

of Justice representation for the employee and will attempt to have the subpoena modified or quashed. If Department of Justice representation cannot be arranged, the employee should appear at the time and place set forth in the subpoena. In such a case, the employee should produce a copy of these rules and state that the General Counsel has advised the employee not to provide the requested testimony nor to produce the requested document. If a legal tribunal rules that the demand in the subpoena must be complied with, the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

§ 104.23 Expert or opinion testimony.

(a)(1) If the General Counsel authorizes an employee to give testimony in a legal proceeding not involving the United States, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the employee. Employees, with or without compensation, shall not provide expert testimony in any legal proceedings regarding Office information, subjects, or activities except on behalf of the United States or a party represented by the United States Department of Justice.

(2) The General Counsel may authorize an employee to appear and give the expert or opinion testimony upon the requester showing, pursuant to § 104.3 of this part, that exceptional circumstances warrant such testimony and that the anticipated testimony will not be adverse to the interest of the Office or the United States.

(b)(1) If, while testifying in any legal proceeding, an employee is asked for expert or opinion testimony regarding Office information, subjects, or activities, which testimony has not been approved in advance in writing in accordance with the regulations in this subpart, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by this subpart;

(ii) Request an opportunity to consult with the General Counsel before giving such testimony; and

(iii) Explain that upon such consultation, approval for such testimony may be provided.

(2) If the tribunal conducting the proceeding then orders the employee to provide expert or opinion testimony regarding Office information, subjects, or activities without the opportunity to consult with the General Counsel, the employee shall respectfully refuse to provide such testimony, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) If an employee is unaware of the regulations in this subpart and provides expert or opinion testimony regarding Office information, subjects, or activities in a legal proceeding without the aforementioned consultation, the employee shall, as soon after testifying as possible, inform the General Counsel that such testimony was given and provide a written summary of the expert or opinion testimony provided.

(d) *Proceeding where the United States is a party.* In a proceeding in which the United States is a party or is representing a party, an employee may not testify as an expert or opinion witness for any party other than the United States.

§ 104.24 Demands or requests in legal proceedings for records protected by confidentiality statutes.

Demands in legal proceedings for the production of records, or for the testimony of employees regarding information protected by the confidentiality provisions of the Patent Act (35 U.S.C. 122), the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), or any other confidentiality statute, must satisfy the requirements for disclosure set forth in those statutes and associated rules before the records may be provided or testimony given.

Subpart D—Employee Indemnification

§ 104.31 Scope.

The procedure in this subpart shall be followed if a civil action or proceeding is brought, in any court, against an employee (including the employee's estate) for personal injury, loss of property, or death, resulting from the employee's activities while

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acting within the scope of the employee's office or employment. When the employee is incapacitated or deceased, actions required of an employee should be performed by the employee's executor, administrator, or comparable legal representative.

§ 104.32 Procedure for requesting indemnification.

(a) After being served with process or pleadings in such an action or proceeding, the employee shall within five (5) calendar days of receipt, deliver to the General Counsel all such process and pleadings or an attested true copy thereof, together with a fully detailed report of the circumstances of the incident giving rise to the court action or proceeding.

(b)(1) An employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee only if the employee has timely satisfied the requirements of paragraph (a) of this section.

(2) No request for indemnification will be considered unless the employee has submitted a written request through the employee's supervisory chain to the General Counsel with:

(i) Appropriate documentation, including copies of the verdict, judgment,

appeal bond, award, or settlement proposal;

(ii) The employee's explanation of how the employee was acting within the scope of the employee's employment; and

(iii) The employee's statement of whether the employee has insurance or any other source of indemnification.

§ 104.42

Subpart E—Tort Claims

AUTHORITY: 28 U.S.C. 2672; 35 U.S.C. 2(b)(2); 44 U.S.C. 3101; 28 CFR Part 14.

§ 104.41 Procedure for filing claims.

Administrative claims against the Office filed pursuant to the administrative claims provision of the Federal Tort Claims Act (28 U.S.C. 2672) and the corresponding Department of Justice regulations (28 CFR Part 14) shall be filed with the General Counsel as indicated in § 104.2.

§ 104.42 Finality of settlement or denial of claims.

Only a decision of the Director or the General Counsel regarding settlement or denial of any claim under this subpart may be considered final for the purpose of judicial review.