Attorney Personnel

References: Refer to Enclosure 1.

1. PURPOSE. This DLA Instruction prescribes policies and processes for handling attorney personnel matters. It sets forth standards, requirements, guidance, processes and policies for attorney recruitment and appointment, attorney supervision, attorney performance, training and professional development, personnel actions including promotions, within-grade increases, transfers, reassignments and details, attorney conduct, and attorney grievances and disputes. Outputs of this process include attorneys who are:
   - Highly qualified and dedicated.
   - Well trained and educated.
   - Promoted on the basis of merit.
   - Professional, responsible and ethical.
   - Assets to DLA and the DLA Office of General Counsel (OGC).

2. APPLICABILITY. This instruction applies DLA-wide.

3. POLICY.
   a. The DLA OGC, a component of the Defense Legal Services Agency (DLSA), is operated under the general direction, authority and control of the DLSA Director and the direct supervision of the DLA General Counsel.

   b. The DLA General Counsel is appointed by the DLSA Director, in consultation with the DLA Director.

   c. The DLA General Counsel reports to the DLSA Director and is responsible for providing all legal services to DLA.

   d. Recruitment for initial appointment to attorney positions within the OGC will be undertaken on the widest scale with the highest degree of selectivity to assure the selection of the best qualified candidates.

   e. All OGC attorney vacancies at the GS-14 and GS-15 level will be announced DoD-wide, with exceptions granted by the DLA General Counsel on a case-by-case basis.
f. Recruitment efforts for vacancies to be filled with candidates outside the DLA OGC must include reasonable efforts to contact sources in a geographical area that is broad enough to reach well-qualified men and women of all racial and ethnic backgrounds.

g. Civilian attorneys, whose initial DLA OGC appointments are granted general approval by the DLA General Counsel, may thereafter be transferred or reassigned, if otherwise qualified, to other attorney positions in DLA.

h. OGC attorneys will receive professional supervision and will develop general competence in the core areas of practice within DLA, in addition to acquiring any specialized knowledge or skills their current assignment may require.

i. OGC attorneys will receive annual performance appraisals.

j. OGC attorneys will enhance their professional development with continuing legal education courses and government and non-government training at their own expense, as well as at Government expense.

k. OGC attorneys will perform their duties with the highest degree of competence, dedication and professionalism and will conduct themselves at all times with a high level of integrity, honesty and ethics.

l. OGC attorneys are responsible for maintaining a license to practice law (mandatory active Bar membership) in at least one jurisdiction and for meeting continuing legal education requirements for the Bar to which admitted. Upon request, official time may be granted to attend training to satisfy Bar membership requirements.

m. OGC attorneys are discouraged from engaging in the private practice of law. OGC attorneys will not engage in the private practice of law without the express written permission of the DLA General Counsel. This prohibition does not include self-representation or representation of counsel provided to family members.

n. To avoid conflicts of interest between official duties and private financial interests or affiliations, OGC attorneys will annually file an Office of Government Ethics (OGE) Form 450 or OGE Form 450-A, Confidential Financial Disclosure Report. OGC attorneys who are members of the Senior Executive Service (SES) will file a Standard Form 278, Public Financial Disclosure Report.

o. All personnel actions involving OGC attorneys will be made on the basis of merit and applicable rules and regulations of Office of Personnel Management (OPM).

p. The DLA General Counsel or a designated official will approve all attorney personnel actions including promotions, removals, reassignments, and details.

q. The DLA General Counsel or a designated official will approve the establishment and abolition of attorney positions.
r. The DLA General Counsel or a designated official will approve the establishment and abolition of DLA legal offices.

4. RESPONSIBILITIES. Refer to Enclosure 2.

5. PROCEDURES. Refer to Enclosure 2. Additional Information is at Enclosure 3.

6. EFFECTIVE DATE. September 24, 2004

   Director, DLA Enterprise Support
Enclosure 1

References


7. This Instruction supersedes the DLA One Book process chapter of the same title.
Enclosure 2
Procedures and Responsibilities

1. Attorney Recruitment. The DLA General Counsel will be promptly informed of all attorney vacancies. Vacancies within the DLA OGC are filled through recruitment efforts undertaken on the widest basis with the highest degree of selectivity. Attorneys are recruited from law schools, from within the DoD, from other Government agencies, from private industry and any other source that yields the best qualified candidates.

