



**UNITED STATES POSTAL SERVICE
OFFICE OF INSPECTOR GENERAL**

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ARLINGTON, VA 22209-2020

MEMORANDUM OF INTERVIEW

Interview Date:	JANUARY 14, 2010
Case Name:	BERNSTOCK, ROBERT F. - PRESIDENT - MAILING AND SHIPPING SERVICES - WASHINGTON, DC
Case Number:	09UIHQ0132GC11SI
Interviewee:	MARY ANNE GIBBONS
Interview Location:	USPS HEADQUARTERS
Interviewed By:	Special Agent (b)(7)(C)
Witnesses:	Special Agent (b)(7)(C) and Investigator (b)(7)(C)

On January 14, 2010, Special Agent (b)(7)(C) U.S. Postal Service Office of Inspector General (OIG), Special Inquiries Division, interviewed Mary Anne Gibbons, Senior Vice President and General Counsel, U.S. Postal Service Headquarters, concerning Robert Bernstock, President, Mailing and Shipping Service, Postal Service Headquarters.

Gibbons provided the reporting agent (RA) with the following information:

OIG REFERRAL

Gibbons stated that in early December 2009 she received a complaint from (b)(7)(C) regarding alleged contract billing irregularities and travel fraud in the Media Planning and Advertising group. Gibbons said that she forwarded the information to OIG Chief Counsel Elizabeth "Lisa" Martin and did not make any further inquiry into the allegations.

CONTRACT NEGOTIATIONS

Gibbons stated she was not involved in Bernstock's contract negotiations and does not know if he was granted any special exceptions. She said that Tony Vegliante, Chief Human Resources Officer and Executive Vice President, and Postmaster General (PMG) John Potter handled the Bernstock negotiations.

Gibbons stated that it is common practice to have the ethics group, led by Helen Grant, Managing Counsel, Civil Practice, to communicate with the new hire to start the SF-278 process and ethics briefings. However, she could not recall if Grant contacted Bernstock before or after he entered on duty. She said it is the legal department's practice to have

Vegliante inform new high-level entrants that they need to coordinate with Grant for their ethics briefing and to start the SF-278 process. Gibbons said the legal department usually tries to talk to new officers about ethics before they come on board.

The RA asked Gibbons if she provided Vegliante or Potter with an interpretation of ethics regulations that may be applicable to Bernstock's outside boards or businesses. Gibbons responded that she often has "the ethics person, then Grant, do that." Gibbons said she prefers to have the ethics attorney provide counsel because they give ethics advice daily.

Gibbons said at the time of Bernstock's hire, she was unaware of any specific agreements Potter made with Bernstock regarding his outside interests. However, since the release of the news articles, she had an opportunity to speak with Potter and Grant. She understood that Bernstock could remain on outside boards, but was required to sell all investments of FEDEX and UPS.

At some point before Bernstock officially started work, Gibbons stated she attended a meeting with Grant, Vegliante and Potter. She recalled at the meeting they discussed Bernstock's desire to stay on outside boards and actively participate in their meetings and teleconferences. They also discussed his use of the government computer to print documents from his other business interests that he was unable to view on his personal Portable Digital Assistant (PDA). She said Potter decided that Bernstock could remain on outside boards, but she was unsure of the number or names of the companies. Potter also decided that he would allow Bernstock to use his government computer to receive, view, and print e-mails sent to his personally owned PDA that he was unable to view. Gibbons stated that she kept no records of the meeting, and referred the RA to Grant, stating that Grant keeps the official files.

The RA asked Gibbons to describe what Bernstock did in his outside business activities. Gibbons responded that she did not know; she was never in the same spot when he did it. The RA asked Gibbons if she was aware of the amount of time Bernstock spent on his outside board business. Gibbons stated that Grant advised Bernstock to keep a record of his activity. Bernstock's method of documenting his time spent on his outside business was to have (b)(7)(C) send Grant and Gibbons an e-mail informing them of the time he spent working on his outside affairs. For example, Bernstock or (b)(7)(C) would provide an email stating: "Bob has ½ hour [of] personal business today and will work an additional two hours."

Gibbons and the RA reviewed multiple e-mails she received from Bernstock's (b)(7)(C). Gibbons acknowledged that the e-mails all provided a date and time in which Bernstock was unavailable to work on Postal Service business, because he worked on personal business. The RA questioned Gibbons about Bernstock's practice of paying back the Postal Service for time spent conducting personal business, by working double the amount of time he used. Gibbons stated she

was unsure why Bernstock does it, but stated that he is not an hourly employee and just needed to get his work done. She also added that Bernstock normally works seven days a week and worked in the office all evening. She knows, because she received calls late in the evenings and on weekends from Bernstock to discuss different issues.

