



U.S. Department of Justice

Executive Office for United States Attorneys

General Counsel

Room 5100
600 E Street, NW, BiCN Building
Washington, DC 20530

Phone (202) 252-1600
FAX (202) 252-1650

November 5, 2013

Mr. Mark Gross
Complaint Adjudication Officer
950 Pennsylvania Ave., NW
Patrick Henry Building, Suite 5300
Washington, DC 20530

Re: *Afsaneh (Ashley) Tabaddor v. Department of Justice*, Agency No. EOI-2013-0081

Dear Mr. Gross:

The Agency is in receipt of the investigative file in the above-referenced matter, along with the complainant's request for a final agency decision. Upon review of the investigative file, it was apparent that the investigator in this matter did not include a supplemental affidavit, with attachment, submitted by Jeff Rosenblum, General Counsel for the Executive Office for Immigration Review (EOIR) and a key witness in the matter. Mr. Rosenblum submitted his initial affidavit to the investigator on March 11, 2013; on April 12, he submitted, via email to the investigator, a supplement his affidavit with an additional response and supporting documentation. That supplemental affidavit and its exhibits, which address some key facts at issue in this matter, is attached and the Agency asks that they be included in Tab 8 of the investigative file (Affidavit of Jeff Rosenblum) in this matter. Among other issues, Mr. Rosenblum's supplemental testimony clarifies that JuanCarlos Hunt, EOIR's current EEO Director, did not have any role in handling ethics matters once he left Office of General Counsel for the EEO Director position despite his stated belief to the contrary.

The Agency also must respond to the September 4, 2013, submission from the complainant in this matter accompanying her request for final agency decision. While the complainant is correct in noting that the material facts in this matter are largely undisputed, she is mistaken in her belief that those facts lead to a conclusion that she was discriminated against based upon her national origin or retaliated against by the Agency. There is no factual dispute that Judge Tabaddor was advised by the Office of General Counsel, Employee/Labor Relations Unit, to recuse herself from immigration matters involving individuals from Iran based upon the

fact that she was a very active advocate on behalf of the Iranian community.¹ As a preliminary matter, the Agency maintains that Judge Tabaddor has failed to establish even a prima facie case of discrimination, since she has not been subjected to any adverse employment decision. To prove a claim of disparate treatment, absent direct evidence, a complainant has the initial burden of proving a prima facie case of discrimination by demonstrating that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; and (3) the action creates an inference of discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). In this instance, the determination that Judge Tabaddor should be recused from certain matters had no adverse effect on her employment in any way, and it is well within management's discretion to assign workload. Here, Judge Tabaddor has not established that she suffered any harm to a term, condition, or privilege of her employment. See Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

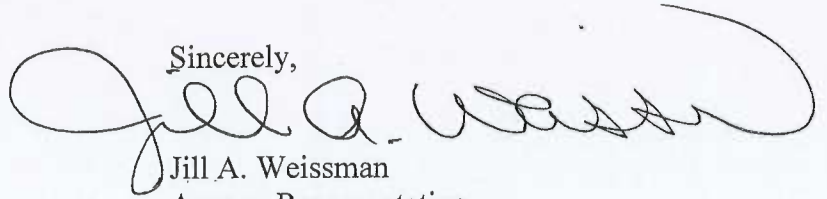
Even if CAO were to conclude that the recusal from certain matters was an "adverse employment action," Judge Tabaddor's claim must fail. The recommendation that she be recused was made pursuant to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635.502(a)(1)-(2), which state that an employee should not participate in matters in which the circumstances would cause a reasonable person with knowledge of the relevant facts to question that employee's impartiality in the matter. After consultation among the attorneys in the Employee/Labor Relations Unit, and with the Department's Ethics Office, it was determined that, based on her high-profile activities on behalf of individuals from Iran, a reasonable person might conclude that she was not acting in an impartial manner when handling an immigration matter involving an individual from Iran. The Office of General Counsel provided its advice on this matter consistent with the applicable regulations, and as a result Judge Tabaddor's supervisor directed her to recuse herself from those matters. These actions were based not on Judge Tabaddor's national origin, but on her status as an active and high-profile advocate on behalf of Iranians. The ethics advice she was given would have been the same regardless of Judge Tabaddor's own national origin; if, for example, Judge Tabaddor was of Swedish origin, but took a personal interest in matters pertaining to Iranian-Americans and engaged in the same types of activities on their behalf, her participation in matters involving individuals from Iran would have raised the same concerns under the Standards of Conduct. Judge Tabaddor's claim the Agency's refusal to reverse its decision is retaliation for engaging in protected activity is also without merit, as the facts underlying the initial decision regarding recusal remain unchanged.

