

LEGADMINMAN

CHAPTER 2

ORGANIZATION OF MARINE CORPS DEFENSE COUNSEL

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CHAPTER 2

ORGANIZATION OF MARINE CORPS DEFENSE COUNSEL

2000. OVERVIEW

1. Purpose. This chapter restates the organization of defense counsel in the Marine Corps and their duties; provides standards, policies, and procedures for the supervision of judge advocates performing defense functions; and explains the role of defense counsel for commanders.

2. Background. Exercising its constitutional responsibility to make rules for the government and regulation of the armed forces, Congress established a system of military law by enacting the UCMJ. In doing so, it recognized that fair and just administration of military justice is essential if the armed forces are to effectively carry out their national defense responsibilities. The UCMJ provides for the appointment of military defense counsel to represent servicemembers charged with violations of military law. By the Manual for Courts-Martial, 1998 (MCM, 1998), the President of the United States has prescribed procedures which govern the conduct of defense counsel in connection with trials by court-martial. The Manual of the Judge Advocate General of the Navy (JAGMAN), in pertinent part, implements the UCMJ and MCM, 1998, and prescribes standards relating to the professional and ethical responsibilities of defense counsel. So, also, military appellate courts, in interpreting provisions of the UCMJ and MCM, 1998, issue binding decisions with respect to defense counsel. Finally, departmental directives and service regulations delineate additional duties for defense counsel in connection with the representation of servicemembers who face adverse administrative action. This chapter refines the Marine Corps system for provision of defense counsel services, and does so in consonance with directives of the Congress, the President, the courts, and well-established policies of the naval service.

3. Policy. If Marines entertain doubts about the fairness of the military justice system or the way that it is administered, confidence in the Marine Corps could be undermined. A robust defense organization is one of the best ways to enhance the strength, efficiency, and fairness of military justice in reality and appearance. Thus, within the Marine Corps military justice system, it is essential that defense counsel are accorded adequate facilities, logistical and administrative support, and continuing professional legal training of the highest quality.

2001. DEFINITIONS

1. Chief Defense Counsel of the Marine Corps (CDC). A Marine Corps judge advocate in the grade of colonel, directly responsible to the Director, Judge Advocate Division (CMC (JA)), Headquarters, U.S. Marine Corps, for the general supervision of the performance and professional development of all Marine Corps judge advocates serving as defense counsel in Marine Corps commands; and who performs the duties described in paragraph 2002.1.
2. Regional Defense Counsel (RDC). A Marine Corps judge advocates in the grade of lieutenant colonel, directly responsible to the CDC for general supervision of the performance and professional development of all Marine Corps judge advocates serving as defense counsel in Marine Corps commands located in their respective regions; and who performs the duties described in paragraph 2002.2.
3. Senior Defense Counsel (SDC). An experienced Marine Corps defense counsel appointed by and responsible to the staff judge advocate, law center director, or officer in charge, legal services support section (OIC, LSSS), for general supervision of the performance and professional development of all Marine Corps judge advocates serving as defense counsel at a particular command or location; who also is directly responsible to the cognizant RDC with respect to the latter's supervisory functions; and who performs the duties described in paragraph 2002.3. Appointment of the SDC shall be made in consultation with the cognizant RDC.
4. Defense Counsel. A Marine Corps judge advocate certified under Article 27b, UCMJ, who performs defense functions as a primary duty, to include service as an individual military counsel (IMC) in accordance with JAGMAN, section 0131.
5. Defense Functions. Acting as defense counsel in connection with courts-martial, Article 32, UCMJ investigations, administrative separation proceedings, and any other matters in which defense counsel participation is required or authorized.
6. Cognizant Command Authority. The staff judge advocate, law center director, OIC, LSSS, or OIC, Legal Services Support Team, of the legal organization to which the defense counsel is assigned.
7. Regions. Three regions are established:
 - a. Eastern, encompassing the geographic area within the 1st, 4th, and 6th Marine Corps Districts.
 - b. Western, encompassing the geographic area within the 8th, 9th, and 12th Marine Corps Districts.
 - c. Western Pacific, encompassing Okinawa, Iwakuni and Hawaii. Marine Corps districts are defined in MCO P1100.71A, Military Personnel Procurement Manual, Vol. 1.

