

Office of the Secretary, DHS

§ 5.43

officers, and employees, or litigation in which the United States has an interest; or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations, prosecutions, or other proceedings, *e.g.*, extradition, deportation.

§ 5.42 Service of summonses and complaints.

(a) Only the Office of the General Counsel is authorized to receive and accept on behalf of the Department summonses or complaints sought to be served upon the Department, the Secretary, or Department employees. All such documents should be delivered or addressed to the Office of the General Counsel, United States Department of Homeland Security, Washington, DC, 20258. The authorization for receipt shall in no way affect the requirements of service elsewhere provided in applicable rules and regulations.

(b) In the event any summons or complaint described in § 5.41(a) is delivered to an employee of the Department other than in the manner specified in this part, the recipient thereof shall decline to accept the proffered service and may notify the person attempting to make service of the Departmental regulations set forth herein.

(c) Except as otherwise provided §§ 5.42(d) and 5.43(c), the Department is not an authorized agent for service of process with respect to civil litigation against Department employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to Department employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon the Office of the General Counsel.

(d) Although the Department is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation, the Department recognizes that its employees should not use their official positions to evade their personal obligations and will, therefore, counsel and encourage Department employees to accept service of process in appropriate cases.

(e) Documents for which the Office of the General Counsel accepts service in

official capacity only shall be stamped "Service Accepted in Official Capacity Only". Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under applicable laws or rules.

§ 5.43 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which the Department is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the Office of the General Counsel is authorized to receive and accept subpoenas, or other demands or requests directed to the Secretary, the Department, or any component thereof, or its employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Department;

(2) Information, including testimony, affidavits, declarations, admissions, responses to interrogatories, or informal statements, relating to material contained in the files of the Department or which any Department employee acquired in the course and scope of the performance of his official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official Department duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to a Department employee other than in the manner prescribed in paragraph (a) of this section, such employee shall, after consultation with the Office of the General Counsel, decline service and direct the server of process to the Departmental regulations. If the subpoena, demand, or other request is nonetheless delivered to the employee, the employee shall immediately forward a copy of that document to the Office of the General Counsel.

(c) Except as otherwise provided in this subpart, the Department is not an

§ 5.44

agent for service, or otherwise authorized to accept on behalf of its employees, any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual Department employee to whom such demand or request is directed.

(d) Acceptance of such documents by the Office of the General Counsel does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable rules.

(e) Copies of any subpoenas, show cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, directed to former employees of the Department in connection with legal proceedings arising out of the performance of official duties shall also be served upon the Office of the General Counsel. The Department shall not, however, serve as an agent for service for the former employee, nor is the Department otherwise authorized to accept service on behalf of its former employees. If the demand involves their official duties, former employees who receive subpoenas, show cause orders, or similar compulsory process of federal or state courts should also notify in the component of the Department in which they were employed if the service involves their official duties while so employed.

(f) If the subpoena, demand, or other request is nonetheless delivered to the employee, the employee shall immediately forward a copy of that document to the Office of the General Counsel.

§ 5.44 Testimony and production of documents prohibited unless approved by appropriate Department officials.

(a) No employee, or former employee, of the Department shall, in response to a demand or request, including in connection with any litigation, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information ac-

6 CFR Ch. I (1-1-07 Edition)

quired while such person is or was an employee of the Department as part of the performance of that person's official duties or by virtue of that person's official status, unless authorized to do so by the Office of the General Counsel, or as authorized in § 5.44(b).

(b) No employee, or former employee, shall, in response to a demand or request, including in connection with any litigation, produce any document or any material acquired as part of the performance of that employee's duties or by virtue of that employee's official status, unless authorized to do so by the Office of the General Counsel or the delegates thereof, as appropriate.

§ 5.45 Procedure when testimony or production of documents is sought; general.

(a) If official information is sought, through testimony or otherwise, by a request or demand, the party seeking such release or testimony must (except as otherwise required by federal law or authorized by the Office of the General Counsel) set forth in writing, and with as much specificity as possible, the nature and relevance of the official information sought. Where documents or other materials are sought, the party should provide a description using the types of identifying information suggested in § 5.3(b). Subject to § 5.47, Department employees may only produce, disclose, release, comment upon, or testify concerning those matters which were specified in writing and properly approved by the appropriate Department official designated in § 5.44. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). The Office of the General Counsel may waive the requirement of this subsection in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, the Department may also require from the party seeking such testimony or documents a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.