

LEGADMINMAN

CHAPTER 9

COORDINATION OF CIVIL LITIGATION

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CHAPTER 9

COORDINATION OF CIVIL LITIGATION

9000. SCOPE

1. Purpose. This chapter provides step-by-step procedures for the reporting, notification, and monitoring of Federal civil litigation involving the United States as a party, and for complying with litigation requests or subpoenas for DON information, documents, or witnesses in Federal or State civil litigation where the United States is not a party.

2. Marine Corps or United States a Party. When the Marine Corps or the United States is a party, CMC is the decision-making authority for the Marine Corps. The Staff Judge Advocate to the Commandant (CMC (JA)) or Counsel for the Commandant (CMC (CL)), as appropriate, will coordinate the Marine Corps position with the Office of the Judge Advocate General of the Navy (OJAG), General Litigation Division.

3. Applicability. This chapter applies whenever a civil action seeking injunctive relief is brought against a Marine Corps command or against an individual Marine for actions taken in his/her official capacity, or whenever a subpoena or request for DON information, documents or witnesses is received.

4. Nonapplicability. This chapter does not apply to requests or subpoenas from Federal agencies, nor from State agencies, except in the case where a State has brought suit against the United States.

5. References. Additional guidance is contained in JAGMAN, chapters V and VI, and SECNAVINST 5820.8A.

9001. INJUNCTIVE RELIEF REQUESTED

1. Procedures. If delivery, service, or attempted service of a summons and complaint seeking injunctive relief (habeas corpus, temporary restraining order, or preliminary injunction) is made on a Marine Corps command or on any DON member or civilian employee arising from official duties, the Marine Corps command in receipt of service of process should immediately notify the command staff judge advocate (SJA).

2. Litigation Action Attorney. The command SJA will immediately appoint a litigation action attorney. The litigation action attorney will be the focal point for any questions or actions regarding the litigation and will comply with the following procedures:

a. Immediately contact the OJAG, General Litigation Division, DSN 221-9870 [(703) 325-9870], and then CMC (JAR) DSN 224-2510 [(703) 614-2510];

b. Forward a copy of the complaint, summons, and all pleadings to the OJAG, General Litigation Division and CMC (JAR) via express mail or facsimile machine. (OJAG General Litigation FAX - DSN 221-6615, (703) 325-6615; CMC (JAR) FAX - DSN 224-5078, (703) 614-5078.)

c. Submit recurring FAX, telephone or message reports (daily if necessary) of significant developments in the case to the OJAG, General Litigation Division, and CMC (JAR);

d. Keep the local Marine Corps command informed of the status of the case.

9002. SUBPOENAS FOR DOCUMENTS AND WITNESSES

1. Procedure

a. DON Documents or Witnesses. If a Marine Corps command is served with a subpoena seeking DON documents or witnesses, the command should refer the matter to the command SJA. The SJA, in most cases, should return the papers to the civilian counsel; refer them to 32 CFR 725 (1996) (which publishes SECNAVINST 5820.8A); and advise the attorney that the General Counsel of the Navy (OGC) is the sole DON agent for service of process at the following address: Department of the Navy, Office of General Counsel, The Pentagon, Room 4E724, Washington, DC 20350-1000.

b. Department of Defense Pay Records

(1) Active Duty and Reserves. To obtain pay records of Marines, active duty or Reserves, a separate subpoena must be served on the Defense Finance and Accounting Service - Kansas City Center. The address for service by mail is: Defense Finance and Accounting Service - Kansas City Center, Office of General Counsel, Kansas City, MO 64197-0001. The telephone number is (816) 926-7103.

(2) Retired or FMCR Marines. To obtain pay records of retired or FMCR Marines, a separate subpoena must be served on the Defense Finance and Accounting Service - Cleveland Center. The address for service by mail is: Defense Finance and Accounting Service - Cleveland Center (MUI), 1240 East 9th Street, Cleveland, OH 44199-2055. The telephone number is (216) 522-5620.

2. Privacy Act Compliance. Subpoenas for service record books, medical records, pay records, and other records maintained in a system of records subject to the Privacy Act must be signed by the judge of a

court of competent jurisdiction (see MCO P5211.2B, and 5 U.S.C. § 552a(b)(11)).

9003. REQUESTS FOR DOCUMENTS, DEPOSITIONS, WITNESSES OR SITE INSPECTIONS

1. United States a Party. In cases where the United States is, or may reasonably become, a party to the lawsuit, the following procedures apply to requests for documents, depositions, witnesses or site inspections:

a. OGC Matters. If subject matter involved is a matter assigned to OGC (see SECNAVINST 5430.25D) such as business and commercial law, patent law, civilian personnel law, or contract claims and litigation:

(1) Forward the request to OGC;

(2) Send a copy of the request to CMC (CL); and

(3) Send a letter to the requesting counsel advising of the referral.

b. OJAG Matters. For all other matters (pursuant to SECNAVINST 5430.27A):

(1) Forward the request to the OJAG, Claims and Tort Litigation Division, or OJAG, General Litigation Division, as appropriate;

(2) Send a copy to CMC (JAR);

(3) Send a letter to the requesting counsel advising of the referral.

2. United States Not a Party. In cases where the United States is not a party, and may not reasonably become a party to the lawsuit, the following procedures apply to requests for documents, depositions, witnesses or site inspections:

a. OGC Matters. If the subject matter is an OGC matter (pursuant to SECNAVINST 5430.25D):

(1) Forward the request to CMC (CL). CL will staff the request to the appropriate Area Counsel's office; and

(2) Send a letter to the requesting counsel advising of the referral.

b. OJAG Matters. If the subject matter is a request for DON personnel to testify as expert witnesses:

(1) Forward the request to the OJAG, General Litigation Division; and

(2) Send a letter to the requesting counsel advising of the referral.

c. Other Matters. For any other matters, the Marine Corps "determining authorities" (i.e., general courts-martial convening authorities listed in SECNAVINST 5820.8A) will respond as follows:

(1) Improper Requests. If the determining authority finds the request does not meet the requirements of SECNAVINST 5820.8A, then it is an improper request. The determining authorities will return improper requests to the requesting counsels and refer them to 32 CFR 725 (1996).

(2) Proper Requests. For proper requests, the determining authority will take the following actions:

(a) Respond directly to the requester (copy to CMC (JAR));

(b) Refer the request to another determining authority where the requested witness or document is located and send a letter to the requesting attorney advising of the referral; or

(c) Refer the request to CMC (JAR) for coordination. This is appropriate in cases where a response from several different commands/determining authorities is necessary (for example, a request to depose a number of Marines, now located at several different commands or geographic areas) or where a requested witness is no longer a member of the Marine Corps.