

Code of Federal Regulations

Title 28 - Judicial Administration

Volume: 2

Date: 2010-07-01

Original Date: 2010-07-01

Title: CHAPTER VI - OFFICES OF INDEPENDENT COUNSEL, DEPARTMENT OF JUSTICE

Context: Title 28 - Judicial Administration.

28 CFR Ch. VI (7-1-10 Edition)

Offices of Independent Counsel, Justice

CHAPTER VI—OFFICES OF INDEPENDENT COUNSEL, DEPARTMENT OF JUSTICE

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PART 600—GENERAL POWERS OF SPECIAL COUNSEL

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Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

Source: 64 FR 37042, July 9, 1999, unless otherwise noted.

§ 600.1 Grounds for appointing a Special Counsel.

The Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, will appoint a Special Counsel when he or she determines that criminal investigation of a person or matter is warranted and—

(a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances; and

(b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume

responsibility for the matter.

§ 600.2 Alternatives available to the Attorney General.

When matters are brought to the attention of the Attorney General that might warrant consideration of appointment of a Special Counsel, the Attorney General may:

- (a) Appoint a Special Counsel;
- (b) Direct that an initial investigation, consisting of such factual inquiry or legal research as the Attorney General deems appropriate, be conducted in order to better inform the decision; or
- (c) Conclude that under the circumstances of the matter, the public interest would not be served by removing the investigation from the normal processes of the Department, and that the appropriate component of the Department should handle the matter. If the Attorney General reaches this conclusion, he or she may direct that appropriate steps be taken to mitigate any conflicts of interest, such as recusal of particular officials.

§ 600.3 Qualifications of the Special Counsel.

(a) An individual named as Special Counsel shall be a lawyer with a reputation for integrity and impartial decisionmaking, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department of Justice policies. The Special Counsel shall be selected from outside the United States Government. Special Counsels shall agree that their responsibilities as Special Counsel shall take first precedence in their professional lives, and that it may be necessary to devote their full time to the investigation, depending on its complexity and the stage of the investigation.

(b) The Attorney General shall consult with the Assistant Attorney General for Administration to ensure an appropriate method of appointment, and to ensure that a Special Counsel undergoes an appropriate background investigation and a detailed review of ethics and conflicts of interest issues. A Special Counsel shall be appointed as a "confidential employee" as defined in 5 U.S.C. 7511(b)(2)(C).

§ 600.4 Jurisdiction.

(a) *Original jurisdiction.* The jurisdiction of a Special Counsel shall be established by the Attorney General. The Special Counsel will be provided with a specific factual statement of the matter to be investigated. The jurisdiction of a Special Counsel shall also include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses; and to conduct appeals arising out of the matter being investigated and/or prosecuted.

(b) *Additional jurisdiction.* If in the course of his or her investigation the Special Counsel concludes that additional jurisdiction beyond that specified in his or her original jurisdiction is necessary in order to fully investigate and resolve the matters assigned, or to investigate new matters that come to light in the course of his or her investigation, he or she shall consult with the Attorney General, who will determine whether to include the additional matters within the Special Counsel's jurisdiction or assign them elsewhere.

(c) *Civil and administrative jurisdiction.* If in the course of his or her investigation the Special Counsel determines that administrative remedies, civil sanctions or other governmental action outside the criminal justice system might be appropriate, he or she shall consult with the Attorney General with respect to the appropriate component to take any necessary action. A Special Counsel shall not have civil or administrative authority unless specifically granted such jurisdiction by the Attorney General.

§ 600.5 Staff.

A Special Counsel may request the assignment of appropriate Department employees to assist the Special Counsel. The Department shall gather and provide the Special Counsel with the names and resumes of appropriate personnel available for detail. The Special Counsel may also request the detail of specific employees, and the office for which the designated employee works shall make reasonable efforts to accommodate the request. The Special Counsel shall assign the duties and supervise the work of such employees while they are assigned to the Special Counsel. If necessary, the Special Counsel may request that additional personnel be hired or assigned from outside the Department. All personnel in the Department shall cooperate to the fullest extent possible with the Special Counsel.

