

§ 76.37

United States pursuant to the provisions of 21 U.S.C. 844a(g) and obtain *de novo* judicial review of the final order.

§ 76.37 Collection of civil penalties.

(a) Collection of any penalty shall be the responsibility of the United States Attorney having jurisdiction over the matter.

(b) The United States Attorney having jurisdiction over the matter may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with 28 U.S.C. 1961.

§ 76.38 Deposit in the United States Treasury.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the United States Treasury.

§ 76.39 Compromise or settlement after Decision and Order of a Judge.

(a) The United States Attorney having jurisdiction over the case may, at any time before the Attorney General issues an order, compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

(b) Any compromise or settlement must be in writing.

§ 76.40 Records to be public.

All documents contained in the records of formal proceedings for imposing a penalty under this part may be inspected and copied, unless ordered sealed by the Judge.

§ 76.41 Expungement of records.

(a) The Attorney General shall expunge all official Department records created pursuant to this part upon application of a respondent at any time after the expiration of three (3) years from the date of the final order of assessment if:

- (1) The respondent has not previously been assessed a civil penalty under this section;
- (2) The respondent has paid the penalty;

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(3) The respondent has complied with any conditions imposed by the Attorney General;

(4) The respondent has not been convicted of a federal or state offense relating to a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(5) The respondent agrees to submit to a drug test, and such test shows the individual to be drug free.

(b) A non-public record of a disposition under this part shall be retained by the Department solely for the purpose of determining in any subsequent proceeding whether the person qualifies for a civil penalty or expungement under this part.

(c) If a record is expunged under this part, the individual for whom such an expungement was made shall not be held guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this part or the results thereof in response to an inquiry made of him for any purpose.

§ 76.42 Limitations.

No action under this part shall be entertained unless commenced within five (5) years from the date on which the violation occurred.

PART 77—ETHICAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT

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AUTHORITY: 28 U.S.C. 530B.

SOURCE: Order No. 2216-99, 64 FR 19275, Apr. 20, 1999, 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 implement 28 U.S.C. 530B and to provide guidance to attorneys concerning the requirements imposed on Department attorneys by 28 U.S.C. 530B.

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(b) Section 530B requires Department attorneys to comply with state and local federal court rules of professional responsibility, but should not be construed in any way to alter federal substantive, procedural, or evidentiary law or to interfere with the Attorney General's authority to send Department attorneys into any court in the United States.

(c) Section 530B imposes on Department attorneys the same rules of professional responsibility that apply to non-Department attorneys, but should not be construed to impose greater burdens on Department attorneys than those on non-Department attorneys or to alter rules of professional responsibility that expressly exempt government attorneys from their application.

(d) The regulations set forth in this part seek to provide guidance to Department attorneys in determining the rules with which such attorneys should comply.

§ 77.2 Definitions.

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

(a) The phrase *attorney for the government* means the Attorney General; the Deputy 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, and Tax Division; the Chief Counsel for 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 (Office of General Counsel) of the FBI; 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; and any other attorney em-

ployed by the Department of Justice who is authorized to conduct criminal or civil law enforcement proceedings on behalf of the United States. The phrase *attorney for the government* also includes any independent counsel, or employee of such counsel, appointed under chapter 40 of title 28, United States Code. The phrase *attorney for the government* does not include attorneys employed as investigators or other law enforcement agents by the Department of Justice who are not authorized to represent the United States in criminal or civil law enforcement litigation or to supervise such proceedings.

(b) The term *case* means any proceeding over which a state or federal court has jurisdiction, including criminal prosecutions and civil actions. This term also includes grand jury investigations and related proceedings (such as motions to quash grand jury subpoenas and motions to compel testimony), applications for search warrants, and applications for electronic surveillance.

(c) The phrase *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.

(d) The phrase *civil law enforcement proceeding* means a civil action or proceeding before any court or other tribunal brought by the Department of Justice under the authority of the United States to enforce federal laws or regulations, and includes proceedings related to the enforcement of an administrative subpoena or summons or civil investigative demand.

(e) The terms *conduct* and *activity* means any act performed by a Department attorney that implicates a rule governing attorneys, as that term is defined in paragraph (h) of this section.

(f) The phrase *Department attorney[s]* is synonymous with the phrase "attorney[s] for the government" as defined in this section.

(g) The term *person* means any individual or organization.

(h) The phrase *state laws and rules and local federal court rules governing attorneys* means rules enacted or adopted by any State or Territory of the United States or the District of Columbia or