



WELCOME

2001 ANNUAL ETHICS BRIEFING

**Office of the Staff Judge Advocate
AMEDDC&S and Fort Sam Houston**



COL Annamary Sullivan
Staff Judge Advocate
USAMEDDC&S and
Fort Sam Houston
1306 Stanley Road
221-0484

To receive credit for this session, notify your supervisor/commander that you have completed the training by reviewing this slide show. In addition to our address and telephone numbers, which are on the slides, the slides also contain a summary of the standards of conduct rules. You can use the class outline to take notes and to follow the progress of the class. We will use the OGE 450 as a reference in parts of this session. As you may know, we do this training every year. With your help, we can improve it. Forward your suggestions to the Staff Judge Advocate, AMEDDC&S and Fort Sam Houston, ATTN: MCCS-BJA-AL, Fort Sam Houston, Texas 78234.

If you have any questions, please feel free to call an Ethics Counselor at 221-2373/0485. If you belong to another command, please call the Ethics Counselor for that command. Their names and phone numbers are listed on the next slide.

E t h i c s

R , U S

MEDCOM

1LT EARL MITCHELL

AMEDDC&S and FSH

CPT S. CHARLES NEILL

MR. SHELBY TANNER

FIFTH ARMY

MAJ RANDALL VANCE

BAMC

CPT MARC A. SAGGESE

5th ARMY RECRUITING

CPT DANA CHASE

221-8400/BLDG. 2792

221-2373/BLDG. 134

221-1515/BLDG. 16

916-2031/BLDG. 3600

221-0155/BLDG. 2007

Today's Goals

- Recognize a conflict of interest when you see one
- Know when to call your Ethics Counselor



Our subject today is conflicts of interest. Our goal is to help you recognize when you have a conflict, so that you will know when you need to contact your ethics counselor. It's like recognizing when you're sick enough that you need help from a doctor. You're not expected to know how to do your own surgery, but you should know when to seek medical help.

As I just said, we are serious about giving advice; so if you are unsure of what to do, pick up the phone and call us.

What We Will Cover

- When do you have a conflict of interest?
 - Basic Conflict of Interest Rule
 - Impartiality Rule
- Exemptions
- Remedies
- Special Conflict of Interest Rules

Let me outline what we will cover.

First, we will ask: “When do you have a conflict of interest?”

The answers are in the basic conflict of interest rule and the impartiality rule.

Then, assuming you do have a conflict in a particular matter, we will see if an exemption applies, so that you may still work on that matter for the Government.

Next, if no exemption applies, we will see what we can do to remedy your conflict of interest.

Finally, we will briefly discuss certain special conflict of interest rules that restrict your personal activities, not your work for the Government.

Let’s start our discussion with a basic question. What’s a “conflict of interest?” Anybody have any ideas?

Question - Conflict

You were injured in a car accident that was caused by defective brakes on your new car. You decide to sue the manufacturer of the brakes for \$500 million.

Would you hire a lawyer who owns 25% of the brake company?



Well, maybe an example can help. Let's say you were injured in a car accident that was caused by defective brakes on your new car. You decide to sue the manufacturer of the brakes for \$500 million. Would you hire a lawyer who owns 25% of the brake company?

What's the problem here? Does the lawyer have a conflict of interest?

Is there a Conflict?

- What is your lawyer supposed to do for you?
- Does your lawyer have an interest that could impair his commitment to you?



To see if he does, let's ask two questions: First, what is he supposed to do for you? And second, does he have an interest that could impair his commitment to you?

The first question is easy. He's supposed to represent you, and only you, in the lawsuit. That's what you pay him to do.

How about the second question? Does the lawyer have an interest that could impair his commitment to represent only you?

Well, if he owns 25% of the brake company's stock, he has an interest in that company's financial well-being. And if you win the lawsuit, his company will be worse off financially, which will tend to cause its stock price to decline. That's a conflict of interest!

Question - Conflict (continued)

What if -

- the lawyer's wife works for the brake company?
- the lawyer plays golf with the brake company's Vice President for Sales?



What if the lawyer's wife works for the brake company? You may very well think that this could impair the lawyer's commitment to represent you against the company.

And finally, what if the the lawyer regularly plays golf with the the brake company's Vice President for Sales? Again, you might question this lawyer's commitment to you.

What's the analogy for us? As Federal employees, we each have a job we must do for the Government. And if we have an interest that may impair our commitment to the Government, then we may have a conflict of interest, no matter how honorable we are.

Basic Conflict of Interest Rule

- You may not work for the Government
- on a particular matter
- that will affect
- your
- financial interest

Alright, let's start with the basic rule on conflicts of interest: You may not work for the Government on a particular matter that will affect your financial interest.

Let's take a closer look at that rule.

“Particular Matter”

- Something that involves deliberation, decision, or action, and
- that is focused on the interests of specific persons, or a discrete and identifiable class of persons

– Examples:

- contract
- claim
- application



What’s a “particular matter?” Something that involves deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons, is a “particular matter.”

