

# Notice

CC-2003-002

December 11, 2002

Upon Incorporation  
Into CCDM

**Subject:** Legal Advice Program

**Cancel Date:**

## Purpose

The purpose of this Notice is to clarify some aspects of the Office of Chief Counsel's legal advice program as discussed in the Chief Counsel's "Roles" memo dated August 26, 2002.

## Discussion

Associate Chief Counsel offices will continue to provide legal advice to their colleagues, clients, and others as appropriate. The "Roles" memo discussed the different natures of advice that the office might issue, including, for example, memoranda providing advice on the legal background of issues and memoranda giving advice on strategy and case development. Some have read the memo as requiring a recategorization of legal advice memoranda and have requested details on new procedures that might be put in place regarding new types of advice. In implementing the direction of the "Roles" memorandum, however, no such recategorization or change in advice procedures is contemplated. Instead, the goals of the memorandum can be accomplished by the exercise of good judgment in better providing legal advice that suits the needs of the requestor.

Associate offices will continue to give legal advice regarding issues within their subject matter jurisdiction to field offices in the Division Counsel organization, other Associate offices, and the Service. What the "Roles" memo seeks to encourage is that our offices work more efficiently and faster in providing legal advice. To that end, the memo suggests that the advice process begin with an initial telephone contact between the requesting office and the responsible Associate office. It may turn out that the issue or question can be handled informally without the need for either office to prepare formal written memoranda. Such contacts will also clarify the nature and urgency of the advice being requested. In addition, the Chief Counsel believes that more advice could be handled on such an informal basis.

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When written advice is deemed appropriate, then the outgoing advice memorandum should be tailored to the requestor's needs. If there is confusion regarding the state of the law on an issue, then it may be appropriate to write a memo that discusses at some length the legal background for the issue without any need to apply the law to the specific facts of a case. On the other hand, sometimes the request for advice may regard strategy or case development issues. In such circumstances, the outgoing advice may be case specific and contain specific suggestions regarding strategy or case development without any need for any extensive recital of the applicable statutes and regulations. In some instances, the advice memorandum may contain both strategic advice and legal background discussion. Attorneys and managers need to exercise their good judgment in tailoring their response to the requestor's needs. By focusing the response more narrowly to fit the need, however, the average length of many legal advice memoranda should be reduced and the amount of time spent preparing and reviewing them should also be reduced. Associate offices should also be alert to the possibility that a request for legal advice could be more appropriately satisfied by published guidance or that a published guidance project should also be opened on an issue raised by a request for legal advice, in addition to responding to the request. Additionally, attorneys and managers should be alert to the possibility that in nondocketed cases a TAM/TEAM would be appropriate.

In preparing legal advice memoranda, attorneys and managers should consider the character of the advice given in preparing the advice memo. A memo that consists entirely of case development and strategic advice that would be subject to the attorney client or law enforcement privilege, or that is given with respect to a docketed case or in anticipation of litigation, will have little, if any, material that will be subject to public disclosure under section 6110. Such memos may be prepared without utilizing legends and other tools that facilitate redaction. A memo that contains a background discussion of the law or a description of the facts will likely have significant portions disclosed - in such cases, the memo should be prepared using the available redaction tools. All legal advice memos that fall within the scope of section 6110, whether prepared utilizing the redaction tools or not, will still be sent to the Disclosure Unit after issuance to the field for appropriate processing.

Again, Associate Chief Counsel offices should continue to provide legal advice on their subject matters, as they have always done. The content of the advice should be tailored to meet the needs of the requestor. No change in procedures or TECHMIS categories is currently contemplated for legal advice. Legal advice memoranda that are subject to the disclosure requirements of section 6110 should be prepared with that in mind.

The revised CCDM will provide further direction concerning the legal advice program consistent with the August 26, 2002, roles memo and with this document. It is anticipated that the section on legal advice will be issued as a Notice after the first of the year in anticipation of the issuance of the new CCDM.

Please forward any questions to Kathryn Zuba or George Bowden at 202-622-3400.

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/s/  
Deborah A. Butler  
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(Procedure and Administration)