**Transition Readiness Series: An Introduction to 18 U.S.C. § 203**

0:00

and welcome to OG's transition Readiness series um I'm Cheryl Kane peki and I'm

0:06

very pleased to be joined today by Monica Asher who is an attorney in our ethics law and policy Branch um welcome

0:14

Monica to the to the broadcast thank you Cheryl um I today we're gonna be Monica's gonna be talking to us about

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the criminal statute um 18 USC section 203 which is um she'll be giving us a

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lot more detail about it but kind of in a nutshell sort of a a compensation bar um for compensation that is in exchange

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for represent you provision of representational services and it's a lot more complicated than that and Monica's going to give us a really good rundown

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on on what that's all about um but one thing I did want to sort of make sure that it's clear to folks from the get-go

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um you may be asking yourself why is this particularly uh transition Readiness related um and I think again

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Monica's going to touch on this in a lot more detail in a moment but um the 203 is something that we do encounter when

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we're onboarding people uh people who are outside of government coming into government um particularly people coming

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in from things like law firms and and that sort of thing um and there's also a very squirly little post-employment

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provision that um that is that is in 203 as well and and Monica's gonna gonna steer us through that as well so without

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further Ado Monica it is your show so so please take it away thank you uh so as Cheryl said I'm going to be discussing

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18 USC 203 which is a criminal conflict of interest statute that concerns the

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receipt of compens compensation in matters affecting the government and the first couple of times that I presented

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on 203 I did so in connection with a presentation on 205 and when you look at 203 and 205

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side by side you notice several similarities um one key similarity being

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that they both deal with representational activity and and sometimes it can be tempting to to somehow conflate the two but the big

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difference here with Section 203 uh as you're going to find out is

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compensation uh so I want you to keep this word in mind uh as as I go through

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the presentation particularly the first part and just to give you a sense of

**18 U.S.C. $ 203: Overview**

2:11

where I'm going um I want to start uh with a quick overview of the structure of section

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203 so in particular this presentation is going to focus on 203

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a1b which deals with employees of the executive branch so the restrictions in

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203 A1 apply to all executive branch employees and all employees of the legislative and judicial branches they

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also apply to elected members of Congress I'm also going to discuss the application of section 203 to special

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government employees and then I'm going to conclude by briefly noting some of the

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exceptions for those on the phone um Monica was just going through slide three so just so that everybody is aware

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of where we are in the slide presentation

3:01

so I've put up on the screen the elements of uh actually this is this is slide three the uh um just so everyone

3:09

can follow along along and I've put up on the screen the elements of section 203

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a1b um and I'm gonna take a moment to briefly go through them uh and and there

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are you know if you're watching on the screen there are quite a few of them uh so section 203 a1b is a Prohibition on

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other than in the ER discharge of one's official duties directly or indirectly

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receiving accepting seeking demanding or agreeing to receive or accept

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compensation in exchange for the provision of representational services as agent or attorney or otherwise to a

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third party rendered or to be rendered either personally or by another at a

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time when such person is an employee and this is in relation to a particular matter in which the US is a party or has

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a direct and substantial interest before a department agency court court marshal

4:05

or any civil military or Naval commission okay so as you can see uh

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there are quite a few elements but I want you to notice a couple of things um the first thing that you'll probably

4:18

notice is that a number of these elements are familiar and can be found

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for example in 18 USC 205 207 and 208 so

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for the the first part of my presentation I'm going to focus on those elements that are probably more familiar

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the ones that you you probably know already and second I want you to notice the three elements that have little

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Graphics by them um not only because I enjoy making little Graphics but it's so

4:47

true um but because I want you to remember them especially in the first part of the

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presentation because when you think about section 203 I want you to remember I want you to think about compensation

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in exchange for the provision of representational services at a time when the person is an

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employee and I'm going to begin by discussing representational

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services so section 203 uses the term representational Services as agents or

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attorney or otherwise and there's a similar Prohibition in 18 USC 205 A2 on