Based on the evidence of record and the applicable legal standards in this matter, the Agency requests that the Complaint Adjudication Office issue a final agency decision finding that the complainant has failed to establish that she was subjected to discrimination based on her national origin or reprisal for protected activity.

¹ Judge Tabaddor's invitation to, and attendance at, an event at the White House, the "Roundtable With Iranian-American Community leaders," is merely one example of the high-profile nature of her activities on behalf of the Iranian community.

If any additional information is necessary, please do not hesitate to contact me by e-mail or at the telephone number below. Please note that the Executive Office for United States Attorneys is representing the Agency in this matter because of the involvement of EOIR's OGC in the underlying actions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill A. Weissman". The signature is fluid and cursive, with a large loop at the end.

Jill A. Weissman
Agency Representative
General Counsel's Office
Executive Office for United States
Attorneys
600 E Street, NW, Ste 5100
Washington, DC 20530
phone: (202) 252-1565
e-mail: jill.weissman@usdoj.gov

cc: Ali M. M. Mojdehi
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121

From: Rosenblum, Jeff (EOIR) <Jeff.Rosenblum@EOIR.USDOJ.GOV>
Sent: Friday, April 12, 2013 12:19 PM
To: Anderson, Patrick (USMS)
Cc: Weissman, Jill (USAEO); Fesak, Matthew (USANCE)
Subject: RE: EEO Investigation
Attachments: DOC003.pdf

Mr. Anderson,

Attached please find a supplemental affidavit, with attachments. Please include with my previous affidavit. Thank you.

Jeff Rosenblum
General Counsel
Executive Office for Immigration Review
U.S. Department of Justice
(703) 305-0799

From: Rosenblum, Jeff (EOIR)
Sent: Monday, March 11, 2013 10:16 AM
To: Anderson, Patrick (USMS)
Cc: Weissman, Jill (USAEO)
Subject: RE: EEO Investigation

Mr. Anderson,

Attached please find my signed affidavit. I have provided all documents referred to in the affidavit, as well as any other documents related to this matter, to the Agency's attorney on this case, Jill Weissman. She will submit any relevant, non-privileged documents to you.

Feel free to contact me to set up a time to speak. Please note that I will be out of town from March 21 – March 31. Thanks.

Jeff Rosenblum
General Counsel
Executive Office for Immigration Review
U.S. Department of Justice
(703) 305-0799

From: Anderson, Patrick (USMS)
Sent: Tuesday, March 05, 2013 11:35 AM
To: Rosenblum, Jeff (EOIR)
Subject: EEO Investigation

Mr. Rosenblum,

I have been assigned to conduct the investigation relating to a complaint filed by Judge A. Ashley Tabaddor against the Executive Office for Immigration Review. The complaint has been designated for processing as file number EOI-2013-00081. Attached you will find an affidavit with questions that need to be responded too. Please ensure to provide complete answers with dates for the accepted issues and not just yes and no answers.

The issue accepted issue for investigation is:

Judge Tabaddor alleges that EOIR discriminated against her on the basis of national origin, religion, race, and reprisal related to the issuing of an ethics opinion to recuse herself from immigration cases involving Iranians. Judge Tabaddor further alleges that EOIR has retaliated against her for claiming that ethics opinion is discriminatory.

Our investigation will be conducted in accordance with procedures required by and timelines imposed by C.F.R. §1614.107(7). The prompt cooperation of all concerning is required under the regulations and is a prerequisite to timely and thorough completion of our work.

Upon completing the question please sign the document and return a scanned copy via email and the original copy via office mail to the address below no later than March 11, 2013. If you have any questions please let me know. Additionally, I would like to set up a time and date to speak with you to ensure that all questions are thoroughly addressed prior to the conclusion of the investigation process. I look forward to working with you as we complete the investigation into this important matter. Please find attached a copy of the Letter of Authorization for your records.

*Patrick Anderson
EEO Counselor/Investigator
Office of Equal Employment Opportunity
United States Marshals Service
Crystal Square #4, Suite 1102
2604 Jefferson Davis Highway
Alexandria, Virginia 22301-1025
Ph: 202 305-8837
Fax: 703 603-7005*

SUPPLEMENTAL AFFIDAVIT

STATE OF VIRGINIA
CITY OF Fairfax

I, Jeff Rosenblum, make the following statement freely and voluntarily without promise or coercion to Patrick Anderson, who has been identified to me as an Equal Employment Opportunity (EEO) Investigator, United States Marshals Service, knowing that this statement may be used in evidence. I understand that the information is given without a pledge of confidentiality and that it may be shown to parties with a need to know. The following statement is made in response to the EEO Complaint of Discrimination filed by A. Ashley Tabaddor against the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) on November 29, 2012.

