

# RE-ENTRY—FROM GOVERNMENT SERVICE TO FIRM PARTNER

## NATIONAL EXPANSION

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**On-ramping refers to re-entering the workforce—or one’s chosen profession—after being away from it for whatever reason. In the case of government officials and politicians, the re-entry into the private practice of law can be facilitated by not only the experience the new ‘law firm applicant’ brings with him or her but also by virtue of the contacts, connections, and accumulation of ‘knowing the way around’ be it Capital Hill or the state capital.**

But accompanying the impressive civil service resume is a potential ethics minefield that must be carefully navigated in order not to run afoul of the Rules of Professional Responsibility.

## From Politician to Private Practitioner

Scores of former politicians—from governors Chis Christie and George Pataki to senators John Edwards and Chris Dodd—have made the transition from politician to law partner after leaving public office. For politicians of such caliber, it is a seller’s market, with law firms vying to onboard politicians with the experience—and connections, as well as political savvy—to represent their clients before regulatory agencies, committees, and in various lobbyist capacities. Indeed, the switch from public service to private practice is quite common, with many senior partners at esteemed law firms having come from government positions. But it is not just elected officials who are in demand after leaving public service, but also federal prosecutors, heads of federal and state agencies, and other civil servants whose skills are in demand post-government.

## When to Switch

For those transitioning to private practice, the timing of their move can be an important factor in maximizing their market potential. Waiting until the end of one’s term in office, or until the end of an administration when a changing of the bureaucratic guard takes place, can result in a less advantageous re-entry to private firms due to the fact that the supply of government

lawyers applying for non-government jobs at that point will be at its peak. In fact, many headhunters advise that the best time to obtain a prized law firm position is well before the post-midterm election rush.

## Bringing Added Value

A recruiter who specializes in assisting attorneys who are switching from a government position to private law firms advises that the 3rd year of an administration—and not the last year—is an ideal time to make a lateral move to private practice. The third year is considered a ‘sweet spot’ for such a lateral move because attorneys who are working with the current administration—whether political appointees or other career officials—have played an important role in shaping recent policy, and they, therefore, possess a keen understanding of where the agency is headed and what regulatory policies are evolving. That gives such candidates added value to the firms seeking them out. It certainly boosts a firm’s resume if they can boast of a partner who is fresh out of the agency for which their clients will need good guidance; however, it is imperative to be well-versed in the ABA Rule 1.11 limitations that apply (see below). The newly adopted rules may still be murky and not yet tested judicially, and having

## Executive Summary

### > The Issue

What are some of the issues pertaining to the attorney who leaves government service for the private practice of law?

### > The Gravamen

Planning ahead and timing one’s transition according to the termination of an administration or the attorney’s own term in office are critical factors in a successful re-entry to practicing law after public service.

### > The Path Forward

Minding the rather extensive ethics rules can prevent headaches for both the departing attorney and the firm that he or she has joined.

counsel who participated in the evolutionary agency process is a significant attraction.

## Notifying Your Agency

According to former EPA attorney David Edelstein, it's a good idea to obtain administrative approval before accepting anything, including an interview, lunch, or a domestic flight to meet with a firm. In addition, a private firm's ethics department will want disclosures as to conflicts before taking the next step in recruiting an exiting government attorney. Using the services of a recruiter who specializes in outboarding government attorneys is highly recommended for the purposes of resume refinement, evaluation of marketable skills, and directing the attorney as to which firms would make the best fit for the attorney's new professional home.

## What the Bar Rule Provides

ABA Rule 1.11: 'Special Conflicts of Interest for Former & Current Government Officers & Employees', sets forth the special ethical considerations that apply when attorneys leave a government position and enter the private practice of law:

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

- (1) is subject to Rule 1.9(c); and,
- (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government

agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless: (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is

## Action

### 1 The Winds of Change:

Timing is everything, and knowing when the optimum time will be to make the transition from public service means properly reading the change in agency administration—or the likely results of a midterm election.

### 2 No Secrets from Agency:

Being candid and forthright with one's employer about the proposed career change is not only a practical step to take but also one that ensures that agency rules of ethics are respected and adhered to.

### 3 Conflicts Check:

Be equally upfront with the ethics department of your putative new firm, disclosing any and all information that might raise a red flag as to conflict issues.

