



Department of Defense INSTRUCTION

NUMBER 1442.02
September 30, 2010

GC, DoD

SUBJECT: Personnel Actions Involving Civilian Attorneys

References: See Enclosure 1

1. PURPOSE. This Instruction:

a. Reissues DoD Directive (DoDD) 1442.2 (Reference (a)) as a DoD Instruction (DoDI) in accordance with the authority in DoDD 5145.01 (Reference (b)) and the guidance in DoDD 5145.4 (Reference (c)) to establish policy, assign responsibilities, and provide procedures for personnel actions involving civilian employee attorneys and applicants for civilian attorney positions in the Department of Defense.

b. Incorporates and cancels General Counsel, Department of Defense, (GC, DoD) Memorandums (References (d) through (h)); Acting GC, DoD, Memorandum (Reference (i)); and GC, DoD, and Director of Administration and Management (DA&M) Agreement (Reference (j)).

c. Establishes the Office of the GC, DoD/Defense Legal Services Agency (OGC/DLSA) Professional Conduct Board which is responsible for providing guidance for civilian attorney compliance with ethical standards and for hearing allegations of impropriety on the part of civilian attorneys.

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 Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

b. Does not apply to:

(1) The Office of the General Counsel to the Inspector General of the Department of Defense.

(2) Attorneys within the Department of Defense who perform their duties as attorneys while serving as Service members.

3. POLICY. It is DoD policy that:

a. The recruitment, selection, appointment, compensation, transfer, promotion, and retention of civilian attorneys throughout the Department of Defense shall be made on the basis of merit and in conformity with applicable law and regulations, including this Instruction.

b. Details of civilian attorneys to duty outside the Department of Defense shall be accomplished in accordance with DoDIs 1000.17 and 1442.10 (References (k) and (l)) and this Instruction. Assignment or detail of OGC or DLSA civilian attorneys to positions outside the legal career field requires the approval of the GC, DoD/Director, DLSA (GC/D/DLSA).

c. Recruitment of civilian attorneys to fill entry-level positions shall be undertaken on the widest practicable basis.

d. Evaluation of applicants for civilian attorney positions shall be made based on the skills, background, knowledge, and relevant experience of the applicants with the sole object being to obtain the highest caliber, most qualified candidates.

e. DoD civilian attorney positions classified below the Senior Executive Service (SES), Defense Intelligence Senior Executive Service (DISES), or equivalent level are excepted from the competitive service.

f. DoD civilian attorneys shall not be penalized in decisions related to their performance evaluations, performance awards, or performance system payouts for issuing legal advice that is timely and well-reasoned, and that correctly states the applicable law and regulations.

g. As a condition of employment, civilian attorneys practicing law as DoD employees in OGC and DLSA must be active members of the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia. This requirement may be extended to other DoD organizations outside OGC and DLSA by the respective Military Department concerned.

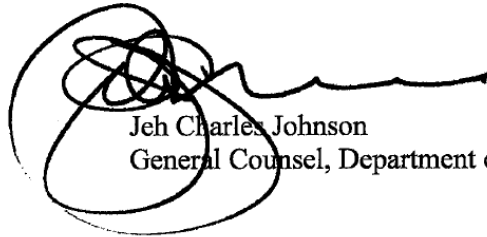
h. This Instruction establishes the exclusive minimum qualification standards for selection for, or promotion to, civilian attorney positions within the Department of Defense. Generalized requirements, such as joint duty assignment tours or experience in more than one DoD Component or in an organization outside the Department of Defense, do not apply to DoD civilian attorney positions unless adopted by the cognizant Military Department, for positions in that Military Department, or by the GC/D/DLSA for positions in OGC or DLSA.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosures 3 through 7.

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

7. EFFECTIVE DATE. This Instruction is effective upon its publication to the DoD Issuances Website.



Jeh Charles Johnson
General Counsel, Department of Defense

Enclosures

1. References
 2. Responsibilities
 3. Procedures for All DoD Civilian Attorney Positions
 4. Procedures for DLSA Civilian Attorney Positions Only
 5. OGC and DLSA Attorney Licensing
 6. OGC and DLSA Standards of Professional Conduct
 7. Delegations of Authority and Responsibilities to the DGCs, DoD
- Glossary

TABLE OF CONTENTS

ENCLOSURE 1: REFERENCES.....6

ENCLOSURE 2: RESPONSIBILITIES.....8

 GC, DoD.....8

 HEADS OF THE DoD COMPONENTS8

 SECRETARIES OF THE MILITARY DEPARTMENTS.....8

ENCLOSURE 3: PROCEDURES FOR ALL DoD CIVILIAN ATTORNEY POSITIONS.....9

 GENERAL.....9

 POSITIONS BELOW SES OR DISES LEVEL.....9

 POSITIONS UP TO AND INCLUDING SENIOR LEVEL (SL) AND DEFENSE
 INTELLIGENCE SENIOR LEVEL (DISL)12

 PROMOTION TO GS GENERAL GRADE (GG) -15 OR EQUIVALENT LEVEL
 AND BELOW.....15

 REASSIGNMENT OR TRANSFER TO GS OR GG-15 OR EQUIVALENT LEVEL
 AND BELOW.....16

ENCLOSURE 4: PROCEDURES FOR DLSA CIVILIAN ATTORNEY
POSITIONS ONLY17

 GENERAL.....17

 GCs OF DLSA ORGANIZATIONS17

 GC POSITIONS AT SES, DISES, SL, DISL, HIGHLY QUALIFIED EXPERT
 (HQE), AND EQUIVALENT LEVEL.....17

 SUBORDINATE COUNSEL POSITIONS AT SES, DISES, HQE, AND
 EQUIVALENT LEVEL21

 SUBORDINATE COUNSEL POSITIONS AT SL, DISL, AND
 EQUIVALENT LEVEL24

 POSITIONS AT GS/GG-15 OR EQUIVALENT LEVEL AND BELOW25

ENCLOSURE 5: OGC AND DLSA ATTORNEY LICENSING.....28

 GENERAL.....28

 REQUIREMENTS.....28

ENCLOSURE 6: OGC AND DLSA STANDARDS OF PROFESSIONAL CONDUCT.....31

 GENERAL.....31

 STANDARDS.....31

 DoD OGC/DLSA PROFESSIONAL CONDUCT BOARD31

ENCLOSURE 7: DELEGATIONS OF AUTHORITY TO THE DGCs, DoD.....34

 DGCs, DoD.....34

 DGC(P&HP), DoD35

 DLSA POSITIONS AT SES, DISES, SL, DISL, AND EQUIVALENT LEVEL.....35

GLOSSARY36

 ABBREVIATIONS AND ACRONYMS36

 DEFINITIONS.....37

TABLE

 DGC, DoD, Delegated Supervisory Authority34

FIGURE

 Notice of Veterans’ Preference.....11

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 1442.2, "Personnel Actions Involving Civilian Attorneys," June 26, 1967 (hereby cancelled)
- (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, Department of Defense, Memorandum, "Reporting of Allegations of Impropriety Against Senior Attorneys in the Department of Defense," December 9, 2004 (hereby cancelled)
- (e) General Counsel, Department of Defense, Memorandum, "Clarification of Authority," June 10, 2002 (hereby cancelled)
- (f) General Counsel, Department of Defense, Memorandum, "Attorney Licensing," September 14, 2007 (hereby cancelled)
- (g) General Counsel, Department of Defense, Memorandum, "Application of Veteran's Preference When Hiring for Attorney Positions," December 19, 2003 (hereby cancelled)
- (h) General Counsel, Department of Defense, Memorandum, "Standards of Professional Conduct for Attorneys in the Office of the DoD General Counsel and the Defense Legal Services Agency," March 7, 2005 (hereby cancelled)
- (i) Acting General Counsel, Department of Defense, Memorandum, "Attorney Licensing," February 2, 2009 (hereby cancelled)
- (j) General Counsel, Department of Defense, and Director of Administration and Management Agreement, "Updated Procedures for Administration of the SES, or Equivalent Positions in the Defense Legal Services Agency (DLSA)," May 2002 (hereby cancelled)
- (k) DoD Instruction 1000.17, "Detail of DoD Personnel to Duty Outside the Department of Defense," April 16, 2008
- (l) DoD Instruction 1442.10, "Outside Assignments of Attorneys from the DoD Office of the General Counsel (OGC, DoD) and Defense Legal Services Agency (DLSA)," February 17, 2010
- (m) Subchapter 1920 of DoD Instruction 1400.25, "DoD Civilian Personnel Management System: Classification and Qualifications," December 1, 2008
- (n) Part 302 of title 5, Code of Federal Regulations
- (o) Subchapter 315 of DoD Instruction 1400.25, "DoD Civilian Personnel Management System: Employment of Spouses of Active Duty Military," September 19, 2007
- (p) Section 5376 of title 5, United States Code
- (q) DoD Directive 1402.3, "Administration of the Senior Executive Service Program in the Office of the Secretary of Defense and the Defense Agencies," August 16, 1984
- (r) DoD Directive 1403.1, "The Senior Executive Service and Equivalent-Level Positions and Personnel," October 18, 1982
- (s) Chapter 2 of DoD 1402.3-H, "Senior Executive Services Handbook: Senior Executive Service Executive Staffing," May 1985
- (t) Chapter 1 of DoD 1402.3-H, "Senior Executive Services Handbook: Senior Executive Service Executive Resources Board," May 1985