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acting as an agent or attorney however the term is not defined in the statute so when we say representational

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Services what do we mean by this so first it means that there is a

**Representational services, as agent or attorney or otherwise Representational services require: Communication to or appearance before specified federal entities**

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communication to or an appearance before the federal entity so if the employee is merely providing behind the scenes

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advice there would be no communication or appearance and second the term

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representational Services requires the intent to influence so the communication must be in Connect connection with some

6:00

matter on which there is some controversy or at least a potential for Divergent views and so this would be in

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contrast to routine factual statements where it's really highly unlikely that there would be any controversy and O

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discusses this intent to influence u in depth in its advisory 07

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X12 so as I mentioned earlier 18 USC 205 A2 contains the language acts as agent

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or attorney so section 203 is at least arguably broader in ter in in terms of the types

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of representational activity that's prohibited section 203 again covers any

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representational Services as agent or attorney or otherwise and at least one federal court

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has said in dicta that section 203 might cover representational services that do

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not amount to acting as someone's agent at least within the common law meaning of agency

7:04

so going back to our element slide and this is slide six section 203 pertains to representational services in relation

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to particular matters and if you look at the language that section 203 uses you'll notice that

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it's probably very familiar Cheryl where have we seen this language before oh

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that looks very much like something I've seen in the 18 USC section 208 conflicting Financial interest law

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exactly so section 208a uses virtually identical language so the good news the

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very good news uh is that you can apply what you already know about the meaning of particular matter from section 208 to

**Particular matters**

7:43

section 203 and so with Section 203 we're concerned with particular matters

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involving specific parties as well as particular matters of General applicability um again particular

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matters do not include the consideration or adoption of broad policy options Direct to the interest of a very large

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very diverse group of persons these would simply be matters not particular matters um Monica can I just ask a

8:08

clarifying sort of question here or make a statement and and by way of of clarification is while for purposes of

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208 the distinction between the two different types of particular matters is material for the for purposes of the ex

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application of the exemptions and other reasons there's no reason necessarily to

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distinguish between the two types of particular matters for purpose of 203 is there when you get to special government

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employees okay um you'll you'll see where we have the distinction but for now um we're just concerned with

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particular matters regardless of whether it's a particular matter of general applicability or a particular matter involving specific parties

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okay so in addition there uh there has to be a Nexus between the US and the

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particular matter at issue so moving on to the next element the US must either be a party or have a direct and

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substantial interest um and in in many cases it will be clear whether this is or is not the case um but what if it's

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not so clear what does it mean for the us to have a direct and substantial interest in the matter so there's no

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statutory definition of the phrase direct and substantial is used in section 203 um but the phrase does

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appear in other criminal conflict of interest statutes uh notably 18 USC sections 20 5 and 207 and O's

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regulations uh interpreting section 207 provide helpful guidance on the scope of

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the phrase by describing its application in the context of that statute um so when you're looking at a a

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section 203 issue if you think it's likely that a particular uh government component could either be a party or

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have a direct and substantial interest you're going to need to coordinate with the ethics official um at that relevant

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component the component is then going to make a determination as to whether uh it has a

**Party or direct and substantial interest**

10:04

direct and substantial interest taking into consideration several factors which I've provided here and these factors

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were listed in 5cfr 2641 which again implements 18 USC

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207 and keep in mind that although uh a federal statute might be an issue or a federal court might be serving as the

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Forum this doesn't necessarily mean that the US as a party or that it has a direct and substantial interest in a

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particular matter um on the other hand the matter might be pending in a non-federal forum regardless the US may

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be a party or have a direct and substantial interest additionally you're going to

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have to consider whether any government component is a party or has a direct and substantial interest and you're going to

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need to be careful here because even if it is determin that the US does not have a direct and substantial interest at the

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present time such an interest may arise while the matter proceeds which would then trigger the statutory

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bar so not only must the US be a party or have a direct and substantial