Examples of a “particular matter” are a contract, an application, a claim, a request for a ruling, a judicial proceeding.

Examples of what is not a “particular matter”: A broad policy discussion, or legislation that applies to the public as a whole.

Basic Conflicts Rule

“Your” Includes:

- Your spouse and minor children



- Your general partner



We said that a particular matter may pose a conflict if it will affect your financial interest. Does your mean only your own interests? What about your spouse's financial interest? Remember the fictional lawsuit against the brake company? We were probably uncomfortable with the idea that the lawyer's wife worked for the company.

Under our basic conflicts rule, the financial interests of others with whom you have certain relationships are treated as if they were your own. Those others are: 1) Your spouse. 2) Your minor children. 3) Your general partners. Because of the legal nature of the relationship, your general partners' financial interests are also treated as if they were your own.

Basic Conflicts Rule

“Your” - continued

- Organization - if you are serving, with or without compensation, as officer, director, trustee, general partner, or employee
- Any individual or organization with whom you are negotiating or have an arrangement for future employment

4) “Your” financial interests also include those of any organization in which you are serving, with or without compensation, as an officer, director, trustee, general partner, or employee. 5) Finally, “your” financial interests include those of any individual or organization with whom you are negotiating or have any arrangement for future employment.

Now look at Part I of your sample confidential financial disclosure report (OGE 450). You can see the interests reported there. That’s why we have financial disclosure reports, so you and your ethics counselor can review your interests to determine if you have potential conflicts. But you may notice that the interests of your general partners are not included in the report. You will want to be especially careful about those interests, since your ethics counselor will not be able to use your financial disclosure reports to advise you on conflicts in that area.

Question - Stock

Question:

You own \$62,000 of stock in Civil War Surplus Co. You are a DOD negotiator for a contract with the company.



Do you have a conflict of interest?

Rule:

- You may not work for the Government
- on a particular matter
- that will affect
- your
- financial interest

Ok, let's see what we've learned so far about financial conflicts of interest. You own \$62,000 of stock in Civil War Surplus Co. You are a DOD negotiator for a contract with the company. Do you have a conflict of interest?

Keep in mind the basic rule: "You may not work for the Government on a particular matter that will affect your financial interest." The contract with Civil War Surplus Co. is a "particular matter," and your financial interest is the stock. We can expect the contract to affect the company's earnings and, thus, the value of your stock.

Bottom line: you may not negotiate the contract.

By the way, this example is based on a real case. The Government official involved paid a large civil penalty.

Question - Spouse's Salary

Question:

Your spouse is Director of Personnel at CDI, a bidder on a DOD software contract. You have been asked to analyze the bids.



Do you have a conflict of interest?

Rule:

- You may not work for the Government
- on a particular matter
- that will affect
- your
- financial interest

Let's look at your confidential financial disclosure report (OGE 450) again. This time, your spouse is Director of Personnel at CDI, a bidder on a DOD software contract. You've been asked to analyze the bids. Do you have a conflict of interest?

We go back to the basic rule. [right side of slide]. The software contract is a "particular matter." Your spouse's salary at CDI is the financial interest, and your spouse's financial interests are treated as if they were your own.

Does the contract affect your spouse's salary? In the previous example we said the value of stock tends to be linked to a company's profits. But as Director of Personnel, her salary is probably fixed, and not linked to profits. So we would not normally expect the software contract to affect your spouse's salary.

But be careful. There might be cases in which the contract would affect your spouse's salary. Suppose, for example, that getting the contract would make the difference between solvency and bankruptcy for CDI. Then your spouse's salary would be very much affected. Or, let's say part of your spouse's salary is not fixed, but is linked directly to CDI's profits. Again, the contract would affect your spouse's salary.

Remember, just contact your ethics counselor in advance if you have doubts about a potential conflict.

Question - Future Employment

Question:

You receive a job offer from a contractor whose performance you are evaluating for the Government.

Do you have a conflict of interest?



Rule:

- You may not work for the Government
- on a particular matter
- that will affect
- your
- financial interest

Let's look at one more financial interest. It involves future employment outside the Government.

Before we discuss the specifics, please note that you do not include future employment in your confidential financial disclosure report. That means your ethics counselor generally cannot use your report to help you stay clear of conflicts in this area. So you will want to be especially alert to potential conflicts involving future employment, and be sure to bring any questions to your ethics counselor's attention in advance.

Now let's look at the specific example. You receive a job offer from a contractor whose performance you are evaluating for the Government. Do you have a conflict of interest?

Once more, the basic rule is our guide. [right side of slide] You are evaluating performance on a contract, which is a "particular matter," and your financial interest is the job you've been offered.

Your evaluation of the contractor's performance could very well affect the company's profits. If you determine that performance is good, the company stands to gain more Government business in the future. If you determine that performance is bad, the company may have to cure contract deficiencies at its own expense, and will be less likely to get future Government business. So your work for the Government on the contract likely influenced the company's willingness to offer you a job. That means your Government work on a particular matter affected your financial interest, a conflict under our basic rule.

