
u.s. department of commerce



summary of ethics rules

**u.s. patent and trademark
office**

2000

**office of the general counsel
ethics division
telephone (202) 482-5384**

PUBLIC SERVICE IS A PUBLIC TRUST

As an employee of the U.S. Patent and Trademark Office, you have been placed in a position of trust and are held to a high standard of ethical conduct. This handout contains a summary of the rules set forth in conflict of interest statutes and the *Standards of Ethical Conduct for Employees of the Executive Branch*. You should retain this handout and use it as a handy reference source. The first part of the handout contains a basic summary of ethics rules. The second part provides specific guidance for USPTO employees regarding some of the ethics rules.

For advice about ethics rules contact the Ethics Division of the Office of the General Counsel, U.S. Department of Commerce, at (202) 482-5384.

Designated Agency Ethics Official:
Andrew J. Pincus, General Counsel

Alternate Designated Agency Ethics Official:
Barbara S. Fredericks, Assistant General Counsel for Administration

Office of the Assistant General Counsel for Administration

To obtain legal advice regarding other administrative law issues, call the following offices:

Employment & Labor Law Division at (202) 482-5017 for advice regarding personnel law and labor law issues.

General Law Division at (202) 482-5391 for advice regarding appropriations laws and laws regarding the release of information, conduct of advisory committee meetings, and general administrative law issues.

Office of the Inspector General

The Ethics Division provides advice but does not investigate allegations of violations of law. To report fraud, waste, abuse, or other violations of law, or to request an investigation, call the Office of the Inspector General HotLine at (202) 482-2495.

FINANCIAL CONFLICTS OF INTEREST

Financial Conflicts of Interest. You may not, as part of your official Government duties, participate in any matter that will have a direct and predictable effect on your personal financial interests, unless an exemption applies. This rule applies to matters involving specific parties in which you have a financial interest and to broad policy matters that affect many entities, including ones in which you have an interest (such as a policy affecting an entire industry sector if you have stock holdings in one of the companies in the industry sector).

Financial Interests of Relatives and Business Associates. The financial interests of some persons are considered so intertwined with your own that they are attributed to you for purposes of the conflict of interest statute and you are barred from participating in matters affecting their financial interests. These include the financial interests of your spouse, minor children, household members, general partners (but not limited partners), and non-Federal employer; persons with whom you are seeking employment; and any entity with which you are serving as an officer, director, or trustee.

Exemptions. Exemptions permit you to participate in matters affecting a financial interest if the financial interest is a:

- " holding in a diversified mutual fund;
- " publicly-traded stock or bond holding of \$5,000 or less (unless the matter involves specific parties and holdings in all affected parties total more than \$5,000); or
- " publicly-traded stock or bond holdings in a single company of \$25,000 or less with regard to broad policy matters (if total holdings in the industry or group affected by the matter are \$50,000 or less).

Waivers. Individual conflict of interest waivers may be issued by the head of USPTO for interests that are not substantial (following consultation with the Office of Government Ethics). However, Department policy is generally to rely on the exemptions listed above rather than issue individual waivers. Nevertheless, if you believe that a waiver is appropriate in a particular case, contact the Ethics Division at (202) 482-5384.

**APPEARANCES OF BIAS
(NON-FINANCIAL CONFLICTS OF INTEREST)**

Appearances of Impropriety concerning Participating in Matters Affecting Relatives and Associates. Unless you receive specific authorization, you may not participate in a matter as a USPTO employee if one of the parties to the matter is (or is represented by) a person with whom you have close family or business ties (covered relationships), if your participation would create an appearance of loss of impartiality. Persons with whom you are considered to have a covered relationship include:

- " persons with whom you have or are seeking a business or a financial relationship (other than a routine consumer transaction);
- " members of your household;
- " your close relatives;
- " employers or clients (or prospective employers or clients) of your parents, dependent children, or spouse;
- " former employers or clients (for a one-year period, or a two-year period if you received an extraordinary payment from the former employer before entering into Federal service); and
- " organizations in which you are an active participant.

