

From: [Schools, Scott \(ODAG\)](#)
To: [Shaw, Cynthia K. \(JMD\)](#)
Subject: RE: Murray authorization
Date: Sunday, February 12, 2017 5:40:19 PM

Cindy:

Thanks for the below. I grant the waiver.

Scott

From: Shaw, Cynthia K. (JMD)
Sent: Thursday, February 9, 2017 7:36 PM
To: Schools, Scott (ODAG) <sschools@jmd.usdoj.gov>
Subject: Murray authorization

Scott, I'm sending this in case you want to consider an authorization for Mike Murray. If you want to discuss and I'm not at 514-8196, you can call my cell at:


Cindy

I recommend that you authorize Michael Murray to continue to work on *Washington and Minnesota v. Trump* and related immigration litigation. The case is a challenge to implementation of the President's January 27, 2017, Executive Order, Protecting the Nation from Foreign Terrorist Entry into the United States ("immigration order"). Other immigration cases nationwide also challenge the immigration order. On February 6, 2017, you authorized participation in the Washington case based on the exigencies of the circumstances. I believe, even without the existing exigencies, that a continued authorization is appropriate.

Jones Day filed an amicus brief in the *Washington* case on behalf of law professors on February 6, 2017. Jones Day will submit a more detailed briefing February 13, 2017, in a related case, *Darweesh v. Trump*, which is another challenge to the order, also on behalf of the law professors. Responding to the expedited hearing before the Ninth Circuit on February 7, 2017, in *Washington*, the amici urged the court, based on constitutional concerns, to deny the Government's motion for a stay of the Temporary Restraining Order preventing implementation of the immigration order. Our understanding is that the law professors do not have a personal financial or other interest in the outcome of the cases, but rather are submitting their expert academic views to the courts.

Mr. Murray was, until January 23, 2017, an associate at Jones Day. Under the Standards of Conduct addressing impartiality in the performance of duties (5 CFR 2635.502), an employee who knows that a person with whom he has a covered relationship is or represents a party to a matter may not participate in the matter. An employee has a covered relationship with a former employer and with former clients for one year after such service ends.

An amicus is not a party, therefore Mr. Murray does not have a covered relationship with Jones Day under sec. 2635.501(a) since Jones Day does not represent a party. The long-

standing practice of the Departmental Ethics Office has been to analyze participation in a matter in which a former employer represents an amicus under the impartiality regulation's "catch-all" provision at 2635.502(a)(2). That provision states that an employee who is concerned that "circumstances other than those specifically described in this section [for example, the existence of a covered relationship]" would cause a reasonable person to question his impartiality may determine whether he should participate. The regulations provide that even if recusal is appropriate, an employee may seek an authorization to participate. 5 CFR 2635.502(d).

An authorization to participate in a matter that otherwise would require recusal may be given if the agency designee determines that the government's interest in the employee's participation in a particular matter involving specific parties outweighs the concern that a reasonable person would question the integrity of the agency's programs and operations. 5 CFR 2635.502(d). Assuming that a reasonable person could question Mr. Murray's impartiality in cases in which his former employer represents amici, we believe that an authorization is appropriate.

The relationship that gives rise to the apparent conflict of interest is that of a former partner to a former law firm. However, the only role that Jones Day now plays in the immigration cases is representing a group of law professors in an amicus brief. The representation began after Mr. Readler left the firm. He does not have a financial interest in the firm, and therefore has no financial interest in its representation in this case. The effect that resolution of the cases will have on Jones Day's financial interests is unclear but appears negligible. Resolution of the cases will most likely have no effect at all on the financial or personal interests of the law professors. At issue in their brief is not financial harm to themselves or harm to their families, but rather constitutional concerns.

The nature and importance of Mr. Murray's role in the matter is significant. As Counsel in the Office of the Deputy Attorney General, he is helping to advance the Department's legal strategy in these extremely high profile cases. In addition, these cases are proceeding at a rapid pace, requiring the government to have a point person ready to lead the government's defense. It benefits the government to have Mr. Murray provide continued assistance in the highly fluid legal environment surrounding the immigration order. Recusing him from these matters would be disruptive to the government. Moreover, to require recusal when the source of the conflict is an academic amicus brief, in a case where many other entities have filed briefs arguing a variety of harms, seems disproportional to the source of the conflict.

In conclusion, the interest of the government in Mr. Murray's participation outweighs the concern that a reasonable person would question the Department's integrity in this instance. We recommend that you authorize his participation, so long as the source of the conflict is Jones Day's filing of amicus briefs on behalf of amici who will not be directly affected, financially or personally, by resolution of the matter.

Your approval for this authorization may be given in a reply email.

