

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XII and Part 1201

PART 1201-PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES, OR IN CONNECTION WITH FEDERAL OR STATE LITIGATION

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Authority: 42 USC Sec. 12501 et seq.

Sec. 1201.1 Definitions.

(a) Corporation Employee means the Chief Executive Officer of the Corporation and all employees, former employees, National Civilian Community Corps Members (hereinafter sometimes known as ``Corps Members"), and VISTA Volunteers (hereinafter sometimes also known as ``AmeriCorps*VISTA Members"), who are or were subject to the supervision, jurisdiction, or control of the Chief Executive Officer, except as the Corporation may otherwise determine in a particular case.

(b) Litigation encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature.

(c) Official Information means all information of any kind, however stored, that is in the custody and control of the Corporation, relates to information in the custody and control of the Corporation, or was acquired by individuals connected with the Corporation as part of their official status within the Corporation while such individuals are employed by, or serve on behalf of, the Corporation.

Sec. 1201.2 Scope.

- (a) This part states the procedures followed with respect to:
- (1) Service of summonses and complaints or other requests or demands directed to the Corporation or to any Corporation employee in connection with Federal or State litigation arising out of, or involving the performance of, official activities of the Corporation; and
 - (2) Oral or written disclosure, in response to subpoenas, orders, or other requests or demands from Federal or by State judicial or quasi-judicial authority, whether civil or criminal, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters of:
 - (i) Any material contained in the files of the Corporation; or
 - (ii) Any information acquired:
 - (A) When the subject of the request is currently a Corporation employee or was a Corporation employee; or
 - (B) As part of the performance of the person's duties or by virtue of the person's position.

Sec. 1201.3 Service of summonses and complaints.

- (a) Only the Corporation's General Counsel or his/her designee (hereinafter "General Counsel"), is authorized to receive and accept summonses or complaints sought to be served upon the Corporation or its employees. All such documents should be delivered or addressed to General Counsel, Corporation for National and Community Service, 1201 New York Avenue, NW., Suite 10610A, Washington, DC 20525.
- (b) In the event any summons or complaint is delivered to a Corporation Employee other than in the manner specified in this part, such attempted service shall be ineffective, and the recipient thereof shall either decline to accept the proffered service or return such document under cover of a written communication that refers the person attempting to effect service to the procedures set forth in this part.
- (c) Except as otherwise provided in Sec. 1201.4(c), the Corporation is not an authorized agent for service of process with respect to civil litigation against Corporation Employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to Corporation Employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon the General Counsel.

Sec. 1201.4 Service of subpoenas, court orders, and other demands or requests for official information or action.

- (a) Except in cases in which the Corporation is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the General Counsel is authorized to receive and accept subpoenas, or other demands or requests directed to any component of the Corporation or Corporation Employees, whether civil or criminal in nature, for:
- (1) Material, including documents, contained in the files of the Corporation;
 - (2) Information, including testimony, affidavits, declarations, admissions, response to interrogatories, or informal statements, relating to material contained in the files of the Corporation or which any Corporation employee acquired in the course and scope of the performance of official duties;

- (3) Garnishment or attachment of compensation of Corporation Employees; or
- (4) The performance or non-performance of any official Corporation duty.
- (b) In the event that any subpoena, demand, or request is sought to be delivered to a Corporation Employee other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such Corporation Employee shall, after consultation with the General Counsel, decline to accept the subpoena, and demand or request the return of it under cover of a written communication referring to the procedures prescribed in this part.
- (c) Except as otherwise provided in this part, the Corporation is not an agent for service or otherwise authorized to accept on behalf of Corporation 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 Corporation Employee to whom such demand or request is directed.
- (d) Acceptance of such documents by 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 at 28 U.S.C. Appendix, Rules 4-6 or 18 USC Appendix or other applicable rules.

Sec. 1201.5 Testimony and production of documents prohibited unless approved by appropriate Corporation officials.

- (a) Unless authorized to do so by the General Counsel, no Corporation Employee shall, in response to a demand or request in connection with any litigation, whether criminal or civil, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired:
 - (1) While such person was a Corporation Employee;
 - (2) As part of the performance of that person's official duties; or
 - (3) By virtue of that person's official status.
- (b) No Corporation Employee shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any other material acquired as part of the performance of that individual's duties or by virtue of that individual's official status, unless authorized to do so by the General Counsel.

