OOD
PM 27-01
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To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: November 20, 2026

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ETHICS AND PROFESSIONALISM CANONS FOR EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ADJUDICATORS

PURPOSE:	To establish uniform ethics and professionalism canons for all EOIR adjudicators
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Ethics and Professionalism Guide for Immigration Judges (Jan. 26, 2011); Ethics and Professionalism Guide for Members of the Board of Immigration Appeals (May 4, 2011)

EOIR previously maintained separate, though nearly identical, Ethics and Professionalism Guides for Immigration Judges and Appellate Immigration Judges; however, it maintained no such Guides for its Administrative Law Judges nor its other adjudicators. This Policy Memorandum (PM) consolidates the prior Guides into one uniform document, removes or corrects outdated, inaccurate, or inapplicable language and references, provides additional context or more useful examples, and clarifies that the principles of ethics and professionalism apply to all EOIR adjudicators, not just Immigration Judges and Appellate Immigration Judges.

I. Introduction

The purpose of the canons in this PM is to restore, preserve, and promote public confidence in the integrity of its adjudicator corps and to restore, preserve, and promote professionalism and ethical behavior among all EOIR adjudicators, characteristics which may have eroded in the recent past. For purposes of this PM, the term "EOIR adjudicators" includes Immigration Judges within the Office of the Chief Immigration Judge (OCIJ), Appellate Immigration Judges within the Board of Immigration Appeals (BIA), and Administrative Law Judges (ALJs) within the Office of the Chief Administrative Hearing Officer (OCAHO). The term also includes all supervisory, management, intermittent, or temporary positions in each category, as well as the Chief Administrative Hearing Officer, the Assistant Director for Policy, and the EOIR Director when they are exercising their adjudicatory functions under 28 C.F.R. Part 68 or 8 C.F.R. Part 1292, including any individual serving in an acting capacity or performing the duties of those

positions.[1]

This PM supersedes and cancels the Ethics and Professionalism Guide for Immigration Judges of Jan. 26, 2011, and the Ethics and Professionalism Guide for Members of the Board of Immigration Appeals of May 4, 2011.[2] However, the provisions in this PM do not supersede other applicable personnel or disciplinary rules, management policies, or other EOIR, Department of Justice (DOJ), and/or United States Government policies. Similarly, this PM does not modify the applicability or scope of the provisions of the Standards of Ethical Conduct for Executive Branch Employees or the rules or code(s) of professional responsibility applicable to an adjudicator. Adjudicators are required to comply with the standards of conduct applicable to all attorneys in the DOJ, including the Standards of Ethical Conduct for Employees of the Executive Branch, codified in Title 5 Part 2635 of the Code of Federal Regulations, and the Department's supplemental regulations at 5 C.F.R. Part 3801 and 28 C.F.R. Part 45.[3] Violations of any of these canons, regulations, or policies, particularly those related to impartiality and neutrality, may subject adjudicators to corrective or disciplinary action.

II. Impartiality (5 C.F.R. § 2635.101(b)(8))

Adjudicators shall act impartially and not give preferential treatment to any private organization or individual. 5 C.F.R. § 2635.101(b)(8). *See also* PM 25-02, *EOIR's Core Policy Values* (Jan. 27, 2025); PM 25-33, *Neutrality and Impartiality in Immigration Court Proceedings* (Jun. 27, 2025); PM 25-42, *Adjudicator Independence and Impartiality* (Aug. 22, 2025).

> *Note: Adjudicators must treat all parties before them impartially, regardless of any personal preferences or feelings toward any particular party. However, adjudicators may, but are not required to, "provide procedural and scheduling courtesies to pro bono representatives over other representatives when appropriate" without violating this regulation. See PM 21-08, Pro Bono Legal Services (Dec. 10, 2020) (noting that "although Immigration Judges may provide procedural and scheduling courtesies to pro bono representatives over other representatives when appropriate, Immigration Judges nevertheless remain obligated to be impartial in their consideration of the merits of cases before them").*

III. Professional Competence

An adjudicator shall be faithful to the law and maintain professional competence in it. *See generally* PM 25-02, *EOIR's Core Policy Values* (Jan. 27, 2025); PM 25-42, *Adjudicator Independence and Impartiality* (Aug. 22, 2025).

> *Note: To "maintain professional competence," adjudicators shall remain knowledgeable about relevant immigration law and policy, be skillful in applying the law to the cases before them, and undertake the preparation reasonably*

[1] EOIR recognizes that officers are legally distinct from employees. Although EOIR has both types of positions, all of its adjudicators are inferior officers. Nevertheless, for purposes of this PM, the term "employee" may be used in its generic, non-legal sense to refer to an EOIR adjudicator.

[2] Any references to those Guides in other materials should now be read as references to this PM.