- (u) Chapter 9 of DoD 1402.3-H, "Senior Executive Services Handbook: Senior Executive Service Disciplinary Actions and Removals," May 1985
- (v) DoD Instruction 1403.2, "Reduction in Force in the Senior Executive Service (SES)," February 1, 1991
- (w) Subchapter 451 of DoD Instruction 1400.25, "DoD Civilian Personnel Management System: Awards," December 1996
- (x) Administrative Instruction No. 104, "Defense Civilian Intelligence Personnel System (DCIPS) Policies in the Office of the Secretary of Defense (OSD) and Organizations Receiving Personnel Support from the Washington Headquarters Services (WHS)," October 24, 2002

ENCLOSURE 2

RESPONSIBILITIES

1. GC, DoD. The GC, DoD shall:

a. Serve as the qualifying authority for personnel actions involving covered attorneys not employed within the Military Departments. This authority is delegated as provided in Enclosure 7.

b. Oversee, as appropriate, legal services performed within the Department of Defense, including establishing procedures to determine the adherence by civilian attorneys in the Department of Defense to appropriate professional responsibility standards pursuant to References (b) and (c).

c. Serve as the coordinating and approval official, in accordance with References (k) and (l), for details of civilian attorneys to duty outside the Department of Defense.

d. Coordinate the activities of qualifying authorities established in this Instruction to achieve the objectives of this Instruction.

2. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall inform the GC, DoD, of allegations of illegal activity, professional or other misconduct, or other impropriety against senior attorneys in their respective Components.

3. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments, in addition to the responsibilities in section 2 of this enclosure:

a. Shall designate one or more civilian attorneys at or above the National Security Personnel System (NSPS) YA3 or YC3, General Schedule (GS) 15, or equivalent level as the qualifying authority to evaluate the qualifications of persons recommended for appointment, transfer, reassignment, or promotion as attorneys, and to approve or disapprove such actions.

b. The authority vested in the designated qualifying authority may be re-delegated, in writing, to a qualified attorney or to qualified attorneys (civilian or military) in any case where circumstances warrant.

c. May assign to the qualifying authority established in paragraph 3.a. of this enclosure such additional duties relating to recruitment, appointment, pay-setting, transfer, reassignment, or promotion of attorneys as the Secretary concerned considers appropriate.

ENCLOSURE 3

PROCEDURES FOR ALL DoD CIVILIAN ATTORNEY POSITIONS

1. GENERAL. Except as otherwise provided, the procedures in this enclosure apply to all DoD civilian attorneys and civilian attorney positions including, without limitation, those in OGC and DLSA and those in the Military Departments (hereafter referred to inclusively as “DoD civilian attorneys” and “DoD civilian attorney positions”). For additional procedures applicable to DLSA attorneys only, see Enclosure 4. For licensing requirements and standards of professional conduct for OGC and DLSA attorneys only, see Enclosures 5 and 6, respectively.

a. The conditional employment requirement in paragraph 3.g. of the front matter of this Instruction does not extend to law clerk positions filled in accordance with paragraph 2.d. of this enclosure.

b. An applicant for a DoD civilian attorney position who is not, at the time of selection to fill the position, serving in a current DoD civilian attorney position must provide to the selecting official prior to his or her appointment to the position an official, current certificate from a State agency demonstrating that he or she has active membership in the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia and is permitted to engage in the active practice of law. Selecting officials may alternatively verify the applicant’s bar membership status through on-line information provided by the licensing jurisdiction, provided that the on-line information clearly establishes that the applicant is permitted to engage in the active practice of law. Information that the applicant is in good standing is not sufficient by itself.

c. DoD civilian attorneys must maintain active status, which permits the practice of law, in at least one State or jurisdiction during the entire course of their employment in accordance with the requirements of Enclosure 5, EXCEPT that judge advocates or civilian attorneys not employed by Department of Defense, OGC, or DLSA shall comply with the applicable certification requirements of their respective Military Departments. However, the requirement for active bar membership may be extended by the respective Military Department.

d. The requirement to maintain active status underscores that the DoD civilian attorney licensing requirements set a standard equivalent to what is expected of attorneys in the private practice of law. Moreover, the DoD licensing requirements are intended to promote the respect with which DoD civilian lawyers are held in the Department of Defense; reinforce the public’s confidence in the competence and credentials of DoD civilian attorneys; and assist in the detection and prevention of the unauthorized practice of law.

2. POSITIONS BELOW SES OR DISES LEVEL

a. As provided for in paragraph 1.b. of this enclosure, each new selectee for a DoD civilian attorney position within the Department of Defense, OGC, or DLSA, shall provide the selecting

official with a current certificate from a state agency demonstrating that he or she is permitted to engage in the active practice of law.

b. For each selection for a DoD civilian attorney position within the Department of Defense, OGC, or DLSA, the selecting official shall submit the certificate required by paragraph 1.b. of this enclosure to the qualifying authority.

c. For selections to GS or equivalent-level positions made from all sources, subject to paragraph 2.f. of this enclosure, when more than one applicant for a particular DoD civilian attorney position meets the minimum requirements for appointment, the applicant who is best qualified on the basis of relevant experience, education, and achievement in the legal field shall be selected. Other factors involving effectiveness to perform the functions of the position may also be considered.

d. Recent law school graduates may apply for and be appointed to positions as law clerks in GS-9 series 904, NSPS YA1, or equivalent level as provided in subchapter 1920 of DoDI 1400.25 (Reference (m)). Any individual appointed under this authority may serve for no more than 14 months before being admitted to the bar of the highest court of a State, the District of Columbia, a U.S. territory, or a U.S. commonwealth. Any individual who fails to be admitted to such bar within 14 months from the date of appointment shall be separated.

e. For selectees entering the Department of Defense from outside the civil service, the duties to be performed are the critical factor in determining the grade, band, or pay entrance level. The possession of a degree or high academic standing alone is not a sufficient basis for placement in a higher NSPS pay band, GS grade and step level, or the equivalent.

f. Excepted service DoD civilian attorney positions are wholly exempted from the appointment procedures in part 302 of title 5, Code of Federal Regulations (Reference (n)). However, the DoD Components are required to follow the principles of veterans' preference in hiring civilian attorneys as far as administratively feasible, as provided for in this Instruction.

(1) Selecting officials must treat veterans' preference eligibility as a positive factor in all stages of the hiring process, including the review process, when making a selection from a job announcement or recruitment open to all sources or when veterans' preference is otherwise applicable as required by law.

(a) At each point in the review process when a decision is made to eliminate candidates from further consideration, the selecting official shall ascertain whether any of the applicants under review are preference eligible and, in borderline cases, continue to consider those applicants.

(b) When making final selections (i.e., at the point the candidates under serious consideration for an offer have been identified), the selecting official shall once again ascertain whether any of the candidates are preference eligible. If all relevant considerations for the position are deemed equal, the selecting official must select the preference-eligible veteran as opposed to an equally well qualified, non-preference-eligible candidate. Further, if all relevant

considerations for the position are deemed equal and there are multiple preference-eligible veterans in the final group of candidates, the selecting official must select from the preference-eligible veterans in the following order:

1. Disabled veterans qualifying for a 10-point preference.
2. Other 10-point preference eligibles, including Purple Heart recipients.
3. Veterans qualifying for 5-point preference.

(2) If a qualified preference-eligible applicant requests information regarding his or her non-selection, the responding official will advise the applicant that it is DoD policy to hire the most qualified applicant taking into consideration all factors, including, if applicable, veterans' preference eligibility, and that a selection was made on that basis. Responses do not follow templates applicable to competitive service positions or disclose personal information about the civilian attorney hired for the position because selections for civilian attorney positions are excepted, not competitive, hires. The responding official may advise the preference-eligible veteran of this Instruction and shall, upon request, furnish him or her with the reasons for his or her nonselection.

(3) Vacancy announcements for DoD civilian attorney positions for selection from all sources or for which consideration of veterans' preference is otherwise required must include the notice in the Figure.