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interest but the representation at issue must take placed before a department agency court court Marshal officer or

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any civil military or Naval

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commission so department and agency are not def in section 203 so we need to look to 18 USC section

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six for these definitions and there you'll find the department means one of the executive departments uh enumerated

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in title five so again we're looking at strictly Federal departments and agency uh includes only

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agencies of the United States so that's going to include

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entities within the legislative branch and probably agencies within the judicial branch although olc has not

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expressly pined on that but it does not include Congress or its

12:04

committees additionally olc has determined in the context of an opinion on 18 USC 205 that it does not include

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state agencies or agencies of the District of

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Colombia now the term court is not defined in Title 18 like agency or

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department is however in an unpublished olc opinion from 1970 which is quoted in

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a a two ,000 public opinion olc has informally advised that the term Court

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means any Court state or federal but again keep in mind that the US must be a

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party or have a direct and substantial interest in the matter to implicate section 203 so 203 is not normally going

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to be an issue in State

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Court okay so now that we've reviewed some of the elements that we're probably a little more familiar with it's time to

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move on to compensation which is going to take up the the bulk of the presentation and again uh this is

13:05

compensation in exchange for the provision of representational services at a time when the individual is an

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employee so for Section 203 to apply the activity must contemplate payment in

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some way the employee does not actually have to accept or receive any compensation as the statute also

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prohibits an employee from demanding seeking or agreeing to receive or accept compensation again when the other

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elements of section 203 have been met further the statute does not cover

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all payments to an employee but only compensation that is in exchange for the

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provision of representational services to a third party and again when all the

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other elements have been met so compensation could take a variety of forms uh for example it could be

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salary from an employer for providing these representational Services it could be hourly legal fees from a client it

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could be a contingency fee for helping someone win a legal case against the government uh or perhaps it could be a

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commission for helping someone obtain a government contract or other business with the government and again these are

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just a few examples however compensation generally

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does not include reimbursement of expenses separately build as actual costs um however I just want to note

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that such Arrangements should be uh considered carefully and you want to encourage employees with these arrangements to discuss them with an

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Ethics

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official so moving on one very important point to keep in mind about section 203

**Representational services by others**

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is that it covers representational Services provided by someone other than the employee

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personally so the prohibition applies as long as the employee either directly or

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indirectly shares in the compensation for those Services

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uh so for example uh an employee who shares in the overall profits of a law firm or a

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lobbying firm May violate 203 even if the individual does not personally

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accept the fees from a particular client for a representation so for example if an

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employee is a partner at a law firm the employee may not share in any fees received by the partnership uh for

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representational work performed by the other firm members before the government and this would include any kind of share

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in the profits of a firm engaged in providing such representational

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services so On a related note and before I move on to some examples I'm bringing up the overview of section 203 again and

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I want to note that section 203 has a separate payor offense for the person who would pay the improper

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compensation so this provision has great practical significance because it potentially puts the clients or the

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business associates of an employee at risk as well and so for this reason uh

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many law firms are rightly careful to protect themselves and their clients by seeking advice from ethics officials um

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before agreeing to a particular compensation Arrangement uh for a lawyer who is or was a government

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employee uh as a practical matter employees should be aware that it may be necessary to make Financial arrangements

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with a firm to expressly exclude any share of compensation that is prohibited by section

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203 okay moving on to slide 17 I'd now like to illustrate these concepts with a

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few examples uh and because this is our first example I'd like to go through each of the elements and for the sake of

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illustrating some of these elements I've made the employee in this example a current government employee um but but

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don't let that throw you it's uh it's only so I can illustrate uh certain other

17:03

elements okay so here we have Valerie who's an employee at the department of energy she maintains an outside law

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practice with two other partners one partner represents a client before the IRS in connection with an

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investigation she herself is not involved in this case and does no tax work but instead works on real estate

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matters that do not involve the federal government her partnership share is calculated based on a percentage of the

