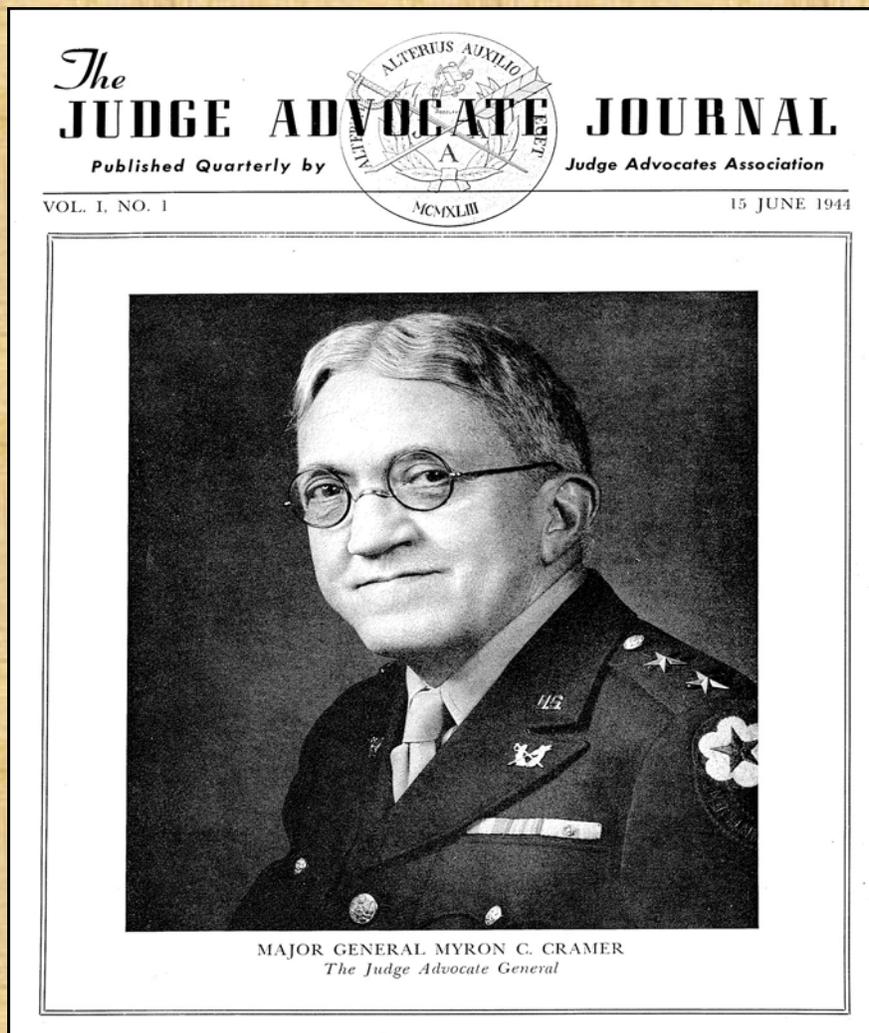


A THE JUDGE 1943 ADVOCATE

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LOOKING BACK

LOOKING FORWARD

ADMINISTRATIVE LAW

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NEED TO KNOW?

The processing of personnel security clearances

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I give an overview of the security clearance process, citing mostly to the background section of the Government Accountability Office (GAO) report, “Personnel Security Clearances: Progress Has Been Made to Improve Timeliness but Continued Oversight Is Needed to Sustain Momentum GAO-11-65 November 19, 2010” (“GAO Report”). I cite the GAO Report because it contains a nicely condensed discussion of a complicated process. I do not discuss reciprocity or how to adjudicate a clearance. Reciprocity is a moving target and adjudicating the merits of a clearance is a different subject than process, and thus a subject for another day. At the end of this article, I give a few personal views on how to help clients within the process.

When an individual needs access to classified information, the three stages of the security clearance process are application, investigation, and adjudication. GAO Report at 11. These same stages, with some variations, apply to decide the basic suitability of candidates for federal employment, trustworthiness, and apply to other personnel clearance processes as well. For example, a condition of employment at some agencies may include suitability for the job, such as ensuring no use of drugs for a Drug Enforcement Administration applicant or passing a polygraph for an intelligence community applicant. GAO

Report at 29-30. Here, I focus on personnel clearances.

At the application stage of security clearance, the individual completes a personnel security questionnaire (Standard Form 86) electronically using OPM’s e-QIP system or on paper. An agency security officer requests an investigation and assesses the completed questionnaire and provides it, fingerprints, and other supporting information to the Office of Personnel Management (OPM) or another investigating entity or provider. GAO Report at 11.

At the investigation stage, information is gathered about the individual using the application as an initial guide and applying OPM and other investigative standards. The extent of the investigation depends on whether a prior investigation was done and on the level of classified information access being sought. GAO Report at 11-12. Clearance renewals, clearance upgrades, and getting new information about a person with an existing clearance are examples of when a prior investigation has been done. Confidential, Secret, and Top Secret are levels of both personnel clearances and classified information. SCI and a Q clearance (for Department of Energy programs) allow higher levels of access.

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At the adjudicative stage, agency adjudicators determine from the investigative file whether the individual is eligible for security clearance by applying adjudicative factors. *See* GAO Report at 12. The adjudication or review of the investigative file begins with a security officer or office. If the clearance may be denied, then a two-step review process takes place. If the security officer intends to revoke or deny a clearance, the applicant for the clearance or the employee holding clearance may ask for an additional review. If the clearance is revoked or denied, then a final review may be requested. The specifics for the review process may vary depending on the agency, whether the individual works for the federal Government or industry, and the level of access being denied.

“How can we help the Government do its job and decide that you are worthy of the privilege of a clearance?”

Executive Order No. 10865, “Safeguarding Classified Information Within Industry,” governs the process for federal contractor employees and applicants. Executive Order No. 12968, “Access to Classified Information,” August 2, 1995, governs the process for federal civilians and military employees. Directives and regulations implement these Executive Orders within different agencies and programs. DCID 6/4, “Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information” is a Central Intelligence Agency directive and governs the SCI access process.

In the end, the clearance may be granted or denied. At all stages of the process, the level of clearances and status of clearances appear in databases. Examples of databases are the Joint Personnel Adjudication System, Central Verification System, and the Intelligence agen-



cies Scattered Castles. GAO Report at 37. The credentials or clearance status may be active, suspended, revoked, administratively withdrawn, or other. Database information may include pending, closed, and discontinued investigations. GAO Report at 36.

That is the clearance process in a nutshell. As an attorney representing applicants, I have a few personal or practical views.

(1) The adjudicative considerations apply at the application and investigative stages. *See* Annex A to DCID 6/4 and DoD Directive 5220.6 containing the Revised Adjudicative Guidelines. Do not wait to be denied the clearance before meeting mitigation or whole person guidelines, for example.

(2) The investigation is not done until the case closes. The adjudicative stage is a form of investigation at which the investigative file record can be supplemented to show the person worthy to have access to classified information. My common refrain to the client at each stage of the process is: how can we help the Government do its job and decide that you are worthy of the privilege of a clearance?

The process can be complicated and confusing, but the objective always remains to gather information to consider against adjudicative factors to determine whether an individual is sufficiently reliable, trustworthy and/or sound judgment so to be trusted with classified information.