

USACE Supplement 1 to AR 690-200,  
Chapter 213, Subchapter 4

DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
Washington, DC 20314

CECC-ZA

USACE Supplement 1 to AR 690-200  
Chapter 213, Subchapter 4

8 March 2004

Civilian Personnel  
Civilian Attorneys Under the Qualifying Authority of  
the Chief Counsel, USACE

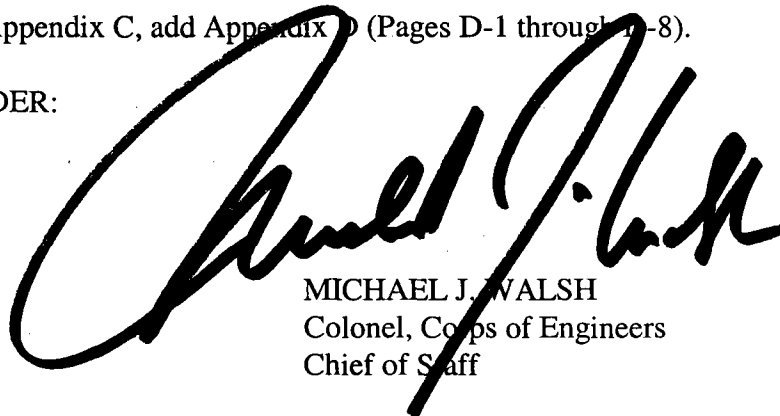
Issue of further supplements to this regulation  
is prohibited except upon approval of CDR, USACE  
(CECC-ZA), Washington, DC 20314

AR 690-200, Chapter 213, is supplemented as follows:

Page 4-1, paragraph 4-3, Qualifying Authority. Add the following to subparagraph b.  
USACE procedures are published as Appendix D to this regulation.

Page C-2. Following Appendix C, add Appendix D (Pages D-1 through D-8).

FOR THE COMMANDER:

A large, stylized handwritten signature in black ink, appearing to read "Michael J. Walsh".

MICHAEL J. WALSH  
Colonel, Corps of Engineers  
Chief of Staff

This supplement supersedes USACE Supplement 1 to AR 690-200, 13 July 2001

## **APPENDIX D**

### **EMPLOYMENT OF CIVILIAN ATTORNEYS - U.S. ARMY CORPS OF ENGINEERS**

#### **4-1. SCOPE**

a. These rules supplement Department of Army rules pertaining to employment of civilian attorneys and implement the principles adopted by the Chief of Engineers pursuant to USACE 2012 regarding legal reforms. The rules specify policies and procedures applicable to the recruitment, selection, assignment, promotion, and performance evaluation of civilian attorneys appointed under the Qualifying Authority of the Chief Counsel, U.S. Army Corps of Engineers (USACE). This supplement also prescribes procedures applicable to adverse actions against USACE civilian attorneys, as well as guidance on the outside practice of law. This supplement supersedes all USACE personnel rules, policies or guidelines to the extent that they are inconsistent.

b. Civilian attorneys are in the Excepted Service (5 C.F.R. §213.3102) and are exempt from the requirements of the Competitive Service, except where otherwise provided by law or regulation. The purpose of this supplement is to make full use of Excepted Service employment procedures to streamline and render efficient all aspects of attorney employment within the USACE.

c. A major tenet of USACE 2012 is that all USACE attorneys, regardless of physical location or legal specialty, are part of the Legal Services Community of Practice, and are available to support the priorities of the Army and the Commander, USACE, and vital civil works, environmental, research, real estate, and military missions throughout the United States and worldwide.

#### **4-2. APPOINTING AUTHORITY**

Not supplemented.

#### **4-3. QUALIFYING AND SUPERVISORY AUTHORITY**

a. Qualifying Authority. The Chief Counsel, as Qualifying Authority, must approve the qualifications for selection, appointment, transfer, reassignment, promotion, temporary promotion, or detail to positions as civilian attorneys within USACE. No USACE civilian attorney shall be appointed to a position outside the Legal Services Community of Practice, either temporarily or permanently, without the prior written approval of the Chief Counsel. Unless otherwise provided by the Chief Counsel, approval of an attorney's qualifications shall be for the specific position for which the attorney is recommended for appointment. The Qualifying Authority for Judge Advocates assigned to USACE is The Judge Advocate General.

b. The Chief Counsel may, for good and sufficient reasons (such as an established violation of the

