

MS 774 Retention of Counsel and Payment of Expenses

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Table of Contents

- 1.0 Purpose
 - 2.0 Authorities
 - 3.0 Retention of Counsel for Defense of Volunteers
 - 3.1 Authority
 - 3.2 Limitations
 - 3.3 Exercise of Authority
 - 3.4 Emergency Retention of Counsel or Posting of Bail
 - 4.0 Legal Expenses for Volunteer Victims of Crime
 - 4.1 Authority
 - 4.2 Exercise of Authority
 - 4.3 Emergency Retention
 - 5.0 Retention of Counsel for Post
 - 5.1 Retention of Counsel for Representation before a Judicial Body
 - 5.2 Counsel Retention to Enable Post to Perform Business Efficiently
 - 5.3 Report on Retention of Counsel
 - 6.0 Retention of Particular Counsel
 - 6.1 Survey of Local Counsel
 - 6.2 Retainers
 - 6.3 Counsel Contracts
 - 6.4 Sole Source
 - 6.5 Counsel to Advise in Cases of Sexual Assault
 - 6.6 Blanket Purchase Agreements
 - 7.0 Indemnification of Volunteers Involved in Furnishing of Medical Care
 - 8.0 Legal Representation of Peace Corps Employees
 - 9.0 Indemnification by the Peace Corps
 - 10.0 Procedures
 - 11.0 Effective Date
-

1.0 Purpose

This Manual Section describes Peace Corps policy for providing legal counsel to Volunteers, Trainees, and Peace Corps posts. All references in this Manual Section to Volunteers include Trainees.

2.0 Authorities

Sections 5(l), 10(i) and 10(j) of the Peace Corps Act, 22 U.S.C. 2504(l), 2509(i) and 2509(j); 22 U.S.C. 2702(f), FAR 13.106-1, FAR 13.303; 26 U.S.C. 2698 (a).

3.0 Retention of Counsel for Defense of Volunteers

3.1 Authority

When a Volunteer has been made a party to a foreign judicial or administrative proceeding during the Volunteer's service, the Peace Corps may:

- (a) Retain counsel for the Volunteer and pay the related legal fees;
- (b) Pay court costs, bail, and other expenses incident to the Volunteer's defense, including costs relating to investigations, counsel's travel, witness fees etc., as may be approved by the Office of the General Counsel (OGC) in advance of expenditure; and
- (c) Continue to pay such expenses after the Volunteer leaves Peace Corps service.

The Peace Corps retains sole discretion to determine whether to retain counsel or to continue the services of counsel. The retention of counsel at Peace Corps posts (Posts) is governed by the Peace Corps procurement system administered by the Chief Acquisition Officer as set forth in the Overseas Contracting Handbook. The actions necessary to be taken at a Post to retain counsel are usually a collaborative process between the Country Director who normally initiates the action to select and recommend retention of a counsel, with the advance legal clearance from OGC, and the Contracting Officer who assures performance of necessary actions in the contracting process. The value of a contract to retain counsel executed at a Post must not exceed the applicable delegated contracting authority. For purposes of this Manual Section, the term Post is used to cover the respective actions and duties of the Country Director and the Contracting Officer under the Peace Corps procurement system.

A contract to retain counsel to represent a Volunteer may be terminated by the Post, after consultation with OGC, for cause or convenience of the U.S. Government.

3.2 Limitations

- (a) Expenditures are not authorized in connection with civil actions instituted by a Volunteer as a plaintiff.
- (b) The authority to retain counsel under this Section 3.0 is generally used only when a Volunteer is party to one of the following proceedings:
 - (1) Criminal proceedings; or
 - (2) Proceedings in which the accused's substantial rights might be denied; or

- (3) Proceedings which might have a significant impact on U.S. Government relations with a foreign government or on other U.S. interests, legal or otherwise.
- (c) This authority may not be used for payment of fines or damages.
- (d) A Volunteer who willfully forfeits bail will be liable to the U.S. Government for all costs assumed on the Volunteer's behalf.