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fees generated from all matters in which she or her partners are involved including the IRS case may she accept

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this partnership share uh and because I can't see anyone nodding or shaking their heads I'm gonna

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have Cheryl help me out uh and and stand in for uh for our audience here um so

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we're gonna go through each of the elements so first would accepting the compensation be other than in the proper

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discharge of her official duties yes presumably because she's engaging in this law practice which is

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outside the scope of her official duties exactly it's her private practice so then would she be accepting the

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compensation either directly or indirectly so if we're talking about the compensation that is tied to the

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representational services before the IRS which I think is the compensation we're concerned about right um she's it would

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appear I would argue she's accepting it indirectly because she didn't provide those services but she's getting compensation from other people having

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provided those Services exactly exactly so would be indirectly because it's going from the client to the firm to

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Valerie in the form of her partnership share um we may have covered this already but is the compensation in

18:38

exchange for providing representational Services yes yes uh does it matter that

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Valerie is not personally representing the client no right so the main point

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here is that 203 bars employees from accepting compensation for the provision of representational services either by

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the employee or by someone else so if she ACS a partnership share based even in part on her partner's representation

19:02

before the IRS then she will be receiving compensation for representational

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services and I think that's the critical thing and I think that's where PE where where it can get tricky um to making

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determinations about whether or not 203 applies is that that compensation has to have been in consideration for the

19:22

provision of representational services and I think with law firms that's obviously very clear or anytime

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where it's very clear that the professional the very professional act that is is you know indisputably a

19:35

representational one um but I think this is a place where it gets it gets it gets kind of I think it can be a little

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tricky when you're dealing with something other than law firms and and and you know or the employee personally

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providing Services right right so then is Valerie an officer or an employee at the time the services are

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being rendered it appears so yes yes uh does it concern a particular matter yes yes it's an investigation

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which is a particular matter involving specific parties um so then is the USC there a party or does it have a direct

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and substantial interest I think it has both it's the IRS is a party and they clearly have a a direct and substantial

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interest in an investigation that's correct um so then is the representation by the partner before a department

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agency or Court yes it's before the IRS so in short section 203 would preclude

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Valerie from accepting the partnership share as described red now the interesting thing here though is is I

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guess I want to be a little punctilious here it's not that she can't accept any partnership share it's just she can't

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accept that partnership that part of the partnership share that is attributable to or that is is that was collected or

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is attributable to that representational service to the IRS is that correct exactly

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exactly okay so let's change up the facts a little bit so what if she uh

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properly uh declines to take any share of the fees from the IRS case uh but

21:02

then her Partners uh then offer her a larger than usual share of the fees expected to be paid by another client in

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the near future could she accept that wow that's that's

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clever um do you want to walk through the elements or do you want me to take a stab at what I think um just take a stab

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at what you think okay I would be inclined to say that

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the the mechanism doesn't really matter through which they want to try to make her whole

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the fact is that they would be remunerating her even though technically it might be out of a separate pot of

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money but they would basically be remunerating her for precisely the same amount for that she's missing out on to

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share in the compensator the compensation that they received for that representational fact right so the

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answer here is going to be no uh because Arrangements that are designed to circumvent section 203 are not going to

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be permissible um so how can Valerie and our partners protect themselves from violating

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203 The Firm would need to maintain a bookkeeping system that that segregates out any fees that Valerie would be

22:11

prohibited from receiving under 203 and then she could take her partnership share uh as Cheryl was saying from from

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those other non-prohibited fees uh but she couldn't take her partnership share

22:23

uh again from the prohibited fees

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now what if Valerie were an associate or of counsel rather than a partner and she received a salary rather than a

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partnership share would this Arrangement be acceptable okay so she's not enjoying um

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like a share of the overall profitability of the firm which would have that representational uh

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compensation bundled in with it right and and again she only works on real estate matters those matters do not

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involve the federal government yeah so I would say that as long as her compensation nothing about her