Rules of Professional Conduct for Lawyers, AR 27-26), withdraw his approval of an attorney's qualifications. All allegations of professional misconduct by a USACE attorney shall immediately be reported to the Deputy Chief Counsel through the appropriate Division Counsel (where applicable). In accordance with ER 27-2-2, the Deputy Chief Counsel shall investigate all allegations of professional misconduct and make appropriate recommendations to the Chief Counsel.

c. Supervisory Authority. All attorneys at Headquarters, Divisions, Engineer Research and Development Command (ERDC) and Centers are under the management and supervision of the Chief Counsel. The Deputy Chief Counsel is the first-line supervisor of all Division Counsels, ERDC Counsel and Center Counsels. Division Counsels are the first-line supervisor of the staff attorneys in the Division and the District Counsels within their Division. District Counsels are the first line supervisor of all attorneys in the District. All staff attorneys in the Districts are under the overall management of their Division Counsel.

#### **4-4. ESTABLISHING LEGAL OFFICES AND POSITIONS**

Not supplemented.

#### **4-5. QUALIFICATION REQUIREMENTS (ATTORNEY POSITIONS)**

a. Ordinarily, attorneys shall be appointed at the highest-grade level for which they fully qualify.

b. The Chief Counsel may, in unusual circumstances, make exceptions to the minimum experience requirements of AR 690-200, Chapter 213, ¶4-5b, when the individual has extraordinary qualifications. Requests for exception will be submitted with the request for Qualifying Authority approval of the selectee.

#### **4-6. LAW CLERK TRAINEE AND LEGAL INTERN APPOINTMENT**

Not supplemented.

#### **4-7. RECRUITMENT AND SELECTION**

a. In furtherance of USACE 2012 reforms, recruitment and selection of civilian attorneys will be accomplished in an expedited and collaborative manner, with appropriate consultation among Commanders, Directors, and their Counsel.

b. Heads of USACE legal offices shall promptly notify the Chief Counsel of anticipated needs to fill attorney and law clerk positions. The Chief Counsel must approve the recruitment and selection plan for all attorney and law clerk positions.

c. It is the Chief Counsel's policy to maximize the career potential of all USACE attorneys and

fill vacancies as quickly and efficiently as possible, under excepted service rules, avoiding disruption to critical USACE missions

d. Recruitment. Recruitment and selection plans for attorneys and law clerks must be designed to attract a sufficient pool of highly qualified candidates. Excepted service rules grant supervisors great flexibility in their choice of procedures to locate and fill attorney vacancies with highly qualified professionals, see 4-7e. & f. *infra*. Whenever sources of applicants other than current USACE civilian attorneys are to be solicited, the recruitment plan must include reasonable efforts to contact sources in a geographic area thought to be broad enough to provide well-qualified minority candidates, women candidates, and candidates with disabilities.

(1) Diversity and Affirmative Action.

(a) Special attention will be given to increasing the representation of minorities and women, and individuals with disabilities in attorney and law clerk positions. Effort must be made to attract highly qualified minority and women candidates and candidates with disabilities.

(b) At a minimum, such recruitment effort shall include notification to all of the accredited law schools, bar associations, known minority groups and women organizations in the state of employment and all adjoining states, as well as national minority groups and women's organizations.

(c) For other than entry-level positions, there may be appropriate justification for limiting the area of consideration. Prior approval of the Chief Counsel is required to limit the area of consideration for any USACE attorney recruitment.

(2) Veterans Preference. The availability of preference eligibles does not preclude appointment of a non-preference eligible candidate. Decisions to appoint a non-preference eligible instead of a preference eligible must be based on factors directly relating to job requirements and must be documented.

(3) Vacancy Announcements.

(a) The servicing CPOC shall provide a copy of the vacancy announcement in an electronically readable format to the Deputy Chief Counsel and to the head of the USACE legal office initiating the recruitment action.

(b) All vacancy announcements will be posted on the USACE Legal Services website.

(4) Incentives may be used to attract the maximum number of highly qualified candidates. Incentives include, but are not limited to, superior qualification appointments, recruitment and relocation bonuses, and payment of permanent change of station (PCS) expenses for new appointees.

e. Competitive Recruitment and Selection.

(1) Heads of Legal Offices. The Deputy Chief Counsel shall chair the selection panel for heads of USACE legal offices. For the selection of a Division or Center Counsel, the appropriate Division or Center Commander shall serve on the selection panel. For recruitment of District Counsels, the Division Commander, District Commander, or both, should serve on selection panel. For recruitment of ERDC Counsel, the Director of ERDC shall serve on the selection panel. Such panels shall recommend the best-qualified candidates to fill vacant heads of legal offices.

