ETHICS FOR NEW IMMIGRATION JUDGES

COUNSEL CAROLYN M. PICCOTTI
COUNSEL GUSTAVO VILLAGELIU
Ethics for New Immigration Judges

Counsel Carolyn M. Piccotti
Counsel Gustavo Villageliu

Objectives:

After this session, you should be able to:

1. Contact an appropriate official for advice on all Ethics related questions which may come up during and after your tenure as a United States Immigration Judge.

2. Summarize the restrictions applicable to gifts from outside sources at 5 CFR 2635.201-205.
   a. Explain that an employee may not, directly or indirectly, solicit or accept a gift from a prohibited source, unless it is excluded from the definition of a gift, or meets one of the exceptions.

3. Summarize the restrictions applicable to gifts between employees at 5 CFR 2635.301-304.
   a. Explain that, with some exceptions, an employee may not, directly or indirectly, give a gift to or make a donation toward a gift for an official superior.

4. Summarize the restrictions applicable to the misuse of United States government official position at 5 CFR 2635.701-705.
   a. Explain that an employee may not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities, or those of another.

5. Summarize the requirements for filing Public Financial Disclosure Reports (SF-278).
   a. Recognize that you are required to file the SF-278 by May 15 of each calendar year.
   b. Explain the rules for seeking an extension of that deadline for appropriate cause.
6. Summarize the restrictions applicable to political activities by federal employees under the Hatch Act.

   a. Explain that you may contribute to the campaign of a partisan candidate, or to a political party or organization; are allowed to have a political bumper sticker on your privately owned vehicle; help organize and speak at a political fundraiser; serve as a delegate, alternate, or proxy to a state or national party convention; distribute brochures for a political party to people arriving at a polling place on Election Day.

   b. Explain the specific prohibitions upon your engaging in political activities.
Executive Office for Immigration Review

Ethics Training for New Immigration Judges

Barbara Leen, Ethics Officer

Office of the General Counsel
Contact Information
Office of the General Counsel

- **John Blum** - Acting General Counsel/ Deputy Designated Agency Ethics Official (DDAEO)
- **Barbara Leen** - Associate General Counsel/ Ethics Officer
- **Gustavo Villageliu** - Senior Associate General Counsel/ Alternate Ethics Officer
- **Kelly Hill** - Ethics Program Paralegal
Contact Information

U.S. Department of Justice

Executive Office for Immigration Review

5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

Phone: (703) 305-0470
Fax: (703) 305-0443
Contact Information

Email

- Within EOIR’s network: Outlook address book, select “EOIR, Ethics”

- Outside EOIR’s network: EOIR.Ethics@usdoj.gov
Protection from Disciplinary Action

- Protection from disciplinary action for violating the Standards of Conduct IF:
  - Full disclosure of all relevant facts
  - Good faith reliance upon advice of ethics official

5 C.F.R. section 2635.107(b)
Layers of Analysis

- Executive Branch Standards of Conduct
- State bar rules - DOJ Professional Responsibility Advisory Office (PRAO)
- Criminal statutes
Topics of Discussion

- Misuse of Position
- Public Speaking
- Conflicts of Interest
- Gifts
- Post-Employment Restrictions
- SF-278 Public Financial Disclosure Reports
Misuse of Position

An employee may not use his public office for his own private gain or for that of persons or organizations with which he is associated personally.

An employee’s position or title should not be used to coerce another person into providing a benefit to the employee or others; to endorse any product, service or enterprise; or to give the appearance of governmental sanction to personal activities.
Misuse of Position

Use of Nonpublic Information

An employee shall not allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation or by knowing unauthorized disclosure.
Misuse of Position

Use of Nonpublic Information

Nonpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public.

It includes information that he knows or should know:

- Is routinely exempt from disclosure under FOIA or other statute, Executive Order or regulation
- Is designated as confidential by the agency
- Has not actually been disseminated to the general public and is not authorized to be made available to the public on request
Public Speaking

3 Categories:

- Official Capacity
- Personal Capacity with Title & Disclaimer (PTD)
- Purely Personal Capacity
Use of your title is an expression of the authority associated with your official position. The Department's general rule is that use of an employee's title is only appropriate in official settings. PTD reflects a limited exception to that rule. You are responsible for ensuring the appropriate use of your title.
Various consequences flow from this consultation with the Ethics Office by your supervisory ACJ in "Engagements Worksheet". Fill out the "Participation in Speaking".

