

Senate Ethics Committee Issues Tough Guidance on Post-Employment Contacts

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On May 24, 2012, the Senate Ethics Committee issued a general advisory memo to the Senate community on the post-government employment contact ban arising under both federal criminal law and Senate rules. The Committee's previous guidance in this area was limited to setting out the scope of the ban as applied to *former* Senate Members and staff; the May 24 memo also covers this ground. But, for the first time in an advisory context, the Committee's memo also sets out new—and potentially controversial—requirements under the post-employment ban for *current* Members and staff who are on the receiving end of contacts by former Senators and Senate employees.

The Committee's memo informs current Members, officers and employees of the Senate that they “may not knowingly assist former Senators and staff to violate” the post-employment restrictions. More specifically, the memo states that “current Senate Members, officers and employees **may not aid or abet** a covered individual in violating the criminal law or Senate rules” on post-employment contacts. (Emphasis in original.) Whether the relevant criminal statute—18 U.S.C. Section 207(e)—would support a criminal aiding and abetting charge against a current Senate individual contacted by a former colleague during their proscribed post-employment period is subject to significant dispute. For example, the legislative history of the statute indicates that no such accessory liability was intended. That is why, for the most part, the Committee rests its admonition against “aiding and abetting” on broad provisions of the non-statutory Code of Ethics for Government Service, including the provision exhorting government employees “never to be a party to . . . evasion” of the law. The Committee does note in the memo, however, that current Senate

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Members and staff who knowingly assist a former colleague in violating the post-employment ban may be subject to “possible referral to the Department of Justice.”

As a practical matter, the most innovative—and far-reaching—guidance in the Committee's May 24 memo is its statement of an *affirmative* obligation on the part of current Senate Members and staff to “promptly inform” the Ethics Committee when they “have reason to believe that they may have received a prohibited contact from a former colleague” This appears to be the first instance, in any context, in which the Committee has articulated an affirmative duty by Senate personnel to report suspected misconduct by others.

The Committee issued its post-employment guidance memo just over one year after issuing the findings of its inquiry concerning Senator John Ensign and the post-Senate employment activities of his former chief of staff, Doug Hampton. The Committee released its May 24, 2012, memo in conjunction with its release of a “Public Letter of Qualified Admonition” to Senator Tom Coburn and of a “Public Letter of Admonition” to Senate staffer Bret Bernhardt, both in connection with the Ethics Committee investigation into apparent communications with Doug Hampton during the period he was subject to restrictions on contacting former Senate colleagues.