2. Attorney Appointments. All OGC appointments are approved by the DLA General Counsel or a designated approving official.

   2.1. DLA field counsel forward recommendations for the appointment of applicants to attorney positions or to law clerk trainee positions to the DLA General Counsel or a designated official for approval prior to making a commitment.

   2.2. Appointments and advance commitments may be extended to outstanding senior law students or recent law school graduates under the Honors Program pending assignment to a permanent career attorney position in the OGC. Appointments under this program will be to positions which are in addition to authorized personnel strength.

   2.3. All recommendations for appointment are forwarded to the DLA General Counsel with the following supporting documentation:

      2.3.1. A description of recruitment sources utilized.

      2.3.2. Total number of applicants considered.

      2.3.3. Detailed explanation of the factors considered in making the selection and why the proposed selectee is considered the best qualified.

      2.3.4. Rationale for non-selection of an Advance Commitment Program appointee, if applicable.

      2.3.5. Letter requesting approval of the personnel actions.

      2.3.6. SF 171, resume, application and any other documents submitted by the proposed selectee.

      2.3.7. An official transcript of the proposed selectee’s law school record, together with an official statement of relative class standing.

      2.3.8. An official certificate showing the proposed selectee has been admitted to the practice of law before the highest court of a jurisdiction in which Bar membership is held, unless the applicant is applying for a law clerk trainee position.

      2.3.9. An official statement that the proposed selectee’s fitness to practice law or conduct as an attorney has never been challenged, unless the applicant is appointed within 90 days
of admission to the practice of law or is applying for a law clerk trainee position. If either fitness or conduct has been challenged, an official statement concerning the facts and circumstances, together with any explanation which the applicant may wish to submit.

2.3.10. A statement signed by the proposed selectee acknowledging that the strict limits on the private practice of law have been explained, along with a statement of whether the selectee anticipates engaging in the private practice of law.

2.3.11. A copy of the proposed or approved position description to which the proposed selectee will be appointed.

2.3.12. Three replies or summaries of replies received from references or former employers listed on the SF 171, if submitted.

3. Requirements for Initial Appointment. To be eligible for initial appointment, applicants must have graduated in the top one-third of their class from a law school that is accredited by the American Bar Association.

3.1. For initial appointment in grades GS-9 through GS-12, applicants need not have been admitted to the Bar and may, if otherwise qualified, be hired as law clerk trainees who must be admitted to the Bar within 14 months from the date of appointment or be separated. For initial appointment in grades above GS-12, applicants must be members of the Bar.

3.2. When more than one applicant for a particular position meets the minimum requirements for appointment, the applicant who is best qualified on the basis of academic standing, relevant experience, achievement, and potential for achievement will be selected. Other factors involving effectiveness to perform the duties of the position may also be considered.

3.3. The duties to be performed are the critical factor in determining entrance level. The possession of a degree or high academic standing alone is not a sufficient basis for appointment at a higher entrance level. The minimum qualifications for initial appointment to the grade level are as follows:

3.3.1. GS-9: J.D.

3.3.2. GS-11: J.D., plus one year professional legal experience; or

J.D., plus the second professional law degree (LL.M), provided the LL.M. degree required at least one full academic year of graduate study; or

J.D. and the applicant’s record shows superior law student work or activities such as academic excellence in law school, work or achievement of significance on the law school’s official law review or in moot court activities, or significant legal clerk or legal aid program experience.

3.3.3. GS-12: J.D., plus two years professional legal experience (at least one of which is equivalent to the GS-11 level); or
J.D. plus LL.M. degree plus one year of professional legal experience equivalent to the GS-11 level; or

In unusual cases, applicants without professional legal experience may be appointed at the GS-12 level, provided that individual has demonstrated superior academic achievement and has advanced educational attainments substantially beyond those required for work at the GS-11 level, which clearly indicate ability to perform work of the type to be assigned. The essential point in such cases is to assure that the individual’s education enables him/her to perform complex legal work characteristic of the GS-12 level and to operate with the degree of independence and responsibility typical of that level.