Figure. Notice of Veterans' Preference

<p>NOTICE OF VETERANS' PREFERENCE</p> <p>There is no formal rating system for applying veterans' preference to attorney appointments in the excepted service; however, the Department of Defense considers veterans' preference eligibility a positive factor for attorney hiring. Applicants eligible for veterans' preference must include that information in their cover letter or resume and attach supporting documentation (e.g., DD Form 214, "Certificate of Release or Discharge from Active Duty") to their submissions.</p> <p>Although the point-preference system is not used, applicants eligible to claim a 10-point preference must submit a Standard Form (SF) 15, "Application for 10-Point Veteran Preference," and supporting documentation required for the specific type of preference claimed. (SF 15, which lists the types of 10-point preference and the required supporting documents, is available from the Office of Personnel Management Website at www.opm.gov.)</p>
--

g. Excepted service DoD civilian attorney positions are wholly exempted from the appointment procedures in Reference (n). However, military spouses preference should be equitably applied for spouses of active duty Service members when those spouses apply for

GS-15 and below, or equivalent position as outlined in subchapter 315 of DoDI 1400.25 (Reference (o)). Military spouses preference shall not contravene existing statutes or regulations on veterans' preference or nepotism.

3. POSITIONS UP TO AND INCLUDING SENIOR LEVEL (SL) AND DEFENSE SENIOR INTELLIGENCE LEVEL (DISL). Minimum qualification requirements for DoD civilian attorney positions shall be established as provided for in this Instruction.

a. Qualification Standards. The GS grade or equivalent qualification standards in subparagraphs 3.a.(1) through 3.a.(6) of this enclosure shall apply to initial appointments and promotions to DoD civilian attorney positions in the grade level or equivalent indicated.

(1) Duties Performed at the GS-9 or Equivalent Level. Assignments are considered developmental and involve legal or factual questions that require relatively easy research on clear-cut issues with adequate precedents. Other legal questions at the GS-9 level are difficult because of the complexity of the facts or the different possible constructions that may be placed on either the facts or the laws involved. Cases are strongly contested in formal hearings or informal negotiations by the individuals, corporations, or agencies involved. In cases of this scope, GS-9 or equivalent entrance-level attorneys search case reports, legal documents, periodicals, and textbooks, and prepare drafts of letters, memorandums, and legal documents for use by higher-level attorneys. They assist attorneys in charge of court cases or administrative proceedings by interviewing and selecting witnesses, preparing them to give testimony, and suggesting questions to be asked in cross-examination.

(a) Level of Supervision. Attorneys who enter at the GS-9 or equivalent-level work under very close supervision. They receive specific preliminary instructions, their authority is very limited, and their completed written work is carefully and closely reviewed.

(b) Qualifications. Assignments require the first professional law degree (Bachelor of Laws (LL.B.) or Juris Doctorate (J.D.)) and, for assignments within the Department of Defense, OGC, or DLSA (except for appointments as law clerks under paragraph 2.d. of this enclosure), active membership in the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia. The Military Departments may also extend the requirement for active bar membership to assignment of civilian attorneys within their respective Departments. No additional work experience as a licensed attorney is required.

(2) Duties Performed at the GS-11 or Equivalent Level. Assignments, while still developmental, involve complex and difficult legal questions requiring extensive research, analysis, and evaluation of information in controversial areas. Cases have an important impact on major public and private interests, such as cases concerning a major extension or revision in a grant program or a substantial question on civil rights. Cases are vigorously contested by capable legal talent, as in a contracts dispute case. In cases of this scope, NSPS YA1 or GS-11 attorneys prepare drafts of pleadings and motions in connection with cases in litigation. They conduct investigations to obtain facts, study legal precedents, and prepare recommendations.

They assist attorneys in charge of court cases by cross-examining witnesses and by drafting findings of fact, conclusions of law, and orders based upon the record.

(a) Level of Supervision. Attorneys who enter at the GS-11 or equivalent-level work under close supervision. They receive specific preliminary instructions, their commitment authority is limited, and their completed written work is carefully reviewed.

(b) Qualifications. Assignments require the first professional law degree (LL.B. or J.D.) and, for assignments within the Department of Defense, OGC, or DLSA, active membership in the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia. The Military Departments may also extend the requirement for active bar membership to assignment of civilian attorneys within their respective Departments. In addition, one of the following requirements must be satisfied:

1. One year of professional legal experience.
2. The second professional law degree (Master of Laws (LL.M.)) provided it required 1 full academic year of graduate study.
3. Superior law student work or activities as demonstrated by one of the following:
 - a. Academic standing in the upper third of the attorney's law school graduating class.
 - b. Work or achievement of significance on one of the attorney's law school's official law reviews or journals.
 - c. Special high-level honors for academic excellence in law school (e.g., membership in the Order of the Coif, winning of a moot court competition, or membership on the moot court team that represents the attorney's law school in competition with other law schools).
 - d. Full-time or continuous participation in a legal aid program as opposed to one-time, intermittent, or casual participation.
 - e. Significant summer law office clerk experience.
 - f. Other evidence of clearly superior accomplishment or achievement.

(3) Duties Performed at the GS-12 or Equivalent Level. Assignments involve extremely complex and difficult legal questions requiring extensive research, analysis, and evaluation of information in controversial scientific, financial, corporate, and medical engineering areas, or in other highly technical areas. Cases have an important impact on major private or public interests, such as cases concerning a major extension or revision in a grant program or a substantial question on civil rights. Interest in these cases is usually nationwide. GS-12 or

equivalent entry-level attorneys are entrusted with the initial preparation of proposed solutions to projects. To this end they conduct investigations to obtain facts, study legal precedents, make recommendations, and prepare necessary documents.

(a) Level of Supervision. Attorneys who enter at the GS-12 or equivalent level work under close supervision. They receive preliminary instructions, their commitment authority is limited, and their completed written work is carefully reviewed.

(b) Qualifications. Assignments require:

1. The first professional law degree (LL.B. or J.D.) and, for assignment to a civilian attorney position within the Department of Defense, OGC, or DLSA, active membership in the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia. The Military Departments may also extend the requirement for active bar membership to assignment of civilian attorneys within their respective Departments. In addition, one of the following requirements must be satisfied:

a. Two years of professional legal experience at or equivalent to the NSPS YA1 or YA2 or GS-11 level.

b. The second professional law degree (LL.M.) plus 1 year of professional legal experience at or equivalent to the NSPS YA1 or GS-11 level.

2. An attorney without experience may, in unusual cases, be employed at the GS-12 or equivalent level provided the individual has advanced educational attainments substantially beyond those required for work at the GS-11 or equivalent level, and his or her education clearly indicates ability to perform work of the type to be assigned; for example, education that included courses directly pertinent to the work of the agency. The essential point in such cases is to ensure that the individual's education has enabled him or her to step into complex legal work characteristic of the GS-12 or equivalent level, and to operate with the degree of independence and responsibility typical of that level.

(4) Duties Performed at the GS-13 or Equivalent Level. Assignments require the first professional law degree (LL.B. or J.D.) and, for assignments within the Department of Defense, OGC, or DLSA, active membership in the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia. The Military Departments may also extend the requirement for active bar membership to assignment of civilian attorneys within their respective Departments. In addition, the attorney shall have professional legal experience in excess of 2 years that is commensurate with the duties and responsibilities of the position.

(5) Duties Performed at the GS-14, GS-15, or Equivalent Level. Assignments require the first professional law degree (LL.B. or J.D.) and, for assignment within the Department of Defense, OGC, or DLSA, active membership in the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia. The Military Departments may also extend the requirement for active bar membership to assignment of civilian attorneys within their respective Departments. In addition, the attorney shall have professional legal experience in

excess of 3 years that is commensurate with the duties and responsibilities of the position. Attorneys performing duties in NSPS YA3 or YC3 (pay set above entry level), GS-15, or equivalent-level positions are expected to perform with substantial independence even when working on the most complex or difficult matters.

(6) Duties Performed at the SL, DISL, or Equivalent Level. Assignments require the first professional law degree (LL.B. or J.D.) and, for assignments within the Department of Defense, OGC, or DLSA, active membership in the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia. The Military Departments may also extend the requirement for active bar membership to assignment of civilian attorneys within their respective Departments. In addition, assignment at the SL, DISL, or equivalent level requires substantial professional legal experience. To qualify for this level, individuals must possess sufficient expertise and experience to be recognized as experts in their fields. The requirements of section 5376 of title 5, United States Code (Reference (p)) apply.

b. Exceptions to Qualification Standards. The qualification requirements, pay band, and grade-level guidelines in paragraph 3.a. of this enclosure shall not preclude the initial appointment of applicants into different levels than those prescribed, as provided in subparagraphs 3.b.(1) and 3.b.(2) of this enclosure.