§ 600.6 Powers and authority.

Subject to the limitations in the following paragraphs, the Special Counsel shall exercise, within the scope of his or

her jurisdiction, the full power and independent authority to exercise all investigative and prosecutorial functions of any United States Attorney. Except as provided in this part, the Special Counsel shall determine whether and to what extent to inform or consult with the Attorney General or others within the Department about the conduct of his or her duties and responsibilities.

§ 600.7 Conduct and accountability.

(a) A Special Counsel shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice. He or she shall consult with appropriate offices within the Department for guidance with respect to established practices, policies and procedures of the Department, including ethics and security regulations and procedures. Should the Special Counsel conclude that the extraordinary circumstances of any particular decision would render compliance with required review and approval procedures by the designated Departmental component inappropriate, he or she may consult directly with the Attorney General.

(b) The Special Counsel shall not be subject to the day-to-day supervision of any official of the Department. However, the Attorney General may request that the Special Counsel provide an explanation for any investigative or prosecutorial step, and may after review conclude that the action is so inappropriate or unwarranted under established Departmental practices that it should not be pursued. In conducting that review, the Attorney General will give great weight to the views of the Special Counsel. If the Attorney General concludes that a proposed action by a Special Counsel should not be pursued, the Attorney General shall notify Congress as specified in § 600.9(a)(3).

(c) The Special Counsel and staff shall be subject to disciplinary action for misconduct and breach of ethical duties under the same standards and to the same extent as are other employees of the Department of Justice. Inquiries into such matters shall be handled through the appropriate office of the Department upon the approval of the Attorney General.

(d) The Special Counsel may be disciplined or removed from office only by the personal action of the Attorney General. The Attorney General may remove a Special Counsel for misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Departmental policies. The Attorney General shall inform the Special Counsel in writing of the specific reason for his or her removal.

§ 600.8 Notification and reports by the Special Counsel.

(a) *Budget.* (1) A Special Counsel shall be provided all appropriate resources by the Department of Justice. Within the first 60 days of his or her appointment, the Special Counsel shall develop a proposed budget for the current fiscal year with the assistance of the Justice Management Division for the Attorney General's review and approval. Based on the proposal, the Attorney General shall establish a budget for the operations of the Special Counsel. The budget shall include a request for assignment of personnel, with a description of the qualifications needed.

(2) Thereafter, 90 days before the beginning of each fiscal year, the Special Counsel shall report to the Attorney General the status of the investigation, and provide a budget request for the following year. The Attorney General shall determine whether the investigation should continue and, if so, establish the budget for the next year.

(b) *Notification of significant events.* The Special Counsel shall notify the Attorney General of events in the course of his or her investigation in conformity with the Departmental guidelines with respect to Urgent Reports.

(c) *Closing documentation.* At the conclusion of the Special Counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.

§ 600.9 Notification and reports by the Attorney General.

(a) The Attorney General will notify the Chairman and Ranking Minority Member of the Judiciary Committees of each House of Congress, with an explanation for each action—

(1) Upon appointing a Special Counsel;

(2) Upon removing any Special Counsel; and

(3) Upon conclusion of the Special Counsel's investigation, including, to the extent consistent with applicable law, a description and explanation of instances (if any) in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued.

(b) The notification requirement in paragraph (a)(1) of this section may be tolled by the Attorney General upon a finding that legitimate investigative or privacy concerns require confidentiality. At such time as confidentiality is no

longer needed, the notification will be provided.

(c) The Attorney General may determine that public release of these reports would be in the public interest, to the extent that release would comply with applicable legal restrictions. All other releases of information by any Department of Justice employee, including the Special Counsel and staff, concerning matters handled by Special Counsels shall be governed by the generally applicable Departmental guidelines concerning public comment with respect to any criminal investigation, and relevant law.

