

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-207996

DATE: September 28, 1982

MATTER OF: Elmer DeRitter, Jr. -- Leave to Represent
Indigent Defendant

DIGEST:

An employee of the Veterans Administration who is licensed as an attorney in New Jersey, was involuntarily summoned to represent an indigent defendant. He may not be excused from duty since he is not entitled to court leave and may not be granted administrative leave under these circumstances. See 44 Comp. Gen. 643 (1965).

This decision is in response to an inquiry from the Newark, New Jersey, Regional Office of the Veterans Administration (VA), as to whether an employee assigned to represent an indigent defendant may be granted court leave for that purpose. We hold that an employee in this situation may not be excused on court leave or administrative leave and may be compensated by the Government only to the extent he has to his credit and requests a grant of annual leave.

The employee in question, Mr. Elmer DeRitter, Jr., is the Loan Guaranty Officer at the New Jersey VA Regional Office and is an attorney licensed to practice law in the State of New Jersey. In New Jersey, indigency assignments are selected from a list of licensed attorneys, and Mr. DeRitter was summoned to represent an indigent defendant in Municipal Court, Borough of Netcong, New Jersey, on May 8, 1982. Although both Mr. DeRitter and the Director of the Regional Office requested that he be relieved of his assignment, they were informed that this could not be done.

The statutory provisions which authorize court leave, 5 U.S.C. § 6322(a) and (b), permit a grant of court leave only when an employee serves on a jury or, in certain circumstances, acts as a witness. There is no provision for court leave when an employee is directed to serve as an attorney. Mr. DeRitter, therefore, may not be granted court leave.

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Nor may he be granted administrative leave for this purpose. In 44 Comp. Gen. 643 (1965), we held that Government attorneys involuntarily assigned to represent indigents in State or Federal courts may not have such service regarded as being in furtherance of a Federal function so as to be entitled to administrative leave, and that, in the absence of statutory authority, attorneys appointed to represent indigent defendants may not be excused for such service without a charge to annual leave or a loss of compensation.

While there is no general statutory authority under which Federal employees may be excused from their official duties on administrative leave without loss of pay or charge to leave, we have recognized that, even in the absence of a statute controlling the matter, the head of an agency may, in certain situations, excuse an employee for brief periods of time without charge to leave or loss of pay. The various purposes for which the granting of administrative leave has been recognized by the Office of Personnel Management include (1) registration and voting, (2) Civil Defense activities, (3) blood donations, and (4) weather conditions. See Federal Personnel Manual Supplement 990-2, Book 630, Subchapter 11. See also 54 Comp. Gen. 706 (1975); B-185128, December 3, 1974; and B-156287, June 26, 1974.

From the foregoing list it is apparent that a determination on the propriety of granting administrative leave in a given case is not necessarily dependent upon a finding that the particular activity concerned is in furtherance of a Federal function. All of the activities listed in the OPM guidelines, however, require only brief absences. We believe that our decisions and OPM's guidelines limit an agency's discretion to grant administrative leave to situations involving brief absences. See 54 Comp. Gen. 705 (1976).

Where the absences are for an indeterminate amount of time, a grant of administrative leave is not appropriate unless the absence is in connection with

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furthering a function of the agency. Assignments to represent indigent defendants may involve a considerable commitment of time on the part of the attorney which would be of longer duration than contemplated by the OPM guidelines. Therefore, since such assignments are not regarded as furthering a function of the agency, a grant of administrative leave would not be appropriate.

It does not appear that Mr. DeRitter is required to be an attorney in order to qualify for his position as a Loan Guaranty Officer. However, we recognize the argument that it may be unfair to force a Government attorney, who is required to be a member of a bar to qualify for his position, to use annual leave to meet this obligation of bar membership. But, the representation of indigent clients is only one of several requirements for bar membership. In most states, of course, bar membership is predicated on passing an exam, and, in many states, on pursuing continuing legal education. It would be inconsistent to grant administrative leave to allow an attorney to fulfill one such requirement, even if the time required is brief, but not the others. We have previously held that grants of administrative leave for bar preparation are not appropriate. See B-156287, February 5, 1967.

In light of the above, we hold that Mr. DeRitter may not be excused from duty to serve as an attorney for an indigent defendant by charging his absence to court leave or administrative leave.

James R. ...
Comptroller General
of the United States