(2) Other Than Heads of Legal Offices. Heads of legal offices shall recommend candidates to fill attorney vacancies within their respective offices. District Counsels shall obtain the approval of their Division Counsel prior to submitting a recommendation.

(a) The appropriate head of the legal office shall interview candidates for staff attorney positions unless the Chief Counsel waives this requirement. Commanders for Division, District and other field offices may also interview candidates based on local practice preferences.

(b) The applicant who is best qualified on the basis of academic standing, relevant experience, achievement in the legal field, and other relevant factors involving the effectiveness to perform the functions of the position shall be selected.

(c) The head of the legal office submitting the recommendation shall submit the name of the selectee, together with the documentation required by ¶4-9 below.

(3) The Chief Counsel is both Qualifying Authority and final selecting official for all civilian attorney positions in the USACE.

f. In lieu of competitive selection procedures, attorney vacancies may be filled by any of the following methods:

(1) *Total Attorney Career Development Program (TACDP).* This program provides for the pre-qualification of current USACE attorneys to other civilian attorney positions. A civilian attorney pre-qualified under this program may be assigned by the Chief Counsel to any position for which he or she is qualified after being interviewed by the appropriate Commander and head of the legal office.

(2) *Chief Counsel's Civilian Attorney Honors Program.* This program allows for the selection and appointment of highly qualified candidates to fill entry-level attorney and law clerk positions. Prior to initiating a recruitment action for any position at or below the GS-13 level, the head of the legal office with the vacancy shall consult with the Chief Counsel to determine the availability of an Honors Program attorney.

g. The North Central Civilian Personnel Operations Center is the servicing personnel office for all USACE civilian attorneys, unless otherwise determined by the Chief Counsel. After the final selection is made, the North Central CPOC shall notify all unsuccessful candidates.

#### **4-8. REASSIGNMENT AND PROMOTION**

a. The incumbent of a position may be non-competitively promoted only after the Chief Counsel has approved the incumbent's professional qualifications to assume the increased responsibilities.

b. A USACE civilian attorney who is otherwise qualified may be reassigned by the Chief Counsel to a vacant civilian attorney position at the same or lower grade, after consultation with, or interview by, the appropriate Commander and the head of the legal office.

c. Assignments or details exceeding 120 calendar days, or that are between Divisions or Centers, must have the prior approval of the Chief Counsel. Division Counsel may approve assignments or details up to 120 calendar days within their Division, after consultation with the Chief Counsel.

#### **4-9. SECURING PRIOR APPROVAL OF THE CHIEF COUNSEL**

To secure the Chief Counsel's approval of the qualifications of a person recommended for selection as an attorney or law clerk, the following documentation must be submitted.

a. Competitive actions. In addition to the documents required by AR 690-200, Chapter 213, subchapter 4, ¶4-9a, the following documentation is required:

(1) DA Form 2600 (Referral and Selection Register);

(2) Written application of all candidates on the referral list;

(3) Written evaluation by the appropriate head of the legal office of the professional qualifications of the proposed selectee.

b. Non-competitive actions. In addition to the request for Qualifying Authority approval, the head of the appropriate head of legal office shall provide a written evaluation of the professional qualifications of the proposed selectee.

c. Attorneys currently under the qualifying authority of the Chief Counsel need not submit the information required by AR 690-200, Chapter 213, subchapter 4, ¶4-9a.

**4-10. ATTORNEY PERFORMANCE EVALUATION**

Table 1 sets forth the performance evaluation responsibilities for all USACE civilian attorneys. Based on direction of the Chief of Engineers, as approved by the General Counsel of the Army, all USACE civilian attorneys shall be rated and senior rated by attorneys. Because the heads of USACE legal offices serve as senior legal advisor to their respective Commanders and Directors, it is important that they, as the leader of their respective organizations, have the non-delegable option to rate these attorneys. Where listed as an Optional Intermediate Rater, the Commander has the option of personally and directly participating as a rating official.

