

VOLUME 3

“MARINE CORPS DEFENSE SERVICES ORGANIZATION”

SUMMARY OF VOLUME 3 CHANGES

Hyperlinks are denoted by ***bold, italic, blue and underlined font.***

The original publication date of this Marine Corps Order (right header) will not change unless/until a full revision of the MCO has been conducted.

The date denoted by **blue font** (left header) will reflect the date this Volume was last updated.

All Volume changes denoted in **blue font** will reset to black font upon a full revision of this Volume.

VOLUME VERSION	SUMMARY OF CHANGE	ORIGINATION DATE	DATE OF CHANGES
ORIGINAL VOLUME	N/A	DD MMM YYYY	N/A

Submit recommended changes to this Volume, via the proper channels, to:

CMC (JA)
 3000 Marine Corps Pentagon
 Washington, DC 20350-3000

(This page intentionally left blank)

VOLUME 3: MARINE CORPS DEFENSE SERVICES ORGANIZATION

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 PURPOSE1-3

0102 APPLICABILITY.....1-3

0103 GENERAL.....1-3

0104 ATTORNEY-CLIENT RELATIONSHIPS.....1-4

0105 GUIDING PRINCIPLES1-4

0106 PERSONNEL1-5

0107 TOUR LENGTH.....1-11

0108 REASSIGNMENT.....1-12

0109 COLLATERAL DUTIES1-13

0110 DETAILING1-13

0111 REPRESENTATION AT INITIAL REVIEW OFFICER HEARINGS.....1-15

0112 REQUESTS FOR INDIVIDUAL MILITARY COUNSEL.....1-15

0113 PROFESSIONAL RESPONSIBILITY COMPLAINTS.....1-16

0114 MISCONDUCT ALLEGATIONS1-16

0115 ADMINISTRATIVE AND LOGISTICAL SUPPORT.....1-17

0116 PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION1-17

0117 BUDGETING AND FUNDING GUIDANCE.....1-17

0118 GUIDANCE ON REFERRALS TO CIVILIAN DEFENSE COUNSEL1-17

REFERENCES

- (a) SECNAVINST 5430.7R
- (b) SECNAVINST 5430.27D
- (c) SECNAVINST 5430.25E
- (d) 10 U.S.C. §§ 806, 1044, 1044e, 1059, 1072, 1565b, 1588, and 5046
- (e) MCO 5430.2
- (f) JAGINST 5803.1E
- (g) Manual for Courts-Martial, (2016 ed.)
- (h) U.S. Navy Regulations, (1990)
- (i) MCO 5800.14
- (j) MCO 1001.62A
- (k) MCO 1200.18
- (l) JAGINST 5803.2B
- (m) SECNAVINST 1920.6C
- (n) Uniform Code of Military Justice, (2016)
- (o) MCO 1610.7
- (p) MCO 1300.8
- (q) MCO 1000.6
- (r) JAGINST 5800.7F
- (s) SECNAVINST 5211.5E
- (t) 5 U.S.C. §§ 101, 552a, and 3111
- (u) JAGINST 5801.2
- (v) 37 U.S.C. §§ 601-604
- (w) 38 U.S.C. §§ 4301-4334
- (x) DoD Instruction 1205.12
- (y) 31 U.S.C. § 1342
- (z) DoD Instruction 1100.21
- (aa) 8 U.S.C. § 1400
- (bb) Executive Order 13269, (July 3, 2002)
- (cc) DoD Directive 2311.01E
- (dd) MCO 3300.4A
- (ee) DoD Directive 2310.01E
- (ff) DoD Directive 5146.13
- (gg) Executive Order 12333, (December 4, 1981)
- (hh) DoD Directive 5240.01
- (ii) DoD 5240.1-R
- (jj) DoD Instruction 3025.21
- (kk) DoD Instruction 5525.03
- (ll) SECNAVINST 5710.25B
- (mm) 1 U.S.C. § 112b
- (nn) 22 CFR Part 181
- (oo) DoD Directive 5530.3
- (pp) DoD 5500.07-R
- (qq) 18 U.S.C. § 202
- (rr) 5 C.F.R. § 2634

“REFERENCES”

As changes are made within this MCO Volume, the References list will also update.
Annotation of each update/change/addition to the References list is required.

The original publication date this MCO (right header) will not change unless/until a full revision of the MCO has been conducted.

The date denoted by **blue font** (left header) will reflect the date these References were last updated as changes/revisions are made within this MCO.

VOLUME 3

“MARINE CORPS DEFENSE SERVICES ORGANIZATION”

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by ***bold, italic, blue and underlined font.***

The original publication date of this Marine Corps Order (MCO) Volume (right header) will not change unless/until a full revision of the MCO has been conducted.

All Volume changes denoted in **blue font** will reset to black font upon a full revision of this Volume.

CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

(This page intentionally left blank)

MARINE CORPS DEFENSE SERVICES ORGANIZATION

0101 PURPOSE

This Chapter describes the organization, roles, and responsibilities of the Marine Corps Defense Services Organization (DSO) and its personnel, as a functionally independent organization and as required by law, regulations, and the rules of professional conduct.

0102 APPLICABILITY

This Volume is applicable to: Marine judge advocates assigned duty as Marine defense counsel; civilian attorney advisors; legal services specialists assigned as defense enlisted support personnel; members of the Judge Advocate Reserve Defense Services Branch; and military personnel from other services assigned to the DSO. This Volume does not apply to judge advocates or legal services specialists attached to commands external to the Marine Corps.

0103 GENERAL

The Sixth Amendment to the United States Constitution provides, “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” This right to counsel has been specifically assigned to service members by Congress through Article 27, Uniform Code of Military Justice (UCMJ), and is implemented by the President through Rule for Courts-Martial (R.C.M.) 506, Manual for Courts-Martial (MCM). The Secretary of the Navy, through JAGINST 5800.7F, Manual of the Judge Advocate General (JAGMAN), provides Departmental policy and regulations regarding the right to counsel and the formation of the attorney-client relationship. This Volume, which supplements the JAGMAN, provides Service policy regarding the delivery of defense counsel services within the Marine Corps. The Chief Defense Counsel of the Marine Corps (CDC) also publishes policy, administrative procedures, and standards of practice applicable to judge advocates serving as Marine defense counsel. These documents are available on the DSO website. Where feasible, they are also made available on the DSO public website.

010301. Defense Counsel

Marine Corps defense counsel services are performed by commissioned officers who are licensed attorneys, certified as judge advocates under Article 27(b), UCMJ, and assigned to defense counsel billets in the DSO. Marine defense counsel serve at locations throughout the Marine Corps and are administratively attached to Legal Services Support Sections (LSSS). However, Marine defense counsel are under the functional supervision of and responsible and accountable to the CDC via the responsible Regional Defense Counsel (RDC) for the delivery of defense counsel services at their respective locations.

010303. Representation

A Marine defense counsel must exhibit unfettered loyalty and professional independence in representing his or her client, and is ultimately responsible for acting in his or her client’s best interest. A Marine defense counsel’s primary duty is to provide zealous, ethical, and effective representation to Marines and other service members. This duty is limited only by law, regulation, and the Rules of Professional Conduct (JAGINST 5803.1E).

0104 ATTORNEY-CLIENT RELATIONSHIPS

010401. Establishment

A Marine defense counsel will not establish an attorney-client relationship with any individual unless detailed, assigned, or otherwise authorized to do so by his or her detailing authority.

010402. Severance

Once established, the attorney-client relationship, whether for a court-martial or administrative separation board, may only be severed under the provisions of R.C.M. 505 and R.C.M. 506 of the UCMJ and the Rules of Professional Conduct. A Marine defense counsel shall continue to represent an accused post-trial until the accused is assigned an appellate defense counsel, if applicable, or until completion of any and all post-trial or post-board matters; however, for purposes of paragraph 0108 of this Volume, a Marine defense counsel's tour with the DSO is considered complete when R.C.M. 1105/1106 matters, if applicable, have been submitted for every criminal case to which the defense counsel was detailed and comments on the Report of the Board have been submitted for every officer and enlisted administrative separation board to which the defense counsel was detailed.

0105 GUIDING PRINCIPLES

010501. Functional Independence

In order to be free from either apparent or unlawful pressure or influence, the Marine Corps DSO must not only be functionally independent, but it must appear to the public as functionally independent, and must be treated as functionally independent.

010502. Funding

Funding for training, resources, and facilities and personnel shall be consistently provided across the Marine Corps legal community, and there should be equitable distribution, commensurate with mission requirements, between the defense function and the prosecution function with respect to the following: assignment of attorneys and enlisted support staff, access to resources, capabilities, and facilities, seats at continuing legal education courses, and training funds.

010503. Case-Related Funding

Requests for specific case-related funding submitted to the convening authority shall be considered and processed consistent with Article 46, UCMJ, the MCM, case law, and the JAGMAN.

010504. Access to Clients

Marine defense counsel shall be provided sufficient time and access to clients to achieve a full and confidential exchange of legal, procedural, and factual information. To ensure confidential communications, private meeting spaces must be available at offices, confinement facilities, courtrooms, and all other places where clients and counsel must confer in confidence.

010505. Workload

To ensure that a Marine defense counsel's workload is not too large as to interfere with his or her ethical obligations to any individual client, supervisory attorneys shall consider factors such as an individual counsel's experience and caseload, case complexity, anticipated end of tour date, and traditional officer duties when assigning counsel to a particular case.

010506. Assignment of Counsel

A Marine defense counsel's ability, training, and experience should match the complexity of the case. Supervisory attorneys will only assign a counsel to a case when that counsel is properly qualified to handle that particular case.