23:04

compensation is in any way tied to those other partners or other associates

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representations um that would be prohibited under two with compensation that would be prohibited under 203 I

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think she's fine it's just it's it's all a matter of is any of her compensation that she's receiving tainted as it were

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right so the receipt of a set salary here would be a permissible mean means of avoiding the 203 prohibition um that

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being said there's a there's kind of a set of circumstances under which a set salary could be problematic and and this

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is explained in in OG's opinion 99x 24 uh so a set salary could be problematic

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if the the set salary had been agreed upon there was some sort of midyear salary increase based on an increase of

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the firm's profitability profitability and there wasn't any sort of deduction for receipts that would be prohib hi

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hibited under under 203 um so against this kind of a uh you

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know a caveat to a uh um to the the

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proposition that a set salary is you know is generally permissible uh and we explained this in uh in 99x 24 so the

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material thing in that though is that again the the remuneration that she's

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receiving is somehow being tainted by being tied to other

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accounts as it were in the that are re the firm is receiving that do

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entail representational Services back to the government so as long as the salary isn't in any way or her her remuneration

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isn't in any way tied EXA or set according to something that is tied to

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those other prohibited comp compensatory Arrangements yes okay

**Timing of services**

24:59

okay so now moving on to another key feature of of section 203 uh as if as if

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203 weren't complicated enough now we're gonna throw in timing um so as I

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mentioned earlier compensation is prohibited when the representational services are rendered or to be rendered

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at a time when the individual is an officer or

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employee however if the representational services are rendered or to be rendered prior to entering government service

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compensation is permissible and similar similarly if the services are rendered

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or to be rendered after the employee leaves government service compensation is also

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permissible so note that employment status does not matter under Section 203 with respect to the timing of the actual

25:48

payment um so again the takeaway here is that compensation is prohibited if the

25:53

individual is an officer or an employee at the time the representational services were rendered so we're looking

25:59

at when were the services provided if the services were not provided while you were a government employee then we're

26:06

not concerned about the compensation correct

**Employees entering government**

26:14

okay so with the transition approaching um and anticipation of many new employees coming on board it's important

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to keep in mind that section 203 has implications for a person who is entering federal government service

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so on the prospective side it is generally a crime for an individual to receive or agree to receive compensation

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even prior to federal employment if the compensation is an exchange for later representational services to be rendered

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when the individual becomes a government employee so a special word is in order

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here about another important timing issue and this involves contingency thee

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arrangements so attorneys who are just entering the government from private practice sometimes arrive with a

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contingent interest in certain cases involving the government and under a typical contingency the arrangement the

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attorney agrees to represent a client in exchange for a certain percentage of whatever amount if anything the client

27:14

ultimately recovers so here's the problem um the problem is that even if an attorney uh

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stops working personally on a contingency fa a contingency fee case upon entering the government some other

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attorney presumably going to have to pick up the ball and keep providing representational Services um which will

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ostensibly occur during the employees period of government

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service and so the long-standing view of both OG and the Department of Justice is

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that prior to assuming federal office attorne must find some way of disposing

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of all interest in contingency fee cases involving the government and the reason

27:55

for that is that the contingency fee by its very nature is compensation for all

28:00

representational services provided in the case up until the point of payment including those Services provided by

28:07

another attorney after the first after the first attorney uh joins the

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government so there are various options for disposing of a contingency fee interest uh you know if you have an

28:22

attorney who's who's entering government service so these would include oh no I I

28:29

somehow managed to uh get rid of the the slides okay hang

28:36

on let's get us back in

28:42

um I apologize no that's not gonna do

28:48

it hang on

28:58

okay hang

29:03

on well I don't know what

29:19

happened I think we may have just dropped the hangup um

29:37

you know while we're while we're getting this up uh if you want to go ahead and continue just as if we're on I need to I

29:44

need to see where where where we are okay you could go ahead and continue and I will see what what we're doing okay

