Seth – Attached is the first draft of the LDF LA. Thanks!
Hey- I was thinking about your memo.

Anyways, have fun!

Chris

Christopher J. Swartz
Assistant Counsel, Ethics Law and Policy Branch
General Counsel & Legal Policy Division
U.S. Office of Government Ethics
Telephone: 202-482-9266

Visit OGE's website: www.oge.gov
Follow OGE on Twitter: @OfficeGovEthics
Rachel,

I have had a chance to review the draft – it looks good. I do have a significant number of suggestions for a next draft, but I do not think that it will take too long to implement. I think that our goal should be to get Dave a draft tomorrow so that there is a chance to get you back a draft to update prior to COB Wednesday and your leaving for vacation.

Thanks!
Seth

Rachel – Please use this version instead. Thanks!
Dave,

If you are referring to the [b](5) sentence, then it seems good to keep it in [b](5) - but I do not feel strongly about it.

Thanks,
Seth

From: Seth Jaffe
To: David J. Apol
Cc: Rachel K. Dowell
Subject: RE: LDF LA - Draft_4_6.21.17.docx
Date: Friday, June 23, 2017 9:41:01 AM

Dave,

If you are referring to the [b](5) sentence, then it seems good to keep it in [b](5) - but I do not feel strongly about it.

Thanks,
Seth

From: Dave J. Apol
Sent: Thursday, June 22, 2017 6:39 PM
To: Seth Jaffe
Cc: Rachel K. Dowell
Subject: RE: LDF LA - Draft_4_6.21.17.docx

Thanks. I think those changes look good. Do you agree, we should also [b](5)?

From: Seth Jaffe
Sent: Wednesday, June 21, 2017 5:32 PM
To: Dave J. Apol
Cc: Rachel K. Dowell
Subject: FW: LDF LA - Draft_4_6.21.17.docx

Dave,

Here is an updated draft reflecting the edits that Rachel and I discussed earlier today for your review.

Thanks,
Seth

From: Rachel K. Dowell
Sent: Wednesday, June 21, 2017 5:10 PM
To: Seth Jaffe
Subject: LDF LA - Draft_4_6.21.17.docx

Seth – Attached is the updated LA with the changes we discussed. Thanks!
Dave,

Per our discussion, I have made the one minor edit and I have put the hard copy file together. I will provide the file to Walter for his review.

Thanks,
Seth
Rachel,

FYI: I left the LDF LA draft on your chair with a note. I am happy to discuss when you are back from vacation.

Thanks,

Seth
Seth,

Draft listserv attached.

Thanks!
Rachel

--
Rachel K. Dowell
Assistant Counsel
Office of Government Ethics
General Counsel & Legal Policy Division
Ethics Law and Policy Branch
(202) 482-9267

Visit OGE's website: www.oge.gov
Follow OGE on Twitter: @OfficeGovEthics
Rachel,

Thank you. I'll let you know when I send it to Dave for his review.

Also, the IG class at DOC OIG went well and Michael says he is looking forward to seeing you at the class on the 9th.

Thanks again,
Seth

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Rachel – Accepted your edits and added a comment with proposed note text. Thanks!

Rachel,

Per our discussion, attached is the latest draft.

Thanks,
Seth
Seth,

Attached is the draft 2012 trust with identifying information removed and citations updated. It is also saved at [b](6) network info (along with the other records I sent along earlier).

Thanks!
Rachel

From: Seth Jaffe
Sent: Friday, August 04, 2017 9:39 AM
To: Rachel K. Dowell
Subject: FW: Legal Expense Trust

Rachel,

Feel free to give me a call if you would like to discuss.

Thanks,
Seth

From: David J. Apol
Sent: Friday, August 04, 2017 9:33 AM
To: Seth Jaffe; Rachel K. Dowell
Subject: FW: Legal Expense Trust

Can you please respond once we scrub the document. Thanks.

From: Bopp, Michael D. [mailto:MBopp@gibsondunn.com]
Sent: Friday, August 04, 2017 9:02 AM
To: David J. Apol
Cc: Hewett, Martin A.; Benishek, Trent J.
Subject: Legal Expense Trust

Dave –

Thanks very much for talking to us yesterday and the day before about the terms under which we might conduct legal services for [b](6). Without ruling out other options [b](6), and we are optimistic about setting up a possible legal expense trust. You mentioned yesterday that you have materials relating to a legal expense trust that was found acceptable in 2012. If you don’t mind sending them to us, along with any other documents you have relevant to establishing such a trust for an Executive Branch employee, we would be most appreciative.

