

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

CECC-ZA

10 September 2020

Civilian Personnel
Civilian Attorneys under the Qualifying Authority of
The Chief Counsel, United States Army Corps Engineers (USACE)

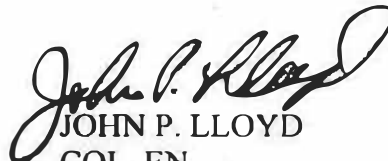
Issue of further supplements to this regulation
is prohibited except upon approval of the Commander, USACE

This document supplements AR 690-300, Chapter 9 is supplemented as follows:

Page 11, paragraph 9-3, Qualifying Authority. Add the following to subparagraph b.
USACE procedures are published as Appendix C to this regulation.

Page 62. Following Appendix B, add Appendix C (Pages C 1-7)

FOR THE COMMANDER:


JOHN P. LLOYD
COL, EN
Chief of Staff

APPENDIX C

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

9-1. APPLICABILITY

a. These rules supplement Department of Army rules pertaining to employment of civilian attorneys. 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 with this supplement.

b. Civilian attorneys and law clerks 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. All USACE attorneys, law clerks, legal interns, and paraprofessionals, 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 civil works, environmental, research, real estate, interagency and international services, and military missions throughout the United States and worldwide.

9-2. APPOINTING AUTHORITY

Not supplemented.

9-3. 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

c. (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.

9-4. ESTABLISHING LEGAL OFFICES AND POSITIONS

Not supplemented.

9-5. QUALIFICATION REQUIREMENTS (ATTORNEY POSITIONS)

a. Attorneys shall be appointed at the highest-grade level for which they fully qualify as they are approved by the Qualifying Authority. Attorney appointments are effective the date the Chief Counsel approves the attorney's qualifications.

b. The Chief Counsel may make exceptions to the minimum experience requirements of AR 690-300, Chapter 9, paragraph 9-5, when the individual possesses special qualifications. GS-13 attorneys who through extensive experience and/or training possess special qualifications may apply for GS-15 head of legal office attorney positions. Heads of legal offices requesting approval of such a selection must also seek an exception to the minimum experience requirement when seeking approval of the attorney's qualifications. Requests for exception will be submitted with the request for Qualifying Authority approval of the selectee.

9-6. LAW CLERK TRAINEE AND LEGAL INTERN APPOINTMENT

Those individuals hired as law clerk trainees may be appointed into any vacant attorney position for a single period not to exceed 14 months.

9-7. RECRUITMENT AND SELECTION

a. Recruitment and selection of civilian attorneys will be accomplished in an expedited and collaborative manner, with appropriate consultation among Commanders, Directors, and their Counsel. The provisions regarding recruitment of well-qualified minority, women, and disabled candidates is not further supplemented.

b. Heads of USACE legal offices shall promptly notify the Chief Counsel of anticipated needs to fill attorney positions. The Chief Counsel must approve the recruitment and selection plan for all attorney positions prior to any initiation of a recruiting action.

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. 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. Generally, this requirement is satisfied if the position is advertised through a widely-available advertising source (e.g., USAJobs, USACE website).

(1) 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, student loan repayment, 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/Director will be invited to serve on the selection panel. For recruitment of District Counsels, the Division Commander, District Commander, or both, will be invited to serve on selection panel. For recruitment of ERDC Counsel, the Director of ERDC will be invited to 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.

(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. It is recommended, but not required, that if an interview panel is to be used, that a client be included on the interview panel.

(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 recommended by the selecting official to the Chief Counsel for approval of their professional qualifications.

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

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

f. Heads of legal offices may also fill attorney vacancies with qualified candidates in the Chief Counsel's Civilian Attorney Honors Program (CHP). This program allows for the selection and appointment of highly-qualified candidates to fill entry-level attorney positions. If the candidate selected to fill an entry-level attorney position has not yet become the member of a state bar, the candidate may be placed in a law clerk trainee position (0904 Occupational Series) for a single period not to exceed 14 months. *See* 5 C.F.R. § 213.3102(e). 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 CHP Program Manager or the Chief Counsel to determine the availability of an Honors Program attorney.