Determining the Appropriate Capacity

Public Speaking
Engagement is permitted.

Free attendance at a conference on the day of the speaking

Title may be used

Disclaimer is unnecessary in most cases

Compensation for speaking

Except in limited circumstances, you cannot receive

Department, as part of your official duties

The Department has selected you to attend on behalf of the

Speaking in an official capacity is rare

Official Capacity

Public Speaking
Discuss leave with your supervisor.

Personal capacity. Free attendance and free CLE credits may not be permitted.

Should pay close attention to gift issues when speaking in a

Disclaimer necessary

Contribute to increased court efficiency

Permitted because events build community relationships and

Situations approved by EOB Ethics

Use of your title in personal capacity is limited to specific

Non-profit, university, bar settings

Invited because of your official position as an I

Personal Capacity with Title & Disclaimer (PTD)

Public Speaking
Your title or position should not be used to distinguish from your participation in the event or your official position, and therefore your title, is no connection to your work as an [Purify Personal Capacity]

Public Speaking
questioned

matter in which her impartiality could be

an ethical official before participating in any

Conflicts of Interest
An employee or in another capacity, within the past year:

- An organization which an employee now serves or has served, as
- or
- A present or prospective employer of a spouse, parent or child,
- A relative with whom an employee has a close relationship
- Employment of a business, contractual or other financial
- Relationship
- Someone with whom the employee has or is seeking
- one of the following is a party or represents a party:
  - Financial interests of members of her household or where
  - particular matter having specific parties that could affect the
  An employee may not participate, without authorization, in a

Conflicts of Interest
such a matter if he has a waiver.

However, an employee may participate in
those of his spouse, minor children and business
interests are considered his ("imputed" to him), such as
to an employer's own financial interests, certain
matters in which he has a financial interest. In addition
an employee is prohibited from participating in any

Conflicts of Interest
Gifts

Two types of Gifts:

- From outside sources
- Between employees
after the expense has been incurred

ticket, payment in advance, or reimbursement
whether provided in-kind, by purchase of a
transportation, local travel, lodging and meals,

Services as well as gifts of training,

having monetary value
hospitality, loan, forbearance, or other item
Any gratuity, favor, discount, entertainment,

The term “gift” includes:

Gifts
Geographic considerations; whether or not restricted on the basis of military personnel, whether or not commercial discounts, available to the public or to a class generally available to the public; loans from banks and other financial institutions on terms presenting; plaques, certificates, and trophies, which are intended solely for greeting cards and items with little intrinsic value, such as coffee and doughnuts, offered other than as part of a meal; modest items of food and refreshments, such as soft drinks.

The term "gift" does not include:

Gifts
Anything for which market value is paid by the employee, authority, and government under specific statutory gift accepted by the Government under a Government contract.

Government under a Government contract.

Anything which is paid for by the Government or secured by the maintenance by a former employer.

Participation in an employee welfare and benefits plan.

Continued pension and other benefits resulting from continued official duties.

Employee's entry into the contest or event is required as part of including random drawings, open to the public unless the rewards and prizes given to competitors in contests or events.

Gifts
Examples: an alien in proceedings, private immigration
above.

Is an organization composed primarily of persons described
performance of an employee's official duties; or
Has interests that may be substantially affected by the

Is regulated by the Department;
Departments;
Has or seeks official action or business with the

A Prohibited Source:

or her official position or from a prohibited source.
An employee may not solicit or accept a gift given because of his

Gifts from Outside Sources
Gifts from Outside Sources

Unless the frequency of the gifts would appear to be improper, an employee may accept:

- Gifts based on a personal relationship (when it is clear that the motivation is not the employee’s official position)
- Discounts and similar benefits offered to a broad class, including a broad class of government employees
- Most genuine awards and honorary degrees, although in some cases an employee will need a formal determination
- Gifts based on an outside business relationship
- Gifts of $20 or less per occasion, not to exceed $50 in a year from one source
- Free attendance, food, refreshments and materials provided at a conference or widely attended gathering, or certain other social events which an employee attends in his or her official capacity, with approval
Gifts Between Employees

An employee may not accept a gift from an employee receiving less pay if the employee is a subordinate.

