

Presidio Trust

§ 1012.1

certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* The Presidio Trust will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* The Presidio Trust will provide a hearing official upon the creditor agency's request with respect to the Presidio Trust employee.

PART 1012—LEGAL PROCESS: TESTIMONY BY EMPLOYEES AND PRODUCTION OF RECORDS

GENERAL INFORMATION

Sec.

1012.1 What does this part cover?

1012.2 What is the Presidio Trust's policy on granting requests for employee testimony or Presidio Trust records?

RESPONSIBILITIES OF REQUESTERS

1012.3 How can I obtain employee testimony or Presidio Trust records?

1012.4 If I serve a subpoena duces tecum, must I also submit a *Touhy* Request?

1012.5 What information must I put in my *Touhy* Request?

1012.6 How much will I be charged?

1012.7 Can I get an authenticated copy of a Presidio Trust record?

RESPONSIBILITIES OF THE PRESIDIO TRUST

1012.8 How will the Presidio Trust process my *Touhy* Request?

1012.9 What criteria will the Presidio Trust consider in responding to my *Touhy* Request?

RESPONSIBILITIES OF EMPLOYEES

1012.10 What must I, as an employee, do upon receiving a request?

1012.11 Must I get approval before testifying as an expert witness other than on behalf of the United States in a Federal proceeding in which the United States is a party or has a direct and substantial interest?

AUTHORITY: 16 U.S.C. 460bb appendix; 40 U.S.C. 102; 44 U.S.C. 2901 and 3102.

SOURCE: 74 FR 42030, Aug. 20, 2009, unless otherwise noted.

GENERAL INFORMATION

§ 1012.1 What does this part cover?

(a) This part describes how the Presidio Trust responds to requests or subpoenas for:

(1) Testimony by employees in State, territorial or Tribal judicial, legislative or administrative proceedings concerning information acquired while performing official duties or because of an employee's official status;

(2) Testimony by employees in Federal court civil proceedings in which the United States or the Presidio Trust is not a party concerning information acquired while performing official duties or because of an employee's official status;

(3) Testimony by employees in any judicial or administrative proceeding in which the United States or the Presidio Trust, while not a party, has a direct and substantial interest;

(4) Official records or certification of such records for use in Federal, State, territorial or Tribal judicial, legislative or administrative proceedings.

(b) In this part, "employee" means a current or former Presidio Trust employee, or Board member, including a contractor or special government employee, except as the Presidio Trust may otherwise determine in a particular case.

(c) This part does not apply to:

(1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States or the Presidio Trust is a party;

(3) Federal administrative proceedings;

(4) Federal, State and Tribal criminal court proceedings;

(5) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the Presidio Trust. The employee must state for the record that the testimony represents the employee's own views and is not necessarily the official position of the Presidio Trust. See 5 CFR 2635.702(b), 2635.807(b).

§ 1012.2

(6) Testimony by employees as expert witnesses on subjects outside their official duties, except that they must obtain prior approval if required by §1012.11.

(d) This part does not affect the rights of any individual or the procedures for obtaining records under the Freedom of Information Act (FOIA), Privacy Act, or statutes governing the certification of official records. The Presidio Trust FOIA and Privacy Act regulations are found at parts 1007 and 1008 of this chapter.

(e) Nothing in this part is intended to impede the appropriate disclosure under applicable laws of Presidio Trust information to Federal, State, territorial, Tribal, or foreign law enforcement, prosecutorial, or regulatory agencies.

(f) This part only provides guidance for the internal operations of the Presidio Trust, and neither creates nor is intended to create any enforceable right or benefit against the United States or the Presidio Trust.

§1012.2 What is the Presidio Trust's policy on granting requests for employee testimony or Presidio Trust records?

(a) Except for proceedings covered by §1012.1(c) and (d), it is the Presidio Trust's general policy not to allow its employees to testify or to produce Presidio Trust records either upon request or by subpoena. However, if the party seeking such testimony or records requests in writing, the Presidio Trust will consider whether to allow testimony or production of records under this part. The Presidio Trust's policy ensures the orderly execution of its mission and programs while not impeding any proceeding inappropriately.

(b) No Presidio Trust employee may testify or produce records in any proceeding to which this part applies unless authorized by the Presidio Trust under §§1012.1 through 1012.11. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

36 CFR Ch. X (7-1-11 Edition)

RESPONSIBILITIES OF REQUESTERS

§ 1012.3 How can I obtain employee testimony or Presidio Trust records?

(a) To obtain employee testimony, you must submit:

(1) A written request (hereafter a "Touhy Request;" see §1012.5 and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)); and

(2) A statement that you will submit a valid check for costs to the Presidio Trust, in accordance with §1012.6, if your Touhy Request is granted.

(b) To obtain official Presidio Trust records, you must submit:

(1) A Touhy Request; and

(2) A statement that you agree to pay the costs of search and/or duplication in accordance with the provisions governing requests under the Freedom of Information Act in part 1007 of this chapter, if your Touhy Request is granted.

(c) You must send your Touhy Request to both:

(1) The employee; and

(2) The General Counsel of the Presidio Trust.

(d) The address of Presidio Trust employees and the General Counsel is: Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052.

§ 1012.4 If I serve a subpoena duces tecum, must I also submit a Touhy request?

Yes. If you serve a subpoena for employee testimony or if you serve a subpoena duces tecum for records in the possession of the Presidio Trust, you also must submit a Touhy Request.

§ 1012.5 What information must I put in my Touhy Request?

Your Touhy Request must:

(a) Identify the employee or record;

(b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;

(c) Identify the parties to your proceeding and any known relationships they have with the Presidio Trust or to its mission or programs;

(d) Show that the desired testimony or records are not reasonably available from any other source;