

**Office of Government Ethics**  
**84 x 6 -- 05/01/84**

**Letter to an Agency Counsel dated May 1, 1984**

This is in response to your letter of April 2, 1984, presenting for our consideration a suggestion intended to permit [an employee's] continued participation in [a] project in your agency with the concomitant rendering of services to [a private contractor on the project] by [the employee's] wife in the role of a part-time "retainer" of that company with a predetermined total remuneration rather than in the role of an independent contractor. Although your letter does not aver that [the employee's wife] would or would not provide a "data entry component" for [the project] (see our letter of December 30, 1983, [numbered 83 x 20]), we assume that she would perform duties of that nature or other duties connected with [the project].

You ask specifically whether the proposed "form of retainer arrangement" described in your letter "could operate to remove any financial interest the [couple] would have in the existence or continuation of . . . the [company's] contract relating to the project?" Assuming that the terms of the "retainer arrangement" realistically placed [the employee's wife] in the role of an employee of [the company], as distinguished from her present role as an independent contractor, she would no longer have a "financial interest" in the [project contract] and therefore her change of status would lift the bar of 18 U.S.C. § 208(a) against the concomitant participation of her husband in that matter. This result is the same as the one that could be alternatively achieved, notwithstanding [the wife's] continuance as an independent contractor, by your agency's grant of a waiver to [the employee] under 18 U.S.C. § 208(b), a possibility we noted in our December 30th, 1983, letter to [your agency]. However, your present suggestion, like the grant of a waiver, would fail to deal with the problem we noted in that letter -- that is, the appearance of impropriety. Regarding that problem, it is not the nature of the financial arrangement between [the employee's wife] and [the company] that is crucial; rather it is the husband-wife relationship which gives rise to the adverse appearance -- that is, to the suggestion that [the employee] might lose his objectivity in performing his duties with regard to [the project] by reason of his wife's services on behalf of [a company with a

Government contract to perform services] in connection with that same project.

Finally, we do not believe the analogy you draw in the third paragraph of your letter is apt. The payment of a salary, instead of the grant of a partnership interest, to a lawyer who has left the service of the Federal Government for practice as a principal in a law firm is a means of avoiding the specific prohibition of 18 U.S.C. § 203 against a former Government employee's sharing in compensation received by another person or entity for services rendered before any Federal agency during the former employee's tenure with the Government. The presence or absence of an untoward appearance if he or she were to be made a partner and share in the firm's receipts would be irrelevant for purposes of 18 U.S.C. § 203.

I trust that you will find this discussion helpful in advising [the employee].

Sincerely,

David H. Martin  
Director