[3] Adjudicators who have questions about the application of Title 5 Part 2635 or DOJ's supplemental agency regulations are encouraged to seek advice from an agency ethics official. *See* 5 C.F.R. § 2635.101(b)(8).

necessary to perform their adjudicatory responsibilities. *Above all, adjudicators shall follow the law, including binding precedent, even when they personally disagree with it.*

IV. Acting in a Neutral and Detached Manner

An adjudicator shall act in a neutral and detached manner and shall not be swayed by partisan interests, public discourse or clamor, or other considerations unrelated to the law and facts of the case. An adjudicator shall decide each case solely on the evidence and applicable law. *See* PM 25-02, *EOIR's Core Policy Values* (Jan. 27, 2025); PM 25-33, *Neutrality and Impartiality in Immigration Court Proceedings* (Jun. 27, 2025); PM 25-42, *Adjudicator Independence and Impartiality* (Aug. 22, 2025).

Note: Partisan pressure from Congress or public clamor stoked by stakeholders through sympathetic media outlets are not appropriate bases for an adjudicator to decide a case on.

V. Appearance of Impropriety (5 C.F.R. § 2635.101(b)(14))

An adjudicator shall endeavor to avoid any actions that, in the judgment of a reasonable person with knowledge of the relevant facts, would create the appearance that the adjudicator is violating the law or applicable ethical standards, including demonstrations of bias or a lack of impartiality. *See generally* PM 25-42*, Adjudicator Independence and Impartiality* (Aug. 22, 2025).

VI. Acting with Judicial Temperament and Professionalism

An adjudicator shall be patient, dignified, courteous, and professional in the performance of official duties and should treat litigants, witnesses, representatives, court personnel, and others with whom the adjudicator interacts in an official capacity with respect. An adjudicator shall conduct proceedings in a fair and impartial manner, maintain appropriate courtroom decorum and control, and avoid any words or conduct that manifest improper bias or prejudice or a lack of neutrality or impartiality.

Note: Adjudicators shall conduct proceedings in a manner that promotes confidence in the integrity, impartiality, and professionalism of all EOIR adjudications and shall avoid unprofessional, biased, or hostile behavior. Conduct that may reflect inappropriate temperament includes, but is not limited to, yelling or screaming; any threatening, intimidating, or hostile acts or physical violations of personal space; comments that may be reasonably viewed as "bullying"; ad hominem attacks; epithets; slurs; demeaning nicknames; stereotyping of any kind; and irrelevant references to personal characteristics.

An adjudicator has the authority to regulate the course of proceedings. See 8 C.F.R. §§ 1003.1(d), 1003.10(b), 1240.1(c), 1240.9; 28 C.F.R. §§ 68.23, 68.28, 68.35-37. Nothing in this PM purports to limit that authority. Adjudicators may be firm and decisive when reasonably necessary to maintain courtroom control, provided that they continue to conduct proceedings with appropriate judicial

temperament and professionalism.

VII. Membership in Organizations

An adjudicator shall not hold membership in any organization that engages in unlawful activity, including, for example, the provision of material support to terrorists or discrimination on the basis of race, sex, religion, national origin, or disability in violation of federal law. Moreover, adjudicators should be aware that membership in or association with an organization that is or is perceived to be engaged in conduct which is discriminatory in violation of federal law may give rise to questions regarding the adjudicator's impartiality or the appearance thereof, and undermine public confidence in the integrity of EOIR's adjudicators.

Adjudicators must consider whether membership in any particular organization raises any questions about their impartiality. This inquiry can be complex, and often cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect a purely private organization whose membership limitations could not be constitutionally prohibited. *See N.Y. State Club Ass'n Inc. v. City of N.Y.*, 487 U.S. 1 (1988); *Bd. of Dirs. of Rotary Int'lv. Rotary Club of Duarte*, 481 U.S. 537 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus, the mere absence of diverse membership does not by itself demonstrate discrimination unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of discrimination.

> *Note: Some adjudicators have advanced a First Amendment argument which, if accepted, would suggest they have a right to belong to any organization they choose even if that organization engages in unlawful activity such as discrimination. Although First Amendment arguments are beyond the scope of this PM, EOIR continues to believe that its adjudicators should refrain from being associated with organizations perceived as biased or discriminatory in order to maintain public confidence in the integrity and impartiality of its adjudicators.*

VIII. Impartiality in Performing Official Duties (5 C.F.R. §§ 2635.501 to 2635.503)

An adjudicator shall not participate, without authorization, in a particular matter involving specific parties which the adjudicator knows is likely to have a direct and predictable effect on the financial interest of members of the adjudicator's household. Nor shall an adjudicator participate, without authorization, in a particular matter in which the adjudicator knows that a person with whom the adjudicator has a covered relationship is or represents a party to the matter.

An adjudicator has a covered relationship with:

(a) a person with whom the adjudicator has or seeks a business, contractual, or other

financial relationship that involves other than a routine consumer transaction;
(b) a person who is a member of the adjudicator's household, or a relative with whom the adjudicator has a close relationship;
(c) a present or prospective employer of a spouse, parent, or child; or
(d) an organization which the adjudicator now serves, or has served, as an employee or in another capacity, within the past year.