3.3 Exercise of Authority

The Country Director must request advance legal clearance from OGC to hire counsel under this Section 3.0. The request and recommendation from the Country Director should be accompanied by as much of the following information as is available at that time:

- (a) The charge, or anticipated charge, against the Volunteer, the minimum and maximum penalties attached, and the circumstances surrounding the situation;
- (b) Whether the proceeding is civil, criminal, or a combination of both;
- (c) The normal sequence of events in such legal proceedings, an estimate of the probable timetable for those events, and the resolution of the proceedings;
- (d) The name, educational and professional background and qualifications of the recommended counsel, and how counsel was selected;
- (e) The estimated legal fee and the amount recommended by the Country Director, with supporting reasons if the amount recommended is excessive in light of the experience of the embassy in paying fees for similar services;
- (f) An estimate of any other legal costs incident to the legal proceedings;
- (g) Whether the Volunteer has requested counsel or approved the counsel selected, or both; and
- (h) Such other information that might be relevant to a determination whether it is in the best interest of the Peace Corps to hire counsel to represent the Volunteer.

In determining whether to give legal clearance, OGC may rely on information provided by the Country Director, the Department of State, and other U.S. Government resources.

Although the counsel fee is paid by the Peace Corps, the counsel is retained for the defense of the Volunteer. Therefore, decisions regarding the defense of the Volunteer rest with the Volunteer and such counsel. The role of the Peace Corps should be supportive, recognizing that the interests of the Volunteer and those of the Peace Corps may conflict. The Country Director, in consultation with OGC, should also ensure that Volunteers receive all those rights and privileges to which they are entitled under host country law and the Peace Corps country agreement.

3.4 Emergency Retention of Counsel or Posting of Bail

In an emergency, a Country Director may retain counsel for a Volunteer, post bail, or both, without prior authorization from OGC. However, the Country Director must promptly notify OGC of such retention of counsel and/or posting of bail and provide the information required under Section 3.3. In addition, the Country Director must provide OGC with the information required in Section 3.3 for the retention of counsel for the remainder of the proceedings beyond the emergency period.

4.0 Legal Expenses for Volunteer Victims of Crime

4.1 Authority

- (a) **Retention of Counsel for Sexual Assault Cases** - The Peace Corps is required to retain counsel for a Volunteer who is the victim of a sexual assault if requested by the Volunteer. The Peace Corps will pay counsel fees, court costs, investigation costs, and other expenses in support of a Volunteer who is, or is considering becoming, a party, complaining witness, or otherwise participating in the prosecution of a sexual assault against such Volunteer.

The Peace Corps may invoke or continue to use this authority to provide counsel to such Volunteer after the Volunteer leaves Peace Corps service. The Peace Corps retains sole discretion to determine whether to continue the services of counsel. The contract to retain counsel to represent a Volunteer may be terminated by the Post, after consultation with OGC, for cause or convenience of the U.S. Government. The reasons to terminate a contract may include, but are not limited to, the following:

- (1) The counsel is deemed ineffective;
- (2) The Volunteer does not actively participate in the matter; or
- (3) The Volunteer requests a change of counsel.

However, if the services of such counsel are terminated, the Peace Corps must retain a replacement counsel if requested by the Volunteer and the Volunteer is actively participating in the legal proceeding.

The Peace Corps is also authorized to retain and have available counsel for the purpose of explaining to a Volunteer, who is the victim of sexual assault, the available enforcement and prosecutorial options in the host country and, generally, the manner in which the host country authorities handle sexual assault cases. See MS 243 *Responding to Sexual Assault Procedures*.

- (b) **Retention of Counsel for Other Crime Cases** - The Peace Corps may retain counsel and pay counsel fees, court costs, investigation costs, and other expenses in support of a Volunteer who is a party, complaining witness, or otherwise participating in the prosecution of a crime against such Volunteer.

In deciding whether to exercise this authority, the following factors should be considered:

- (1) Whether the applicable jurisdiction requires a victim and victim's counsel to participate in the prosecution of a crime as a party or complaining witness (also known as a third party prosecution, *partie civile*, etc.), or requires private counsel in connection with the filing of a criminal complaint and/or investigation or reporting of a crime;
- (2) Whether the applicable jurisdiction permits a victim and victim's counsel to participate in the prosecution of a crime as a party or complaining witness, and such participation would be materially beneficial to the prosecution of the case; and
- (3) Whether the crime is sufficiently serious to justify use of the authority.