Any time you look for non-Federal employment, I recommend that you contact your ethics counselor in advance.

Impartiality Rule

- A reasonable person
- with knowledge of the relevant facts
- could question your impartiality in working for the Government on a particular matter
- in 2 sets of circumstances

Now that we've mastered the basic conflicts of interest rule, it's time to look at another rule, the one on impartiality. The effect is the same - you may not work for the Government on a particular matter if certain personal interests are involved.

Unlike the basic conflicts rule, the impartiality rule requires us to take an extra step before finding that a conflict actually exists. This step is a determination by the famous "reasonable person" that your impartiality could be questioned. We are not concerned here with your actual objectivity, just whether the circumstances create the appearance of a problem. What would the typical "man on the street" think? This "man on the street" must be aware of all the relevant facts, not just the ones that make for juicy gossip.

5 C.F.R. 2635.502 and 2635.702(d).

Impartiality Rule: 2 Circumstances

Where certain “persons” whom you know either:

- have a financial interest that is affected by a particular matter, or
- are parties, or represent parties, to a particular matter

Obviously, there has to be some particular set of circumstances before the “reasonable person” is going to question your impartiality. There are actually two such circumstances: when certain persons whom you know either have financial interests that are affected by a particular matter that you are working on, or 2nd, where those persons are parties, or represent parties, to that matter. “Persons” includes people and organizations.

Just who are these persons? That’s where we’re going to have some fun. The range of people or organizations that you know that may trigger a concern under the impartiality rule is very broad, in fact, much broader than the categories we discussed earlier under the basic conflicts rule. Because of the complexity of the area, you should call our office if you ever find yourself wondering if you have a potential conflict.

Impartiality Rule: Who Are These “Persons”?

- Anyone and everyone
- If it will make it any easier(!), these 3 categories may help:
 - Personal Relationships
 - Businesses /Organizations
 - Employers

If you stumble on some situation involving anyone whom you know, and it causes you to wonder whether someone might question your impartiality, just use the “reasonable person” standard - that is, ask yourself if a “reasonable person” would question your impartiality if you were to work on a particular matter. If your answer is “yes,” you probably shouldn’t do it! If your answer is “no,” talk to your supervisor to make sure he or she agrees. Either way, it’s time to call us!

It’s important for you to be familiar with the impartiality rule and the “persons” it covers because you’re the only one who knows the facts. Most of the circumstances that we will discuss today do not have to be reported on your financial disclosure reports.

Well, anyone is still pretty vague. To help make it easier for you to remember, we organized these persons into 3 categories: Personal Relationships; Business or Organization Relationships, and finally, Employment Relationships. We’ll discuss each of these in turn.

Let’s look at a concrete situation.

What About A Friend?

Question:

You awarded a \$25,000 grant to a friend. You did not inform anyone in DoD of the friendship.

Do you have a conflict?



- A reasonable person
- questions impartiality
- in a particular matter
- when certain persons whom you know
 - have financial interests, or
 - are a party
- to that matter

(Question): You awarded a \$25,000 grant to a friend. You did not inform anyone in DoD of the friendship. Do you have a conflict?

Particular matter? Yes. You were obviously aware that your friend had a financial interest in the matter and that the matter could affect the interest. Should you discuss it with your supervisor? What concerns do you have? What would the reasonable person think? (Answer): A reasonable person would question your impartiality.

This is based on a real case. The Budget Office questioned the need for the purchase. Even then, the employee tried to force the requisition through. The GAO investigated and determined that the ethics regulations had been violated. The employee resigned.

This case shows that 5 C.F.R. 2635.702(d) is enforced under section 502.

Impartiality Personal

The first category covers:

- Members of your household
- Relatives
- Friends



As the example concerning friends illustrates, the first category of persons that may cause a conflict of interest under the impartiality rule are people who have a personal relationship with you. As you can see, there are 3 groups.

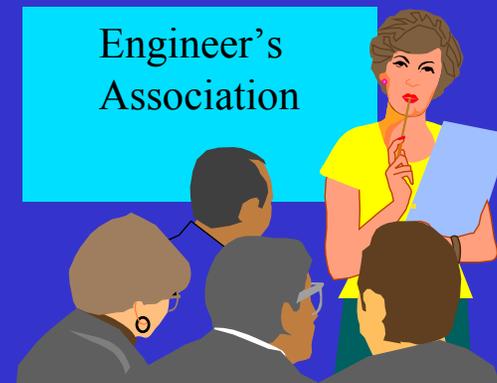
The first group, your household, includes anyone who lives with you, such as “significant others;” adult children (just when you thought you had gotten rid of them, they’re back!); and even your housemates.

The second group is your relatives. Let’s say your Auntie Em lives in Oz. She is representing Lockheed Martin in its merger case against the government. You have been asked to help prepare DoD’s case. As your aunt represents a party to the suit, and you have been asked to work on the suit for the government, you have a potential conflict.