An adjudicator is prohibited from adjudicating cases in which he or she has participated personally and substantially prior to becoming an adjudicator. An adjudicator may not adjudicate a case if he or she has personal knowledge of the disputed facts or previously participated in the case as a representative, counselor, or advisor. An appellate adjudicator should not adjudicate any appeal in which he or she previously presided over the case at the trial level. A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of the above provision.

If a conflict of interest exists, in order for the adjudicator to participate in the matter, the EOIR Director or his or her designee must make a determination that the interests of the Government in the adjudicator's participation outweigh the concern that a reasonable person may question the integrity of the Department's programs and operations. The determination must be made in writing.

If a conflict of interest exists, and the adjudicator has obtained a determination from the EOIR Director or his or her designee that the adjudicator may continue to participate in the matter, the conflict must be disclosed to the parties, either orally on the record or in writing. If an adjudicator disqualifies himself or herself from an assigned case, he or she shall document the recusal in writing or orally on the record before the parties and otherwise follow all procedures delineated in relevant regulations and policies. *See* 8 C.F.R. §§ 1240.41(b), 1246.4; 28 C.F.R. § 68.30; Policy Manual, Part III, Ch. 1.3(c), Part IV, Ch. 8.3; OPPM 05-02, *Procedures for Issuing Recusal Orders in Immigration Proceedings* (Mar. 21, 2005), or any superseding EOIR policy.

IX. Use of Public Office for Private Gain (5 C.F.R. § 2635.702)

Adjudicators shall not use their public office for their own private gain; for the endorsement of any product, service, or enterprise (except as otherwise permitted by law); or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. An adjudicator's position or title should not be used to coerce, to threaten, or to give the appearance of government sanction or favor. Adjudicators, particularly adjudicators who are judges, should be mindful of the authority their positions and titles convey to the public and should be accordingly mindful of whether their involvement in a matter due to their position or title gives an improper imprimatur of endorsement or sanction. Regarding a request for a letter of reference or recommendation, an adjudicator may only use his or her official title and stationery for someone he or she has dealt with in the course of federal employment or someone he or she is recommending for federal employment.

X. Use of Nonpublic Information (5 C.F.R. § 2635.703)

An adjudicator shall not engage in financial transactions using nonpublic information, nor allow the use of such information to further his or her private interests or those of another, whether through advice or recommendation, or by knowing unauthorized disclosure. Nonpublic information is information an adjudicator gains by reason of federal employment that he or she knows or reasonably should know has not been made available to the general public and is not authorized to be made available upon request.

> *Note: Adjudicators should also be aware of the many privacy and confidentiality laws which restrict the disclosure of information and are applicable to information regarding EOIR proceedings. Disclosure of information under those provisions may subject adjudicators to corrective or disciplinary action and, in certain cases, may lead to criminal prosecution.*

XI. Use of Government Property (5 C.F.R. § 2635.704)

An adjudicator has a duty to protect and conserve government property and shall use government property only for authorized purposes.

> *Note: The use of any government property for any partisan political activities is always prohibited. DOJ employees are generally authorized to make minimal personal use of most office equipment and library facilities where the cost to the Government is negligible and on an employee's own time. 28 C.F.R. § 45.4. This is DOJ's de minimis use policy, and would permit an employee to send a short, personal electronic message to another individual. However, personal messages sent to large groups of people and messages sent to disseminate information on non-governmental activities are prohibited.*

XII. Use of Official Time (5 C.F.R. § 2635.705)

An adjudicator shall use official time in an honest effort to perform official duties. Generally, personal activities should not be conducted during official time. An adjudicator may not use the official time of another employee for anything other than official business.

XIII. Conflicting Financial Interest (5 C.F.R. §§ 2635.401 to 2635.403)

An adjudicator is prohibited from participating in any matter in which he or she has a financial interest. In addition to an adjudicator's own financial interest, certain interests are considered his or hers (*i.e.*, "imputed" to him or her), including those of a spouse, minor child, general partner, or an organization for which the adjudicator serves as an officer, director, trustee, general partner, or employee. However, an adjudicator may participate in such a matter if he or she is granted a waiver. Adjudicators should contact the Ethics team at EOIR's Office of the General Counsel about possible financial conflicts of interest.

If an adjudicator has a financial conflict of interest, remedies include disqualification, divestiture, or a waiver of the disqualification under 18 U.S.C. § 208. Before divesting, however, he or she

should determine whether he or she is eligible for a Certificate of Divestiture from the Office of Government Ethics, which would allow him or her to defer paying capital gains tax on the sale of the asset. 5 C.F.R. §§ 2634.1001-1004. A waiver may be granted if the financial interest is found to be not so substantial as to affect the integrity of the adjudicator's services.