3.3.4. Above GS-12: Initial appointments to positions of above GS-12 require admission to the Bar and such professional legal experience in excess of two years as is commensurate with the duties and responsibilities of the position to be assumed.

4. Attorney Supervision. All OGC attorneys receive professional supervision.

4.1. The General Counsel, DLA, provides professional supervision to the Chief Counsel of DLA’s field activities.

4.2. The Chief Counsel provide professional supervision to subordinate field attorneys and temporary appointees within the OGC.

5. Attorney Performance Appraisal. All OGC attorneys receive annual performance appraisals with advice, guidance or instruction as needed.

5.1. The General Counsel, DLA, appraises the performance of DLA field counsel and DLA supervisory attorneys appraise the performance of subordinate attorneys based upon internally developed performance standards and critical elements.

5.2. Performance appraisals are used to provide attorneys with information on their performance and how it may be improved, and serves as a basis for decisions to:

5.2.1. Grant performance and other awards.

5.2.2. Grant or withhold within-grade increases and quality step increases.

5.2.3. Grant pay adjustments and other compensation.

5.2.4. Reassign.

5.2.5. Promote.

5.2.6. Train.

5.2.7. Retain in a Reduction-In-Force.
5.2.8. Reduce in grade.

5.2.9. Remove.

5.3. A narrative discussion describing the overall performance of the attorney, potential for advancement, and areas in need of further development is required. A separate factual narrative is required for any critical elements rated at the Minimally Acceptable or Unacceptable levels. In addition, an Individual Development Plan (IDP) for the attorney will be prepared to accompany the evaluation.

5.4. The critical elements used to appraise the performance of OGC attorneys at the GS-9 through GS-12 levels are: Communications, Issue Identification, Work Relationships and Productivity.

5.5. The critical elements used to appraise the performance of OGC attorneys at the GS-13 level are: Productivity, Work Relationships, Legal Advice and Counsel, Representation and Special Projects.

5.6. The critical elements used to appraise the performance of OGC attorneys at the GS-14 level are: Work Relationships, Productivity, Legal Advice and Counsel and Advocacy.

5.7. The critical elements used to appraise the performance of OGC attorneys at the GS-15 level vary with the nature of the position held by the GS-15 attorney and the duties required for the performance of tasks related to that particular position.

6. Disputes. An attorney who is dissatisfied with the performance rating shall immediately seek to resolve those disagreements informally with the appraising supervisor. If no solution is reached, the attorney will have five working days from the initial receipt of the performance rating to submit a written response to the approving official. The response should specifically identify each point in disagreement and state at what level each disputed critical element should be appraised. The response should state as fully as possible the basis for the belief that the rating is incorrect and provide all available facts and evidence to support the grievance. Upon receipt of a written grievance, the approving official has five working days to provide a written reply to the employee which addresses each of the specific points raised. Any change to the appraisal found appropriate must be made promptly, and the employee notified. The decision of the reviewing official shall be final and is not subject to further appeal within the DLA OGC.

7. Within-Grade Increases (WGI). A decision to withhold a WGI based upon a negative determination must be concurred in by the DLA General Counsel. Requests for reconsideration of the negative determination requires the following:

7.1. Submission of a request by the attorney in writing to the appraising supervisor within 15 calendar days of receipt of the notice of negative determination.

7.1.1. The request must set forth the reasons why the negative determination should be reconsidered. The 15-day time limit to request reconsideration may be extended when the record shows that the attorney was not notified of the time limit, or circumstances beyond
the control of the attorney prevented the submission of the request for reconsideration within the time limit.

7.1.2. When an attorney files a request for reconsideration, a reconsideration file shall be established within the local counsel’s office. This file will contain all pertinent documents relative to the negative determination, to include the written negative determination and the basis for the determination; the attorney’s written request for reconsideration; a written summary of any personal presentation made; and the decision on the reconsideration request. The decision shall identify specifically the reasons for the conclusion. This file will not contain any document or information that has not been made available to the attorney or his/her personal representative.