**contingency fee arrangements Uquidate employee's share and converting to a sum certain not contingent upon the outcome Assign interest in a contingency fee to another person, when the following conditions are met**

29:52

and and again I I apologize for uh for the the technical uh um uh problems I

30:00

think I may have clicked on something um so we were talking about contingency fee

30:05

Arrangements uh and and how someone enter in the government with one of these uh contingency the uh Arrangements

30:12

in a in a case that involves the government um how they can dispose of that contingency fee interest um so one

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option that they have is uh to liquidate their share and convert it into a some

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certain that is not contingent on the outcome of the matter additionally under carefully limited

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circumstances an employee May assign his or her interest in a contingency fee to another person again in a case in which

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the US is a party or has a direct and substantial interest and so um o has an

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opinion on this uh at at 99 X20 we set forth the conditions um for for a

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permissible assignment of a contingency fee uh interest and so what we say is

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that uh the assignment must be executed and effective prior to entering government service it has to be complete

31:05

unconditional and irrevocable it must not be made to the employees spouse minor child legal

31:12

dependent or household member and it must not permit the employees involvement after entering government

31:18

service in determining the amount of the fee and here we would say that consultation with OG prior to the

31:26

execution of the assignment uh is is highly

31:31

recommended okay so we're going to look at another example um and we're still trying to get the example on the screen

31:38

uh in the meantime I'm I'm just going to read it to you and and for those of you who have printed out the slides if you're if you're following along um

31:45

we're currently on slide 24 so in this example we have Jacob

31:52

who's an attorney and he's leaving his personal injury practice to join the Department of Justice

31:58

in his private practice he has one Federal tort claims act case against the VA his retainer agreement calls for him

32:05

to receive a 30% contingency fee in addition to reimbursement for his litigation expenses if his client is

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successful all depositions and other pre-trial Discovery and motions are concluded but the settlement

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negotiations are ongoing with the possibility of a trial in the future so may he hand this contingency

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fee case over to another attorney while reserving the right to a proot a share

32:29

of any contingency fees ultimately received so just take a moment to think

32:36

about that um but you you might have a a gut reaction already and and the answer here is no um section 203 would bar this

32:45

Arrangement um because as I described in the fact pattern someone else would have to pick up uh where Jacob stopped uh and

32:52

that person would be performing representational Services while Jacob works as a government employee uh and if

32:58

the plaintiff prevails the contingency fee that would be due would be compensation for all the representational services provided in

33:05

the course of the case including those Services provided by Jacob's successor attorney after Jacob enters government

33:13

service so moving on to slide 25 slightly different facts um may he

33:18

assign his right to receive his share of the contingency fee to his spouse

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and the answer here uh Cheryl if you'd like to hop in

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um I would argue that no you can't that's right assignment to a spouse

33:42

would not be permissible so slightly different fact

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slide 26 may he settle on a specific non-contingent sum in lie of a

33:53

contingency fee prior to joining the government there I would say that it's kind of like

33:59

almost like akin to you know like as long as it seems to me yes he could

34:05

because then it's not tied directly to the like he's gonna get it no matter what the outcome of the matter is right

34:12

right yeah so this would be okay and this is because he will no longer have an interest that depends on the outcome

34:17

it's going to be paid to him or due to him regardless of whether the US [Music]

34:26

prevails so well we're on the subject of contingency fees I want to touch on three deceptively difficult little words

34:33

and those are in exchange for um because of all the concepts here I think this is

34:38

probably the most complex uh and the least intuitive and as I was looking at uh at

34:45

these three words and as I Was preparing for my discussion on this section I realized that these three words um could

34:52

could quickly swallow up the presentation because the the concept is so nuanced so all want to say on this

34:58

subject um is again to reiterate that section 203 targets compensation

35:04

received in exchange for representational services it does not however Target

35:10

compensation received because of or but for representational

35:16

services and the majority of the time when you see something that looks like compensation and exchange for representational services that's exactly