§ 600.10 No creation of rights.

The regulations in this part are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law or equity, by any person or entity, in any matter, civil, criminal, or administrative.

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PART 601—JURISDICTION OF THE INDEPENDENT COUNSEL: IRAN/CONTRA

Authority: 28 U.S.C. 509, 510, and 515; 5 U.S.C. 301; Article II of the U.S. Constitution.

§ 601.1 Jurisdiction of the Independent Counsel: Iran/Contra.

(a) *The Independent Counsel.* Iran/Contra has jurisdiction to investigate to the maximum extent authorized by part 600 of this chapter whether any person or group of persons currently described in section 591 of title 28 of the U.S. Code, including Lieutenant Colonel Oliver L. North, other United States Government officials, or other individuals or organizations acting in concert with Lt. Col. North, or with other U.S. Government officials, has committed a violation of any federal criminal law, as referred to in section 591 of title 28 of the U.S. Code, relating in any way to:

- (1) The direct or indirect sale, shipment, or transfer since in or about 1984 down to the present, of military arms, materiel, or funds to the Government of Iran, officials of that government, or persons, organizations or entities connected with or purporting to represent that government, or persons located in Iran;
- (2) The direct or indirect sale, shipment, or transfer of military arms, materiel or funds to any government, entity, or persons acting, or purporting to act as an intermediary in any transaction above referred to in paragraph (a)(1) of this section;
- (3) The financing or funding of any direct or indirect sale, shipment or transfer referred to in paragraph (a) (1) or (2) of this section;
- (4) The diversion of the proceeds from any transaction described in paragraph (a) (1) or (2) of this section to or for any person, organization, foreign government, or any faction or body of insurgents in any foreign country, including, but not limited to Nicaragua;
- (5) The provision or coordination of support for persons or entities engaged as military insurgents in armed conflict with the Government of Nicaragua since 1984.

(b) *The Independent Counsel.* Iran/Contra shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal law by Oliver L. North, and any person or entity heretofore referred to, developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation, and to seek indictments and to prosecute any persons or entities involved in any of the foregoing events or transactions who are reasonably believed to have committed a violation of any federal criminal law (other than a violation constituting a Class B or C misdemeanor, or an infraction, or a petty offense) arising out of such events, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense.

(c) *The Independent Counsel.* Iran/Contra shall have prosecutorial jurisdiction to initiate and conduct prosecutions in any court of competent jurisdiction for any violation of section 1826 of title 28 of the U.S. Code, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of the federal criminal laws, in connection with the investigation authorized by part 600 of this chapter.

[52 FR 7272, March 10, 1987; 52 FR 9241, Mar. 23, 1987]

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PART 602—JURISDICTION OF THE INDEPENDENT COUNSEL: IN RE FRANKLYN C. NOFZIGER

Authority: 28 U.S.C. 509, 510, and 515; 5 U.S.C. 301.

§ 602.1 Independent Counsel: In re Franklyn C. Nofziger.

(a) The Independent Counsel: In re Franklyn C. Nofziger shall have jurisdiction to investigate to the maximum extent authorized by part 600 of this chapter whether Franklyn C. Nofziger committed a violation of any Federal criminal law, as referred to in 28 U.S.C. 591, and more specifically whether the aforesaid Franklyn C. Nofziger, who served as Assistant to the President from January 21, 1981 through January 22, 1982, and who was therefore prohibited by the provisions of 18 U.S.C. 207 from thereafter knowingly making certain types of oral or written communications, did violate any subsection of 18 U.S.C. 207 because of certain oral or written communications with departments or agencies of the U.S. Government (including but not limited to the White House or the Executive Office of the President) on behalf of Welbilt Electronic Die Corporation, Comet Rice, Inc., or any other person or entity, at any time during 1982 or 1983.

