its agents in any respect or in any capacity in connection with any case or proceeding which was pending in any regional office to which he was attached during the time of his employment with the [agency].

It seems to us doubtful that participation in argument before the Circuit [Court] could be viewed as "practice before the [agency] or its agents;" however, as your letter anticipates, this Office has no authority to advise you on the applicability of a rule such as this, which is specific to a particular agency. Neither would we comment on the significance or status of this rule. For an opinion on the impact of the rule, we advise you to contact the Designated Agency Ethics Official at the [agency].

Finally, we would also caution you that bar association rules governing successive Government and private employment are in some instances more restrictive than the Federal post-employment statute and that statute does not supplant bar rules. Accordingly, you may wish to consider the impact of applicable bar rules on your proposed activities.

If this Office can be of further assistance, please do not hesitate to contact us.

Sincerely,

Stephen D. Potts  
Director