



Department of Defense **DIRECTIVE**

NUMBER 5145.01

December 2, 2013

Incorporating Change 2, Effective January 30, 2015

DA&M-DCMO

SUBJECT: General Counsel of the Department of Defense (GC DoD)

References: See Enclosure

1. **PURPOSE.** This directive:

a. Reissues DoD Directive (DoDD) 5145.01 (Reference (a)) to update the responsibilities and functions, relationships, and authorities of the GC DoD, pursuant to the authority vested in the Secretary of Defense by sections 113 and 140 of Title 10, United States Code (U.S.C.) (Reference (b)).

b. Incorporates and cancels Deputy Secretary of Defense Memorandum (Reference(c)).

2. **APPLICABILITY.** This directive applies to the OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD (referred to collectively in this directive as the “DoD Components”).

3. **RESPONSIBILITIES AND FUNCTIONS.** The GC DoD is the chief legal officer of the DoD and:

a. Advises the Secretary of Defense and Deputy Secretary of Defense regarding all legal matters and services performed within or involving the DoD.

b. Provides legal advice to OSD organizations and, as appropriate, other DoD Components.

c. Oversees, as appropriate, legal services performed within the DoD, including establishing professional responsibility standards and determining, or referring to the cognizant authority, DoD attorneys’ adherence to these standards, except within the Office of the General Counsel to the Inspector General of the Department of Defense, pursuant to section 8(h) of the Appendix to

Title 5, U.S.C., also known as “The Inspector General Act of 1978, as amended” (Reference (~~ed~~)).

d. Coordinates with DoD Components on appeals from denials of requests under section 552 of Reference (~~ed~~), also known as “The Freedom of Information Act, as amended” as appropriate, in accordance with DoDD 5400.07 (Reference (~~de~~)).

e. Establishes policy for and oversees the Standards of Conduct Program within the DoD, in accordance with DoDD 5500.07 (Reference (~~ef~~)), to include providing guidance on, and coordination of, significant legal ethics issues and, as necessary, conducting program reviews of ethics programs within the DoD to ensure consistency.

f. Serves as the Designated Agency Ethics Official (DAEO) for OSD and all DoD organizations that are not defined as separate agencies in part 3601 of Title 5, Code of Federal Regulations (Reference (~~fg~~)), in accordance with DoD 5500.07-R (Reference (~~gh~~)), and designates an alternate DAEO and Deputy DAEOs, as appropriate.

g. Advises on the conflict of interest statutes, federal standards of conduct and financial disclosure reporting obligations of OSD and other DoD Component personnel, as appropriate.

h. Provides legal advice on legislative proposals; coordinates on Congressional requests for views on legislation; provides legislative drafting services; and coordinates, drafts, and approves all Departmental and interagency actions concerning Executive orders (E.Os.) and Presidential Proclamations.

i. Provides for the coordination of significant legal issues before the Department of Justice, including litigation involving the DoD and other matters in which the DoD has an interest.

j. Establishes DoD policy on general legal issues, determines the DoD position on specific legal problems, and resolves disagreements within the DoD on such matters.

k. Performs functions relating to the DoD security program, including oversight of DoD personnel security programs, in accordance with DoD Instruction (DoDI) 5145.03 and DoDD 5205.07 (References (~~hi~~) and (~~ij~~)), as the Secretary of Defense or Deputy Secretary of Defense may assign.

l. As lead counsel for the DoD in all international negotiations conducted by the DoD Components:

(1) Coordinates on all proposed international agreements prior to:

- (a) Their submission to prospective parties.
- (b) The initiation of negotiations.
- (c) Conclusion of proposed international agreements.

(2) Oversees legal reviews performed by the DoD Components with respect to the negotiation and conclusion of international agreements, in accordance with DoDD 5530.3 (Reference (~~jk~~)).

m. Maintains the central repository for all international agreements coordinated, negotiated, or concluded by DoD personnel.

n. Provides guidance on, and coordination of, significant legal issues in:

(1) International law, including those presented by military operations requiring the approval of the Secretary of Defense.

(2) The DoD Law of War Program, in accordance with DoDD 2311.01E (Reference (~~kl~~)).

(3) The review of the legality of weapons, in accordance with DoDD 5000.01 (Reference (~~lm~~)), including:

(a) Non-lethal weapons, in accordance with DoDD 3000.03E (Reference (~~mn~~)).

(b) Autonomy in weapon systems, in accordance with DoDD 3000.09 (Reference (~~no~~)).

(c) The review of the legality of cyber capabilities, in accordance with Reference (~~nl~~).

