



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:
CECC-ZA

21 May 2001
Rev. 1

MEMORANDUM FOR THE DEPUTY COMMANDING GENERAL

SUBJECT: Improvement of Corps Legal Services System to Enhance Value to Corporate Mission

We have had a series of very productive discussions regarding the need to streamline the personnel processes for recruiting, hiring, promoting, educating, and retaining high quality Corps attorneys, including those conducted on March 30, April 19, and the VTC on May 3, 2001. We also reviewed the need for better strategic thinking and corporate management of our scarce legal resources throughout the Corps. You stated that there is a need for change and directed me to provide a detailed action plan to achieve the required reforms.

This memorandum documents the results of a two-year study designed to identify deficiencies in the Corps legal services system and prepare an action plan for correcting those deficiencies. All but one of the following proposals can be accomplished within current resource limits.

BACKGROUND:

1. I have recently concluded an important study of the strengths, and potential deficiencies, within the Corps legal services system. During the course of that review, I engaged in discussions with Commanders, civilians, and legal counsel at all levels in the Corps to determine if weaknesses exist which threaten execution of vital Corps missions, both now and in the future. I also worked with outside entities involved in Corps programs such as the Department of Justice, the Departments of Interior and Commerce, EPA, and other Agencies with science and engineering missions to compare how they provide legal services and sustain their workforces.

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2. Our greatest strength is the experience and professionalism of our legal workforce. As an outsider to the Corps, I had no preconceived notions regarding the legal capabilities of the Corps. In fact, I was prepared to take much more dramatic action if my review disclosed that the Corps did not have a high quality, diverse, attorney workforce. I found the opposite, a highly intelligent and motivated workforce that understands its clients business and legal needs. In each of the last two years, the General Counsel of the Army has cited the legal services system within the Corps as a model for all Army organizations in achieving affirmative action and diversity goals.

3. Alarmingly, over half of our attorney workforce will be 55 years or older within the next five years. 1 out of 7 attorneys in the Corps are currently retirement eligible. In four years, one third of our workforce (over 100 of the 370 total) will be retirement eligible. Even more disturbing are the statistics for our senior managing attorneys and leaders. See attachments 1-6 which graphically display this information and compare it with the Army attorney workforce and the federal governments attorney workforce. While both those workforces are aging, the Corps situation is far more urgently in need of attention.

4. It is the overwhelming consensus within the Corps that the principal threat to quality of our attorney workforce is our personnel practices. Our legal workforce is aging rapidly; outstanding attorneys are leaving for opportunities elsewhere in the public and private sector. Before our core capability is bled away, we must take decisive action. This action must be a coordinated one so that the long-term interest of the Corps in professional excellence and diversity is preserved. The good news is that the root cause of the problem and its cures were easily identified. Failure to fully utilize the "excepted service" personnel system to recruit, hire, promote, educate, and retain the best attorney workforce needlessly jeopardizes the Corps mission.

5. A second threat to our effectiveness is failure to think strategically and to corporately manage the scarce legal resources that we do possess.

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6. I am proposing to the COE and DCG a series of important changes to our personnel practices and how legal services are delivered and managed within the Corps of Engineers. Excepted service requirements already authorize most of what we need to do. Excepted service, simply stated, is a system for federal employment that is exempt from many procedural requirements in civil service system. Because attorneys are professionals with graduate degrees, licenses from state bar authorities, and subject to professional rules of conduct and discipline, civil service requirements were determined to be unnecessary and burdensome. All our civilian attorneys are already in excepted service, but we have grafted needless additional requirements on the system. Second, it is my firm belief that as the highest ranked civilian in the Corps with the broadest corporate legal perspective, and extensive experience in the personnel practices related to attorneys, I must be entrusted with both the responsibility and the authority to turn this situation around.

7. Some individuals within the Corps has failed to recognize that many of the tools we are trying to invent to improve the Corps professional workforce in other areas, such as engineering and project management, are already available for the attorney workforce. These tools have been effectively utilized by the Corps and other agencies in the past. Instead of restricting excepted service use within the Corps, we should seek to expand its use to the other professions.

8. A second set of proposals will address how to improve corporate management of our legal assets.

PROPOSED ACTIONS:

1. That the Office of the Chief Counsel develop and execute a plan which makes maximum use of excepted service in the hiring, promotion, career training development, and retention of Corps attorneys. The first step in that plan is to revise, and then coordinate with HR, a draft supplement to the Army regulations which makes full use of excepted service

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then finalize the supplement for DCG approval and implementation. The role of the Chief Counsel of the Corps will be critical in leading the effort to rebuilding our aging workforce. The current regulatory supplement was last updated in 1984, and all aspects of recruitment, selection, hiring, training, promotion, discipline, and development are addressed. Full use of existing excepted service processes will greatly streamline the hiring, promotion, transfer, and career development actions for attorneys.

2. Following finalization of the Corps Supplement referenced in action item No.1 above, harmonize all inconsistent engineering regulations, policies, and guidance, including but not limited to the Corporate selection policy, with existing Army and DOD regulations specific to attorneys, and the final approved version of the Supplement.
3. The third step is to emphasize the hiring of entry level attorneys to rebuild legal capability from the ground up. Under the Chief Counsel's direction, and guidance, both the approved civilian and military honors programs should be utilized to the maximum extent possible to fill vacancies at the entry level both at Headquarters and in all field offices and to promote diversity.
4. To provide for greater accountability for the quality and timeliness of legal services, the performance of all attorneys within the qualification authority of the Chief Counsel should be rated annually by at least one higher level attorney within the legal services system. **This can be accomplished within the structure already in existence in all Commands and field offices.** LTG Joe Ballard established as policy that counsel at all levels report directly to the Commanders who are their principal clients. Division Commanders would continue to serve as the senior rater of Division Counsel, and, at their discretion, District Counsel. In addition, the Deputy Chief Counsel would serve as either a rater or an intermediate rater for Division Counsel on the soundness of legal advice provided conformances with Codes of Professional Responsibility and Ethics, and effectiveness

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in dealing with nationally significant issues of importance to the Chief of Engineers. Division Counsels would serve as either a rater or intermediate rater of all head District Counsels on soundness of legal advice provided, compliance with ethical requirements, and effectiveness in working within a regional business center concept. Real Estate attorneys throughout the Corps should be rated by at least one attorney also. This change in rating can be accomplished immediately at all levels since we are at the end of the mid-year rating cycle right now. The first ratings would be provided at the end of the current performance year.

5. Given recent reorganization with the Engineering Research Development Center (ERDC) under principles of major subordinate Counsel, ERDC Counsel should report directly to both the Commander and ultimately the Director of ERDC at WES. To ensure that ERDC advice is properly coordinated among the labs, and with national R&D and intellectual property activities in Headquarters and HECSA, ERDC's lead Counsel should be rated by the ERDC Commander, intermediate rated by the Deputy Chief Counsel and senior rated by the Director of ERDC.

6. That legal services to other Centers and field offices be managed as corporate assets using the current organization at Humphreys Engineers Center Support Activity (HECSA) as the model for reporting relationships, performance appraisals and accountability. Directors of Centers would rate the Center Counsel, and the Chief Counsel would serve as senior rater Center Counsel as is now done at HECSA.



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