I have been advised that the claim accepted for investigation is as follows:

Judge Tabaddor alleges that EOIR discriminated against her on the basis of national origin, religion, race, and reprisal related to the issuing of an ethics opinion to recuse herself from immigration cases involving Iranians. Judge Tabaddor further alleges that EOIR has retaliated against her for claiming that ethics opinion is discriminatory.

I hereby solemnly swear or affirm:

QUESTION #31: Do you have anything else to add?

ANSWER:

During the course of this investigation, it has come to my attention that JuanCarlos Hunt, EOIR's EEO Director, submitted an affidavit in relation to this matter. While I am not privy to the specific contents of the affidavit, I believe it is important to clarify the record with regard to Mr. Hunt's role during the time period at issue.

Mr. Hunt served as the Acting General Counsel for a couple of months in Spring 2012. Prior to the actions at issue in this case, Mr. Hunt left the Office of the General Counsel in June 2012 to become EOIR's EEO Director. At that time, I ceased consulting with him on ethics-related matters. From the time of Mr. Hunt's departure until I began working as General Counsel in

December 2012, Jean King served as Acting General Counsel. (Jean now serves as EOIR's Deputy General Counsel.) Because Ms. King did not have a background in the area of government ethics, she generally deferred to me on ethics issues. If there was a circumstance in which I felt that I needed further advice, I reached out to the Departmental Ethics Office (DEO), which I did in relation to the ethics opinion at issue in this case. DEO is not in a supervisory chain of command with EOIR's Office of General Counsel, nor does it generally respond to specific requests for ethics advice from EOIR employees. Rather, DEO provides general ethics guidance to all Department of Justice components, and is available for consultation on particular matters at the request of the component.

It is my understanding that Mr. Hunt contacted the investigator by e-mail on March 20, 2013, stating, in part:

Attached are the organizational charts for EOIR and the ethics office (the latter of which is how to contact the ethics office). . . . I note that the ethics document is current; however, at the time in question, Mr. Rosenblum was the Acting [Ethics] Officer and I was the Deputy Designated Agency Ethics Official (DDAEO). Because I am now the EEO Director, I requested that another DOJ, EEO component investigate the case because I was the DDAEO when Mr. Rosenblum sent his responses to IJ Tabaddor. As the DDAEO, I should have been consulted by Mr. Rosenblum; I was not. In my opinion, had Mr. Rosenblum consulted me there would be no complaint, because I would not have approved his response because it is discriminatory. I do not want to submit attached ethics office document and later be accused or have EOIR be accused of providing misleading information.¹

Mr. Hunt's conclusion that he was still the DDEAO is questionable. In March 2013, DEO confirmed in writing that it no longer considered him the DDEAO once he vacated the position of Acting General Counsel. Attachment 1. I note that DEO made that determination unrelated to this matter, but in response to several e-mails Mr. Hunt had sent containing his view that he was still the DDEAO. Attachments 2, 3 and 4. Regardless, it is indisputable that I did not seek Mr. Hunt's assistance on ethics issues after he left the position of Acting General Counsel, and that the DDAEO delegation contains no supervisory authority, so once Mr. Hunt was no longer in my chain of command, he did not have the authority to "approve" the ethics advice.

I reiterate what I stated previously in my affidavit – my recommendation that Complainant disqualify herself from particular matters was made solely as a result of my interpretation of the ethics regulations, and had no discriminatory animus whatsoever. In making this recommendation, I relied upon 5 C.F.R. Part 2635, Subpart E, which states that employees should not participate in matters in which "the circumstances would cause a reasonable person with knowledge of the relevant facts to question [the employee's] impartiality in the matter." 5

¹ I note that at the time Mr. Hunt sent his unsolicited opinion to the investigator in this case, he had already disqualified himself from this investigation, and as explained in his statement, he had no personal knowledge of the factual background of this case other than through his role as EOIR's EEO Officer. I further note that prior to disqualifying himself from this investigation, and despite his own stated opinion that he believed the ethics advice in this case was discriminatory, Mr. Hunt personally made the dispositive decision to accept this complaint of discrimination for investigation.

