

E-Mail to ECs, Subject: Impartiality in Performing Official Duties

In the business section of "The Washington Post," an interesting situation is posed in the "On the Job" column of the 28 July 1999 issue. Two employees in a Federal agency have a close, personal relationship. It appears so close, that the other workers think that the relationship is intimate. One of the employees in this relationship received a promotion, and she selected the other employee in the relationship to work for her... which was also a promotion for the second employee. The worker writing in to the "Post" says that this has impacted negatively on morale, that it sure seems like favoritism, and there are others who would have liked to have a crack at this job. You will find the article at:

The answer set out in the column appears correct as far as it goes: there are OPM rules, but they apply only to marriage partners or other familial relationships. But, the OPM rules do not apply in this type of situation. Too bad; it reflects bad judgment, but the OPM rules don't apply.

But, I suggest that this answer does not go far enough... and, as ECs, you all know that! The "Standards of Ethical Conduct" govern this situation. There is definitely a "covered relationship" here as defined by 5 C.F.R. Sec. 2635.502(b)(1). It might seem that it does not *exactly* fit the definition, but 5 C.F.R. Sec 2635.702(d) brings this relationship under Sec. 2635.502. In addition, it could be that these two employees in this relationship are members of the same household (although that is not stated in the article). Accordingly, the ethics rules say:

"Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interests of a member of his household [if that should be the case here], or knows that a person with whom he has a covered relationship [that *is* the case here] is ... a party to such a matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate ... " unless he has received written authorization (in accordance with Sec. 2635.502(d)).

Accepting as fact that the two employees have a close, personal (intimate) relationship, how do you think that a reasonable person will view one of them selecting the other for promotion; one of them making work assignments, training decision, award recommendations, etc.? Pretty bad appearances, don't you think? Unfortunately, the way the rules are written are nonsensical! It gives the employee first bite at the apple: " ... and where the employee determines that the circumstances would cause ... etc.". So, all the employee has to say is that "I didn't think that there was any issue." But, what about judgment? Where was management when this was going on? Poor judgment all around!

Now what? The employee who made the selection of her close and personal friend is purposely obtuse or just clueless and says "But, I didn't see a problem." This does not lock management in concerning prospective matters. The "agency designee" can say: "Well, I *do* see a problem, I *do* think that a reasonable person with knowledge of the relevant facts would question your impartiality in your participation in official matters affecting this other employee." Now the employee is disqualified from participating in such matters. See Sec. 2635.502(c). One of them will probably have to be transferred to resolve the disqualification.

I take the time to point this article out to you and to discuss the issues. They are complex issues, difficult to deal with, and all wrapped up in emotion. They are especially problematical when we don't have statutory guidance (e.g., the nepotism law, or conflicts of interest type statute like 18 U.S.C. Sec. 208 -- the financial interests of a spouse are imputed to an employee by law, but NOT the financial interests of a close, personal, or even intimate and live-in friend!) What's important to my mind is that we be alert to such situations, understand where these relationships fit into the scheme of things, and insist on management dealing with and resolving the issues. There is nothing worse than letting situations like this fester.

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