

# State Bar Oversight of Federal Government/Military Attorneys

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# Disclaimer

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- *Disclaimer: The views in this presentation are those of the author and do not necessarily reflect the official policy or position of the Department of Veterans Affairs (VA), the Department of Defense (DOD), or the United States Government (USG).*



# Sources of Law

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- DOJ OLC Opinion 1985
- McDade Amendment, 28 USC 530B
- State Bar rules
  - To Include Virginia State Bar Rules
- State Bar disciplinary decisions and advisory opinions

# DOJ OLC

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The DOJ committed itself to resisting, "on 'Supremacy Clause grounds,' any disciplinary action against federal prosecutors by state authorities for violation of ethics rules that interfered with 'legitimate federal law enforcement techniques.'"



# McDade-Murtha 1988

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- 28 U.S. Code § 530B - Ethical standards for attorneys for the Government
- An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.

# Can a Virginia Judge also be a JAG Reservist?

## VIRGINIA'S JUDICIAL SYSTEM



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### Commonwealth of Virginia Judicial Ethics Advisory Committee Opinion 03-4

Date Issued: November 21, 2003

Amended: May 21, 2004

**A judge may serve as an officer in the Judge Advocate General's Corps of the reserve components of the Armed Forces of the United States.**

#### ISSUE

Is a judge practicing law within the meaning of Canon 4(G) when serving as an officer in the Judge Advocate General's Corps of the United State Army Reserve?

**Answer:**





# Canon 4(g) Violation?

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- Virginia Canon 4(g)
  - A Judge shall not practice law
- Virginia judge is also an Army JAG Reservist
- “JAG officers provide a full range of general and specialized legal services to the armed forces.... The officer may provide legal services to a commanding officer on matters of military justice, administrative and contract law, and the law of war. The officer may act as a military judge.”

# Yes – not practicing law

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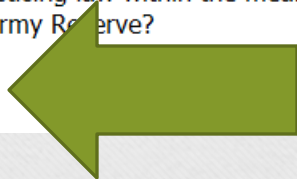
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**Answer:** No.





Legal assistance may “give the impression that the judge is practicing law and could be a violation”

# VIRGINIA'S JUDICIAL SYSTEM

Legal Assistance may give the



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## Commonwealth of Virginia Judicial Ethics Advisory Committee Opinion 03-4

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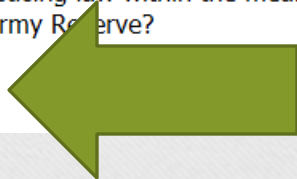
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# Can Government attorney hire a stripper to wear a wire?

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- Defendants who own the Platinum Club have a contested forfeiture action (and a related criminal case)
- Defendants suspected of prostitution and tax evasion
- US Atty in rem action against 8 real estate parcels, 11 automobiles, 2 motorcycles, \$216K in cash
- Gov't hires stripper who previously perjured during Grand Jury to wear a wire
- AUSA involved



# Alabama Rule 4.2

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- **Communication with Person Represented by Counsel.**
- In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

# Motion to Suppress

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- Grant or Deny?



# Oregon

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- The Oregon Supreme Court has held that an attorney violates the honesty rules when he misidentifies himself and his purpose in the course of investigating possible fraud committed against a client,
- In re Gatti, 330 Ore. 517, 8 P.3d 966 (2000).
- In doing so, it refused to recognize a law enforcement exception for either state or federal authorities, 300 Ore. at 530-33, 8 P.3d at 974-76.

# Furlough?

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- Is this a conflict?





# Furloughed Feds

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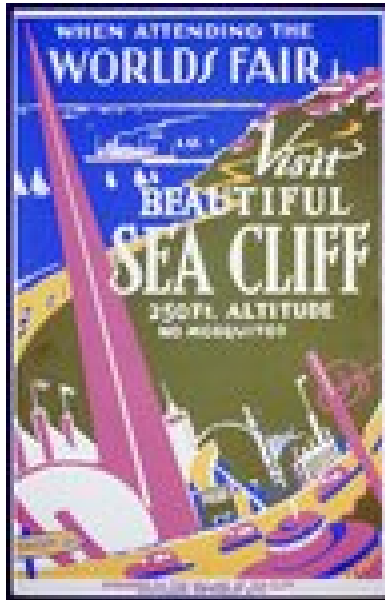
- Can a government lawyer represent an agency employer in defending the agency from furlough-related complaints brought by other agency employees when the lawyer was also furloughed and is pursuing her own complaint in which the allegations are substantially similar to those in the complaint she is defending?

# Bar Rules

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- Rule 1.7 (Conflict of Interest)
- Rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers)
- Rule 5.2 (Subordinate Lawyers)





# Moving to Fed Government?

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It's not a vacation

# Just cause you left them doesn't mean it's over

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- Ethical Constraints on Lawyers Who Leave Private Employment for Government Service
  - What duties do you owe to former clients?
  - What duties do you owe to current client/ federal government in regards to former clients?



# Bar Rules

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- Rule 1.6 (Confidentiality)
- Rule 1.7 (Conflict of Interest: General Rule)
- Rule 1.9 (Conflict of Interest: Former Client)
- Rule 1.10 (Imputed Disqualification)

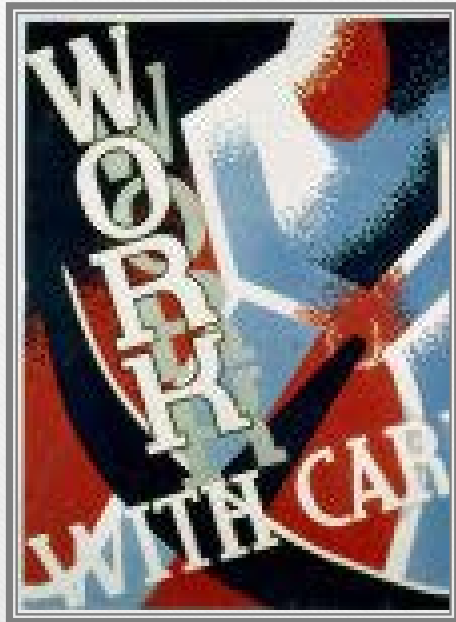
# Food for Thought





# Take Aways for Attorneys, Judges & Judicial Staff

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- 1. Know your State Bar Rules
- 2. If Federal Duties seem to conflict w/State Bar rules – get a 2<sup>nd</sup> opinion
- 3.