35:23

what it's going to be so for example hourly legal fees from a client a contingency fee um and and so forth so

35:31

I'm not going to discuss this slide but I've included it here because I think it would be a useful reference um and I'd

35:36

really encourage you to take a look at the advisories uh and the opinions that I've listed because they really they

35:41

really discuss this subject in depth uh and and I think they'll be a a very useful um you know resource for

35:52

you so we just discussed the timing aspect for employees who are entering government service um again with the

**Employees leaving government**

36:00

transition there are going to be many employees uh who are not only entering government service but who are leaving

36:06

government Service uh and it's important to remember that section 203 also has implications for them um employees need

36:13

to remember that once they've left they're not off the hook they still need to consider 203 especially if they're

36:20

going to a law firm uh or another entity that is providing representational

36:26

services again it's a crime for an individual to

36:32

receive compensation uh again after terminating federal employment if the compensation is an exchange for

36:39

representational services that were rendered while the individual was still in

36:46

government this is uh of course going to uh arise most often with attorneys who

36:52

leave government and join private law firms because firms uh sometimes compensate their members especially

36:57

their Partners on the basis of fees received for past representational Services provided by The Firm um

37:04

including services that may have been rendered During the period when the former employee was still in government

37:10

so in these cases the former government employee must make arrangements with the firm to avoid sharing in any prohibited

37:17

compensation such Arrangements might include for for example agreeing to receive a fixed salary for a certain

37:23

period of time so moving on to slide 30 let's take a

37:30

look at another example so Jane left the Department of Health and Human Services to become part

37:37

owner of government strategies LLC which is a government relations and consulting firm while she was still in government

37:45

The Firm began representing a coalition of state governments in their efforts to persuade HUD to modify its requirements

37:51

for Community Development grants shortly after she joined the firm the Coalition paid its first bill for these Services

37:58

may jane share in the fees generated by the HUD work my reaction would be no

38:07

because the HUD work those representations were taking

38:12

place at the time that Jane was still an employee at the Department of Health and Human

38:18

Services and so th she couldn't share in those fees exactly so this illustrates

38:23

the post-employment effect of section 203 uh again as Cheryl was saying she may not share in the fees um because

38:30

there in exchange for representational services rendered during the time when Jane was a government

38:40

employee so what if she were a salaried employee um could she receive a bonus

38:45

that was based on the firm's profitability for the calendar year in which those fees were received well I

38:51

think again and that kind of goes back to the the other example we were talking about is any Monies that

38:58

are that that are that are tainted with I use the word taint because I don't know a better word to use um that are

39:05

tainted with um compensation that was that even though the employee him or

39:10

herself did not engage in the services for which that remuneration resulted but any monies they receive simply can't

39:17

touch any representational activities before the government that would have occurred while they were still a federal employee right and I I think the use of

39:24

Tainted is a is a really good word um so uh if the bonus was based on a on a

39:30

percentage of the firm's profits she would be receiving compensation for representational communications beforehe

39:35

had um that occurred during her government service and as such it would be barred by section 203 uh again it's

39:41

it's it's tainted so again it's a a a workaround for this if you will that

39:46

would allow her to enjoy at least some bonus would be they would just have to carve out of her bonus any amount that

39:53

was attributable to those representational Services correct okay

40:02

okay so slight variation may jane share in any future fees for additional services that are rendered in connection

40:08

with this matter so this is after she's already left the government oh of course because she's no longer a government

40:13

employee and we're only concerned about when those representations take place and if these representations are now going to be when she's no longer a

40:19

government employee then the compensation is okay exactly so as long as the fees are for representational

40:24

activities provided after Jane leaves the government these are some pretty

40:30

Advanced accounting practices these places have to have is all I can

**Special Government Employees**

40:39

say okay so moving on to the application of 203 to special government employees

40:45

um so a special government employee is as you know is an employee appointed to perform temporary duties for not more

