

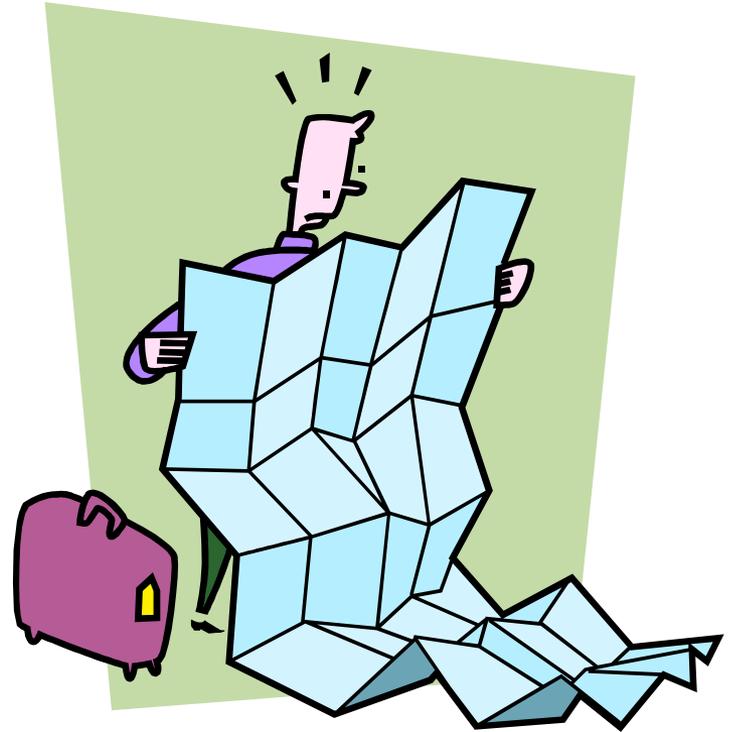
2004 ETHICS WORKSHOP

Post-Government Service Employment Restrictions



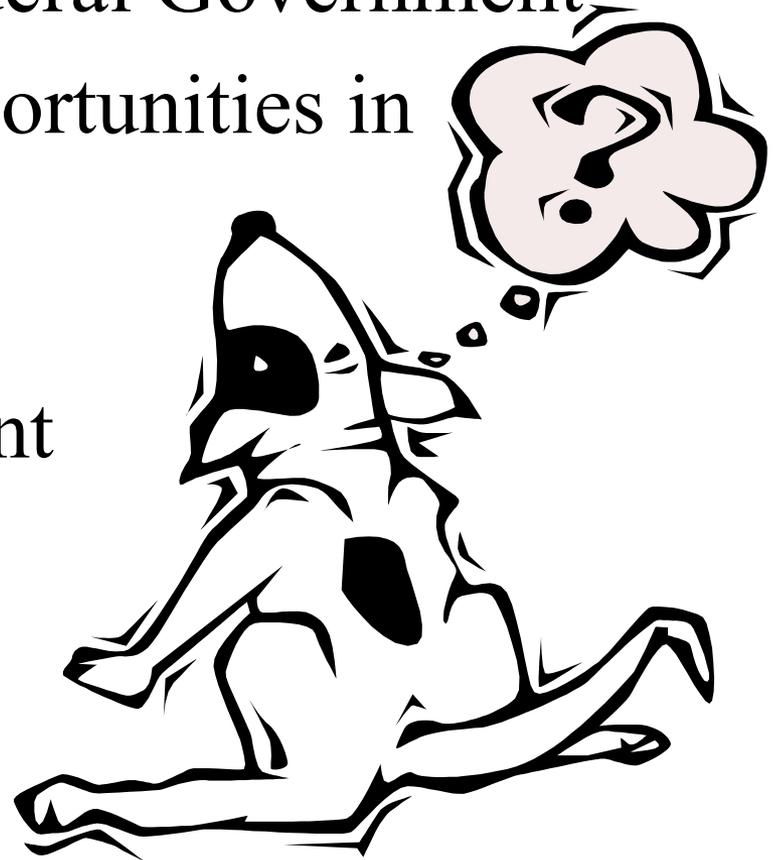
Road Map

- Purpose of Restrictions
- Seeking Employment
- Private Employment Restrictions



Purpose of Restrictions

- Prevent conflicts of interest
- Promote economy in Federal Government
- Expand employment opportunities in the Federal system
- Preserve the public's confidence in Government integrity



Rendering Competent Advice

(always a pretty good idea)

- Need full disclosure!!!
 - Client Questionnaire
- Who is the client?
 - JER § 9-500
- Effect of advice?