9-8. 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 grade or, voluntarily, to a 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.

9-9. 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, the following documentation must be submitted.

a. Competitive Actions. In addition to the documents required by AR 690-300, Chapter 9, the following documentation is required:

(1) All application materials of the candidate recommended for appointment and any alternate candidates;

(2) Written evaluation by the appropriate head of the legal office of the professional qualifications of the recommended candidate.

b. Non-competitive Actions. The following documentation is required for all non-competitive actions:

- (1) A request for Qualifying Authority approval;
- (2) A written evaluation of the professional qualifications of the recommended selectee.

c. Conversion of Law Clerks Hired Through the CHP Program: For a request to convert a CHP law clerk from the 0904 occupational series to the 0905 occupational series, heads of legal offices must submit, in addition to a request for Qualifying Authority approval and a written evaluation of the professional qualifications of the CHP law clerk a copy of an official certificate showing that the applicant is a member in good standing of a bar of a state, territory, the District of Columbia, or the Commonwealth of Puerto Rico and a sworn statement by the CHP law clerk that their fitness to practice law or conduct as an attorney has never been challenged in any jurisdiction.

9-10. ATTORNEY PERFORMANCE EVALUATION

Table 1 sets forth the performance evaluation responsibilities for all USACE civilian attorneys. 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 heads of legal offices, as the leaders of their respective organizations, have the non-delegable obligation to rate these attorneys. Where listed as a Guest Reviewer, the Commander has the option of personally and directly providing input.

Table 1 - USACE Civilian Attorney Performance Evaluation Responsibilities

Washington Headquarters			
	Rater	Guest Reviewer	Higher Level Reviewer
Assistant Chief Counsel	Deputy Chief Counsel		Chief Counsel
Assistant Counsels (Staff Attorneys)	Assistant Chief Counsel		Deputy Chief Counsel
Division Headquarters			
Division Counsel	Deputy Chief Counsel	Division Commander	Chief Counsel
Assistant Division Counsel (Staff Attorneys)	Division Counsel	Division Commanders (Optional)	Deputy Chief Counsel
Huntsville Center, HECSA and ERDC			
Center Counsel	Deputy Chief Counsel	ERDC / HECSA Director or HNC Commander	Chief Counsel
Assistant Center Counsel (Staff Attorneys)	Center Counsel	ERDC / HECSA Director or HNC Commander (Optional)	Deputy Chief Counsel
Districts			
District Counsel	Division Counsel	District Commander	Deputy Chief Counsel

Assistant District Counsel (Staff Attorneys)	District Counsel	District Commander (Optional)	Division Counsel
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9-11. 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.

9-12. 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.

9-13. ASSISTANCE TO ATTORNEYS AFFECTED BY PERSONNEL ACTIONS

Not supplemented.

9-14 REPORTING PERSONNEL ACTIONS

Not supplemented.

9-15. STANDARDS OF CONDUCT AND PROFESSIONAL RULES

Not supplemented.

9-16. OUTSIDE PRACTICE OF LAW

a. No USACE attorney will engage in the outside practice of law absent approval by the General Counsel, or by The Judge Advocate General for those attorneys under his/her purview. Requests to teach any area of law, practice law on a pro bono or reimbursable basis, practice law while on transitional leave, or to practice law on behalf of a family member, must be approved in advance. This provision does not apply to attorneys within the Army National Guard and the U.S. Army Reserve, respectively, when not drilling or not in an active status.

b. No USACE attorney may engage in outside employment with or without compensation, without the prior written approval of the Chief Counsel. Employment does not include volunteer activities that do not involve engaging in the outside practice of law.

c. A request to engage in outside employment or the private practice of law shall be submitted to the HQUSACE Ethics Council and must include the following:

(1) To the extent permitted by the Codes of Professional Responsibility, a detailed description of the proposed outside employment or outside 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 outside practice of law by 18 U.S.C. §203, §205, and §209, the Joint Ethics Regulation (DoD 5500.7-R), and AR 690-300, Chapter 9 paragraph 9-16.

d. The Chief Counsel may impose whatever limitations deemed necessary and shall limit the approval for a period of time, not to exceed two years.