40:51

than 130 days in a year because sges almost always have other jobs outside

40:57

the government how section 203 applies to them is going to be very important so for Section 203 SG aren't

41:05

as restricted as regular employees um basically if the sge works for less than

41:10

60 days then the restrictions in section 203 only apply to party matters that

41:16

they personally worked on uh and then if the sge works more than 60 days the

41:22

restrictions of section 203 would apply to both party matters they personally worked on and any party matters that are

41:29

pending at their agency um but section 203 is not going to apply to all particular matters the way it does for

41:36

regular employees so here's where that distinction between and understanding the distinction

41:42

between specific party matters and matters of General pability it comes into

41:51

play okay so now we're on slide 34 and we're going to revisit one of our prior examples

41:59

so let me uh do do people generally see this on their screen yeah everybody should okay so I'm I'm not going to read

42:05

the example um but what would happen if Valerie instead of being a regular employee what if she were an

42:14

sge okay so she's not involved in the case she does not tax work but instead work real estate okay so she were in

42:23

sge you really have to tie it back to specific party matters that are pending

42:29

before her agency correct right so section 203 um again only applies to

42:35

sg's uh in relation to particular matters involving specific parties and then only if the sge participated in the

42:42

matter personally and substantially as a government employee or if the matter is pending in the department or agency

42:48

where the sge serves provided the sge served there more than 60 days out of

42:54

the proceeding 365 so in this case well I think the critical thing there then is

42:59

that if she works for the Department of energy she would only be 203 restricted with respect to things that were either

43:04

before the department of energy or that she worked on personally Andor that she worked on personally substantially while

43:10

she was at the department of energy right right right and these are IRS matters right these are IRS matters so

43:15

we can we can forget about the second condition because the IRS matter is not pending at energy um then regarding the

43:23

the first Condition it's highly unlikely that the the energy employee would have participated in this IRS matter um but

43:31

we might want to check to make sure that Valerie didn't work at the IRS and and on this matter before moving on to

43:37

[Music] energy okay so slight variation what if

43:43

Valerie were an sge at the IRS so here there's a little more cause for concern

43:50

and and regarding the first condition we'll need to find out if she worked on this matter as an IRS

43:55

employee regarding the second condition we know that the matter is pending before the IRS so the question is going

44:01

to be whether she served at the IRS for more than 60 days out of the proceeding

44:06

365 so then if she worked on the matter or worked at the IRS for more than 60 days then section 203 would bar her from

44:14

accepting as part of her partnership share or otherwise any fees for representational communications by her

44:21

Partners in the IRS case and I just want to wrap up by

**Exceptions: 18 U.S.C. $ 203**

44:28

noting uh that section 203 contains three exceptions um and all of these have similar counterparts in uh 18 USC

44:38

205 so that concludes our presentation on uh on Section 203 I hope uh I hope it

44:45

was informative and uh if you have any questions I'd encourage you to to contact your desk officers and uh or or

44:52

reach out to me is as needed um although please please contact your desk officers

44:57

[Laughter] um no I think this no thank you Monica very much and this was extraordinarily

45:03

helpful I think to just walk through the statute and parse it because it is a

45:09

fairly complex statute but it's also a fairly narrow Statute in many ways and I

45:14

think that that one of the biggest takeaways from this is that you know be mindful not to read it maybe too broadly

45:21

and too restrictively um but also that you know in instances where you if you have something come up or you think you

45:27

have a colorable 203 um circumstance because this the fixes for them can be

45:33

quite comp complicated um it's definitely worth your while to to touch base with your desk officer um and

45:39

contact o about it well um so thank you everyone um uh Monica I want to thank

45:45

you very very much this has been a very helpful presentation I'm sorry for the for the glit the little glitch we had in

45:50

the middle but I think we we ironed it out um and uh so thank you all for joining us and we look forward to seeing

45:56

you next month uh for our next uh distance learning

46:14

broadcast thank you at this time the call is ended and you may disconnect at this time

46:36

you do