LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Law Firm Executive Orders Create A Legal Ethics Minefield

By **Joshua Robbins and Sherry Haus** (April 1, 2025, 3:55 PM EDT)


Joshua Robbins


Sherry Haus

Over the past few weeks, the White House has issued a series of unprecedented executive orders and memoranda that target both specific law firms associated with President Donald Trump's opponents, as well as the legal profession more broadly.

These executive actions not only raise constitutional questions, but also create potential ethical dilemmas — and even possible civil or criminal liability — for government attorneys implementing them, and perhaps also for private attorneys whose firms choose to comply with administration demands. This article addresses some of these risks.

As always, "following orders" is no excuse; most relevant ethical rules and statutes apply even to those acting at the direction of superiors, including the president.

Background

Executive Orders Against Specific Law Firms

The administration's actions began with a Feb. 25 memorandum directing the suspension of security clearances for employees of Covington & Burling LLP who had assisted former special counsel Jack Smith, and directed agencies to terminate engagements with the firm "to the maximum extent permitted by law."

Then, beginning on March 6, the administration issued a series of executive orders targeting other firms:

- Perkins Coie LLP, for engaging in "dishonest and dangerous activity" while representing former Secretary of State Hillary Clinton's presidential campaign;
- Paul Weiss Rifkind Wharton & Garrison LLP, because one of its former partners went on to investigate Trump as a state prosecutor; and
- Both Jenner & Block LLP and WilmerHale, for employing members of the special counsel team who investigated Russian interference in the 2016 presidential election.

The orders also cited the firms' engagement in pro bono work that the administration disapproved of, as well as their adoption of diversity, equity and inclusion policies.

These additional executive actions were more punitive than the first, directing agencies to forgo contact with firm attorneys, bar them from government buildings and even cancel federal contracts with the firm's clients.

Perkins Coie, Jenner & Block, and WilmerHale each challenged the orders in federal court, and in each case, the courts granted temporary restraining orders against the administration, finding that the executive actions were likely unconstitutional.

Paul Weiss and Skadden Agreements with White House

On March 21, the president issued another order revoking the previous action against Paul Weiss after the firm reportedly "acknowledged ... wrongdoing [by a] former partner,"[1] agreed to "adopt[] a policy of political neutrality," "committ[ed] to merit-based hiring" instead of diversity initiatives, and pledged $40 million in pro bono services over the rest of Trump's term to support causes favored by the administration.

On March 28, the White House announced that Skadden Arps Slate Meagher & Flom LLP had entered into a similar "settlement" — though no executive order had yet named the firm — raising the pro bono commitment to $100 million worth of attorney time.

Broader Executive Order on Legal Firms

On March 22, the administration also issued a memorandum titled "Preventing Abuses of the Legal System and the Federal Court." This directive broadly instructs the attorney general to seek sanctions against, and refer for bar discipline, "attorneys and law firms who engage in frivolous, unreasonable, and vexatious litigation against the United States."

It also directs a review of attorney conduct in litigation against the government over the past eight years, with recommendations for potential actions including security clearance reassessments and termination of federal contracts with firm clients.

Potential Ethical Issues for Government Lawyers

Frivolous Positions: Discipline and Sanctions

Government attorneys implementing the directives outlined in these executive orders face significant ethical risks.

The American Bar Association's Model Rule of Professional Conduct 3.1 prohibits bringing or defending proceedings or positions unless there is a nonfrivolous basis in law and fact.

Government attorneys directed to seek sanctions against opposing counsel based primarily on their representation of clients adverse to the administration, rather than genuine sanctionable conduct, would likely be advancing frivolous legal positions, thus violating Rule 3.1 — or any state equivalent — and exposing government attorneys to disciplinary action in the states or jurisdictions where they are barred.

Moreover, government attorneys who pursue court sanctions that lack legal merit or are unsupported

by the record — including those based primarily on a client's challenges to administration policies — risk being sanctioned themselves.

Rule 11 of the Federal Rules of Civil Procedure provides that, by presenting a motion to the court, an attorney certifies that it is not being presented for an improper purpose, such as harassment. Courts would likely view Rule 11 motions filed pursuant to the March 22 memorandum with skepticism, particularly if the motions appear designed to intimidate opposing counsel or appease the White House, rather than address genuine misconduct.