0106 PERSONNEL

Marine Corps Defense Services Organization (DSO). The Marine Corps DSO encompasses all defense counsel and defense support personnel assigned to Marine Corps Commands. The DSO is functionally independent. It operates under the functional supervision of, and is responsible and accountable to, the CDC for the delivery of defense services throughout the Marine Corps.

010601. Chief Defense Counsel of the Marine Corps

Chief Defense Counsel of the Marine Corps (CDC). The CDC is the Officer-in-Charge of the DSO. He exercises functional, day-to-day supervision over personnel assigned to the DSO, and is directly responsible to the Staff Judge Advocate (SJA) to the Commandant for supervision of all Marine defense personnel and the delivery of defense counsel services throughout the Marine Corps. The CDC shall be an experienced judge advocate serving in or selected to the grade of O-6/Colonel. The CDC is assigned in accordance with Article 6, UCMJ. The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) should, when possible, consult with the current CDC and take into consideration the following when selecting a successor CDC: designation with the Additional Military Occupational Specialty (AMOS) of 4409 (criminal law); prior experience as a Defense Counsel (DC), Senior Defense Counsel (SDC), Officer-in-Charge, Defense Counsel Assistance Program (DCAP), and/or Regional Defense Counsel (RDC); significant litigation experience as either a trial or defense counsel or as a military judge.

010602. Assignment of Chief Defense Counsel of the Marine Corps (CDC)

Upon assignment, the SJA to CMC will provide the CDC with an appointment in writing on behalf of the Commandant of the Marine Corps (CMC). This appointment should normally be for no less than two (2) years. The CDC's reporting senior and reviewing officer is the SJA to CMC. The CDC is administratively assigned to Judge Advocate Division (JAD), Headquarters Marine Corps (HQMC) and receives administrative support from HQMC.

010603. Support of Chief Defense Counsel of the Marine Corps (CDC)

The CDC is supported by a legal services specialist staff non-commissioned officer of appropriate experience and temperament, serving as DSO Chief, selected in coordination with the Legal Services Chief of the Marine Corps.

010604. Chief Defense Counsel of the Marine Corps (CDC) Supervision

The CDC serves as the supervisory attorney for the RDCs, DCAP, SDCs, and DCs.

010605. Specific Chief Defense Counsel of the Marine Corps (CDC) DutiesA. Establishing Policies and Procedures

Establishing standing operating procedures and Standards of Practice for the delivery of defense counsel services throughout the Marine Corps. Establishing policies and procedures to ensure that the internal organization structure of the DSO best facilitates the accomplishment of the DSO mission. Establishing policies to provide proper mentorship and training for all officer and enlisted DSO members.

B. Inspections

Conducting, at a minimum, one site inspection at each LSSS and subordinate LSST annually. On behalf of the SJA to CMC, inspecting at least annually the availability of funds, training opportunities, resources and personnel within each LSSS. Reporting to the SJA to CMC annually regarding the delivery of defense counsel services within the Marine Corps.

C. Performance Observation

Assessing through personal observations, inspections, reports of others, and records reviews, the practice, procedure, and techniques of defense counsel and enlisted support personnel in the performance of defense functions. Monitoring the experience level of judge advocates assigned as defense counsel relative to judge advocates assigned as trial counsel.

D. Facility Assessment

Assessing the adequacy of facilities and assets provided to defense counsel. Establishing and maintaining a JAD CDC/DSO Headquarters Branch, functionally independent of but administratively assigned to and supported by JAD.

E. Detailing

Detailing Marine defense counsel and auxiliary defense counsel to cases consistent with paragraph 0110 of this Volume and JAGMAN section 0130. Making availability determinations for Marine defense counsel to serve as Individual Military Counsel (IMC) consistent with paragraph 0112 of this Volume and JAGMAN section 0131.

F. Assignments

Consulting with JAD in the identification of the DSO leadership, including but not necessarily limited to RDCs, DCAP, and the CDC/DSO Chief.

G. Funding

In coordination with JAD, ensuring the availability of Headquarters-level resources and funds for training.

H. Ethics Complaints

Investigating and resolving all informal ethics complaints made in the case of DSO personnel. Investigating and forwarding all formal ethics complaints to the SJA to CMC.

I. Personal Caseload

The CDC may maintain a personal caseload that does not interfere with the responsibilities otherwise described in this Volume.

010606. Officer-in-Charge, Defense Counsel Assistance Program (DCAP)

DCAP is directly responsible to the CDC for the training and support of the DSO Marines. The OIC, DCAP is a Marine judge advocate, preferably serving in or selected to the grade of O-4/Major with the AMOS of 4409 (criminal law). DCAP is administratively assigned to JAD and receives administrative support from HQMC.

010607. Specific Defense Counsel Assistance Program (DCAP) Duties

A. Planning and coordinating DSO-wide and regional training events to ensure that defense counsel and support personnel receive appropriate training.

