

N(33)620-1

October 8, 1998

Subject: National Office and Field
Coordination of Significant Cases

Cancellation Date: April 6, 1999

(33)620 Purpose

The Assistant Chief Counsel (General Legal Services) (hereafter National Office) needs to be kept informed of significant issues and cases handled by the field General Legal Services offices. Likewise, the Assistant Regional Counsel (General Legal Services) must be kept abreast of important cases and information affecting their regions. Uniform procedures established herein identify those issues and cases which must be brought promptly to the attention of the National Office. Likewise, these procedures provide that the National Office will notify the Assistant Regional Counsel of those issues and cases coming to its attention which affect matters handled by the field. The following procedures also identify those matters which, because of the need for nationwide consistency in the advice and *guidance* provided by the Office of Chief Counsel, must be coordinated with the National Office.

(33)621 Significant Litigation Matters

(1) Notification

(a) The term "litigation" includes complaints in federal district court, FLRA, MSPB or EEOC cases, agency grievances, and grievance arbitrations.

(b) The Assistant Regional Counsel (GLS) shall notify the GLS National Office of significant litigation matters or related issues that are under GLS jurisdiction and fall within the following list.

- 1 the use of enforcement statistics;
- 2 UNAX ;

3 non frivolous allegations of wrongdoing, including sexual harassment, by a manager (Service or Counsel), at the GS-15 or above level;

4 *Bivens* type claims in conjunction with either

a an IRC Section 7433 claim or

b any claims containing factual allegations which indicate that the IRS either should have obtained a Writ of Entry or else obtained an invalid Writ of Entry;

5 CI disciplinary/adverse action cases in which the circumstances have significantly changed since CAU processing ;

6 any novel GLS issues;

7 non frivolous challenges to Service or Counsel-wide policies or programs;

8 cases relying on recent precedent of particular importance to GLS issues (*e.g.*, *Adarand*) as identified by the Chief, CLP Branch;

9 cases which have generated high level interest, publicity, media attention, or Congressional interest or where there is a tangible basis for concluding that such will result, *e.g.*, published news account, Congressional inquiry, Congressional testimony;

10 any litigation, other than *Bivens*, in which an SES employee is a party;

11 any litigation in which a Chief Counsel employee is a party;

12 any litigation in which an FTCA administrative claim has been filed;

13 non frivolous complaints seeking damages and/or attorneys fees in the amount of \$100,000 or more;

14 Title VII class actions and cases challenging the Service's affirmative employment plan or policies (*e.g.*, ERR-16). These cases will also be referred by the National Office to the Director of EEO and Diversity, for his information and to enable him to properly brief the Commissioner and other interested parties.

(2) Procedures

(a) Notification to the Assistant Chief Counsel shall be by e-mail, fax, or other mailing within five business days of receipt of information regarding a significant litigation matter unless there are exigent circumstances requiring immediate notification. A copy of the initial pleading or complaint should be transmitted within the same time frame.

(b) When informing the National Office of a case the subject line should cite this CCDM section so that the case can be easily tracked.

(c) In cases identified by the National Office, it should be notified of the setting of hearing or trial dates, and any major changes in the status of a significant litigation matter within five business days of the setting or change in status.

(d) Unless there are exigent circumstances requiring immediate notification, the National Office should be notified within five business days of a decision in a significant litigation matter . Absent exigent circumstances, a copy of the decision should be transmitted within the same time frame.

(e) The National Office should inform the field office whether it considers a case to be of such importance that it requires notification of a decision in the case within one business day of the decision. A copy of the decision should be transmitted by facsimile at the same time.

(f) The National Office should be notified within one business day of the Assistant Regional Counsel becoming aware of major congressional interest, media attention or publicity regarding a litigation matter.

(g) The Assistant Chief Counsel (GLS), or, in his absence or unavailability, the Deputy Assistant Chief Counsel (GLS), shall be notified directly of any significant litigation matter listed above which may fall within the jurisdiction of more than one branch.

(3) Coordination and Concurrence

(a) The Assistant Regional Counsel (GLS) shall coordinate and reach consensus with the National Office in litigation in which the office is involved which raises any of the following issues:

1 the use of enforcement statistics;

2 UNAX ;

3 non frivolous allegations of wrongdoing, including sexual harassment, by a manager (Service or Counsel) at the GS-15 or above level;

4 Bivens type claims in conjunction with either

a an IRC Section 7433 claim or

b any claims containing factual allegations which indicate that the IRS either should have obtained a Writ of Entry or else obtained an invalid Writ of Entry;

5 CI disciplinary/adverse action cases in which the circumstances have significantly changed since CAU processing ;

6 Title VII class actions, cases challenging the Service's affirmative employment plan or policies (*e.g.*, ERR-16). These cases will also be referred by the National Office to the Director of EEO and Diversity, for his information and to enable him to properly brief the Commissioner and other interested parties.