> *Note: Adjudicators employed by EOIR are required to file financial disclosure reports annually, pursuant to statute. Adjudicators at level IJ-1 or equivalent are required to file confidential financial disclosure reports, while adjudicators at levels IJ-2 and above, including all Administrative Law Judges and Senior Executive Service (SES) adjudicators, are required to file public financial disclosure reports. Financial disclosure reports are used to identify potential or actual conflicts of interest. If the ethics official charged with reviewing an adjudicator's report finds a conflict, the ethics official should, upon consultation with the adjudicator's supervisor, recommend an appropriate remedy. In order to comply with the applicable law and regulations regarding financial reporting and disqualification, adjudicators must inform themselves about their personal financial interests, as well as the personal financial interests of spouses, minor children, and any other imputed party.*
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> *EOIR recognizes that these reports are cumbersome, labor-intensive, and largely irrelevant for many adjudicators such as Immigration Judges because of the lack of any plausible financial interests in removal proceedings. Nevertheless, timely completion of the reports is required by law, and adjudicators who fail to timely comply may face penalties and/or disciplinary action.*

XIV. Outside Employment and Activities (5 C.F.R. §§ 2635.801 to 2635.803; 5 C.F.R. § 3801.106)

An adjudicator shall not engage in any outside employment or other outside activity that conflicts with his or her official duties.

An adjudicator shall not engage in any outside employment without prior approval. Outside employment and activities is defined in 5 C.F.R. 3801.106 as any form of employment, business relationship, or activity involving the provision of personal services, whether or not for compensation. It includes, but is not limited to, services as a lawyer (practice of law), officer, director, trustee, employee, agent, consultant, contractor or general partner. All requests for approval of outside employment and activities should be made through EOIR's Office of the General Counsel prior to engaging in the outside employment.

The following outside employment and activities are always prohibited, unless such prohibition is waived in writing, by the Deputy Attorney General or designee: (1) the practice of law unless it is uncompensated and in the nature of community service, or it is on behalf of the adjudicator himself or herself, or on behalf of the adjudicator's parents, spouse, or minor children; [4] (2) any criminal or habeas corpus matter, be it federal, state, or local; or (3) litigation, investigations,

[4] Note that prior approval of the outside employment activity is still required even if it is uncompensated, for self-representation, or for the adjudicator's parent, spouse, or minor children.

grants, or other matters in which DOJ is or represents a party, witness, litigant, investigator, or grant-maker. All requests for a waiver seeking approval of outside employment that is prohibited under the regulations should be made through EOIR's Office of the General Counsel prior to engaging in the outside employment or activity.

Adjudicators should regularly reexamine their activities and the organizations with which they are affiliated to ensure that they do not lead to the perception of bias or partiality on the part of an adjudicator. *See also* Canons V, VII, VIII, *supra*.

II. Teaching, Speaking, and Writing (5 C.F.R. § 2635.807)

Teaching, speaking, and writing that is not assigned as an adjudicator's official duty is generally considered to be an outside employment or activity. All requests for approval of outside employment and activities should be made through EOIR's Office of the General Counsel prior to engaging in the outside employment or activity.

Generally, an adjudicator may not be compensated in any way for speaking or writing about a subject matter that relates to his or her official duties. A subject matter relates to an adjudicator's official duties if it deals in significant part with a matter to which the adjudicator is presently assigned or has been assigned in the last year; any ongoing or announced policy, program, or operation of the Department; or, in the case of a non-career employee, the general subject matter primarily affected by the programs and operations of the Department. 5 C.F.R. § 2635.807. Under 5 C.F.R § 3801.103, an adjudicator would only be prohibited from receiving compensation for speaking or writing on a subject matter related to EOIR's policies, programs, or operations, not the entire Department's. An adjudicator may receive compensation for teaching, even if the course relates to an adjudicator's official duties, if the course requires multiple presentations and is offered as part of the regularly established curriculum of an institution of higher education; an elementary or secondary school; or a program sponsored and funded by the Federal Government or by a state or local government, which is not offered by an entity described above.

An adjudicator that is approved to engage in teaching, speaking, or writing as an outside employment or activity may not use or permit the use of their official title or position to identify themselves in connection with a teaching, speaking, or writing activity, or to promote any book, seminar, course, program, or similar undertaking, except that adjudicators may allow: (1) their title or position to be included in biographical details when such information is given no more prominence than other significant biographical details; (2) if included, the information includes a reasonably prominent disclaimer that the views expressed in the article do not necessarily represent the views of the agency or the United States. An adjudicator may not use government resources, including nonpublic information, materials, and official time (theirs or that of another employee), to prepare materials.

> *Note: In considering teaching, speaking, or writing activities, adjudicators should always be mindful of the potential for an appearance of bias, impropriety, lack of partiality, or a conflict of interest, as well as whether the activity gives preferential treatment, including access, to a private organization.*

III. Service as an Expert Witness (5 C.F.R. § 2635.805)

Adjudicators may not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency. Requests for such authorization should be made through EOIR's Office of the General Counsel.[5]

IV. Representation before Federal Agencies (18 U.S.C. §§ 203, 205; 5 C.F.R. § 2635.801)

Subject to limited exceptions for close family members or an estate, an adjudicator may not represent anyone before a federal agency or official, or any court, with or without compensation, on a matter in which the United States is a party or has a substantial interest. This prohibition applies whether the adjudicator renders the representation personally or shares in compensation from someone else's representation. 18 U.S.C. §§ 203 and 205.