2002. DUTIES AND RESPONSIBILITIES

1. Chief Defense Counsel of the Marine Corps. The CDC exercises supervision, direction, and control over RDCs, and general professional supervision over SDCs and defense counsel within Marine Corps commands. The CDC is directly responsible to the Director, Judge Advocate Division, for assessing the quality of the performance of defense functions throughout the Marine Corps and making recommendations for improvement whenever appropriate. The CDC exercises general professional supervision through the RDCs. This supervision does not, however, include operational or administrative control of SDCs or defense counsel, which will continue to be exercised by cognizant command authority per established practices, policies, and procedures. Similarly, it will not interfere with the judge advocates' professional, legal, and ethical responsibilities to exercise independent judgment and action in the discharge of their duties as defense counsel. It does entail the performance of specific tasks in certain administrative and professional areas, including but not limited to the following:

- a. Preparing and reviewing fitness reports per paragraph 2005;
- b. Supervising the quality of practice, procedure and techniques in the performance of defense functions, to include recommendations for corrective action;
- c. Inspecting the professional training and continuing legal education accorded defense counsel, and making recommendations for appropriate changes;
- d. Inspecting the adequacy of legal facilities provided defense counsel, including private office spaces, office equipment, access to law libraries and reference materials, logistical, administrative and clerical support, and making recommendations for appropriate changes;
- e. Monitoring the relative experience levels of judge advocates assigned as defense counsel and the requirements imposed on defense counsel to perform duties in addition to defense counsel functions; and
- f. Reporting to the Director, Judge Advocate Division, at least quarterly, on the state of defense counsel services within the Marine Corps, to include the status of personnel, facilities, administrative and logistical support.

2. Regional Defense Counsel. RDCs are under the operational control of the CDC for all purposes, including assignment to duty as IMCs and the performance of other defense functions. The CDC will make RDCs available to take courts-martial and other appropriate cases so that RDCs maintain a case load commensurate with their training and supervisory responsibilities. In discharging supervisory

responsibilities in their respective regions, RDCs will be guided by the principles and objectives set forth in paragraph 2002.1. Additionally, they will perform specific tasks in certain administrative and professional areas including, but not limited to, the following:

- a. Preparing and reviewing fitness reports per paragraph 2005;
- b. Preparing memorandum endorsements on requests for augmentation or extended active duty per paragraph 2006;
- c. Conducting frequent visits to locations at which judge advocates perform defense functions, to include courtroom observation and attendance at docket calls and calendaring sessions;
- d. Monitoring defense counsel performance through personal observation, reading records of trial, and continuing liaison with convening authorities, commanders, military judges, staff judge advocates, law center directors, and OICs of LSSSSs;
- e. Being available to provide professional advice, guidance, and assistance to the SDCs and defense counsel;
- f. Communicating with SDCs and defense counsel concerning matters within the purview of the RDC supervisory responsibilities;
- g. Providing SDCs and defense counsel training in military law and procedures, trial tactics, professional responsibility, and other aspects of the defense function;
- h. Inspecting the professional training and continuing legal education accorded defense counsel through command sources, and making recommendations for appropriate changes;
- i. Inspecting the adequacy of legal facilities provided defense counsel, including private office spaces, office equipment, access to law libraries and reference materials, logistical, administrative and clerical support, and making recommendations for appropriate changes;
- j. Monitoring the relative experience levels of judge advocates assigned defense counsel duties and the requirements imposed on defense counsel to perform duties in addition to defense counsel functions;
- k. Reporting to the CDC, at least quarterly, on the state of defense counsel services within their respective regions, to include the status of personnel, facilities, administrative and logistical support; and,

1. Maintaining a caseload of defense cases commensurate with the training and supervision responsibilities over defense counsel in their area.

3. Senior Defense Counsel. SDCs perform defense counsel functions, including duties as IMC when so assigned by cognizant command authority; are responsible to the staff judge advocate, law center director or OIC, LSSS, for all operational and administrative matters within that official's purview; and provide assistance to the RDC with respect to the latter's supervisory functions. Other specific tasks include:

- a. Preparing fitness reports per paragraph 2005;
- b. Providing advice to defense counsel working under their supervision;
- c. Acting as primary liaison between the defense counsel and the RDC;
- d. Maintaining a caseload of defense cases commensurate with the training and supervision responsibilities over defense counsel under their cognizance; and,
- e. Detailing defense counsel for all Marines or Sailors who have been in arrest or pretrial confinement for 10 days or more, regardless of whether charges have been preferred, provided that cognizant command authority has delegated detailing authority to the SDC.

4. Defense Counsel. Defense counsel perform defense functions, including duties as IMCs assigned by cognizant command authority; are responsible, via the SDC, to the staff judge advocate, law center director or OIC, LSSS, for all matters within that official's purview; and are authorized to communicate directly or via the SDC with the RDC with respect to the latter's supervisory functions. Once assigned to defense counsel duties, SDC and defense counsel, excluding IMCs, shall not be reassigned to other full-time duties without first consulting with the applicable RDC. Under normal circumstances, SDC and defense counsel should serve at least 12 months in their respective billets before reassignment, other than pursuant to PCS orders.

