

## Department of Justice

## § 45.3

executive branch-wide employee responsibilities and conduct regulations at 5 CFR part 735.

[61 FR 59815, Nov. 25, 1996]

### § 45.2 Disqualification arising from personal or political relationship.

(a) Unless authorized under paragraph (b) of this section, no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with:

(1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or

(2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

(b) An employee assigned to or otherwise participating in a criminal investigation or prosecution who believes that his participation may be prohibited by paragraph (a) of this section shall report the matter and all attendant facts and circumstances to his supervisor at the level of section chief or the equivalent or higher. If the supervisor determines that a personal or political relationship exists between the employee and a person or organization described in paragraph (a) of this section, he shall relieve the employee from participation unless he determines further, in writing, after full consideration of all the facts and circumstances, that:

(1) The relationship will not have the effect of rendering the employee's service less than fully impartial and professional; and

(2) The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.

(c) For the purposes of this section:

(1) *Political relationship* means a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof; and

(2) *Personal relationship* means a close and substantial connection of the type

normally viewed as likely to induce partiality. An employee is presumed to have a personal relationship with his father, mother, brother, sister, child and spouse. Whether relationships (including friendships) of an employee to other persons or organizations are "personal" must be judged on an individual basis with due regard given to the subjective opinion of the employee.

(d) This section pertains to agency management and is not intended to create rights enforceable by private individuals or organizations.

[Order No. 993-83, 48 FR 2319, Jan. 19, 1983. Redesignated at 61 FR 59815, Nov. 25, 1996]

### § 45.3 Disciplinary proceedings under 18 U.S.C. 207(j).

(a) Upon a determination by the Assistant Attorney General in charge of the Criminal Division (Assistant Attorney General), after investigation, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, of the Department of Justice (former departmental employee) has violated 18 U.S.C. 207 (a), (b) or (c), the Assistant Attorney General shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former departmental employee to show cause within a specified time of not less than 30 days after receipt of the notice why he or she should not be prohibited from engaging in representational activities in relation to matters pending in the Department of Justice, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate disciplinary action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their basis, sufficiently detailed to enable the former departmental employee to prepare an adequate defense.

(2) Notification of the right to a hearing, and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former departmental employee who submits an answer to the notice to show cause does not request a hearing or if the Assistant Attorney General does not receive an answer

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within five days after the expiration of the time prescribed by the notice, the Assistant Attorney General shall forward the record, including the report(s) of investigation, to the Attorney General. In the case of a failure to answer, such failure shall constitute a waiver of defense.

(c) Upon receipt of a former departmental employee's request for a hearing, the Assistant Attorney General shall notify him or her of the time and place thereof, giving due regard both to such person's need for an adequate period to prepare a suitable defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(d) The presiding officer at the hearing and any related proceedings shall be a federal administrative law judge or other federal official with comparable duties. He shall insure that the former departmental employee has, among others, the rights:

- (1) To self-representation or representation by counsel,
- (2) To introduce and examine witnesses and submit physical evidence,
- (3) To confront and cross-examine adverse witnesses,
- (4) To present oral argument, and
- (5) To a transcript or recording of the proceedings, upon request.

(e) The Assistant Attorney General shall designate one or more officers or employees of the Department of Justice to present the evidence against the former departmental employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former departmental employee must be sustained by substantial evidence that he violated 18 U.S.C. 207 (a), (b) or (c).

(g) The presiding officer shall issue an initial decision based exclusively on the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, and shall set forth in the decision findings and conclusions, supported by reasons, on the material issues of fact and law presented on the record.

(h) Within 30 days after issuance of the initial decision, either party may appeal to the Attorney General, who in that event shall issue the final decision based on the record of the proceedings

or those portions thereof cited by the parties to limit the issues. If the final decision modifies or reverses the initial decision, the Attorney General shall specify the findings of fact and conclusions of law that vary from those of the presiding officer.

(i) If a former departmental employee fails to appeal from an adverse initial decision within the prescribed period of time, the presiding officer shall forward the record of the proceedings to the Attorney General.

(j) In the case of a former departmental employee who filed an answer to the notice to show cause but did not request a hearing, the Attorney General shall make the final decision on the record submitted to him by the Assistant Attorney General pursuant to subsection (b) of this section.

(k) The Attorney General, in a case where:

- (1) The defense has been waived,
- (2) The former departmental employee has failed to appeal from an adverse initial decision, or
- (3) The Attorney General has issued a final decision that the former departmental employee violated 18 U.S.C. 207 (a), (b) or (c),

may issue an order:

(i) Prohibiting the former departmental employee from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, the Department of Justice on a pending matter of business for a period not to exceed five years, or

(ii) Prescribing other appropriate disciplinary action.

(1) An order issued under either paragraph (k)(3) (i) or (ii) of this section may be supplemented by a directive to officers and employees of the Department of Justice not to engage in conduct in relation to the former departmental employee that would contravene such order.

[Order No. 889-80, 45 FR 31717, May 14, 1980. Redesignated at 61 FR 59815, Nov. 25, 1996, and further redesignated at 62 FR 23943, May 2, 1997]