Exceptions. Authorization to participate in a matter in which one of these persons or entities is a party or a representative may be granted if the needs of the agency outweigh appearance concerns. To seek such an authorization, contact the Ethics Division.

GIFTS, BRIBES, AND SALARY SUPPLEMENTATION

Bribes and Salary Supplementation. As a Federal employee, you may not solicit or receive anything of value for taking action or failing to take action. You also may not accept payment for performing your Government duties from a source other than the United States Government.

Personal Gifts. Generally, you may not accept a gift from a person or entity that has a contract, grant, or other business with the Department of Commerce or that is seeking such business; is regulated by Commerce; or has interests that may be affected by performance of your Government duties. You also generally may not accept a gift that is given to you because of your Government position. Gifts to your spouse or minor children are considered gifts to you in most circumstances.

However, *exceptions* permit you to accept:

- " items of little intrinsic value (cards, plaques, trophies);
- " gifts of \$20 or less (other than cash) (up to \$50 per year);
- " gifts from relatives or friends (if based on a personal relationship);
- " invitations to widely-attended events (if your supervisor approves as being in USPTO's interest and as outweighing any appearance concern);
- " discounts available to a broad range of persons;
- " awards and honorary degrees (in specified circumstances);
- " meals, lodging, transportation, and other benefits based on an outside business or employment relationship;
- " business meals overseas (if a foreign citizen is present) (up to *per diem*); and
- " gifts from a foreign government of \$260 or less. (Gifts of over \$260 may be accepted, but become property of the United States Government.)

Gifts between Employees. In general, you may not offer a gift to a supervisor or accept a gift from a subordinate. However, *exceptions* permit you to accept or give:

- " a gift for a special occasion (such as a wedding, retirement, or birth of a child);
- " items of \$10 or less given occasionally;
- " food shared in the office;
- " personal hospitality at one's home; and
- " a gift to a host or hostess.

Gifts to the Government. With approval, you may accept a gift for official travel (if it was not solicited) or for other USPTO activities, if acceptance would not create appear improper. You may not accept an honorarium or, generally, a gift from a firm with a contract with, or patent or mark application pending before, USPTO.

**OUTSIDE EMPLOYMENT AND
ACTIVITIES
AND
LOBBYING THE GOVERNMENT**

General Rule on Outside Activities. You may not engage in outside employment or any other personal activity that conflicts with your Department position, including employment that requires disqualification from a significant part of your Government duties or an activity that creates an appearance of using your public office for private gain. You must disqualify yourself from participating in a matter as a Department employee which may affect the financial interests of an outside employer or in which an outside employer, or an organization in which you are an active participant, is a party or is representing a party. If you are a non-career senior employee, you are subject to some limits on compensation from non-Federal activities and restrictions regarding some outside professional work or affiliations.

Working for a Foreign Government. You may not accept compensation from any foreign government.

Teaching, Speaking, and Writing. You may teach courses at accredited colleges, universities, and other educational institutions, if such activity will not interfere with the performance of Government duties, but there are restrictions on receiving payments for other teaching, speaking, or writing that relates to official duties.

Lobbying the Government. You may not, in general, in a personal capacity, contact any Federal agency or Federal court on behalf of others to influence Government action. However, *exceptions* permit you to engage in representational activities on behalf of:

- " your parents, spouse, or children, or an estate you administer (with prior approval through the Ethics Division); or, if you receive no compensation,
- " Federal employees in some personnel disputes; or, if you receive no compensation),
- " a professional, recreational, or similar organization if the majority of the organization's members are Federal employees or their spouses or dependents, unless the matter involves claims against the Government, proceedings in which the organization is a party, or Government financial benefits to the organization.

You also may not receive compensation which is based on representational activities before a Federal agency or court, even if the representation was by someone else, such as a member of a firm with which you work as an outside activity.