5. Cognizant Command Authority. Pursuant to JAGMAN, 0130b(1), the authority to detail defense counsel is vested in the defense counsel's commanding officer and cognizant command authority. Detailing authority may be delegated to SDCs. Cognizant command authority will ensure that defense counsel are detailed for all Marines or Sailors who have been in arrest or pretrial confinement for 10 days, regardless of whether charges have been preferred. If detailing authority is delegated to the SDC, the delegation shall be in writing and shall specify the requirement to detail defense counsel to all

Marines or Sailors who are in pretrial confinement or arrest within 10 days, regardless of whether charges have been preferred.

2003. SUPPORT

1. Reserve Augmentation Support. In the event of mobilization, the CDC and the RDCs will require immediate augmentation to provide necessary defense services and supervision. The table of organization of the Judge Advocate Division, HQMC, provides for such augmentation upon mobilization. During peacetime, Reserve judge advocates will be assigned to the augmentation billets under the cognizance of the CDC and the RDC in order to provide maximum readiness for mobilization. Reserve judge advocates serving in these augmentation assignments shall perform both inactive training duty and active duty for training as assigned by the CDC and the RDC, and shall be evaluated as Reservists per MCO 1001.45G.

2. Administrative and Logistical Support

a. Cognizant command and convening authorities will continue to provide administrative and logistical support to defense counsel and SDCs per established practices, policies, and procedures.

b. Administrative and logistical support for the CDC and RDCs, including their support personnel, will be provided by the respective host commands to which they are administratively attached. This support will include, but is not limited to:

(1) Permanent quarters to the same degree as are provided regularly assigned personnel of the same grade;

(2) Maintenance of financial records, preparation of pay vouchers, and payment of personnel;

(3) Maintenance of service record books, officer qualification records, leave records, and similar personnel requirements; and

(4) Private office space, office furniture, equipment, supplies, class-A telephone service, and access to legal library and reference materials.

c. The CDC and support personnel are administratively attached to Company B, Headquarters Battalion, Headquarters, U.S. Marine Corps, with Monitored Command Code TEM.

d. The RDC, Eastern Region, and support personnel are administratively attached to Headquarters Battalion, Marine Corps Base, Camp Lejeune, with Monitored Command Code TEH.

e. The RDC, Western Region, and support personnel are administratively attached to Headquarters Battalion, Marine Corps Base, Camp Pendleton, with Monitored Command Code TEJ.

f. The RDC, Western Pacific Region, and support personnel are administratively attached to Headquarters Battalion, Marine Corps Base, Camp Smedley D. Butler, with Monitored Command Code TEG.

2004. BUDGETING AND FUNDING GUIDANCE

1. Cognizant command and convening authorities will continue to provide funding for defense counsel and SDCs per established practices, policies, and procedures.
2. Funding for administrative and logistical support of RDCs and their support personnel, including travel, per diem, training and continuing legal education in connection with duties described in paragraph 2002.2 will be provided by the commands to which the RDCs are administratively attached.
3. Funding for administrative and logistical support, travel, per diem, training, and continuing legal education of the CDC and support personnel will be provided by HQMC.
4. Funding for special requirements, such as defense counsel, SDC, RDC, Reserve augmentee, and instructor participation in professional training seminars and continuing legal education directed by the CDC, will be provided by HQMC.
5. Annual budget requirements to support the activities described above will be submitted per MCO P7100.11, Budget Manual for HQMC and Special Activities. Amplifying guidance will be provided in Field Budget Guidance Bulletins (7100 series).

2005. FITNESS REPORTS

1. Fitness reports on judge advocates assigned duties as defense counsel, SDCs, RDCs, and CDC will be completed per MCO P1610.7E (PES). The only exception to these policies is the approved reporting chain outlined below.

a. Reporting and Reviewing Responsibilities for Regular Reports

(1) Director, Judge Advocate Division

(a) The Director, Judge Advocate Division, is the reporting senior and the Assistant Commandant of the Marine Corps is the reviewing officer for the CDC.

(b) The Director, Judge Advocate Division, is the reviewing officer of judge advocates whose reporting senior is the CDC.

(2) Chief Defense Counsel

(a) The CDC is the reporting senior for RDCs.

(b) The CDC is the reviewing officer of judge advocates whose reporting senior is an RDC.

(3) Regional Defense Counsel

(a) The RDC is the reporting senior for all SDCs in the region and the reviewing officer for defense counsel whose reporting senior is an SDC.

(b) The RDC is the reporting senior for defense counsel not reported on by an SDC.

(c) When authorized by the CDC, the RDC is the reporting senior for SDCs of the same grade.

(4) Senior Defense Counsel

(a) The SDC is the reporting senior for defense counsel who are junior in grade and under the SDC's immediate supervision.