(1) The applicable qualifying authority:

(a) May make exceptions to the GS grade-level, or equivalent, standards in this enclosure for applicants possessing special experience or qualifications of a legal or non-legal nature that will be of material value in performing the duties of the position to which the civilian attorney is appointed. Such experience may have been gained either before or after admission to the bar.

(b) May NOT make exceptions to the basic qualification requirements of graduation from law school; admission to the bar; and, for initial assignment to a DoD civilian attorney position, active membership in the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia. The Military Departments may extend the requirement for active bar membership to assignments of civilian attorneys within their respective Departments.

(2) Exercise of the authority to make exceptions to the GS grade-level standards within DLSA requires the approval of the GC/D/DLSA or the Principal Deputy GC, DoD/Deputy Director, DLSA (PDGC/DD/DLSA).

4. PROMOTION TO GS OR GENERAL GRADE (GG) -15 OR EQUIVALENT LEVEL AND BELOW

a. Merit-Based Promotions Under Other Than Full and Open Competition

(1) Each proposed promotion of a DoD civilian attorney shall be submitted to the applicable qualifying authority for approval or disapproval. The submission shall include an

evaluation by the professional supervisor of the attorney of the quality of the attorney's work and, if desired, an expression of opinion as to the attorney's prospective ability to perform the duties of the proposed new position.

(2) The criteria to be used by the qualifying authorities in considering promotions shall include the ability of the subject civilian attorney to perform the duties of the proposed new position, the quality of his or her performance of prior duties, and any other relevant experience.

(3) To be qualified for promotion, a DoD civilian attorney within OGC or DLSA must be an active member in the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia. The requirement for active bar membership may be extended to other DoD organizations outside OGC and DLSA by the respective Military Department.

b. Promotion After Full and Open Competition

(1) Each proposed promotion of a DoD civilian attorney shall be submitted to the qualifying authority for approval or disapproval.

(2) The criteria to be used by the qualifying authorities in considering promotions shall include the ability of the subject civilian attorney to perform the duties of the proposed new position, the quality of his or her performance of prior duties, and any other relevant experience.

(3) To be qualified for promotion, a DoD civilian attorney within OGC or DLSA must be an active member in the bar of the highest court of a State, U.S. commonwealth, U.S. territory, or the District of Columbia. The requirement for active bar membership may be extended to other DoD organizations outside OGC and DLSA by the respective Military Department.

5. REASSIGNMENT OR TRANSFER TO GS OR GG-15 OR EQUIVALENT LEVEL AND BELOW

a. When reassigning a DoD civilian attorney within the same GS or GG grade or similar pay band or equivalent, referral to the qualifying authority is not required unless otherwise directed by the qualifying authority.

b. When action by the qualifying authority is not required, the attorney's losing and gaining supervisors (if different) must both consent to the proposed transfer, unless the reassignment or transfer is the result of the employee's application for the new position and the gaining supervisor agrees.

ENCLOSURE 4

PROCEDURES FOR DLSA CIVILIAN ATTORNEY POSITIONS ONLY

1. GENERAL. The procedures in this enclosure apply to DLSA civilian attorney positions only. Military Department attorney positions are governed by applicable Military Department procedures.

2. GCs OF DLSA ORGANIZATIONS. The GCs of DLSA organizations shall:

a. Approve qualifications for, select, and promote individuals in GS-13, NSPS YA2, or equivalent-level and below civilian attorney positions in their organizations, in accordance with Reference (c).

b. Refer proposed selections or promotions of civilian attorneys for GS-14, NSPS YA3 or YC3, or equivalent-level and above positions in their organizations to the cognizant Deputy General Counsel (DGC), DoD, for approval of qualifications, selection, and promotion in accordance with Reference (k) and this Instruction.

c. Comply with the procedures in this Instruction for filling SES, DISES, SL, DISL, and equivalent-level positions.

d. Submit recommendations for details and other assignments of civilian attorneys in their organizations for outside of the Department of Defense to the GC, DoD, through the cognizant DGC, DoD, for review and approval, in accordance with References (k) and (l). Assignment or detail of DLSA civilian attorneys to positions outside the legal career field requires the approval of the GC/D/DLSA.

3. GC POSITIONS AT SES, DISES, SL, DISL, HIGHLY QUALIFIED EXPERT (HQE), AND EQUIVALENT LEVEL. This section applies to SES, DISES, HQE, and equivalent-level GC positions in the Defense Agencies and DoD Field Activities.

a. Position Establishment, Abolishment, or Change in Duties

(1) DLSA civilian attorney positions are under the cognizance of the GC/D/DLSA, who must approve the establishment, abolishment, or change in duties of any DLSA SES attorney position. The DA&M serves as the manager of all SES resources outside the Military Departments and the Combatant Commands, in accordance with DoDDs 1402.3 and 1403.1 (References (q) and (r)).

(2) Either the GC/D/DLSA or the Director of the Defense Agency or DoD Field Activity concerned may initiate a request for establishment, abolishment, or change in duties of a position. Defense Agency and DoD Field Activity requests shall be prepared by the Defense

Agency or DoD Field Activity servicing personnel office for the approval by the GC/D/DLSA. (See Chapter 2 of DoD 1402.3-H (Reference (s)) for additional information.)

(3) To establish a new SES, DISES, SL or DISL attorney position, an applicable resource is necessary. If the Defense Agency or DoD Field Activity has no such resource available after the GC/D/DLSA approves establishing the position, an allocation may be requested from the DA&M or, for intelligence resources, from the Under Secretary of Defense for Intelligence (USD(I)). If the allocation is approved, the position may be established.

(4) If the GC/D/DLSA approves the abolishment of an SES or DISES attorney position, the resource may be withdrawn from the Defense Agency or DoD Field Activity by the DA&M or the USD(I), as applicable.

(5) Changes in duties are the responsibility of the GC/D/DLSA, who shall act in consultation with the Director of the Defense Agency or DoD Field Activity concerned. The Director shall notify the GC/D/DLSA of any changes to the organization's mission that would necessitate such changes. Any significant change of duties, to include assignment or detail outside the legal field, requires the approval of the GC/D/DLSA.

b. Appointments

(1) The Defense Agency or DoD Field Activity servicing personnel office, under the direction of the cognizant DGC, DoD, shall prepare the required paperwork for GC/D/DLSA approval, to include a job vacancy announcement with proposed technical qualifications.

(a) The Inter-Defense Agency (IDA) Executive Resources Board (ERB) is the responsible ERB for the merit staffing process and overall planning and management of agency executive development programs for all DLSA SES positions outside the DLSA headquarters and the Defense Office of Hearings and Appeals (DOHA).

(b) The OSD ERB is the responsible ERB for DLSA headquarters and DOHA SES positions, in accordance with References (r) and (s).

(c) The internal boards of the respective Defense intelligence agencies are the responsible boards for DISES positions outside OSD.

(2) The GC/D/DLSA, in consultation with the Director of the Defense Agency or DoD Field Activity concerned, shall select the executive evaluation panel (see Chapter 1, Appendix 3, of DoD 1402.3-H (Reference (t)) for additional information) and shall select the candidate who will fill the position.

c. Reassignments, Transfers, and Reinstatements

(1) Paperwork may be prepared by OGC/D/DLSA or, at the request of the GC/D/DLSA, by the Defense Agency or DoD Field Activity servicing personnel office.

(2) Decisions on reassignments, transfers, and reinstatements are the responsibility of the GC/D/DLSA, who will consult with the Director of the Defense Agency or DoD Field Activity concerned prior to final action on such decisions.

d. Adverse Actions. (This paragraph does not apply to HQE positions.)

(1) Paperwork may be prepared by OGC/D/DLSA or, at the request of the GC/D/DLSA, by the Defense Agency or DoD Field Activity servicing personnel office, and shall be processed according to appropriate SES, DISES, or equivalent procedures. (See Chapter 9 of DoD 1402.3-H (Reference (u)) for additional information.)

(2) Actions taken at the supervised GC or director level ordinarily will be proposed by the supervising DGC, DoD, and decided by the GC/D/DLSA or the PDGC/DD/DLSA in consultation with the Director of the Defense Agency or DoD Field Activity concerned. (See the Table at Enclosure 7 for supervised GCs and directors, and for supervisory DGCs.)

(3) The Directors of the Defense Agencies and DoD Field Activities in the Table at Enclosure 7 may request that the GC/D/DLSA or the PDGC/DD/DLSA take adverse actions in cases they deem appropriate.

