

OFFICE OF ETHICS

NEWSLETTER

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MESSAGE FROM THE DAEO



“Misnomer” Spoken Here.

One of the small burdens of being an “ethics-type,” as they might say in the Navy, is that about once a week someone will pass by and say something like “Keep me ethical,” or “I’m ethical. How are you?” Introduced at training presentations, you hear “Here to keep us all on the straight and narrow . . .” Not a major offense, really. At least it shows that you are a player in their workday. But it does make you feel like “ethics” is the very worst title one could give to what we do.

“Ethics,” in some minds, is forever tied to Aristotelian contemplations of “virtue.” To others, we represent the staunch, inflexible defenders of bureaucratic morality—a sort of Federal Chaplain service, if you will, admonishing and absolving governmental sinners. Fact is, the worst sinner, from a moral perspective, still can be perfectly ethical in our eyes. Conversely, a recognized paragon of virtue can be forced into resignation from criticism over a relatively minor ethical lapse—certainly one that Aristotle would have bypassed.

There are some who, seeing “ethics” on our door, feel that we defend what they see as administrative actions that cause cruelty to small furry animals [we, at OE, love animals], or creation of all sorts of microbial miscreants [there are no known scientists in OE]. Still others feel that we investigate allegations of “whatever” that no one else will touch—kind of an “Omni-Ethspecter General.”

Hopefully, the reader knows that we are none of the above.

So, if “ethics” is inaccurate—perhaps too lofty and maybe a bit self-righteous, what should we call what we do?

Other office titles currently in use don’t seem to provide much help. “Compliance” is far too authoritarian—seemingly requiring us to wear monocles and walk in a manner in which the knees are not permitted to flex naturally [small countries should be on the alert]. “Integrity” is just too pompous—as if we can all maintain perfect posture for that long. “Impartiality” or “fairness” seems too vague as if there are no objective standards to address. The Department of Defense uses “Standards of Conduct Office,” but that seems to indicate that everything that a good ethics (sorry) advisor must tell you comes from that one source, making it into some sort of Talisman or Rosetta Stone. “Ethics,” as it has grown with the complexity in all else governmental, is about much more than that.

For example, to those experienced in governmental operations, we may be an all-purpose early warning system. In an earlier newsletter, I spoke of the fact that an ethics advisor needs to “know the neighborhood.” Granted, our small jurisdiction is limited to the Federal Bribery and Conflict of interest statutes, the Standards of Conduct for Employees of the Executive Branch, the Hatch Act, and a few other statutes and regulations. However, our arena intersects with so many other legal and procedural specialties that limiting one’s advice solely to what is within our bailiwick and omitting issues that we see but over which we have no jurisdiction, can be a prescription for disaster. In these circumstances, by seeing and raising potential appropriations, procurement, discrimination, prohibited personnel practices, labor, program administration, Constitutional, and other issues, we can help a client see the need to seek advice from the Office of the General Counsel. So, maybe we are an “Office of Red Flags.”

At the same time, amidst a Presidential Transition with its swift influx of high-energy political appointees, many of whom have had no prior experience in government, we may take on an almost socio-anthropological role. Like Lewis and Clark traveling through tribal territories on the way to the Pacific, an energetic political appointee who has never worked IN the Federal government (worse yet, any government) before is entering the territory of a vastly different culture [Washington, D.C., home of the Federal Government and all interests tied directly to it]. On such an individual it may not dawn that they are in a foreign environment with certain mores, prescriptions, rites, rituals, and courtesies that the wise respect and the unwary ignore at their own peril—irrespective of whether any of it makes sense. In our DC-Federal environment, “ethics,” over two centuries, has become a “sacred” word which is acknowledged through the performance or non-performance of certain specific practices. In this sense, our object is to get this person to do things in a way that, if it does not please, at least does not offend the inhabitants to a degree that they will rise up and waylay our traveler on the way to accomplishing what he or she came here to do. In this sense, the Office of Ethics becomes more like an “Office of the Cultural Liaison.”

Whatever one calls what we do, one thing remains consistent: we simply advise. We do not conduct inquisitions and rarely have the authority to order anything. Intentionally misquoting Blanche DuBois’ famous line from Tennessee Williams’ *A Streetcar Named Desire*, we must in some sense “depend on the authority of others.” We simply read the tea leaves at the intersection of one’s outside interests/affiliations and their public duties. The Federal employee is the determiner of whether he or she is going to take a certain action or not and whether, in that process, he or she will abide by or not abide by our best judgment. Sadly, we are advisors; we cannot tell you to take any given action. The choice is yours. So, maybe “The Office of Risk Assessment.”