(b) When authorized by the cognizant RDC, the SDC is the reporting senior for defense counsel of the same grade.

b. Simultaneous Reports

(1) Recognizing that the demand for defense services will vary and that defense counsel may legitimately be required to perform duties in addition to defense functions, particularly in commands with low court-martial caseloads, simultaneous fitness reports prepared and reviewed by appropriate command authorities are authorized.

(2) Simultaneous fitness reports prepared and reviewed by command authorities will be limited to specific, significant duties other than those related to defense functions.

(3) An IMC whose regular reporting senior is neither an SDC nor an RDC may receive a simultaneous fitness report from the RDC or SDC having cognizance over the site of the trial or other proceeding in which such duties are performed. Minimum periods of observation set forth in MCO P1610.7E (PES) must be met.

c. Deployment. Fitness report responsibility for defense counsel deployed with a MAGTF normally remains with the RDC or SDC having cognizance over the area from which deployed.

d. Officer and Enlisted Support Personnel. Fitness reports on officer and enlisted personnel assigned duties with the CDC and RDC will be completed per MCO P1610.7E (PES).

2006. REQUESTS FOR AUGMENTATION AND EXTENDED ACTIVE DUTY

1. In addition to the guidance contained in MCO 1001.45G, the following procedures will govern processing of requests for augmentation or extended active duty submitted by judge advocates who have performed duty as a defense counsel.

2. Such requests submitted by judge advocates who, at the time of the request, are performing defense functions as a primary duty or who, during the preceding 12 months, performed defense functions as a primary duty, will be referred to the cognizant RDC for memorandum endorsement.

3. The staff judge advocate, law center director, OIC, LSSS, or other command authority will ensure that this endorsement is obtained prior to forwarding the request to the CMC (MMOA).

2007. APPLICABILITY. This chapter has no applicability to Marine Corps judge advocates serving as defense counsel in commands external to the Marine Corps.

POINT PAPER FOR COMMANDERS

Subj: THE ROLE OF DEFENSE COUNSEL

1. Authority. All Marine Corps judge advocates practice under the supervision of the Navy Judge Advocate General and must comply with JAGINST 5803.1A. This instruction establishes the Rules of Professional Conduct for Marine Corps and Navy judge advocates. The rules are based on the American Bar Association Rules of Professional Responsibility with some modifications to conform to military practice. They are also similar to rules issued by State bar associations.

2. Duties of Defense Counsel

a. Unfettered Loyalty. Pursuant to the JAGINST, a defense counsel must exhibit unfettered loyalty and professional independence in representing the client, and is ultimately responsible for acting in the best interests of the individual servicemember. Accordingly, when assigned to represent a particular Marine or Sailor, neither a judge advocate's personal interests, the interests of the Marine Corps, or some other third party, may affect the loyalty owed the individual servicemember. In a nutshell, a defense counsel's duty to the client supersedes the defense counsel's duty to the Marine Corps.

b. Truthfulness to Others. When dealing with others, a judge advocate must be truthful. The obligation to be truthful, however, should not be viewed as an obligation to be forthcoming with any or all information that might help a convening authority make an informed decision. Despite their duty to tell the truth, defense counsel have no affirmative duty to inform of relevant facts. For example, a defense counsel discussing a proposed pretrial agreement with a convening authority has no obligation to divulge relevant information that would dissuade the convening authority from entering such an agreement.

c. Confidentiality. A defense counsel shall not reveal information relating to a client's representation unless the client authorizes the disclosure. This rule builds trust and facilitates candid communication by the client. The ability of a Marine to speak freely to his Marine lawyer ensures effective representation.

3. Chain of Command and Autonomy. The OIC of the LSSS or the SJA at the law center have administrative control over defense counsel. They are accountable to the SJA/OIC for administrative purposes only, e.g., duty hours, formations, PFT, etc. In matters related to their duties as defense counsel, they receive supervision/guidance and fitness reports from the Senior or Regional Defense Counsel. Unlike a battalion commander who can order the company commander to use a

Figure 2-1.--Point Paper for Commanders - The Role of Defense Counsel.

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particular scheme of maneuver, neither the SDC nor RDC can order a defense counsel to take a particular action during the representation of a client.

4. Rules of Thumb for Commanders

a. Always bear in mind that the primary interest of a defense counsel is the client.

b. Although you may agree to defense requests and enter into pretrial agreements without first conferring with your SJA or trial counsel, consulting your SJA or trial counsel prior to granting a defense request or entering into a pretrial agreement is a more prudent course.

c. Before meeting with defense counsel, you should advise the trial counsel/investigator of the meeting and invite them to attend.

d. The military justice system is only as good as its defense counsel.