(b) The Independent Counsel shall have jurisdiction and authority to investigate other allegations and evidence of violation of any Federal criminal law by Franklyn C. Nofziger, and/or any of his business associates who may have acted in concert with or aided or abetted Franklyn C. Nofziger, developed during the Independent Counsel's investigation referred to in paragraph (a) of this section or connected with or arising out of that investigation, and to seek indictments and to prosecute any such persons or entities involved in any of the foregoing events or transactions that Independent Counsel believes constitute a Federal offense and that there is reasonable cause to believe that the admissible evidence probably will be sufficient to obtain and sustain a conviction (28 U.S.C. 594(f)) of any Federal criminal law (other than a violation constituting a Class B or C misdemeanor, or an infraction, or a petty offense) arising out of such events, including such persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense related to the prosecutorial jurisdiction of the Independent Counsel as herein established.

(c) The Independent Counsel: In re Franklyn C. Nofziger shall have jurisdiction to investigate to the maximum extent authorized by title 28 U.S.C. 594, whether the conduct of Edwin Meese III specified in this section constituted a violation of any federal criminal law, as referred to in 28 U.S.C. 591, and more specifically whether the federal conflict of interest laws, 18 U.S.C. 201-211, or any other provision of the federal criminal law, was violated by Mr. Meese's relationship or dealings at any time from 1981 to the present with any of the following: Welbilt Electronic Die Corporation/Wedtech Corporation (including any of its contracts with the U.S. Government, or efforts to obtain same); Franklyn C. Nofziger; E. Robert Wallach; W. Franklyn Chinn; and/or Financial Management International, Inc.

(d) The Independent Counsel: In re Franklyn C. Nofziger shall have jurisdiction and authority to investigate other allegations and evidence of violation of any federal criminal law by Edwin Meese III developed during the Independent Counsel's investigation referred to in paragraph (c) of this section, and connected with or arising out of that investigation, and to seek indictments and to prosecute any persons or entities involved in any of the foregoing events or transactions that Independent Counsel believes constitute a federal offense and that there is reasonable cause to believe that the admissible evidence probably will be sufficient to obtain and sustain a conviction (28 U.S.C. 594(f)) of any federal criminal law (other than a violation constituting a Class B or C misdemeanor, or an infraction, or a petty offense) arising out of such events, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense related to the prosecutorial jurisdiction of the Independent Counsel as herein established.

(e) The Independent Counsel shall have prosecutorial jurisdiction to initiate and conduct prosecutions in any court of competent jurisdiction for any violation of 28 U.S.C. 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of the Federal criminal laws, in connection with the investigation authorized by this regulation, and shall have all the powers and authority provided by the Ethics in Government Act of 1978, as amended, and specifically by 28 U.S.C. 594.

[52 FR 22439, June 12, 1987, as amended at 52 FR 22439, June 12, 1987; 52 FR 35544, Sept. 22, 1987]

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PART 603—JURISDICTION OF THE INDEPENDENT COUNSEL: IN RE MADISON GUARANTY SAVINGS & LOAN ASSOCIATION

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 543, unless otherwise noted.

§ 603.1 Jurisdiction of the Independent Counsel

(a) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate to the maximum extent authorized by part 600 of this chapter whether any individuals or entities have committed a violation of any federal criminal or civil law relating in any way to President William Jefferson Clinton's or Mrs. Hillary Rodham Clinton's relationships with:

- (1) Madison Guaranty Savings & Loan Association;
- (2) Whitewater Development Corporation; or
- (3) Capital Management Services.

(b) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal or civil law by any person or entity developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation.

(c) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate any violation of section 1826 of title 28 of the U.S. Code, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal law, in connection with any investigation of the matters described in paragraph (a) or (b) of this section.

(d) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to seek indictments and to prosecute, or to bring civil actions against, any persons or entities involved in any of the matters referred to in paragraph (a), (b), or (c) of this section who are reasonably believed to have committed a violation of any federal criminal or civil law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any federal offense.

[59 FR 5322, Feb. 4, 1994]