

Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Chief, Communication and Services Section, Office of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Chief, Communication and Services Section, Office of Administration, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §607.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agen-

cy determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4576, Feb. 5, 1986, as amended at 51 FR 4576, Feb. 5, 1986]

§§ 607.171—607.999 [Reserved]

PART 608—SERVICE OF PROCESS; PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES, OR SIMILAR REQUESTS OR DEMANDS IN CONNECTION WITH FEDERAL OR STATE LITIGATION; EXPERT TESTIMONY

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AUTHORITY: 22 U.S.C. 2581(j).

SOURCE: 61 FR 36821, July 15, 1996, unless otherwise noted.

§ 608.1 Purpose and scope; definitions.

(a) This part sets forth the procedures to be followed with respect to:

(1) service of summonses and complaints or other requests or demands directed to the U.S. Arms Control and Disarmament Agency (ACDA, the Agency) or to any ACDA employee or former employee in connection with federal or state litigation arising out of or involving the performance of official activities of ACDA; and

(2) the oral or written disclosure, in response to subpoenas, orders, or other requests or demands of federal or state judicial or quasi-judicial authority (collectively, "demands"), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters, pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively, "requests"), of any material contained in the files of the Agency, any information relating to material contained in the files of the Agency, or any information acquired while the subject of the demand or request is or was an employee of the Agency as part of the performance of the person's duties or by virtue of the person's official status.

(b) For purposes of this part, and except as ACDA may otherwise determine in a particular case, the term employee includes the Director of ACDA and former Directors of ACDA, and all employees and former employees of ACDA or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Director of ACDA, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors.

(c) For purposes of this part, the term *litigation* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This part governs, inter

alia, responses to discovery requests, depositions, and other pre-trial, trial, or post-trial proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this part shall not apply to any claims by ACDA employees (present or former), or applicants for Agency employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; the Foreign Service Labor Relations Board; the Foreign Service Grievance Board; or a labor arbitrator operating under a collective bargaining agreement between ACDA and a labor organization representing ACDA employees; or their successor agencies or entities.

(d) For purposes of this part, *official information* means all information of any kind, however stored, that is in the custody and control of ACDA, relates to information in the custody and control of ACDA, or was acquired by ACDA employees as part of their official duties or because of their official status within ACDA while such individuals are employed by or served on behalf of ACDA.

(e) Nothing in this part affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, Executive Order 12958, 3 CFR, 1995 Comp., p. 333, the Government in the Sunshine Act, 5 U.S.C. 552b, the Agency's regulations in 22 CFR chapter VI implementing any of the foregoing, or pursuant to congressional subpoena. Nothing in this part otherwise permits disclosure of information by ACDA or its employees except as provided by statute or other applicable law.

(f) This part is intended only to inform the public about ACDA procedures concerning the service of process and responses to demands or requests and is not intended to and does not create, and may not be relied upon to create, any right or benefit substantive or procedural, enforceable at law by a party against ACDA or the United States.

(g) Nothing in this part affects:

(1) The disclosure of information during the course of legal proceedings in foreign courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals; or

(2) The rules and procedures, under applicable U.S. law and international conventions, governing diplomatic and consular immunity.

(h) Nothing in this part affects the disclosure of official information to other federal agencies or Department of Justice attorneys in connection with litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees, or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations, prosecutions, extradition, deportation or other proceedings.

§ 608.2 Service of summonses and complaints.

(a) Only ACDA's General Counsel, or his/her delegate, is authorized to receive and accept summonses or complaints sought to be served upon ACDA or ACDA employees. All such documents should be delivered or addressed to General Counsel, U.S. Arms Control and Disarmament Agency, 320 21st St. NW., Room 5635, Washington, DC 20451. Pursuant to 42 U.S.C. 659(b) and 5 U.S.C. 5520a(c)(1), this same officer has been designated specifically to accept service of process for the enforcement of the legal obligation to provide child support or to make alimony payments by employees of the Agency and to accept service of process for the enforcement of the legal obligation to pay monies owed for other than child support or alimony by employees of the Agency, respectively.

(b) In the event any summons or complaint described in § 608.1(a) is delivered to an employee of ACDA other than in the manner specified in this part, such attempted service shall be ineffective, and the recipient thereof shall either decline to accept the proffered service or return such document under cover of a written communication which directs the person attempting to make service to the procedures set forth in this part.

(c) Except as otherwise provided in §§ 608.2(d) and 608.3(c), ACDA is not an authorized agent for service of process with respect to civil litigation against ACDA employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to ACDA employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon ACDA's General Counsel, or his/her delegate.

(d) Although ACDA is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation, ACDA recognizes that its employees stationed overseas should not use their official positions to evade their personal obligations and will, therefore, counsel and encourage ACDA employees to accept service of process in appropriate cases, and will waive applicable diplomatic or consular privileges and immunities when ACDA determines that it is in the interest of the United States to do so. Pursuant to section 302 of Executive Order 12953 (3 CFR, 1995 Comp., p. 325), ACDA's General Counsel has been designated in Appendix B to 5 CFR part 581 as the official to assist in the service of legal process in civil actions pursuant to orders of State courts to establish paternity and to establish or to enforce support obligations by making ACDA employees available for service of process, regardless of the location of the employee's workplace.

