



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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DEC 15 2017

Ref: 8RA

MEMORANDUM

SUBJECT: My Ethics Obligations - Recusal and Screening Arrangement

FROM: Douglas H. Benevento
Regional Administrator

TO: E. Scott Pruitt
Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and Region 8's ethics team and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in particular matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13770 and the Trump Ethics Pledge that I signed.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse or any minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment. I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest but will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order and the Trump Ethics Pledge, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, **Xcel Energy**, is a party or represents a party, or that is directed at Xcel as a specifically identifiable party (e.g. sulfur dioxide National Ambient Air Quality Standard designations directed at Xcel owned power plants). I understand that my recusal from particular matters involving Xcel Energy as a specific party lasts until October 15, 2019, which is two years from the date that I

joined federal service.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication with **Xcel Energy** relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means five or more parties.

ATTORNEY BAR OBLIGATIONS

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially while in private practice, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics.

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

Pursuant to federal ethics impartiality rules at 5 C.F.R. § 2635.502, I understand that I have a “covered relationship” with my wife’s employer, Holland & Hart LLP. However, on December 11, 2017, EPA’s Designated Agency Ethics Official issued an impartiality determination that authorizes me to participate in particular matters in which Holland & Hart is a party or represents a party provided that my spouse is not herself involved. I understand that I must recuse myself from participation in EPA specific party matters if my wife works on those matters for Holland & Hart. (See attached Impartiality Determination).

SCREENING ARRANGEMENT

In order to help ensure that I do not participate in matters subject to my recusal obligations, I have taken or will take the following steps:

1. I will provide the Deputy Regional Administrator with a copy of this memorandum so that she may fully understand the purpose and scope of my recusal obligations and this screening arrangement. In order to help ensure that I do not inadvertently participate in matters from which I am recused, I am directing the Deputy Regional Administrator to seek the assistance of the Region 8 ethics team and/or OGC/Ethics if she is ever uncertain whether or not I may participate in a matter.
2. I will provide a copy of this memorandum to my principal subordinates, including the Region 8 Senior Leadership Team. I will also instruct my principal subordinates that all inquiries and comments involving matters that may be covered by my recusal obligations should be directed to the Deputy Regional Administrator for her review without my knowledge or involvement.

UPDATE AS NECESSARY

In consultation with OGC/Ethics or the Region 8 ethics team, I will revise and update my recusal memorandum whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you, the Chief of Staff, OGC/Ethics, ORC, the Deputy Regional Administrator, and to my principal subordinates.

Attachment

cc: Ryan Jackson, Chief of Staff
Debra H. Thomas, Deputy Regional Administrator, Region 8
Kevin Minoli, Acting General Counsel
Suzanne J. Bohan, Assistant Regional Administrator, ECEJ, Region 8
Richard D. Buhl, Assistant Regional Administrator, TMS, Region 8
Carl Daly, Deputy Assistant Regional Administrator, OPRA, Region 8
Bert Garcia, Deputy Assistant Regional Administrator, OWP, Region 8
Martin Hestmark, Assistant Regional Administrator, OPRA, Region 8
Patrice Kortuem, Deputy Assistant Regional Administrator, TMS, Region 8
Paul Logan, Deputy Regional Counsel, Region 8
Andrew Mutter, Director, OCPI, Region 8
Darcy O'Connor, Assistant Regional Administrator, OWP, Region 8
Kim Opekar, Deputy Assistant Regional Administration, ECEJ, Region 8
Kenneth C. Schefski, Regional Counsel, Region 8
Betsy Smidinger, Assistant Regional Administrator, EPR, Region 8
Sandy Stavnes, Deputy Assistant Regional Administrator, EPR, Region 8
Elyana Sutin, Deputy Regional Counsel, Region 8
Patrick Davis, Senior Advisor for Public Engagement, Region 8
Laura Flynn Jenkins, Chief of Staff, Region 8
Justina Fugh, Senior Counsel for Ethics
Michael Gleason, Regional Ethics Counsel, Region 8
Diane Moon, Staff Assistant, Region 8



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

DEC 11 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving Holland & Hart LLP

FROM: Kevin S. Minoli *KSM*
Designated Agency Ethics Official and
Acting General Counsel

TO: Doug Benevento
Regional Administrator
Region 8

This memorandum addresses your ethics obligations with respect to Holland & Hart LLP (Holland & Hart), a law firm that practices environmental law and where your spouse is employed as an attorney. Because your spouse is not an equity sharing principal and does not receive any bonus based on the profitability of the firm, you do not have a financial conflict of interest with her employer, Holland & Hart. What remains is whether you may participate in particular matters in which your spouse's employer is a party or represents a party. As explained in more detail below, I am granting you a limited impartiality determination.

Pursuant to 5 C.F.R. § 2635.502(b)(1)(iii), you have a "covered relationship" with Holland & Hart given your spouse's employment. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Absent an impartiality determination, you cannot participate in any specific party matter in which Holland & Hart is a party or represents a party if that matter is likely to have a direct and predictable effect upon the firm or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. See 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve Holland & Hart with the following limitation, however unlikely: you must recuse yourself from participation in EPA specific party matters if your spouse participates in the same specific party matters. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Your spouse is employed part time as of counsel at Holland & Hart. Her areas of practice do not include environmental matters or involve the EPA. Thus, the intersection between your spouse's work and that of the Agency is extremely remote.

Effect of the matter upon your financial interest – Your spouse has no equity interest in the firm's revenues since she is not an equity sharing partner at the firm. Also, she does not receive any bonus from the firm. Due to this compensation arrangement with the firm, I conclude that there is no possibility that any of EPA's actions involving Holland & Hart will affect your own financial interests or those imputed to you under the financial and impartiality rules. See 18 U.S.C. § 208 and 5 C.F.R. § 2635.502.

Nature and importance of the employee's role – As Regional Administrator, you are the leader of your Region and part of the Agency's political team. You may be asked to participate in discussions and meetings related to particular matters that involve Holland & Hart.

Sensitivity of the matter – I understand that in Region 8 there are already a number of specific party matters where Holland & Hart provides legal representation. These matters will likely rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation and input as Regional Administrator in such matters will be of importance to the Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in specific party matters that involve Holland & Hart, but not the same specific party matters which your spouse participates in while employed at the firm. If the Agency determines that we have a compelling reason for your participation as an EPA official on any specific party matter that your spouse participates in personally and substantially, then you or your Deputy Regional Administrator or Regional Counsel may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis along with additional relevant details before determining whether to authorize your participation. You must continue to recuse yourself from these matters unless EPA ethics officials determine that the Agency's interest in your participation outweighs any impartiality concern and authorizes you to participate.

While I have issued you this determination to interact with Holland & Hart on specific party matters, except for any specific party matter in which your spouse participates, please note that you may elect to voluntarily make adjustments to your duties and not participate in a particular matter that involves Holland & Hart. Nothing in this impartiality determination should preclude you from choosing to recuse yourself altogether from specific party matters in which Holland & Hart represents a party, but doing so is not necessary under the federal ethics rules.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786, or any member of your regional ethics team.

cc: Deb Thomas, Deputy Regional Administrator, Region 8
Kenneth Schefski, Regional Counsel, Region 8
Paul Logan, Deputy Regional Counsel, Region 8
Elyana Sutin-McCeney, Deputy Regional Counsel, Region 8
Michael Gleason, Regional Ethics Counsel, Region 8
Justina Fugh, Senior Counsel for Ethics