B. Monitoring defense counsel performance through personal observation, reading records of trial and briefs, and meeting and corresponding with senior judge advocates, military judges, and commanders.

C. Providing advice and consulting with defense counsel in the field on pending litigation, either face-to-face, telephonically or through SharePoint.

D. Assessing and reporting to the CDC on the adequacy of support, assets, and facilities provided to defense counsel at their location.

E. Maintaining and updating web-based support, such as the DSO SharePoint site and the DSO public website.

F. DCAP may maintain a caseload that does not interfere with DCAP's responsibilities for training and mentoring personnel within the DSO.

010608. Regional Defense Counsel (RDC)

RDCs are administratively supported by the regional LSSS but are functionally independent of the LSSS. They are under the functional supervision of, and are directly responsible to the CDC for the delivery of defense counsel services within their region. RDCs are assisted by a legal services specialist SNCO.

A. Qualifications

RDCs are Marine judge advocates serving in or selected to the grade of O-5/Lieutenant Colonel, with considerable expertise in military justice matters and will normally possess the AMOS of 4409 (criminal law). They are identified as being qualified for service as an RDC by JAD acting in the capacity of occupational field sponsor, in coordination with and after receiving advice from the CDC.

B. Funding

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 this Volume, will be provided by the commands to which the RDCs are administratively attached. RDCs are administratively supported by their regional LSSS and assigned through the normal assignment process as follows:

1. National Capital Region. The RDC, National Capital Region and support personnel are administratively attached to Headquarters and Service Battalion, Marine Corps Base, Quantico, with Monitored Command Code TEM.

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

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

4. Pacific Region. The RDC, Pacific Region and support personnel are administratively attached to Headquarters and Support Battalion, Marine Corps Base, Camp Smedley D. Butler, with Monitored Command Code 1FU.

C. Responsibilities

RDCs serve as the supervisory attorney for the SDCs and DCs assigned to their LSSS and their subordinate LSSTs. While assignment of counsel within the LSSS and LSST remains within the purview of the LSSS and LSST OICs, selection of personnel with the qualifications to serve as either Senior Defense Counsel or Defense Counsel is a coordinated effort between the RDC and LSSS OIC. Subject to the approval of the CDC, RDCs organize defense leadership billets in their region to ensure efficient and effective DSO mission accomplishment.

F. Specific Regional Defense Counsel (RDC) Duties

1. Coordinating with local commands to ensure that defense counsel and support personnel receive appropriate training.

2. Conducting, at a minimum, quarterly site visits to each subordinate LSST defense branch.

3. Monitoring defense counsel performance through personal observation, reading records of trial and briefs, and meeting and corresponding with senior judge advocates, military judges, commanders, and Naval Criminal Investigative Service supervisory special agents (NCIS SSA).

4. Assessing and reporting to the CDC on the adequacy of support, assets, and facilities provided to defense offices within the region.

5. Detailing defense counsel assigned to their respective region, provided that authority has been delegated by the CDC consistent with paragraph 0110 of this Volume.

6. Making IMC availability determinations for defense counsel assigned to their respective region, provided that authority has been delegated by the CDC consistent with paragraph 0110 of this Volume.

G. Regional Defense Counsel (RDC) Priorities

An RDC's primary duty is the training, mentoring, and supervision of subordinate defense counsel in the RDC's region. If a RDC maintains a case load, it should not interfere with the RDC's responsibilities for training, mentoring, and supervising personnel within the region.

010609. Senior Defense Counsel (SDC)

An SDC is directly responsible to the RDC and CDC for the delivery of defense counsel services in support of the Marines and Sailors serviced by his or her LSSS or LSST. SDCs are Marine judge advocates, preferably serving in or selected to the grade of O-4/Major, normally with the AMOS of 4409 (criminal law), who serve as head of the defense section for the LSST. SDCs will be appointed in writing by the RDC. SDCs are assisted by legal service specialists of appropriate grade and experience assigned by the LSSS or LSST OIC in consultation with the SDC. SDCs are administratively attached to an LSST or LSSS, but are functionally independent of the LSST or LSSS. They are under the functional supervision of and are directly responsible and accountable to their RDC and the CDC for the delivery of defense services by their LSST or LSSS.

010610. Specific Senior Defense Counsel (SDC) Duties

A. Ensuring that defense counsel and enlisted support personnel receive appropriate training.

B. Monitoring defense counsel performance through personal observation, reading records of trial, briefs, motions, and meeting and corresponding with senior judge advocates, military judges, commanders, and NCIS SSAs.

C. Assessing and reporting to the RDC on the adequacy of support, assets, and facilities provided defense counsel at their location.

D. Detailing defense counsel assigned to that SDC's specific location, provided that authority has been properly delegated by the RDC or CDC consistent with paragraph 0110 of this Volume.

E. Reporting periodically on the condition of trial defense services at his or her location to the RDC and/or CDC.

F. An SDC will maintain a caseload that does not interfere with the SDC's responsibilities for training, mentoring, and supervising personnel within the section.