(4) DoD activities in the United States, including those presented by military operations in support of other federal departments and agencies.

o. Analyzes the legal impact on the DoD of mergers and acquisitions involving major defense suppliers and:

(1) Coordinates contacts between DoD personnel and the government agency responsible for the antitrust aspects of such mergers and acquisitions, in accordance with DoDD 5000.62 (Reference (~~op~~)).

(2) Reviews other agreements between competitors or potential competitors involving major defense suppliers that may have an adverse impact on competition.

(3) Coordinates contacts between DoD personnel and the government agency responsible for the antitrust aspects related to arrangements and agreements between competitors or potential competitors, in accordance with Reference (~~op~~).

p. Determines whether legislation proposed by the DoD or any DoD Component has federalism implications or imposes unfunded mandates.

q. Advises the Secretary of Defense and, as appropriate, other senior government officials on all military justice matters requiring the attention of the Secretary of Defense. Oversees the annual review of the Manual for Courts-Martial, United States (Reference (~~p~~q)) by the Joint Service Committee on Military Justice, in accordance with DoDD 5500.17 (Reference (~~e~~r)).

r. Provides overall legal guidance on matters concerning the Office of Special Counsel, in accordance with DoDD 5500.19 (Reference (~~f~~s)).

s. Provides overall legal guidance on DoD implementing policies related to partisan political activities of DoD personnel, pursuant to the Memorandum of President of the United States (Reference (~~s~~t)).

t. Coordinates on execute orders, deployment orders, and other authorizations for the deployment or employment of resources or capabilities requiring the approval of the Secretary of Defense.

u. Serves, in accordance with DoDI 5105.04 (Reference (~~t~~u)), as the DoD sponsor for advisory committees as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the Director of Administration and Management.

v. Designs and manages Office of the GC DoD policies and programs to improve performance standards, economy, and efficiency, and ensures that all Offices of General Counsel in the Defense Agencies and DoD Field Activities attend to the requirements of their organizational clients, both internal and external to the DoD.

w. Establishes policy and prescribes procedures for the release of official information in litigation and for the presentation of witness testimony by DoD personnel during litigation, pursuant to United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951) (Reference (~~u~~v)).

x. Accepts service of process for the DoD and the Secretary of Defense and establishes procedures for handling service of process throughout the DoD.

y. Performs such other duties as the Secretary of Defense or Deputy Secretary of Defense may prescribe.

4. RELATIONSHIPS

a. In performing assigned responsibilities and functions, the GC DoD:

(1) Reports directly to the Secretary of Defense.

(2) Serves as the Director, Defense Legal Services Agency (DLSA), in accordance with DoDD 5145.04 (Reference (~~v~~w)).

(3) Exercises authority, direction, and control over:

(a) The DLSA.

(b) Such subordinate officials and organizations as may be assigned.

(4) Serves as the representative of the Secretary of Defense to the Department of Justice on all appropriate matters.

(5) Coordinates actions and exchanges information with other OSD officials, the DoD Component heads, and officials of federal agencies having collateral or related responsibilities and functions.

(6) Uses existing systems, facilities, and services of the DoD or other federal agencies, when possible, to avoid duplication and to achieve maximum efficiency and economy.

b. The other OSD Principal Staff Assistants (PSAs) and the DoD Component heads will coordinate with the GC DoD on matters under their purview related to the authorities, responsibilities, and functions assigned in this directive.

5. AUTHORITIES. Pursuant to the authority vested in the Secretary of Defense, subject to his or her authority, direction, and control, and in accordance with DoD policies and issuances, the GC DoD is hereby delegated authority to exercise, within assigned responsibilities and functional areas, all authority of the Secretary of Defense derived from statute, E.O., or interagency agreement, except where specifically limited by statute or E.O. to the Secretary of Defense, and is hereby delegated authority to:

a. Establish, in DoDIs and directive-type memorandums (DTMs), DoD policy within the authorities and responsibilities assigned herein, including authority to identify collateral responsibilities of other OSD PSAs and the DoD Component heads in accordance with DoDI 5025.01 (Reference (~~w~~x)). This authority will not be redelegated. Such issuances will be fully coordinated. Further, in areas of assigned responsibilities and functions, the GC DoD has authority to approve and sign other DoDIs, DoD manuals, and DTMs, in accordance with Reference (~~w~~x), that implement policy approved by the Secretary of Defense or Deputy Secretary of Defense. Assignment of responsibilities in DoD issuances to the Military Departments must be to the Secretaries of those Departments. Assignment of responsibilities in DoD issuances to the Combatant Commanders must be coordinated with the CJCS.

b. Obtain reports and information, in accordance with DoDI 8910.01 (Reference (x)y)), as necessary, to carry out assigned responsibilities and functions.

c. Communicate directly with the DoD Component heads, as necessary, to carry out assigned responsibilities and functions, including the transmission of requests for advice and assistance. Communications to the Military Departments must be transmitted through the Secretaries of the Military Departments, or as otherwise provided in law or directed by the