The third group is your friends! Of course, we don’t expect you to go out and grill your friends about their financial holdings. But if you have knowledge about these interests, they may cause a potential conflict for you.

Impartiality Business/Organizations

- The second category covers:
 - Anyone with whom you have or seek a business, contractual, or other financial relationship
 - Organizations in which you are an active participant



Now let's discuss the second category of persons that may cause a conflict of interest under the impartiality rule. As you can see, these include businesses and organizations. The business group includes any person with whom you have, or seek, a business relationship, such as serving as an agent, attorney, consultant, or contractor. Routine consumer transactions are not included. So, let's say you've offered to buy some waterfront real estate from Florida Swamplands, Inc. for \$5 million. That company has applied for a Government license to export mud to Iraq for use in commando training. You may have a conflict of interest if you work on that company's application because it is a party to a particular matter.

What do you think about all the organizations that you are active in? "Active" means doing such things as serving as an official or a committee chairperson, or putting a lot of time into promoting a program. Merely paying dues, however, is not active participation. Also, your participation in political parties is excluded.

Now that you're into this, what do you think some other interests could be?

These interests are reported on SF 278-Schedule D, Part I, and OGE 450-Part III.

What About Your Spouse's Employer?

Remember that your spouse works for CDI? You had been asked to analyze bids, including CDI's.



Do you see any other interests that may cause a conflict?

- A reasonable person
- questions impartiality
- in a particular matter
- when certain persons whom you know
 - have financial interests, or
 - are a party
- to that matter

(Question): Remember that your spouse works for Computer Data Intl., CDI? You had been asked to analyze bids, including CDI's. Do you see any other interests that may cause a conflict?

Remember that we said you could probably work on the bids based on your financial interests, which are your spouse's salary and interest in continued employment? Well, we can't stop there - the impartiality standard requires us to go further and ask if there are any concerns with CDI. It is your spouse's employer and a party to the bidding. What would the "reasonable person" think? (Answer): This is a potential conflict. If more interests are added, such as stock, there is an even greater problem.

Impartiality

Your Family's Employers

The third category includes:

- Organizations in which your spouse, parent, or dependent child are serving, or seeking to serve, as an

officer, director, trustee, general partner, employee, agent, attorney, consultant, or contractor

The final category of persons that may cause a conflict of interest under the impartiality rule includes employers. Here, we see that your family's employers are included. Your family is also expanded to include your parents, as well as your spouse and dependent children. Of course, the possible future employers of your family are also included. You didn't have any doubt by this time, did you?

What About Your Past Employment?

Question:

You recently came to DoD from Hughes! Your new duties include supervising the performance of Hughes.

Do you have any concerns?



- A reasonable person
- questions impartiality
- in a particular matter
- when certain persons whom you know
 - have financial interests, or
 - are a party
- to that matter

(Question): You recently came to DoD from Hughes! Your new duties include supervising the performance of Hughes. Do you have any concerns?

You have a relationship with any company for which you worked in the previous one-year period. What if you had been the vice president for 25 years? Would a reasonable person be likely to question your impartiality here?

(Answer:) Probably yes.

Impartiality

Your Past Employers

The third category also includes:

- Organizations in which **you** were, **in the last year**
 - an officer, director, trustee, general partner, employee, agent, attorney, consultant, or contractor

We are only concerned with those relationships that existed within the previous year. This information is collected on financial disclosure reports.

Note to Instructor: These are included on SF 278-Schedule D, Part 1 and OGE 450-Part 3.

Do any of you feel that you are more restricted than your private counterparts? Well, their codes are pretty similar. In fact, some companies prohibit their employees from serving as directors or part-time employees of companies that do business with them. That's pretty strong. They must also disclose outside activities. And yes, families are included!

Impartiality Rule: Summary

- You may not work on a particular matter if:
- members of your household, relatives, or friends
- people you do or seek to do business with
- organizations in which you actively participate
- organizations that employ your family, or
- organizations you worked for in the last year
- are a party or represent a party to the matter, or
- have financial interests affected by the matter
- And a reasonable person with knowledge of the relevant facts would question your impartiality

Confused? Don't be. The impartiality rule is very broad. In its broadest context, it prohibits you from working on particular matters involving persons with whom you have a relationship and that would cause a "reasonable person" to question your impartiality.

Within this window of potential conflicts, the impartiality rule singles out certain people and organizations whose interests are likely to cause a conflict of interest. They are members of your household, relatives and friends; people you do, or seek to do, business with; organizations in which you actively participate; organizations that employ your family, or organizations you worked for in the last year. Then these people have to be either a party, or represent a party, to a particular matter, or have financial interests that can be affected by the matter. Finally, that reasonable person must be able to question your impartiality. Whew!

See, it's really a piece of cake! Any questions before we move on?

