

§ 44.303

28 CFR Ch. I (7-1-03 Edition)

§ 44.303 Determination.

(a) Within 120 days of the receipt of a charge, the Special Counsel shall undertake an investigation of the charge and determine whether a complaint with respect to the charge will be brought before an administrative law judge specially designated by the Attorney General to hear cases under section 102 of the Act.

(b) When the Special Counsel decides not to file a complaint with respect to such charge before an administrative law judge within the 120-day period, or at the end of the 120-day period, the Special Counsel shall issue letters of determination by certified mail which notify the charging party and the respondent of the Special Counsel's determination not to file a complaint.

(c) When the charging party receives a letter of determination issued pursuant to § 44.303(b), indicating that the Special Counsel will not file a complaint with respect to such charge, the charging party, other than an officer of the Immigration and Naturalization Service, may bring his or her complaint directly before an administrative law judge within 90 days after his or her receipt of the Special Counsel's letter of determination. The charging party's complaint must be filed with an administrative law judge pursuant to the regulations issued by the Office of the Chief Administrative Hearing Officer codified at 28 CFR 68.1.

(d) The Special Counsel's failure to file a complaint with respect to such charge, before an administrative law judge within 120 days shall not affect the right of the Special Counsel to continue to investigate the charge or to bring a complaint before an administrative law judge during the additional 90-day period as defined by paragraph (c) of this section.

(e) The Special Counsel may seek to intervene at any time in any proceeding brought by a charging party before an administrative law judge.

[Order No. 1225-87, 52 FR 37409, Oct. 6, 1987, as amended by Order No. 1520-91, 56 FR 40249, Aug. 14, 1991]

§ 44.304 Special Counsel acting on own initiative.

(a) The Special Counsel may, on his or her own initiative, conduct inves-

tigations respecting unfair immigration-related employment practices when there is reason to believe that a person or entity has engaged or is engaging in such practices.

(b) The Special Counsel may file a complaint with an administrative law judge where there is reasonable cause to believe that an unfair immigration-related employment practice has occurred within 180 days from the date of the filing of the complaint.

§ 44.305 Regional offices.

The Special Counsel, in consultation with the Attorney General, shall establish such regional offices as may be necessary to carry out his or her duties.

PART 45—EMPLOYEE RESPONSIBILITIES

Sec.

- 45.1 Cross-reference to ethical standards and financial disclosure regulations.
- 45.2 Disqualification arising from personal or political relationship.
- 45.3 Disciplinary proceedings under 18 U.S.C. 207(j).
- 45.4 Personal use of Government property.

AUTHORITY: 5 U.S.C. 301, 7301; 18 U.S.C. 207; 28 U.S.C. 503, 528; DOJ Order 1735.1.

§ 45.1 Cross-reference to ethical standards and financial disclosure regulations.

Employees of the Department of Justice are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Department of Justice regulations at 5 CFR part 3801 which supplement the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and the executive branch-wide employee responsibilities and conduct regulations at 5 CFR part 735.

[61 FR 59815, Nov. 25, 1996]

§ 45.2 Disqualification arising from personal or political relationship.

(a) Unless authorized under paragraph (b) of this section, no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with:

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(1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or

(2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

(b) An employee assigned to or otherwise participating in a criminal investigation or prosecution who believes that his participation may be prohibited by paragraph (a) of this section shall report the matter and all attendant facts and circumstances to his supervisor at the level of section chief or the equivalent or higher. If the supervisor determines that a personal or political relationship exists between the employee and a person or organization described in paragraph (a) of this section, he shall relieve the employee from participation unless he determines further, in writing, after full consideration of all the facts and circumstances, that:

(1) The relationship will not have the effect of rendering the employee's service less than fully impartial and professional; and

(2) The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.

(c) For the purposes of this section:

(1) *Political relationship* means a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof; and

(2) *Personal relationship* means a close and substantial connection of the type normally viewed as likely to induce partiality. An employee is presumed to have a personal relationship with his father, mother, brother, sister, child and spouse. Whether relationships (including friendships) of an employee to other persons or organizations are "personal" must be judged on an individual basis with due regard given to the subjective opinion of the employee.

(d) This section pertains to agency management and is not intended to

create rights enforceable by private individuals or organizations.

[Order No. 993-83, 48 FR 2319, Jan. 19, 1983. Redesignated at 61 FR 59815, Nov. 25, 1996]

§ 45.3 Disciplinary proceedings under 18 U.S.C. 207(j).

(a) Upon a determination by the Assistant Attorney General in charge of the Criminal Division (Assistant Attorney General), after investigation, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, of the Department of Justice (former departmental employee) has violated 18 U.S.C. 207 (a), (b) or (c), the Assistant Attorney General shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former departmental employee to show cause within a specified time of not less than 30 days after receipt of the notice why he or she should not be prohibited from engaging in representational activities in relation to matters pending in the Department of Justice, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate disciplinary action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their basis, sufficiently detailed to enable the former departmental employee to prepare an adequate defense,

(2) Notification of the right to a hearing, and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former departmental employee who submits an answer to the notice to show cause does not request a hearing or if the Assistant Attorney General does not receive an answer within five days after the expiration of the time prescribed by the notice, the Assistant Attorney General shall forward the record, including the report(s) of investigation, to the Attorney General. In the case of a failure to answer, such failure shall constitute a waiver of defense.

(c) Upon receipt of a former departmental employee's request for a hearing, the Assistant Attorney General shall notify him or her of the time and