The Peace Corps may invoke or continue to use this authority to provide counsel to a Volunteer after the Volunteer leaves Peace Corps service. The Peace Corps retains sole discretion to determine whether to retain counsel or to continue the services of counsel. The contract to retain counsel to represent a Volunteer may be terminated by the Post, after consultation with OGC, for cause or convenience of the U.S. Government. The reasons to terminate a contract may include, but are not limited to, the following:

- (1) The costs of the counsel are excessive;
- (2) The likelihood of success appears low;
- (3) The counsel is deemed ineffective;
- (4) The Volunteer does not actively participate in the matter; or
- (5) Other good cause or reason.

4.2 Exercise of Authority

The Country Director, in consultation with the Office of Victim Advocacy and Office of Safety and Security, must request advance legal clearance from OGC to incur or pay counsel fees, court costs, and expenses for a Volunteer covered by Section 4.1. In determining whether to give legal clearance, OGC may rely on information provided by the Country Director, the Office of Victim Advocacy, the Office of Safety and Security, the Department of State, and other U.S. Government resources.

The request for advance legal clearance by the Country Director must be accompanied by as much of the following information as is available:

- (a) The reasons the Country Director believes that the seriousness of the crime or the circumstances surrounding the crime warrants the use of this authority;
- (b) Information as to whether the Volunteer victim wishes to pursue the matter;

- (c) The normal sequence of events in such legal proceedings, an estimate of the probable timetable for those events, and the resolution of the proceedings;
- (d) The name, educational and professional background and qualifications of the recommended counsel, and how the counsel was selected;
- (e) The estimated legal fee and the amount recommended by the Country Director, with supporting reasons if the amount recommended is excessive in light of the experience of the embassy in paying fees for similar services;
- (f) An estimate of any other legal costs incident to the legal proceedings;
- (g) Whether the Volunteer has requested counsel or approved the counsel selected, or both; and
- (h) Such other information that might be relevant to a determination whether it is in the best interest of the Peace Corps to hire counsel to represent the Volunteer.

However, in the case of retention of counsel for a Volunteer who is a victim of sexual assault, the request for advance legal clearance need only be accompanied by as much of the information specified in (b) through (g) above as is available.

4.3 Emergency Retention

In the event of an emergency, the Country Director may retain counsel to represent the Volunteer without advance legal clearance from OGC. However, the Country Director must promptly notify the Office of Safety and Security, OGC, and the Office of Victim Advocacy of such retention and provide the information required under section 4.2. In addition, the Country Director must provide OGC with the information required in section 4.2. for the retention of counsel for the remainder of the proceedings beyond the emergency period.

5.0 Retention of Counsel for Post

5.1 Retention of Counsel for Representation before a Judicial Body

- (a) The Department of Justice is responsible for all litigation involving the U.S. Government overseas and in the United States, and has the sole authority to represent the Peace Corps before a judicial body overseas. If service of process is made through diplomatic channels, which means through the Ministry of Foreign Affairs to the Embassy, OGC must be notified to permit it to work with the Department of Justice to defend the matter. If service of process, seeking to initiate a legal action or seeking testimony is made on a Post without having gone through the Ministry of Foreign Affairs to the Embassy, the Country Director must advise the OGC, as well as the Embassy's Management Officer in order to coordinate with the Department of State Office of the Legal Advisor to send a diplomatic note to the Ministry of Foreign Affairs explaining that the U.S. Government was not properly served. In such a circumstance, Post should not hire legal counsel and no U.S. citizen staff should make any appearance to testify on behalf of Peace Corps. It

may be necessary for Host Country National staff to appear, but the Country Director should consult with OGC regarding the matter.