Resolution of Conflicts

- Determine if a Regulatory Exemption Applies
- If not, then:
 - Determine the Appropriate Remedial Action
 - Follow Through

**So, what happens when you have a conflict of interest ---
You still need to work. Well, the first step is to determine if
there are any regulatory exemptions. If one applies, you're
home free. If not, work with your supervisor and ethics
counselor to determine the appropriate remedial action.
Let's talk about the regulatory exemptions.**

Regulatory Exemptions

- Determine if Regulatory Exemptions Apply
- Financial interests are too remote or inconsequential to affect decisions that you may make in your Government job
 - “Pooled” Investments
 - Securities
 - Miscellaneous

Regulatory exemptions apply when your financial interests are too remote or inconsequential to affect decisions that you may make in your Government job. There are three categories : "pooled" investments, securities, and miscellaneous exemptions. Let's look at the first two categories. We will skip the miscellaneous exemptions because of their limited scope and applicability.

"Pooled" Investments

- Diversified Mutual Funds and Unit Investment Trusts
- Sector Mutual Funds
- Employee Benefit Plans

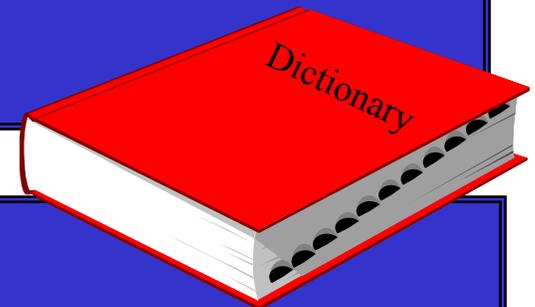
Let's first take a look at exemptions for "Pooled" Investments. It includes exemptions for diversified mutual funds and unit investment trusts, sector mutual funds, and employee benefit plans.

Two terms to keep in mind are "matters involving specific parties" and "matters of general applicability". Matters involving specific parties will, of course, have specific identifiable parties involved. Matters of general applicability do not identify specific parties and involve broad rulemaking such as legislation or regulations that may affect an entire industry.

We'll look at the first two exemptions. If you have any questions on pensions, call your Ethics Counselor.

“Pooled” Investments

- Diversified Mutual Funds & Unit Investment Trusts



DEFINITION

Diversified - does not have a stated policy of concentrating its investments in any industry, single country other than the U.S., or bonds of a single state.

As you know, most diversified funds are invested in many companies, so your ability to affect the interests of any particular company is almost nonexistent. Therefore, the diversified mutual fund and unit investment trust exemption allows you to work on matters affecting the underlying holdings of the fund or trust.

The term “diversified” means that the fund or trust does not have a stated policy of concentrating its investments in any industry, single country other than the U.S., or bonds of a single state. You can determine whether it is diversified by looking at the prospectus. Generally all mutual funds except sector funds are exempted because they are diversified. Let’s look at a hypothetical.

Quiz

You are the Assistant Secretary of Defense (Computer Matters). You want to invest in the Bodine Growth Fund. You notice that it is invested in several software companies. The prospectus indicates that the fund is a “diversified management company.”

Any problems?



(Question): You are the Assistant Secretary of Defense (Computer Matters). You want to invest in the Bodine Growth Fund. You notice that it is invested in several software companies. The prospectus indicates that the fund is a “diversified management company.” Any problems?

(Answer): When a prospectus states that a fund is a “diversified management company,” this means that the underlying holdings of the fund are diversified. You may work on matters that will affect the software companies in the fund’s portfolio. (NOTE: This fund is reported on page 1 of the SF 278 and page 1 of the OGE 450)

“Pooled” Investments

- Sector Mutual Funds
 - Exemption for interests that are outside the sector fund’s area of concentration

Please note that the exemption for diversified mutual funds does not apply to sector funds. There is, however, an exemption for sector funds which allows you to work on matters affecting a company that is outside a sector fund's area of concentration. In other words, you may work on a matter affecting a health care company whose stock is included in a Banking Fund's portfolio. You may not work on matters affecting any banks whose stock is in the fund. Again, you can determine if a fund is a sector fund by looking at the investment philosophy in the prospectus.

To briefly recap, if you are invested in a diversified mutual fund, you can work on matters affecting any of the holdings. If you are invested in a sector fund, you are only prohibited from working on matters affecting holdings in the fund's area of concentration.

Pop Quiz

You are the Deputy Assistant Secretary of Defense (Personnel Matters). You are invested in the Fidelity Drug Company Fund. Any problems? What if you were the Deputy Assistant Secretary of Defense (Health Affairs)?

Any problems?



(Question): You are the Deputy Assistant Secretary of Defense (Personnel Matters). You are invested in the Fidelity Drug Company Fund. Any problems? What if you were the Deputy Assistant Secretary of Defense (Health Affairs)?

(Answer): If you are the DASD (Personnel Matters), investing in a drug company fund is probably not going to cause a conflict of interest. Matters affecting those drug companies in the sector fund probably will not come before you. As the DASD (Health Affairs), however, you would not be able to participate in matters affecting the drug companies whose stock is included in the sector fund's portfolio. (NOTE: this fund is reported on page 1 of the SF 278 and page 1 of the OGE 450.)

