

Office of Government Ethics

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Letter to a Member of Congress dated February 26, 1981

This is in response to the question raised by one of your constituents, whether full-time Government employees may engage in the private practice of law during their period of Government employment. You have asked that we address the subject generally rather than the specific cases cited by [the constituent] in his letter.

The standards of conduct for Federal employees in the executive branch of the Government are set forth in Executive Order 11222, a copy of which is enclosed. Section 202 of the Order states that such employees shall not engage in any outside employment which might result in a conflict or an apparent conflict between their private interests and their official duties and responsibilities with the Government. The Order has been implemented by regulations issued by the former Civil Service Commission, now the Office of Personnel Management (OPM). One of OPM's regulations -- 5 C.F.R. § 735.203 provides that an employee shall not engage in any outside employment which is "not compatible with the full and proper discharge of the duties and responsibilities of his Government employment." Under 5 C.F.R. § 735.203, incompatible activities are defined to include:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair his mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

Each agency in turn issues its own regulations relative to outside

employment by its employees -- regulations which have to be approved by OPM prior to their issuance. Some agencies require that before any employee takes on outside employment, the employee must receive the specific approval of the agency. There are also differences among the agencies in the types of employment they will authorize.

There is no statutory prohibition as such against the practice of law by Federal employees nor is any contained in the Executive Order or OPM's regulations. The Department of Justice, in view of the nature of its functions, does not allow its attorneys to practice law.¹ On the other hand, there is no such prohibition at most other agencies. A Federal employee, however, cannot maintain an action against the Federal Government on behalf of a client in view of the proscriptions contained in 18 U.S.C. §§ 203 and 205.

In any event, an employee may not participate in the practice of law during office hours unless he or she takes annual leave for this purpose. It should be kept in mind also that if the private practice of the Federal employee took an inordinate amount of time or interfered with his or her Government responsibilities by reason of them employee's becoming too preoccupied or fatigued as a result of it, the employee might have to discontinue this outside activity.

I do hope we have been of assistance.

Sincerely,

J. Jackson Walter
Director

¹ The Department of Justice permits certain exceptions to this rule which are outlined in 28 C.F.R. § 45.735-9.