Secretary of Defense in other DoD issuances. Communications to the Combatant Commanders must be in accordance with paragraph 4b(3)(c) above the signature line of DoDD 5100.01 (Reference (~~yz~~)).

d. Communicate with other government officials, members of the public, and representatives of foreign governments, as appropriate, to carry out assigned responsibilities and functions. Communications with representatives of the Legislative Branch must be conducted through the Office of the Assistant Secretary of Defense for Legislative Affairs, except for communications with the Defense Appropriations Committees, which must be coordinated through the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense.

e. Grant or deny applications for waiver of indebtedness arising from the erroneous payment of pay (including salary) and allowances (including travel and transportation allowances), pursuant to section 2774(a)(1) of Reference (b), section 5584(a)(1) of Reference (c), and section 716(a)(1) of Title 32, U.S.C. (Reference (~~z~~aa)).

f. Issue advance decisions, pursuant to section 3529 of Title 31, U.S.C. (Reference (~~aa~~ab)).

g. Exercise the authority of the Secretary of Defense to adjudicate, settle, assign duties for handling, or otherwise resolve claims, or other matters incident to such claims, against or involving the United States or the DoD arising under:

(1) Sections 1089(f), 2575, 2771, 4712, and 9712 of Reference (b).

(2) Chapter 163 of Reference (b).

(3) Section 420 of Title 24, U.S.C. (Reference (~~a~~bac)).

(4) Sections 1346(b), 2671-2680 of Title 28, U.S.C. (Reference (~~a~~ead)).

(5) Sections 3701, 3702, 3711, and 3721 of Reference (~~aa~~ab).

(6) Sections 714 and 715 of Reference (~~z~~aa).

(7) Sections 2651-2653 of Title 42, U.S.C. (Reference (~~a~~d~~a~~e)).

(8) North Atlantic Treaty Organization Status of Forces Agreement (SOFA) (4 United States Treaty 1972, Treaties and Other International Acts Series 2846) (Reference (~~a~~ea~~f~~)) and similar SOFAs.

h. Serve as the DoD Dispute Resolution Specialist, pursuant to section 571 of Reference (c) note and Public Law (PL) 101-552 (Reference (~~a~~f~~a~~g)), as amended.

i. Oversee and manage the DoD alternative dispute resolution program, pursuant to PL 104-320 (Reference (~~a~~g~~a~~h)), as amended.

j. Exclude any DoD employee or group of DoD employees in OSD from any or all of the reporting requirements of the confidential financial disclosure reporting system, pursuant to section 2634.905 of Reference (~~fg~~).

k. Provide advance decisions, pursuant to section 484 of Title 37, U.S.C. (Reference (~~ahai~~)), that the Secretary of Defense is authorized to make.

l. Exercise authorities of the Secretary of Defense under applicable law with respect to the establishment of qualifications for DoD civilian attorneys.

m. Establish DoD policy and assign responsibilities regarding the use of copyrighted sound and video recordings within the DoD.

n. Exercise authorities of the Secretary of Defense and assign responsibilities under sections 181, 182, and 184 of Title 35, U.S.C. (Reference (~~aiaj~~)) concerning certain inventions and patents.

o. Exercise authorities and responsibilities vested in the Secretary of Defense under section 330 of PL 102-484 (Reference (~~ajak~~)), as amended, ~~relating to indemnification of transferees of closing defense property~~. These authorities and responsibilities may be redelegated in writing to a level not below that of Deputy GC DoD, *except the authority to acknowledge receipt of a claim, which may be delegated to any attorney in the Office of the GC DoD*.

p. Administer oaths of office to personnel within the DoD, including, without limitation, the authority to administer oaths, pursuant to section 2903 of Reference (~~ed~~). This authority may be redelegated only:

(1) On a case-by-case basis.

(2) With Secretary of Defense or Deputy Secretary of Defense approval.

q. In response to a litigation request or demand, and after any required coordination with the Department of Justice, determine whether the DoD may release official information and whether DoD personnel may be interviewed, contacted, or used as fact or expert witnesses concerning official information.

r. Accept service of process for the DoD and the Secretary of Defense.

s. The GC DoD may redelegate these authorities, as appropriate and in writing, except as otherwise specifically indicated or as otherwise provided by law or regulation.