Any questions?

Exemptions For Securities

- De minimis for Party Matters
- De minimis for Matters of General Applicability
- Short Term Federal Government Securities Savings Bonds
 - Securities Owned by Tax-Exempt Organizations
 - General Partner

Let's move onto our second set of exemptions - the exemptions for securities, of which there are five.

Exemptions For Securities: Party

- You may work on particular matters
- involving specific parties, if
- you own \$5,000 or less in all affected parties

The first exemption applies when your interest is so small that we believe it would not influence your objectivity. We call this the de minimis exemption for matters involving specific parties. It allows you to work on these matters when you, your spouse, and minor child own no more than \$5,000 in all affected parties.

Example: Party Matters

You own 50 shares of Microsoft worth \$4,000 and your spouse owns 100 shares of Apple Computer worth \$4,000.



If a matter comes before you that will affect both companies, you may not work on the matter because you and your spouse together own \$8,000 worth of securities in those companies.

If a matter comes before you that only affects Microsoft, you may work on the matter.

Let's take a look at an example. You own 50 shares of Microsoft worth \$4,000 and your spouse owns 100 shares of Apple Computer worth \$4,000. If a matter comes before you that will affect both companies, you may not work on the matter because you and your spouse together own \$8,000 worth of securities in those companies. If a matter comes before you that only affects Microsoft, you may work on the matter.

Any questions?

Exemptions For Securities: General

- You may work on matters of general applicability (broad rulemaking)
- if you own:
 - \$25,000 or less in any one company and
 - \$50,000 or less in **all** of the affected companies

Like the previous exemption for securities, this one applies when your interest in the matter is so diluted that we believe it would not influence your decision. The dollar threshold is higher and it applies for matters involving broad rulemaking, such as legislation or regulations affecting an industry. We call this the de minimis exemption for matters of general applicability. It allows you to work on general matters when you, your spouse and minor child together own no more than \$25,000 in any one of the companies affected by the matter, and no more than \$50,000 in all of them.

Example: General Applicability

You are drafting a regulation that will affect all domestic software manufacturers. You own stock in three software firms worth \$10,000, \$15,000, and \$20,000 for a total of \$45,000.

You may draft the regulation because the value of the securities does not exceed \$25,000 in any one affected company, and the total owned in all affected companies does not exceed \$50,000.

Let's take a look at another example. You are tasked to draft a regulation that will affect all domestic software manufacturers. You own stock in three software firms worth \$10,000, \$15,000, and \$20,000 for a total of \$45,000. You may draft the regulation because the value of the securities does not exceed \$25,000 in any one affected company, and the total owned in all affected companies does not exceed \$50,000.

Any questions before we move on?

Exemptions For Securities: Misc.

- Short Term Federal Government Securities Savings Bonds
- Securities Owned by Tax-Exempt Organizations
- General Partner

There are three other exemptions for securities. Because of their limited scope and applicability, we will not discuss them today. If you have any burning questions on any of these, call your local Ethics Counselor.

Remedial Action

- Determine if a Regulatory Exemption Applies
- Determine the Appropriate Remedial Action
- Follow Through

Ok, let's say there are no exemptions that fit your situation. What's the next step - you still need to work. Fortunately, there are several remedies that could apply. You should determine the best remedy by consulting with your supervisor and ethics counselor.

Remedial Actions

- Disqualification
- Divestiture
- Waiver (basic conflict rule)
- Determination (impartiality rule)
- Reassignment or Transfer
- Resignation from outside position
- Blind or Diversified Trust

So, what exactly are these remedies? The first is disqualification. When disqualifying yourself, send a memo to your supervisor (and cc: your subordinates) explaining that you have a financial interest in a matter and cannot work on it. You may not use disqualification if it will impair your ability to perform your duties.

Getting rid of your asset, or what we call “divestiture,” is another way to resolve conflicts. If disqualification is not an option and you are directed to divest, you may be able to defer the tax consequences (capital gains) by applying for a Certificate of Divestiture or CD. You can get specific guidance on obtaining a CD from your local ethics counselor.

A waiver may be available if your ethics counselor determines that your financial interest is not so substantial as to affect the integrity of any actions that you may take. For conflicts which would call into question your impartiality, your supervisor may make a written determination that the Government’s interest in your participation in the matter outweighs the concern that a reasonable person may question your impartiality.

Other possible remedies are reassignment or transfer to a new Government position, resignation from an outside position, or creating a Blind or Diversified Trust.

