



## U.S. OFFICE OF SPECIAL COUNSEL

### Policy Statement on Personal Legal Representation at Interviews

The U.S. Office of Special Counsel (OSC) investigates complaints alleging, among other things, prohibited personnel practices and violations of the Hatch Act. OSC permits individuals to have personal legal representatives or attorneys present during OSC interviews.

#### *Personal Legal Representation of Witnesses and Subjects*

OSC typically interviews witnesses and subjects during its investigations. "Witnesses" are employees who have or may have information about the matter under investigation. OSC designates as "subjects" those agency officials or employees who are responsible for the personnel action(s) or other prohibited activity at issue in the investigation. In some instances, subjects may face disciplinary action as a result of the investigation and, as such, request legal representation during interviews. Witnesses, however, seldom request such representation.

OSC will advise individuals whether they are potential subjects in the investigation. If persons are not so notified, they may consider themselves to be witnesses. OSC also may notify the agency liaison or point of contact which employees have been identified as potential subjects. If during an interview, OSC learns information that suggests a witness has now become a potential subject, OSC will inform the witness and give him or her the opportunity to reschedule the interview.

#### *Designation of Personal Legal Representative Form Requirement*

To ensure compliance with its policies and practices, OSC requires an individual requesting legal representation during an interview to complete a *Designation of Personal Legal Representative* form. This form must be completed before OSC will permit a representative to be present at an interview. Please note that the attorney must also sign the form, indicating that he or she is serving as the individual's personal legal representative.

#### *Personal Legal Representation by Agency Counsel*

OSC recognizes that in some limited circumstances agencies may decide to allow agency counsel, in their personal capacity, to provide personal legal representation to employees at interviews. OSC will permit agency counsel to attend interviews only if, in their personal capacity, they represent the individual being interviewed, and not the agency, for purposes of the matter under investigation. If agency counsel is not personally representing the individual being interviewed, he/she is not permitted to attend the interview. Situations occasionally arise in which it is not clear in what capacity agency counsel are serving or whose interests they are representing. To protect witnesses and subjects and to prevent conflicts of interest from compromising the OSC

investigation, the *Designation of Personal Legal Representative* form contains specific language addressing those situations where individuals request to be represented by agency counsel. OSC will require the agency attorney to sign this portion of the form before OSC will permit him or her to be present during an interview. OSC recommends that agency counsel receive guidance and approval from their agency, including the Designated Agency Ethics Official, to ensure compliance with 18 U.S.C. § 205 and any other laws or state bar rules of professional conduct and appropriations principles. Agency liaisons and points of contact should not serve as the personal legal representatives of any witness or subject.

### ***The Personal Legal Representative's Role during the OSC Interview***

During OSC interviews, individuals may request advice and counsel from their personal legal representatives. An attorney may not make specious objections or otherwise interrupt an interview. After OSC has finished questioning an individual, a representative may request permission for the individual to clarify any of his or her answers. OSC has the discretion to determine whether such requests will be granted or denied.

OSC will take all necessary steps during the interview to avoid delay and disorderly, obstructionist, or contumacious conduct. If a representative engages in such conduct or refuses to comply with OSC's instructions, OSC may exclude the representative from further participation in the investigation.

### ***More Information on Personal Legal Representation***

OSC has developed an information sheet, *Your Role in an OSC Investigation*, to answer some of the questions most frequently asked by individuals who are interviewed in OSC investigations. It also explains employees' rights and responsibilities in connection with OSC investigations, including OSC's policies with respect to personal legal representation at interviews. OSC can provide a copy of *Your Role in an OSC Investigation* upon request to a witness, subject, or personal legal representative. Copies are also available on OSC's website at [www.osc.gov](http://www.osc.gov).

*Note: This policy statement supercedes all prior policy statements on personal legal representation at interviews. This statement is intended only to provide guidance to OSC staff on the circumstances under which individuals may have such representatives present, and the procedures for doing so. The statement is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against OSC or any other individual or entity.*