

106TH CONGRESS
1ST SESSION

S. 855

To clarify the applicable standards of professional conduct for attorneys
for the Government, and other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 1999

Mr. LEAHY introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To clarify the applicable standards of professional conduct
for attorneys for the Government, and other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION. 1. SHORT TITLE.**

4 This Act may be cited as the “Professional Standards
5 for Government Attorneys Act of 1999”.

6 **SEC. 2. PROFESSIONAL STANDARDS FOR ATTORNEYS FOR**
7 **THE GOVERNMENT.**

8 (a) IN GENERAL.—Section 530B of title 28, United
9 States Code, is amended to read as follows:

1 **“§ 530B. Professional standards for attorneys for the**
 2 **Government**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘attorney for the Government’
 5 means any attorney described in section 77.2 of part
 6 77 of title 28 of the Code of Federal Regulations (as
 7 in effect on the date of enactment of the Profes-
 8 sional Standards for Government Attorneys Act of
 9 1999) and includes any independent counsel, or em-
 10 ployee of such a counsel, appointed under chapter
 11 40;

12 “(2) the term ‘court’ means any Federal, State,
 13 or local court or other adjudicatory body, including
 14 an administrative board or tribunal; and

15 “(3) the term ‘State’ means a State of the
 16 United States, the District of Columbia, and any
 17 commonwealth, territory, or possession of the United
 18 States.

19 “(b) CHOICE OF LAW.—Subject to any uniform na-
 20 tional rule prescribed by the Supreme Court under chapter
 21 131, the standards of professional conduct governing an
 22 attorney for the Government shall be—

23 “(1) with respect to conduct in connection with
 24 a proceeding in or before a court, the standards es-
 25 tablished by the rules and decisions of that court;

1 “(2) with respect to conduct in connection with
 2 a pending or contemplated grand jury proceeding,
 3 the standards established by the rules and decisions
 4 of the court under whose authority the grand jury
 5 was impanelled;

6 “(3) with respect to all other conduct—

7 “(A) the standards established by the rules
 8 and decisions of the State in which the attorney
 9 is licensed to practice; or

10 “(B) if the attorney is licensed to practice
 11 in more than 1 State—

12 “(i) the standards established by the
 13 rules and decisions of the licensing State
 14 in which the attorney principally practices;
 15 or

16 “(ii) if the conduct has a predominant
 17 effect in another State in which the attor-
 18 ney is licensed to practice, the standards
 19 established by the rules and decisions of
 20 the licensing State so affected.

21 “(c) UNIFORM NATIONAL RULE.—(1) In order to en-
 22 courage the Supreme Court to prescribe, under chapter
 23 131, a uniform national rule governing attorneys for the
 24 Government with respect to communications with rep-
 25 resented persons and parties, not later than 1 year after

1 the date of enactment of the Professional Standards for
2 Government Attorneys Act of 1999, the Judicial Con-
3 ference of the United States shall submit to the Chief Jus-
4 tice of the United States a report, which shall include rec-
5 ommendations with respect to amending the Federal Rules
6 of Civil and Criminal Procedure to provide for such a uni-
7 form national rule.

8 “(2) In developing the recommendations included in
9 the report under paragraph (1), the Judicial Conference
10 of the United States shall take into consideration, as
11 appropriate—

12 “(A) the needs and circumstances of
13 multiform and multijurisdictional litigation;

14 “(B) the special needs and interests of the
15 United States in investigating and prosecuting viola-
16 tions of Federal criminal and civil law; and

17 “(C) practices that are approved under Federal
18 statutory or case law or that are otherwise con-
19 sistent with traditional Federal law enforcement
20 techniques.

21 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
22 tion may be construed to abridge, enlarge, or modify the
23 power of the Supreme Court or of any court established
24 by an Act of Congress, under chapter 131 or any other
25 provision of law, to prescribe standards of professional

1 conduct for attorneys practicing in and before the Federal
2 courts, including attorneys for the Government.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—

4 The analysis for chapter 31 of title 28, United States
5 Code, is amended, in the item relating to section 530B,
6 by striking “Ethical” and inserting “Professional”.

○