

**Office of Government Ethics**  
**87 x 10 -- 09/02/87**

**Letter to a Former Employee dated September 2, 1987**

This is in response to your letter of June 24, 1987 and your telephone conversations with [members] of this Office concerning the application of the post employment restrictions to certain of your activities.

Given your past position with the Department, you are subject to all four of the 18 U.S.C. § 207 restrictions. Briefly, the first restriction, found in section 207(a), is a bar to your representing a private party to a Government agency or court on a particular matter if you personally and substantially participated in the matter while in Government service and at the time you participated there was a specific party or parties involved in the matter. This restriction applies throughout the entire life of the matter. The second restriction, found in section 207(b)(i), prohibits you, for a period of two years after your official responsibility for the matter terminates, from representing a private party on any particular matter involving a specific party that was pending under your official responsibility during your last year of Government service in that position. The difference between this restriction and the first one is that the first involves matters in which you personally participated while the second does not. The second restriction applies even if you had no personal knowledge of a particular matter to which a specific party was identified, as long as it was pending under your official responsibility during your last year with the Government.

The third and fourth restrictions apply only to former Senior Employees of the executive branch. By virtue of the position you held, you were a Senior Employee. The third restriction, found in section 207(b)(ii), applies to the same matters as does the first restriction, i.e., particular matters involving specific parties in which you personally and substantially participated as a Government employee. However, in addition to barring you permanently from representing someone to the Government on those matters, this provision prevents you, for a two-year period following the termination of your Executive branch employment, from assisting another in making a representation to the Government on such a matter through your personal presence at

that representation. Finally, the fourth restriction, found in section 207(c), prohibits you from representing anyone on any matter before your former agency for a one-year period following your termination as a Senior Employee of that agency.<sup>1</sup>

As you can see, under section 207 former employees are not restricted from working in the behind-the-scenes capacities you describe in your letter. Further, the assistance prohibitions in section 207(b)(ii) apply only to your personal presence while someone else is making a representation to the Government on a matter in which you personally and substantially participated while a Government employee. Therefore, with regard to your first question, there is nothing in section 207 that would prohibit you from discussing any matter with the law firm's clients or that would prohibit the law firm from billing your time, as long as you are not making personal representations to the Government and are not personally present assisting another in certain representations. However, before you undertake to represent clients to Government agencies, you should first make certain that the matters do not fall into the categories of those for which you have incurred restrictions.

We note, however, that even though you are not an attorney, you are now employed by a law firm. The firm should consult the rules of professional conduct applicable to their use of your services as a non-lawyer. Certain jurisdictions may prohibit firm attorneys from using your services or even providing the services themselves without establishing arrangements that would screen you from the information and the fees generated by their representation. While we do not render opinions on professional conduct restrictions, we are aware that they may have a significant impact on the firm's activities. We suggest the firm review DR-9-101(B) and DR-5-105(D) of the ABA Model Code of Professional Responsibility and Rules 1.11 and 5.3 of the newer ABA Model Rules of Professional Responsibility.

With regard to your second concern, you seem to be asking for an interpretation of how to define the particular matter when dealing with a loan from [an agency within your former Department]. This issue has arisen before in this Office but was ultimately addressed by the Office of the General Counsel at the Department. Briefly, however, you should be aware that in most instances borrowers from [that agency] have only one loan contract, which is amended as they need additional funds. The original loan agreement contemplates that this will be the manner

in which new funds are provided to the borrower, and we believe [the Department] has taken the position that the original contract with all of its amendments is the particular matter involved, not just an individual amendment providing funds for one project. Assuming our understanding of [the Department's] position is correct, this means that all of the original [agency] contracts which were outstanding during your last year of Government service are matters for which you incur at least the two-year bar under section 207(b)(i). You stated that you were aware of only two loans that were in trouble during the period you served [in a position supervising this agency's activities]. These may very well not be the loans originally entered into under contract with the [agency], but subsequent amendments for funds for new projects. The two-year restriction extends not only to representing the borrowers or other parties on those two loans or contract amendments but also to representing any borrowers who had [agency] loans during your service in that position and the representational assistance requested on those loans. Whether your restrictions endure beyond two years will depend on whether you personally and substantially participated in some aspect of these loan agreements so as to trigger the section 207(a) lifetime prohibition.

We would suggest that if you have any questions about representing clients who had [agency] loans outstanding during your service [with the Department], you should contact [a specific ethics official] at [the Department] with more specific information regarding the actions you wish to take on behalf of these present or potential clients. In that way you will be able to receive more specific advice, which should help you with the decisions you and the firm will have to make regarding your activities for the clients.

Please feel free to contact this Office if you have any further questions.

Sincerely,

Donald E. Campbell  
Acting Director

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**1** The first three restrictions apply to representations made to any Department, agency, court martial, or any civil, military or navel

commission of the United States or the District of Columbia, or any officer or employee thereof. You are not restricted from making representations to members of Congress or their staffs. For the fourth restriction, your former agency is considered to be the entire Department, as no separate statutory or non-statutory component designation within the Department have been made by this Office pursuant to 18 U.S.C. section 207(d)(1)(C) or (e).