

Office Memorandum • UNITED STATES GOVERNMENT

TO : All Section Chiefs

DATE: January 11, 1968

FROM : Clyde O. Martz
Assistant Attorney General

SUBJECT: Proposed changes in Division organization and practices

Attached is a memorandum concerning proposed changes in Division organization and practices. There will be a meeting in my office at 8:30 a.m., Tuesday, January 16, 1968, to discuss these matters. Please invite the Assistant Section Chiefs whom you wish to have present to attend with you.

The agenda for the meeting will be as follows:

8:30, Tuesday, January 16, 1968

1. Administrative objectives of the Division.
2. Proposed organizational changes.
3. Outline of recruiting program.
4. Report on adjustments in current budget and implementation thereof.
5. Schedule for staff conferences.

10:00 adjournment

Attachment

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : All Section Chiefs

DATE: Jan. 11, 1968

FROM : Clyde O. Martz
Assistant Attorney General
Land and Natural Resources Division

SUBJECT: Proposed Changes in Administration.

As principal administrative officer of this Division, I have a pervading desire to eliminate unnecessary administrative detail, to delegate maximum authority to the lawyers engaged in our trial and appellate business under reasonable supervision of their section chiefs, and to create a working climate that facilitates training, cross-fertilization of ideas, and maximum utilization of our diverse manpower competence. It is my hope that all of us will work vigorously for the attainment of certain goals that are widely hailed by United States Attorneys, agency lawyers, and division personnel with whom I have visited, namely (i) the expeditious determination of assigned causes where necessary to protect the government interests on the one hand and the constitutional rights of its citizens on the other, (ii) the vesting of United States Attorneys and our division lawyers with the challenges and responsibilities that befit their professional status, and (iii) the development of rational rules of law that respect the rights of both government and citizen in the public resources and land acquisitions of the United States under the United States Constitution and applicable statutes.

As a starting point, Glen Taylor and I respectfully suggest the following changes in division administration to achieve the stated objectives, and invite your comments on the effect they will have upon the work of your respective sections. An excellent memorandum by Harold S. Harrison concerning organization of his section has been a basis for many of the suggestions herein made.

I. Expedition of Causes.

To expedite the disposition of causes in the Division with minimum pain and maximum success, we propose several changes in present administrative procedures. It is expected that you will suggest others.

A. Settlement of Cases.

I am advised by certain United States Attorneys and note from the records of this Division that substantial periods of time are often required to get decisions on settlement proposals and to provide funds to consummate settlements when made. Part of this difficulty may lie in obtaining agency approval. Some certainly lies, however, in the procedures employed for circulation of settlement authorizations for signature and approval by all interested parties.

Proposal: Promptly upon receipt of any settlement proposal by a lawyer of this Division, having the recommendation of the United States Attorney or the lawyer in charge, a standard Division form should be sent to the interested agency (if agency consent or recommendation has not theretofore been received), to the Appraisal Section of this Division (in condemnation matters), and to the Section Chief. The form would advise the addressees of the terms of the offer, request their recommendations within a specified period of time, and permit three alternative responses: (1) recommendation of approval, (2) recommendation of rejection, or (3) request for a conference to discuss the offer.

In condemnation matters, when settlement is approved by the agency and appropriate division attorneys, the assigned attorney from this Division shall assume responsibility for getting funds disbursed by the acquiring agency to consummate the settlement, except where this responsibility is assumed by the Section Chief or his assistant, and will advise the Assistant Attorney General or the First Assistant of any significant delay in payment.

B. Review of Correspondence and Pleadings

There must be a system of useful review that will assure consistency of action within the Division and excellence of performance. But review should never be required before action is initiated by the responsible attorney where the same is not necessary for these purposes. Under present procedures, each Section Chief reviews and signs all correspondence originating in his Section, without regard to the nature of the correspondence or the character of the case to which it relates. The result is that much of the Section Chief's time may be spent in reviewing routine matters; and the initiating attorney is denied the freedom of expeditious, independent, and professional action in the case. Under the present system it appears that even the more experienced attorneys have not been allowed to exercise their discretion responsibly with respect to even routine matters.