In any case, if you can think of a better title, we’re all ears.



Moonlighting?

For those for whom one job is not enough (Where do they find the energy?!), we thought we should explore the rules related to outside employment. From our humble, though experienced, vantage, there appears to be some misunderstanding of when employees need to seek prior approval for outside employment, the procedures for doing so, and the rules they need to follow. We hope this article provides a bit of clarification.

What is employment?

“Employment” means any form of non-Federal employment or business relationship or activity involving the provision of personal services by the employee for direct, indirect, or deferred **compensation** other than reimbursement of actual and necessary expenses.

Money!! OK, that’s easy enough!

BUT, that’s not all! It can also include the following **unpaid activities**:

- (1) Providing personal services as a consultant or professional, including service as an expert witness or as an attorney; and
- (2) Providing personal services to a **for-profit** entity as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee, which involves decision making or policymaking for the non-Federal entity, or the provision of advice or counsel.

When and how to seek prior approval.

Other than a special Government employee, if you file a financial disclosure report (SF 278 or OGE

Form 450, or an approved alternative form), before engaging in outside employment, you need to obtain **written** approval. You must submit an Application for Approval to Engage in Non-Federal Employment Form (<http://www.usda-ethics.net/forms/nonfederalemloyment.pdf>) to your supervisor a reasonable time before you propose to begin the employment. Also, upon a significant change in the nature of your outside employment or in your official position, you will need to submit a revised request for approval. The Office of Ethics will review for conflicts and advise your supervisor who then will make his or her decision on your request.

Advice for those with outside employment.

Criminal Conflicts of Interest:

Don't work on Department matters – including policy matters – if you or the outside organization you serve as an employee has a **financial interest** in the matter, *unless permitted by a regulatory exemption or waiver*. [Don't count on waivers!]

Illegal Representation Before the Government:

Don't represent (even without pay) any person in a matter in which the United States is a party or has a direct and substantial interest.

Pay Limitations:

Non-career SES: Don't exceed the limitations on receipt of outside earned income, currently \$25,830. [Senate-confirmed Presidential appointees cannot have any outside earned income].

Expert Witnesses: Don't violate the limitations on paid and unpaid service as an expert witness.

Misuse of Position:

Don't use your official title for other than official business unless authorized by Department policy.

Don't use your official title or position to solicit funds for charitable organizations.

Don't use office equipment in connection with a paying job.

Teaching, Speaking and Writing:

Don't receive compensation for teaching, speaking, or writing that is related to your duties.

Please note that employees serving in their official capacity with outside organizations, even in an advisory capacity, must also seek ethics guidance before serving.

2009 ELECTION: HATCH ACT REMINDERS



GOOD GRIEF!! DIDN'T WE JUST HAVE AN ELECTION??

So, true. Nonetheless, in what may be an intense 2009 election cycle in some states, employees planning to engage in political activity **NEED** to become familiar with the Hatch Act. Because the Hatch Act treats categories of employees (GS, Schedule C, SGE, SES-C, SES-NC, PAS) differently, you should contact the Office of Ethics Headquarters for specific advice on how the Hatch Act may affect you.

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal executive branch employees. The Act permits most employees to actively participate in partisan political management and partisan political campaigns. Employees, however, are prohibited from:

- Running for partisan political offices;
- Fundraising in connection with partisan politics;
- Misusing their official authority or influence for the purpose of affecting the result of an election;

- and knowingly soliciting or discouraging the political activity of any individual with business before their agency. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits most employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia or in an official vehicle. 5 U.S.C. § 7324.

Allegations of Hatch Act violations (even if unfounded) are easy to make and, in a very partisan atmosphere, a popular tool to get at you, your superiors, your policies and programs. In recent years, too many employees have had their autumns and winters disturbed by an investigation by the Office of Special Counsel based on Hatch Act violations. Most popular targets involve misuse of email and improper use of bumper stickers. Be active if you can; but be mindful.

BRANCH REPORTS



OE-Farm

FSA and RD Ethics Advisors Hit the Road.



Tonya Willis, National Ethics Program Manager for Farm Service Agency (FSA), of OE’s Farm, Conservation and Rural Programs Branch (OE-Farm) recently made a site visit to the North Carolina State FSA Office. Tonya undertook a week of developmental training at the state office in an effort to better understand “who we are servicing” and become more knowledgeable about the various programs administered by FSA. As she says, “The experience of visiting a state office was

invaluable and has given me a different perspective from which to look at conflict of interest issues.” Her detail, covering the week of August 2nd-8th, 2009, involved meeting with the state office staffs “from the Office of the State Executive Director to the mailroom.” Tonya noted that the State Office discussed their programs in detail . . . while she used the opportunity to explain how ethics policies, rules or regulations impacted their programs.