Seeking Employment

- Conflicts of Interest
- Gifts From Prospective Employers

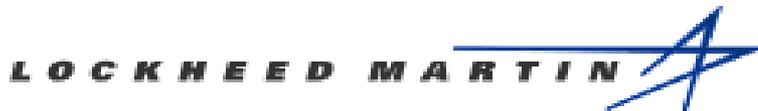


Conflicts of Interest

18 U.S.C. § 208

5 C.F.R. § 2635.402

- You may not take any official action that affects a company with which you are negotiating for employment or have an arrangement concerning prospective employment
- JER 5-301 applies to National Guard and enlisted personnel



Careers



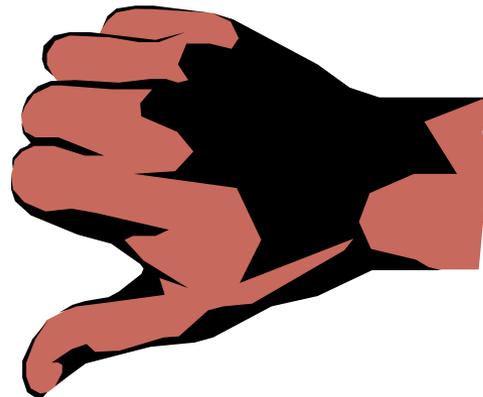
“Seeking Employment”

- 5 C.F.R.2635.603(b)
- You are “seeking employment” when you:
 - engage in negotiations
 - make unsolicited employment contact
 - includes sending resume
 - excludes requesting job application
 - respond to unsolicited proposal (except unconditional rejection)



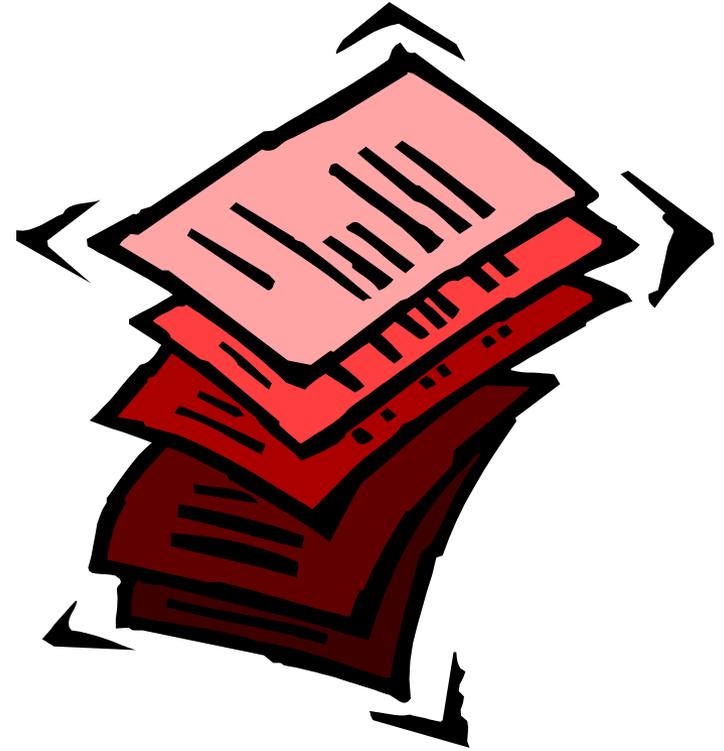
Termination of Seeking Employment

- You are no longer “seeking employment” when:
 - either party rejects proposal and discussions have terminated, or
 - two months have passed after mailing resume and no response



Disqualification

- To avoid violation:
 - Take no action
 - Written notice to supervisor (JER 2-204)
 - Supervisor response:
 - written
 - shielding procedures
 - copy to Ethics Counselor, subordinates



Procurement Integrity Act

- Special reporting rules for procurement officials
 - Contacts with bidders/offerors in procurements \geq \$100K
 - Written “contact report”
 - Special disqualification notice
- Pre-award disclosure of procurement information prohibited (present and former officials)



Gifts From Prospective Employers



5 C.F.R. § 2635.204(e)(3)

- Meals, lodging, transportation, etc. *customarily* offered
- Don't forget to disqualify
- if necessary



