

§ 18.2

§ 18.2 Definitions.

For the purpose of this part—

(a) The term *Department* means the Department of State and includes the Foreign Service.

(b) The term *Director General* means the Director General of the Foreign Service and Director of Personnel.

(c) The term *practice* means any informal or formal appearance before, or, with the intent to influence, any oral or written communication to the Department on a pending matter of business on behalf of any other person (except the United States).

§ 18.3 Director General.

The Director General shall institute and provide for the conduct of disciplinary proceedings involving former employees of the Department as authorized by 18 U.S.C. 207(j), and perform such other duties as are necessary or appropriate to carry out his/her functions under this part.

§ 18.4 Records.

The roster of all persons prohibited from practice before the Department shall be available to public inspection at the Office of Director General. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the Department.

Subpart B—Applicable Rules

§ 18.5 Interpretative standards; advisory opinions.

(a) A determination that a former officer or employee of the Department violated 18 U.S.C. 207(a), (b) or (c) will be made in conformance with the standards established in the interpretative regulations promulgated, either in interim or final form by the Office of Government Ethics and published at 5 CFR part 737.

(b) Former officers and employees of the Department wanting to know whether a proposed course of conduct would be in conformity with the Act or the interpretive regulations thereunder may contact the Assistant Legal Adviser for Management to request an advisory opinion.

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Subpart C—Administrative Enforcement Proceedings

§ 18.6 Authority to prohibit appearances.

Pursuant to 18 U.S.C. 207(j), if the Director General finds, after notice and opportunity for a hearing, that a former officer or employee of the Department has violated 18 U.S.C. 207(a), (b) or (c), the Director General in his/her discretion may prohibit that person from engaging in practice before the Department for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 18.7 Report of violation by a former employee.

(a) If an officer or employee of the Department has reason to believe that a former officer or employee of the Department has violated any provision of this part, or if any such officer or employee receives information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Director General. If any other person has information of such violations, he/she may make a report thereof to the Director General or to any officer or employee of the Department.

(b) The Director General shall coordinate proceedings under this part with the Department of Justice in cases where it initiates criminal prosecution.

§ 18.8 Institution of proceeding.

Whenever the Director General determines that there is sufficient reason to believe that any former officer or employee of the Department has violated 18 U.S.C. 207(a), (b) or (c), he/she may institute an administrative disciplinary proceeding. The proceeding may be for that person's suspension from practice before the Department or for some lesser penalty. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director General and filed in his/her office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a proceeding will not be instituted under this section until facts or conduct which may warrant such action have been called

to the attention of the proposed respondent in writing and he/she has been accorded the opportunity to provide his/her position on the matter.

§ 18.9 Contents of complaint.

A complaint shall plainly and concisely describe the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him/her so that the respondent is able to prepare a defense. Written notification shall be given of the place and of the time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint. Notice shall be given that a decision by default may be rendered against the respondent in the event he/she fails to file an answer.

§ 18.10 Service of complaint and other papers.

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail; by delivering it to the respondent or his/her attorney or agent of record either in person; or by leaving it at the office or place of business of the respondent, attorney or agent; in any other manner which has been agreed to by the respondent; or by first-class mail in case of a person resident abroad.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director General, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service.

(c) Whenever the filing of a paper is required or permitted in connection with a proceeding, and the place of filing is not specified by this subpart or by rule or order of the hearing examiner, the paper shall be filed with the Director General, Department of State, Washington, DC 20520. All papers shall be filed in duplicate.

§ 18.11 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director General. The answer shall be filed in duplicate with the Director General.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director General shall constitute a waiver of hearing, and the Director General may make his/her decision by default without a hearing or further procedure.

§ 18.12 Motions and requests.

Motions and requests, including requests to intervene, may be filed with the Director General.

§ 18.13 Representation.

A respondent or proposed respondent may appear in person or he/she may be represented by counsel or other representative. The Director General may be represented by an attorney or other employee of the Department.

§ 18.14 Hearing examiner.

(a) After an answer is filed, if the Director General decides to continue the administrative disciplinary proceedings, he/she shall appoint a hearing examiner to conduct those proceedings under this part.

(b) *Authorities.* Among other powers, the hearing examiner shall have authority, in connection with any proceeding assigned or referred to him/her, to do the following:

(1) Take evidence under appropriate formalities;