Michael
This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.
Rachel,

Thank you.

Seth

---

Seth,

Attached is a redline based on today’s meeting, and below is the proposed note to be added to 93x21.

Thanks!
Rachel
Updated version of 93x21 has gone live on the website!

--Patrick

Per our conversation:

Thanks,
Seth
Rachel,

Thank you. I’ll get back to you on this.

Thanks again,
Seth

Seth,

Attached is the draft template with redline edits from today’s meeting, and the draft transmittal text is below. All working versions and the 2012 letter are saved at:

Thanks!
Rachel

--
Rachel,

Thank you for entering this - and for your excellent work on this matter.

Seth

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: Michael_Hanson.USOGE@oge.gov
Sent: Wednesday, August 16, 2017 9:41 AM
To: Seth Jaffe; Deborah J. Bortot; David J. Apol
Subject: Accomplishment has been entered by Rachel K. Dowell

Hello
Rachel K. Dowell has added a new accomplishment

ACCOMPLISHMENT

Provided guidance to private attorneys on what ethics rules apply to the formation and implementation of a legal expense trust for the benefit of a federal government employee client. Created a draft trust instrument template based on a legal expense fund trust that OGE reviewed in 2011 and 2012. Provided the draft template to the private attorneys.

Click this link to open the entry and see individual contributions:

[b][b] network info
### PROPOSED STATEMENT

<table>
<thead>
<tr>
<th>(b) (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

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From: Elaine Newton  
Sent: Friday, September 15, 2017 11:03 AM  
To: David J. Apol; Christopher J. Swartz  
Subject: Statement on Legal Defense Funds
Dear Michael,

It was a pleasure speaking with you on August 3rd concerning guidance on what ethics rules apply to the formation and implementation of a legal expense trust for the benefit of a federal government employee. During that call you indicated that it would be helpful to you if we provided you with a template trust document.

Please find attached a draft trust instrument template that is based on a legal expense fund trust that OGE reviewed in 2011 and 2012. OGE does not approve or disapprove of specific legal expense fund trust instruments. However, if a trust is established and administered in accordance with the terms set out in the attached draft trust instrument template, both the trustees and the employee will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the trust should ensure the employee does not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the trustee on the employee’s behalf.
If you decide to change any of the terms of the trust template when drafting your client’s trust instrument, you may contact OGE to review those changes to ensure they are consistent with ethics rules.

Sincerely,

Seth Jaffe

Seth H. Jaffe
Chief, Ethics Law & Policy Branch
U.S. Office of Government Ethics
(202) 482-9303
THE [EMPLOYEE] LEGAL EXPENSE TRUST FUND

THIS AGREEMENT, dated the last dated executed below, shall constitute a Trust Agreement between [name of grantor] hereinafter called the Grantor, and [name of trustee] hereinafter called the Trustee.

This agreement established the [employee] Legal Expense Trust Fund (the “Trust”).

ARTICLE I

Trust Property

The Grantor, desiring to create a trust for the purpose of accepting funds and making expenditures in connection with legal expenses incurred by the Beneficiary relating to or arising by virtue of the Beneficiary's service to the [agency] and any other legal expenses that have arisen or may arise in any judicial, civil, criminal, administrative, state, Federal, or Congressional inquiries or proceedings arising from the same operative facts and circumstances, does hereby assign to the Trustee the sum of $10.00 and such other property, monies, and assets payable to or contributed to the Trust which shall hereinafter come into his possession. Negotiable instruments made payable “[employee] Legal Expense Fund” shall be considered as being donated to the Trust.
ARTICLE II

Trust Purposes

The sole purpose of this Trust is to receive funds and to pay all expenses reasonably related to the legal representation of the Beneficiary in connection with the matter described in Article I, relating to or arising by virtue of the Beneficiary’s employment by or service to the [agency], and to pay all taxes which arise from the existence of this Trust or for which the Beneficiary may become liable as a result of the establishment of this Trust. This Trust will be established, administered, and terminated in conformity with all applicable gift and ethics rules, including but not limited to 5 C.F.R. § 2635 and 5 U.S.C. §§ 7351 and 7353, and all applicable rules governing Federal Executive Branch employees.