Government attorneys filing such motions could face monetary penalties and even referrals to bar authorities.

Courts could also sanction, under Title 28 of the U.S. Code, Section 1927, any government attorney "who so multiplies the proceedings in any case unreasonably and vexatiously," requiring that counsel personally satisfy excess costs, expenses and attorney fees.

Separately, courts have inherent authority to sanction attorneys who act in bad faith.

Threatening Administrative Action

Many states have adopted rules similar to Rule 3.10 of the California Rules of Professional Conduct, which prohibits "threaten[ing] to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute."

Government attorneys who threaten law firms with security clearance revocations, contract terminations or bar referrals to gain advantage in litigation would likely violate such rules.

Interfering with Administration of Justice or Right to Practice

ABA Model Rule 8.4(d) prohibits "conduct that is prejudicial to the administration of justice." Government attorneys implementing directives that appear designed to intimidate or retaliate against law firms for their representation choices also risk violating this rule.

Meanwhile, Model Rule 5.6 prohibits lawyers from participating in the "offering or making [of] ... an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy."

The March 22 memorandum, targeting law firms that mount legal challenges against administration actions in ways the government characterizes as unreasonable or vexatious, could be aimed at setting up future agreements that restrict firms' involvement in such litigation going forward. If so, they could be viewed as restricting the right to practice of lawyers at those firms.

Potential Criminal and Civil Liability for Government Lawyers

At the more extreme end of potential consequences, government attorneys and other officials who implement or enforce these executive actions should be aware of possible civil or criminal liability under federal and state law.

While the U.S. Department of Justice under this administration is unlikely to take action against

attorneys who implement the executive orders, that could change in four years, and clients that are affected by the orders or by firms' responses to them may pursue their own claims.

Hobbs Act Violations

The circumstances surrounding the Paul Weiss agreement raise concerns about potential Hobbs Act violations. The Hobbs Act — Title 18 of the U.S. Code, Section 1951 — is a criminal law that prohibits obtaining property from another "with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

Under facts similar to the reported Paul Weiss and Skadden scenarios — a firm's agreement to provide tens of millions of dollars in certain types of pro bono services, in return for revocation or withholding of a punitive order — a colorable argument could be made that the administration obtained property (the committed legal services) under color of official right.

Notably, extortion under color of official right does not require force or threat by the public official; the coercive element is provided by the holding of the public office.

And it also probably does not matter that the services would be provided to pro bono clients. Courts have held that the Hobbs Act is violated even where extorted payments are made to third parties, rather than to the public official who has acted under color of official right, so long as there was a quid pro quo understanding.[2]

The March 21 executive order stated that it was rescinding the prior order against Paul Weiss due in part to the firm's commitment to provide "the equivalent in pro bono legal services during [the president's] term in offices to support [certain causes and initiatives]." Government attorneys asked to negotiate or enforce this type of agreement should tread carefully to avoid stepping into a legal minefield — particularly given that the statute of limitations for most Hobbs Act or other similar violations would outlive the present administration.

And while the president may claim immunity based on the U.S. Supreme Court's 2024 decision in Trump v. U.S.,[3] other officials and attorneys involved in negotiating or implementing this arrangement cannot.

RICO Implications

Because Hobbs Act violations can serve as predicate acts for a Racketeer Influenced and Corrupt Organizations Act claim under Title 18 of the U.S. Code, Section 1962, officials and attorneys involved in multiple firm agreements driven by sanctions threats could face exposure under that statute, as well.

An ongoing pattern of targeting of multiple law firms, and apparent goal of securing concessions from them, may suggest a potential "pattern of racketeering activity" that could theoretically support a RICO charge.

Related Professional Responsibility Issues

ABA Model Rule 1.2(d), like its state equivalents, prohibits an attorney from counseling or assisting clients in conduct the lawyer knows is criminal.

If the executive orders and memoranda are found to violate the Hobbs Act, other extortion laws or RICO, government attorneys — whether in the DOJ, federal contracting agencies or elsewhere — who implement the actions could also be disciplined under this rule.

Potential Civil Claims

Government attorneys should also keep in mind their risk of civil liability. Law firms or clients whose "business or property" is harmed by the government's actions could potentially bring civil RICO claims for treble damages under Title 18 of the U.S. Code, Section 1964(c).