C.F.R. §§ 2635.502(a)(1)-(2). My concern was that, based on Ms. Tabaddor's high-profile activities, a reasonable person could question her impartiality in cases involving individuals from Iran. In making this recommendation, I consulted with several individuals, including two individuals under my supervision responsible for issuing ethics opinions, Marlene Wahowiak and Rena Scheinkman, and two ethics officials outside my chain of command, EOIR's ethics officer Brigette Frantz (on detail at the time) and Kathy Silbaugh in the Departmental Ethics Office. Ms. Silbaugh and Ms. Frantz could offer further testimony regarding both the substance of my opinion and the fact that Mr. Hunt, in his capacity as the EEO Director, had no role in providing ethics advice to EOIR employees after he left the position of Acting General Counsel.

I have one additional example to demonstrate my analysis in this case. If an Immigration Judge (IJ) from country X stated publicly that she believed that all individuals from country X were absolutely not entitled to asylum under any circumstances, in my opinion, under 5 C.F.R. Part 2635, Subpart E, it would be clear that a reasonable person with knowledge of the relevant facts would question the IJ's impartiality in immigration cases involving individuals from country X based on her outside activity (in this example, her public statement). Similarly, with respect to the ethics opinion at issue in this case, I concluded that a reasonable person would question Complainant's impartiality based on her outside activity. While it is not unreasonable that an individual might question that *conclusion*, which is why I consulted with several individuals prior to issuing the opinion, the *analysis* was based on my (and others') interpretation of the regulation, not on any discriminatory animus, just as my analysis in the example cited above is based on the IJ's outside activity, not the particular country at issue.

Finally, the only similar situation that I encountered during the time that the ethics function at EOIR was under my direct supervision (February 2012 – December 2012) was when an IJ was invited, in her personal capacity, to meet with an Ambassador in December 2012. In that case, I recommended to DEO that, if the IJ were approved to attend the event, we recommend that she disqualify herself from matters involving individuals from Armenia. Ultimately, DEO recommended against approving her attendance at the event, because she would be representing an organization at the event, and her attendance would thus violate 18 U.S.C. § 205. *See* discussion of section 205 in my response to question 7. A copy of the e-mails related to that issue are attached as Attachments 5 and 6.

Attachment

1

Rosenblum, Jeff (EOIR)

From: Silbaugh, Kathleen (JMD)
Sent: Wednesday, March 20, 2013 11:13 AM
To: Rosenblum, Jeff (EOIR)
Subject: Response re DDAEO
Attachments: Document1.docx

Because of my lack of tech skills, I created an attachment. Message for JC is at top, let me know if ok.

Also did a screen shot because all of your messages came in at the same time, after 6 pm last night. Thought that was weird.

Don't know why, but all of your messages came in a bunch last night, just as I was walking out the door. I'm working with Janice now to determine her concerns, if any, and to move all of the delegations along.

I think we would prefer your message to JC to say:

The Departmental Ethics Office has confirmed that the responsibilities of the DDAEO are delegated to the General Counsel position at EOIR. Therefore, when you moved to your new position, you no longer have the responsibilities assigned to the DDAEO.

Does this work for you?

Attachment 2

Rosenblum, Jeff (EOIR)

From: Hunt, JuanCarlos (EOIR)
Sent: Thursday, March 14, 2013 7:03 PM
To: Rosenblum, Jeff (EOIR); Billingsley, Kelly (EOIR); Smith, Charles (EOIR)
Cc: Scheinkman, Rena (EOIR)
Subject: Ethics

FYI, I hope you are all doing well. I wanted to let you know that I recently inquired of the Deputy Director and Director the status of the DDAEO position, and reiterated my concerns with maintaining these duties. It is my understanding that it is in the works but not yet completed. Therefore, I remind you that you should forward to me any matters that need to be reviewed by the DDAEO. Also, if any of you get word that the duties have been formally reassigned, I would appreciate it if you would please let me know.

Sincerely,

JuanCarlos M. Hunt
EEO & Diversity Programs Director
Office of the Director
Executive Office for Immigration Review
United States Department of Justice

Attachment 3

Rosenblum, Jeff (EOIR)

From: Billingsley, Kelly (EOIR)
Sent: Tuesday, March 19, 2013 10:49 AM
To: Rosenblum, Jeff (EOIR)
Cc: Smith, Charles (EOIR)
Subject: FW: Ethics Newsletter!!!

FYI:

From: Hunt, JuanCarlos (EOIR)
Sent: Tuesday, March 19, 2013 10:33 AM
To: Billingsley, Kelly (EOIR)
Subject: RE: Ethics Newsletter!!!

