



U.S. Department of Justice

Washington, D.C. 20530

February 24, 2006

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM:

for Paul R. Corts
Assistant Attorney General
for Administration

Michael H. Allen

SUBJECT: Delegation of Certain Personnel Authorities to the Chief of Staff to the Attorney General and the White House Liaison to the Department of Justice

PURPOSE: To obtain the Attorney General's approval of an order delegating certain reserved personnel authorities to his Chief of Staff and to the White House Liaison.

TIMETABLE: As soon as possible.

SYNOPSIS: The attached delegation would authorize the Chief of Staff to the Attorney General and the White House Liaison to exercise personnel administration authority reserved to the Attorney General in 28 C.F.R §§ 0.15(h) and 0.19(d).

DISCUSSION: On January 31, 2006, the Attorney General approved amendments to the Department's organizational regulations reserving certain personnel administration authorities to him. These regulations were published in the *Federal Register* on February 7, 2006. Under the new regulations, final authority is reserved to the Attorney General in matters pertaining the appointment, employment, pay, separation, and general administration of the following Department employees:

- (1) employees in the Offices of the Attorney General, the Deputy Attorney General, and the Associate Attorney General;
- (2) employees in the Department of Justice appointed to a Schedule C position established under 5 C.F.R. Part 213, or to a position which meets the same criteria as a Schedule C position; and
- (3) Any Senior Executive Service position in the Department of Justice in which the incumbent serves under other than a career appointment.

28 C.F.R §§ 0.15(h) and 0.19(d).

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In order to implement these new regulations, the Attorney General's staff requested that I prepare a delegation from the Attorney General to the Chief of Staff and the White House Liaison (the "delegates") to exercise these personnel administration authorities newly reserved to the Attorney General. It is important for the delegates to obtain the Attorney General's imprimatur for all appointments or removals of constitutionally "inferior officers" made under authority of this delegation, however.

The Excepting Clause of the Constitution provides that "Congress may by law vest the appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." U.S. Const. art. II, § 2, cl. 2. The Office of Legal Counsel (OLC) advises that permitting the Attorney General's delegates to approve appointments (or removals) of constitutionally "inferior officers," which may include some appointed offices such as U.S. Trustees and certain Deputy Assistant Attorneys General, would be inconsistent with this Clause. OLC recommends that the delegates exercising the authority of this delegation submit appointments or removals to the Attorney General (individually or in groups) and that each appointment or removal be made in the Attorney General's name (whether the document evidencing the appointment be signed by the Attorney General or a delegate). *See Memorandum for Jennifer G. Newstead, General Counsel, Office of Management and Budget, Assignment of Functions Related to Certain Military Appointments, at 3-4 (July 28, 2005).*

The Attorney General's imprimatur is not necessary in order for the delegates to appoint or remove non-inferior officers within the scope of the delegation, such as administrative staff in a leadership office.

RECOMMENDATION: That the Attorney General approve and sign the proposed delegation order.

APPROVE _____

Concurring component:

OLC _____

DISAPPROVE _____

Non-concurring components:

None

OTHER _____

Attachment



Office of the Attorney General
Washington, D.C.

ORDER NO. 2808-2006

DELEGATION OF CERTAIN PERSONNEL AUTHORITIES TO THE
CHIEF OF STAFF TO THE ATTORNEY GENERAL AND THE
WHITE HOUSE LIAISON OF THE DEPARTMENT OF JUSTICE

By virtue of the authority vested in me as Attorney General of the United States, I hereby delegate to the Chief of Staff to the Attorney General and to the White House Liaison of the Department of Justice the authority, with the approval of the Attorney General, to take final action in matters pertaining to the appointment, employment, pay, separation, and general administration of:

- (1) employees in the Offices of the Attorney General, the Deputy Attorney General, and the Associate Attorney General;
- (2) employees in the Department of Justice appointed to a Schedule C position established under 5 C.F.R. Part 213, or to a position which meets the same criteria as a Schedule C position; and
- (3) Any Senior Executive Service position in the Department of Justice in which the incumbent serves under other than a career appointment.

Under authority of this delegation, any proposed appointments or removals of personnel who are "inferior officers" within the meaning of Excepting Clause of the Constitution shall be

INTERNAL ORDER -- NOT PUBLISHED IN F.R.

presented to the Attorney General (individually or in groups) for approval, and each appointment or removal shall be made in the name of the Attorney General.

This authority may not be redelegated.

March 1, 2006

Date

A handwritten signature in dark ink, appearing to read 'A. Gonzales', written over a horizontal line.

Alberto R. Gonzales
Attorney General