Proposal: (1) Upon receipt of any litigation matter by this Division, it will be classified by the Section Chief, subject to review by the First Assistant, in one of three categories: Type A - cases of a routine nature, not involving novel questions of law, complex fact situations or claimed compensation in excess of \$50,000 (and assigned to or under supervision of an experienced trial lawyer). Type B - all Type A cases assigned to inexperienced trial lawyers and other cases involving novel questions of law, complex fact situations or claimed compensation in excess of \$50,000. Type C - Type B cases with significant policy or legal questions in which the Assistant Attorney General or the First Assistant wish to participate.

(2) The attorney to whom any matter is assigned shall have authority to sign all correspondence with United States Attorneys, witnesses, and other counsel, pertaining to trial or settlement of cases of any type and to sign and file pleadings in Type A cases, without preliminary review unless otherwise instructed by his Section Chief or Assistant Section Chief.

(3) Pleadings in Type B cases shall be approved before filing by the Section Chief or other supervising lawyer or co-counsel assigned to the case.

(4) Pleadings in Type C cases shall be approved before filing by the Assistant Attorney General or First Assistant.

(5) Copies of all correspondence in Type B and C cases shall be distributed to the Section Chief. After transmittal of such correspondence, the Section Chief shall review his copies thereof for quality and policy consistency, and shall promptly convey his questions and suggestions, if any, to the assigned lawyer. Copies of Type C correspondence shall also be sent to the Assistant Attorney General.

(6) Regardless of any delegations provided for herein, the attorney assigned to any case shall be personally responsible for consulting with his Section Chief, Assistant Chief or co-counsel on all policy or novel factual or legal questions that arise in connection with his case, and shall keep the Assistant Attorney General advised of all developments in Type C cases; and the Section Chief and Assistant Attorney General can call for reports on any case at any time.

C. Assignment of Co-counsel.

The Division should seek to utilize the unusual competence it possesses among experienced and young attorneys alike to train top trial and appellate lawyers and cause the Division to operate in the manner and with the standards of the best law firms in the country.

Proposal: For the purpose of training younger lawyers, providing trial assistance to older lawyers in significant cases and achieving on-the-spot review of work, a co-counsel or supervisory lawyer shall be assigned on all Type B and C matters, and on Type A matters for which relatively inexperienced attorneys may have primary responsibility. The co-counsel or supervising lawyer shall keep track of developments in the assigned case, be available for counsel and assistance as required and cosign pleadings and briefs. The Assistant Chief or Section Chief may, of course, act as co-counsel as desired.

II. Legislation.

To provide better coordination between the various sections concerning legislative matters and to insure better administrative control over the handling of legislative reports, primary legislative responsibility should be placed in the First Assistant's office.

Proposal: The responsibility for handling legislative matters will be transferred from the General Litigation Section to the Office of the First Assistant. A new position of Legislative Assistant for the Division will be created and the holder thereof, acting under the general supervision of the First Assistant, will be responsible for all legislative matters in the Division.

III. Excellence in Personnel.

We must strive to recruit, train, and retain competent attorneys to represent the Government in handling the work of this Division.

Proposal: We are informed that one of the chief obstacles to the recruitment and retention of competent young lawyers is the fact that we do not have a training program established that will give the younger attorneys sufficient trial experience, and the additional fact that, in some instances, the new attorney's workload is not sufficiently challenging to provide long-term interest. We know of no panacea for these problems. However, we propose to make a start in combating them by asking each of the Section Chiefs to work with us in setting up a training and assimilation program for new attorneys. A "grandfather" system, whereby inexperienced attorneys work closely with and under the supervision of the more experienced attorneys, has proven successful in private practice. We welcome your suggestions as to the desirability of adopting this technique in each of the operating sections.

It also has been suggested that there should be flexibility of attorney assignments among the Appellate Section, the General Litigation Section, and the Land Acquisition Section, to the end that the experience of individual attorneys will be broadened and manpower surplus that exists from time to time in one section may be used to meet manpower requirements in other sections. Such assignments can be effected at any time between Section Chiefs or worked out by the First Assistant at staff meetings as required.

