Office of Government Ethics
84 x 2 -- 03/06/84

Letter to a Former Employee dated March 6, 1984

This letter is in response to your telephonic request that this Office address an issue not discussed in [84 x 1] regarding the application of the post-employment restrictions of 18 U.S.C. § 207 to certain of your proposed activities. The question you now wish us to address is whether a number of private commercial disputes which the Tribunal will hear must be considered part of two particular matters involving specific parties in which you personally and substantially participated -- two treaty dispute cases you argued before the Tribunal.

Case [X] involved Iran's contention that the United States is obligated under the Accords to terminate ancillary attachments outside the Tribunal which were obtained against Iranian property as interim relief. It is our understanding that [your firm] had obtained attachments in [another country's] courts pending disposition of the commercial disputes on the merits before the Tribunal and that because of this direct interest, the firm has also filed an extensive memorial as amicus curiae in this case. The matters in which you now wish to participate are the underlying commercial disputes which gave rise to the attachments and the attempt by Iran to force the United States to go into the German courts to terminate the attachments.

Case [Y] involves the question of whether the Tribunal has jurisdiction over a group of 230 cases brought by Iranian banks (entities of the Government) against the United States banks based on letters of credit issued by these banks. Again, [Case Y] involves an interpretation of whether the Accords give the Tribunal jurisdiction over claims by the Iranian Government banks against private U.S. banks. The matters in which you would like to participate are the private commercial disputes between the account parties which caused U.S. banks to issue certain letters of credit. You and the firm are not involved in any of the 230 disputes between the banks themselves.

Since this Office has previously discussed the prohibitions of 18 U.S.C. § 207 regarding your representations to the Tribunal, as opposed to the United States, the question here simply involves a determination of whether the underlying commercial

disputes and the treaty interpretations of [Case X] and [Case Y] are the same particular matters. In the interpretive regulations issued by this Office at 5 C.F.R. § 737.5, we indicated the factors that must be taken into consideration in determining whether two particular matters are the same are the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest.

In [Case Y] the most clearly identified private parties, other than the Governments of Iran and the United States, are the United States and Iranian banks which have issued letters of credit; the account parties who are involved in the commercial disputes in which you wish to participate are identifiable because of the letters of credit, but are not the primary parties in the case. The issue is one of jurisdiction of the Tribunal over claims between banks and does not involve the merits of any claims between account parties. The information necessary for the argument in [Case Y] is not the same kind of information required to litigate the commercial disputes between private parties even though the fact that letters of credit were issued may arise in the private disputes. The United States has a strong interest in any treaty interpretation but that interest is not so easily established in these private commercial disputes. Therefore, we do not see each separate underlying commercial dispute between the account parties in these 230 cases as the same matter or part of the same matter in which you had personally and substantially participated.

While [Case X] appears to be a closer call because of [your law firm's] participation and because the parties to the private commercial disputes were easily identified as those who had secured the attachments which were the basis of the complaint in the case, it is still our opinion that the cases on the merits of the commercial claims are not the same matter as the dispute between the Governments of Iran and the United States as to whether the Accords require the United States to attempt to set aside attachments secured in German courts as interim relief.

We believe that our interpretation in this matter is of little significance in applying the restrictions of 18 U.S.C. § 207(a) because it appears that in representing these clients in private commercial disputes, you will not normally find yourself in a position of making a representation to any United States

agency, court or employee, a necessary element in the application of section 207. Section 207(a) does not prohibit representations to purely nongovernment entities such as the Tribunal even on matters in which the former employee had been personally and substantially involved.

Finally, while we believe that while under normal circumstances these are not the same particular matters, if in participating in the private commercial claims the merits of [Case X] or [Case Y] are brought into question, we believe that your participation in any discussion of those merits would give rise to a serious question under most state codes of professional conduct and that you might wish to consider removing yourself from any such discussion. This is an issue which we have no authority to address and should be reviewed carefully by you and your firm. Certainly, if you were asked to make a representation to the United States during any such discussion of [Case X] or [Case Y], this would be prohibited by section 207(a).

We hope this will be of assistance to you.

Sincerely,

David H. Martin
Director