- (b) Entities such as local labor courts may be considered judicial bodies, in which case proper service of process is still required, and representation will be through the Department of Justice.
- (c) Country Directors are encouraged to consult with the OGC in case of any uncertainty about whether this Section 5.0 applies.
- (d) Representation by the Department of Justice also may occur in certain circumstances when a Peace Corps employee is identified as a defendant. The Department of Justice makes a determination about whether its representation is necessary or appropriate. Country Directors must work with OGC and the Embassy in such circumstances. Generally, as in the United States, Peace Corps employees are not provided with representation for their personal affairs, but there may be occasions when it is not clear whether the legal matter is purely a personal affair. U.S. Direct Hires overseas should discuss with the Embassy their status in the country of assignment in the event of civil or criminal legal actions.

5.2 Counsel Retention to Enable Post to Perform Business Efficiently

Posts are authorized and encouraged to retain local counsel to enable them to carry out official duties effectively. For example, local counsel might be retained under this authority to advise a staff member regarding a Peace Corps lease on real property, or on the requirements of local labor laws.

5.3 Report on Retention of Counsel

The Post will immediately submit a written report to OGC concerning any retention of counsel under Section 5.2, including all the applicable information specified in Section 3.3.

6.0 Retention of Particular Counsel

6.1 Survey of Local Counsel

Country Directors, in consultation with OGC, must maintain a list of names of local counsel, who may be available to provide legal services to a Post or a Volunteer, taking into account information from the Embassy or previous Country Directors. In particular, Country Directors must include on the list the names of local counsel experienced in handling criminal proceedings and representing victims of sexual assault.

6.2 Retainers

Generally, a Post must not enter into agreements with local counsel for services on a retainer basis. In unusual circumstances, a Post may enter into such agreements with the concurrence of the Regional Director and the Chief Acquisition Officer, and legal clearance from OGC, upon receipt of a full statement of the circumstances.

6.3 Counsel Contracts

Posts should consult the Office of Acquisition and Contract Management's online Overseas Contracting Handbook for templates for hiring overseas counsel.

6.4 Sole Source

U. S. Government contracts for legal services are normally subject to competition. However, in circumstances where urgent and compelling circumstances require hiring counsel immediately, or if it is determined that there is only one source reasonably available or in order to acquire expert services for current or anticipated litigation without the delay of competition, then a written justification for a sole source contract can be drafted by Post and approved following the procedures specified in the Overseas Contracting Handbook, with a signed copy retained in the Post's contract file.

6.5 Counsel to Advise in Cases of Sexual Assault

Under MS 243 Responding to Sexual Assault, a Volunteer who has been the victim of sexual assault is entitled to an explanation of the available law enforcement and prosecutorial options. In order to provide this service, the OGC duty lawyer may need to engage counsel to provide such advice. In such a case, the OGC duty lawyer should use a micropurchase order to engage counsel, provided that the expenses for such services do not exceed \$2,500. For more information, see *MS 243 Responding to Sexual Assault Procedures*.

6.6 Blanket Purchase Agreements

In connection with the hiring of counsel for a Volunteer or a Post, pursuant to Sections 3-5, the Peace Corps may use a firm fixed-price single or multiple award Blanket Purchase Agreement (BPA) following guidance provided by OACM. A BPA is not a contract for legal services, but a pre-engagement agreement between the Peace Corps and qualified counsel that sets certain rates, terms, and conditions in advance of the need for the counsel's services. When a BPA is in place and the need for services arises, Peace Corps may expedite the execution of a contract (known as an Order). BPAs are cleared by OGC. Orders issued under a BPA for hiring of counsel under sections 3.0 or 4.0 must be approved by OGC. To the extent that information required to be provided to OGC under Sections 3.3, 4.2 and 5.3 is available in a BPA, the BPA information may be included in the relevant report or information provided to the OGC.

7.0 Indemnification of Volunteers Involved in Furnishing of Medical Care

7.1 Subject to the terms and conditions set forth below, where a Volunteer has been authorized to furnish medical care or related services as part of the Volunteer's assignment, the Peace Corps will hold such Volunteer harmless for damages for personal injury, including death, negligently caused by such Volunteer while acting within the scope of his or her Volunteer assignment as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

7.2 In the circumstances set out in paragraph 7.1, the Peace Corps will indemnify a Volunteer for:

- (a) any verdict, judgment, or other monetary award which is rendered against such Volunteer;
- (b) any amounts payable by such Volunteer under a settlement or compromise of a claim, provided that the Peace Corps has approved in writing such settlement or compromise; and
- (c) any fees and expenses of legal counsel, court costs and other expenses incident to any foreign judicial or administrative proceedings to which such Volunteer has been made a party.