Hi Kelly,

I'm not sure if anything has changed since I spoke with the Deputy Director, but as I emailed you last week, my understanding from my conversation with her is that I am still the DDAEO. I read the Ethics Newsletter and clicked on the links, and the contact link lists Jeff as the DDAEO. If I am no longer the DDAEO then you just made my day. However, if I am still the DDAEO, then as the Department Designated Agency *Ethics* Officer, I must insist on correcting this misleading information. I am very uncomfortable with the current situation, particularly in light of the Tabaddor case, because as I mentioned last week, I have not received any thing to review as the DDAEO in some time. EOIR employees need to know that I'm the DDAEO, if that is the case. If Jeff is now the DDAEO, then listing him as the DDAEO is obviously appropriate; however, if he is not the DDAEO, then this needs to be corrected immediately. This is a serious issue, all I can do is make my point and if it is ignored, at least, I can say I tried but was ignored. Thanks for your assistance.

Sincerely,

JuanCarlos M. Hunt
EEO & Diversity Programs Director
Office of the Director
Executive Office for Immigration Review
United States Department of Justice

From: Billingsley, Kelly (EOIR)
Sent: Tuesday, March 19, 2013 8:45 AM
To: All of EOIR
Subject: Ethics Newsletter!!!



Ethics News

March 2013

EOIR Ethics, Volume 3, Number 2

Call the Ethics Office

(703) 305-0322

Personnel

Charles F. Smith
Acting Ethics Officer
and

Kelly Billingsley
Program Specialist
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

Ethics Resource Links

EOIR Ethics Intranet Site
DOJ Pro Bono Program
Departmental Ethics Office
Professional Responsibility Advisory
Office (PRAO)
Office of Government Ethics (OGE)
Office of Special Counsel (OSC)

Email us with a question
([click here](#))

Sequestration and Ethics

In light of the possibility of furloughs, we remind you that even when in a furlough status (i.e., a non-pay, non-duty status), you are still a Federal employee subject to statutory ethics provisions, the government-wide standards of conduct, and the Department's supplemental ethics regulations.

For example, if furloughed, it's foreseeable that some employees may seek outside employment to offset income losses, or be offered discounts, etc., that may constitute a gift. In anticipation of these possibilities, please carefully review the summary below on outside employment and gifts.

We invite you to visit the Departmental Ethics Office [web site](#) or contact the agency's Ethics Program at EOIR.Ethics@usdoj.gov for additional guidance on outside employment and/or gifts.

OUTSIDE EMPLOYMENT

1. No prior approval is required, generally, for certain outside employment opportunities such as sales positions at a retail store or food service positions at restaurants.
2. Certain outside employment is prohibited unless a waiver is first obtained from the Deputy Attorney General. In the event of a furlough, the following outside employment activities are **prohibited unless a waiver is obtained from the DAG, in advance**:
 - The paid practice of law;
 - Involvement in any criminal or habeas corpus matter (Federal, State or local); or
 - Involvement in any matters in which the Department is or represents a party, witness, litigant, investigator or grant-maker.
3. Certain outside employment may be permissible with **prior written approval** from the employee's Component Head. These outside activities include:
 - The uncompensated practice of law; or
 - A subject matter, policy, or program that is in the component's area of responsibility – this kind of employment specifically includes working for a DOJ contractor who provides products or services to the employee's component.
 - Employees are also reminded that they may not use their official title or position in connection with their outside employment, or misuse their DOJ status in order to obtain outside employment.

GIFTS

You may encounter banking institutions and various commercial organizations offering "discounts" of some kind to furloughed employees. As a Federal employee, you may accept discounts that are:

- Offered to ALL federal employees, regardless of pay or agency; and
- Discounts and similar benefits offered to a broad category of the public, as long as grade is not a factor (i.e., a discount offered only to GS-12 and above would NOT be a permissible discount).

An employee may not accept gifts from the same or different sources on a basis

so frequent that it would appear to be misuse of public office. Further, it is a misuse of public office for a federal employee to use her/his identification or badge to solicit or encourage a gift or special treatment, although it is permissible to show the identification or badge to prove h/she is eligible for an existing discount.

In cases where a discount is offered to a select group of federal employees or agencies, consult with your ethics official first, as this kind of discount may not fit into the exception.



Reminders:

Financial Disclosure Reports – The season for financial disclosure reports is on! The end of the reporting period was December 31st.

- If you are an OGE 278 annual filer, your report will be due May 15th.
- Be prepared to file your report – feel free to file early!

