

## § 77.1

77.11 Enforcement of this part.

77.12 Relationship to state and local regulation.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515(a), 516, 519, 533, 547.

SOURCE: Order No. 1903-94, 59 FR 39928, Aug. 4, 1994, unless otherwise noted.

### § 77.1 Purpose and authority.

(a) The Department of Justice is committed to ensuring that its attorneys perform their duties in accordance with the highest ethical standards. The purpose of this part is to provide a comprehensive, clear, and uniform set of rules governing the circumstances under which Department of Justice attorneys may communicate or cause others to communicate with persons known to be represented by counsel in the course of law enforcement investigations and proceedings. This part ensures the Department's ability to enforce federal law effectively and ethically, consistent with the principles underlying Rule 4.2 of the American Bar Association Model Rules of Professional Conduct, while eliminating the uncertainty and confusion arising from the variety of interpretations given to that rule and analogous rules by state and federal courts and by bar association organizations and committees. (Copies of the Bar rules are on file in most law libraries, and through on-line legal research services).

(b) This part is issued under the authority of the Attorney General to prescribe regulations for the government of the Department of Justice, the conduct of its employees, and the performance of its business, pursuant to 5 U.S.C. 301; to direct officers of the Department of Justice to secure evidence and conduct litigation, pursuant to 28 U.S.C. 516; to direct officers of the Department to conduct grand jury proceedings and other civil and criminal legal proceedings, pursuant to 28 U.S.C. 515(a); to supervise litigation and to direct Department officers in the discharge of their duties, pursuant to 28 U.S.C. 519; and otherwise to direct Department officers to detect and prosecute crimes, to prosecute offenses against the United States, to prosecute civil actions, suits, and proceedings in which the United States is concerned, and to perform such other functions in

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an appropriate and ethical manner as may be provided by law, pursuant to 28 U.S.C. 509, 510, 533, and 547.

### § 77.2 Definitions.

As used in this part, the following terms shall have the following meanings, unless the context indicates otherwise:

(a) *Attorney for the government* means the Attorney General; the Deputy Attorney General; the Associate Attorney General; the Solicitor General; the Assistant Attorneys General for, and any attorney employed in, the Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Environment and Natural Resources Division, or Tax Division; the Chief Counsel of the DEA and any attorney employed in that office, the General Counsel of the FBI and any attorney employed in that office or in the Legal Counsel Division of the FBI, and, in addition, any attorney employed in, or head of, any other legal office in a Department of Justice agency; any United States Attorney; any Assistant United States Attorney; any Special Assistant to the Attorney General or Special Attorney duly appointed pursuant to 28 U.S.C. 515; any Special Assistant United States Attorney duly appointed pursuant to 28 U.S.C. 543 who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United States; or any other attorney employed by the Department of Justice who is authorized to conduct criminal or civil law enforcement proceedings on behalf of the United States. The term *attorney for the government* does not include any attorney employed by the Department of Justice as an investigator or other law enforcement agent who is not authorized to represent the United States in criminal or civil law enforcement litigation or to supervise such proceedings.

(b) *Civil law enforcement investigation* means an investigation of possible civil violations of, or claims under, federal law that may form the basis for a civil law enforcement proceeding.

(c)(1) *Civil law enforcement proceeding* means a civil action or proceeding before any court or other tribunal brought by the Department of Justice under the police or regulatory powers