POLITICAL ACTIVITIES

Participating in Political Activities. The rules on political activities are intended to allow you to participate actively in the political process without being subject to coercion, and to prevent intermingling of Government and political activities. For most employees, the rules generally permit you to engage in a wide range of partisan political activities during non-duty hours, while strictly prohibiting on-duty political activities.

General Rule. During non-duty hours and when not on Government premises and while not using Government resources, you may:

- " vote and sign political petitions;
- " campaign for or against referendum questions;
- " campaign as a candidate or for a candidate in a *nonpartisan* election;
- " attend a political fund-raiser or rally;
- " belong to a political party or group; and
- " make a contribution to a candidate or party.

In addition, if you are not a career member of the Senior Executive Service (SES), an administrative law judge, or a contract appeals board member, you may also:

- " serve as an officer of a political party organization; and
- " actively campaign on behalf of a candidate in a *partisan* election, such as by:
 - " soliciting votes by telephone,
 - " stuffing envelopes with campaign literature,
 - " serving as a poll watcher for a party,
 - " writing speeches for candidates, or
 - " otherwise actively managing or assisting a campaign (subject to the limitations listed below).

Limitations. You may not:

- " accept or receive political contributions;
- " solicit political contributions or host political fund-raisers;
- " run as a candidate in a partisan election (except as an independent candidate in certain designated areas, including most of the suburbs of Washington, D.C., but not Washington, D.C. itself); or
- " solicit or accept volunteer services from a subordinate.

MISUSE OF GOVERNMENT POSITION AND RESOURCES

Use of Government Resources. You may use Government resources only for authorized Government activities. This includes Government equipment, supplies, and services, and the time of Government personnel. You may not use information you receive in the course of Federal service for personal activities, unless the information is also available to the public.

Use of Government Position. You may not use your Government authority, including business contacts obtained through Government employment, for personal activities. In addition, you may not use your Government title in connection with a non-Government activity.

SEEKING EMPLOYMENT AND POST EMPLOYMENT RESTRICTIONS

Seeking Employment. Once you begin to seek non-Federal employment, you must disqualify yourself from working on any matter as a Government employee in which your prospective employer has a financial interest. Your disqualification must continue until negotiations end through a clear statement by either party or until two months have passed after you have submitted an unsolicited employment proposal (such as a resume) with no response from the prospective employer. Additionally, if you are participating in a procurement over \$100,000, you must notify your supervisor and the Ethics Division of employment contacts to a competing contractor.

Post Employment Restrictions. After you leave Federal service, you may not:

- " lobby any Federal agency or Federal court (i.e., contact a Federal agency or court on behalf of another to influence Government action) on specific-party matters on which you worked;
- " for two years, lobby any Federal agency or Federal court on specific-party matters on which your subordinates worked during your last year of Federal service;
- " for one year, lobby any official of USPTO, if you served as a *career senior employee* (pay equivalent to SES level 5 or higher);
- " for five years, lobby any official of USPTO, if you served as a *non-career senior employee* (pay equivalent to SES level 5 or higher) (or lobby any Commerce official, if you served as a Presidential Appointee);
- " serve as a *foreign agent* of a foreign government or foreign political party, if you served as a *non-career senior official*;
- " for one year, advise or represent foreign governments and foreign political parties, if you served as a *senior employee*;
- " disclose or use certain nonpublic information gained during the course of Federal employment, including information obtained during a trade or treaty negotiation, personal private information, trade secrets or business proprietary information, and national security information; or
- " for one year, accept compensation from the winning contractor of a major procurement (over \$10,000,000), if you served as a procurement official.

Exceptions and Special Post Employment Rules. There are exceptions to some post employment rules regarding testimony under oath, and representing state and local governments, international organizations, educational institutions, health facilities, and environmental research organizations. There are also special rules applicable to attorneys, and to former employees who received buyouts. Contact the Ethics Division for a more detailed summary of these rules.