The RA asked Gibbons about the circumstances surrounding Bernstock's desire to hire (b)(7)(C) as an employee of his personal business. Gibbons responded that Bernstock asked either her or Grant if he could hire (b)(7)(C). Grant wrote a response letter addressing the question and sent it to Gibbons attention. Gibbons did not recall if she ever provided the letter to Bernstock. Gibbons said that she might have given Bernstock advice like, "You really shouldn't do that." The RA asked Gibbons if she informed Bernstock of the contents within the letter, sharing Grant's legal opinion. Gibbons stated she did not recall the particular circumstances or the details of any specific counsel she may have provided Bernstock.

Gibbons stated that she and Grant gave Bernstock his ethics briefing on July 7, 2008. Gibbons obtained her journal and showed the RA an agenda, containing hand-written notes that read "sell FedEx, UPS, and DHL." Gibbons stated she covered misuse of position and the *de minimis* usage policy in her briefing. She advised Bernstock that he could receive occasional e-mails, calls, and use the printer.

The RA asked if Bernstock's use of the Postal Service telephone, e-mail, and computer hardware for his other business interests would constitute *de minimis* use. Gibbons stated she would have to review the policy, but believes the policy is in place to ensure employees do not cost the government a lot of money and the use of resources does not have a negative impact on the employee's job and they are not accomplishing things. Gibbons said that she would have to be presented with the totality of Bernstock's activities to know if his current use of the telephone, e-mail and computer systems are exceeding the *de minimis* standard. Gibbons used an example of telephone usage to define *de minimis*. She said that when the Postal Service used to pay for long distance tolls calls, employee use for personal reasons would carry a low threshold. However, present day it is hard to quantify a dollar amount on usage, because the cost of the telephone service includes long distance. Therefore telephone usage, such as Bernstock making calls for his board teleconferences could be considered *de minimis*.

The RA showed Gibbons a copy of a letter Grant prepared advising against allowing Bernstock to hire (b)(7)(C) to conduct personal business. Specifically, the RA quoted from page 2, paragraphs 3-4, and page 3, paragraph 1-5 (below), and asked Gibbons how (b)(7)(C) conducting non-postal business on government time and property differs with Bernstock's ability to conduct business on government time and property, using government equipment.

Regarding the proposal that (b)(7)(C) perform Mr. Bernstock's non-postal work during (b)(7)(C) core workhours, on government property and then extend (b)(7)(C) workday accordingly, the Impartiality concerns set out above remain the most significant ethics risk for Mr. Bernstock. Additionally, performing such work on postal property and during (b)(7)(C) normal workday gives rise to the possibility that both Mr. Bernstock and (b)(7)(C) may violate one or more of the Misuse provisions of the Standards of Conduct.

(b)(7)(C) the most likely violation is a Misuse provision regarding the misuse of government property. Even if (b)(7)(C) were to use a cell phone to answer non-postal business calls, (b)(7)(C) would still be in a postal facility, sitting at a postal desk, most likely using a postal computer and otherwise occupied performing postal duties. Such usage is likely to significantly expand beyond the limited use contemplated in postal policy in the relevant Management Instruction. Moreover, it would be disruptive to postal business to interrupt (b)(7)(C) postal duties as the need arrives for (b)(7)(C) to perform the personal work of Mr.

Bernstock. Non-postal business calls are likely to arrive without advance knowledge or announcement.

It is also likely Mr. Bernstock may be viewed as violating another Misuse provision that prohibits an employee from using his public office for private gain. Employees and/or customers in Mr. Bernstock's office, as well as other employees that may be in the general vicinity of (b)(7)(C) are likely to hear (b)(7)(C) take such calls. The consequential and unavoidable perception that postal employees can be used for non-postal work and that postal work can be subordinated for the personal gain of a senior officer is not in the best interests of the Postal Service.

Also, (b)(7)(C) is at risk of violating another of the Misuse provisions – the provision that requires an employee to use his or her official time only for government purposes. It is not likely that (b)(7)(C) will be in a position to fully devote (b)(7)(C) to postal work if (b)(7)(C) is intermittently interrupted to perform non-governmental work.

