



DEPARTMENT OF THE NAVY
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MARINE CORPS BULLETIN 5813

From: Commandant of the Marine Corps
To: Distribution List

Subj: DETAILING OF TRIAL COUNSEL, DEFENSE COUNSEL, AND ARTICLE
32, UCMJ, INVESTIGATING OFFICERS

Ref: (a) 10 U.S.C. § § 5041-5043
(b) U.S. Navy Regulations, 1990
(c) SECNAVINST 5430.27D
(d) JAGINST 5800.7E (JAGMAN)
(e) R.C.M. 405(d)(1), MCM, (2012, ed.)
(f) R.C.M. 707, MCM, (2012, ed.)
(g) 10 U.S.C. § 810 (Article 10, UCMJ)
(h) R.C.M. 502(d), MCM, (2012, ed.)
(i) MCO P5800.16A
(j) 10 U.S.C. § 827(b) (Article 27(b), UCMJ)

1. Purpose. To ensure that judge advocates who are detailed as trial counsel, defense counsel, and Article 32, Uniform Code of Military Justice (UCMJ), investigating officers possess the appropriate expertise to perform their duties.

2. Cancellation. Not applicable.

3. Background. This bulletin is issued in furtherance of references (a) through (c). Pursuant to references (a) and (b), the Commandant of the Marine Corps is responsible for the administration and discipline of the force. Pursuant to reference (c), the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) exercises supervision of the administration of military justice, and has professional supervisory authority over all Marine Corps judge advocates.

4. Detailing Policy and Standards. In accordance with section 0130 of reference (d), Marine Corps judge advocates may be detailed as trial counsel, assistant trial counsel, defense

counsel, and assistant defense counsel, by their Commanding Officer, Officer-in-Charge (OIC), or designee. In accordance with reference (e), any commissioned officer in the grade of O-4 or above, or any judge advocate, may be detailed as an investigating officer to conduct an Article 32, UCMJ, pretrial investigation. Under the authority established in references (a) through (c), the following additional policies and standards are hereby established for detailing judge advocates as counsel and Article 32, UCMJ, investigating officers:

a. Detailing authorities will consider the following factors when detailing trial counsel, defense counsel, and Article 32, UCMJ, investigating officers: experience, education, training, ability, existing case load, professional responsibilities, grade, and the individual characteristics of the case (e.g., nature of the offense, special victims, expert witnesses, aggravating circumstances, media, and/or public scrutiny, etc.). The detailing of assistant trial and defense counsel to contested and/or complex cases is encouraged. Detailing authorities must remain cognizant of potential conflicts of interest when considering the detailing of judge advocates, especially those judge advocates whose normal duties are as a command legal advisor (e.g., SJA, DSJA) or as an OIC of an organization providing legal services. Detailing authorities must remain cognizant of the speedy trial requirement in reference (f) and due diligence requirement in reference (g).

b. Detailing Trial Counsel

(1) Detailing will be completed in writing and made prior to preferral of charges. Upon preferral, the detailing authority will provide a copy of the detailing memorandum to the accused's summary court-martial convening authority, the responsible staff judge advocate, cognizant defense section, and the detailed judge advocate's OIC. Should additional counsel be detailed, or the detailed trial counsel relieved, a subsequent detailing memorandum will be produced and distributed.

(2) Detailing authority for trial counsel may be delegated; however, such delegation must be in writing and may not be delegated to any officer below the grade of O-4.

(3) No judge advocate may be detailed as trial counsel, as defined in reference (h), to an Article 32, UCMJ, pretrial investigation, or general court-martial, unless he or she has served in a trial counsel billet for at least six months or has served in a military justice billet for at least 18 months.

(i.e. trial counsel, defense counsel, or military judge) Additionally, no judge advocate may be detailed as trial counsel in any case that involves allegations of violations of UCMJ Articles 118, 119, 119a, 120, 120b, 120c, 125 (with a child or forcible), or 134 (Child Pornography), unless that judge advocate has served as a trial counsel or assistant trial counsel in at least one contested case (i.e., a case in which the accused pled not guilty to at least one charged offense and the finder of fact entered findings on that offense) involving one of the offenses identified in this paragraph.

c. **Detailing Defense Counsel.** The Chief Defense Counsel (CDC) of the Marine Corps is designated as the OIC of the Defense Services Organization (DSO) and as such has detailing authority and individual military counsel (IMC) approval authority for defense counsel per references (d) and (i). The CDC may establish detailing criteria and delegate detailing and IMC approval authority to subordinates within the DSO, subject to the restrictions set forth in references (e) and (i) and this bulletin.

d. **Detailing Article 32, UCMJ, Investigating Officers**

(1) An officer below the grade of O-4 may only be detailed as an Article 32, UCMJ, investigating officer if he or she is a judge advocate certified per reference (j), and has at least six months of experience as a trial or defense counsel.

(2) In addition to the requirements in paragraph 4.d.(1), an officer below the grade of O-4 may not be detailed as an Article 32, UCMJ, investigating officer to investigations involving the offenses listed in paragraph 4.b.(3), unless he or she has acted as a trial counsel, assistant trial counsel, defense counsel, associate defense counsel, or assistant defense counsel in at least one contested case involving an offense listed in paragraph 4.b.(3).

(3) In complex cases, detailing authorities should consider detailing, as available, a judge advocate certified as a Military Judge as an Article 32, UCMJ, investigating officer.

5. Supported and Supporting Relationship. If the detailing requirements established in this bulletin exceed a detailing authority's organic capability, convening authorities may request support from other legal support providers. If unsuccessful in obtaining qualified trial counsel support,

detailing authorities shall immediately forward the matter to the Commandant of the Marine Corps (JA) for resolution.

6. Reserve Applicability. This bulletin is applicable to the Total Force.

7. Non-enforceability of Legal Right. Nothing in this bulletin creates a right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies or instrumentalities, its officers or employees, or any other person.

8. Cancellation Contingency. This bulletin is canceled when incorporated in reference (i).



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