FINANCIAL DISCLOSURE

Guidelines for Filing a Financial Disclosure Report. If you serve in a position in which you may work on matters which are likely to have a substantial impact on the financial interests of members of the public, you may be designated as being required to file a financial disclosure report. Such reports are due when appointed to such a position and annually thereafter. The information requested on such forms financial investments, liabilities, gifts, non-Federal positions, and arrangements with past and future employers is information relevant to the ethics rules discussed in this handout. Ethics officials review the reports in order to identify potential conflicts of interest and to advise you on means to resolve any problem. For this system to work effectively, you must file your report in a timely manner and you must list all information requested as completely and clearly as possible.

Specific Guidance. When filling out your report, please:

- " sign and date the report;
- " if reporting a mutual fund, identify the specific fund by name;
- " if reporting an IRA or 401(k) plan, identify the specific holdings in the account
- " do not list as a gift payments for Government travel these are gifts to the Government and should be reported on a Form CD 210;
- " do not list a mortgage on a personal residence, unless you receive income from the property; and
- " if listing an investment or position with a closely-held company or a partnership, identify the nature of the business of the company or partnership.

Remember that this information is used to provide advice to you, so the information you include on your report must be specific and complete in order to be useful.

**For further advice on ethics rules or
their application to specific
situations, please call the ETHICS
DIVISION at (202) 482-5384.**

**ETHICS GUIDANCE FOR EMPLOYEES
OF THE
PATENT AND TRADEMARK OFFICE**

Financial Conflicts of Interest

Interests in Patents By statute, USPTO employees are barred from applying for or acquiring a patent or any right or interest in a patent issued by USPTO. This may also preclude you from serving as the member of the board of an organization that holds interests in a patent.

Conflicts of Interests regarding Patent Examiners If you are a patent examiner, you may not participate in the review of any patent if you have a financial interest in a company that may be affected by the issuance or denial of the patent (unless your interest is in publicly-traded stock valued at \$5,000 or less in all affected companies). Because a patent is the grant of exclusive rights to a particular person or company with regard to a device, process, or design, a conflict would be present not only if you hold stock in the patent applicant, but if you hold stock in a company that manufactures similar devices (or markets similar processes or similar designs).

Conflicts of Interest regarding Trademark Examiners If you are a trademark examiner, you may not participate in the review of any mark if you have a financial interest in the registration applicant regarding that mark (unless the interest is in publicly-traded stock valued at \$5,000 or less). A trademark applicant, unlike a patent applicant, is presumed to have a direct interest only in its mark and not in the mark of competitors or others.

Use of Inside Information for Personal Investments As a USPTO employee, you may have access to nonpublic information; it is important that you do not use any such information when making investment decisions and that you do not disclose such information to others.

Appearances of Bias (Non-Financial Conflicts of Interest)

Participation in Professional Organizations If you are an active member of a professional organization, such as a member of a association of attorneys or patent professionals, you will be barred from participating in USPTO on matters in which that organization is a party or is representing a party. If this will interfere with your USPTO duties, you should refrain from such activities or should seek advice from the Ethics Division. If you are serving with an organization, you must be careful not to co-mingle your private and Government activities, such as by speaking at an

organization event in your official capacity or while on Government time. If it is useful for your office to provide input to the organization, you may be permitted to serve as a liaison in an official capacity, but only if you do not also have a role with the organization in a private capacity. You may not serve in an official capacity as an officer or director of a non-Federal organization (unless it is a standards-setting body).

Authorization to Participate in a Matter Involving a Former Employer or Client As noted in the summary of ethics rules, you generally may not participate in a matter if one of the parties is a former employer or client, or if one of the parties is represented by a former employer or client, for a period of one or two years (depending on severance payment arrangements). If it is important for USPTO that you participate in the matter, notwithstanding the potential appearance problems, special authorization to participate is available through the Ethics Division.