Finally, although outside the general concerns of the Standards of Conduct, we should consider the effect and impact such an arrangement would have on other employees. Agencies, including the Postal Service, typically consider an employee's performance of non-postal work on government property during official work hours as a reasonable basis for discipline up to and including removal from federal service. While Mr. Bernstock's proposal is seeking permission to do so, a dual standard could be detrimental to employee morale and lead to unnecessary problem with other employees.

Gibbons stated that there are two standards; (b)(7)(C)
(b)(7)(C) For example, Bernstock has the ability to conduct his business from his office behind a closed door and would not encounter a perception problem, because other employees would not know that he was performing work for his boards. (b)(7)(C) would have the opposite

effect, because persons passing by may overhear the personal business-related conversation, which would cause an "unavoidable perception." As long as Bernstock gets his work done and there are no performance issues, then she does not see a problem with Bernstock continuing his board activity. However, she said, "If Bernstock is getting e-mail from someone, and is late to meetings, cannot get stuff out – that is a problem."

Gibbons also stated that another problem noted in Grant's letter arose from Bernstock wanting to use (b)(7)(C) for both his personal and Postal Service business. She said that (b)(7)(C) a subordinate, they like to please, would agree to stay late, and will not refuse." Furthermore, if (b)(7) is in the office doing Bernstock's personal business (b)(7)(C), the Postal Service would have to pay (b) because it would be difficult to distinguish what exactly (b) worked on throughout the day and who was responsible for paying (b) salary.

The RA asked Gibbons if she considered his use of Postal Service time to conduct teleconferences *de minimis*. She responded that he uses a ½ hour sporadically to participate in teleconferences and makes the time up at the end of the day, which is *de minimis*. She said the ½ hour teleconference is different than Bernstock sitting at his desk typing proposals for his private business.

The RA again questioned whether it was acceptable for Bernstock to promote his profit-making business ventures on Postal Service time, property and telephone. Gibbons stated "[I'm] not saying he is promoting his profit making-business on our time; [I] do not know if he is using our phone and e-mail for his profit-making business." Gibbons stated "[I] think we told him he ought to use his personal cell phone." However, Gibbons stated she does not know if Bernstock "knew that from square one."

The RA asked if Grant advised Bernstock not to use the Postal Service e-mail, telephone, and computer system for his personal business activities during their July 7, 2008, ethics briefing. Gibbons answered that Potter said if Bernstock could not read a document for his outside business on his personal BlackBerry that he could forward it to his Postal Service BlackBerry/computer.

The RA asked if Potter has the authority to override 5 C.F.R. and authorize the use of Postal Service property by Bernstock in his personal business activities. She answered if the PMG said he could use his computer system and e-mail for his personal business activities, then "it is OK." However, Gibbons said that receiving e-mails directly to his Postal Service account from Nutrisystems and Pantry could be an issue, but she would need to rely on Grant for "specific chapter and verse." Gibbons said she would not disagree if Grant said it was not allowed. Gibbons said that use of his government e-mail account to receive board e-mails would violate the ethics rules if he did not have permission from Potter.

When asked again by the RA whether personal use of government property was covered during her ethics briefing to Bernstock, Gibbons admitted that he was informed that it was improper. However, she said that the question OIG should ask is "did it stop over time, or did it continue?" She thinks it would be useful for the OIG to examine it and the answer would have some relevance.

The RA asked Gibbons if Bernstock indeed received the ethics briefing, did he fail to take heed to her warning regarding personal use of government property. She responded that he may not have understood. She then questioned if there was anything else she could do. She stated, "Maybe when someone comes from the outside, they need an ethics briefing the first month, and again the second month."

IMPROPER USE (b)(7)(C)

The RA asked Gibbons if Bernstock was authorized to use (b)(7)(C) to conduct his personal business. She responded that Bernstock's use of his staff to conduct his private business (i.e. (b)(7)(C) writing e-mails to external businesses) is unacceptable and he "should not do it." However, she stated that OIG should research whether it happened at the beginning of his tenure, and the activities slowed or stopped over time. Gibbons reiterated, she and Grant "briefed Bernstock early on (July 7, 2008)" about the ethics rules, and she also "briefed him in a meeting with Potter." She said "[for] some people it is clear and they get it. If his understanding was worse and then better, it is important to include in the OIG report." Gibbons said that the private sector is very different from the government and persons new to the Postal Service do not adapt well.

Gibbons admitted she received e-mails from Bernstock's secretary informing her that Bernstock was going off the clock to conduct personal business, but Gibbons said that she did not know what he was specifically doing during that time period. Gibbons said that the e-mails she received did not indicate Bernstock used Postal Service equipment or telephone.

