

**U.S. OFFICE OF SPECIAL COUNSEL**  
**Policy Statement on Personal Legal Representation at Interviews**

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The U.S. Office of Special Counsel (OSC) conducts independent and impartial investigations of complaints alleging, among other things, prohibited personnel practices and Hatch Act violations. Although legal representation is not required to participate in its investigations, OSC allows individuals to have personal legal representatives present during interviews.

**Personal Legal Representation Generally**

OSC may interview witnesses and subjects during its investigations. “Witnesses” are individuals who have or may have factual information about the matter under investigation. OSC designates as “subjects” those agency officials or employees who are allegedly 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 witnesses. OSC also may notify the agency liaison which individuals 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 the witness the opportunity to reschedule the interview. Correspondingly, a witness should inform OSC at the earliest opportunity if the witness has reason to believe that OSC should reclassify the witness as a subject based on information known to the witness.

**Designation of Personal Legal Representative Form Requirement**

Some subjects elect to obtain a personal legal representative. To ensure clarity and compliance regarding legal representation, OSC requires individuals requesting legal representation for an interview to complete and sign a *Designation of Personal Legal Representative* form. Please note that representatives must also sign the form, indicating that they are serving as the individual’s personal legal representative. This form must be submitted before OSC will permit a representative to be present at an interview.

**Personal Legal Representation by Agency Attorneys**

In limited circumstances, some subjects may request personal legal representation by agency attorneys. OSC recognizes that, although these arrangements are uncommon, some agency attorneys may receive approval from their agencies to provide personal legal representation to individuals at interviews. OSC will permit an agency attorney to appear at an interview only if the agency attorney personally represents the individual being interviewed—and not the agency—for purposes of the matter under investigation. If agency attorneys are not personally representing the individuals being interviewed, they are not permitted to attend the interviews.

Agency attorneys who were involved in the matter under investigation or who regularly defend the agency will likely be unable to lawfully or ethically provide personal legal representation to

individuals. Situations occasionally arise in which it is not clear in what capacity agency attorneys are serving or whose interests they are representing. To protect individuals' rights and prevent conflicts of interest from compromising the integrity of its investigations, OSC requires agency attorneys to sign the relevant section of its *Designation of Personal Legal Representative* form, which instructs them to obtain approval from their agency superiors, such as a supervisor or Designated Agency Ethics Official, to ensure compliance with 18 U.S.C. § 205 and other ethics laws. Agency attorneys should also ensure compliance with state bar rules of professional conduct.

To ensure OSC obtains accurate evidence in its independent investigations and to avoid the appearance of agency interference in its work, OSC asks that agency attorneys not share information learned in the course of their personal legal representation with other individuals. Agency liaisons and points of contact should not serve as the personal legal representatives of any witness or subject during OSC's investigation. Please also note that a claim of common law privilege, such as attorney-client privilege, does not prevent OSC from obtaining records and information from the individual's agency. *See* 5 U.S.C. § 1212(b)(5)(C).

### **Personal Legal Representative's Limited Role During OSC Interview**

An OSC investigative interview is not a deposition, unless so designated. During OSC interviews, personal legal representatives may not make evidentiary objections or otherwise interrupt, interfere with, or obstruct OSC's fact gathering process. After OSC has finished questioning an individual, a representative may request permission for the individual to clarify any part of their statement. OSC has the discretion to determine whether such requests will be granted or denied.

Legal representation during an OSC interview is a privilege that OSC extends voluntarily as a courtesy. OSC will take all necessary steps during the interview to avoid delay. If a legal representative engages in dilatory, disorderly, obstructionist, or contumacious conduct or refuses to comply with OSC's instructions, OSC may revoke the privilege and 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 individuals' 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.

*Note: This policy statement supersedes all prior policy statements on personal legal representation at interviews. 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. OSC reserves the right to make exceptions to this policy in exigent circumstances.*