Approved For Release 2006/08/31 : CIA-RDP81M00980R000200050049-2

OGC 78-6642
5 October 1978

OLC #78-5294

Guidelines

MEMORANDUM FOR: Deputy Director for Administration
Deputy Director for Science & Technology
Deputy Director for Operations
Deputy to the DCI for National Intelligence
Deputy to the DCI for Resource Management
Deputy to the DCI for Collection Tasking
Director, Equal Employment Opportunity
Director of Public Affairs
Legislative Counsel
Inspector General
Comptroller
Executive Secretary

FROM : Anthony A. Lapham
General Counsel

SUBJECT : Suits Against Agency Employees in Their Individual Capacities

1. The Department of Justice recently alerted this Office to certain special problems which may occur when Government officials are sued in their personal capacities for activities involving their official duties, and provided appropriate guidance for dealing with these matters.

> "So that your office and our office can work toward the best representation possible for these officials, this letter will highlight some recurring problems in suits of this type, and provide some guidance in this area.
>
> The most important point is that these suits need to be identified quickly."

2. This Office is asked to contact Justice immediately when officials are sued individually "so that an Assistant United States Attorney can be assigned to them straightway to ensure that the rights of any individually sued government official are protected pending action on representation requests, etc." As you may know, when CIA or CIA officials are sued in their official capacities, this Office accepts service in the name of the Agency or the official. In order to make clear to all concerned, in particular the plaintiff, that our acceptance of service is with respect to the defendant's official capacity only, we will stamp the documents by which

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we accept service with the phrase "Service Accepted in Official Capacity Only." Thus service on the individual in his personal capacity would have to be accomplished in some other way and, in some cases, might not be done at all. In this connection, Justice points out that if the summons and complaint are delivered to the employee's secretary or assistant, that is inadequate service on the employee unless he has specifically designated the secretary or assistant to accept service.

3. In order to make certain that Justice is in a position to promptly address these suits, whenever an employee in your component is sued, that is, whenever an employee is served in a suit in which his activities in his official capacity are the basis for the suit, this Office should be contacted promptly with full details including, of course, the date of service on the employee/defendant, the name of the court, etc. We will advise Justice immediately and we will consult with the defendant concerning possible representation to be supplied by the Department of Justice and other pertinent aspects.

STATINTL

Anthony A. Lapham

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