



United States
Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005-3917

December 14, 2012
LA-12-09

LEGAL ADVISORY

TO: Designated Agency Ethics Officials
FROM: Don W. Fox, General Counsel 
SUBJECT: Scope of the Exception for Representation of a Parent or Child before the Government under 18 U.S.C. § 205(e)

This Legal Advisory addresses the scope of the exception to 18 U.S.C. 205(a) that permits an employee to represent before the Government persons with whom he or she has a personal relationship, in connection with most matters.¹ See 18 U.S.C. § 205(e). In particular, this Legal Advisory clarifies that the exception's provision authorizing an employee to act as agent or attorney for his or her parent or child may include representation of an employee's stepparent or stepchild if the stepchild is determined to be a "dependent child" of the stepparent or the stepparent is a lawful parent of the stepchild.

Section 205 of title 18 generally bars an officer or employee of the United States from, among other things, "act[ing] as agent or attorney for prosecuting any claim against the United States" or "act[ing] as agent or attorney for anyone" before any department, agency, court, or officer in connection with a particular matter in which the United States is a party or has a direct and substantial interest. 18 U.S.C. § 205(a). Notwithstanding this prohibition, the exception for representation of persons with whom an employee has a personal relationship provides that:

[n]othing in subsection (a) or (b) prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for, or otherwise representing, his *parents*, spouse, *child*, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary.

18 U.S.C. § 205(e)(emphasis added). This exception has two limitations. First, the employee may not act under this exception without approval of the government official responsible for his or her appointment to the position. Second, the employee may not act under the exception in

¹ Section 203 of title 18 contains a similar exception for representation before the Government of persons with whom an employee has a personal relationship. See 18 U.S.C. § 203(d).

matters in which he or she has personally and substantially participated in his or her capacity as a government employee or in matters that are subject of his or her official responsibility.

Neither the immediate section nor 18 U.S.C. § 202 define the terms “parent” and “child” for purposes of this exception. Likewise, both the title-specific and code-specific definition sections fail to define these terms. Thus, in determining its scope, OGE has looked to the purpose of the exception, which “springs from the recognition that government employees will on occasion have family and other personal responsibilities that may be thoroughly proper but would, without special statutory recognition, be prohibited by the broad rules of Section 203 and 205.” *See* BAYLESS MANNING, FEDERAL CONFLICT OF INTEREST LAW 95-96 (1964).

In light of the exception’s purpose, OGE has determined that an employee’s representation of his or her stepparent or stepchild may be proper when the relationship is one that invokes certain family responsibilities. A “stepmother” is generally defined as the wife of one’s father by a later marriage, and “stepfather” as the husband of one’s mother by a later marriage. *See* BLACK’S LAW DICTIONARY 1425 (7th ed. 1999). By itself, such a relationship may not be sufficient to qualify for the exception because it may not invoke the same type of responsibilities that a parent-child relationship creates.²

However, a stepparent may take steps to create a parent-child relationship with the stepchild, thus bringing the relationship within the scope of 18 U.S.C. § 205(e).³ For example, an employee may represent his or her stepparent or stepchild if the stepparent is a lawful parent of the stepchild through legal adoption or a judicial decree establishing the stepparent’s status as guardian. Likewise, an employee may represent his or her stepchild if the stepchild is determined to be a “dependent child” of the stepparent.⁴

Agency ethics officials should consult with their OGE Desk Officer Team regarding any questions about the issues addressed in this legal advisory.

² Likewise, OGE has determined that an employee may not represent his or her parent-in-law before the government under this exception because such a relationship does not create the same type of family responsibilities as a parent-child relationship. *See also* United States v. Schnabel, Civil Action No. 93-1290 (D.D.C., June 24, 1993) (alleging a violation of 18 U.S.C. § 205 when the defendant, a government employee, referred a letter to the Deputy Secretary of the Department of Veterans Affairs on behalf of his *father-in-law*; however, it is not clear whether the employee attempted to invoke the exception to represent his father-in-law).

³ Common dictionary definitions of “parent” further support the interpretation that blood or natural parentage is not necessary to create a parent-child relationship. *See* BLACK’S LAW DICTIONARY 1137 (7th ed. 1999) (defining “parent” as “the lawful father or mother of someone . . . [t]he term commonly includes . . . the adoptive father or adoptive mother of a child . . . and an individual or agency whose status as guardian has been established by judicial decree”); MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 842 (10th ed. 2002) (defining “parent” as “a person who brings up and cares for another”).

⁴ To determine whether a stepchild is a dependent child of the stepparent, ethics officials may look to the Ethics in Government Act of 1978 (EIGA), which requires a reporting individual to disclose the assets and income of his or her dependent child. Because a filer and his or her dependent child typically share the type of close financial relationship that inevitably results in the comingling of assets and income, the requirement to report the assets and income of the filer’s dependent children was intended to discourage a filer from transferring ownership or control to the dependent child to avoid disclosure. For these purposes, dependent child is defined as “any individual who is a son, daughter, stepson, or stepdaughter and who is unmarried and under age 21 and living in the household of such reporting individual; or is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986.” 5 U.S.C. app. § 109(2).