010611. Defense Counsel

A defense counsel's primary duties are to represent Marines and Sailors in courts-martial, administrative boards, and other proceedings, to provide counsel as required by law or regulation, and to perform other duties as prescribed by the SDC, RDC, or CDC. Defense Counsel are administratively assigned to an LSSS or LSST, but once assigned to a defense billet in the DSO, they are functionally independent of the LSST or LSSS and remain under the supervision of and are responsible and accountable to his or her SDC, RDC, and the CDC. Defense counsel will be assigned to their duties by the cognizant LSSS OIC or LSST OIC detailing authority in a written memorandum that includes an anticipated end date for their tour as a defense counsel.

010612. Auxiliary Defense Counsel

If needed to meet requirements, the LSSS or LSST OIC may identify a judge advocate that will be available to be detailed by the CDC or his or her designee to be a defense counsel for a particular case. SJA, deputy SJAs, trial counsel, victims' legal counsel, or review officers may not serve as auxiliary defense counsel. As outlined in paragraph 2010.3 of MCO 1610.7, Performance Evaluation System, auxiliary defense counsel concurrently performing non-defense duties may receive simultaneous fitness reports from a member of the DSO to evaluate the auxiliary defense counsel's performance as a defense counsel and from his or her supervisor outside of the DSO to evaluate the performance of non-defense counsel duties.

010613. Student Judge Advocates

Student judge advocates (MOS 4401) may be assigned by the LSSS or LSST OIC to support the LSSS or LSST defense branch in a manner similar to that provided to support the military justice section. Student Judge Advocates may likewise be assigned to augment the CDC/DSO Headquarters Element. While assigned to the DSO, student judge advocates are under the supervision of and responsible and accountable to the DSO. While they may assist in the preparation of cases and are bound by the attorney-client privilege, they may not be detailed to represent clients. With the approval of the military judge, student judge advocates may sit at counsel table.

010614. Enlisted Support Personnel

A defense legal services specialist's primary duties are to assist defense counsel in their representation of Marines and Sailors in courts-martial, administrative boards, and other proceedings and to perform other duties as prescribed by the SDC, DCAP, RDC, or CDC. Defense legal services support specialists are administratively assigned to the LSSS or LSST, but once assigned to a defense billet in the DSO, they are under the supervision of and responsible and accountable to his or her SDC, RDC, and the CDC.

A. Enlisted Support to Chief Defense Counsel

The Office of the Chief Defense Counsel of the Marine Corps/Officer-in-Charge, Defense Services Organization shall be supported by a legal services support specialist in the rank of at least a staff sergeant/E-6 or higher to serve as CDC/DSO Chief. This SNCO should have formal paralegal training and prior experience as an RDC Chief, DSO section chief, defense clerk, or other relevant military justice experience.

B. Duties of the Chief Defense Counsel/Defense Services Office Chief

1. Lead, supervise, train, and support all Marine Corps DSO enlisted personnel.
2. Serve as senior enlisted advisor to the CDC on all matters pertaining to the DSO personnel, to include mentoring and the training of 4421s.
3. Support the four DSO regions and provide litigation support to defense counsel.
4. Serve as the CDC's representative for the DSO Inspection Program, inspecting all DSO office branches at least annually to ensure compliance with the standards set by the CDC are being met.
5. Other duties as required by the CDC.

B. Enlisted Support to Regional Defense Counsel

The Offices of the Regional Defense Counsel shall be supported by a legal services support specialist. This Marine should be in the rank of at least an E-6/Staff Sergeant, normally will have formal paralegal training, have previously served as a DSO section chief, defense clerk, or possess other relevant military justice experience, and will be administratively assigned as described in paragraph 0108 supra.

010615. Judge Advocate Reserve Defense Services Branch

The DSO includes judge advocates who are members of the Reserve Component of the Marine Corps. These Reserve DSO members serve in billets within the Office of the CDC or in the RDC Offices. The most senior-ranking billet for a Reserve Component member of the DSO is Branch Head, Judge Advocate Reserve Defense Services Branch. This billet is held by an O-6/Colonel and is the Reserve counterpart to the Chief Defense Counsel of the Marine Corps. Reserve DSO members may be detailed as respondent's counsel for administrative separation boards and boards of inquiry, but should normally not be detailed to courts-martial. The Reserve DSO members are administratively attached to the Reserve Legal Support Branch at the JAD, Headquarters, Marine Corps. However, these judge advocates are under the functional supervision of and responsible and accountable to the CDC.

0107 TOUR LENGTH

All members of the DSO shall have an established tour length and established rotation date. After consultation with the RDC, the LSSS or LSST OIC will establish an anticipated end date for a Marine's tour with the DSO, which normally will be at least 18 months for defense counsel, SDCs, and DSO

enlisted support personnel. When assigning a Marine to the DSO, the OIC will memorialize the anticipated end of tour date in writing and provide a copy of the assignment letter to the RDC.

