

107TH CONGRESS
1ST SESSION

S. 1437

To clarify the applicable standards of professional conduct for attorneys for the Government, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2001

Mr. LEAHY (for himself, Mr. HATCH, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To clarify the applicable standards of professional conduct for attorneys for the Government, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Professional Standards
5 for Government Attorneys Act of 2001”.

6 **SEC. 2. PROFESSIONAL STANDARDS FOR GOVERNMENT AT-**
7 **TORNEYS.**

8 (a) Section 530B of title 28, United States Code, is
9 amended to read as follows:

1 **“SEC. 530B. PROFESSIONAL STANDARDS FOR GOVERNMENT**
2 **ATTORNEYS.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) GOVERNMENT ATTORNEY.—The term
5 ‘Government attorney’—

6 “(A) means the Attorney General; the
7 Deputy Attorney General; the Solicitor General;
8 the Associate Attorney General; the head of,
9 and any attorney employed in, any division, of-
10 fice, board, bureau, component, or agency of
11 the Department of Justice; any United States
12 Attorney; any Assistant United States Attorney;
13 any Special Assistant to the Attorney General
14 or Special Attorney appointed under section
15 515; any Special Assistant United States Attor-
16 ney appointed under section 543 who is author-
17 ized to conduct criminal or civil law enforce-
18 ment investigations or proceedings on behalf of
19 the United States; any other attorney employed
20 by the Department of Justice who is authorized
21 to conduct criminal or civil law enforcement
22 proceedings on behalf of the United States; any
23 independent counsel, or employee of such coun-
24 sel, appointed under chapter 40; and any out-
25 side special counsel, or employee of such coun-

1 sel, as may be duly appointed by the Attorney
2 General; and

3 “(B) does not include any attorney em-
4 ployed as an investigator or other law enforce-
5 ment agent by the Department of Justice who
6 is not authorized to represent the United States
7 in criminal or civil law enforcement litigation or
8 to supervise such proceedings.

9 “(2) STATE.—The term ‘State’ includes a Ter-
10 ritory and the District of Columbia.

11 “(b) CHOICE OF LAW.—Subject to any uniform na-
12 tional rule prescribed by the Supreme Court under chapter
13 131, the standards of professional responsibility that
14 apply to a Government attorney with respect to the attor-
15 ney’s work for the Government shall be—

16 “(1) for conduct in connection with a pro-
17 ceeding in or before a court, the standards of profes-
18 sional responsibility established by the rules and de-
19 cisions of that court;

20 “(2) for conduct reasonably intended to lead to
21 a proceeding in or before a court, the standards of
22 professional responsibility established by the rules
23 and decisions of the court in or before which the
24 proceeding is intended to be brought; and

1 “(3) for all other conduct, the standards of pro-
2 fessional responsibility established by the rules and
3 decisions of the Federal district court for the judicial
4 district in which the attorney principally performs
5 his or her official duties.

6 “(c) LICENSURE.—A Government attorney (except
7 foreign counsel employed in special cases)—

8 “(1) shall be duly licensed and authorized to
9 practice as an attorney under the laws of a State;
10 and

11 “(2) shall not be required to be a member of
12 the bar of any particular State.

13 “(d) COVERT ACTIVITIES.—Notwithstanding any
14 provision of State law, including disciplinary rules, stat-
15 utes, regulations, constitutional provisions, or case law, a
16 Government attorney may, for the purpose of enforcing
17 Federal law, provide legal advice, authorization, concur-
18 rence, direction, or supervision on conducting covert activi-
19 ties, and participate in such activities, even though such
20 activities may require the use of deceit or misrepresenta-
21 tion.

22 “(e) ADMISSIBILITY OF EVIDENCE.—No violation of
23 any disciplinary, ethical, or professional conduct rule shall
24 be construed to permit the exclusion of otherwise admis-
25 sible evidence in any Federal criminal proceeding.

1 “(f) RULEMAKING AUTHORITY.—The Attorney Gen-
2 eral shall make and amend rules of the Department of
3 Justice to ensure compliance with this section.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—
5 The analysis for chapter 31 of title 28, United States
6 Code, is amended, in the item relating to section 530B,
7 by striking “Ethical standards for attorneys for the Gov-
8 ernment” and inserting “Professional standards for Gov-
9 ernment attorneys”.

10 (c) REPORTS.—

11 (1) UNIFORM RULE.—In order to encourage the
12 Supreme Court to prescribe, under chapter 131 of
13 title 28, United States Code, a uniform national rule
14 for Government attorneys with respect to commu-
15 nications with represented persons and parties, not
16 later than 1 year after the date of enactment of this
17 Act, the Judicial Conference of the United States
18 shall submit to the Chief Justice of the United
19 States a report, which shall include recommenda-
20 tions with respect to amending the Federal Rules of
21 Practice and Procedure to provide for such a uni-
22 form national rule.

23 (2) ACTUAL OR POTENTIAL CONFLICTS.—Not
24 later than 2 years after the date of enactment of
25 this Act, the Judicial Conference of the United

1 States shall submit to the Chairmen and Ranking
2 Members of the Committees on the Judiciary of the
3 House of Representatives and the Senate a report,
4 which shall include—

5 (A) a review of any areas of actual or po-
6 tential conflict between specific Federal duties
7 related to the investigation and prosecution of
8 violations of Federal law and the regulation of
9 Government attorneys (as that term is defined
10 in section 530B of title 28, United States Code,
11 as amended by this Act) by existing standards
12 of professional responsibility; and

13 (B) recommendations with respect to
14 amending the Federal Rules of Practice and
15 Procedure to provide for additional rules gov-
16 erning attorney conduct to address any areas of
17 actual or potential conflict identified pursuant
18 to the review under subparagraph (A).

19 (3) REPORT CONSIDERATIONS.—In carrying out
20 paragraphs (1) and (2), the Judicial Conference of
21 the United States shall take into consideration—

22 (A) the needs and circumstances of
23 multiforum and multijurisdictional litigation;

1 (B) the special needs and interests of the
2 United States in investigating and prosecuting
3 violations of Federal criminal and civil law; and

4 (C) practices that are approved under Fed-
5 eral statutory or case law or that are otherwise
6 consistent with traditional Federal law enforce-
7 ment techniques.

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