

Office of Government Ethics

89 x 1 -- 01/24/89

Letter to a Former Employee dated January 24, 1989

We have received your letter of December 19, 1988, inquiring about the scope of 18 U.S.C. § 207(b)(i)(3) and whether 18 U.S.C. §§ 207(b)(ii) and 207(c) apply to administrative judges in [an agency]. In responding to your questions, we have consulted with [the agency], which concurs with this response. After reviewing the materials you enclosed and the applicable statute and regulations, we have concluded that the prohibitions of section 207(a) would apply to you if you were consulted on a case pending before another panel (of which you were not a member) where your participation -- even if consisting merely of "informal discussions" -- rose to the level of personal and substantial participation. We also have concluded that neither section 207(b) (ii) nor section 207(c) applies to administrative judges of the [agency] who are employed at the GS-16 level. See 5 C.F.R. § 737.33.

As you most likely are aware, 18 U.S.C. § 207(a) operates as a lifetime prohibition against representing any other person by written or oral communications to any department, agency or court of the United States or the District of Columbia in connection with any particular matter involving specific parties in which the United States or the District of Columbia is a party or has an interest and in which you participated personally and substantially while a Government employee. For matters under your official responsibility during your last year of Government service, there is a two-year ban on such representation.

For all matters assigned to you as [an] administrative judge or to a panel of which you were a member, you would be subject to the lifetime section 207(a) ban, as your participation would be both personal and substantial. Informal discussions of particular matters pending before another administrative judge of the [agency], while not necessarily constituting matters pending under your official responsibility and thus subject to the section 207(b)(i) ban, also may be subject to the lifetime ban of section 207(a) where your participation in the matter is personal and substantial. See 5 C.F.R. § 737.5(d)(1) and its example 2.2

As discussed above, the answer to your second question is

that your position at the [agency] was not designated as a Senior Employee position and thus you are not subject to the prohibitions of sections 207(b)(ii) and 207(c). See 5 C.F.R. § 737.33. You also asked whether any statutes other than 18 U.S.C. § 207 apply to your post-Government employment. For your information, I am enclosing a copy of the recently enacted Office of Federal Procurement Policy Act Amendments of 1988. While its scope is not yet clear and implementing regulations have not yet been issued, you may want to be aware of the provisions of the Act.

Sincerely,

Frank Q. Nebeker
Director

1 Although yours question two refers to a "§207(b)(3)(ii)," we assume that your inquiry is directed to whether administrative judges of the [agency] employed at the GS-16 level have "Senior Employee" status and thus are subject to the prohibitions of sections 207(b)(ii) and 207(c).

2 Example 2 to 5 C.F.R. § 737.5 reads:

A Government lawyer is not in charge of, nor has official responsibility for a particular case, but is frequently consulted as to filings, and strategy. Such an individual has personally and substantially participated in the matter.