



Department of Defense INSTRUCTION

NUMBER 1442.10
February 17, 2010

GC, DoD

SUBJECT: Outside Assignments of Attorneys from the DoD Office of the General Counsel (OGC, DoD) and Defense Legal Services Agency (DLSA)

References: See Enclosure 1

1. PURPOSE. This Instruction:

a. Establishes policy and assigns responsibilities in accordance with the authority in section 140 of title 10, United States Code; DoD Directive (DoDD) 5145.01; and DoDD 5145.4 (References (a) through (c)) for the assignment of OGC, DoD and DLSA attorneys outside the Department of Defense.

b. Incorporates and cancels General Counsel of the Department of Defense (GC, DoD) memorandums (References (d) through (f)).

2. APPLICABILITY. This Instruction:

a. Applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense.

b. Does not apply to the Office of the General Counsel to the IG DoD.

3. DEFINITIONS

a. detail. Defined in DoD Instruction (DoDI) 1000.17 (Reference (g)).

b. fellowship. Defined in DoDI 1322.06 (Reference (h)).

c. grant. Defined in Reference (h).

d. nonreimbursable detail. Defined in Reference (g).

e. outside assignment. For the purposes of this Instruction, the assignment in excess of 30 calendar days of an attorney employed by or assigned to the OGC, DoD or DLSA to perform duties for any purpose at any location other than a DoD facility or for any non-DoD organization. The term includes, but is not limited to, all details as defined in Reference (g), and assignments or details pursuant to DoDD S-5210.36 (Reference (i)), as well as training, developmental and rotational assignments, fellowships, liaison functions, and other assignments that are specifically excluded from the definition of a detail. It also includes, but is not limited to, assignments that are part of a fellowship, grant, scholarship, or training with industry opportunity covered by Reference (h). The term does not include professional military education and professional legal education.

f. reimbursable detail. Defined in Reference (g).

g. scholarship. Defined in Reference (h).

h. training with industry. Defined in Reference (h).

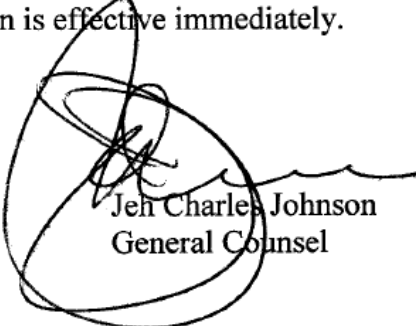
4. POLICY. It is DoD policy that any outside assignment of an attorney employed by or assigned to the OGC, DoD or DLSA must be approved or recommended for approval by the GC, DoD, pursuant to the procedures set forth in this Instruction, prior to the commencement of the outside assignment.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction is effective immediately.



Jeh Charles Johnson
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Enclosures

1. References
2. Responsibilities
3. Procedures for Approval of a Proposed Assignment of an OGC, DoD or DLSA Attorney
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ENCLOSURE 1

REFERENCES

- (a) Section 140 of title 10, United States Code
- (b) DoD Directive 5145.01, "General Counsel of the Department of Defense," May 2, 2001
- (c) DoD Directive 5145.4, "Defense Legal Services Agency," December 15, 1989
- (d) General Counsel of the Department of Defense Memorandum, "Assignment of Department of Defense (DoD) Attorneys to Duty Outside the Department," February 22, 2007 (hereby cancelled)
- (e) General Counsel of the Department of Defense Memorandum, "Assignments of Department of Defense (DoD) Attorneys to Duty Outside the Department of Defense," March 7, 2005 (hereby cancelled)
- (f) General Counsel of the Department of Defense Memorandum, "Assignments of Department of Defense (DoD) Attorneys to Duty Outside the Department of Defense," July 6, 2001 (hereby cancelled)
- (g) DoD Instruction 1000.17, "Detail of DoD Personnel to Duty Outside the Department of Defense," April 16, 2008
- (h) DoD Instruction 1322.06, "Fellowships, Scholarships, Training With Industry (TWI), and Grants for DoD Personnel," November 15, 2007
- (i) DoD Directive S-5210.36, "Provision of DoD Sensitive Support to DoD Components and Other Departments and Agencies of the U.S. Government (U)," November 6, 2008

ENCLOSURE 2

RESPONSIBILITIES

1. GC, DoD. The GC, DoD, as the chief legal officer of the Department of Defense pursuant to References (a) and (b), and as part of his or her responsibility as the Director of DLSA under Reference (c), shall:

a. Review and approve all proposed outside assignments of OGC, DoD or DLSA attorneys.

b. Transmit proposed outside assignments of OGC, DoD or DLSA attorneys that also meet the definition of a detail, and for which he or she recommends approval, to the Director of Administration and Management (DA&M) for decision as required in accordance with Reference (g).

c. Transmit proposed outside assignments of OGC, DoD or DLSA attorneys that are part of a fellowship, grant, scholarship, or training with industry opportunity covered by Reference (h), and for which he or she recommends approval, to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) for decision as required in accordance with Reference (h).