6. RELEASABILITY. *Unlimited.Cleared for public release*. This directive 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 directive

~~—a. *Is* effective December 5, 2013.~~

~~—b. Must be reissued, cancelled, or certified current within 5 years of its publication to be considered current, in accordance with Reference (wx).~~

~~—c. Will expire effective December 5, 2023 and be removed from the DoD Issuances Website if it has not been reissued or cancelled, in accordance with Reference (wz).~~



Ashton B. Carter
Deputy Secretary of Defense

Enclosure
References
Glossary

ENCLOSURE

REFERENCES

- (a) DoD Directive 5145.01, "General Counsel of the Department of Defense," May 2, 2001, as amended (hereby cancelled)
- (b) Title 10, United States Code
- (c) *Deputy Secretary of Defense Memorandum, "Delegations of Authorities and Responsibilities Under Section 330 of the National Defense Authorization Act for Fiscal Year 1993, as Amended," October 13, 2004, hereby cancelled*
- (~~ed~~) Title 5, United States Code
- (~~de~~) DoD Directive 5400.07, "DoD Freedom of Information Act (FOIA) Program," January 2, 2008, as amended
- (~~ef~~) DoD Directive 5500.07, "Standards of Conduct," November 29, 2007
- (~~fg~~) Title 5, Code of Federal Regulations
- (~~gh~~) DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 30, 1993, as amended
- (~~hi~~) DoD Instruction 5145.03, "Oversight of the DoD Personnel Security Programs," January 10, 2013
- (~~ij~~) DoD Directive 5205.07, "Special Access Program (SAP) Policy," July 1, 2010
- (~~jk~~) DoD Directive 5530.3, "International Agreements," June 11, 1987, as amended
- (~~kl~~) DoD Directive 2311.01E, "DoD Law of War Program," May 9, 2006, as amended
- (~~lm~~) DoD Directive 5000.01, "The Defense Acquisition System," May 12, 2003
- (~~mn~~) DoD Directive 3000.03E, "DoD Executive Agent for Non-Lethal Weapons (NLW), and NLW Policy," April 25, 2013
- (~~no~~) DoD Directive 3000.09, "Autonomy in Weapon Systems," November 21, 2012
- (~~op~~) DoD Directive 5000.62, "Impact of Mergers or Acquisitions of Major DoD Suppliers on DoD Programs," October 21, 1996
- (~~pq~~) Manual for Courts-Martial, United States
- (~~qr~~) DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 3, 2003
- (~~rs~~) DoD Directive 5500.19, "Cooperation with the United States Office of Special Counsel (OSC)," May 24, 2004
- (~~st~~) Memorandum of President of the United States, "Delegation of Authority," 59 Federal Register 54515, October 27, 1994 (5 U.S.C. 7321 note)
- (~~tu~~) DoD Instruction 5105.04, "Department of Defense Federal Advisory Committee Management Program," August 6, 2007
- (~~uv~~) Volume 340 of the United States Reports (1951), United States ex rel. Touhy v. Ragen
- (~~vw~~) DoD Directive 5145.04, "Defense Legal Services Agency (DLSA)," April 16, 2012
- (~~wx~~) DoD Instruction 5025.01, "DoD ~~Directives-Issuances~~ Program," ~~September 26, 2012~~*June 6, 2014*, as amended
- (~~xy~~) DoD Instruction 8910.01, "Information Collection and Reporting," ~~March 6, 2007~~*May 19, 2014, as amended*
- (~~yz~~) DoD Directive 5100.01, "Functions of the Department of Defense and Its Major Components," December 21, 2010

- ~~(z~~*aa*) Title 32, United States Code
- ~~(aa~~*ab*) Title 31, United States Code
- ~~(ab~~*ac*) Section 420 of Title 24, United States Code
- ~~(ae~~*ad*) Title 28, United States Code
- ~~(ae~~*ae*) Title 42, United States Code
- ~~(ae~~*af*) North Atlantic Treaty Organization Status of Forces Agreement (4 United States Treaty 1972, Treaties and Other International Acts Series 2846)
- ~~(af~~*ag*) Public Law 101-552, "Administrative Dispute Resolution Act," November 15, 1990, as amended
- ~~(ag~~*ah*) Public Law 104-320, "Administrative Dispute Resolution Act of 1996," October 19, 1996, as amended
- ~~(ah~~*ai*) Section 484 of Title 37, United States Code
- ~~(ai~~*aj*) Title 35, United States Code
- ~~(aj~~*ak*) Public Law 102-484, "National Defense Authorization Act for Fiscal Year 1993," October 23, 1992, as amended

GLOSSARY

ABBREVIATIONS AND ACRONYMS

CJCS	Chairman of the Joint Chiefs of Staff
DAEO	Designated Agency Ethics Official
DLSA	Defense Legal Services Agency
DoDD	DoD Directive
DoDI	DoD Instruction
DTM	directive-type memorandum
E.O.	Executive order
GC DoD	General Counsel of the Department of Defense
PL	Public Law
PSA	Principal Staff Assistant
SOFA	status of forces agreement
U.S.C.	United States Code