### 4 Use a Recruiter:

A recruiter who specializes in transitioning lawyers from the government to private firm positions can be of invaluable service both to helping you frame your experience and value and also to giving you good placement direction.

apportioned no part of the fee therefrom.

Several other ethical strictures apply, but the foregoing provides a sketch of just how seriously the bar views the potential for conflict of interest, breach of confidentiality, and other legal ethics issues pertaining to the on-ramping government lawyer. The career opportunities that await the attorney who has retired from any level of government service are substantial, but must be navigated according to the rules.

**“STARTING A JOB SEARCH WHEN YOU WORK IN THE FEDERAL GOVERNMENT IS DIFFERENT FROM THE WAY YOU’D APPROACH IT IN THE PRIVATE SECTOR. EVERYTHING HAS TO BE TOTALLY ABOVEBOARD TO AVOID THE APPEARANCE OF IMPROPRIETY. YOU SHOULD NOTIFY ETHICS THAT YOU’RE LOOKING FOR NEW EMPLOYMENT —A NOTIFICATION THAT’S BEST MADE IN A FACE-TO-FACE MEETING WITH THE AGENCY’S ETHICS COUNSEL.”**

—DAVID EDELSTEIN, FORMER GOVERNMENT ATTORNEY AT THE U.S. ENVIRONMENTAL PROTECTION AGENCY, NOW ASSOCIATE AT VORYS CINCINNATI ENVIRONMENT GROUP



## Further Reading

1. <https://abovethelaw.com/2022/03/moving-from-government-to-private-practice-start-your-search-before-midterm-elections/>
2. <https://www.bcgsearch.com/article/900045600/How-Difficult-Is-It-Right-Now-to-Transition-from-a-Government-Position-to-Private-Practice/>
3. <https://legaljob.com/transition-from-government-to-firm-part-two/>
4. <https://www.vorys.com/publication-From-Govt-To-Firm-Happily-Changing-Careers-Midstream>
5. [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_11\\_special\\_conflicts\\_of\\_interest\\_for\\_former\\_current\\_government\\_officers\\_employees/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_11_special_conflicts_of_interest_for_former_current_government_officers_employees/)







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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions.

Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



### **William H. Anderson, Esq.**

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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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## About GreenPoint Executive Search and Recruiting

- Founded in 2001, GreenPoint Global offers a blend of proprietary technology and US-trained lawyers to provide advanced legal solutions to our clients. As part of GreenPoint Global, the GPESR team draws upon a deep knowledge base across multiple disciplines including Legal, Publishing, IT, Finance, and numerous other industries.
- By virtue of our unique methods and a proven history of providing top-tier legal services to our clients, the GPESR team is capable of supporting a diverse client base both in the US and globally. From solo practitioners to AmLaw 100 firms, legal publishers, Fortune 1000 companies, and in-house law departments, our team offers legal staffing solutions to suit any business needs. GPESR provides skilled attorneys in either permanent placements or temporary contracts through a selective recruiting process. Adherence to quality, value, and flexibility are hallmarks of our offerings.
- Ensuring privacy and security of client data is a critical component of our business. GreenPoint has instituted rigorous physical, administrative, and technical safeguards to protect the integrity, security, and privacy of client data, all of which comply with the most stringent US and global standards and regulations.



## About GreenPoint Law & Compliance

- GreenPoint Global was founded in 2001 and since that time has faithfully served an expanding roster of clients. GreenPoint leverages a unique combination of US-trained attorneys and proprietary technology to deliver a unique offering of skill and flexibility to meet client needs.
- Our core team of experienced US attorneys is based in Israel and works US hours. The breadth of experience of our attorneys ensures high-quality, cost-effective results across a wide range of legal, compliance, and regulatory matters.
- GreenPoint's methodology and proven track record of achieving client objectives has resulted in a broad base of clients in the United States, ranging from Fortune 500 insurance companies to solo practitioners, law firms, in-house law departments, and legal publishers. GreenPoint attorneys are selectively recruited and deployed based on possessing demonstrable subject matter expertise covering a broad spectrum of substantive US laws and regulations. The work product of our attorneys is thoroughly vetted internally before delivery to client. Adherence to quality, value and flexibility is at the core of our foundation.