2. USD(P&R). The USD(P&R) shall approve or disapprove any proposal for an outside assignment of an OGC, DoD or DLSA attorney associated with a fellowship, grant, scholarship, or training with industry opportunity in accordance with Reference (h), only after receiving a recommendation from the GC, DoD. No such outside assignment may be approved without the approval of the GC, DoD.

3. DA&M. The DA&M shall approve or disapprove any proposal for an outside assignment of an OGC, DoD or DLSA attorney that also falls within the definition of a detail that requires DA&M approval in accordance with Reference (g), only after receiving a recommendation from the GC, DoD. No such outside assignment may be approved without GC, DoD approval.

4. GENERAL COUNSELS OF DEFENSE AGENCIES AND DoD FIELD ACTIVITIES. The General Counsels of the Defense Agencies and DoD Field Activities, under the authority, direction, and control of the GC, DoD, as the Director of the DLSA, shall:

a. Establish procedures to review proposed outside assignments of attorneys from their respective General Counsel offices.

b. Transmit the proposed outside assignments for which they recommend approval to the GC, DoD, in compliance with the procedures set forth in Enclosure 3 of this Instruction.

ENCLOSURE 3

PROCEDURES FOR APPROVAL OF A PROPOSED ASSIGNMENT OF AN OGC, DoD
OR DLSA ATTORNEY OUTSIDE THE DEPARTMENT OF DEFENSE

1. TRANSMITTAL OF PROPOSED ASSIGNMENT TO THE GC, DoD. For attorneys employed in or assigned to the General Counsel offices of the Defense Agencies and DoD Field Activities, the General Counsels of the Defense Agencies and DoD Field Activities shall transmit, through their respective supervisory Deputy General Counsels, a memorandum describing any proposed outside assignment of the attorney under their respective jurisdiction to the GC, DoD, at least 30 calendar days before the scheduled commencement of an assignment. A similar memorandum should be transmitted by the relevant Deputy General Counsel to the General Counsel for attorneys who are in OGC, DoD or within DLSA, but not within an Office of General Counsel of a Defense Agency or DoD Field Activity (for example, the Standards of Conduct Office or the Office of Litigation Counsel).

a. The memorandum shall include a recommendation that the proposed assignment be approved, along with the rationale for the recommendation, and may include supporting documents as attachments, as appropriate.

b. The memorandum shall include:

- (1) Whether this is to be an ongoing requirement.
- (2) What organization or person initiated the requirement.
- (3) The anticipated start and end dates.
- (4) The duties to be performed.
- (5) Whether the assignment is to be made on a reimbursable or nonreimbursable basis.
- (6) The name, grade or rank, permanent duty assignment, and other pertinent information about the individual to be assigned.
- (7) How the assignment benefits or affects the DoD mission.
- (8) How DoD mission requirements will be met during the assignee's absence.

2. APPROVAL OR DISAPPROVAL BY THE GC, DoD. The GC, DoD normally shall approve or disapprove any proposed assignment timely received with the information described in paragraph 1.b. of this enclosure no later than 15 calendar days before the commencement of the assignment. An outside assignment of an OGC, DoD or DLSA attorney may not commence

without the approval of the GC, DoD and, when necessary, the approval of the DA&M or the USD(P&R).

a. Additional Processing by the DA&M for Details Covered by Reference (g). In the case of a proposed outside assignment of an OGC, DoD or DLSA attorney that also meets the definition of a detail outside the Department of Defense, the GC, DoD, will normally transmit any proposed details to the DA&M for processing as required by Reference (g), along with the GC, DoD approval, at least 15 days before the OSD-established suspense. Any such detail shall not commence without the approval of the GC, DoD and the DA&M. A proposed detail of an OGC, DoD or DLSA attorney required to be processed in accordance with Reference (g) shall not be submitted to the DA&M without the prior approval of the GC, DoD as required by subparagraph 6.2.3. of Reference (g) and this Instruction.

b. Additional Processing by the USD(P&R) for Assignments Covered by Reference (h). In the case of a proposed outside assignment of OGC, DoD or DLSA attorneys who are part of a fellowship, grant, scholarship, or training with industry opportunity covered by Reference (h), the GC, DoD will normally transmit any proposed outside assignment to the USD(P&R) for processing as required by Reference (h), along with the GC, DoD approval, at least 15 days before commencement of the detail. Any such outside assignment shall not commence without the approval of the GC, DoD and the USD(P&R). Any proposed outside assignment of an OGC, DoD or DLSA attorney required to be processed in accordance with Reference (h) shall not be submitted to the USD(P&R) without the prior approval of the GC, DoD, as required by this Instruction.