IV. Space Allocations

Working conditions in the Main Justice Building do not appear to be particularly conducive to cooperative work, discussion of trial tactics and legal problems, and providing the lawyers with convenient and adequate secretarial support.

Proposal: The First Assistant will investigate several alternatives to achieve a better utilization of space; among these are:

(1) Partition the 9th street corridor to block through traffic, provide carpeting, lighting, heating and other office apparatus and move the secretarial pool into the corridor office to serve attorney offices opening at both sides. Section mailing and case file materials could also be put in the corridor with conference tables or work tables as required. This would free several offices for lawyer assignment, and create more of a law firm atmosphere.

(2) Same proposal, but place partitions in middle of Constitution Avenue corridor to enclose all of the corridor in Sections of this Division and devote such space to office use.

(3) Move all of Lands Division out of the Main Justice and Star Buildings and consolidate the Division on one or more floors of the Pennsylvania Avenue Building (11th and Pennsylvania Avenue) around a secretarial core.

(4) Convert the elevator lobby opposite the front office for use as a conference room or secretarial office and place lawyer or lawyers in present conference room.

I. Coordination of Functions.

Concurrently with any reduction in administrative review and increased delegations of responsibility, an efficient way must be found to keep the Assistant Attorney General advised of what is happening in the Division, to provide him with a measure of control over policy matters, and to coordinate the work and assignments of the sections under the supervision of the First Assistant.

Proposal: To this end, we propose weekly staff conferences with each operating section, except the Indian Claims Section, with which we will meet biweekly. The conferences will be held consecutively each Monday, Tuesday and Wednesday morning. Each conference will last 30 minutes, and the time limit will be rigorously adhered to, except in very unusual circumstances.

A. General Litigation Section

At the staff conference for the General Litigation Section, we will review the work load, case assignments, and progress of cases in the Section. Each conference will be attended by the Assistant Attorney General, the First Assistant, the Section Chief and his Assistants, and attorneys assigned to any matters to be discussed.

The Section Chief shall report orally on all new cases or other matters received in his section since the last conference and make recommendations concerning (1) whether the matter should be handled from Washington or through the United States Attorney, (2) the Department's position, (3) the case classification assigned or proposed, (4) the assignment of the case, (5) proposed trial tactics, if known, and (6) other relevant matters.

B. Appellate Section

At the staff conferences for the Appellate Section, in addition to the Assistant Attorney General and the First Assistant, the Section Chief of the Appellate Section should be present with the Assistant Section Chiefs. Conferences may be scheduled at such meetings or at supplemental meetings for consideration of particular cases. At such special conferences, the attorney who is to write the particular appellate brief and the trial attorney who participated in the particular lower court decision will also be present. At the regular meeting, the Section Chief will be expected to report on all matters of importance, arising since the preceding conference, that require action in the section. In particular, the Section Chief should report on all new appeals and adverse judgments, and recommendations proposed for the Solicitor General. At the conference, consideration may be given to whether we should recommend appeal, tactics on appeal, the purpose of the appeal, the ideas of the trial attorney, and the scheduling of briefs, review of briefs, and other problems that may be anticipated during the appeal.

C. Land Acquisition Section

The Section Chief, the Assistant Section Chiefs, and attorneys responsible for matters to be discussed should be present. The Section Chief should report on all new matters received and all matters concluded since the preceding conference, the status of all pending settlement proposals, and any other matters that require a policy decision or that, for other reasons, should be brought to our attention.

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At each conference, the Assistant Attorney General or First Assistant will advise Section Chiefs of particular items and reports desired with respect to each meeting and will provide section offices with budget, Attorney General or Division directives pertaining to work in their respective sections.

VI. General Observations.

1. Existing policies and procedures of the Division, not expressly modified by directives issued to implement the program herein outlined, or supplements thereto, should remain in full effect.

2. Subject to the provisions of existing policy or new directives, Section Chiefs shall have full and independent responsibility for the organization and operation of their respective sections.

3. Subject to such limitations on complement as may be imposed by the Deputy Attorney General and the state of the Division's budget, the First Assistant shall be responsible for recruiting and assigning new lawyer personnel to the sections of this Division.