

**Department of
Veterans Affairs**

Memorandum

Date: **MAR 28 2018**

From: Deputy Secretary (001)

Subj: Seeking Ethics Advice from Agency Ethics Officials (VIEWS 38661)

To: Under Secretaries, Assistant Secretaries, and Other Key Officials

1. The Designated Agency Ethics Official (DAEO) is charged with providing Department of Veterans Affairs employees guidance on the Standards of Ethical Conduct for Employees of the Executive Branch and on criminal conflict of interest laws, generally referred to as "ethics laws." The DAEO is a senior leader within the Office of General Counsel who, in the role of the Department's senior ethics official, is responsible directly to the Secretary. The DAEO leads the Ethics Specialty Team (EST) consisting of attorneys and paralegals located throughout the country (see Attachment).

2. All employees receive ethics training when on-boarding and during annual ethics training through the Talent Management System (TMS). Senior leaders, required to file public disclosure forms, must receive annual in-person ethics training from the EST. Ethics training enables employees to identify potential ethics issues that may arise. It is incumbent on all employees to seek ethics advice from the EST prior to taking any action that they are concerned may implicate ethics laws. It is important that employees are proactive in seeking ethics guidance to protect both themselves and the Department from violations of ethics laws.

3. Seeking the EST's guidance in advance can provide an employee a safe harbor from administrative action. No administrative action will be taken against an employee for violating ethics laws provided that prior to taking any action the employee takes the following actions:

- Seeks the advice of an ethics official;
- Provides complete, relevant, and accurate background information to the ethics official; and
- Acts consistently with the advice of the ethics official.

An employee who acts in such "good faith reliance" on the ethics official's advice will be protected from administrative action even if their actions should later be determined to have violated ethics laws. Providing false, incomplete, or misleading information to ethics officials would negate the good faith reliance and

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leave the employee in jeopardy of administrative action if the employee's subsequent participation or actions are in violation of the Standards of Ethical Conduct. Even though most agency ethics officials are attorneys, there exists no attorney-client privilege between an employee and an ethics official. Therefore, if an employee in seeking ethics advice after-the-fact discloses evidence of a potential violation of criminal conflict of interest laws, the attorney would be obligated, by law, to refer the matter to the Inspector General.

4. The safe harbor afforded by acting in good faith reliance does not offer an absolute guarantee against criminal prosecution as decisions regarding prosecution are the purview of the Department of Justice. However, there is no known case in which an employee who had acted in good faith reliance on the advice of ethics counsel was subsequently prosecuted.

5. Finally, where ethics counsel advises an employee that they may engage in a particular activity, counsel is indicating that there is no legal objection. Employees must decide themselves whether such activities could create an appearance of impropriety or otherwise reflect poorly upon themselves or the Department.


Thomas G. Bowman

Attachment

To Contact a Government Ethics Official at Department of Veterans Affairs:

VA Central Office (VACO):

Tammy Kennedy, Chief Counsel/VA's Designated Agency Ethics Official (DAEO)

Mark Jaynes, Deputy Chief Counsel/Alternate DAEO

They and other Ethics Officials at VA Central Office may be contacted at

GovernmentEthics@va.gov or (202) 461-6000 or (202) 461-7637

Outside VACO:

OGCNorthAtlanticEthics@va.gov CT, DC, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, VA, VT, WV

OGCSouthEastEthics@va.gov AL, FL, GA, KY, Puerto Rico, SC, TN

OGCMidwestEthics@va.gov IA, IL, IN, KS, MI, MN, MO, NE, ND, OH, SD, WI

OGCContinentalEthics@va.gov AR, CO, LA, MS, MT, OK, TX, UT, WY

OGCPacificEthics@va.gov AK, AZ, CA, Guam, HI, ID, NM, NV, OR, Philippines, WA

Note: For questions about ethical issues (other than those covered in Government ethics) that arise in patient care, health care management, and research, VA employees as well as Veterans, patients and their families may contact the National Center for Ethics in Health Care at vhaethics@va.gov or (202) 632-8457.

To inquire or report concerns about suspected compliance violations within VHA business operations:

- Call the VHA CBI Helpline toll-free: (866) 842-4357
- Fax the VHA CBI Helpline: (201) 643-1184
- Email the VHA CBI Helpline: vhacbihelpline@va.gov
- Write to the VHA CBI Helpline:
VHA/Office of Compliance and Business Integrity
Attention: VHA CBI Helpline
110A Meadowlands Parkway, Suite 202
Secaucus, NJ 07094