

**ETHICS FOR NEW IMMIGRATION  
JUDGES**

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## **Ethics for New Immigration Judges**

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### **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

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# Contact Information

## Email

- Within EOIR's network: Outlook address book, select "EOIR, Ethics"
- Outside EOIR's network:  
[EOIR.Ethics@usdoj.gov](mailto: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

# Public Speaking

- 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

# Public Speaking

## Determining the Appropriate Capacity

- Fill out the “Participation in Speaking Engagements” worksheet
- Determination by your supervisory ACIJ in consultation with the Ethics Office
- Various consequences flow from this determination



# Public Speaking

## Official Capacity

- Speaking in an official capacity is rare
- The Department has selected you to attend *on behalf of* the Department, as part of your official duties
- Except in limited circumstances, you cannot receive compensation for speaking
- Disclaimer is unnecessary in most cases
- Title may be used
- Free attendance at a conference on the day of the speaking engagement is permitted.

# Public Speaking

## Personal Capacity with Title & Disclaimer (PTD)

- Invited *because of* your official position as an IJ
- Non-profit, university, bar settings
- Use of your title in personal capacity is limited to specific situations approved by EOIR Ethics
- Permitted because events build community relationships and contribute to increased court efficiency
- Disclaimer necessary
- Should pay close attention to gift issues when speaking in a personal capacity. Free attendance and free CLF credits may not be permitted.
- Discuss leave with your supervisor

# Public Speaking

## Purely Personal Capacity

- No connection to your work as an IJ
- Your official position, and therefore your title, is distinct from your participation in the event or organization
- Your title or position should not be used

# Conflicts of Interest

Generally, an employee should seek advice from an ethics official before participating in any matter in which her impartiality could be questioned

# Conflicts of Interest

An employee may not participate, without authorization, in a particular matter having specific parties that could affect the financial interests of members of her household or where one of the following is a party or represents a party:

- Someone with whom the employee has or is seeking employment, or a business, contractual or other financial relationship
- A relative with whom an employee has a close relationship
- A present or prospective employer of a spouse, parent or child, or
- An organization which an employee now serves or has served, as an employee or in another capacity, within the past year.

# Conflicts of Interest

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

# Gifts

## Two types of Gifts:

- From outside sources
- Between employees

# Gifts

The term “gift” includes:

- Any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value
- Services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred



# Gifts

The term “gift” does not include:

- Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;
- Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
- Loans from banks and other financial institutions on terms generally available to the public;
- Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

# Gifts

- Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;
- Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;
- Anything which is paid for by the Government or secured by the Government under a Government contract;
- Any gift accepted by the Government under specific statutory authority; and
- Anything for which market value is paid by the employee.

# Gifts from Outside Sources

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

## A Prohibited Source:

- Has or seeks official action or business with the Department;
- Is regulated by the Department;
- Has interests that may be substantially affected by the performance of an employee's official duties; or
- Is an organization composed mainly of persons described above.

Examples: an alien in proceedings, private immigration lawyer, ALLA

# 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)
- Gifts based on an outside business relationship
- Gifts of \$20 or less per occasion, not to exceed \$50 in a year from one source
- 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
- 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 give or solicit a contribution for a gift to an official superior.
- Official superior includes any person who directs or evaluates the employee's performance of his/her official duties
- An employee may not accept a gift from an employee receiving less pay if the employee is a subordinate.

## Gifts Between Employees

- On special, infrequent occasions, (marriage, illness, birth of a child) or an occasion that terminates the superior/subordinate relationship, an employee may give an official superior a gift that is *appropriate* to the occasion.
- In addition, an employee may solicit voluntary contributions of nominal amounts from fellow employees, but not subordinates, to contribute to the gift.

## **Gifts Between Employees**

On annual occasions where gifts are traditionally given, (birthdays, Christmas) an employee may give the following to an official superior:

- Items, other than cash, valued at \$10 or less (no Amex/Visa gift cards - deemed same as cash);
- Items such as food and refreshments to be shared in the office; and
- Personal hospitality provided at a residence, which is of a type and value that an individual would customarily provide to personal friends.

# Post-Employment Restrictions

## 3 Temporal Restrictions

- Permanent bar
- 2-year bar
- 1-year bar
- 18 USC Section 207



# Post-Employment Restrictions

- Permanent Bar
  - An employee is prohibited from representing anyone else before the government on a particular matter involving specific parties in which she participated personally and substantially
- 2-year Bar
  - An employee is prohibited for two years from representing another person on a particular matter involving specific parties which was pending under her responsibility during her last year of employment
- 1 - year Bar
  - An executive level official or an ES 5 or 6 in the Senior Executive Service (or comparable level of another pay system) is subject to an additional restriction that generally prohibits her from representing anyone before the Department of Justice or her component for one year

# Post-Employment Restrictions

- For each of these post-employment restrictions, it is important to note that the ban is on communication to and representation before the government entities.

- There is some level of “behind-the-scenes” communication that is permitted.

- 18 USC section 203 prohibits an employee that leaves government service from sharing in any fees that his or her firm receives or received that were generated by representations that the firm made before a federal agency or court, in which the United States was a party or had a direct and substantial interest, while that individual was a federal employee.

- This restriction applies to any representation by the employee’s new firm before the federal government, no matter the subject.

- Even after an employee has left government service, he or she may contact the agency’s ethics officer if he or she has a concern regarding post employment restrictions.

# Public Financial Disclosure Statements

SF-278

## Due Dates

- For new entrants: within 30 days of entering a covered position
  - Starting as an IJ-2
  - Transition from IJ-1 to IJ-2
- Annual/Incumbent: May 15<sup>th</sup>
- Termination: within 30 days of your effective termination date

# Public Financial Disclosure Statements

## Late Fee & Extension

- \$200 late fee imposed by the Office of Government Ethics
- Extension granted for “good cause shown”
- Must be requested in writing prior to the due date
- Up to 45 days possible; in some instances, a second 45-day extension may be granted; no more than 90 days

# Public Financial Disclosure Statements

## OGE Red Flags

- Incorrect reporting of Individual Retirement Accounts (IRAs); you must report underlying assets
- Incomplete reporting of college prepaid tuition plans and savings plans (529 plans)
- Incorrect reporting of outside positions

# Public Financial Disclosure Statements

## Tips

- Consult your corrected SF-278
- One entry per line
- Typed information preferred
- Complete all requested information
- Use “(s)” or “(dc)” to indicate spousal or dependent child designations
- If assets are sold, indicate as “(sold during year)”
- Attachments become public
- Specify the type of asset- checking/savings, CD, stock, 401k

# Ethics Resources

## GPO Publications:

- The Executive Order on Conduct
- The Standards of Conduct for Executive Branch Employees
- The Department of Justice Supplemental Standards of Conduct

## Websites:

- EOIR: EOIR Intranet Ethics (under popular links on the homepage)
- DOJ: [www.usdoj.gov/jmd/ethics](http://www.usdoj.gov/jmd/ethics)
- Updated DOJ Ethics Handbook and other materials available online at: [www.usdoj.gov/jmd/ethics/general.html](http://www.usdoj.gov/jmd/ethics/general.html)
- OGE: [www.usoge.gov](http://www.usoge.gov)
- OSC: [www.osc.gov](http://www.osc.gov)
- Pro Bono: <http://10.173.2.12/jmd/ps/volunteer/>

# Ethics Resources

For ethics advice contact the Ethics Program

- From outside EOIR: EOIR.ethics@usdoj.gov
- On the EOIR network: Open a new email, click the “To:” button, and select “EOIR, Ethics” from the Outlook address book