

in writing and accepted in writing by that employee.

7. DoD resources may not be used to provide legal representation for an employee with respect to a DoD disciplinary action against the employee for committing or participating in a prohibited personnel practice or for engaging in illegal or improper conduct, regardless of whether that participation or conduct is also the basis for disciplinary action proposed by the OSC.

8. After approval of an employee's request, under section 4, above, a DoD attorney shall be assigned (or, in unusual circumstances, outside counsel retained) as the employee's representative in matters pending before the OSC or MSPB. This approval may be limited to representing the employee only with respect to some of the pending matters if other specific matters of concern to the OSC or MSPB do not satisfy the requirements of his Directive.

9. An attorney-client relationship shall be established and continued between the suspected or accused employee and assigned DoD counsel.

10. In representing a DoD employee under this part, a DoD attorney designated counsel for the employee shall act as a vigorous advocate of the employee's individual legal interests before the OSC or MSPB; the attorney's professional responsibility to the Department of Defense and his or her employing Component will be satisfied by fulfilling this responsibility to the employee. Legal representation may be terminated only with the approval of the General Counsel who authorized representation, and normally only on the basis of information not available at the time the attorney was assigned.

11. The attorney-client relationship may be terminated if the assigned DoD counsel for the employee determines, with the approval of the General Counsel who authorizes representation, that:

a. The employee was acting outside the scope of his or her official duties when engaging in the conduct that is the basis for the OSC investigation or charge.

b. Termination of the professional representation is not in violation of the rules of professional conduct applicable to the assigned counsel.

12. The DoD attorney designated counsel may request relief from the duties of representation or counseling without being required to furnish explanatory information that might compromise the assurance to the client of confidentiality.

13. This part authorizes cognizant DoD officials to approve a represented employee's request for travel, per diem, witness appearances, or other departmental support necessary to ensure effective legal representation of the employee by the designated counsel.

14. An employee's participation in OSC investigations, MSPB hearings, and other related proceedings shall be considered official departmental business for time and attendance requirements and similar purposes.

15. The following advice to employees questioned during the course of an OSC investigation may be appropriate in response to the most frequent inquiries:

a. An employee may decline to provide a "yes" or "no" answer in favor of a more qualified answer when this is necessary to ensure accuracy in responding to an OSC interviewer's questions.

b. Requests for clarification of both questions and answers are appropriate to avoid misinterpretation.

c. Means to ensure verification of an interview by OSC investigators are appropriate, whether the employee is or is not accompanied by a legal representative. Tape recorders may only be used for this purpose when:

(1) The recorder is used in full view.

(2) All attendees are informed.

(3) The OSC interrogator agrees to the tape recording of the proceeding.

d. Any errors that appear in a written summary of an interview prepared by the interviewer should be corrected before the employee signs the statement. The employee is not required to sign any written summary that is not completely accurate. An employee may make a copy of the summary for his or her own use as a condition of signing.

PART 146—COMPLIANCE OF DOD MEMBERS, EMPLOYEES, AND FAMILY MEMBERS OUTSIDE THE UNITED STATES WITH COURT ORDERS

Sec.

146.1 Purpose.

146.2 Applicability.

146.3 Definitions.

146.4 Policy.

146.5 Responsibilities.

146.6 Procedures.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 113; 10 U.S.C. 814; Pub. L. 100-456 section 721.

SOURCE: 54 FR 298, Jan. 5, 1989, unless otherwise noted.

§ 146.1 Purpose.

This part:

(a) Implements section 721 of Pub. L. 100-456.

(b) Establishes policy and procedures for the return to the United States of, or other action affecting, DoD members and employees serving outside the

§ 146.2

United States, and family members accompanying them.

(c) Prescribes procedures for treating such individuals who have been charged with, or convicted of, a felony in a court, have been held in contempt of a court for failure to obey the court's order, or have been ordered to show cause by a court why they should not be held in contempt for failing to obey the court's order.

§ 146.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Uniformed Services University of the Health Sciences (USUHS), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

§ 146.3 Definitions.

Court. Any judicial body in the United States with jurisdiction to impose criminal sanctions on a DoD member, employee, or family member.

DoD Employee. A civilian employed by a DoD Component, including an individual paid from nonappropriated funds, who is a citizen or national of the United States.

DoD Member. An individual who is a member of the Armed Forces on active duty and is under the jurisdiction of the Secretary of a Military Department, regardless whether that individual is assigned to duty outside that Military Department.

Felony. A criminal offense that is punishable by incarceration for more than 1 year, regardless of the sentence that is imposed for commission of that offense.