(4) The DA&M must be advised of all proposed adverse actions against SES or SL personnel. The USD(I) must be advised of all proposed adverse actions against DISES and DISL personnel.

e. Reduction-in-Force (RIF), Transfer-of-Function (TOF), and Adjustment in Force (AIF). (This paragraph does not apply to HQE positions. AIF applies to DISES and DISL positions only.)

(1) The requesting Defense Agency or DoD Field Activity servicing personnel office shall prepare the paperwork.

(2) The Directors of the Defense Agencies and DoD Field Activities listed in the Table at Enclosure 7 may request or propose RIF or TOF, or, if applicable, AIF, and shall comply with the policy and procedures in DoDI 1403.2 (Reference (v)) and this Instruction. The decision to abolish a position must be accomplished in accordance with paragraph 3.a. of this Enclosure. RIF and TOF are the responsibility of the GC/D/DLSA.

f. Probationary Period. (This paragraph does not apply to HQE positions.)

(1) The Defense Agency or DoD Field Activity servicing personnel office shall prepare the paperwork according to their DoD Component internal procedures.

(2) The GC/D/DLSA shall certify satisfactory or unsatisfactory completion of the probationary period, in consultation with the Director of the Defense Agency or DoD Field Activity concerned.

g. Performance Elements and Plans, Appraisals, Ratings and Pay Increases, and/or Bonuses

(1) The GC/D/DLSA, PDGC/DD/DLSA, or cognizant DGC, DoD, who has the authority to establish performance elements, and the employee shall develop the performance plan in consultation with the Defense Agency or DoD Field Activity Director concerned for SES positions and in accordance with equivalent guidance issued by the USD(I) for DISES positions.

(2) The GC/D/DLSA, PDGC/DD/DLSA, or cognizant DGC, DoD, is the immediate supervisor for appraisal purposes. The appraisal should be completed in consultation with the Director of the Defense Agency or DoD Field Activity concerned.

(3) OGC/DLSA shall prepare the narrative justifications for pay increases and/or bonuses for non-DISES personnel in consultation with the Director of the Defense Agency or DoD Field Activity concerned.

(4) The Defense Agency or DoD Field Activity servicing personnel office shall prepare justifications for pay increases and bonuses, as applicable, for DISES personnel for approval by the GC/D/DLSA, in consultation with the Director of the Defense Agency or DoD Field Activity concerned, in accordance with internal DISES procedures.

h. Recommendations for Presidential Rank Awards

(1) The GC/D/DLSA shall prepare nominations in accordance with subchapter 451 of DoDI 1400.25 (Reference (w)). The Directors of the Defense Agencies and DoD Field Activities may propose nominations to the GC/D/DLSA. When doing so, the Defense Agency or DoD Field Activity shall provide draft nomination packages.

(2) All non-DISES nominations made by the GC/D/DLSA shall be priority-ordered within the group of OGC nominations before being submitted to the OSD Rank Awards Committee.

(3) All DISES nominations shall be priority-ordered and processed in accordance with internal DISES procedures.

i. Recommendations for Sabbaticals or Long-Term Training Opportunities

(1) The Defense Agency or DoD Field Activity servicing personnel office shall prepare the paperwork based on the recommendation of the Director concerned and the approval of the GC/D/DLSA.

(2) The IDA ERB shall provide the review function for sabbaticals for all SES positions outside OSD/DLSA headquarters and DOHA. The OSD ERB shall provide the review function for sabbaticals for all SES positions in OSD/DLSA headquarters and DOHA. The DISES review function shall be provided in accordance with internal DISES procedures.

4. SUBORDINATE COUNSEL POSITIONS AT SES, DISES, HQE, AND EQUIVALENT LEVEL. This section applies to DLSA subordinate counsel (below the Defense Agency or DoD Field Activity GC level) SES, DISES, and equivalent-level positions in the Defense Agencies and DoD Field Activities, and in other organizations outside the Military Departments with DLSA subordinate-level SES, DISES, and equivalent-level positions.

a. Position Establishment, Abolishment, or Change in Duties. The Defense Agencies, DoD Field Activities, and other organizations outside the Military Departments with DLSA subordinate-level SES, DISES, and equivalent-level positions shall follow the procedures in paragraph 3.a. of this enclosure for position establishment, abolishment, or change in duties.

b. Appointments

(1) Paperwork will be prepared by OGC/DLSA, or, at the request of the OGC/D/DLSA, by the Defense Agency or DoD Field Activity servicing personnel office for GC/D/DLSA approval.

(2) The IDA ERB is the responsible ERB for first appointments to all DLSA SES positions, except DLSA headquarters, DOHA, and DISES positions. The OSD ERB is the responsible ERB for DLSA headquarters and DOHA SES positions. The internal boards of the Defense Intelligence Components are the responsible boards for DISES positions.

(3) The GC/D/DLSA, in consultation with the Director and the GC of the Defense Agency or DoD Field Activity concerned, shall select:

- (a) The executive evaluation panel.
- (b) The candidate who will fill the position.

c. Reassignments, Transfers, and Reinstatements

(1) Paperwork shall be prepared by OGC/DLSA or, at the request of the OGC/D/DLSA, by the Defense Agency or DoD Field Activity servicing personnel office for GC/D/DLSA approval.

(2) The IDA ERB shall process competitive actions for all positions except DISES, which shall be processed by the internal boards of the Defense Intelligence Agencies, and HQE, which do not require a board.

(3) Decisions on reassignments, transfers, and reinstatements are the responsibility of the GC/D/DLSA, who shall consult with the Director and the GC of the Defense Agency or DoD Field Activity concerned prior to final action on such decisions.

d. Adverse Actions. (This paragraph does not apply to HQE positions.)

(1) Paperwork shall be prepared by OGC/DLSA or, at the request of the OGC/D/DLSA, by the Defense Agency or DoD Field Activity servicing personnel office, and shall be processed according to appropriate SES or DISES procedures for GC/D/DLSA approval.

(2) Actions ordinarily will be proposed by the Defense Agency or DoD Field Activity GC and decided by the supervising DGC, DoD, in consultation with the Director of the Defense Agency or DoD Field Activity concerned.

(3) The Directors of the Defense Agencies and DoD Field Activities may request that their respective GCs propose adverse actions in appropriate cases.

(4) The DA&M must be advised of all proposed adverse actions involving SES personnel. The USD(I) must be advised of all proposed adverse actions involving DISES personnel.

e. RIF, TOF, and AIF. (This paragraph does not apply to HQE positions. AIF applies to DISES positions only.)

(1) The Defense Agency or DoD Field Activity servicing personnel office shall prepare the paperwork.

(2) The Directors of the Defense Agencies and DoD Field Activities may request or propose RIF or TOF or, if applicable, AIF. Decisions must be approved by the GC/D/DLSA, PDGC/DD/DLSA, or supervising DGC, DoD, and shall comply with the policy and procedures in Reference (v) and this Instruction.

f. Probationary Period. (This paragraph does not apply to HQE positions.)

(1) The Defense Agency or DoD Field Activity servicing personnel office shall prepare the paperwork to certify satisfactory or unsatisfactory completion of the probationary period according to their respective procedures.

(2) The Defense Agency or DoD Field Activity GC shall certify satisfactory or unsatisfactory completion of the probationary period according to their respective internal procedures, with the approval of the cognizant DGC, DoD.

g. Performance Elements and Plans, Appraisals and Ratings, and Pay and Bonuses. (This paragraph does not apply to HQE positions.)

(1) The Defense Agency or DoD Field Activity GC and the employee shall develop the performance plan.

(2) The Defense Agency or DoD Field Activity GC shall manage performance plans and appraisals according to their respective internal procedures, and through the Defense Agency or DoD Field Activity performance review board (PRB).

(3) The Defense Agency or DoD Field Activity GC shall prepare the narrative justifications for pay increases and/or bonuses for non-DISES personnel for the approval of the GC/D/DLSA, according to Agency or Activity internal procedures, through the Defense Agency or DoD Field Activity PRB.

(4) Pay increase and bonus recommendation for DISES personnel shall be processed in accordance with internal DISES procedures.

h. Recommendations for Presidential Rank Awards. (This paragraph does not apply to HQE positions.)

(1) The Defense Agency or DoD Field Activity shall prepare all non-DISES, non-DLSA headquarters, and non-DOHA nominations in coordination with the GC/D/DLSA, using internal procedures. Nominees shall be incorporated into the priority listing of the Defense Agency or DoD Field Activity on whose rolls they are carried. The IDA Rank Awards Committee shall review nominations and make recommendations to the Secretary of Defense.

(2) Rank nominations for DLSA headquarters and DOHA SES members fall under the OSD Rank Awards Committee for review and recommendations to the Secretary of Defense. Nominations shall be prepared in accordance with Reference (w).

