

DOCUMENT RESUME

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[Review of Alleged Mismanagement of the Denver Regional Litigation Center of the Equal Employment Opportunity Commission]. FGMSD-77-64; B-167015. October 14, 1977. 2 pp. + enclosure (7 pp.).

Report to Rep. Max Baucus; by Elmer B. Staats, Comptroller General.

Issue Area: Accounting and Financial Reporting (2800).  
Contact: Financial and General Management Studies Div.  
Budget Function: Miscellaneous: Financial Management and Information Systems (1002).  
Organization Concerned: Equal Employment Opportunity Commission: Denver Regional Litigation Center.  
Congressional Relevance: Rep. Max Baucus.

A review was conducted of alleged mismanagement of employment, travel, and procurement activities in the Denver Regional Litigation Center of the Equal Employment Opportunity Commission. Findings/Conclusions: One employee was conducting private business on Government time. One of the attorneys handled private cases during normal duty hours without taking annual leave or leave without pay, and the Commission had already taken action to charge annual leave for time spent on the private cases. Although the Center had no records showing the hours the attorney spent on private cases, it probably could be determined by the attorney's personal records and court records. The Center's travel records did not support an assertion that travel funds were being misused by the Center's manager and his deputy. An allegation that the Center was not purchasing office supplies and equipment needed to carry out litigation responsibility was not supportable. (SW)

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

B-167015

OCT 24 1977

The Honorable Max Baucus  
House of Representatives

Dear Mr. Baucus:

On February 22, 1977, you asked us to review allegations made by one of your constituents of mismanagement in the Denver Regional Litigation Center of the Equal Employment Opportunity Commission. The enclosure to this letter contains the results of our review which, as agreed with your office, was limited to allegations related to the Center's employment, travel, and procurement activities.

Briefly, we substantiated the allegation that an employee was conducting private business on Government time. One of the Center's attorneys did, in fact, handle private cases during his normal duty hours. We were told that this was consistent with a verbal preemployment agreement between the employee and Commission officials, but we found no authority that permitted the attorney to handle private cases during his normal duty hours at the Center without taking annual leave or leave without pay. The Commission's General Counsel had recognized, prior to our investigation, the impropriety of the attorney's handling the private cases on Government time and had instructed the Center to charge the attorney's annual leave balance for time spent on private cases.

The Center has no records showing the number of official duty hours the attorney spent on his private cases. We believe, however, that the number of such hours could be determined by using the attorney's personal records in conjunction with court records. We are recommending that the Commission's General Counsel have these records reviewed to estimate the amount of leave to be charged and, based on the results, to adjust the attorney's leave balance accordingly. Because of the attorney's position in the Center, we are recommending that a Commission employee from outside the Center be used to make the estimate. The General Counsel agreed to follow our recommendations.

The Center's travel records did not support an assertion that travel funds were being misused by the Center's Manager and his deputy. Over a 21-month period from July

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1975 to March 1977, these two officials spent about 7 percent, around \$13,800, of the Center's travel funds. The Center's records show that their travel expenses were for trips normally considered to be official Government business. Although some litigation-related travel was delayed for 2 weeks because of fund shortages, we found no indication that trips by the Manager or his deputy prevented other Center employees from making litigation-related trips.

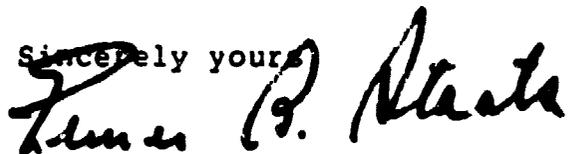
An allegation that the Center was not purchasing office supplies and equipment needed to carry out the Center's litigation responsibility was not supportable. Center officials acknowledged some past shortages of office supplies and equipment, but they attributed them to conditions beyond their control. At the time of our investigation, the Center appeared to have adequate office supplies and equipment to carry out its mission.

We are undertaking a review of the Commission to evaluate a number of financial-related activities. The review will be made at several selected Commission offices and will consider the adequacy of controls over areas related to the constituent's allegations, including such things as time and attendance reports and travel vouchers. We will send you a copy of any reports issued on the review.

As suggested by your office, we did not ask the Commission to formally comment on this report. However, we informally discussed its contents with Commission officials, and their comments are included as appropriate.

As arranged with your office, we are sending copies of this report to the Chair of the Commission and to Congresswoman Patricia Schroeder because of her expressed interest. Copies will also be available to other interested parties who request them.

Sincerely yours,



Comptroller General  
of the United States

Enclosure

SUMMARY OF GAO'S FINDINGS  
REGARDING ALLEGED MISMANAGEMENT OF  
THE DENVER REGIONAL LITIGATION CENTER,  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

BACKGROUND

The Equal Employment Opportunity Commission has responsibility to eliminate discriminatory employment practices through court proceedings whenever necessary. It has five regional litigation centers in the United States to carry out this responsibility. The litigation centers are under the Commission's General Counsel, who sets policies and issues general guidelines for them to follow.

