POST EMPLOYMENT SEMINAR QUESTIONS

Question One:

Major General Adams of the Army, is finishing his career working in the Office of the Joint Chiefs of Staff. He is approached by the USO for a position as he prepares to retire. Before accepting the position, he signs off on the USO entertainment contract to be held at various defense base venues in the USA. He subsequently accepts the offer to work at the USO and approaches DoD about base access for the event. Can he do this? Is there a 1045 problem?

Question Two:

Rear Admiral Green has left the Navy to work for RKZ, an entity that arranges entertainment events for troops. While Rear Admiral Green did not work directly on entertainment matters, members of his staff did during his last year of service. Rear Admiral Green is sending a letter to the Navy Secretary asking whether the Navy can accommodate this request. Is that a problem? What about 1045?

Question Three:

A former DoD employee prepares a DoD research grant on behalf of his new employer, the University. The application is signed and submitted by another university officer, but it lists the former employee as the principal investigator who will be responsible for the substantive work under the grant. Can his name be used? The grant is submitted to a full time career SES.

Question Four:

A former DoD employee GS- 15 now works for a DoD contractor that produces an operator's manual for a radar device used by DoD. In developing a chapter about the technical features of the device, the former employee asks a DoD official factual questions about the device and its properties. Has he violated 207?

Question Five:

Colonel Tommy has just served on a source selection board that has awarded a 5 year contract at $8 million for the base year with four one year options at $3 million a year to the Kobe Corporation of Japan. Colonel Tommy subsequently is offered a position with Kobe. Any problems.

Answers to Post-Government Employment Seminar Questions

Question One: This scenario raises major Post-Government Employment issues. First, the Major General is an O-8. 18 U.S.C. § 207(c)(iv) applies 207c to all military officers in the pay grade of O-7 or above (it also applies to all civilian SES making base pay of $170,665 or more in 2020). Thus, 207(c) imposes a one year cooling off period for the Major General that prohibits him from representing another before his former agency whether he worked on a particular matter involving specific parties personally and substantially or not. Here, the Major General is dual-hatted, so, he cannot represent another before two parts of the DoD. His former agency is the Army, and since he finished his career at the Joint Chiefs of Staff, his former agency also includes the Joint Chiefs, the Office of the Secretary of Defense (OSD) of which the Joint Chiefs are a part, all combatant commands and DoD field activities. Regardless of any actions he has taken regarding the USO, he could not represent the USO before the Army or before the Joint Chiefs, combatant commands, DoD OSD offices and DoD field activities.

Prior to retiring, the Major General signed a USO entertainment contract. The post Government employment law prohibits Federal personnel from acting or communicating on behalf of another with the intent to influence the Government on a particular matter involving specific parties that he or she worked on personally and substantially. 18 U.S.C. § 207(a) The signing constitutes personal and substantial participation. 5 C.F.R. § 2641.201(h)(5)(ii)(C)(i)(2 and 3). The contract is a particular matter. 5 C.F.R. § 201(h)(5)(ii)(C). So, 18 U.S.C. § 207(a)(1) would impose a lifetime ban prohibiting the Major General from participating in representing the USO before the Government on the USO entertainment contract to be held at various defense base venues in the USA.

Finally, because the Major General signed the contract after being approached by the USO but before he retired, he is subject to the conflict of interest statute at 18 U.S.C. § 208. This statute prohibits him from taking any official action that would have a direct and predictable effect on his financial interest which includes the interest of a prospective future employer. Id. There is no evidence here that he signed a disqualification. Without the disqualification, he could be prosecuted for violating 18 U.S.C. § 208.

As for 1045 of the NDAA for FY 2018, the entertainment contract would be an existing contract. So he may not violate 1045 by working on the contract, he still would violate 207.

Question Two:

This question suggests that Rear Admiral Green has violated 18 U.S.C. § 207 (a)(2), a provision that prohibits him from representing another before the Government on any matter that was

pending under his supervision during his last year of Government service. If he is representing back on the same RKZ contract to entertain troops when writing to the Navy that his subordinates worked on during his last year of service, then he would violate (a)(2). If it was an RKZ contract to entertain veterans at a hospital, it would be a different matter, and he would not be violating (a)(2).

As for 1045 of the NDAA for FY 2018, if it is the RKZ contract to entertain troops that the government wanted, then the contract would be an "existing contract" the exception where the government is looking for help, and no 1045 issue would arise.

Question Three:

Here, no act of communication with the intent to influence the Government has been committed. He is just signing an assurance that he will be responsible as the Principal investigator for the direction and conduct of research. 5 C.F.R. § 2641.201 (e)(2)(iv). So, the former employee now acting as Principal investigator may have their name included in the grant proposal.

Because the grant is not going to a political appointee or an O-7 or above but to an SES, 1045 would not apply.

Question Four:

Limiting questions to facts to be included in the technical manual does not "fit" any of the elements of 207. There is no act or communication with the intent to influence the government. He is just asking for facts about the device and its properties to be used in technical manual. If he would attempt to market a product, that could result in a 207 violation.

Because he is a GS 15, 1045 would not apply

Question Five:

This question raises concerns under the Procurement Integrity Act, 41 U.S.C. § 2101-2107. This statute is the only one of the conflict of interest laws that prohibit Federal personnel from working for an entity for one year if the contract value exceeded $10 Million. The one year runs from the last date of service which could be the date of award or date of selection. All option years are included when calculating the $10 Million value. 48 C.F.R. § 3.104.1, definitions, "$10,000,000".

Here, because the contract would exceed $10 Million, and the employee was on the source selection board, he must obtain a post-Government employment letter from his ethics official consistent with section 847 of the National Defense Authorization Act for Fiscal Year 2008.

Finally, because Colonel Tommy is going to work for a foreign country, it would be wise to inquire as to whether the company is controlled by a foreign government. If so, the Colonel would need advance approval to work for the foreign Government (37 U.S.C. § 908). Otherwise, he could violate the Emoluments Clause of the Constitution (Article 1, Section 9), and have his military retirement pay suspended. 65 Comp. Gen. 382 (1986, affirmed in 1990).

1045 does not apply to a Colonel.