(3) Rank nominations for DISES shall be processed in accordance with internal DISES procedures. (See Administrative Instruction 104 (Reference (x)) for additional information.)

i. Recommendations for Sabbaticals or Long-Term Training Opportunities. (This paragraph applies to SES/DISES positions only.)

(1) The Defense Agency or DoD Field Activity servicing personnel office shall prepare the paperwork based on the recommendation of their respective GC and the approval of the GC/D/DLSA.

(2) The IDA ERB shall provide the review function for sabbaticals for all SES positions outside OSD/DLSA headquarters and DOHA. The OSD ERB shall provide the review function for DLSA headquarters and DOHA. The DISES review function shall be provided in accordance with Reference (x).

5. SUBORDINATE COUNSEL POSITIONS AT SL, DISL, AND EQUIVALENT LEVEL.

This section applies to DLSA subordinate counsel (below the GC level) SL, DISL, and equivalent-level positions in the Defense Agencies and DoD Field Activities, and in other organizations outside the Military Departments with DLSA subordinate-level SL, DISL, and equivalent-level positions.

a. Position Establishment, Abolishment, or Change in Duties. The Defense Agencies, DoD Field Activities, and other organizations outside the Military Departments with DLSA subordinate-level SL, DISL, and equivalent-level positions shall follow the procedures in paragraph 3.a. of this enclosure for position establishment, abolishment, or change in duties.

b. Appointments. Paperwork shall be prepared by OGC/DLSA or, at the request of OGC/D/DLSA, by the Defense Agency or DoD Field Activity servicing personnel office. Selections shall be made by the GC/D/DLSA, PDGC/DD/DLSA, or cognizant DGC, DoD, in consultation with the Defense Agency or DoD Field Activity GC.

c. Reassignments, Transfers, and Reinstatements. Paperwork shall be prepared by OGC/DLSA or, at the request of the OGC/D/DLSA, by the Defense Agency or DoD Field Activity servicing personnel office. Decisions are the responsibility of the GC/D/DLSA, PDGC/DD/DLSA, or cognizant DGC, DoD, who shall consult with the Defense Agency or DoD Field Activity GC prior to final action on such decisions.

d. Adverse Actions. Paperwork shall be prepared by OGC/DLSA or, at the request of the OGC/D/DLSA, by the Defense Agency or DoD Field Activity servicing personnel office, and shall be processed according to adverse action procedures for SL or DISL positions, as appropriate. (See paragraph 3.d. of this enclosure.) The Directors of the Defense Agencies and DoD Field Activities may request that their respective DoD Component GCs take or propose, as applicable, adverse actions in appropriate cases. The DA&M must be advised of all proposed adverse actions involving SL personnel. The USD(I) must be advised of all proposed adverse actions involving DISL personnel.

e. RIF, TOF, and AIF. (AIF applies to DISL positions only.) The Defense Agency or DoD Field Activity servicing personnel office shall prepare the paperwork. The Directors of the Defense Agencies and DoD Field Activities may request or propose RIF or TOF, or, if applicable, AIF. Decisions must be approved by the GC/D/DLSA, PDGC/DD/DLSA, or cognizant DGC, DoD.

f. Probationary Period. (This paragraph applies to DISL or first Government appointment SL positions only.) DISL positions are subject to a 1-year probationary period in accordance with Reference (x). The Defense Agency or DoD Field Activity GC shall make decisions regarding successful completion of the probationary period, in consultation with the GC/D/DLSA, PDGC/DD/DLSA, or cognizant DGC, DoD.

g. Performance Elements and Plans, Appraisals and Ratings, and Pay and Bonuses

(a) The Defense Agency or DoD Field Activity GC and the employee shall develop the individual development plan, and the Defense Agency or DoD Field Activity GC shall manage the performance management system.

(b) Except for DISL positions, the Defense Agency or DoD Field Activity GC shall prepare narrative justifications for and recommend pay increases and bonuses, with the approval of the GC/D/DLSA and in accordance with established internal procedures.

(c) Performance plans, appraisals, and ratings and pay increase and bonus recommendations for DISL personnel shall be processed using internal DCIPS procedures.

h. Recommendations for Presidential Rank Awards

(a) The Defense Agency or DoD Field Activity shall prepare all non-DISL, non-DLSA headquarters and non-DOHA nominations in coordination with the GC/D/DLSA, using internal procedures. Nominees shall be incorporated into the priority listing of the Defense Agency or DoD Field Activity on whose rolls they are carried for recommendation to the Secretary of Defense.

(b) Rank nominations for DISL personnel shall be processed under DCIPS procedures.

(c) The GC/D/DLSA shall prepare rank nominations for DLSA headquarters and DOHA SL personnel for recommendation to the Secretary of Defense.

6. POSITIONS AT GS/GG-15 OR EQUIVALENT LEVEL AND BELOW. This section applies to GS/GG-15 or equivalent-level positions and below in the Defense Agencies and DoD Field Activities.

a. Position Establishment, Abolishment, or Change in Duties. The Defense Agencies and DoD Field Activities shall follow internal procedures except that:

(1) No Defense Agency or DoD Field Activity GC, PDGC, or equivalent-level position may be established or abolished by the Defense Agency or DoD Field Activity without the approval of the GC/D/DLSA.

(2) No civilian staff attorney position may be established or abolished without consultation with the Defense Agency or DoD Field Activity GC concerned and approval of the cognizant DGC.

(3) Changes in duties of Defense Agency or DoD Field Activity GCs, PDGCs, and equivalent-level positions are the responsibility of the GC/D/DLSA, who shall act in consultation with the Director of the Defense Agency or DoD Field Activity concerned and, in the case of the

Defense Agency or DoD Field Activity PDGC, in consultation with the Defense Agency or DoD Field Activity GC concerned.

(4) Changes in duties of DLSA civilian staff attorneys are the responsibility of the GC/D/DLSA, who shall act through the supervising DGC, DoD, and the Defense Agency or DoD Field Activity GC and PDGC.

b. Selection and Appointment. The Defense Agencies and DoD Field Activities shall follow their respective Agency or Field Activity internal procedures, except that:

(1) The proposed vacancy announcement, if applicable, and the proposed selection for civilian attorney positions at the GS/GG-14 or equivalent level and above shall be approved by the cognizant DGC as established in the Table in Enclosure 7.

(2) Unless otherwise directed by the cognizant DGC, the proposed selection for civilian staff attorney positions below the GS/GG-14 or equivalent level shall be made or approved by the Defense Agency or DoD Field Activity GC.

c. Reassignments and Transfers. Unless otherwise directed by the cognizant DGC, decisions on reassignments and transfers shall be made by the Defense Agency or DoD Field Activity GC, and shall comply with the requirements in Enclosure 3.

d. Disciplinary and Adverse Actions. For disciplinary or adverse actions not involving allegations of breaches of professional conduct against DLSA civilian attorneys, the Defense Agencies and DoD Field Activities shall comply with internal procedures, except that the proposing and deciding officials shall be in the employee's DLSA supervisory chain. (See Enclosure 6.) The Defense Agencies and DoD Field Activities shall forward allegations of civilian attorney misconduct involving violations of professional responsibility to the DoD OGC/DLSA Professional Conduct Board for investigation and determination in accordance with Enclosure 6.

e. RIF, TOF, or AIF (DCIPS Only) Actions. The Defense Agencies and DoD Field Activities shall comply with their respective internal procedures.

f. Probationary Period. The Defense Agencies and DoD Field Activities shall follow internal procedures, except that:

(1) For the Defense Agency or DoD Field Activity PDGC (or equivalent-level position) and other civilian attorneys, the Defense Agency or DoD Field Activity GC shall certify satisfactory or unsatisfactory completion of the probationary period.

(2) For the Defense Agency or DoD Field Activity GC, the cognizant DGC shall certify satisfactory or unsatisfactory completion of the probationary period. (See Enclosure 6.)

g. Performance Elements and Plans, Appraisals and Ratings, and Pay and Bonuses

(1) The Defense Agency or DoD Field Activity GC and the individual attorney shall develop the performance plan in accordance with internal procedures. The cognizant DGCs shall develop performance plans for Defense Agency or DoD Field Activity GCs, in consultation with the Defense Agency or DoD Field Activity GC and the Director of the Defense Agency or DoD Field Activity.

(2) Performance appraisals shall be processed using Defense Agency or DoD Field Activity internal procedures, through the DLSA chain of supervision, to ensure compliance with the policies and procedures in this Instruction.