ARTICLE III

Beneficiary

The beneficiary of this trust shall be [employee], but he/she shall exercise absolutely no control over the Trust property and shall receive no tangible or intangible benefit from the Trust other than such benefit that is incidental to or may have arisen from legal representation related to the purposes stated in Articles I and II.

ARTICLE IV

Grantor

The Grantor shall not be a prohibited source as defined in 5 C.F.R. §2635.203(d), and desires to create a trust for the purposes stated in Articles I and II.
ARTICLE V

Trustee

The Trustee shall not be: a relative of the Beneficiary; an employee of the Beneficiary; an employee of any organization affiliated with Beneficiary; an employee of the United States Government; a partner of, or involved in any joint venture or other investment with the Beneficiary; an entity or individual with any business that would be affected by the official duties of the Beneficiary; a law firm or a partner, associate or employee of any law firm that is representing the Beneficiary in connection with any matter of investigation, which may be entitled to payment of attorney fees from this Trust; a prohibited source as defined in 5 C.F.R. §2635.203(d); a registered lobbyist or lobbyist organization as those terms are defined by 2 U.S.C. §1602 and the Presidential Executive Order 13770; or an agent of a foreign government.

ARTICLE VI

Trustee’s Powers

In the administration of the Trust, the Trustee shall have the following powers, which, subject to the restrictions contained elsewhere herein, may be exercised in the sole and absolute discretion of the Trustee without resort to any person or court for further authority and which shall be in addition to the powers conferred upon the Trustee by law or by other provisions of this instrument:

1. to invest and reinvest the principal and any accumulated interest of the Trust, if any, in only the following: (a) obligations of the United States; or (b) bank deposits maintained at a depository institution or trust company organized under
the laws of the United States or any of the States thereof or the District of Columbia;

2. to incur reasonable expenses on behalf of the Trust where necessary to make the Trust productive;

3. to hold cash uninvested for such length of time as the Trustee shall determine is advisable;

4. to sell, exchange or otherwise dispose of any of the Trust property as the Trustee may deem expedient;

5. to employ such agents, custodians, investment counsel and attorneys which the Trustee deems expedient and to pay them reasonable compensation for their services out of either principal or income of the Trust property, pursuant to the terms and conditions of a services agreement with the Trust;

6. to allocate to income or principal any receipt, gain, loss, or expenditure as he/she deems just and equitable under the circumstances of each case as it arises;

7. to compound, compromise, settle, and adjust all claims and demands in favor of or against the Trust estate on such terms as the Trustee shall deem just; and

8. to set up reserves from principal or income for the purpose of making provision for any liability or obligation of the Trust including reserves for the payment of any and all taxes referred to in Article II.
ARTICLE VII

Duties of the Trustee

In addition to the duties stated elsewhere in this Agreement, the Trustee shall have the authority to:

1. solicit and accept contributions to the trust, which may be accomplished by retaining the services of a professional fundraiser, under the following restrictions:
   a. contributions shall not be solicited from: a subordinate federal employee; a foreign government or agent of a foreign government; a federal employee earning a federal salary that is less than the Beneficiary; or, if the Beneficiary is an appointee subject to Executive Order 13770, a registered lobbyist or lobbying organization (as defined by 2 U.S.C. §1602 and the Presidential Executive Order 13770),
   b. contributions shall not be accepted from: a subordinate federal employee; a foreign government or agent of a foreign government; a federal employee earning a federal salary that is less than the Beneficiary; from any donor that indicates verbally or in writing that such contribution is given because of the Beneficiary’s official position or because of the performance of [his/her] duties or from a prohibited source (as defined in 5 C.F.R. § 2635.203(d)), unless a specific exception under 5 C.F.R. §2635.204 applies; or, if the Beneficiary is an appointee subject to Executive Order 13770, a registered lobbyist or lobbying organization (as defined by 2 U.S.C. §1602 and the Presidential Executive Order 13770),
   c. Contributions shall not be accepted unless the donor certifies in writing that the donor is not a prohibited source (as defined in 5 C.F.R. § 2635.203(d)) and that
the donor is not giving the gift because of the Beneficiary’s official position or
because of the performance of his duties,

d. contributions shall not be accepted from anonymous sources, and
e. contributions solicited by the Beneficiary shall not be accepted;

2. make expenditures for the purpose described in Article II;

3. enter into any legal agreements with legal counsel selected by the Beneficiary,
   including agreements relating to compensation, as may be necessary to effectuate the
   purposes of this Agreement;