The regional litigation center in Denver, Colorado, is authorized 66 employees, including 33 attorneys to handle litigation related to discriminatory employment practices in an 11 State area. The Center's budget for fiscal year 1977 was about \$1.5 million, primarily to cover salary, travel, and procurement expenses.

SCOPE OF REVIEW

On February 22, 1977, Congressman Max Baucus asked us to review allegations by one of his constituents of mismanagement in the Denver Litigation Center. As agreed with the Congressman's office, we limited our review to complaints related to employment, travel, and procurement activities of the Center. Our specific objectives were to establish whether:

- An attorney had retained an active private law practice and worked on cases related to the practice during normal duty hours after he was employed by the Center.
- Two management officials had misused travel funds, traveling extensively when funds were not available for travel connected with litigation proceedings.
- Adequate office equipment and supplies were available to carry out the Center's responsibilities.

The Commission's General Counsel had also reviewed the areas we reviewed to answer an inquiry from Congressman

Morris K. Udall's office. To the extent possible we used the results of that review in our work, as well as data furnished to us by the constituent who made the allegations of mismanagement.

ALLEGATION OF ATTORNEY HANDLING PRIVATE  
CASES ON GOVERNMENT TIME JUSTIFIED

The constituent claimed that one attorney retained a private law practice and worked on cases related to the practice during normal duty hours after he was employed by the Center. The attorney in question admitted to working on a number of private cases during normal duty hours after starting to work at the Center, and the Commission's General Counsel said the attorney was given permission by the Center Manager with his approval to dispose of the cases in order for the Center to hire the attorney. However, we found no authority which permitted the attorney to handle private cases during normal duty hours without taking annual leave or leave without pay.

The Center employed the attorney in question as a supervisory trial attorney on March 1, 1976. The attorney was considered to be extremely qualified for the job because of almost 10 years' experience as a trial lawyer in private practice. However, it was recognized that the courts might not allow some of the private cases he had under litigation to be transferred. This presented a possible problem because the Commission's written policy on its employees' outside employment is restrictive, requires employees to obtain advance approval to engage in outside employment, and requires employees to inform the Commission's personnel office in writing of the approval.

The Commission's General Counsel said this possible problem was resolved by a verbal agreement between the attorney and the Center's Manager allowing the attorney, after employment by the Center, to handle any cases that could not be transferred. The Commission's General Counsel said he approved the agreement but did not stipulate that the private cases could not be handled on Government time, assuming this was understood by the parties to the agreement.

The attorney retained about 75 private cases when he was employed by the Center in March 1976. He said that all but 12 of the cases had been resolved as of June 1, 1977. According to the attorney, he worked on the cases after the Center's normal duty hours or on weekends except in cases where his presence was required in court during normal duty hours. He said that he had appeared in court during the

Center's normal duty hours on 44 of the private cases he retained.

Prior to March 1977 the attorney did not take annual leave or leave without pay for court appearances during the Center's normal duty hours. The Federal Personnel Manual contains no provision allowing excused absences to employees to conduct private business affairs. However, the Commission's General Counsel issued a memorandum in March 1976, saying the Commission's policy on outside employment specifically prohibits its attorneys from doing any work other than official business during normal duty hours.

In a March 3, 1977, letter to Congressman Morris Udall, the General Counsel said the attorney was improperly given administrative leave to cover the normal duty hours spent on private cases. He also said that the Center would be instructed to charge the individual annual leave for the amount of administrative leave improperly authorized.

The Center may encounter problems in determining the number of hours to charge against the attorney's annual leave account. Although the General Counsel said in his letter to Congressman Udall that administrative leave was given to handle the private cases, the Center did not have any records showing the amount of Government time the attorney spent on them. Also, the constituent did not have any records that could be used as a basis for a reasonable estimate. Using his own records, the attorney estimated that he spent a total of 73 hours of official duty time on the cases. But that estimate may be substantially understated. For example:

- The attorney's estimate omitted court appearances during normal duty hours for two of three cases we reviewed. The attorney acknowledged the omission and raised his estimate by 11 hours, to 84 hours, to cover court appearances related to the 2 cases.
- The attorney's estimate did not include time related to a case on which a day long jury deliberation was described in a news article of December 7, 1976. The attorney's estimate was not adjusted to include the normal duty hours he spent on that case.

The attorney said he had to rely on informal records for his estimate since he had no billing records showing the amount of official duty time he spent on the private cases. He said his calendar showing the dates of court appearances related to the cases was stolen. We found, however, that the dates of his court appearances could be established by using

records of the Denver District Court, but those records did not provide data needed to estimate the hours related to each court appearance.

In the absence of records showing the amount of Government time the attorney spent on the private cases, the Commission should estimate the hours to be charged against his leave balance. The attorney's position in the Center dictates the use of an employee from another Commission activity to make the estimate. We therefore recommend that the Commission's General Counsel:

- Use a Commission employee from outside the Center to estimate the hours that should be charged to the attorney's leave balance.
- Make sure the appropriate adjustment is made to the attorney's leave balance within a reasonable time.