The RA asked Gibbons if she knew if Bernstock conducted teleconferences on the Postal Service telephone during the time he was conducting his personal business. Gibbons said, "I don't know that part. I do not know how he is doing it. He should do it on his personal telephone." She agreed that Bernstock should not use Postal Service telephones for his outside business activity. However, an occasional e-mail, in her view is "OK." Beyond that, such as typing documents, is "not OK."

Gibbons stated that it is improper for Bernstock to provide (b)(7)(C) name and contact information to his external business colleagues for communication purposes. It was also improper for Bernstock to allow his colleagues to copy (b)(7)(C) on his private business e-mails, to include correspondence with his personal financial advisor. She said, "He should not be using (b)(7)(C) to correspond back and forth." (b)(7)(C) should not

be responsible for printing his personal business documents, nor (b)(7)(C) his personal business meeting and itineraries.

After the RA presented her with documents showing (b)(7)(C) performed the aforementioned tasks for Bernstock, she said again that "maybe we need to train early and later." The RA asked if training could be used by both Bernstock (b)(7)(C) as an excuse. She recalled both Bernstock (b)(7)(C) received ethics training. She affirmed that she and Grant did a good job providing ethics training. She said they covered all the ethics rules, but "some people just do not get it, especially if they just operate that way." Gibbons said that she may need to give a "booster shot."

Gibbons stated she agrees that the aforementioned offenses are a violation of the ethics rules.

SF-278

Gibbons stated that Grant, who looked into a media inquiry about Bernstock's board affiliations and SF-278, learned that Bernstock failed to report multiple board affiliations. She said that she did not refer the failure to Potter for action. She instructed Grant to turn the information over to the OIG and wait for the return of an official report of investigation.

Bernstock received specific instructions on what he needed to report for his SF-278, both verbally and in the form of an official letter. The Postal Service required Bernstock to "cough everything up.... boards, gifts, etc." Gibbons recalled that his portfolio is large and he worked with (b)(7)(C) postal attorney, (b)(7)(C). As a courtesy, (b)(7)(C) completed Bernstock's SF-278's. Gibbons stated the ethics group has occasionally helped persons to ensure filing compliance. (b)(7)(C) received the information from Bernstock, recorded the information in the right boxes and confirmed with him about the accuracy of the SF-278 at its completion. She recalled it took (b)(7)(C) a lot of time and work, approximately one month, because he has a complicated portfolio. Gibbons said she knew the challenges Bernstock faced and she tries to "support the top of the house." Gibbons said Bernstock could have hired an outside attorney to prepare the form, but she did not believe he would have been reimbursed.

Gibbons said that at the completion of the SF-278, (b)(7)(C) provided the original to Bernstock to review and certify (sign). The RA questioned whether it would have been better practice or made a difference to have someone other than (b)(7)(C) responsible for reviewing the forms she had previously prepared. Gibbons stated it would not make much difference because they can only review what is there.

Gibbons said it is her understanding that Bernstock's failure to fully disclose could be a criminal violation; however, she never researched it. Gibbons stated he violated the OGE requirement of completing his SF-278, but Gibbons could not comment on punishment. She would have to look at similar cases and the penalties. Gibbons stated

that she did not recall any postal employees being disciplined for failing to report information on their SF-278. The RA asked if Bernstock's failure to fully complete his SF-278 was a violation of postal policy. She responded that the SF-278 requires he list everything. When he signed, it was not complete, it should have been complete.

Gibbons said that she did some follow-up with Grant after the July 8, 2008, meeting regarding Bernstock's potential ethical conflicts; specifically, to identify ways to manage Bernstock's potential financial conflicts. She said his financial advisors trade all the time and she recalled thinking of someone in his role, meeting with customers, had to have a conflict because every company in the country is a customer. She instructed Grant to talk to OGE to see if there was some kind of blanket waiver for the very wealthy.

PERSONAL SERVICE CONTRACT

Gibbons stated that Bernstock came to her for advice regarding hiring Lynne Alvarez as a contractor shortly after he entered on duty. Bernstock informed her that he evaluated his staff's abilities and believed that he "holes in the talent," specifically in the area of marketing. Bernstock said that Alvarez was very talented and they worked together in the past at multiple companies. He said she would be a great person to bring to the Postal Service to help with the "morass." Gibbons gave Bernstock her support after she learned he had no financial connection with Alvarez and he would not be enriching the pockets of a business associate. She advised him to work with Senior Vice President Susan Brownell's Supply Management group to learn the process before he contracted with Alvarez.