010701. The RDC will ensure, as far as practicable, that the agreed upon tour length for a defense counsel coincides with the termination of that defense counsel's duties and responsibilities.

010702. If circumstances arise that require curtailing a defense counsel's tour before the previously established agreed upon end of tour date, the LSSS OIC and RDC shall together establish a new end of tour date.

010703. If the parties cannot mutually agree upon a new end of tour date, the cognizant OIC, shall report, in writing, the circumstances requiring the tour curtailment to the SJA to CMC via the CDC.

010704. A defense counsel tour is not considered to be complete until R.C.M. 1105/1106 and post-board matters have been submitted for every case to which the defense counsel remains detailed and written matters are submitted concerning the reports of administrative separation boards such as Boards of Inquiry or Involuntary Enlisted Administrative Separation Boards.

0108 REASSIGNMENT

The reassignment of any Marine defense counsel requires careful planning and coordination between the RDC and the LSSS OIC. Once a Marine defense counsel is slated for reassignment by the OIC, the responsible RDC must ensure that the defense counsel is not detailed cases anticipated to extend beyond the targeted reassignment date without the consent of the OIC. If the RDC and the OIC cannot reach an agreement on the detailing decision involving a case that will likely extend beyond the defense counsel's anticipated rotation date, the matter will be forwarded to the CDC for resolution. If the CDC cannot resolve the matter, the matter will be forwarded to the SJA to CMC for final decision.

010801. Reassignment Prior to Completion of Duties

If a Marine defense counsel is pending reassignment, including discharge or retirement, prior to the completion of defense counsel duties, including post-trial representation, the responsible RDC must ensure the defense counsel has:

- A. Notified all remaining clients and any co-counsel in writing of the pending reassignment;
- B. Informed all remaining clients of their options with regard to the pending reassignment;
- C. Arranged for the client, when the reassignment creates a conflict of interest with a particular case, to consult with a conflict-free counsel about the matter and ensure the client's understanding of this advice is memorialized in writing, counter-signed by the client, and, in court-martial cases, provided to the military judge; and,
- D. Notified the military judge detailed to any ongoing courts-martial of the defense counsel's pending reassignment.

010802. Concurrent Service

Absent a knowing and affirmative waiver by the client of the apparent conflict of interest, and approval by a military judge, judge advocates may not serve concurrently, including periods of transition between billets, as a judge advocate assigned to the DSO or an auxiliary defense counsel and as:

- A. A trial counsel, SAUSA, or a victims' legal counsel on any case.
- B. The deputy SJA or SJA to the convening authority of any case in which the defense counsel is still performing defense counsel duties, including post-trial representation.
- C. The LSST OIC that the defense counsel is assigned to.
- D. Other billets which carry the mantle of command presence and therefore would create a conflict of interest with concurrent service as a defense counsel.

010803. Resolution of Assignment Disputes

Disputes over internal LSSS or LSST assignment or reassignment of DSO personnel will be resolved at the lowest possible level. Those disputes which cannot be resolved through the cooperative effort of the RDC and LSSS OIC will be adjudicated by the SJA to CMC, after consultation with the CDC.

0109 COLLATERAL DUTIES

Marine defense personnel shall perform routine non-defense duties, such as unit PT, training, and standing duty, so long as those collateral duties do not have a military justice connection or conflict with their statutory and ethical obligations to their clients. For example, a defense attorney cannot serve as a duty officer if he or she is responsible for checking Marines on or off restriction or is required to make command visits to the local confinement facility. A Marine defense counsel may, with the consent of the responsible RDC, augment the local legal assistance office. Recognizing the smaller caseload in a combat or expeditionary environment, Marine defense personnel may also perform non-defense duties in an expeditionary or combat environment such as working group member in operational planning teams in civil affairs, information operations and detainee operations, or providing legal assistance so long as these duties do not have a military justice connection or conflict with their statutory and ethical obligation to their clients. Prior to assigning a Marine defense counsel to these duties, the Marine Air Ground Task Force (MAGTF) SJA should consult with the responsible RDC.

0110 DETAILING

011001. Chief Defense Counsel of the Marine Corps (CDC) Detailing Authority

The CDC is the detailing authority for all judge advocates assigned to the DSO and auxiliary defense counsel. Detailing authority includes the authority to remove a counsel from a case for good cause. The CDC may further delegate detailing authority for Marine defense counsel to subordinates within the DSO, subject to the restrictions set forth below. Further delegation of detailing authority will be published via CDC Policy Memorandum. With the consent of the SJA to CMC, the CDC may detail himself or herself to a case. The CDC is authorized to detail, or to delegate detailing authority, to assign

counsel in certain officer and E8 and above cases pending investigation under Chapter 2, JAGINST 5800.7F or under investigation by an Inspector General.