If you have a question as to whether a proposed activity would constitute the practice of law or if there is an applicable exception to this statutory prohibition, please consult with the Office of the General Counsel. Ethics guidance is fact-specific and guidance can vary depending on your specific circumstances.

V. Practice of Law (5 C.F.R. §3801.106)

The private practice of law, whether or not for compensation, is considered outside employment (as defined in 5 C.F.R. 3801.106) and, with limited exceptions, is prohibited for DOJ personnel. Adjudicators must receive prior approval to engage in any practice of law. If you have a question as to whether a proposed activity would constitute the practice of law or if there is an applicable exception to the prohibition on the practice of law, please consult with the Office of the General Counsel. Ethics guidance is fact-specific and guidance can vary depending on your specific circumstances.

> *Note: Nothing in this canon precludes an adjudicator from engaging in the practice of law as a function of military service obligations (e.g., service as a reservist or in the National Gard).*

VI. Fundraising (5 C.F.R. § 2635.808)

Fundraising is defined as raising of money for a nonprofit organization, other than a political organization, through the solicitation of funds or items, or participation in an event where attendance costs may be tax-deductible. The only authorized fundraising that may occur on government property is on behalf of the Combined Federal Campaign, in accordance with

[5] EOIR is aware that prohibitions on public employees serving as expert witnesses on behalf of parties adverse to their employer have recently faced scrutiny on First Amendment grounds; however, such concerns are beyond the scope of this PM.

regulations found at 5 C.F.R. Part 950. No other fundraising by EOIR employees is permitted unless expressly authorized.

In a personal capacity, an adjudicator may engage in fundraising on their own personal time and away from federal premises. In addition, adjudicators may not solicit from subordinates or prohibited sources, may not use or permit the use of his or her official title, position, or authority, and may not take any action that otherwise violates, or appears to violate, the federal ethics rules.

VII. Just Financial Obligations (5 C.F.R. § 2635.809)

An adjudicator shall satisfy in good faith his or her obligations as a citizen, including all just financial obligations imposed by law, especially those such as federal, state, or local taxes, and child support payments.

VIII. Purchase of Forfeited Property (5 C.F.R. § 3801.104)

Without prior written approval, an adjudicator may not purchase, directly or indirectly, or use property that has been forfeited to the Government and offered for sale by the Department of Justice or its agents. Similarly, no adjudicator may use property forfeited to the United States that has been purchased, directly or indirectly, from the Department of Justice or its agents by the adjudicator's spouse or minor child.

IX. Gifts

An employee may not, directly or indirectly, solicit or accept a gift from a "prohibited source" or that which is "given because of the employee's official position," unless the item is excluded from the definition of gift (5 C.F.R. § 2635.203) or falls within one of the applicable exceptions (5 C.F.R. § 2635.204). Even though acceptance of a gift may be permissible, it is never inappropriate and frequently prudent for an adjudicator to decline a gift if acceptance would cause a reasonable person to question the employee's integrity or impartiality.

A "gift" is any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings, and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. The term excludes the following:

(a) Modest items of food and non-alcoholic refreshments;
(b) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended primarily for presentation;
(c) Opportunities, discounts, and benefits that are available to the public, or to all government employees;
(d) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a current or former employer;
(e) Under certain circumstances, anything which is paid for by the Government or secured by the Government under Government contract (gift is offered to and accepted by Agency, not the employee);
(f) Under certain circumstances, free attendance to an event where the employee is assigned to present information on behalf of the agency (gift is offered to and accepted

by Agency, not the employee);
(g) Any gift accepted by the Government under specific statutory authority (gift is offered to and accepted by Agency, not the employee); and
(h) Under certain circumstances, anything for which full "market value" (as defined) is paid by the employee.

A "prohibited source" means any person or entity who:
(a) is seeking official action by EOIR (e.g., individuals coming before EOIR's adjudicators);
(b) does business or seeks to do business with EOIR (e.g., contractor employees and their contractor companies);
(c) conducts activities regulated by EOIR (e.g., individuals or entities seeking to practice before EOIR);
(d) has interests that may be substantially affected by the performance or nonperformance of the adjudicator's official duties (e.g., law firms representing individuals coming before EOIR); or
(e) is an organization a majority of whose members are described above (e.g. most immigration advocacy or immigration legal service organizations).

A gift is "given because of the employee's official position" if the gift is from a person other than another federal employee and would not have been given had the adjudicator not held the status, authority, or duties associated with his or her position as a federal employee or adjudicator.

If you have a question as to whether an unsolicited offer would constitute a gift and would fall under an applicable exception to the prohibitions on accepting such gift, please consult with the Office of the General Counsel. Ethics guidance is fact-specific and guidance can vary depending on your specific circumstances.

X. Gifts that may be Permissible to Accept (5 C.F.R. §§ 2635.204)

The following are possible exceptions to the general prohibition on the acceptance of gifts from prohibited sources or which are given because of the adjudicator's official position that may arise in the course of an adjudicator's employment with EOIR.[6] In accepting any gift, however, an adjudicator must be cognizant that he or she may not accept gifts on a basis so frequent that a reasonable person would be led to believe the employee is using his or her public office for private gain, question the employee's integrity or impartiality, or otherwise raise the appearance the adjudicator is violating federal ethics regulations.