<b>Rater</b>	<b>Intermediate Rater</b>	<b>Senior Rater</b>
<b><i>Washington Headquarters</i></b>		
Associate Deputy Chief Counsel and Special Assistants	Deputy Chief Counsel	Chief Counsel
Assistant Chief Counsels	Deputy Chief Counsel	Chief Counsel
Assistant Counsels <i>(Staff Attorneys)</i>	Assistant Chief Counsel	Letter Input from RIT Leader(s) Deputy Chief Counsel
<b><i>Regional/Division Headquarters</i></b>		
Assistant Chief Counsels/Division Counsels	Deputy Chief Counsel	Division Commander Chief Counsel
Assistant Division Counsels <i>(Staff Attorneys)</i>	Division Counsel	Division Commander (Optional) Deputy Chief Counsel
<b><i>Centers and ERDC</i></b>		
Center Counsels and ERDC Counsel	Deputy Chief Counsel	Commander/Director Chief Counsel
Assistant Center Counsels and ERDC Assistant Counsels <i>(Staff Attorneys)</i>	Center Counsel or ERDC Counsel	Commander/Director (Optional) Deputy Chief Counsel
<b><i>Districts</i></b>		
District Counsels	Division Counsel	District Commander Deputy Chief Counsel
Assistant District Counsels <i>(Staff Attorneys)</i>	District Counsel	District Commander (Optional) Division Counsel

Table 1 – USACE Civilian Attorney Performance Evaluation Responsibilities

#### **4-11. RECOGNITION INCENTIVES**

a. It is the policy of the Chief Counsel to foster excellence in the USACE legal services mission by recognizing such excellence and in motivating USACE attorneys to high levels of performance and service. Accordingly, all heads of USACE legal offices will appropriately, effectively and consistently use the various types of awards, which comprise the Army Incentive Awards Program. See generally, AR 672-20, Chapter 2.

b. Additionally, as authorized by ER 672-1-18, the Chief Counsel has established an Honorary Awards Program designed to specifically recognize USACE attorneys and other personnel who have distinguished themselves through their professional excellence and achievement and/or superior performance in support of the USACE legal services mission. A complete description of the Program, including eligibility criteria and nomination forms, can be downloaded from the USACE Legal Services website.

#### **4-12. CLASSIFICATION APPEALS**

A copy of all classification appeals by USACE civilian attorneys shall be sent to the Deputy Chief Counsel.

#### **4-13. ADVERSE ACTIONS**

The Chief Counsel has the responsibility to assure that no unwarranted disciplinary or adverse action is taken against a USACE attorney based solely, or in part, on the substance of his or her complete and accurate legal advice. The Chief Counsel shall be notified before any disciplinary or performance-based adverse action is initiated against a USACE civilian attorney including, but not limited to, reprimand, suspension, involuntary reassignment, reduction in grade, or separation from federal service. The head of the affected legal office shall notify the Chief Counsel immediately in writing of the proposed disciplinary or adverse action. Such notification shall include, as a minimum, the nature of the charges against the attorney and a summary of the facts and circumstances surrounding each charge. No disciplinary or performance-based action shall be initiated until the Chief Counsel makes a finding that it is not based solely or in part on the substance of the attorney's complete and accurate legal advice.

#### **4-14. ASSISTANCE TO ATTORNEYS AFFECTED BY PERSONNEL ACTIONS**

Not supplemented.



#### **4-15. REPORTING PERSONNEL ACTIONS**

Not supplemented.

#### **4-16. STANDARDS OF CONDUCT AND PROFESSIONAL RULES**

Not supplemented.

#### **4-17. OUTSIDE PRACTICE OF LAW**

a. No USACE attorney may engage in outside employment or the private practice of law, with or without compensation, without the prior written approval of the Chief Counsel. This does not include the infrequent, occasional rendering of legal advice or assistance, without compensation, to personal friends and relatives when not inconsistent with other legal requirements of Federal employment. A request to engage in outside employment or the private practice of law shall include the following --

(1) To the extent permitted by the Codes of Professional Responsibility, a detailed description of the proposed outside employment or private practice of law;

(2) An explanation of the steps that will be taken to ensure that the outside employment or private practice of law will not interfere with job performance during normal duty hours;

(3) A statement from the requestor's head of legal office as to whether the proposed outside employment or private practice of law will adversely affect the requestor's ability to perform his or her duties and responsibilities;

(4) A recommendation for his or her head of legal office and the Assistant Chief Counsel/Division Counsel, as appropriate, regarding approval or disapproval of the request;

(5) A statement from the requestor that he or she has read, and understands the limitations placed upon outside employment or the private practice of law by 18 U.S.C. §203, §205, and §209, the Joint Ethics Regulation (DoD 5500.7-R), and AR 690-200, Chapter 213, ¶4-17.

b. All requests for approval to engage in outside employment or the private practice of law shall be in writing and sent directly to the Deputy Chief Counsel. The Chief Counsel may impose whatever limitations deemed necessary and shall limit the approval for a period of time, not to exceed 2 years.