

Department of the Navy, DoD

§ 725.4

§ 725.1 Purpose.

This instruction implements 32 CFR part 97 regarding the release of official Department of the Navy (DON) information and provision of testimony by DON personnel for litigation purposes, and prescribes conduct of DON personnel in response to a litigation request or demand. It restates the information contained in Secretary of the Navy Instruction 5820.8A of 27 August 1991¹, and is intended to conform in all respects with the requirements of that instruction.

§ 725.2 Policy.

(a) It is DON policy that official factual information, both testimonial and documentary, should be made reasonably available for use in Federal courts, state courts, foreign courts, and other governmental proceedings unless that information is classified, privileged, or otherwise protected from public disclosure.

(b) DON personnel, as defined in § 725.4(b), however, shall not provide such official information, testimony, or documents, submit to interview, or permit a view or visit, without the authorization required by this part.

(c) DON personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DON or Department of Defense (DOD) information, subjects, personnel, or activities, except on behalf of the United States or a party represented by the Department of Justice, or with the written special authorization required by this part.

(d) Section 725.2(b) and (c) constitute a regulatory general order, applicable to all DON personnel individually, and need no further implementation. A violation of those provisions is punishable under the Uniform Code of Military Justice for military personnel and is the basis for appropriate administrative procedures with respect to civilian employees. Moreover, violations of this instruction by DON personnel may, under certain circumstances, be actionable under 18 U.S.C. 207.

¹Copies may be obtained, if needed, from the Naval Publications and Forms Directorate, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120-5099.

(e) Upon a showing by a requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the DON, DOD, or the United States, the General Counsel of the Navy, the Judge Advocate General of the Navy, or their respective delegates may, in their sole discretion, and pursuant to the guidance contained in this instruction, grant such written special authorization for DON personnel to appear and testify as expert or opinion witnesses at no expense to the United States.

§ 725.3 Authority to act.

(a) The General Counsel of the Navy, the Judge Advocate General of the Navy, and their respective delegates [hereafter “determining authorities” described in § 725.4(a)], shall respond to litigation requests or demands for official DOD information or testimony by DON personnel as witnesses.

(b) If required by the scope of their respective delegations, determining authorities’ responses may include: consultation and coordination with the Department of Justice or the appropriate United States Attorney as required; referral of matters proprietary to another DOD component to that component; determination whether official information originated by the Navy may be released in litigation; and determination whether DOD personnel assigned to or affiliated with the Navy may be interviewed, contacted, or used as witnesses concerning official DOD information or as expert or opinion witnesses. Following coordination with the appropriate commander, a response may further include whether installations, facilities, ships, or aircraft may be visited or inspected; what, if any, conditions will be imposed upon any release, interview, contact, testimony, visit, or inspection; what, if any, fees shall be charged or waived for access under the fee assessment considerations set forth in § 725.11; and what, if any, claims of privilege, pursuant to this instruction, may be invoked before any tribunal.

§ 725.4 Definitions.

(a) *Determining authority.* The cognizant DON or DOD official designated