(a) Gifts with market value of $20 or less, per source, per occasion. Gifts received from any one person or entity (prohibited source) may not exceed $50 per calendar year.
(b) Gifts based on a personal relationship. Relevant factors include the history and nature of the relationship and that the individual (not their prohibited source employer) personally paid for the gift.
(c) Discounts and similar benefits which are offered to all qualified government employees, or are not related to government employment.

[6] The solicitation of gifts is always prohibited without express prior approval from the Attorney General or Deputy Attorney General.

(d) Bona fide awards and honorary degrees. Only under specific circumstances.
(e) Gifts based on outside employment or activity relationships. Only under specific circumstances and subject to other ethics provisions.
(f) Gifts based on prior or prospective non-government employment. Only under specific circumstances and subject to other ethics provisions.
(g) Free attendance at widely attended gatherings. Requires a written authorization by EOIR designee that finds EOIR's interest in the employee's attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of his or her official duties.
(h) Social invitations from an individual (not an entity) who is not a prohibited source and there is no fee for anyone to attend the event.
(i) Non-federal source travel under 5 U.S.C. § 4111.
(j) Gifts acceptable under DOJ's statutory authority.
(k) Gifts of informational materials which do not exceed a market value of $100 in a calendar year.

If you have a question as to whether it would be permissible under the federal ethics regulations to accept a gift offered by a prohibited source or given because of your official position, please consult with the Office of the General Counsel. Ethics guidance is fact-specific and guidance can vary depending on your specific circumstances.

XI. Gifts between Employees (5 C.F.R. §§ 2635.301 to 2635.304)

Unless the item being gift is excluded from the definition of gift or there is an applicable exception, adjudicators may not, directly or indirectly, give a gift, or make or solicit for a contribution toward a gift to an official supervisor, and the official supervisor is prohibited from knowingly accepting such a gift. In addition, adjudicators are prohibited from accepting a gift from an employee receiving less pay.

Possible exceptions to these prohibitions are as follows:

(a) On an occasional basis, including occasions on which gifts are traditionally given or exchanged, adjudicators may offer and accept:
- an item with a market value of $10 or less;
- food and refreshments to be shared among several employees;
- personal hospitality provided at a residence; and/or
- host gift.

(b) Special, infrequent occasions, including marriage, illness, or the birth of a child, or an occasion that terminates the supervisor/subordinate relationship such as retirement or transfer, an adjudicator may offer and accept gifts valued in an amount that is appropriate to the occasion.

(c) Solicitation of voluntary contributions of nominal amounts from fellow adjudicators (not subordinates) is permissible for gifts marking special, infrequent occasions or for food and refreshments to be shared in the office. The official superior may contribute, accept, and partake in such gifts.

XII. Proper Disposition of Prohibited Gifts (5 C.F.R. § 2635.206)

An adjudicator who has received a gift that cannot be accepted as per federal ethics regulations must properly dispose of the gift in accordance with 5 C.F.R. § 2635.206. Employees who, on their own initiative, promptly consult their agency ethics official to determine whether acceptance of an unsolicited gift is proper and who return the gift or otherwise properly dispose of the gift, will be considered to have complied with the regulatory requirements.

Improperly accepted gifts to an adjudicator will be considered for acceptance by the Agency pursuant to its statutory authority. The Assistant Attorney General for Administration retains the exclusive authority to accept gifts for EOIR. If the gift cannot be accepted by the Agency, the employee must dispose of the gift as follows:

Gifts of tangible items must be returned to the donor or the employee must pay the donor the full market value of the item. Alternatively, if the item has a market value of less than $100, it may be destroyed.

Gifts of perishable items may be, at the discretion of the agency's designee, given to an appropriate charity, shared within the office, or destroyed.

Gifts of intangibles (e.g., tickets to a performance) must be promptly reimbursed to the donor at full market value.

XIII. Frequent Flyer Miles and Airline "Compensation" (41 C.F.R. § 301)

Some airlines encourage those purchasing tickets to join frequent flyer programs that award free flights and other benefits to frequent flyers. Pursuant to 41 C.F.R. § 301-53.1, adjudicators may keep and use for their personal benefit frequent flyer miles accrued incident to government official travel, if such items are obtained under the same conditions as those offered to the general public and at no additional cost to the Government. If an employee is offered such benefits in connection with planning an official conference or other group travel, they are considered property of the Government and cannot be retained for personal use, but may be accepted on behalf of the Government for use on official travel.

Similarly, pursuant to 41 C.F.R. § 301-10.123, adjudicators may retain any compensation (e.g., roundtrip airline ticket) an airline gives if they voluntarily surrender their reserved seat on a flight, and if: 1) voluntarily vacating the seat does not interfere with the adjudicator's performance of duties; 2) the adjudicator bears, and is not reimbursed for, any additional travel expenses incurred as a result of vacating the seat; and 3) the adjudicator is charged leave if taking a later flight incurs additional duty time in a travel status. If the airline involuntarily denies boarding to an adjudicator, the adjudicator must give EOIR any liquidated damages an airline gives to him or her. 41 C.F.R. §§ 310-10.122-123.

