**Touhy Requests (Request for an Army employee to appear in private litigation)**

**Requesting Witnesses or Documents for Private Litigation**

Under 32 CFR §§ 97.6(c), 516.40, and 516.41, the Army must authorize the appearance of its personnel or the production of official documents in private litigation. The Army cannot authorize its employees to appear absent the following:

You must request in writing the employees appearance in accordance with Department of Defense directives, 32 CFR § 97.6(c), and Army regulations, 32 CFR §§ 516.40 - 516.57. The request must include the nature of the proceeding and the nature and relevance of the official information sought. Id. § 516.41. The written request must be received no later than 14 days from the date of any intended testimony. We cannot act upon your request until we receive the required information. See for example, United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951); Schutterle v. United States, 74 F 3d 846 (8th Cir. 1996).

Please furnish this office with a written statement setting forth a detailed summary of:

1) The name of the employee you seek to testify;
2) The testimony you seek to elicit from the employees;
3) The nature of the proceedings and the relevance and importance of the testimony to the proceedings; and
4) The extent to which the testimony is available from other sources.

Please provide this written summary as soon as possible. By virtue of Touhy v. Ragen, 340 U.S. 462 (1951), the Supreme Court has recognized the authority of agency heads to restrict testimony of their subordinates.

In addition to the above requirements, each employee’s supervisor must approve their absence from duty so that their absence does not interfere with the mission. See 32 CFR § 516.50. In any event, should they be authorized to appear, you must subpoena them and pay all travel expenses, as this is purely private litigation and the witness' appearance must be at no expense to the United States. See Id. § 516.55(c).

Finally, should any of the employees appear as a witness, they may give factual testimony only. They may not testify as an opinion or expert witness. This limitation is based on Department of Defense and Army policy that generally prohibits Government employees from appearing as expert witnesses in private litigation. See Id. § 97.6 (e), § 516.49.

**Contact**

To speak with someone regarding a Touhy request, please dial (651) 290-5496 and your call will be directed to the appropriate party.