4. transfer to the Trust property all property, monies, and assets payable or contributed
   to the Trust which the Trustee may hereafter come to possess, from or through
   Grantor or any other source, unless the Trustee in his/her discretion determines that
   such property, monies, and assets shall be returned to their source;

5. confer with the designated Ethics Official within the agency as needed within 30
   days of the receipt of any contribution or notification by a potential donor of the
   intent to make a contribution, whichever is earlier, to seek a determination as to
   whether the contribution is from a prohibited source;

6. confer with the Office of Government Ethics, where appropriate;

7. distribute cash to the Beneficiary for tax purposes as related to the Trust;

8. retain professional services on behalf of the Trust;

9. keep Trust property separate from any of the Trustee’s personal funds or any other
   funds;

10. operate as a fiduciary in relation to the Trust property and the Trust purpose as stated
    in this Agreement;
11. provide information to the Beneficiary as necessary to comply with the Ethics in Government Act, 5 U.S.C. app. § 102(a)(2).

12. return any previously accepted contribution not in conformity with the limitations found herein or not otherwise a permissible contribution within 30 days of learning the contribution is not permissible, or, when Trustee is not reasonably able to return the impermissible contribution to the donor, to donate such contribution to one or more organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986 and made exempt from taxation under Section 501(a) thereof as selected by the Grantor in his/her sole discretion, without advice or input from the Beneficiary.

ARTICLE VIII

 Liability of Trustee

The Trustee shall not be liable for any act, in his/her capacity as Trustee, undertaken in good faith and with the purpose of advancing the best interests of the Trust. No bond or other security shall be exacted or required of the Trustee in any jurisdiction.

ARTICLE IX

 Compensation of Trustee

The Trustee, if an individual, shall be compensated from either income or principal of the Trust per hour spent in administration of this Trust in accordance with his or her usual hourly rate for professional services. In the event that the Trustee shall be the trust department of a national banking institution, the Trustee shall be compensated in accordance with the usual,
customary, and published Trustee’s rates of said institution for a trust of this type and size. The Trustee may waive any or all compensation.

The Trustee shall keep a log of the time spend and a record of services performed, which log shall be available for inspection by the Grantor or his agents at reasonable times and places.

The Trustee shall further maintain documentation and an itemization of all expenses incurred in the administration of this Trust. The Grantor reserves the right to inspect such documentation at reasonable times and places.

The Trustee shall be reimbursed for all reasonable expenses incurred in the administration of this Trust.

Fees incurred by the Trustee and all expenses incurred by the Trustee shall be submitted and paid monthly, and said Trustee’s fees and expenses shall have priority over other payments to accomplish the purpose of this Trust.

ARTICLE X

A. The Term and Disposition of Residual Funds

The Trust established by this Agreement may be terminated at any time by the Trustee upon the direction of the Grantor. The Trust shall terminate, in any event, no later than six months following the completion of the legal proceedings, as determined by the Grantor, involving the Beneficiary as a result of the matter described in Article I for which the Trust was created.

Upon termination of the Trust, no further contributions shall be accepted, and no further expenditures shall be made.
B. **Distribution of Unexpended Funds Upon Termination**

Funds remaining upon the termination of the Trust shall, within thirty days thereafter, be returned to contributors to the Trust on a pro rata basis or donated and distributed to one or more organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986 and made exempt from taxation under Section 501(a) thereof as selected by the Grantor in his/her sole discretion.

**ARTICLE XI**

The Trust shall be executed and delivered in [STATE / DC] and shall be construed and administered according to the laws of [STATE / DC].

**ARTICLE XII**

The Trustee herein named may, at any time following thirty (30) days’ notice to the Grantor, resign as Trustee. In such event, or in the event of the death, malfeasance or incapacitation of the Trustee, the Grantor shall appoint a substitute Trustee without the need of Court approval and without consulting the Beneficiary.
IN WITNESS WHEREOF, said Grantor has hereunto set his hand and said Trustee has signed this instrument, all parties intending to be legally bound hereby on the day, month and year written below.

Dated this ________ day of _____________________ 201_.

Witness:

_________________________________________  

Grantor

Dated this ________ day of _____________________ 201_.