Gifts, Bribes, and Salary Supplementation

Widely-attended Events You may be invited to an event, such as a dinner, lunch, or reception, held by a firm or organization with interests in USPTO activities, including law firms with a patent practice, corporations, and associations of inventors. You may attend such an event if: (1) the value of the invitation is less than \$20 (and total gifts you received from the person or firm inviting you will remain less than \$50 for the year), or (2) your supervisor approves your attendance as in the interests of USPTO (in which case you may also bring your spouse if non-Government guests are also allowed to bring their spouses). However, you may not attend such an event if it is primarily entertainment in nature, such as a concert or sports event (unless it is the equivalent of a product demonstration).

Soliciting Gifts for USPTO Programs USPTO may solicit, as well as accept, gifts (other than travel gifts) to support USPTO programs, provided that the gifts do not present an appearance of loss of impartiality with regard to agency programs or employees. This authority has been used in the past to obtain funding in support of conferences and similar events. However, because of the quasi-judicial nature of USPTO's activities, it is particularly important to avoid any appearance problems with regard to gift solicitations. Therefore, before soliciting gifts, you should seek specific guidance from the Ethics Division at (202) 482-5384.

Outside Employment and Activities

Service with Non-Federal Organizations If you serve as an officer or director of an outside organization, such as a professional association, you may not participate as a USPTO employee on any matter that is likely to affect the financial interests of the organization. This may preclude you from serving with organizations that are active in matters before your office. If it would benefit USPTO to have an official

relationship with a private organization, you may be assigned as a liaison to the organization, in which case your service with the organization would be in an official capacity, rather than as an outside activity. However, you may not be assigned to serve in an official capacity as an officer or director of a non-Federal organization (other than a standards-setting body).

Lobbying the Government

Representing Others Before Federal Agencies and Letters of Recommendation

USPTO employees, like all Executive Branch employees, are barred from contacting officials of any Federal agency or Federal court on behalf of someone else to influence Government action. However, USPTO officials may contact other agencies in an official capacity if the communication supports an agency program, including contacting the Immigration and Naturalization Service of the Department of Justice to recommend a residency permit for an individual whose presence in the United States directly supports a USPTO program. However, such contacts may only be made to support an agency program and should be approved by a senior USPTO official.

Misuse of Government Resources

Protection of Information As a USPTO employee, you must be particularly careful to safeguard non-public information to which you have access, including proprietary business information.

Seeking Employment and Post Employment Restrictions

Restrictions regarding Patent Rights After leaving service with USPTO, you will be barred for one year from applying for a patent or acquiring patent rights or interests in a patent (other than by inheritance).

CITATIONS TO APPLICABLE LAW

Financial Conflicts of Interest

18 U.S.C. § 208

~~~~~ 5 C.F.R. §§ 2635.502, 2640.201 - 2640.202

35 U.S.C. § 4

### Appearances of Bias (Non-Financial Conflicts of Interest)

18 U.S.C. §§ 203 and 205

5 C.F.R. §§ 2635.501 - 2635.503

### Gifts, Bribes, and Salary Supplementation

5 U.S.C. §§ 5342 and 5351

15 U.S.C. § 1522

18 U.S.C. §§ 201 and 209

5 C.F.R. §§ 2635.201 - 2635.205, 2635.301 - 2635-304;

41 C.F.R. Part 304-1 and Department Administrative Order 203-9

### Outside Activities, Lobbying the Government, and Political Activities

18 U.S.C. §§ 203 and 205

5 C.F.R. §§ 2635.801 - 2635.809

### Misuse of Government Position and Resources

18 U.S.C. § 641

5 C.F.R. §§ 2635.701 - 2635.705

### Seeking Employment and Post Employment Restrictions

18 U.S.C. § 207; 35 U.S.C. § 4; 41 U.S.C. § 423

Exec. Order No. 12834

5 C.F.R. Parts 2635 and 2637

15 C.F.R. Part 15a

37 C.F.R. Part 10