



U.S. Department of Justice

Executive Office for United States Trustees

Office of the General Counsel

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July 20, 2000

MEMORANDUM

TO: All United States Trustee Program Employees

FROM: Esther I. Estry
Deputy General Counsel

SUBJECT: Participation in Outside Organizations and
Activities

Attached for your information is a copy of a recent memorandum issued by the Deputy Attorney General (DAG) which sets forth the Department's policy on participation in outside organizations and activities, both in an official capacity, and a personal capacity where the activity is related to the work of the employee's component. This memorandum revises and expands the earlier policy articulated in a memorandum issued by then Deputy Attorney General Jamie Gorelick in March 1997, which addressed only bar activities. The principal change from previous policy is to require DAG approval for all employees who are serving in positions with outside organizations as part of their official duties. In addition, those employees currently serving as representatives to outside organizations as part of official duties who do not have written authorization from the DAG to serve in such capacity should seek approval through the Director and the Office of the General Counsel.

Should you have any questions, please give me a call at (202) 307-1399.

Attachment



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

May 19, 2000

MEMORANDUM

TO: All Department of Justice Employees

FROM: Eric H. Holder, Jr.

SUBJECT: Approval for Participation in Outside
Organizations and Activities by Department
of Justice Employees

Department employees are encouraged to participate in outside volunteer and professional activities, including pro bono and bar activities, and I believe we have a large number of employees who are doing so. Employees participating in these activities have raised questions about how to ensure that such work complies with Department rules. The purpose of this memorandum is to reissue and clarify earlier guidance to employees on what is and is not permitted when participating in outside activities so that such activities do not conflict with employees' primary responsibilities to the Department. Although the standards for participation in pro bono activities are the same as for other outside activities, the Department has issued more specific guidance for pro bono legal services and similar volunteer work, which is contained in the Department of Justice Policy Statement on Pro Bono and Volunteer Services.

Outside Activities That Are Not Part of Official Duties:

Most employees participate in outside organizations in their personal capacities as a matter of personal choice, and generally no approval is necessary. They will have made a personal choice to undertake the activity rather than having been assigned to perform the activity by a supervisor as part of their official duties. In these individual capacity cases, the employee will be subject to the following rules:

1. An employee is not required to obtain approval to participate as a member only of an outside organization, including bar associations or other professional associations, or on a committee of such an organization. Advance approval is not required regardless of whether the organization's work is related to the work of the employee's component. However, if the activity will involve service as an officer, director, fiduciary, or employee of the

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organization, and the work of the organization is related to the work of the employee's component, then prior approval must be obtained from the employee's component head. In addition, employees who wish to serve as committee or subcommittee chair for committees with a jurisdiction that overlaps with their component's area of responsibility should contact their supervisor or an ethics official in their component for advice about the possible application of ethics rules to their activities.

2. A component head or Presidential appointee, except for U.S. Attorneys and U.S. Marshals, who wishes to serve as an officer, director, fiduciary, employee, or committee or subcommittee chair with outside organizations that have goals or activities that overlap with those of the Department, should seek prior approval from the Deputy Attorney General (DAG) or the Associate Attorney General depending on who has direct responsibility for their component. U.S. Attorneys and U.S. Marshals should continue to seek approval from the Director, Executive Office for U.S. Attorneys (EOUSA), and the Director, U.S. Marshals Service (USMS), respectively. EOUSA and the USMS will notify the Office of the Deputy Attorney General of all approved requests. Approval is not required for any component head or Presidential appointee to participate as a member or committee member only in an outside organization.
3. Ordinarily, personal activities on behalf of outside organizations should not be conducted at the expense of the Government in terms of time or money. The Department does generally permit a limited use of its resources for outside activities so long as the cost to the Government is negligible. These resources may not be used in a manner that suggests that the Department endorses the activity, nor may they be used for outside activities in a way that interferes with official business. And, employees may not task subordinate staff to assist them in their outside activities. See 5 CFR 2635.705(b). Managers may continue to authorize administrative time for outside activities where there is a benefit to the Department, consistent with the rules applicable to administrative time.

4. The Department does not control or direct employees in outside activities undertaken in an individual capacity. Employees should take care to ensure that their actions and positions taken while participating in these activities are recognized as their own, and not those of the Department.

All employees must be aware of the prohibitions of 18 U.S.C. Section 205, which prohibits executive branch employees from representing an outside organization to any department or agency of the U.S. Government. Organizations whose membership is composed of a majority of federal employees or their family members, are not subject to this prohibition. However, even in the case of these organizations, an employee may not represent the organization if it would conflict with the employee's own duties to the Department.

Service With An Outside Organization That Is Assigned As An Official Duty:

Occasionally, when the work of an outside organization is of great interest to the Department, the DAG may determine that an employee should serve in a position with the organization as part of his official duties. These duties will not differ from other work performed under the direction of an appropriate supervisor and at Department expense. However, this will not be a common occurrence because the Department generally performs its work directly, rather than by participating in outside entities. Participation in an outside organization as part of official duties is subject to the following rules.

1. An employee should seek advance approval from the DAG if the employee desires to serve in a position with an outside organization as part of his official duties by submitting a request through the component's ethics official to the component head, who will forward the request, with a recommendation, to the DAG.^{1/} Such a request will only be granted when the Department has a clear interest in having an employee represent the Department's interest in a particular outside

^{1/} Department of Justice employees who are currently serving as representatives to outside organizations as part of official duties and do not have written authorization from the DAG to serve in such capacity, should follow the same procedure described in paragraph 1 above.

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organization.^{2/} This requirement would not apply to an employee who, as part of her or his official duties, is appearing as a speaker or panelist or participating in a particular event.

2. When employees serve an outside organization as part of their official duties, some Government expense and use of subordinate employees' time is permissible, subject to supervisory discretion. However, in general the Department does not authorize use of Department resources to support the internal administration of an outside organization. The following use of resources may be authorized for employees serving an outside organization as part of their official duties: official time to prepare materials related to the activities; appropriated funds for travel to meetings; and the time of a subordinate in preparing material for meetings and other activities.
3. The views articulated by officials serving in outside organizations as part of official duties must reflect the views of the whole Department, not just that of one office or component. These officials also must recognize when the Department will take no position because the Department has no interest in the matter or on which it will always be inappropriate for the Department to express an official position, such as the internal operation of an organization. Department coordination of official positions is necessary to achieve these results, and therefore officials serving in this capacity should seek guidance from the supervisor assigned by the DAG to coordinate the Department's positions.

If you have further questions about your participation in outside organizations you should consult the ethics official for your component or the Departmental Ethics Office on (202) 514-8196 for general advice.

^{2/} Authorizing a Department official to serve in an outside organization as part of official duties where the outside organization's work is unrelated to the Department's mission and responsibilities would mistakenly convey a Department sanction of the organization's activities.