011002. Detailing Considerations

Prior to detailing a defense counsel to a particular case, the detailing authority will consider such factors as: the geographic locations of the accused and counsel, the expected location of the hearing the anticipated rotation date of the defense counsel, the counsel's caseload and experience, any applicable conflict-of-interest analysis, the case complexity, collateral duties assigned to the defense counsel, and the defense counsel's training and education requirements. The detailing of assistant defense counsel to contested and/or complex cases is encouraged.

011003. Detailing Responsibilities

When detailing a defense counsel to a particular case, the detailing authority shall ensure that:

- A. Standard detailing criteria are used.
- B. The needs of the local commands are taken into consideration.
- C. Every accused receives zealous representation by a fully qualified counsel.
- D. Every accused is detailed counsel in a timely manner.

011004. Detailing Timeline

The responsible detailing authority shall detail a defense counsel in writing to a particular case as soon as practicable. Absent good cause, the detailing authority shall detail a defense counsel within:

- A. Ten days of being notified via e-mail, fax, or other written means by corrections personnel, command representatives, the military justice section, or some other government official that an accused has been placed in pretrial confinement or arrest under R.C.M. 305.
- B. Five days of being served notice of preferred charges.
- C. Five days of being served notice of the appointment of an Article 32, UCMJ, Investigating Officer.
- D. Five days of being served an administrative separation/board of inquiry package.
- E. As otherwise required by law or regulation.

011005. Detailing Memorandum

The detailing authority will provide a copy of the detailing memorandum to the appropriate representative of the client's command and the cognizant prosecution section.

011006. Regional Defense Counsel (RDC) Detailing Authority

If delegated the authority, RDCs may detail defense counsel assigned to their regions, except themselves, to cases supported by their LSSS.

011007. Senior Defense Counsel (SDC) Detailing Authority

If delegated the authority, SDCs may only detail counsel assigned to their LSST, including themselves, to cases supported by their LSST or an element thereof either because of geography or a specific request for legal services. However, SDCs who write fitness reports on subordinate counsel may not detail themselves to cases that involve clients with a conflict of interest with clients of a defense counsel for whom the SDC is the reporting senior.

011008. Special Detailing Cases

Defense counsel are normally only detailed to represent an accused assigned to an organization that is supported by that defense counsel's LSST either as a consequence of geography or through a specific request for legal services. However, a defense counsel may be detailed to represent an accused assigned to an organization that is not normally supported by the defense counsel's LSST on a case-by-case basis. Factors that may necessitate such a detailing include, but are not limited to, the following: unique requirements of the case; supporting units and organizations without defense counsel; conflict-of-interest cases; gaps in defense counsel coverage; and savings by using a counsel from another location. If such detailing decisions will result in non-local travel costs as defined by the Joint Federal Travel Regulations beyond those implicit in the request for legal services, then prior to detailing a defense counsel to the case, the authorized detailing authority shall get approval from the Convening Authority (CA) or his or her SJA for travel costs associated with that detailing decision. If the CA will not agree to fund the non-local travel costs associated with the detailing decision the issue will be forwarded to the CDC for resolution. If the CDC cannot resolve the funding issue, it will be forwarded to the SJA to CMC for final decision.

0111 REPRESENTATION AT INITIAL REVIEW OFFICER HEARINGS

Unless the accused has previously been detailed a defense counsel, the responsible detailing authority shall ensure a defense counsel is assigned to represent Marines and Sailors at Initial Review Officer (IRO) Hearings conducted under R.C.M. 305. The defense counsel need not be assigned to the LSST that normally supports the command to which the accused is assigned and may instead come from the LSST closest to the confinement facility or by another Service's defense organization as approved by the RDC. A defense counsel's representation at an IRO hearing is a limited attorney-client relationship related solely to that hearing and does not create an attorney-client relationship for any other purpose or create an entitlement that the accused later be detailed the counsel who represented him or her at this hearing.

0112 REQUESTS FOR INDIVIDUAL MILITARY COUNSEL (IMC)

Article 38, UCMJ, provides that an accused has the right to be represented by a military counsel of his own selection, if that counsel is reasonably available. JAGMAN section 0131 sets forth standards for determining the availability of a requested IMC.

011201. Determining Authority for Individual Military Counsel (IMC) Requests

A. As the OIC of the DSO, the CDC is the determining authority under JAGMAN section 0131b(2) for all IMC requests for Marine defense counsel assigned to the DSO, except IMC

requests for the CDC. The CDC may further delegate this authority to subordinates within the DSO, subject to the restrictions set forth below.

B. The SJA to CMC is the determining authority on IMC requests for the CDC.

C. The CDC is the determining authority on IMC requests for RDCs and DCAP. For IMC availability purposes, an RDC's organization encompasses the Legal Services Support Area of the LSST assigned, not the unit the RDC is administratively assigned. The DCAP OIC's organization is the DSO, not the unit to which the DCAP OIC is administratively assigned.