Witness:

_________________________________________  

Trustee
Hi Rachel-

As we've discussed, Dave would like to [redacted]. Please let me know if you think that the below [redacted]:

Chris
Rachel and I have reviewed and put together this:

(b) (5)
From: Christopher J. Swartz
Sent: Friday, September 15, 2017 4:22 PM
To: David J. Apol
Cc: Rachel K. Dowell
Subject: Re: Note for 1993 Op

How about a (b) (5) approach:

(b) (5)

From: David J. Apol
Sent: Friday, September 15, 2017 4:19 PM
To: Christopher J. Swartz
Cc: Rachel K. Dowell
Subject: RE: Note for 1993 Op

Do you like it better as rewritten below?

From: Christopher J. Swartz
Sent: Friday, September 15, 2017 3:34 PM
To: David J. Apol
Cc: Rachel K. Dowell
Subject: Note for 1993 Op

Dave-

As amended, the proposed note would read:

(b) (5)
(Dave--I would suggest we add in the language stating [b] (5))
Attached, please find the updated LA per our discussions. Chris also provided some edits that I incorporated. Thanks!

--
Rachel K. Dowell
Assistant Counsel
Office of Government Ethics
General Counsel & Legal Policy Division
Ethics Law and Policy Branch
(202) 482-9267

Visit OGE's website: www.oge.gov
Follow OGE on Twitter: @OfficeGovEthics
Draft talking points attached. I also left a voicemail and will let you know once I hear back about a time for the call. Thanks!

--

Rachel K. Dowell
Assistant Counsel
Office of Government Ethics
General Counsel & Legal Policy Division
Ethics Law and Policy Branch
(202) 482-9267

Visit OGE's website: www.oge.gov
Follow OGE on Twitter: @OfficeGovEthics
Good morning Dave,

Please find attached talking points for today's call (scheduled for 12p, with a short prep meeting at 11:50a). I will bring copies to the meeting.

Thanks!
Rachel
Dave – Updated as discussed. Thanks!
Dave,

Please find attached an updated draft of the LA, which incorporates your edits from earlier, as well as edits from Seth (in redline).

Thanks!
Rachel
Additional update attached. Thanks!
Small changes. 2 page attachment withheld in full - (b)(5)
Hi Nicole,

Per my recent VM, attached please find the comm content for a forthcoming LA re LDFs. It is my understanding that publication of the LA is imminent, so with apologies for the last minute loop in (I was just looped in myself an hour and a half ago), we appreciate input from you and other comm folks as soon as possible.

Thanks,

Kim
Let me know if you have any concerns.

From: Shelley K. Finlayson  
Sent: Tuesday, September 26, 2017 1:29 PM  
To: Nicole Stein <nstein@oge.gov>; Patrick Shepherd <pshephe@oge.gov>; Elizabeth D. Horton <edhorton@oge.gov>  
Subject: LDF(edited).docx

Please find my edits attached (after speaking with Seth). Please let me know if you have any additional suggestions.
Thank you in advance for providing a final proofread!
Ok.

Rachel, as soon as you send me the final tweets, I will post.

From: Monica M. G. Ashar  
Sent: Thursday, September 28, 2017 9:20 AM  
To: Rachel K. Dowell <rkdowell@oge.gov>  
Cc: Nicole Stein <nstein@oge.gov>; Zohair Baig <mzbaig@oge.gov>  
Subject: FW: LA-17-10

Here's the box link, below.

From: Zohair Baig  
Sent: Thursday, September 28, 2017 9:19 AM  
To: Monica M. G. Ashar  
Subject: RE: LA-17-10

It's ready to go:

[b(6) nonpublic internal web address]

Best,

M Zohair Baig  
202-482-9311

From: Monica M. G. Ashar  
Sent: Thursday, September 28, 2017 9:16 AM  
To: Zohair Baig  
Subject: LA-17-10

Here's the file for posting. The name is

LA-17-10

Thanks,  
Monica

From: Rachel K. Dowell  
Sent: Thursday, September 28, 2017 9:03 AM  
To: Monica M. G. Ashar
Hi Monica – The LA is ready to be posted. Please let me know when it is posted so that I can add the website link to the listserv/MAX and the external site link to the tweets. Thanks!

--
Rachel K. Dowell
Assistant Counsel
Office of Government Ethics
General Counsel & Legal Policy Division
Ethics Law and Policy Branch
(202) 482-9267

Visit OGE’s website: www.oge.gov
Follow OGE on Twitter: @OfficeGovEthics
Rachel,

When you are in the office could you please stop by or give me a call so we can discuss your draft listserv concerning gift issues?

Thanks,
Seth