7.1.3. An attorney in a duty status will be granted a reasonable amount of official time to review the material supporting the negative determination and to prepare a response to the determination.

7.1.4. A written final decision on the request for reconsideration will be provided to the attorney within 15 calendar days of receipt of the reconsideration request and will be reviewed by the DLA General Counsel or the Deputy General Counsel. If the decision sustains the original negative determination, the final decision notice will inform the employee of the reasons for the decision and of the right to appeal.

7.1.5. If the negative determination is overturned, the effective date of the WGI will be the original due date.

8. Approval of Promotions. Each proposed promotion of a DLA field attorney is submitted to the DLA General Counsel for approval or to a designated approving official.

8.1. For promotions up to and including GS-13, requests for approval include a copy of the position description to which the attorney is proposed to be promoted, a copy of the attorney’s most recent approved performance rating of record, and a statement as to the attorney’s prospective ability to perform the duties of the new position. Promotion depends on individual performance and on the individual demonstrating through actual performance, the competence to perform professional assignments involving the complexity and level of difficulty for the next higher grade up to the GS-13 level. A minimum of one year in grade is a prerequisite to promotion. This requirement may be waived only when an attorney, who was hired at a level lower than that for which qualified, demonstrates during the first year that performance at a higher level is characteristic of actual on-the-job performance.

8.2. For promotions to grades GS-14 and GS-15, in addition to the information required for promotions up to and including GS-13, the request for approval also includes identification of all applicants for the position with a copy of each application, a brief narrative of each applicant’s qualifications, a thorough discussion of the basis for the selection which includes, as a minimum, evidence of consideration of EEO policies, past performance, continuing legal education, supervisors’ views of the applicant’s potential, the variety of assignments and diversity of experience in the DLA OGC which demonstrates potential for continued professional growth, and identifies the strengths that makes the selected candidate the best choice for the position.
8.3. The DLA Attorney Personnel Committee which is comprised of GS-15 and SES attorneys within the OGC, evaluates the ability of the attorney to perform the duties of the position, the quality of performance of prior duties and any other relevant experience and factors.

9. Attorney Personnel Actions. The DLA General Counsel or a designated official provides approval for all attorney transfers, reassignments, and details of attorneys with limited approval and details of attorneys to a higher graded position for more than 30 days. Requests for approval include a copy of the position description to which the attorney is proposed for transfer, reassignment or detail. The DLA General Counsel may also remove for cause, or reassign the field counsel after consulting with the Head of the field activity concerned.

10. Training. Each OGC attorney receives training within and outside of the OGC, based upon an IDP prepared and designed to enhance the attorney’s professional career development. OGC attorneys take continuing legal education courses and related training.

11. Financial Disclosure. All OGC attorneys at the GS-15 level and below, file an OGE Form 450 or Form 450-A, Confidential Financial Disclosure Report, on an annual basis with their respective Office of Counsel. All OGC attorneys at the SES level, file an OGE Form 278, Public Financial Disclosure Report, on an annual basis.

12. Attorney Position Classification. The DLA General Counsel or a designated official provides approval for new or revised attorney position descriptions forwarded by the servicing Human Resources Office to the OGC for review. The DLA General Counsel or a designated official approves the establishment and abolishment of attorney positions within DLA.

13. DLA Legal Offices. The General Counsel, DLA, or a designated official approves the establishment and abolishment of DLA legal offices.
Enclosure 3
Additional Information

1. DLA OGC recruitment process inputs:
   
   1.1. Applications for attorney positions submitted in response to OGC job opportunity announcements, including resumes, Standard Form 171s, and any other documents submitted with the application.
   
   1.2. Statement of Attorney Qualifications and recommendations from DLA field counsel for appointments to attorney or law clerk trainee positions.
   
   1.3. Supervising attorneys’ evaluations and assessments of attorney performance based on internally developed performance standards and critical elements.
   
   1.4. Identification of continuing legal education courses and related training for attorney professional development and career enhancement.
   