Tonya also visited two FSA county level offices located in Vance and Duplin counties and sat in on an FSA County Committee Meeting. Finally, she met with the county level Farm Loan staff and toured a tobacco and an organic independent hog farming operation. This allowed her to experience first-hand how FSA interacts with and services the producers in their farming community.



Julia West, National Ethics Program Manager for Rural Development (RD), had a one-week professional development detail studying RD facilities and projects in North Carolina.

Julia visited three projects in the Lumberton and Pembroke area visiting a single-family housing project of the North Carolina Indian Authority, a unique day-care program for children of the Lumbee Indians, and a Town Hall, Community Center and medical care facility built by the community with RD grants and loans.

In the Asheboro area, Julia visited STARworks-a previously-abandoned sock textile warehouse being renovated through RD funding; -Piedmont Bio-Fuels of Pittsboro, NC, which uses oils from food processing to produce bio-fuels; homes of RD Single Family Housing families; Multi-Family Housing sites which provide homes with special accommodations for the elderly and physically challenged; the Neuse Regional Water & Sewer Authority (NRWSA)-- funded in part through RD

grants and low-interest loans; a facility at Mount Olive College using RD funding for technology to teach medical professionals through distance learning; a fire station and fire vehicles purchased through RD grants and loans; and several small businesses receiving start-up funds in small towns including a bakery, an automotive repair business owned by a survivor of 9/11, and a BBQ & Restaurant in Clayton, NC (in her opinion one of the best eastern-style barbecued pork restaurant—sorry, we can't endorse, so give Julia a call if you're headed to Clayton).

OE-Science

*Sue Sheridan, Chief of the Science Branch, provides updated advice regarding **Immigration Support Letters**.*



As a result of a memorandum from the Office of Government Ethics (OGE) to the executive branch Designated Agency Ethics Officials dated May 17, 2007, the Science Ethics Branch revisited its guidance concerning letters of recommendation. OGE became aware of inconsistent guidance, and sometimes misguidance, regarding the application of the rules on representation to Federal employees who write and submit letters to Federal agencies in support of aliens applying for a change in immigration status. OGE interprets the statute from which these rules derive, 18 U.S.C. § 205, to require the exercise of some control by the principal over the agent and determined that Section 205 does not appear to apply in the case of a Federal employee submitting an immigration support letter. In that case, the author of the letter typically is free to write his personal opinion (based on official interaction) regarding the alien's abilities and character. In the unusual case where the alien did somehow exert control over the Federal employee in drafting and submitting the letter, the Federal employee would be the alien's agent for purposes of immigration,

and the letter would violate Section 205. Detailed guidance regarding this topic is available @ <http://www.usda-ethics.net/science/topic-index/lettersofrecommendation.htm>

Fantasy Football, Real Consequences

By: Andrew Tobin



As fans all over the country anxiously await an end to the oppressive humidity of summer and the beginning of another NFL football season (other than Redskins fans), we here at the Office of Ethics would like to send out a friendly reminder about fantasy football: keep it out of the workplace.

41 C.F.R. § 102-74.395, forbids all persons entering in or on Federal property from participating in games for money or other personal property, operating gambling devices, conducting a lottery or pool, or selling or purchasing numbers tickets. While, on its face, fantasy football does not appear to constitute gambling in the usual sense of the word, two recent rulings have held otherwise. In the past year, gambling allegations were made against employees at the Department of Defense and the Air National Guard for operating fantasy football leagues on Government computers and in Government offices. In both cases, it was determined that these activities amounted to impermissible gambling in the workplace.

As ethics officials, we want to make sure that your enjoyment of the football season is not ruined by a disciplinary allegation. In that vein, we ask that you please limit your involvement in fantasy sports leagues to when you are off-duty and off Government premises. Thank you.

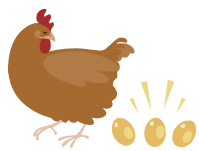
MEET THE OE-MARKETING STAFF



Lori Commins joined the Office of Ethics, Marketing and Regulatory Branch (OE-Marketing), as an Ethics Specialist in August of last year. Before joining OE, Lori worked at the FSIS Ethics Office as a contractor/Ethics Advisor and assisted in closing up the office during the transition. She is an attorney who has worked in the private sector and in government. She graduated from Georgetown University with a B.A. and Catholic University, Columbus School of Law.