ALLEGATION OF TRAVEL FUNDS  
MISUSE NOT JUSTIFIED

The constituent contended that, because the Center's Manager and his deputy traveled extensively to management conferences and conventions, funds were not available for attorneys and clerical assistants for litigation-related travel. The constituent could not provide records or specifics supporting the contention and, as discussed below, we found no evidence that trips by the Manager or his deputy kept other Center employees from traveling as necessary to litigate cases assigned to them.

The Denver Center has litigation responsibility over a rather large geographical area, including the States of Arkansas and Louisiana. During the 21-month period from July 1975 to March 1977, the Center received \$193,000 to cover travel expenses and spent \$186,500 of that amount. For the same period, the Center's records show about 7 percent of its travel expense, about \$13,800, was incurred by the two management officials alleged to be traveling extensively. Our analysis of the \$13,800 showed that travel expenditures were for trips normally considered to be official Government business. More specifically,

- about \$9,000 was for travel to conferences and internal management meetings;
- about \$2,600 was for travel connected with litigation, the primary responsibility of the Center;

--about \$1,700 was for travel connected with training; and

--about \$500 was related to speaking engagements.

We identified only one request for litigation-related travel that was denied. The request was for three Center employees to travel to another city to interview a consultant about services he could provide. According to a Center official, the consultant was brought to Denver and interviewed, an approach much less costly than allowing three Center employees to travel.

Center officials said that fund shortages had required some litigation-related travel to be delayed about 2 weeks, especially near the end of each quarter of the fiscal year, and to be rescheduled for the next quarter. They also said that travel delays had no direct negative effects on litigated cases, except for the possible loss of the Center attorneys' initiative in handling litigation cases. According to the Center's administrative officer and selected trial attorneys we interviewed, travel related to court ordered appearances was always accomplished.

**ALLEGATION OF OFFICE SUPPLIES AND EQUIPMENT SHORTAGES FROM MISMANAGEMENT NOT SUBSTANTIATED**

The constituent indicated that the Center did not have adequate supplies and equipment to carry out its litigation activities. Although Center officials acknowledged some past shortages in equipment and supplies had occurred, we found no evidence of the Center's responsibility being adversely affected or of shortages being caused by mismanagement. Moreover, at the time of our review, sufficient equipment and supplies appeared to be available to carry out the Center's litigation activities.

The constituent alleged shortages of office supplies and equipment to demonstrate his contention that the Center was being mismanaged. Specifically, he said typewriters and calculators were not available; file cabinets were in such short supply that case files had to be stacked in every corridor; chairs were not available for attorneys to sit on; and writing pads and supplies had to be purchased with personal funds. The constituent could not provide us with official records demonstrating that these conditions had existed.

Center officials acknowledged some past shortages of office supplies and equipment. They said the shortages

were due primarily to either purchase delays to stay within internal budget ceilings or inadequate stocks in General Services Administration stores. They also said some past shortages of typewriters had existed because a service contractor had not completed repair work promptly. But according to the officials, this condition was corrected by requiring the service contractor to provide typewriters to replace those undergoing repairs.

At the time of our review, the Center appeared to have adequate supplies and equipment to carry out its mission. The Center was planning to obtain additional file cabinets for the completed litigation cases that were stacked in a corridor. However, we believe the need for the additional cabinets is questionable because the Center was using only 75 percent of the space in its existing file cabinets. The Commission's General Counsel was aware of the inefficient use of file cabinets and has asked Center officials to make a study of file space requirements. The study had not been started at the completion of our review.

#### CONCLUSIONS AND AGENCY'S COMMENTS

The constituent's allegations dealt with three major functions of the Commission's Denver Litigation Center. Our review did not confirm the allegation of mismanagement of the Center's travel and procurement activities, but did confirm the allegation that an attorney had handled civil cases during official duty hours after he was employed by the Center. We see no reason to suspect widespread employment irregularities because of this one instance.

The Commission's policy on outside employment is consistent with that outlined in the Federal Personnel Manual. It specifically prohibits attorneys from doing any work other than official Government business during normal duty hours. The General Counsel's approval of the preemployment agreement suggests the policy is enforced unless it is waived by higher authority.

In approving the preemployment agreement which was made verbally the Commission's General Counsel should have emphasized that annual leave or leave without pay would have to be taken when private cases were handled during normal duty hours. The General Counsel has acknowledged the impropriety of handling the private cases on Government time by instructing the Center to reduce the attorney's annual leave balance by the number of official duty hours spent on the private cases.

We discussed the information in this report, including our conclusions and proposed corrective actions, with the Commission's General Council and Center officials. They acknowledged the need to resolve the issue related to the attorney and said that the corrective actions we recommended would be taken, including the use of a Commission employee from outside the Center to make the estimate necessary to resolve the issue.