An official superior includes any person who directs or evaluates the employee's performance or his/her official duties.

Gift to an official superior.

Gifts between employees.
Gifts between Employees

Gifts, but not subordinant gifts, to contribute to the contributions of nominal amounts from fellow employees, an employee may solicit voluntarily in addition.

On special, infrequent occasions, (marriage, illness, birth of a child) or an occasion that terminates the employee/superior/subordinant relationship, an official superior is appropriate to give an official superior a gift that is appropriate to the occasion.
Provide to personal friends,

Personal hospitality provided at a residence, which is the office, and

Items such as food and refreshments to be shared in

Amex/Visa gift cards - deemed same as cash;

Items, other than cash, valued at $10 or less (no

following to an official supervisor:

birthdays, Christmas) an employee may give the

On annual occasions where gifts are traditionally given,
18 USC Section 207

- 1-year bar
- 2-year bar
- Permanent bar

3 Temporal Restrictions

Post-Employment Restrictions
The Department of Justice or her component for one year.

Restriction that generally prohibits her from representing anyone before An executive official or an ES 5 or 6 in the Senior Executive Service (or comparable level of another pay system) is subject to an additional An executive level official or an ES 5 or 6 in the Senior Executive Service.

1-Year Bar

Pending under her responsibility during her last year of employment An employee is prohibited for two years from representing another person on a particular matter involving specific parties which was

2-Year Bar

Participated personally and substantially An employee is prohibited from representing anyone else before the permanent bar.

Post-Employment Restrictions
Regarding post-employment restrictions, once an employee has left government service, he or she may contact the agency's ethics officer if he or she has a concern. Even after an employee has left government service, he or she before the federal government, no matter the subject, no restriction applies to any representation by the employee's new firm while that individual was a federal employee. United States was a party or had a direct and substantial interest, the firm made before a federal agency or court, in which the firm received or rejected that were generated by representations that government service. From this time in any fees that his or her firm provided prohibited an employee that leaves permitted. There is some level of "behind-the-scenes" communication that is before the government entities. For each of these post-employment restrictions, it is important to note that the ban is on communication to and representation. Post-Employment Restrictions.
Termination date: within 30 days of your effective

Annual/Incum: May 15th

Transition from 11-1 to 11-2

Starting as an 11-2 position

For new entrants: within 30 days of entering a covered

Due Dates

SF-278

Statements

Public Financial Disclosure
more than 90 days
Second 45-day extension may be granted; no
up to 45 days possible; in some instances, a
date
Must be requested in writing prior to the due
Extension granted for "good cause shown"
Government Ethics
$200 late fee imposed by the Office of
Late Fee & Extension
Statements
Public Financial Disclosure
Incorrect reporting of outside positions (529 plans)

Incomplete reporting of college prepaid tuition assets

Accounts (TRAs); you must report underlying
Incomplete reporting of Individual Retirement

OG&E Red Flags

Statements

Public Financial Disclosure
Tips

Statements

Public Financial Disclosures
Pro Bono: http://10.173.2.12/1md/ps/volunteer

OSC: www.osc.gov

OGE: www.usoge.gov

www.usdoj.gov/mlmd/ethics/general.html

Updated DOJ Ethics Handbook and other materials available online at:

DOJ: www.usdoj.gov/mlmd/ethics

EOIR: EOIR Internet Ethics (under Popular Links on the homepage)

Web sites:

The Department of Justice Supplemental Standards of Conduct

The Standards of Conduct for Executive Branch Employees

The Executive Order on Conduct

GPO Publications:

Ethics Resources
Ethics Resources

From the Outlook address book, click the "To:" button, and select "EOIR; 
On the EOIR network: Open a new email, 
From outside EOIR: EOIR.ethics@usdoj.gov 
For ethics advice contact the Ethics Program 

Ethics Resources