> *Note: The same principles apply to points accumulated through other travel loyalty programs such as those operated by hotels or rental car agencies.*

XIV. Seeking and Negotiating Other Employment (5 C.F.R. §§ 2635.601 to 2635.606)

An adjudicator who is seeking to transfer to another position in the federal government must take care that they are not taking actions which raise questions as to their impartiality, particularly if the new agency engages with the adjudicator in the performance of their EOIR duties. Similarly, an adjudicator who is seeking employment at a law firm or legal services organization must take care that they are not taking actions which raise questions as to their impartiality, particularly if the form or organization engages with the adjudicator in the performance of their EOIR duties. Adjudicators facing either situation should notify their supervisor and the Ethics team at the Office of the General Counsel. Adjudicators are prohibited from adjudicating cases in which their prospective new employer is a party to the case.

An adjudicator who is seeking to leave federal service has further, significant requirements. He or she shall not take official action on a matter that can affect the financial interest of a person or organization with which he or she is negotiating with or has an arrangement for future employment. The remedy is disqualification or recusal. Depending on the circumstances, failure to properly recuse is a criminal violation. 18 U.S.C. § 208. Public financial disclosure filers are also required to file a STOCK Act[7] notification within 3 days of beginning negotiations for non-federal employment. If they are leaving federal service, they are also required to file a termination report for their OGE-278 financial disclosure report.

An adjudicator starts "seeking" employment when he or she, directly or through an intermediary (e.g., headhunter):

(a) Sends a resume, application, or makes an inquiry to a prospective employer; or
(b) Provides a response (other than a clear declination) to a prospective employer's unsolicited communication.

Negotiations are considered to begin when discussions or communications are "mutually conducted with a view toward reaching an agreement toward possible employment." Depending on the circumstances, an interview could be considered to be negotiations.

An adjudicator's "seeking" status remains until the employee or the prospective employer have rejected the possibility of employment, or at least two months have elapsed since the adjudicator's inquiry to the prospective employer without a response.

Adjudicators seeking to leave federal service are encouraged to consult with the Ethics team at the Office of the General Counsel as to their ethics requirements.

XXVII. Post-Employment Restrictions (18 U.S.C. § 207 and 5 C.F.R. Part 2641)

The criminal statute found at 18 U.S.C. 207 applies to all employees after they leave federal government employment. In general, it does not prohibit adjudicators from working for any particular employer; it may, however, limit the type of work you can perform for your new employer for certain periods of time. Specifically, the law restricts the types of appearances or

[7] The Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105, 126 Stat. 291 (2012).

communications you can make back to the Government on behalf of your new employer, whether or not done for compensation.

The restrictions that apply depend on what you worked on and what you were responsible for while you were employed by the federal government and where there is an intent to influence the agency's official action.

(1) **Lifetime Ban** – Former federal employees are prohibited from appearing or communicating, on behalf of another, with any Government employee on a particular matter (e.g., grants, contracts, litigation, investigations, etc.) in which he or she participated personally and substantially. Note the expansive language as it applies to the entirety of the employee's federal career.

(2) **Two-Year Ban** – Former federal employees are prohibited from appearing or communicating, on behalf of another, with any Government employee on a particular matter (e.g., grants, contracts, litigation, investigations, etc.) which was pending under his or her responsibility during the adjudicator's last year of Government service.

(3) **Senior Employees' 1-Year Cooling Off Period** – An employee who is designated as a "senior employee" has additional restrictions. A senior employee designation includes Executive Level officials and employees who are paid at certain levels. Employees should contact the Ethics team at the Office of the General Counsel to determine whether they meet the qualification for senior employee. During the 1-Year Cooling Off Period, former senior employees are prohibited from appearing before, or communicating with, the agency in which they served during the last year of their government service with the intent to influence.

Employees who are seeking to leave federal service are encouraged to consult with the Ethics team at the Office of the General Counsel about their ethics requirements in seeking non-federal employment as well as post-employment restrictions. Moreover, the Ethics team at the Office of the General Counsel can continue to provide ethics guidance related to your employment with EOIR after you leave federal service.

XXVIII. Political Activities (5 U.S.C. §§ 7321-7326; 5 C.F.R. Parts 733 & 734)

Adjudicators shall not engage in political activity, i.e., activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group, while the employee is on duty, in any federal room or building, while wearing a uniform or official insignia, or using government equipment or resources. This restriction is always applicable.