(b) Unless otherwise directed by the National Office all substantive documents prepared in connection with significant litigation matters listed in this subsection shall be provided to the National Office for review and consensus no later than three business days prior to transmittal by the field office for filing. Substantive documents include litigation reports, briefs, and dispositive pleadings. Discovery or information request documents, including pleadings, generally will not be considered substantive.

(c) The National Office may determine, upon receiving notification under subsection (1) above of a significant litigation matter which is not listed in subsection (2) above, that further coordination and concurrence will be necessary. The National Office may release a significant litigation matter from the coordination and concurrence requirement as well.

(33)622 Appeals

(1) Notification

(a) Upon determining that there may be a basis for appeal of a decision, the Assistant Regional Counsel (GLS) shall notify the National Office, setting forth the basis for an appeal and his/her recommendation whether to seek an appeal.

(b) Definition. For purposes of this section, the term "decision" includes

- 1 District Court decisions;
- 2 Court of Appeals decisions;
- 3 Any administrative decision concerning any significant litigation matter (see (33)621(1)(b) above).

(c) Procedures

1 Notification of a decision for which there is a basis to appeal shall be made by e-mail, fax, or other mailing within three business days to the Assistant Chief Counsel.

A copy of the decision to be appealed should be transmitted to the National Office within the same time frame.

2 When notifying the National Office regarding an appeal of a decision, the subject line should cite this CCDM section so that the case can be easily tracked.

(2) Coordination and Concurrence

(a) The Assistant Regional Counsel (GLS) shall coordinate and obtain concurrence from the National Office on its recommendation, for or against, an appeal of a decision described under (1)(b) above.

(b) Appeal recommendations for the Department of Justice must be received for review and agreement by the National Office at least 10 business days before they are due to DOJ.

(c) Appeal recommendations of other significant litigation matters listed under (33)621(1)(b) above must be received for review and concurrence by the National Office no later than five business days before the filing date of the appeal.

**(33)623
Settlements**

(1) Notification

(a) The Assistant Regional Counsel (GLS) shall notify the appropriate GLS Branch Chief by e-mail, fax, or other mailing of receipt of a firm offer to settle from the opposing party or learning of the client's decision to make a firm offer with respect to litigation involving:

1 the use of enforcement statistics;

2 UNAX ;

3 non frivolous allegations of wrongdoing, including sexual harassment, by a manager (Service or Counsel) at the GS-15 or above level;

4 Bivens type claims in conjunction with either

a an IRC Section 7433 claim or

b any claims containing factual allegations which indicate that the IRS either should have obtained a Writ of Entry or else obtained an invalid Writ of Entry;

5 CI disciplinary/adverse action cases in which the pertinent law or facts have changed since CAU processing

6 any litigation, other than Bivens, in which an SES employee is a party;

7 any litigation in which a Chief Counsel employee is a party;

8 Title VII class actions and cases challenging the Service's affirmative employment plan or policies (*e.g.*, ERR-16). These cases will also be referred by the National Office to the Director of EEO and Diversity, for his information and to enable him to properly brief the Commissioner and other interested parties.

9 Any matter the settlement of which includes a monetary amount of \$ 25,000 or more, inclusive of attorney's fees.

(b) Procedures

1 Notification of the National Office shall be made within three business days of receipt of a firm offer to settle from the opposing party or receipt of a firm decision from the client to make an offer, unless exigent circumstances call for earlier notification.

2 When informing the National Office of a proposed settlement of a case, the subject line should cite this CCDM section so that the case can be easily tracked.

(2) Coordination and Concurrence

(a) The Assistant Regional Counsel (GLS) and the National Office must reach consensus prior to settling any litigation matter described in (1)(a) above, and prior to settlement of any other matter identified by the National Office as requiring its concurrence.

(b) Absent exigent circumstances, the National Office will respond to the Assistant Regional Counsel (GLS) within three days of notification as set forth in 1(b)1 above. In situations where settlement discussions must be concluded within a limited time period, the National Office should be notified as soon as possible. Should there be no opportunity to discuss a settlement offer with the National Office, the Assistant Regional Counsel will exercise his/her best judgment in settling the case within the scope of his authority to do so.

(c) A copy of the final settlement agreement shall be provided to the National Office within 10 business days of signature.

**(33)624
Representation**

(1) Notification

(a) The National Office shall be notified of the intended decision of the Assistant Regional Counsel (GLS) to recommend against government representation of a current or former employee.

