



UNITED STATES MARINE CORPS
LEGAL SERVICE SUPPORT SECTION
3D FORCE SERVICE SUPPORT GROUP, FMFPAC
UNIT 38477
FFO AP 96604-6477

5800
17:LAo
24 Aug 93

LEGAL SERVICE SUPPORT SECTION POLICY MEMORANDUM 2-93

From: Officer in Charge, Legal Service Support Section

Subj: DETAILING COUNSEL, REQUESTS FOR INDIVIDUAL MILITARY COUNSEL (IMC), DETAILING COUNSEL FOR RESPONDENT FOR ADMINISTRATIVE DISCHARGE BOARDS, AND PROVIDING LEGAL ADVICE BY DEFENSE COUNSEL

Ref: (a) JAGMAN
(b) MARCORSEPMAN
(c) JAGINST 5803.1

Encl: (1) Request for IMC format
(2) Services provided by Defense Counsel

1. PURPOSE. TO promulgate policies and procedures for the detailing of trial and defense counsel for courts-martial, acting on requests for IMC, assigning counsel to represent respondents before administrative discharge board proceedings., and providing legal advice by defense counsel per the references.

2. CANCELLATION. Officer in Charge, Legal Service Support Section, memorandum 5800 LSSS:A.01 of 15 February 1991.

3. BACKGROUND. Section 0130b(T) of reference (a) provides authority for the Officer in Charge, Legal Service Support Section- (OIC, LSSS), to detail trial and defense counsel for courts-martial conducted by LSSS personnel.

4. DELEGATION OF AUTHORITY.

a. Trial Counsel. Per section 0130b(1) of reference (a), the Officers in Charge of each Legal Service Support Team (LSST) delegated the authority to detail trial counsel in courts-martial tried by that LSST.

b. Defense Counsel. Per section 0130b(1) of reference (a), the Senior Defense Counsel (SDC) is delegated the authority to detail defense counsel in courts-martial and other proceedings where defense counsel are required to be detailed. Counsel will not be detailed to summary courts-martial.

5. DETAILING DEFENSE COUNSEL. The SDC will detail defense counsel to accused/respondents after consideration of the accused's assigned unit, complexity of the case, possible conflicts of interest, prior establishment of an attorney-client relationship or other factors deemed appropriate to the SDC. Counsel should normally be detailed:

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a. AS soon as practicable after preferral of charges against an accused. The SDC should also be given the pretrial package from the trial counsel at the same time.

b. Within 10 days after an accused is placed in pretrial confinement, regardless of whether or not charges are preferred or whether the accused has been released from pretrial confinement by the initial review officer;

c. After a respondent has exercised his right to have the case presented before an administrative discharge board and receipt of the administrative discharge package.

6. REQUESTS FOR INDIVIDUAL MILITARY COUNSEL. Requests for Individual Military Counsel (IMC) will be submitted in writing by the accused or the detailed defense counsel utilizing the format of enclosure (I). Action on all IMC requests will be made in accordance with section 0131 of reference (a).

7. DEFENSE COUNSEL PROVIDING LEGAL ADVICE. Reference (c) provides that judge advocates will not establish an attorney-client relationship with an individual unless detailed, assigned, or otherwise authorized to represent that individual by competent authority. Accordingly, defense counsel should not enter into attorney-client relationships unless specifically detailed or assigned by the SDC in accordance with this memorandum or specifically authorized to do so by the OIC, LSSS. Other than in cases of regularly scheduled counseling sessions (e.g. providing legal advice on nonjudicial punishment, involuntary administrative discharges or Article 31, Uniform Code of Military Justice counseling), defense counsel will provide legal advice not requiring an attorney-client relationship to individuals only when authorized to do so at the request of the individual's unit or other competent authority and with approval of either the SDC, OIC, LSST or OPC, LSSS. Enclosure (2) provides information with regard to advice and assistance normally provided by defense counsel.

8. ACTION.

a. Team OIC's. Ensure that the pretrial package is provided to the SDC and that trial counsel are detailed to courts-martial.

b. Military Justice Officer/AOIC, LSSS. Ensure that trial counsel are appointed as recorders for administrative discharge boards as soon as practicable after receipt of the board package from the Administrative Law Officer.