Ella Jones has worked for the Federal Government for 26 years, beginning with the FBI, then IRS and finally, USDA. She joined the OE-Marketing as an Ethics Specialist in September 2008 after working for USDA, Food and Nutrition Service as a Human Resources Specialist, where she managed their agency Ethics Program from 2007 until the transfer.



Mary Royster came to USDA in 1980 after working for DC Government and the Department of Energy. She transferred to a security clerk position with Departmental Administration (DA), Security, Employee and Labor Relations Staff (SELRS). At the time, SELRS administered, among other programs, the USDA Ethics Program, along with the Security, Employee Relations (ER), Labor Relations, Benefits, and Committee Management (Advisory Committees) Programs. In 1985, she became an ER Assistant and later became an ER Specialist. Her official duties, in addition to ER, consisted of working on the Ethics Program and Committee Management. In the mid-90s, she

made the move from DA to APHIS as an ER Specialist. Starting in 2002, she served as the Mission Area Ethics Advisor for Marketing and Regulatory Programs (APHIS, AMS and GIPSA). In 2008, she received a transfer from APHIS to her current position in DA, as Branch Chief of OE-Marketing.



Tamarra Smedley, Ethics Assistant, has been an employee with USDA for sixteen years. She started her career as a clerk with AMS, Dairy Division. From there, she went to work for the Department's Office of Civil Rights (OCR) as an Office Automation Assistant. Shortly thereafter, she became a part of RD's OCR as an Office Assistant where she worked for former director, Cheryl Prejean Greaux. Eventually, she returned to the Department's OCR as an Equal Opportunity (EO) Assistant. Most recently, she was with the ARS Office of OUTREACH, Diversity and EO Branch under Dr. Don McLellan. Always eager to learn, she finally applied to work as a team member of OE-Marketing and was hired in November 2008.

THE GREAT ZAMBONI SPEAKS!!!!



The voice of the GREAT ZAMBONI, World-renown Ethics Sage and Fine Dining Critic responds to the most perplexing issues facing *the World Today*.

O, Great Zamboni: Please help me settle a small disagreement. We're raising money for the Combined Federal Campaign (CFC) at our office.

We truly appreciate the importance of this effort and have suspended all office operations in order to dedicate full time to CFC. After applying daily “positive encouragement” to some of our less compassionate fellow employees for donations to the Great Cause (some who claimed that they had no, as in “n-o,” money), we were initially stumped. Then our supervisor had a great idea. The “recalcitrants,” as we call them, could sign cards that promised they would pay the CFC in the future, either in cash or by withholding. This would help us make our office goal of \$25,000 and 100% participation. Here’s the problem: Since so many of these people have the same lame excuse for not giving, we’d like to type in the amount of \$500 on these cards to, shall we say, save them some writing. Our supervisor says not to do this because he wants the chance to “encourage” them to give more than \$500. So, if we type the \$500 on the cards are we permanently stuck with that amount, or can we alter the form later when they “become more generous?” Oh, and would the ethics folks like to buy raffle tickets? Only \$50 and great prizes! Third prize is a thousand hours of leave. (Signed) Begfer C. Afsee, Key Worker

Dear B.C.

Just what civilian employment did you have before the Government? [Please specify the junta.] Your letter suggests coercion tactics that would win the Corleone family seal of approval. [To be totally honest, The G.Z. loves this question because it is not often that his CFC ethics advisories get to cite the Geneva Conventions. But, in the words of Dostoyevsky, “I digress.”] So B.C., how much interest did you plan to charge and were you going to send a couple of hulking CFC “encouragers” to collect on the note if your fellow employee didn’t pay up? [GZ says this out of curiosity and with great respect, having just finished a particularly juicy crime novel, as well as watching an in-flight showing of “Rocky XIV”.] GZ would also be interested in whether the Office of General Counsel has approved spending appropriated funds for bullet proof vests and brass knuckles for your Agency key

workers. Editors’ note: (1) The CFC does not coerce or pressure employees to give or even fill out Pledge cards. (2) The campaign does not set financial goals below the Agency level. (3) Gambling is prohibited in Federal buildings. (4) When prizes are offered, they must be modest (under \$100). (5) Leave may not be used as an incentive to give to the Campaign. (6) Supervisors should not be involved in encouraging individual employees to donate. Did GZ leave anything out??? Please take the time to look up the word “voluntary” in your Miriam Webster’s Dictionary. [I know that it is an arcane word (much like “robust” used to be); however the word (synonymous with “non-coercive”) is still found in the CFC Regulations (please read 5 CFR 950.108) and hence cannot be “voluntarily” disregarded.]