7.3 A Volunteer must notify the Country Director as soon as practicable of any claim, suit or proceeding brought against the Volunteer in the circumstances set out in paragraph 7.1 or otherwise involving the furnishing of medical care or related services by the Volunteer.

7.4 As a condition of providing indemnification, the Peace Corps is entitled at any time, but not obligated, to:

- (a) conduct an investigation of a claim or potential claim; and
- (b) coordinate any submissions made by the Volunteer to, or other participation by the Volunteer in, any official investigation, examination, tribunal, inquiry or other official proceeding related to the claim held or conducted by a coroner, an overseeing professional body or industry association.

7.5 The Peace Corps is entitled at any time, but not obligated, to negotiate, on behalf of the Volunteer, the settlement of any claim for damages brought against a Volunteer in the circumstances set out in paragraph 8.1. If the Peace Corps recommends the settlement of such claim for a particular amount and such claim can be settled for that amount but the Volunteer refuses to agree to the settlement, then the Peace Corps will indemnify the Volunteer only for the recommended settlement amount and any costs and expenses referred to in paragraph 7.2(c) that have been incurred up to the date of the Volunteer's refusal to settle.

7.6 As a condition of receiving indemnification, the Volunteer shall (a) cooperate with the Peace Corps in any investigation, (b) assist the Peace Corps in negotiating settlements, conducting lawsuits, and enforcing any rights of contribution or indemnity against any person or organization that may be liable to the Volunteer with respect to a claim, (c) attend hearings and trials, (d) assist in securing and giving evidence and obtaining the attendance of witnesses and any other testimony, statement or relevant information, and (e) comply with any instructions of the Peace Corps regarding the conduct of the defense of the claim or the making of any submissions to any official investigation, examination, tribunal or other official proceeding related to the claim held or conducted by a coroner, an overseeing professional body or industry association.

7.7 The Volunteer must submit a written request for indemnification to the Office of the General Counsel (OGC). The written request for indemnification should be submitted as early as possible in the process to ensure coordination of the conduct of the claim with the Peace Corps. After reviewing the Volunteer's written request, OGC will prepare a decision memorandum for the Director with a recommendation as to whether the claim in question is covered by paragraph 7.1 and whether the Volunteer should be indemnified in accordance with paragraph 7.2. The written request for indemnification for costs and expenses referred to in paragraph 7.2(c) may be submitted in advance of the final disposition of foreign judicial or administrative proceedings.

7.8 Any payment by the Peace Corps under this manual section is contingent upon the availability of appropriated funds.

7.9 The indemnification provided to the Volunteer in paragraph 7.2 shall continue after the end of the Volunteer's service with respect to claims that arose during the period of service of the Volunteer in the circumstances set out in paragraph 7.1.

8.0 Legal Representation of Peace Corps Employees

There are circumstances where a current or former Peace Corps employee may be entitled to legal representation for civil, criminal and Congressional proceedings in which the employee is sued, subpoenaed, or charged in his or her individual capacity for actions within the scope of the employee's Peace Corps employment. The Peace Corps employee must submit a written request for legal representation to OGC.

9.0 Indemnification by the Peace Corps

Subject to the availability of funds, the Peace Corps may indemnify a Peace Corps employee (defined to include present and former Peace Corps employees) for any verdict, judgment, or other monetary award in the United States and overseas which is rendered against the employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the Peace Corps, as determined by the General Counsel. The employee must submit a written request for indemnification to the OGC. The written request for indemnification should be submitted as early as possible in the process to ensure coordination of the conduct of the claim with the Peace Corps.

10.0 Procedures

Procedures implementing this Manual Section may be adopted with the approval of OGC and the Office of Global Operations.

11.0 Effective Date

The effective date of this Manual Section is the date of issuance.