

## **Guidance Regarding Application of the Federal Post-Employment Conflict of Interest Laws when Providing an Expert Opinion in a Matter Pending Before the Commission**

All former employees and members of the Commission must comply with federal post-employment conflict of interest restrictions, including those found in 18 U.S.C. § 207(a) and in the Commission's procedures under 17 C.F.R. § 200.735-8(b) ("Rule 8(b)").

Section 207(a)(1) permanently bars a former employee or member from appearing before or communicating with a federal agency with the intent to influence it in connection with a particular matter involving specific parties in which that former employee or member personally and substantially participated while an employee or member. A violation of Section 207 can result in a criminal or civil prosecution, imprisonment, and fines up to \$50,000.

A former Commission employee or member who contemplates appearing before the agency must also comply with the Commission's procedures under Rule 8(b). Rule 8(b) requires that a former employee or member, for two years after leaving the Commission, file a statement with the Commission's Ethics Counsel if that individual is employed or retained as the "representative" of any person outside the Government in any matter in which it is contemplated that he or she will appear before or communicate with the Commission or its staff. The "representation" envisioned by Rule 8(b) is not limited to legal representation. The Rule 8(b) statement must be filed within ten days of such retainer or employment or of the time when appearance before, or communication with the Commission or its staff is first contemplated. A sample Rule 8(b) statement is

available [here](#). This advance notice enables the agency to review whether the contemplated appearance or communication would violate Section 207 and to advise the former employee or member.

In 2018, the Commission settled a proceeding under Rule 102(e) of its Rules of Practice by suspending a former employee who prepared an expert opinion that was provided to the Commission in a matter in which the former employee had personally and substantially participated while on the staff. See Release No. 82877 (March 14, 2018). The former employee did not file the statement required by Rule 8(b), providing advance notice to the Commission of his intention to submit the expert opinion. The settlement included a finding that the former employee's failure to file the required statement violated Rule 8(b).

The settlement highlights two key considerations for former employees and members. First, it is a reminder that Section 207(a)(1) applies to expert opinions submitted in connection with a matter pending before the agency. The Office of Government Ethics (OGE), which has responsibility for interpreting Section 207, has noted that a "former employee may not serve as expert witness (except for [the] U.S.) in any party matter in which he or she participated personally and substantially for the Government, if [the] U.S. is [a] party or has [a] direct and substantial interest." OGE Memorandum DO-07-19 (July 12, 2007), Att. at 5. Second, the advance notice requirement of Rule 8(b) also applies because a former employee or member who provides an expert opinion on behalf of a person is a "representative" of that person under the rule. As is the case with 18 U.S.C. § 207, the provisions of Rule 8(b) apply to all former employees and members regardless of the professional capacity (including, but

not limited to, attorneys, accountants or economists) in which they contemplate appearing before or communicating with the Commission on behalf of any person or entity outside the Government. *See* 5 C.F.R. § 2641, Subpart B (prohibitions under Section 207 apply to “former employees” and are not limited to those acting in a particular professional capacity).

**FOR FURTHER INFORMATION CONTACT: Office of the Ethics Counsel, at  
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