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c. Administrative Law Officer. Ensure that copies of all administrative discharge packages that require a board are provided to the SDC and Military Justice Officer.

d. SDC.

(1) Detail defense counsel, counsel for the respondent, and process requests for IMC according to the policy established herein.

(2) Ensure that the necessary counseling required by the policies established herein is accomplished.

(3) Ensure that legal advice provided by defense counsel is accomplished per the policies established herein and as provided in enclosure (2).



W. F. WARRINER

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OIC, LSST Hansen
OIC, LSST Foster
OIC LSST Kinser

All judge advocates of the LSSS
AdminLawO

(date)

From: (Accused)
To: (Convening Authority)
Via: (Trial Counsel)

Subj: REQUEST FOR INDIVIDUAL MILITARY COUNSEL

Ref: (a) MCM, 1984, R.C.M. 506(b)
(b) JAGMAN 0131a

1. In accordance with references (a) and (b), I hereby request that _____ be appointed my individual military counsel for my pending _____ court-martial/article 32 pretrial investigation. I do/do not request that my detailed defense counsel remain on the case.

2. This request is submitted in accordance with the advice I received concerning my rights to counsel as explained to me by detailed defense counsel, _____.

3. I have a/have no prior attorney-client relationship with the requested attorney.

4. Trial is presently scheduled for _____.

5. The charge(s) are:

6. Special qualifications of requested counsel, if any, that are relevant to particular case _____

7. If this request is denied, it is requested that I be informed of the reasons for denial.

(SIGNATURE OF ACCUSED)

copy to:
Trial Counsel

SERVICES PROVIDED BY DEFENSE COUNSEL

FUNCTION	REPRESENTATION	CONSULTATION ONLY	SPECIAL INSTRUCTIONS
-GCM	Yes	NA	Note 1
-Art 32 Inves	Yes	NA	Note 1
-SPCM	Yes	NA	Note 1
-SCM	No	Yes	Note 3
-Pretrial Cnft	Yes	NA	Note 2
-Advice prior to NJP	No	Yes	See JAG-MAN 0109(a)
-NJP Personal Rep	No	No	
-Interrogation pursuant to MRE 305	No	Yes	Note 3 limitation unless counsel has been assigned to represent the individual at a SPCM or GCM
-NC&PB Documents	No	Yes	
-Polygraph Exam	No	Yes	Note 3 limitation unless counsel has been assigned to represent the individual at a SPCM or GCM
-Vacation Proceedings	Yes	NA	
-AdminDischg Advice	No	Yes	Note 3
-AdminDisch Bd Rep	Yes	NA	Note 1
-Board of Inquiry	Yes	N/A	Note 1
-Art 138, UCMJ complaints	No	No	
-Request Mast	No	No	
-Turnover to civilian authorities	No	No	
-Admin determinations regarding loss/damage/destruction of Govt property	No	Yes	Note 3 See MCO P4400.150

-Field Flt Perf Bd	No	No	
-BCNR/BCNR/DisReviewBd			
petition	No	Yes	Note 4
-Special Selection Bds	No	No	
-Medical Bd	No	Yes	
-Admin Reduction Bd	No	Yes	Note 3
-Traffic Court	No	No	
-Eviction Hearings	No	No	
-Civilian Civil and			
Criminal Matters	No	No	
-Federal Employees	No	No	
-Legal Assistance			
conflicts	No	Yes	
-Requests for legal			
advice	NA	No	

Note 1: Formation of attorney-client relationships and representation is authorized only after the request for legal service has been received and assignment has been made by SDC.

Note 2: Prisoners will be informed representation is limited only to pretrial confinement proceedings before charges are preferred R.C.M. 305(f) of reference (c).

Note 3: Clients will be informed scope of services is limited to consultation on authorized matters only.

Note 4: Defense counsel will not be assigned to assist Marines, officer or enlisted, in preparing or drafting petitions. Once the Marine has drafted the petition, defense counsel may be consulted to review the petition prior to submission.