Gibbons said that the OGC did not normally review sole source contracts. She did not think OGC should be part of sole source contracting reviews, stating, "There are not enough lawyers." Gibbons has confidence in the Supply Management procedure, stating it is a "strong process."

Gibbons stated that she was confident that Supply Management followed the process for the Tatum LLC, Alvarez, Richard Sorota, and Kimberly Wolfson contracts. She reviewed most of the documents that make up the complete contract file, to include the business case justifications, and was comfortable making that conclusion. Gibbons stated she did not review the pricing clause memorandums, but received confirmation from Brownell that the market research was properly done and the memorandums were in the contracting file. Gibbons stated she specifically asked Brownell if her contracting officers followed the steps, and Brownell responded yes.

The RA asked Gibbons if it was proper for one of the aforementioned contractors to work for Bernstock's personal business and the Postal Service at the same time. She responded that it is "not a concern if one of them worked on his private business." Gibbons does not see it as a problem if they are not billing the Postal Service for the work they are doing for him, unless the Postal Service is paying the contractor by the

hour and they are not performing under the contract while performing Bernstock's personal business work.

MEETING AT BERNSTOCK'S RESIDENCE

Bernstock participates in the flexiplace/ flexitime program, and works from home on Fridays. Bernstock is also allowed to hold meetings from his house, authorizing contractors and employees to meet at his home. Gibbons said she does not see a problem with him holding a meeting at his home, but she said that she would have to look at it in a variety ways and consider the attendees, cost, time element, and absolute deadlines before determining if there is an issue.

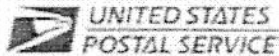
BERNSTOCK COMMUNICATION

The RA asked if Bernstock had been in communication about the ongoing OIG investigation. Gibbons stated, "Yes, he called asking can the OIG talk to [REDACTED] [REDACTED] also called to inquire if [REDACTED] had to interview with the OIG. Gibbons advised Bernstock that [REDACTED] had to cooperate. She also advised him that if asked, he had to provide the OIG with documents. Gibbons stated she advised Bernstock to obtain outside counsel to advise him. Gibbons stated the fees associated with Bernstock hiring a private attorney to assist him with the OIG investigation are covered [REDACTED] [REDACTED] She also advised [REDACTED] that it was important to make sure [REDACTED] facts were accurate when talking with the OIG.

Attachment: OGC Memorandum, dated June 26, 2009.



PREPARED BY: [REDACTED]	DATE: March 18, 2010
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June 26, 2009

MARY ANNE GIBBONS
SENIOR VICE PRESIDENT AND GENERAL COUNSEL

SUBJECT: Proposed Outside Employment Arrangement between
Robert Bernstock (b)(7)(C)

This responds to an inquiry posed to you by another senior officer as to whether there are any ethics restrictions or limitations that would prevent that officer from entering into an employment arrangement with (b)(7)(C) to work on personal, non-postal business matters. Specifically, Robert Bernstock, President, Mailing and Shipping Services, inquired whether he could enter into a personal employment arrangement with (b)(7)(C). Pursuant to that arrangement, Mr. Bernstock would compensate (b)(7)(C) to perform (b)(7)(C) related to his outside, non-postal, business matters, including service on the boards of several companies, during non postal hours.

Assuming such an arrangement would be permissible, Mr. Bernstock also asked about the possibility of having (b)(7)(C) perform work for him on non-postal business matters during limited parts of the regular workday, and then make up any postal time by working additional hours at the end of the business day. Such an arrangement would accommodate the fact that telephone calls concerning these outside business matters are likely to come in, and would need to be answered, during core business hours.

Analysis

We examined the questions presented and discussed the issues with a representative of the Office of Government Ethics (OGE). We have concluded that both proposed arrangements are problematic and will likely lead to ethics violations.

Should Mr. Bernstock and (b)(7)(C) enter into the proposed non-postal employment arrangement, Mr. Bernstock would have a covered relationship (b)(7)(C) as this term is defined by the applicable ethics regulations. As such, his official postal duties, insofar as they relate to (b)(7)(C) must be examined under the *Impartiality In Performing Official Duties* provision in the Standards of Conduct. The test for ensuring that an employee does not violate this Standard is whether a reasonable person with the relevant facts would question the federal employee's ability to remain impartial in a particular matter involving the covered party. It is the opinion of this office that other employees would find a reasonable basis to question Mr. Bernstock's ability to remain impartial (b)(7)(C) if he is relying upon (b)(7)(C) in support of non-postal duties for which he is compensated by non-governmental entities. The particular matters that are most likely to lead a reasonable person

with the relevant facts to question his ability to remain impartial in particular matters involving (b)(7)(C) are decisions regarding leave usage; performance appraisals; salary increases; and other decisions which would have a direct and predictable financial impact (b)(7)(C). Further, it is not feasible to consider a recusal for Mr. Bernstock in all particular matters dealing with his (b)(7)(C) as it is not likely that such a recusal would be effective or practical in application. Based on all of the above, we counsel against the proposed outside employment relationship.

