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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

January 2, 1979

In reply refer to: B-193462

The Honorable William E. Foley, Director
Administrative Office of the United States Courts
Washington, D.C. 20544

AGC 00439.

Dear Mr. Foley:

This refers to your notice of October 20, 1978, soliciting our comments and suggestions on the Report and Tentative Recommendations of the Committee to Consider [Standards for Admission to Practice in the Federal Courts].

While we generally support changes proposed that will improve the quality of the bar of the Federal District Courts, we believe that Government agencies such as the General Accounting Office (GAO), which only under specific circumstances represent themselves before the courts, should be exempted from proposed rules setting minimum requirements for trial experience.

As you know, most Government agencies are represented by the Justice Department in court proceedings. However, the Congress has determined that in certain circumstances,--for example, where particular expertise is involved or where an agency's independence from the Executive Branch is to be protected,--some agencies should be given the authority to represent themselves. The GAO has such authority under the Medicare-Medicaid Anti-Fraud and Abuse Amendments (Pub. L. No. 95-142, § 6, October 25, 1977, 91 Stat. 1175, 1192), the Impoundment Control Act of 1974 ( 31 U.S.C. § 1406 (1976)), and the Energy Policy and Conservation Act (42 U.S.C. § 6384 (1976)). We have also requested Congress to give us enforcement power in connection with our access authority under 31 U.S.C. § 54 (1976).

If adopted, Rule 1 could require an attorney to have at least four trial experiences before he could appear alone in testimonial proceedings before a Federal District Court. It is anticipated by the Committee that the trial experiences would involve appearances as lead counsel, advised by an "experienced member" of the bar of a United States District Court or as an assistant to such a member. As indicated earlier, obtaining trial assistance from experienced Justice Department attorneys, while helpful in meeting the Committee's requirements, would nevertheless compromise our independence from the Executive Branch which was the primary reason we were given authority to represent ourselves. Furthermore, the rule would require all applicants to receive a satisfactory score on a test of Federal civil

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and criminal procedure, evidence, and other subjects related to Federal practice, prior to being admitted to the bar of a Federal District Court. While Rule 3(e) would permit waiver of these requirements in "exceptional circumstances," we cannot determine from the Rule as drafted whether our attorneys would qualify for a waiver.

We believe that the trial practice requirement would create considerable hardship for this agency and other agencies which recruit attorneys for their substantive knowledge of specialized areas of the law, and research and writing ability, rather than for trial experience. In view of the limited number of trials in which actual appearances by our attorneys are required, it is impractical for us to recruit experienced trial attorneys. Furthermore, we have found in those limited circumstances in which our attorneys have been required to participate in judicial proceedings, they have performed adequately.

We also believe that the administrative burden that would be placed on the courts by requiring present members of the bar of any State to take written examinations, and the practical difficulties in applying experience requirements to such lawyers, should preclude application of the new standards to lawyers who are federally employed at the date of implementation.

Your courtesy in extending an invitation for our comments on the Committee's recommendations is appreciated.

Sincerely vours,

MILTON SOCOLAR

Milton J. Socolar
General Counsel