Cynthia K. Shaw
Director
Departmental Ethics Office
U.S. Department of Justice

145 N Street, NE
Washington, DC 20530
(202) 514-8196

From: [Schools, Scott \(ODAG\)](#)
To: [Shaw, Cynthia K. \(JMD\)](#)
Subject: RE: Washington CA9 appeal - Newly filed amicus briefs
Date: Monday, February 06, 2017 4:31:29 PM

Cindy:

Given the exigencies of the circumstances and the difficulty with replacing the services being provided by Mike and Chad in connection with the brief which is due in 1.5 hours and for the other reasons stated by you, I approve their continued participation in the drafting of the brief.

Scott

From: Shaw, Cynthia K. (JMD)
Sent: Monday, February 6, 2017 4:22 PM
To: Schools, Scott (ODAG) <sschools@jmd.usdoj.gov>
Subject: FW: Washington CA9 appeal - Newly filed amicus briefs

Scott,

Two additional former Jones Day people—Murray and Readler—have requested authorizations. Given the time constraints, I recommend authorization. [REDACTED]

Cindy

I recommend that you authorize Michael Murray and Chad Readler to work on the brief for *Washington and Minnesota v. Trump* to be submitted at 6:00 p.m. today in the U.S. Court of Appeals for the Ninth Circuit.

The Department has just learned that Jones Day has filed an amicus brief in the case. Both Mr. Murray and Mr. Readler have a covered relationship with Jones Day; both were recently attorneys in that law firm in the last year. Under 5 CFR 2635.502, an employee who knows that a person with whom he has a covered relationship is or represents a party to a matter may not participate in the matter. A filer of an amicus brief is not a party to a matter, but does create an appearance of loss of impartiality that is covered by the regulation's "catch-all" provision at 2635.502(a)(2).

An authorization to participate in a matter that otherwise would require recusal may be given if the agency designee determines that the government's interest in the employee's participation in a particular matter involving specific parties outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. 5 CFR 2635.502(d).

I evaluate the regulation's factors as follows:

1. The nature of the relationship is a former attorney to a former law firm.
2. The effect of the resolution of the matter on Jones Day's financial interests is unclear. The amicus is being filed on behalf of law professors, whose interests may be more academic than financial.

3. The nature and importance of Mssrs. Murray and Readler is extremely high, given that they have been working on the matter for the past 12 hours and the work product is due within an hour and a half. To remove them from this matter at this time is extremely disruptive to the government.
4. The sensitivity of the matter is extremely high given the national attention given to the case.
5. The difficulty of reassigning the matter is high, given that the work requires being finished within an extremely tight timeframe.
6. Adjustments that may be made in the employee's duties to eliminate the likelihood that a reasonable person would question his impartiality are being made in conformity with the January 28, 2017 Executive Order, which disallows communications with former employers. Neither Mr. Murray nor Mr. Readler may communicate with Jones Day or sign the brief, which would constitute making an appearance or communication.

In sum, the exigencies of the moment compel a conclusion that Mssrs. Murray and Readler continue working on the brief due today. Those exigencies outweigh the concern that a reasonable person may question the Department's integrity in this instance.

Your approval for this authorization may be given in a reply email.

From: Murray, Michael (ODAG)
Sent: Monday, February 06, 2017 4:00 PM
To: Francisco, Noel (OSG) <nfrancisco@jmd.usdoj.gov>; Shaw, Cynthia K. (JMD) <cshaw@jmd.usdoj.gov>
Cc: Readler, Chad A. (CIV) <creadler@CIV.USDOJ.GOV>
Subject: RE: Washington CA9 appeal - Newly filed amicus briefs

Thank you Noel. Cynthia, please let me know if you need anything else from me on this issue.

From: Francisco, Noel (OSG)
Sent: Monday, February 6, 2017 3:30 PM
To: Shaw, Cynthia K. (JMD) <cshaw@jmd.usdoj.gov>
Cc: Readler, Chad A. (CIV) <creadler@CIV.USDOJ.GOV>; Murray, Michael (ODAG) <mmurray@jmd.usdoj.gov>
Subject: FW: Washington CA9 appeal - Newly filed amicus briefs

Cynthia,

Chad Readler and Mike Murray need the same approval that you are preparing for me.

Thanks.

From: Francisco, Noel (OSG)
Sent: Monday, February 6, 2017 3:27 PM
To: Shaw, Cynthia K. (JMD) <cshaw@jmd.usdoj.gov>

Subject: FW: Washington CA9 appeal - Newly filed amicus briefs

See second brief for scholars.

From: [REDACTED]

Sent: Monday, February 6, 2017 2:29 PM

To: Francisco, Noel (OSG) <nfrancisco@jmd.usdoj.gov>; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Subject: Washington CA9 appeal - Newly filed amicus briefs

Two new amicus briefs just got filed. Attached.