   1.5. OGC chief counsel recommendations to the DLA General Counsel for attorney promotions and removal.
   
   1.6. Requests to the DLA General Counsel for approval of attorney transfers, reassignments and details.
   
   1.7. Completed Standard Form 450s, 450-As and 278s, Financial Disclosure.

2. Subprocesses

   2.1. The DLA General Counsel provides professional supervision, direction, and control for all attorney personnel actions within the DLA OGC.
      
   2.1.1. The DLA General Counsel or his/her designee approves all attorney personnel actions, including but not limited to appointments, promotions, transfers, reassignments, and details for more than 30 days to a higher grade job.
   
   2.1.2. The DLA General Counsel or his/her designee reviews, adjusts as necessary, and approves each attorney’s performance appraisal.
   
   2.1.3. The DLA General Counsel or his/her designee approves the final selection, transfer and permanent assignment of law school students and law school graduates under the OGC Honors Program.
   
   2.1.4. The DLA General Counsel approves the establishment and abolishment of DLA legal offices.
   
   2.1.5. The DLA General Counsel approves the establishment and abolishment of attorney positions.
2.2. OGC chief counsel work under the direct professional supervision of the DLA General Counsel.

2.2.1. OGC chief counsel supervise attorneys assigned to DLA field activities.

2.2.2. OGC chief counsel recruit and initially select attorneys to fill vacancies in their respective offices and in any subordinate offices.

2.2.3. OGC chief counsel obtain the necessary approvals for proposed attorney personnel actions and performance appraisals.

2.2.4. OGC chief counsel develop and conduct a program for the recruitment, orientation, and training of individuals selected under the OGC Advance Commitment Program.

2.2.5. OGC chief counsel furnish the DLA Headquarters (HQ) OGC with a copy of each SF 50, Notification of Personnel Action, relating to attorneys or law clerk trainees in their activity.

2.3. OGC supervisory attorneys are responsible for appraising the performance of the attorneys they supervise.

2.3.1. With the assistance of subordinate attorneys, OGC supervisory attorneys establish job-related performance standards for locally developed critical elements. The standards are written to reflect levels of performance that are fully successful and minimally acceptable.

2.3.2. OGC supervisory attorneys communicate to each attorney under their supervision, the critical elements of the attorney’s position and the written performance standards against which performance in each element will be measured.

2.3.3. OGC supervisory attorneys keep subordinate attorneys informed of how they are measuring up to performance standards.

2.3.4. OGC supervisory attorneys appraise the performance of subordinate attorneys on a continuing basis.

2.3.5. OGC supervisory attorneys give guidance and assistance to subordinate attorneys, helping them to progress according to their abilities or help them to improve, if their performance is below par.

2.3.6. OGC supervisory attorneys provide a periodic performance appraisal to subordinate attorneys on a timely basis.
2.3.7. Upon request, OGC supervisory attorneys provide clarification of any element or performance standard used to appraise the performance of subordinate attorneys.

2.4. The DLA Attorney Personnel Committee consists of DLA OGC attorneys at the GS-15 and SES levels and operates under the direct supervision of the DLA General Counsel.

2.4.1. The Attorney Personnel Committee reviews the qualifications of candidates proposed for appointments and promotions and makes recommendations regarding such appointments and promotions to the DLA General Counsel. The Committee’s consideration includes an evaluation of the ability of the attorney to perform the duties of the position, the quality of performance of prior duties, and any other relevant experience and factors.

2.4.2. The Attorney Personnel Committee reviews attorney grievances and recommends dispositions to the DLA General Counsel.