In addition to the probability that the proposed situation will lead to a violation of his duties to remain impartial, it is possible that such an outside employment arrangement may lead to a violation of the gift rules. Note the following example provided in the Standards of Conduct:

An employee of the Department of Housing and Urban Development may not ask his secretary to type his personal correspondence during duty hours. Further, directing or coercing a subordinate to perform such activities during non-duty hours constitutes an improper use of public office for private gain in violation of §2635.702(a). Where the arrangement is entirely voluntary and appropriate compensation is paid, the secretary may type the correspondence at home on her own time. Where the compensation is not adequate, however, the arrangement would involve a gift to the superior in violation of the standards in subpart C of this part. (Emphasis added.) 5 C.F.R. §2635.705, Example 1.

While we have not had any discussion with Mr. Bernstock regarding the salary he may offer (b)(7)(C) under such an arrangement, the potential for a gift violation is yet another reason to recommend against the proposed arrangement.

Regarding the proposal that (b)(7)(C) perform Mr. Bernstock's non-postal work during (b)(7)(C) workhours, on government property and then extend workday accordingly, the Impartiality concerns set out above remain the most significant ethics risk for Mr. Bernstock. Additionally, performing such work on postal property and during normal workday gives rise to the possibility that both Mr. Bernstock (b)(7)(C) may violate one or more of the Misuse provisions of the Standards of Conduct.

(b)(7)(C) the most likely violation is a Misuse provision regarding the misuse of government property. Even if (b)(7)(C) were to use a cell phone to answer non-postal business calls, (b)(7)(C) would still be in a postal facility, sitting at a postal desk, most likely using a postal computer and otherwise occupied performing postal duties. Such usage is likely to significantly expand beyond the limited use contemplated in postal policy in the relevant Management Instruction. Moreover, it would be disruptive to postal business to interrupt (b)(7)(C) postal duties as the need arrives for (b)(7)(C) to perform the personal work of Mr.

Bernstock. Non-postal business calls are likely to arrive without advance knowledge or announcement.

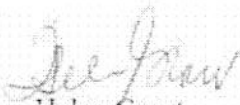
It is also likely Mr. Bernstock may be viewed as violating another Misuse provision that prohibits an employee from using his public office for private gain. Employees and/or customers in Mr. Bernstock's office, as well as other employees that may be in the general vicinity of (b)(7)(C) are likely to hear (b)(7)(C) take such calls. The consequential and unavoidable perception that postal employees can be used for non-postal work and that postal work can be subordinated for the personal gain of a senior officer is not in the best interests of the Postal Service.

Also, (b)(7)(C) is at risk of violating another of the Misuse provisions – the provision that requires an employee to use his or her official time only for government purposes. It is not likely that (b)(7)(C) will be in a position to fully devote (b)(7)(C) to postal work if (b)(7)(C) is intermittently interrupted to perform non-governmental work.

Finally, although outside the general concerns of the Standards of Conduct, we should consider the effect and impact such an arrangement would have on other employees. Agencies, including the Postal Service, typically consider an employee's performance of non-postal work on government property during official work hours as a reasonable basis for discipline up to and including removal from federal service. While Mr. Bernstock's proposal is seeking permission to do so, a dual standard could be detrimental to employee morale and lead to unnecessary problem with other employees.

While the decision to approve or deny this request remains ultimately with the Postal Service, we should note that OGE joined in our conclusions and strongly rejected the proposal that (b)(7)(C) could work intermittently throughout the postal work day, on postal property, on Mr. Bernstock's non-postal business under the circumstances Mr. Bernstock proposed.

In light of the numerous concerns discussed above, we advise against Mr. Bernstock entering into any arrangement with (b)(7)(C) pursuant to which (b)(7)(C) would support Mr. Bernstock's non-postal business matters whether such work is performed on or off postal property. Please let me know if you have any additional questions.



Helen Grant
Chief Counsel
Ethics and Federal Requirements