(e) Documents for which ACDA's General Counsel, or his/her delegate, accepts service in official capacity only shall be stamped "Service Accepted in Official Capacity Only." Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable for the service of process.

§ 608.3 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which ACDA is represented by legal counsel who have entered an appearance or otherwise given notice of their representation,

only ACDA's General Counsel, or his/her delegate, is authorized to receive and accept subpoenas, or other demands or requests directed to ACDA or any component thereof, or its employees, or former employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Agency;

(2) Information, including testimony, affidavits, declarations, admissions, response to interrogatories, or informal statements, relating to material contained in the files of the Agency or which any Agency employee acquired in the course and scope of the performance of official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official ACDA duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to an Agency employee (including former employee) other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such employee shall, after consultation with the Office of the General Counsel, decline to accept the subpoena, demand, or request or shall return it to the server under cover of a written communication referring to the procedures prescribed in this part.

(c) Except as otherwise provided in this part, ACDA is not an agent for service or otherwise authorized to accept on behalf of its employees any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual ACDA employee to whom such demand or request is directed.

(d) Acceptance of such documents by ACDA's General Counsel, or his/her delegate, does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable rules.

§ 608.4 Testimony and production of documents prohibited unless approved by appropriate Agency officials.

(a) No employee of ACDA shall, in response to a demand or request in connection with any litigation, whether criminal or civil, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired while such person is or was an employee of ACDA as part of the performance of that person's official duties or by virtue of that person's official status, unless authorized to do so by ACDA's General Counsel, or his/her delegate.

(b) No ACDA employee shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any other material acquired as part of the performance of that employee's duties or by virtue of that employee's official status, unless authorized to do so by ACDA's General Counsel, or his/her delegate.

§ 608.5 Procedure when testimony or production of documents is sought—general.

(a) If official ACDA information is sought, through testimony or otherwise, by a request or demand, the party seeking such release or testimony must (except as otherwise required by federal law or authorized by the Office of the General Counsel) set forth in writing and with as much specificity as possible, the nature and relevance of the official information sought. Where documents or other materials are sought, the party should identify the record or reasonably describe it in terms of date, format, subject matter, the office originating or receiving the record, and the names of all persons to whom the record is known to relate. Subject to § 606.7, ACDA employees may produce, disclose, release, comment upon, or testify concerning only those matters that were specified in writing and properly approved by ACDA's General Counsel or his/her delegate. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). The Office of

the General Counsel may waive this requirement in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, ACDA may also require from the party seeking such testimony or documents a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) ACDA's General Counsel, or his/her delegate, will notify the ACDA employee and such other persons as circumstances may warrant of the decision regarding compliance with the request or demand.

(d) The Office of the General Counsel will consult with the Department of Justice regarding legal representation for ACDA employees in appropriate cases.

§608.6 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before ACDA's General Counsel, or his/her delegate, renders a decision, ACDA will request that either a Department of Justice attorney or an ACDA attorney designated for the purpose:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this part;

(3) Inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of ACDA's General Counsel, or his/her delegate; and

(4) Respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances that would preclude the proper designation or appearance of a Department of Justice or ACDA attorney on the employee's behalf, the employee shall respectfully request the demanding court or authority for a reasonable stay of proceedings

for the purpose of obtaining instructions from ACDA.

§608.7 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made pursuant to §608.6, or if the court or other authority rules that the demand must be complied with irrespective of the Agency's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy v. Ragen*, 340 U.S. 463 (1951).

§608.8 Considerations in determining whether the Agency will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, ACDA officials and attorneys shall consider, among others:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of ACDA employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by ACDA of its mission and duties; and

(8) The need to avoid involving ACDA in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are

those with respect to which, *inter alia*, any of the following factors exist:

- (1) Compliance would violate a statute or a rule of procedure;
- (2) Compliance would violate a specific regulation or executive order;
- (3) Compliance would reveal information properly classified in the interest of national security;
- (4) Compliance would reveal confidential commercial or financial information or trade secrets without the owner's consent;
- (5) Compliance would reveal the internal deliberative processes of the Executive Branch; or
- (6) Compliance would potentially impede or prejudice an on-going law enforcement investigation.

§ 608.9 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, ACDA employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official ACDA duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, ACDA's General Counsel, or his/her delegate, may, consistent with 5 CFR 2635.805, in the exercise of discretion, grant special, written authorization for ACDA employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of ACDA's General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of an ACDA employee, such employee shall immediately inform the office of the General Counsel of such order. If the Office of the General Counsel determines that no further legal review or challenge to the court's order will be made, the ACDA employee shall comply with the order. If so directed by the Office of the General Counsel, however, the employee shall respectfully decline to testify. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).