Private Employment Restrictions

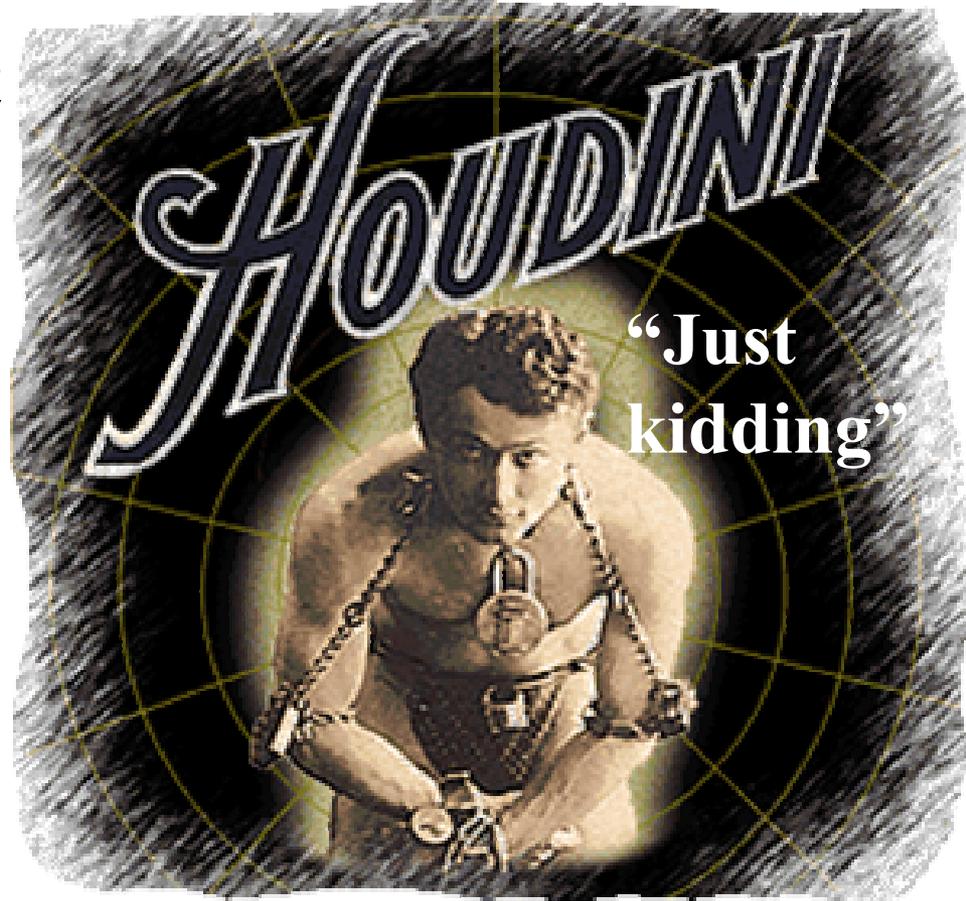
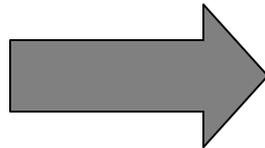
- Representational restrictions - 18 USC 207
- Procurement Integrity Act
 - 41 USC 423
- Repealed
 - 10 USC 2397
 - 10 USC 281
 - 37 USC 801
 - No more DD Form 1787



Private Employment Restrictions

18 U.S.C. § 207

- Designed to curb “switching sides”
- ***DOES NOT*** prohibit acceptance of employment
- ***MAY*** restrict scope of employee’s activities



