

7 FAM 970

SUITS AGAINST THE U.S. GOVERNMENT AND/OR U.S. GOVERNMENT EMPLOYEES

(CT:CON-127; 01-26-2006)
(Office of Origin: CA/OCS/PRI)

7 FAM 971 SUITS AGAINST U.S. GOVERNMENT

7 FAM 971.1 Service of Process on U.S. Embassy or Consulate in Connection With Suits in Foreign Courts

(CT:CON-127; 01-26-2006)

- a. Service of process in a suit against the U.S. government abroad can be made only in the following ways:
 - (1) Pursuant to applicable international convention. See section 7 FAM 953.4; or
 - (2) By delivery to the Department of State through the diplomatic channel by the embassy of the foreign state in Washington DC(L/EX is the only office with authority to receive service for the Department; see 2 FAM); or
 - (3) Any delivery to a U.S. embassy through the diplomatic channel by the foreign ministry of the foreign state.
- b. The U.S. embassy or consulate should report immediately to the Department (L/DL; See 2 FAM) any service pursuant to 7 FAM 971.1 a (3) or any other attempt of service of process on an embassy or consulate.
- c. Should service abroad upon the United States be attempted by any other method (such as delivery to the embassy or consulate by private process server, or by local mail), the post immediately should return the service documents (originals) to the issuing court under cover of a brief letter. The letter should explain the post's lack of authority to accept service on behalf of the United States except as described in section 7 FAM 971.1 a. Transmit copies of the cover letter and service documents to the Ministry of Foreign Affairs in the host country under cover of an appropriate diplomatic note. Notify the Department (L/DL), by telegram at once of

the potential litigation. (See 2 FAM).

- d. Service of process on the Department and its employees in their official capacity in connection with suits in U.S. courts must be made on L/EX. In the event post or post officers are served in connection with such litigation, seek guidance from the appropriate section of the Legal Adviser's Office (L).

7 FAM 971.2 Retaining Local Counsel To Represent United States Abroad in Suit Before Foreign Court

(CT:CON-127; 01-26-2006)

- a. Under 28 CFR 0.46, the Assistant Attorney General in charge of the Civil Division of the Department of Justice shall direct all civil litigation, including claims by or against the United States, its agencies, or officers in domestic or foreign courts, special proceedings, and similar civil matters not otherwise assigned. Under 28 CFR 0.45, the Attorney General also shall employ foreign counsel to represent before foreign criminal courts, commissions, or administrative agencies, officials of the Department of Justice and all other law enforcement officers of the United States who are charged with violations of foreign law as a result of acts which they perform in the course and scope of their Government service.
- b. This responsibility has been delegated to the Office of Foreign Litigation in the Civil Division of the Department of Justice (OFL). In accordance with 2 FAM guidelines, consular or administrative officers should submit formal requests for retention of a foreign attorney to the Department (L/DL) for referral to OFL. (See 2 FAM for the elements to include in such a request. For additional guidance, see 22 U.S.C. 2698(a)).

7 FAM 971.3 Tort Claims Against United States

(CT:CON-127; 01-26-2006)

2 FAM provides an extensive discussion of the authority for action and the procedures to be followed in tort claims against the United States.

7 FAM 972 SUITS AGAINST CONSULAR OFFICERS, FOREIGN SERVICE NATIONAL EMPLOYEES, OR CONSULAR AGENTS

7 FAM 972.1 Official Capacity

(CT:CON-127; 01-26-2006)

- a. If a consular officer or any other U.S. official at post, foreign service national employee, or consular agent is served with process in a suit in the United States or in a foreign court which involves any matter arising out of the performance of official duty, notify the Department (L/DL) by telegram.
- b. 2 FAM provides guidelines on when and how the Department of Justice (DOJ) will represent Federal employees.

7 FAM 972.2 Private Capacity

(CT:CON-127; 01-26-2006)

2 FAM provides instructions about reporting requirements on litigation in foreign courts that involves a U.S. employee in a private capacity.

7 FAM 973 THROUGH 979 UNASSIGNED