Speaking Engagements – In accordance with EOIR policy, please remember to obtain your supervisor's approval prior to submitting your speaking request form for ethics advice. Also, kindly use the most recent version of the speaking request form, which can be found here.

You may also find the latest ethics information, memos and forms on EOIR's ethics intranet site located here.

As always, we encourage you to contact us with any questions you may have about the ethics rules mentioned in this newsletter, or any other government ethics issues.

The Ethics Newsletter is produced by the Office of the General Counsel, Executive Office for Immigration Review. It is intended only as an informational resource for EOIR employees, and is not a substitute for individual ethics counseling.

Please remember that only Federal employees are bound by the ethics regulations. Contractors are bound by the terms of their contract, but not Federal ethics regulations.

Attachment

4

Rosenblum, Jeff (EOIR)

From: Hunt, JuanCarlos (EOIR)
Sent: Wednesday, March 20, 2013 3:24 PM
To: Rosenblum, Jeff (EOIR)
Subject: RE: Ethics Newsletter!!!

I am glad to hear that I am not the DDAEO, but I respectfully disagree that when I moved I no longer held the responsibilities assigned to the DDAEO, as this is not consistent with the letter I received from the Department or conversations/emails I have had as recently as in the last few weeks.

Sincerely,

JuanCarlos M. Hunt
EEO & Diversity Programs Director
Office of the Director
Executive Office for Immigration Review
United States Department of Justice

From: Rosenblum, Jeff (EOIR)
Sent: Wednesday, March 20, 2013 12:18 PM
To: Hunt, JuanCarlos (EOIR)
Subject: FW: Ethics Newsletter!!!

JC,

The Departmental Ethics Office has confirmed that the responsibilities of the DDAEO are delegated to the General Counsel position at EOIR. Therefore, when you moved to your new position, you no longer had the responsibilities assigned to the DDAEO.

Jeff

From: Hunt, JuanCarlos (EOIR)
Sent: Tuesday, March 19, 2013 10:33 AM
To: Billingsley, Kelly (EOIR)
Subject: RE: Ethics Newsletter!!!

Hi Kelly,

I'm not sure if anything has changed since I spoke with the Deputy Director, but as I emailed you last week, my understanding from my conversation with her is that I am still the DDAEO. I read the Ethics Newsletter and clicked on the links, and the contact link lists Jeff as the DDAEO. If I am no longer the DDAEO then you just made my day. However, if I am still the DDAEO, then as the Department Designated Agency *Ethics* Officer, I must insist on correcting this misleading information. I am very uncomfortable with the current situation, particularly in light of the Tabaddor case, because as I mentioned last week, I have not received any thing to review as the DDAEO in some time. EOIR employees need to know that I'm the DDAEO, if that is the case. If Jeff is now the DDAEO, then listing him as the DDAEO is obviously appropriate; however, if he is not the DDAEO, then this needs to be corrected immediately. This is a serious issue, all I can do is make my point and if it is ignored, at least, I can say I tried but was ignored. Thanks for your assistance.

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From: Billingsley, Kelly (EOIR)
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Ethics News

March 2013

EOIR Ethics, Volume 3, Number 2

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(703) 305-0322

Personnel

Charles F. Smith
Acting Ethics Officer
and

Kelly Billingsley
Program Specialist

5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

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[Office of Government Ethics \(OGE\)](#)

[Office of Special Counsel \(OSC\)](#)

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 - Involvement in any criminal or habeas corpus matter (Federal, State or local); or
 - Involvement in any matters in which the Department is or

Email us with a question
([click here](#))

represents a party, witness, litigant, investigator or grant-maker.

3. Certain outside employment may be permissible with **prior written approval** from the employee's Component Head. These outside activities include:
 - The uncompensated practice of law; or
 - A subject matter, policy, or program that is in the component's area of responsibility – this kind of employment specifically includes working for a DOJ contractor who provides products or services to the employee's component.
 - Employees are also reminded that they may not use their official title or position in connection with their outside employment, or misuse their DOJ status in order to obtain outside employment.

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Attachment

5

Rosenblum, Jeff (EOIR)

From: Rosenblum, Jeff (EOIR)
Sent: Thursday, November 29, 2012 3:53 PM
To: Silbaugh, Kathleen (JMD)
Subject: FW: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)

Kathy,

Per our conversation, please see my draft advice to Immigration Judge Hoogasian. Please let me know if you agree with this advice, and/or if you have any other questions or concerns.