Representational Restrictions

18 U.S.C. § 207

- Prohibits representing another before U.S. Government with intent to influence

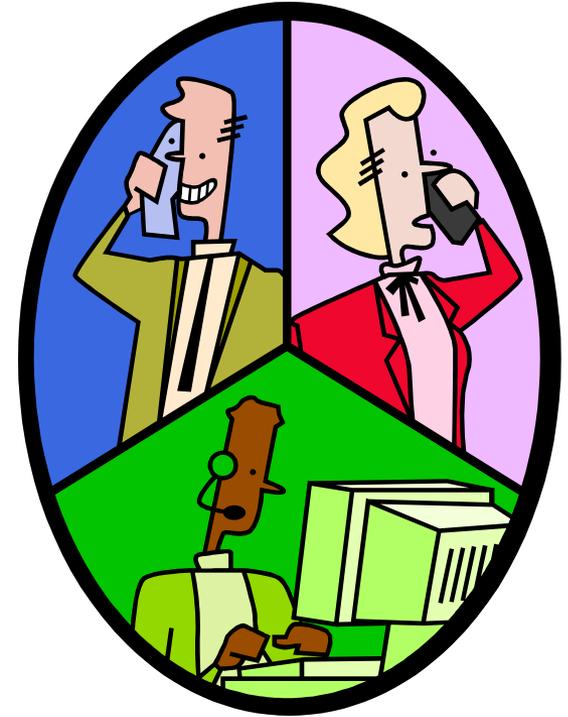
- Lifetime ban
- 2-year ban
- 1-year cooling-off period for senior employees
- 1-year ban on treaty negotiations
- 1-year ban on senior employees representing foreign entities



“We represent the Lollipop Guild!”

Lifetime Ban

- 18 U.S.C. § 207(a)(1)
- May not:
 - Communicate/appear on behalf of another
 - With “intent to influence”
 - Regarding a “particular matter”
 - Involving specific parties
 - Where participated “personally and substantially” as Federal employee
 - Behind-the-scenes assistance permitted



Representational Restrictions

Definitions

- **Particular matter -- includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, or investigation. Generally, does not include rulemaking, formulation of general policy, standards or objectives, or other matters of general application.**
- **Intent to influence -- seeking some discretionary action, ruling, benefit, or approval. Does not include purely social contacts or requesting publicly available information.**

Representational Restrictions

Definitions

- Participate personally and substantially -- to participate directly and significantly by decision, approval, recommendation, rendering of advice or investigation. Includes actions of a subordinate if actually directed by the former employee.

Representational Restrictions

2-Year Ban

- *18 U.S.C. § 207(a)(2)*. May not, within 2 years of termination of Government service
 - Communicate/appear on behalf of another
 - With “intent to influence”
 - Regarding a “particular matter”
 - Involving specific parties
 - Under “official responsibility” during last year of Government service
- Behind-the-scenes assistance permitted



Representational Restrictions

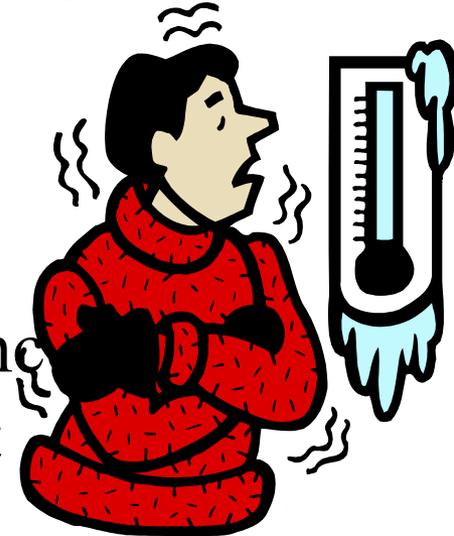
Definitions

- **Official responsibility -- direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.**
- **Administrative authority -- planning, organizing, and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter, such as regularity of budgeting procedures, public or community relations aspects, or EEO considerations.**

Representational Restrictions

1-Year Cooling-Off Period

- *18 U.S.C. § 207(c)*
 - Applies to former senior employees (personnel whose basic pay exceeded 86.5 percent of the rate for level II of the Executive Schedule (EL II) \$136,757 in 2004)
 - Prohibits communication or appearance before *former agency*, on behalf of another with intent to influence any matter where official action is sought



1-Year Cooling-Off Period

- Behind-the-scenes assistance permitted
- Communications to other DoD components permitted



New Procurement Integrity Act

- Applies to employees who retire on or after 1 January 1997
- Bars acceptance of compensation from contractor for 1 year after certain participation in procurement of:
 - contracts, subcontracts, modifications, and other actions > \$10M



Triggers

- Served as Procuring Contract Officer, Source Selection Authority, Source Selection Evaluation Board Member, Chief of Financial or Technical Evaluation Team for procurement > \$10M
- Served as Program Manager, Deputy Program Manager, or Administrative Contracting Officer for procurement > \$10M



- Personally made decision to:
 - award a contract, subcontract, modification, or task order > \$10M
 - establish overhead or other rates applicable to contract > \$10M
 - approve issuance of a contract payment > \$10M
 - pay or settle a claim > \$10M

Questions?