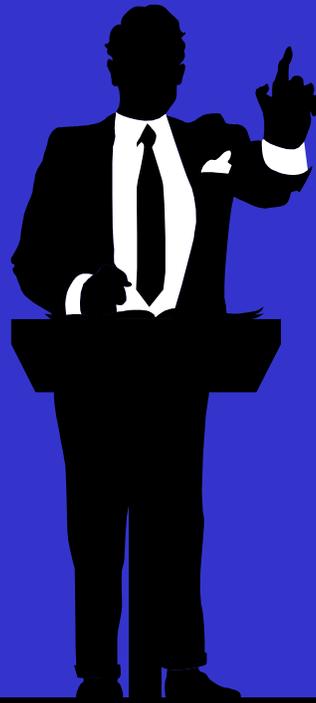
Follow Through

- Determine if a Regulatory Exemption Applies
- Determine the Appropriate Remedial Action
- Follow Through



The last step to resolving your conflict is to ensure you follow through with any remedial action as soon as possible. You should accomplish all actions within 90 days (although disqualification statements should be executed immediately).

Representations to the Federal Government



Before we finish today, you should also recognize that there is another type of conflict of interest, which occurs when Federal employees switch sides and represent others before Federal agencies. So far today, we have discussed conflicts that arise as we carry out our official duties. Now we'll address conflicts that arise, not on the job, but when we act in our personal capacities.

Prohibited Acts

- You may not represent others:
 - In claims against the United States, or
 - Before any Federal agency or court on a matter involving the United States.(18 U.S.C. 205)



The rule is that we may not represent others in a claim against the United States, or even accept compensation for prosecuting such a claim. Nor may we represent others before a Federal agency or court on a matter involving the United States.

For example, an IRS tax examiner may not represent her neighbor in the neighbor's appeal of an IRS audit.

This prohibition is based on a criminal statute first passed in 1853. It was enacted to stem influence-peddling and information-selling by Government officials. A famous example of such abuse was when a Senator, who was arguing a case before a military court-martial, told the military officers of the court that if they didn't rule in favor of the Senator's client, they could forget about the Senate approval of their pending promotions.

Question

Question:

You are the troop leader for a local Boy Scout troop.



May you write a letter to the local Army base requesting use of the rifle range for target practice?

Rule:

- Federal employees
- may not represent
- others
- before Federal agencies
- on matters involving the United States

Let's see how this works.

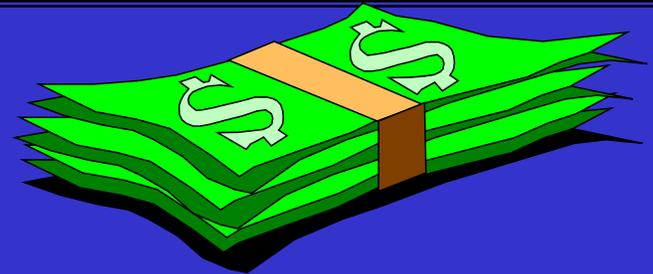
(Question): In your spare time, you serve as a Boy Scout troop leader in your local community. Is it legal for you to write a letter to the local Army base, requesting use of the rifle range for target practice?

(Answer): No. Even matters as harmless as this. Since you are a Federal employee, you may not represent others, including Boy Scouts, to Federal agencies, such as the Army, regarding particular matters in which the United States has an interest.

Solution: Ask another Boy Scout leader, who is not a Federal employee, to write the letter.

Payment for Representation to the Government

- You may not receive
- directly or indirectly
- compensation for representation
- before a Federal agency or court
- on a matter involving the United States



(18 U.S.C. 203)

The prohibition on representation has a sister statute that is very similar. This law bans us from receiving compensation for representing others before a Federal agency or court on matters involving the United States. Please notice that this bars us from accepting compensation, even if someone else made the representations.

For example, this would prevent a Federal employee, who is a part-time lobbyist, from accepting compensation from R.J. Reynolds Tobacco Company for asking the Department of Education to include free cigarettes in the elementary school lunch program. The employee would violate this statute if she accepted compensation, even if her partner, not she, made the representations to the Education Department.

Exceptions

- You may represent, without compensation:
 - professional, recreational, or similar non-profit organizations in which a majority of the members are employees or the immediate family of employees
 - immediate family members
 - others

These two statutes, being so similar, have the same exceptions. Although there are many exceptions, I'll point out the 2 most common.

You may make representations to the Federal agencies if they are made without compensation:

-On behalf of professional, recreational, or similar non-profit organizations in which a majority of the members are employees or immediate family members of the employees.

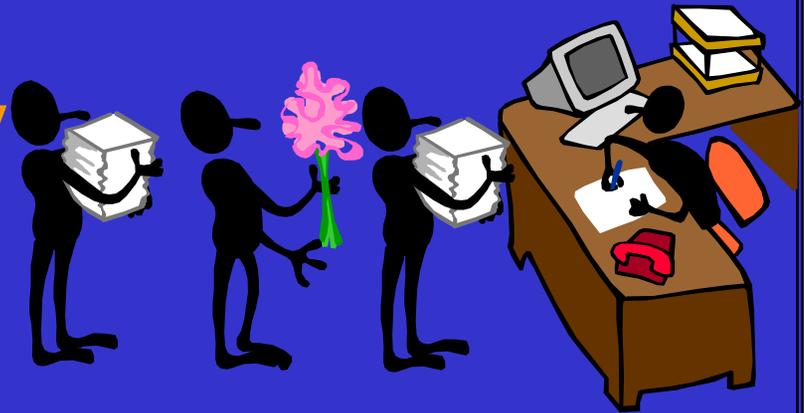
-On behalf of immediate family members.