Note that although I've worded this as an approval, she would be meeting with the Ambassador on behalf of the Armenian Bar Association – does 18 U.S.C. § 205 prohibit her from doing this anyway?? (Note that in the previous, similar issue that we had, the IJ was not at the meeting on behalf of an organization.) Thanks,

Jeff

Judge Hoogasian,

You have requested approval to attend a meeting, in your personal capacity, with the United States Ambassador to Armenia. The request was made due to your board membership on the Armenian Bar Association. You have received supervisory approval for you to attend this event. The ethics office hereby grants you approval to participate in this activity in your personal capacity. However, as explained below, please note that should you decide to participate in this activity, the ethics office recommends that you disqualify yourself from any matter involving individuals from Armenia that comes before you in your capacity as an Immigration Judge.

If you decide to attend this event, because you will be doing so in your personal capacity, you must comply with the ethics restrictions related to personal, outside activities. *See generally* 5 C.F.R. Part 2635, subparts G and H.

Most importantly in relation to this activity, you cannot create or allow the impression that you are engaging in this activity officially, *i.e.*, on behalf of EOIR or the Department. *See* 5 C.F.R. § 2635.702(b). An employee's position or title should not be used to coerce; to endorse any product, service or enterprise; or to give the appearance of governmental sanction. *See generally* 5 C.F.R. § 2635.702. Thus, you should not use or permit the use of your position or title in relation to this personal, outside activity; this restriction obligates you to ensure that neither your position nor your official title is associated with this activity. You also cannot hand out your business card during this event. Should you be asked about your position or title, you may disclose it, but you must make clear that you are participating in a purely personal capacity. You also may not opine on immigration-related issues during this activity.

In addition, please keep in mind the general restrictions concerning outside activities:

- You cannot use your official title or affiliation, or create or allow the impression that you are acting officially, *i.e.*, on behalf of EOIR or the Immigration Court;
- The outside activity must not, in any manner, interfere with the proper and effective performance of your official duties and responsibilities;
- The outside activity must not create, nor appear to create, a conflict of interest with your official duties;
- The outside activity must not reflect adversely upon the Department of Justice or EOIR;
- You cannot use official resources in relation to this activity (except to the extent that such use involves only negligible expense to the Department, in accordance with 28 C.F.R. § 45.4);

- You cannot use official time in relation to this activity, and under no circumstances may you accept the assistance of another EOIR employee in relation to this activity, even if the employee volunteers to assist;
- You should refer 5 C.F.R. §§ 2635.701-705, as well as §§ 2635.801-809 for general guidelines concerning outside activities.

Finally, in light of the fact that you would be meeting with a high-level government official on issues related to Armenians, should you decide to attend this meeting, we recommend that you disqualify yourself from any matter involving individuals from Armenia that comes before you in your capacity as an Immigration Judge. Pursuant to 5 C.F.R. § 2635.502(a), an employee should not participate in a matter in which "circumstances would cause a reasonable person with knowledge of the relevant facts to question [her] impartiality in the matter." Please note that in no way are we suggesting that you have an actual bias. Rather, based on the circumstances as described, and utilizing the relevant standards, it is our recommendation that should you participate in this event, you should disqualify yourself from cases involving respondents from Armenia to avoid any appearance problems.

Please let me know if you have any questions or would like to discuss this matter further. Thanks.

Jeff Rosenblum
Office of the General Counsel
Executive Office for Immigration Review
(703) 305-0799

From: Maggard, Print (EOIR)
Sent: Wednesday, November 28, 2012 11:24 AM
To: Hoogasian, Amy C. (EOIR); EOIR, Ethics (EOIR)
Subject: RE: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)

It is my understanding that IJ Hoogasian would be attending in her unofficial IJ capacity as a member of the Armenian Bar Association's Board. I approved this request, thank you.

PRINT

From: Hoogasian, Amy C. (EOIR)
Sent: Tuesday, November 27, 2012 4:05 PM
To: Maggard, Print (EOIR)
Subject: FW: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)
Importance: High

ACIJ Maggard:
I received the below request to attend United States Ambassador Heffern's meeting in the SF Bay Area on Tues., 12/11. Please let me know if this meeting is approved.

The request was made due to my current board membership on the Armenian Bar Association's Board. If there is any issue of conflict I can and will abstain from attending.

Thank you for your kind assistance.

-Amy
AMY C. HOOGASIAN
U.S. IMMIGRATION JUDGE
U.S. DEPARTMENT OF JUSTICE-EOIR
120 MONTGOMERY STREET, STE. 800
SAN FRANCISCO, CA 94104

----- Forwarded message -----

From: **Parechan, Jeffrey** <jparechan@usaid.gov>

Date: Mon, Nov 26, 2012 at 7:44 AM

Subject: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)

To: amyhoogasian@gmail.com, Amy.C.Hoogasian@usdoj.gov

Dear Judge Hoogasian,

I received your name and contact information from John Lulejian.