For purposes of the Hatch Act, the following restrictions apply to all employees:

(1) EOIR employees may not engage in political activity while on official time, including remote or telework, or while using government equipment or resources (e.g., government vehicle, laptop, phone, email). Political activity includes activity or engagement on social media, whether directly or indirectly;

(2) Political activities are not permitted in any government facility. This includes, but is not limited to, displaying political posters or photos, or wearing political buttons;
(3) EOIR employees may not engage in political fundraising, such as soliciting or receiving political contributions. This includes indirect fundraising on social media platforms. EOIR employees may not take action on any social media post (like, dislike, comment, or repost) that includes a donation link or solicitation for donations within that post. This applies while on or off duty and on or off federal premises;
(4) EOIR employees may not use their official authority or influence to interfere with or affect the results of an election;
(5) EOIR employees may not run for partisan office, though some limited exceptions exist. Contact the Ethics team at the Office of the General Counsel before taking action if you are considering running as a candidate in a partisan or nonpartisan election.

Additional Hatch Act guidance depends on whether the adjudicator is a "Less Restricted employee" or "Further Restricted employee." Immigration Judges and Appellate Immigration Judges are considered Less Restricted employees. Administrative Law Judges and all Senior Executive Service adjudicators are considered Further Restricted employees.

Adjudicators who are Less Restricted employees may, in their personal capacities, and only when off-duty and off federal premises:

(1) Volunteer for a political campaign;
(2) Register and vote as they choose;
(3) Circulate and sign nominating petitions;
(4) Attend and speak at political events and rallies (but not fundraise);
(5) Distribute campaign literature;
(6) Join political clubs or parties;
(7) Display campaign signs on their lawns;
(8) Contribute money to political campaigns, political parties, or partisan political groups up to lawful limits;
(9) Put a political bumper sticker on a personal vehicle and park in government garages. They may not, however, use the car on official business. "Campaign cars" are not permitted.

Further Restricted adjudicators may, in their personal capacities, and only when off-duty and off federal premises:

(1) Register and vote as they choose;
(2) Sign nominating petitions;
(3) Attend political events and rallies;
(4) Join political clubs or parties (but not hold office);
(5) Display campaign signs on their lawns;
(6) Contribute money to political campaigns, political parties, or partisan political groups up to lawful limits.

In addition to the prohibited political activities above, Further Restricted adjudicators may **not**:

(1) Take an active part in partisan political campaigns by, for example:

- Campaigning for or against a candidate or slate of candidates
- Making campaign speeches or engaging in other campaign activities to elect partisan candidates
- Distributing campaign material in partisan elections
- Circulating nominating petitions

(2) Take an active part in partisan political management by, for example:

- Holding office in political clubs or parties
- Organizing or managing political rallies or meetings
- Assisting in partisan voter registration drives

(3) Solicit, accept, or receive a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group by, for example:

- Hosting a political fundraiser
- Inviting others to a political fundraiser
- Collecting contributions or selling tickets to political fundraising functions

XXIX. Prohibited *Ex Parte* Communications

An adjudicator should not initiate, permit, or consider *ex parte* communications concerning a pending matter, except as otherwise authorized by law or EOIR policy. An *ex parte* communication is a substantive contact between an adjudicator presiding over a pending proceeding and one party to that proceeding during which the opposing party is not present or included and the substantive contact relates to the subject of the proceeding. A prohibited *ex parte* communication is one that is not authorized by law or EOIR policy.

If an adjudicator inadvertently receives a prohibited unauthorized *ex parte* communication, the adjudicator should take appropriate steps in accordance with any applicable laws or policies. *See*, *e.g.*, 28 C.F.R. § 68.36.

> *Note: An ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is not prohibited, provided that the adjudicator reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication. Filing a complaint against an adjudicator and the subsequent investigatory process do not constitute ex parte communications. Internal discussions solely among EOIR or DOJ employees also do not generally constitute ex parte communications, except in the limited circumstance in which the presiding adjudicator and one party are the employees having the discussion (e.g. if an attorney for the DOJ Immigrant and Employee Rights Section in the Civil Rights Division were to discuss a case under 8 U.S.C. § 1324b with the OCAHO ALJ presiding over that case).*

XXX. Reporting Misconduct (5 C.F.R. § 2635.101(b)(11); 28 C.F.R. § 45.12)

An adjudicator shall disclose waste, fraud, abuse, and corruption to appropriate authorities, such as a supervisor, or to the Office of the Inspector General. Adjudicators, like all Department employees, also have a duty to report allegations of misconduct by Department of Justice

attorneys, as explained by Chapter 1-4.300 Justice Manual (JM). *See also* PM 19-14, *Allegations of Misconduct by EOIR Adjudicators and Ex Parte Communications* (Aug. 16, 2019). In addition, adjudicators have a duty to report allegations of misconduct by non-Department attorneys or judges, as explained by Chapter 1-4.340 of the JM. *See also* PM 19-07, *Identifying and Reporting Fraud and Abuse* (Dec. 19, 2018).

XXXI. Conclusion

This PM is an internal management directive, applicable solely to adjudicators at EOIR. It is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing herein should be construed as mandating a particular outcome in any specific case. Nothing in this PM limits an adjudicator's independent judgment and discretion in adjudicating cases or an adjudicator's authority under applicable law.

Please contact your supervisor if you have any questions.