Any questions?

(Other exceptions are for official duties, testimony under oath, representations on behalf of employees who are the subject of disciplinary or administrative proceeding and special Government employees.)

Bribery and Illegal Gifts

- You may not seek or accept
- directly or indirectly
- anything of value
- for performing an official act



(18 U.S.C. 201)

Another conflict is the easiest and the most infamous: bribery and the acceptance of illegal gifts. Unfortunately, Federal employees seem to be prosecuted for these offenses more than any other.

It should not be a surprise to you that we may not seek or accept, either directly or indirectly, anything of value in return for performing (or not performing) an official act.

Any questions about this?

Outside Supplementation of Salary

- You may not accept compensation
- for performing your official duties
- from any non-Federal source

(18 U.S.C. 209)



Here's our last type of conflict of interest. Like a bribe, it involves accepting compensation from someone other than the Government, for doing your Government job. It's like getting 2 paychecks for the same job. So what's wrong with this? Well, if someone else is paying you to do your job, there is a natural tendency to give preferential treatment to that person. Furthermore, this situation would cause the public to question who you were really working for.

We have this statute because in the past, several wealthy organizations paid their employees while the employees held "\$1 per year" posts in the Government. This arrangement led to accusations that these public servants were really working for their sponsoring organization.

Any questions?

Question

May Julie Arnold, an Army lawyer, represent her husband, Benedict, at an Army hearing to determine if Benedict should keep his top-secret clearance?



- Federal employees
- may not represent
- others
- before Federal agencies
- on matters involving the United States
- (exceptions exist)

OK, let's see how much of this you remember:

(Question): May Julie Arnold, an Army lawyer, represent her husband, Benedict, at an Army hearing to determine if Benedict should keep his top secret clearance?

(Answer): Yes. Although 18 U.S.C. 205 prohibits Federal employees from representing others to Federal agencies or courts on particular matters involving the United States, an exception allows such representations, without compensation, of members of the employee's immediate family, such as husbands.

(turn to next question)

Question

You are the Den-Mother of an on-base Cub Scout Den.

May you write a letter to the base CO requesting use of the base rifle range for target practice?

- Federal employees
- may not represent
- others
- before Federal agencies
- on matters involving the United States
- (exceptions exist)

Question #2:

(Question): You are the den-mother of an on-base Cub Scout Den. May you write a letter to the Base Commanding Officer asking to use the rifle range for target practice?

(Answer): Normally, Federal employees may not represent others before Federal agencies on particular matters in which the United States is a party or has a direct and substantial interest. However, an exception exists for this case because it involves the representation of a non-profit group in which the majority of the members are employees or members of their immediate families.

Pop Quiz

In a moment of patriotic fervor, you give up your \$500,000/year position as VP of Hughes to become the ASD for Health Affairs. Hughes, knowing your extravagant lifestyle, offers to pay you \$100,000/year while you are at DoD.

May you accept?



(Question): In a moment of patriotic fervor you give up your \$500,000/year position as vice president of Hughes Aircraft, to become the Assistant Secretary of Defense for Health Affairs. Hughes Aircraft, knowing your extravagant lifestyle, offers to pay you \$100,000/year while you are at DoD. May you accept?

(Answer): Sorry, but you can't accept. Hughes Aircraft is supplementing your salary. As the Assistant Secretary for Health Affairs, it would be hard to convince the public that you would not give Hughes Aircraft, who pays you \$100,000 a year, preferential treatment.

Goals of Brief

- Now that this brief has concluded, you should:
 - Be able to recognize a conflict of interest when you see one.
 - Know to call your ethics counselor for appropriate remedial action.



That's it, folks. In this past hour we have briefly examined conflicts of interest. Our goal was not to make you a legal expert, but to give you an understanding of conflicts of interest, and an appreciation of why they are contrary to good government. Just like a serious medical malady, you must be able to recognize its symptoms before seeking professional advice for its treatment.

There are many areas we did not cover, many exceptions and remedies that we omitted. If, in reviewing your financial interests, your present duties, or even your outside activities, you discover potential conflicts, don't panic, just call your ethics counselor.

Which leads me to the last and most important slide of this presentation, our phone number. Please call us if you have any questions.

Thank you and have a great day.

E t h i c s

R , U S

MEDCOM

1LT EARL MITCHELL

AMEDDC&S and FSH

CPT S. CHARLES NEILL

MR. SHELBY TANNER

FIFTH ARMY

MAJ RANDALL VANCE

BAMC

CPT MARC A. SAGGESE

5th ARMY RECRUITING

CPT DANA CHASE

221-8400/BLDG. 2792

221-2373/BLDG. 134

221-1515/BLDG. 16

916-2031/BLDG. 3600

221-0155/BLDG. 2007