

CLE: State Bar Oversight of Federal Government and Military Attorneys

Class length: 60 minutes

Instructor: Prof. Martin Mitchell

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From a historical perspective, the Department of Justice (DOJ) was opposed to state bar oversight of federal government attorneys based on a robust reading of the Supremacy Clause. Congress removed the exemption with the McDade-Murtha Amendment, 28 USC 530B. This law establishes that attorneys for the federal government are subject to the state laws and rules that govern attorneys.

But what are the challenges to the application of this rule? How do Federal Government attorneys who practice in more than one state handle conflicts between different state bar rules?

How do Federal Government attorneys involved in law enforcement address state bar concerns about contact with represented parties during advice to undercover law enforcement investigations?

Can a Federal Government attorney who is furloughed represent the Agency against other furloughed employees?

What are the legal ethics obligations that new Federal Government attorneys owe to their former clients?

Can federal government attorneys participate in their Agency's public hearings when citizens who are represented and have open adverse claims against the Agency will be present?

DC Bar Rule 1.6 Confidentiality of Information has a specific exception of government attorneys. It is designed to permit disclosures that are not required by law or court order under Rule 1.6(e)(2)(A), but which the government authorizes its attorneys to make in connection with their professional services to the government. How is this rule different for government attorneys? In what situations? What about when a government attorney has an individual client?

This lecture will address some of these concerns by looking at case law and bar ethics opinions. By examining these questions and scenarios,

Sources:

DOJ OLC Memo, State Bar Disciplinary Rules as Applied to Federal Government Attorneys, August 2, 1985

28 U.S. Code § 530B

United States v. Bowman, 277 F. Supp. 2d 1239

Virginia Judicial Ethics Advisory Opinion 03-4

In re Gatti, 330 Ore. 517, 8 P.3d 966 (2000)

DC Bar Rule 1.6, Confidentiality of Information

DC Bar Ethics Opinion 365

DC Bar Ethics Opinion 308

DC Bar Ethics Opinion 274