In theory, affected plaintiffs could bring Bivens actions for damages caused by officials' violations of the First Amendment or other constitutional rights[4] — although the Supreme Court has made such actions more difficult to pursue.[5]

If firms or their clients lose substantial revenue as a result of the executive orders, or are forced to give up valuable rights in the process, the possible damages claims in such cases could be substantial.

While individual officials might claim qualified immunity, the constitutional violations appear sufficiently clear that such immunity could be overcome. As all three judges in lawsuits challenging the executive orders have found, taking punitive actions against a law firm based on its representation of disfavored clients or causes likely constitutes a plain infringement of First Amendment rights to free speech and association, as well as Fifth Amendment rights to due process.

A strong argument could also be made that clients' rights to representation under the Sixth Amendment are also implicated.

Potential Conflicts Issues for Private Law Firms

It is not only government counsel who must take caution in navigating these executive orders. Law firms that choose to reach agreements with the administration to avoid punitive measures may face serious conflict of interest concerns.

ABA Model Rule 1.7(b) prohibits an attorney from representing a client when there is a significant risk that representation will be materially limited by the lawyer's responsibilities to a third person or by the lawyer's own interests. A firm that has committed to adopting the administration's hiring policies and providing years of pro bono service to the administration's favored causes may have created a significant risk of such a limitation.

Not only would the firm have committed to align itself with the government's interests, it would have a strong incentive to avoid antagonizing the administration. This could obviously compromise its ability to diligently and competently advocate for clients adverse to the government.

The firm would likely have to disclose the full nature of its arrangement with the administration to any clients who have interests opposed to that of the government. For some matters, the conflict may be so significant that it cannot be waived, requiring the firm to decline representation.

While circumstances will differ by client and case, attorneys at firms that reach such agreements need to carefully evaluate their duties to each affected client.

In addition, there is at least some prospect of civil or criminal liability under federal law. Title 18 of the U.S. Code, Section 201(b)(1), makes it illegal to "offer[] or promise[] any public official ... to give anything of value to any other person or entity ... with intent to influence any official act."

Tens of millions of dollars in free legal services provided to the president's designated groups, in return for rescission or withholding of an executive order, could potentially meet those terms.

In addition, some courts have held that someone who pays a government official's extortion demand under color of official right can also violate the Hobbs Act.[6]

Conclusion

The administration and DOJ leadership have shown they are willing to terminate staff who refuse to execute their orders, even when those attorneys cite their own ethical concerns.[7] But compliance carries its own risks, as the president's orders seem to force the government's lawyers toward possible violations of federal laws and professional obligations.

Private lawyers who choose to cooperate must also tread carefully, at least if they intend to continue representing clients in matters adverse to the government. Regulatory defense, government contracts disputes, and pro bono work concerning immigration or criminal defense may all require navigating difficult conflicts issues.

Over the next four years, attorneys who litigate for and against the federal government may find themselves facing complex and consequential dilemmas. Capitulating to the demands of potentially unlawful orders may further weaken attorneys' ability to represent their clients against the government, or to ethically represent the government itself.

Choose wisely.

Joshua M. Robbins is a shareholder and co-chair of the white collar and investigations group at Buchalter PC. He previously served as an assistant U.S. attorney in the Central District of California.

Sherry Haus is a shareholder at Buchalter. She previously served as an assistant U.S. attorney in the Eastern District of California.

[1] Paul Weiss has not publicly confirmed this point.

[2] In Wilkie v. Robbins, 551 U.S. 537 (2007), the Supreme Court held that the Hobbs Act was not violated where the property obtained was solely for use of the government. That does not appear to be true of the Paul Weiss arrangement, which presumably entails pro bono work for private entities.

[3] 603 U.S. 593 (2024).

[4] Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

[5] See, e.g., Egbert v. Boule, 596 U.S. 482 (2022) (rejecting Bivens claim based on retaliation in violation of the First Amendment).

[6] See, e.g., United States v. Torcasio, 959 F.2d 503, 505-506 (4th Cir. 1992).

[7] For example, the Deputy Attorney General recently terminated the DOJ Pardon Attorney, reportedly after she objected to recommending including actor Mel Gibson on a list of individuals whose prior convictions should not bar them from owning firearms. See Devin Barrett, Justice Department Official Says She Was Fired After Opposing Restoring Mel Gibson's Gun Rights, New York Times, March 10, 2025.