(b) Procedures

1 Notification should be made by e-mail, fax or other mailing to the Assistant Chief Counsel within one business day of making the decision to recommend against representation.

2 When informing the National Office of a representation matter, the subject line should cite this CCDM section so that the case can be easily tracked.

3 The Request for Representation and the Assistant Regional Counsel's written recommendation should be provided to the National Office as soon as possible but no later than ten business days before a response is due following notification.

(2) Coordination and Concurrence

(a) The Assistant Regional Counsel (GLS) and the National Office must reach consensus prior to issuing a recommendation against the Department of Justice (DOJ) providing representation to a current or former employee within ten calendar days before the date the recommendation is due to DOJ.

(b) In cases in which government representation is sought by a current or former employee who may be eligible for representation because the employee was acting within the scope of employment, but a question exists as to whether it is in the interest of the government to represent the employee, the Assistant Regional Counsel (GLS) and the National Office must reach consensus prior to recommending to the Department of Justice that representation be provided.

**(33)625
Payment or Reimbursement of Legal Expenses**

(1) Notification

(a) The National Office shall be notified of the intended decision of the Assistant Regional Counsel (GLS) that the legal expenses of a current or former employee are payable from government appropriations.

(b) Procedures

1 Notification should be made by e-mail, fax or other mailing to the Assistant Chief Counsel within one business day of reaching the decision that payment or reimbursement is appropriate.

2 When notifying the National Office of a matter involving the payment or reimbursement of legal fees, the subject line should cite this CCDM section so that the case can be easily tracked.

3 Written memoranda related to the intended decision should be provided to the branch chief for review within fifteen business days thereafter.

(2) Coordination and Concurrence. The Assistant Regional Counsel (GLS) and the National Office must reach consensus prior to recommending that the Service or Counsel pay for or reimburse any employee for legal expenses incurred in connection with an employee's official duties.

**(33)626
Legal Opinions**

(1) Notification

(a) The Assistant Regional Counsel (GLS) must inform the National Office of a request for a legal opinion

1 which would have potential for significant impact beyond the local office requesting the opinion;

2 concerning significant litigation matters (see (33)621(1));

3 concerning the professionalism of Office of Chief Counsel employees.

(b) Procedures

1 The Assistant Chief Counsel shall be notified by e-mail, fax or other mailing within five business days after receiving a request for a legal opinion listed above.

2 When informing the National Office of a request for a legal opinion, the subject line should cite this CCDM section so that the case can be easily tracked.

3 A copy of the request should be transmitted to the National Office within five business days of receiving the request for a legal opinion listed above.

4 In situations in which it was not immediately recognized that a request for a legal opinion involved issues described above, the branch chief should be notified one business day of those issues being identified.

5 If a response to a request for a legal opinion is required within ten business days or less, the National Office should be contacted immediately.

6 An office receiving a request for a legal opinion on an issue traditionally handled by the National Office, *e.g.*, ethics or liability issues, should forward the request within five business days of receipt to the Assistant Chief Counsel for response.

(2) Coordination and Concurrence. The Assistant Regional Counsel (GLS) shall coordinate and obtain concurrence from the National Office prior to issuing a legal opinion regarding matters listed in (1)(a) above.

(a) Generally, a legal opinion must be received by the National Office for coordination and concurrence at least five business days before it is due.

(b) The Assistant Chief Counsel may determine, at the time he or she is notified of the request for a legal opinion, that the issues will require a longer review time and may request receipt of a legal opinion more than five business days before it is due.

(33)627

National Office Notification to Field

(1) Significant litigation matters, recommendations regarding appeals, settlement proposals, decisions to pay or reimburse employees for legal expenses, legal opinions, and issues of importance related to these categories of cases, which come to the attention of the National Office and which should be handled by an Assistant Regional Counsel (GLS), which affect matters already being handled in the field, or which information is important to the handling of GLS cases nationwide, will be brought promptly to the attention of the ARC (GLS).

(2) Procedures

(a) Notification shall be made by e-mail, fax, or other mailing within three business days to the appropriate Assistant Regional Counsel (GLS).

(b) Case related documents will be transmitted to the ARC (GLS) within three business days following notification. Additional information and follow up will be provided within three business days upon availability.

(33)628

Procedures When There Is No Consensus

Under these procedures the Assistant Regional Counsel and the National Office must reach consensus on the handling of significant matters. In the event that the National Office and field attorneys cannot agree, unresolved issues shall be raised through the appropriate Assistant Regional Counsel with the respective branch chief and Assistant Chief Counsel. If the parties are unable to agree the dispute will be elevated to the Regional Counsel and the Associate Chief Counsel (F&M).

/s/

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Associate Chief Counsel
(Finance and Management)