

The primary focus of my topic is three fold, first if a high ranking official from a firm were to become the Director of an agency and his former company is asking for approval of a drug, how should the Director act in regard to this rulemaking? The second question is not a difficult, if a former Director were to assume a position at a firm asking for approval of a drug, how should the former directors position influence the decisions of the agency? Finally how could government regulation limit the potential conflicts of interest from the "Revolving Door"?

The first scenario answer is both ethics and law based. It would be unethical for the Director to have any influence what so ever in this circumstance. Realistically the Director would have probably at least an influence to the degree that those who work for him would at least try and guess his desire for the outcome, at worst he would directly or indirectly tell them. Probably at this point no procedural rules have been breached. This is of course only if the director has not tried to influence the Administrative Law Judge in which case many legal issues could be raised, more on that in question three. Back to the ethics involved, it would be very important if the Director were to try and be ethical about the issue he/she should give the appearance of ethical procedure. One way this could be done is that a recommendation could be made rulemaking be in a formal format. In addition she/he should be very careful to limit ex parte contacts between himself and his former business associates. Under no circumstance should the Director have conversation of any nature involving this case. Under the circumstance that the drug was or was not approved, the case could go before Judicial review, there any appearance of unethical behavior could not only be evidence to support a plaintiffs claims, and even case a de novo review, but even worst it could be food for the media and a public scandal.

The second question if the director were to leave and become a superior for a firm. I don't see this as a big threat, the new director would have his new alliances. It would seem like any influence that the former director would have would have to be kept to a minimum in order to preserve the rulemaking under the circumstance that the findings were on the firms behalf. As a company representative he should not personally make ex parte contacts with the agency and obviously not approach the ALJ.

The government control over the behavior described above is done through various ways. The first way is to keep the final decision maker in regard to the agencies findings, the ALJ, separate from the mainstream agency. This is in accordance with the procedural rules as outlined in the Administrative Procedure Act (APA). The situation of ex parte contacts or meetings which are off the record are a problem. They are primarily demonstrated in the format of informal rulemaking, so it would be a good policy to make high profile cases good situations to place on the formal rulemaking track. Another controlling influence is the three acts which impose public scrutiny of the agencies behavior during rulemaking. The freedom of information act, the government is responsible to disclose specific records to the public on request. The Government in Sunshine Act, here every portion of every meeting that is headed by a collegial body is open to public observation. The Regulatory Flexibility Act of 1980, If a new regulation has a significant influence on small business an analysis is done to determine if the financial burden outweighs the benefits. If so then less costly alternatives are given.

The two cases of the Director are extreme, in truth individuals of less power but sometimes more influence to the actual findings, for example an ALJ, may be a more common occurrence. The government has went to some lengths to protect society from insider manipulations but I feel in truth it is common and for the most part because of the power of Agencies not preventable. It is perhaps the constant attention that is paid to the Federal Register by Public groups and environmentalists which protect us the most.