(3) Pay and bonus decisions must be approved by the Defense Agency or DoD Field Activity GC. For the Defense Agency or DoD Field Activity GC and PDGC (or equivalent-level position), pay and bonus decisions must be approved by the cognizant DGC.

h. Awards. The Defense Agencies and DoD Field Activities shall comply with internal procedures, except that approval shall be through the DLSA chain of supervision.

i. Long-Term Training and Development. The Defense Agencies and DoD Field Activities shall comply with internal procedures, except that final approval rests with the cognizant DGC.

j. Attorney Details. The Defense Agencies and DoD Field Activities shall process proposed details of covered attorneys to duty outside the Department of Defense in accordance with Reference (k). They shall process details and other assignments of civilian attorneys to duty outside OGC or DLSA in accordance with this Instruction and References (l) and (k).

ENCLOSURE 5

OGC AND DLSA ATTORNEY LICENSING

1. GENERAL. Pursuant to paragraph 3.3. of Reference (b) and in accordance with section 5.1.5. of Reference (c), this enclosure establishes uniform civilian attorney licensing requirements for covered attorneys employed in OGC and DLSA, and clarifies the active status requirement in paragraph 2.b. of Enclosure 3. This enclosure applies to OGC and DLSA civilian attorney positions only.

2. REQUIREMENTS. All covered attorneys in OGC and DLSA must meet the licensing and professional responsibility standards in this section.

a. Licensing Standards

(1) Covered attorneys and candidates for OGC or DLSA civilian attorney positions must have a current license to practice law from at least one State, the District of Columbia, or a U.S. commonwealth or U.S. territory.

(2) Covered attorneys must be able to demonstrate that in at least one State or jurisdiction in which they are licensed they are permitted to engage in the active practice of law, and must maintain active status in one State or jurisdiction during employment in OGC or DLSA.

(a) Active status must permit the full privileges of practicing law in the jurisdiction concerned, except as described in subparagraph 2.a.(2)(c) of this enclosure. It is not sufficient that the attorney be a member in good standing. The attorney must be able to demonstrate that, in an active status, he or she is entitled to represent the Federal Government in the courts of the jurisdiction concerned in the same way an attorney in private practice in that jurisdiction would be authorized to practice law on behalf of private clients.

1. The status “active, but not eligible to practice” or the equivalent does not meet the DoD licensing standard.

2. Being an “associate member in good standing” or a “special member in good standing” does not meet the DoD licensing standard if the status does not confer full eligibility to practice law in the jurisdiction concerned.

(b) Any active status for which the attorney qualifies, including those that permit fee reductions, continuing legal education exemptions, proof of malpractice insurance waivers, or waiver of pro bono requirements for attorneys who practice outside the jurisdiction, will satisfy the DoD licensing standard.

(c) In the event a State does not authorize active status for an attorney who does not maintain a law office or practice in that jurisdiction, the GC, DoD, may waive or modify this requirement.

(3) Questions about whether a covered attorney's licensing status meets the DoD licensing standards should be addressed to the Executive Secretary of the DoD OGC/DLSA Professional Conduct Board, who is also the Director, DoD Standards of Conduct Office, in accordance with the procedures in Enclosure 6.

(4) Proof of active status is necessary for covered attorneys and candidates for these positions to fulfill the requirements of their respective position descriptions. Failure of covered attorneys to provide satisfactory proof of active status may result in adverse personnel action under applicable regulations, up to and including removal from Federal service. A candidate for a position who fails to provide proof of active status will be disqualified from further hiring consideration.

b. Self-Certification

(1) The OGC/DLSA Attorney Manager shall oversee the collection and retention of relevant records for self-certification of the active status requirement.

(2) All covered attorneys must satisfy the active status requirement of being eligible to practice fully in the jurisdiction concerned, as discussed in this enclosure. Covered attorneys shall self-certify that they are in active status with their licensing authority to the OGC/DLSA Attorney Manager annually between June 1 and November 30 based on Social Security number. Covered attorneys with Social Security numbers ending in an odd digit must self-certify in odd-numbered years; covered attorneys with Social Security numbers ending in an even digit must self-certify in even-numbered years. Certification shall include this information for each jurisdiction in which the covered attorney is licensed:

(a) Name of attorney and contact information.

(b) Date of self-certification.

(c) Name of licensing jurisdiction.

(d) License number.

(e) Status of license.

(f) Contact information for licensing authority.

(3) Each covered attorney is personally responsible for complying with this Instruction.

(4) The DoD OGC/DLSA Attorney Manager shall randomly select a number of covered attorneys annually and confirm with their respective licensing authorities the status of their licenses.

ENCLOSURE 6

OGC AND DLSA STANDARDS OF PROFESSIONAL CONDUCT

1. GENERAL. Pursuant to the authority of the GC, DoD, in paragraph 3.3. of Reference (b), and in accordance with paragraph 5.1.5. of Reference (c), this enclosure provides the standards of professional conduct for all covered attorneys. It also establishes a DoD OGC/DLSA Professional Conduct Board responsible for providing guidance for compliance with ethical standards and for hearing allegations of impropriety on the part of OGC and DLSA civilian attorneys.

2. STANDARDS

a. Covered attorneys must adhere to the highest standards of professional conduct, to include compliance with the rules of professional conduct of the licensing authority of the jurisdiction(s) in which they are members of the bar and with such supplemental requirements as may be established by the GC, DoD.

b. Covered attorneys shall report to the GC, DoD, through their respective supervisory chains, the existence of any disciplinary investigation or action in which they are the subject, by any jurisdiction, within 7 business days of being informed that the investigation or action has been initiated. They must also report the outcome and other significant developments in such disciplinary investigations or actions within 7 business days of being informed of such outcomes or developments.

c. Similarly, a candidate for a covered attorney position has an affirmative obligation to notify the hiring authority, prior to any hiring decision, of any pending or completed disciplinary investigation or action against him or her in any jurisdiction in which he or she is or was licensed to practice. For DLSA organizations, the DLSA GC concerned shall be responsible for ensuring that all candidates for covered positions are informed of their obligation to disclose any pending or completed disciplinary investigation or action prior to accepting an offer to fill a covered attorney position. For OGC and DLSA positions in DLSA headquarters or DoHA, the OGC/DLSA Attorney Manager shall be responsible for ensuring that all candidates for covered positions are informed of their obligation to disclose any pending or completed disciplinary investigation or action prior to accepting an offer to fill a covered attorney position.

3. DoD OGC/DLSA PROFESSIONAL CONDUCT BOARD

a. Board Membership. The DoD OGC/DLSA Professional Conduct Board shall consist of three permanent members and two permanent alternate members.

(1) The permanent members shall be the PDGC, DoD, who shall serve as Chair of the Board; the DGC (Personnel and Health Policy) (DGC(P&HP)), DoD; and the GC of a Defense Agency or DoD Field Activity as designated by the GC, DoD.

(2) The permanent alternate members shall be the DGC (Acquisition and Logistics) (DGC(A&L)) and the GC of a Defense Agency or DoD Field Activity designated by the GC, DoD, who has not been designated as the permanent member.

(3) If the Board is considering an allegation of impropriety involving a civilian attorney under the supervision of the DGC(P&HP), the DGC(A&L) shall serve in his or her place. If the Board is considering an allegation of impropriety involving an attorney under the supervision of the GC of the Defense Agency or DoD Field Activity who is serving as the permanent member, the GC of the Defense Agency or DoD Field Activity who is serving as the permanent alternate member shall serve in his or her place.

(4) The Director, DoD Standards of Conduct Office, shall serve as the Executive Secretary of the DoD OGC/DLSA Professional Conduct Board.

b. Duties of the Board. The Board shall:

(1) Establish guidance, consistent with this Instruction, for the professional conduct of civilian attorneys in OGC and DLSA.

(2) Establish procedures to hear allegations of professional impropriety and misconduct by civilian attorneys in OGC and DLSA.

(3) At the direction of the GC, DoD, hear allegations of professional impropriety and misconduct against other civilian attorneys in the Department of Defense who are not covered by this enclosure.

c. Procedures for the Board

(1) Allegations of professional impropriety or misconduct arising out of the activities of any OGC or DLSA civilian attorney shall be submitted in writing to the Chair of the Professional Conduct Board, OGC, 1600 Defense Pentagon, Washington D.C. 20301-1600, and shall state on the envelope: "Allegation of Professional Impropriety." Such allegations against an attorney assigned to OGC or DLSA who is on active military duty shall be referred to the attorney's Military Department Judge Advocate General.

(2) The Chair shall direct any necessary inquiry, using members of the Board, the Executive Secretary, or other DoD resources, as appropriate, and shall determine whether to close the matter or refer it to the Board for its consideration.

(3) In the event the Board considers a matter, it shall provide its findings and recommendations to the GC, DoD, for consideration and appropriate action, if any, in accordance with this Instruction.

d. Requests for Guidance

(1) An OGC or DLSA civilian attorney may request informal guidance regarding the standards of professional conduct orally or in writing from the Board. He or she may also, in writing, request an advisory opinion regarding the standards of professional conduct applicable to him or her in his or her official capacity.