D. If delegated the authority, RDCs are determining authorities on IMC requests for SDCs and defense counsel assigned to their LSSS and subordinate LSSTs. For IMC availability purposes, an SDC or defense counsel's organization is the LSSS or LSST assigned and the location of the units supported from that location, not the units to which the SDC or DC is administratively assigned.

E. The determining authority for IMC requests for judge advocates not assigned to the DSO, including auxiliary defense counsel with active defense cases, is that judge advocate's OIC or commanding officer (CO).

011202. If the requested defense counsel is made available as an IMC, the detailed defense counsel shall normally be excused from further participation in the case, unless the detailing authority approves a request from the accused that the detailed defense counsel act as associate counsel.

011203. Administrative Review and Appeal of Individual Military Counsel Request Denials

A. The SJA to CMC's denial of an IMC request may not be appealed, but is subject to judicial review.

B. For all IMC requests denied by the CDC, the SJA to CMC is the immediate superior in command for administrative review and appeal.

C. For all IMC requests denied by an RDC, the CDC is the immediate superior in command for administrative review and appeal.

D. For all IMC requests denied by an OIC or CO, that officer's commander is the immediate superior in command for administrative review and appeal.

0113 PROFESSIONAL RESPONSIBILITY COMPLAINTS

The SJA to CMC is the Rules Counsel for all Marine judge advocates, including Marine defense counsel. Informal professional responsibility complaints regarding Marine judge advocates performing duties as defense counsel will be resolved within the DSO. Formal professional responsibility complaints regarding Marine defense counsel will be forwarded via the responsible RDC and CDC to CMC (JCA) for resolution in accordance with any applicable CDC policy memos in effect.

0114 MISCONDUCT ALLEGATIONS

Allegations of misconduct (other than professional responsibility complaints) concerning members of the DSO will be investigated and resolved through the administrative chain of command. Except in those cases where disclosure may jeopardize ongoing sensitive police operations, the responsible LSSS OIC shall immediately notify the responsible RDC and CDC in any case where a member of the DSO is suspected of any offense, and shall keep the RDC and CDC apprised of ongoing case developments. In cases where sensitive police operations are ongoing, notification shall be made as soon as doing so no longer hazards the investigation.

0115 ADMINISTRATIVE AND LOGISTICAL SUPPORT

Cognizant commands will provide personnel, administrative, and logistical support, commensurate with mission requirements, to defense sections equitably with that provided to military justice sections. Absent a judicial order to the contrary, nothing in this paragraph shall be construed to establish a requirement for assignment of investigators to the DSO on a permanent basis.

0116 PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

Defense counsel will ensure that all personally identifiable information (PII) is properly handled, redacted, and disposed of in accordance with SECNAVINST 5211.5E, the Privacy Act, 5 U.S.C. § 552a, paragraph 0141a of JAGINST 5800.7F, this Volume, and any policies or procedures established by the CDC, USMC/OIC, DSO to prevent the unlawful or unauthorized disclosure of PII. All PII provided to defense counsel during discovery is provided pursuant to the Official Use exception of the Privacy Act and SECNAVINST 5211.5, which is not applicable to defense clients. While a defense counsel may discuss information with includes PII with a client when necessary for the preparation of the client's case, under no circumstances shall a defense counsel allow a client to copy or otherwise maintain PII.

0117 BUDGETING AND FUNDING GUIDANCE

Funding to support the defense function should be provided equitably with command funding provided to support the prosecution function. Funding for administrative and logistical support and training expenses for RDCs, SDCs, DCs, and their support personnel will be provided by local commands or LSSS/LSST to which they are administratively attached, as available. All case-related expenses shall be provided by the convening authority, as required by JAGMAN section 0145.

0118 GUIDANCE ON REFERRALS TO CIVILIAN DEFENSE COUNSEL

011801. Acceptable Practices

Marines retain the right to be represented by counsel of their choice, including civilian defense counsel hired at no expense to the United States Government. Marines periodically request advice or referrals from their detailed or IMC for private, non-governmental defense counsel representation. DSO attorneys are obligated to honestly answer any and all questions posed to them by their clients, but will typically avoid recommending to a client which attorney among a group of two or more the client should select. When asked for advice, DSO attorneys may answer specific questions about civilian attorneys, but shall make clear that any information they provide does not reflect any Federal, Department of the Navy, or Marine Corps endorsement of that attorney. Clients will be advised to consult publically available resources such as attorney referral services, local bar and state association web sites, etc. when making their decision.

011802. Prohibited Practices

DSO Branch Offices shall not maintain a list of private attorneys for purposes of referral. Reserve judge advocates serving in any defense counsel capacity are prohibited from soliciting or receiving fees or compensation for the same matter about which they consulted with or advised a DSO client. Nothing in this section prevents or interferes with an attorney's ability to provide free, unfettered, and independent advice to individual clients consistent with this Volume.