United States. The 50 States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

§ 146.4 Policy.

It is DoD policy that:

(a) With due regard for mission requirements, the provisions of applicable international agreements, and ongoing DoD investigations and courts-

32 CFR Ch. I (7-1-02 Edition)

martial, the Department of Defense shall cooperate with courts and State and local officials in enforcing court orders relating to DoD members and employees stationed outside the United States, as well as their family members who accompany them, who have been charged with, or convicted of, a felony in a court, have been held in contempt by a court for failure to obey the court's order, or have been ordered to show cause why they should not be held in contempt for failing to obey the court's order.

(b) This part does not affect the authority of DoD Components to cooperate with courts and State and local officials in enforcing orders against DoD members and employees outside the United States on matters not listed in paragraph (a) of this section.

(c) This part does not create any rights or remedies and may not be relied on by any person, organization, or other entity to allege a denial of such rights or remedies.

§ 146.5 Responsibilities.

(a) The *General Counsel of the Department of Defense* (GC, DoD) shall:

(1) Issue Instructions and other guidance, as necessary, to implement this part.

(2) Review and approve the implementing documents issued by DoD Components under this part.

(3) Coordinate on requests for exception to the requirements of this part under § 146.5(b).

(b) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)), with the concurrence of the GC, DoD, shall grant exceptions on a case-by-case basis to the requirements of § 146.6. In exercising this authority, the ASD(FM&P), on request by the DoD Component concerned, shall give due consideration to the pertinent mission requirements, readiness, discipline, and ongoing DoD investigations and courts-martial.

(c) The *Heads of DoD Components* shall:

(1) Comply with this part.

(2) Issue Regulations implementing this part.

(3) Report promptly to the ASD(FM&P) and GC, DoD, any action

taken under paragraphs (a) (1) and (2) of § 146.6.

§ 146.6 Procedures.

(a) On receipt of a request for assistance from a court, or a Federal, State, or local official concerning a court order described in § 146.4(a), the Head of the DoD Component concerned, or designee, shall determine whether the request is based on an order issued by a court of competent jurisdiction. Attempts shall be made to resolve the matter to the satisfaction of the court without the return of, or other action affecting, the member, employee, or family member (subject). Before action is taken under this section, the subject shall be afforded the opportunity to provide evidence of legal efforts to resist the court order, or otherwise show legitimate cause for noncompliance. If the Head of the DoD Component concerned determines that such efforts warrant a delay in taking action under this section, the DoD Component Head may grant a brief delay (not more than 90 days). All delays promptly shall be reported to the ASD(FM&P) and to the GC, DoD.

(1) If the request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be resolved with the court without the return of the subject to the United States, the Head of the DoD Component, or designee, promptly shall take the action prescribed in paragraphs (b) through (d) of this section, unless the ASD(FM&P), or designee, grants an exception.

(2) If the request does not pertain to a felony or contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or another person awarded custody by court order, and if the matter cannot be resolved with the court without the return of the subject to the United States, the Head of the DoD Component, or designee, promptly shall take the action prescribed in paragraphs (b) through (d) of this section, when deemed appropriate with the facts and cir-

cumstances of each particular case, following consultation with legal staff.

(b) If a DoD member is the subject of the request, the member shall be ordered, under 10 U.S.C. 814, to return expeditiously to an appropriate port of entry at Government expense, contingent on the party requesting return of the member providing for transportation, and escort, if desired, of the member from such port of entry to the jurisdiction of the party. The party requesting return of the member shall be notified at least 10 days before the member's return to the selected port of entry, absent unusual circumstances.

(c) If a DoD employee is the subject of the request concerning the court order, the employee strongly shall be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawal of command sponsorship and may be the basis for adverse action against the DoD employee, to include removal from the Federal Service. Proposals to take such adverse action must be approved by the Head of the DoD Component concerned, or designee. Such proposals shall be coordinated with the cognizant civilian personnel office and legal counsel.

(d) If the family member of a DoD member or employee is the subject of a request concerning the court order, the family member strongly shall be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawing the command sponsorship of the family member.

[54 FR 298, Jan. 5, 1989, as amended at 55 FR 34555, Aug. 23, 1990]

PART 147—ADJUDICATIVE GUIDELINES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED INFORMATION

Subpart A—Adjudicative Guidelines

Sec.	
147.1	Introduction.
147.2	Adjudicative process.
147.3	Guideline A—Allegiance to the United States.
147.4	Guideline B—Foreign influence.
147.5	Guideline C—Foreign preference.
147.6	Guideline D—Sexual behavior.
147.7	Guideline E—Personal conduct.