(2) The Board may provide a written opinion or may refer the civilian attorney to the professional responsibility office of the bar(s) in which he or she is licensed.

(3) Requests to the Board shall be:

(a) In the hypothetical and shall provide all of the relevant facts, including the bar(s) of which the attorney is an active member and the rule(s) of professional responsibility in question.

(b) Addressed to the Executive Secretary of the DoD OGC/DLSA Professional Conduct Board, OGC, Department of Defense, 1600 Defense Pentagon, Washington, D.C. 20301-1600, and shall state on the envelope: "Request for Advisory Opinion."

ENCLOSURE 7DELEGATIONS OF AUTHORITY TO THE DGCs, DoD1. DGCs, DoD

a. The DGCs, DoD, are delegated the authority to serve as the immediate supervisors of the DLSA GCs and office directors shown in the Table, with full authority pursuant to References (b), (k), (l), and this Instruction.

Table. DGC, DoD, Delegated Supervisory Authority

SUPERVISORY DGC, DoD, AND OFFICE SYMBOL	SUPERVISED GC OR DIRECTOR
DGC(Acquisition and Logistics) DGC(A&L)	GC, Defense Logistics Agency GC, Defense Information Systems Agency GC, Defense Threat Reduction Agency GC, Defense Advanced Research Projects Agency GC, Missile Defense Agency GC, Defense Contract Management Agency GC, Defense Acquisition University GC, Business Transformation Agency GC, Joint Improvised Explosive Device Defeat Organization
DGC(Fiscal) DGC(F)	GC, Defense Contract Audit Agency GC, Defense Finance and Accounting Service
DGC(Intelligence) DGC(I)	GC, National Security Agency GC, Defense Intelligence Agency GC, National Geospatial-Intelligence Agency GC, National Reconnaissance Office GC, Defense Security Service
DGC(International Affairs) DGC(IA)	GC, Defense Security Cooperation Agency GC, Defense Prisoner of War/Missing Persons Office GC, Defense Technology Security Administration
DGC(Legal Counsel) DGC(LC)	GC, Defense Media Activity Chief Prosecutor for Military Commissions Director, Defense Office of Hearings and Appeals Director, Office of Litigation Counsel Director, Office of Legislative Counsel
DGC(Personnel and Health Policy) DGC(P&HP)	GC, Washington Headquarters Services and Pentagon Force Protection Agency GC, TRICARE Management Activity GC, Uniformed Services University of the Health Sciences GC, Department of Defense Education Activity GC, Defense Commissary Agency GC, Defense Human Resources Activity, and GC, National Security Personnel System Transition Office GC, National Defense University GC, White House Military Office Chief Defense Counsel for Military Commissions Director, Standards of Conduct Office Director, Computer Support Office

b. The DGC, DoD, supervisory authority includes, but is not limited to, the authority to:

(1) Take or approve, as appropriate, personnel actions for non-SES, non-DISES, non-SL, non-DISL, and equivalent-level positions, including recruitment and appointment to fill vacant positions in DLSA organizations.

(2) Approve transfers, long-term training, and awards of DLSA personnel.

(3) Take or approve, as appropriate, disciplinary and adverse actions.

(4) Take or approve, as appropriate, short-term details (under 30 calendar days), reassignments, and promotions of DLSA personnel.

(5) Evaluate the performance of the DLSA GCs and their staffs.

(6) Issue such additional instructions and directions as they deem necessary to execute their responsibilities under this Instruction.

2. DGC(P&HP), DoD. The DGC(P&HP), DoD, is delegated authority to act as the qualifying authority for personnel actions (not including actions involving SES, DISES, SL, DISL, and equivalent-level positions) involving DoD civilian attorneys assigned to the Combatant Commands who are not employed by a Military Department.

3. DLSA POSITIONS AT SES, DISES, SL, DISL, AND EQUIVALENT LEVEL. The GC/D/DLSA retains authority to:

a. Take or approve actions involving SES, DISES, SL, DISL, and equivalent-level positions in DLSA, with appropriate recommendations from the cognizant DGC, DoD; the PDGC, DoD; and the Director and GC of the Defense Agency or DoD Field Activity GC concerned (as provided for in Enclosures 3 and 4).

b. Approve details and other assignments to duty outside of the Department of Defense of 30 calendar days or more, in accordance with References (k) and (l).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AIF	adjustment-in-force
DA&M	Director of Administration and Management
DCIPS	Defense Civilian Intelligence Personnel System
D/DLSA	Director, Defense Legal Services Agency
DD/DLSA	Deputy Director, Defense Legal Services Agency
DGC, DoD	Deputy General Counsel of the Department of Defense
DGC(A&L)	Deputy General Counsel (Acquisition and Logistics)
DGC(P&HP)	Deputy General Counsel (Personnel and Health Policy)
DISES	Defense Intelligence Senior Executive Service
DISL	Defense Intelligence Senior Level
DLSA	Defense Legal Services Agency
DoDD	DoD Directive
DoDI	DoD Instruction
DOHA	Defense Office of Hearings and Appeals
ERB	Executive Resources Board
GC	General Counsel
GC, DoD	General Counsel of the Department of Defense
GC/D/DLSA	General Counsel of the Department of Defense/Director, Defense Legal Services Agency
GG	General Grade
GS	General Schedule
HQE	highly qualified expert
IDA ERB	Inter-Defense Agency Executive Resources Board
J.D.	Juris Doctor
LL.B.	Bachelor of Laws
LL.M.	Master of Laws
NSPS	National Security Personnel System
OGC	Office of the General Counsel of the Department of Defense
OGC/DLSA	Office of the General Counsel of the Department of Defense/Defense Legal Services Agency
PDGC	Principal Deputy General Counsel

PRB	performance review board
RIF	reduction-in-force
SES	Senior Executive Service
SF	Standard Form
SL	Senior Level
TOF	transfer of function
USD(I)	Under Secretary of Defense for Intelligence
YA	NSPS Standard Career Group Professional and Administrative Occupations
YC	NSPS Standard Career Group-Related Supervisory Positions

PART II. DEFINITIONS

These terms and their definitions are for the purpose of this Instruction:

active practice of law. The practice of law by an attorney who is an active member in good standing of a State Bar; i.e., who is eligible for the immediate practice of law before the highest court of a state, the District of Columbia, or a territory or possession of the United States in which he or she is licensed. This does not include inactive membership even if the membership is deemed “in good standing.” An individual who is a member of more than one State Bar need only be active in one State Bar provided he or she is in good standing with that State Bar.

active, but not eligible to practice. The situation where an attorney may be considered to be an active member in good standing of a State Bar, EXCEPT that the attorney is ineligible for the immediate practice of law before the highest court of a State, the District of Columbia, or territory or possession of the United States in which he or she is licensed. An individual who is a member of more than one State Bar need only be active in one State Bar provided he or she is in good standing with that State Bar.

associate (or special) member in good standing. The situation where an attorney may be afforded a special membership status by a State Bar, which considers the individual to be in good standing of that State Bar. Such a status will not meet the DoD licensing standard if the status does not confer full eligibility to immediately practice law before the highest court of that state. An individual who is a member of more than one State Bar need only be active in one State Bar provided he or she is in good standing with that State Bar.

attorney manager. The senior attorney on the OGC or DLSA staff who is designated to administer the civilian attorney certification process. This attorney is the equivalent of the managing partner of a civilian law firm.

cognizant DGCs. The DGCs, DoD, listed in Enclosure 7 when referred to in the context of the organizations over which they exercise delegated supervisory authority.

covered attorneys. All civilian attorneys employed by DoD OGC or by DLSA in civilian attorney (or equivalent) positions. Does not include judge advocates and civilian attorneys employed by a Military Department, the Combatant Commands, the Office of the Chairman of the Joint Chiefs of Staff, or the Joint Staff.

DLSA GCs. The chief legal officers, whether civilian or military, of the DLSA organizations.

DLSA organizations. Those organizations listed in paragraph 3.1. of Reference (c).

DLSA positions. All civilian attorney positions funded, supervised, managed and controlled by the D/DLSA. Does not include SL, DISL, SES, DISES, and HQE positions.

DoD civilian attorney positions. All civilian attorney positions in the Department of Defense, including without limitation those in OGC and DLSA and those in the Military Departments.

DoD civilian attorneys. All civilian attorneys in the Department of Defense, including without limitation those in OGC and DLSA and those in the Military Departments.

senior attorney. An attorney assigned to perform legal duties in any DoD Component who has a military rank greater than O-6 or a civilian position classified above the GS-15 or equivalent level.