2.4.3. The Attorney Personnel Committee provides advice to the DLA General Counsel on attorney personnel policy.

3 Process Mechanisms

3.1. Personnel:

3.1.1. General Counsel.

3.1.2. Deputy General Counsel.

3.1.3. Associate General Counsels.

3.1.4. Chief Counsels.

3.1.5. Associate Counsels.

3.1.6. Assistant Counsels.

3.1.7. Paralegals and legal assistants.

3.1.8. Administrative assistants.

3.1.9. Attorney Personnel Committee.

3.1.10. Senior law students and recent law school graduates.

3.2. Resources and tools.

3.2.1. Telephones.
3.2.2. Photocopy machines.

3.2.3. Facsimile transmission machines.

3.2.4. Scanners.

3.2.5. Personal computers with standard office automation software applications and tools.

3.2.6. Knowledge management technologies, including document management, collaboration, and portal technology.

3.2.7. Standard telecommunication technologies, including access to the Internet and the World Wide Web.

3.2.8. Specialized legal research databases (subscription services) that provide electronic access to legal authorities.

3.2.9. Legal authorities (access to authorities whether in book, periodical, printed or electronic form).

4. Definitions

4.1. Appraising Supervisor. The individual responsible for informing attorneys of the critical elements of their positions, developing appropriate performance standards for those elements, appraising performance, and assigning a performance appraisal for each individual element. The DLA Deputy General Counsel, or a designee, performs this function for the DLA Chief Counsel and Associate General Counsel. For all other attorneys, this function is performed by the attorney’s immediate supervisor.

4.2. Approving Official. The DLA General Counsel or his/her designee is the approving official for all performance appraisals, and will review, adjust individual element appraisals in appropriate cases, and approve performance appraisals. The DLA General Counsel or designee performs this function for all attorneys above GS-13. For all GS-9 through GS-13 attorneys, this function is performed by the DLA Chief Counsel.

4.3. Critical Element. A component of a position consisting of one or more duties and responsibilities which contribute toward accomplishing organizational goals and objectives, and which is of such importance that unacceptable performance on the element would result in unacceptable performance in that position.

4.4. DLA Attorney Personnel Committee. The DLA Attorney Personnel Committee is comprised of the DLA General Counsel, Deputy General Counsel and such associate and field counsel as the DLA General Counsel may designate from time to time. In actions involving field attorneys, the DLA Attorney Personnel Committee is the qualifying authority for the evaluation of the qualifications of persons recommended for
appointment or promotion. The DLA Attorney Personnel Committee also approves or disapproves such actions.

4.5. General Approval. Attorneys who are granted general approval may thereafter be transferred or reassigned to any other attorney position at the grade for which approved without any further action by the DLA Attorney Personnel Committee.

4.6. Individual Element Rating. The official written evaluation of the attorney’s performance which is made annually in compliance with provisions of this regulation for each critical element of the position. The appraisal assigned on each individual element may be unacceptable, minimally acceptable or fully successful.

4.6.1. Unacceptable. Performance which substantially and consistently fails to meet the applicable fully successful performance standard.

4.6.2. Minimally Acceptable. Performance in which important aspects of work are deficient and improvement is necessary for the attorney to achieve the applicable fully successful performance standard.

4.6.3. Fully Successful. The performance level necessary for the attorney to function adequately, fulfill the duties and responsibilities for the position, and properly contribute to meeting organizational goals.

4.7. Limited Approval. Attorneys who are granted limited approval are approved only for the specific position for which approval has been granted.


4.10. Performance Standard. The expressed measure of level of performance for the duties and responsibilities for a position or group of positions, which may include but is not limited to such elements as quantity, quality, timeliness, and manner of performance.

4.11. Rating of Record. The summary rating, required at the end of the appraisal period, or in other special circumstances, including written notice at any time that an attorney’s performance is unacceptable in one or more critical elements.

4.12. Supervisory Remedial Measures. These include but are not limited to additional training, formal counseling, or written admonitions.

5. Competencies / Certifications

5.1. Agency attorneys must possess the requisite education, certification, experience, and training required for employment with the OGC.
5.2. Agency attorneys must be currently licensed and active members in good standing of a state or the District of Columbia attorney licensing authority. Most licensing jurisdictions require members to meet mandatory annual continuing legal education requirements to maintain licensing. Agency attorneys must comply with all such training requirements. In addition to meeting established educational requirements for maintaining licensing, all Agency lawyers must stay current in their respective substantive areas of expertise and obtain appropriate training in the substantive areas of the law to which they are assigned. Legal training must be planned and budgeted for this process to be successful.