As John may have shared with you, we are currently arranging Ambassador Heffern's visit which will be taking place in early December. We will be visiting the Bay Area and I wanted to extend an invitation to you to represent the ABA at a private round table meeting of Armenian organizations with the Ambassador.

The meeting will take place on Tuesday, December 11th at 2:30 pm at the University of California at Berkley, Institute of Slavic, East European, and Eurasian Studies room 270 Stephen's Hall.

Please let me know by email if you will be able to attend.

I look forward to hearing from you.

Kind regards,

Jeffrey Parechan
Public Private Alliance Specialist / Diaspora Outreach Coordinator
USAID | Armenia
American Embassy
1 American Avenue
Yerevan 0082, Armenia
Office Direct: +(374 10) 49 45 18 (GMT +4)

Attachment

6

Rosenblum, Jeff (EOIR)

From: Rosenblum, Jeff (EOIR)
Sent: Friday, December 07, 2012 11:24 AM
To: Hoogasian, Amy C. (EOIR)
Cc: Maggard, Print (EOIR); Billingsley, Kelly (EOIR)
Subject: FW: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)

Judge Hoogasian,

I apologize for the delayed response to this. The Departmental Ethics Office (DEO) reviewed and sent me the e-mail below. If you have any questions or would like to discuss, please feel free to give me a call at your convenience. Thanks.

Jeff

Jeff Rosenblum
Executive Office for Immigration Review
Office of the General Counsel
(703) 305-0799

From: Silbaugh, Kathleen (JMD)
Sent: Friday, December 07, 2012 11:20 AM
To: Rosenblum, Jeff (EOIR)
Subject: RE: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)

DEO has reviewed this invitation and concludes that it is not permissible for Ms. Hoogasian to represent the ABA at a private round table meeting of Armenian organizations with the U.S. Ambassador. Under 18 U.S.C. 205, federal employees cannot represent anyone else before any court, or an agency of the Federal Government, on a matter in which the U.S. is a party or has an interest. This includes contacting any Federal agency on behalf of a business or organization. The U.S. Ambassador is a representative of the U.S. Government.

Kathy

From: Rosenblum, Jeff (EOIR)
Sent: Tuesday, December 04, 2012 10:21 AM
To: Silbaugh, Kathleen (JMD)
Subject: FW: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)

FYI

From: Maggard, Print (EOIR)
Sent: Tuesday, December 04, 2012 10:21 AM
To: Rosenblum, Jeff (EOIR)
Subject: FW: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)

FYI

PRINT

From: Hoogasian, Amy C. (EOIR)
Sent: Monday, December 03, 2012 5:41 PM
To: Maggard, Print (EOIR)
Subject: RE: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)

Hi – I was just checking in about this since it is in one week.
Please let me know if I have an answer as the scheduler for the Ambassador had inquired. Thanks.
Amy

From: Maggard, Print (EOIR)
Sent: Thursday, November 29, 2012 2:39 PM
To: Hoogasian, Amy C. (EOIR)
Subject: RE: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)

Amy, this request ended up going to main DOJ, please do not consider it approved until you hear back from ethics or myself.

PRINT

From: Hoogasian, Amy C. (EOIR)
Sent: Tuesday, November 27, 2012 4:05 PM
To: Maggard, Print (EOIR)
Subject: FW: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)
Importance: High

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Thank you for your kind assistance.

-Amy
AMY C. HOOGASIAN
U.S. IMMIGRATION JUDGE
U.S. DEPARTMENT OF JUSTICE-EOIR
120 MONTGOMERY STREET, STE. 800
SAN FRANCISCO, CA 94104
415.705.4415

----- Forwarded message -----

From: Paretchan, Jeffrey <jparetchan@usaid.gov>
Date: Mon, Nov 26, 2012 at 7:44 AM
Subject: U.S. Embassy Armenia Ambassador Heffern's Diaspora Tour ABA (SF)
To: amyhoogasian@gmail.com, Amy.C.Hoogasian@usdoj.gov

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Please let me know by email if you will be able to attend.

I look forward to hearing from you.

Kind regards,

Jeffrey Paretchan
Public Private Alliance Specialist / Diaspora Outreach Coordinator
USAID | Armenia
American Embassy
1 American Avenue
Yerevan 0082, Armenia
Office Direct: +(374 10) 49 45 18 (GMT +4)