Sec. 1201.6 Procedure when testimony or production of documents is sought.

- (a) If Official Information is sought, either through testimony or otherwise, the party seeking such information must (except as otherwise required by federal law or authorized by the General Counsel) set forth in writing with as much specificity as possible, the nature and relevance of the Official Information sought. The party must identify the record or reasonably describe it in terms of date, format, subject matter, the offices originating or receiving the record, and the names of all persons to whom the record is known to relate. Corporation Employees may produce, disclose, release, comment upon, or testify concerning only those matters that were specified in writing and properly approved by the General Counsel. The General Counsel may waive this requirement in appropriate circumstances.

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

(c) The General Counsel will notify the Corporation Employee and such other persons as circumstances may warrant of the decision regarding compliance with the request or demand.

(d) The General Counsel will consult with the Department of Justice regarding legal representation for Corporation Employees in appropriate cases.

Sec. 1201.7 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand or request for Official Information pursuant to litigation is required before the General Counsel renders a decision, the Corporation will request that either a Department of Justice attorney or a Corporation attorney designated for the purpose:

(1) Appear, if feasible, with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this part;

(3) Inform the court or other authority that the demand or request has been or is being, as the case may be, referred for the prompt consideration of the General Counsel; and

(4) Respectfully request the court or authority to stay the demand or request pending receipt of the requested instructions.

(b) In the event that an immediate demand or request for production or disclosure is made in circumstances that would preclude the proper designation or appearance of a Department of Justice or Corporation attorney on behalf of the Corporation employee, the Corporation Employee shall respectfully request the court or other authority for a reasonable stay of proceedings for the purpose of obtaining instructions from the Corporation.

Sec. 1201.8 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand or request in response to a request made pursuant to Sec. 1201.7, or if the court or other authority rules that the demand or request must be complied with irrespective of the Corporation's instructions not to produce the material or disclose the information sought, the Corporation Employee upon whom the demand or request has been made shall, if so directed by the General Counsel, respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and the regulations in this part.

Sec. 1201.9 Considerations in determining whether the Corporation will comply with a demand or request.

- (a) In deciding whether to comply with a demand or request, Corporation officials and attorneys are encouraged to consider:
- (1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;
 - (2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;
 - (3) The public interest;
 - (4) The need to conserve the time of Corporation Employees for the conduct of official business;
 - (5) The need to avoid spending the time and money of the United States for private purposes;
 - (6) The need to maintain impartiality between private litigants in cases where a government interest is not implicated;
 - (7) Whether compliance would have an adverse effect on performance by the Corporation of its mission and duties; and
 - (8) The need to avoid involving the Corporation in controversial issues not related to its mission.
- (b) Among those demands and requests in response to which compliance may not ordinarily be authorized are those when compliance would:
- (1) Violate a statute, a rule of procedure, a specific regulation, or an executive order;
 - (2) Reveal information properly classified in the interest of national security;
 - (3) Reveal confidential commercial or financial information or trade secrets without the owner's consent;
 - (4) Reveal the internal deliberative processes of the Executive Branch; or
 - (5) Potentially impede or prejudice an ongoing law enforcement investigation.

Sec. 1201.10 Prohibition on providing expert or opinion testimony.

- (a) Except as provided in this section, Corporation Employees shall not provide opinion or expert testimony based upon information that they acquired in the scope and performance of their official Corporation duties, except on behalf of the United States or a party represented by the Department of Justice.
- (b) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the General Counsel, in the exercise of discretion, may grant special, written authorization for Corporation Employees to appear and testify as expert witnesses at no expense to the United States.
- (c) If, despite the final determination of the General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a Corporation Employee such individual shall immediately inform the General Counsel of such order. If the General Counsel determines that no further legal review of or challenge to the court's order will be made, the Corporation Employee shall comply with the order. If so directed by the General Counsel, however, the individual shall respectfully decline to testify.

Sec. 1201.11 Authority.

The Corporation receives authority to change its governing regulations from the National and Community Service Act of 1990 as amended (42 U.S.C. 12501 et seq.).