



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY  
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WASHINGTON DC 20350-1000

SECNAVINST 5430.27D

OJAG (Code 13)

15 February 2011

SECNAV INSTRUCTION 5430.27D

From: Secretary of the Navy

Subj: RESPONSIBILITY OF THE JUDGE ADVOCATE GENERAL OF THE NAVY  
AND THE STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE  
MARINE CORPS FOR SUPERVISION AND PROVISION OF CERTAIN  
LEGAL SERVICES

Ref: (a) 10 U.S.C. § 5148  
(b) 10 U.S.C. § 5046  
(c) U.S. Navy Regulations 1990, Article 0331  
(d) 10 U.S.C. §806  
(e) GC memo of 3 Feb 11  
(f) JAGINST 5803.1C  
(g) 10 U.S.C. Ch. 47  
(h) DoD Directive 5500.17 of 3 May 03  
(i) 10 U.S.C. § 1044  
(j) SECNAVINST 5430.7Q  
(k) SECNAVINST 5000.34D  
(l) SECNAVINST 5720.42F  
(m) SECNAVINST 5211.5E  
(n) SECNAVINST 5820.8A  
(o) SECNAVINST 5430.25E  
(p) SECNAVINST 3052.2  
(q) SECNAV M-5210.1 CH-1

1. Purpose. Pursuant to references (a) through (p), this instruction prescribes the responsibility of the Judge Advocate General (JAG) of the Navy for the supervision of certain legal services in the Department of the Navy, and sets forth the responsibilities of the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC). In discharging their responsibilities in the Department of the Navy and in their respective services, the JAG and the SJA to CMC shall maintain a cooperative and close working partnership. The JAG and the SJA to CMC shall also maintain a cooperative and close working partnership with the General Counsel, to include regularly informing each other of issues that arise within their areas of respective cognizance and that affect the legal interests of the Department. With regard to the delineation of service

responsibilities, nothing in this instruction is intended to infringe upon the overall departmental responsibilities of the JAG or the General Counsel as defined by the references.

2. Background. The provision of legal services in the Department of the Navy ensures the ability of Navy and Marine Corps forces to accomplish their missions within the rule of law and ensures that the rights of all naval personnel are protected.

3. Cancellation. SECNAVINST 5430.27C.

4. Responsibilities of the JAG. The JAG is the senior uniformed attorney of the Department of the Navy and commands the Office of the Judge Advocate General (OJAG). The JAG responsibilities include:

a. The JAG has primary responsibility for ensuring the ethical and professional practice of law by judge advocates and certain other covered U.S. Government (USG) and non-USG attorneys. This supervision extends to active-duty and reserve judge advocates in the Navy and Marine Corps. It also extends to the following attorneys when they practice under the cognizance of the JAG: uniformed attorneys from other Services, civilian USG attorneys, and non-USG attorneys;

b. The JAG is responsible for certifying that military trial counsel, military defense counsel, and military judges detailed to Department of the Navy courts-martial proceedings are competent and qualified. Civilian defense counsel who represent Sailors and Marines before Department of the Navy courts and administrative tribunals must also be appropriately qualified and follow the JAG's rules of professional responsibility;

c. The JAG is the qualifying authority for civilian attorneys per the delegation by the General Counsel, reference (e). Thus, prior to the establishment, promotion, elimination, or revision, of any civilian attorney position and associated position description under the JAG's cognizance, such action must be coordinated through the JAG;

d. The JAG serves as a Staff Assistant to the Secretary of the Navy (SECNAV) and performs duties relating to legal matters arising in the Department of the Navy as assigned; and

e. The JAG is responsible for providing and supervising the provision of legal advice and related services throughout the Department of the Navy in the following areas:

(1) Military Justice

(a) The JAG is responsible for the military justice function within the Department of the Navy. The military justice function includes, but is not limited to, promulgating regulations for nonjudicial punishment and the execution, management, and oversight of the military criminal justice system at the trial and appellate levels, including national security court-martial litigation. In performing this function, the JAG responsibilities include: inspecting legal offices within the JAG's cognizance; certifying military judges for practice on the bench; certifying trial and defense counsel for practice in military courts-martial; taking action in certain courts-martial if the convening authority fails to do so; receiving records of trial from military courts-martial; reviewing the records of trial of general courts-martial in cases where the accused is not entitled to appellate review; reviewing applications for relief and for new trials; establishing and staffing the Navy and Marine Corps Court of Criminal Appeals; staffing the Office of Military Commissions and U.S. Court of Military Commissions Review; and ordering certain cases be sent to the Court of Appeals for the Armed Forces for review.

(b) In executing the responsibility for the military justice function within the Department of the Navy, the JAG shall convene a Military Justice Oversight Council (MJOC) no less than quarterly, to evaluate the practice of military justice within the Department of the Navy. The MJOC will ensure thorough visibility and communication at the flag and general officer level regarding the military justice function in the Department of the Navy. The MJOC will evaluate the practice of military justice, the effectiveness of the military justice system, assess any potential impediments, and facilitate such action as is necessary to ensure a fair, effective, efficient, and responsive system of military justice. The MJOC shall be co-chaired by the JAG and the SJA to CMC, and include those members appointed by the JAG in coordination with the SJA to CMC. The JAG shall also provide an annual report to the SECNAV, the Chief of Naval Operations (CNO), and the CMC on the state of military justice within the Department of the Navy. Additionally, in accordance with reference (h), the JAG, or the

JAG's designated representative, will serve as a voting member of the Joint Service Committee on Military Justice.

(2) Operational and International Law. The JAG provides legal advice and training on those international and operational law issues of interest to the Department of the Navy. Operational law includes those fundamental principles of international and domestic law that govern or affect U.S. naval operations. Additionally, operational law includes matters of jurisdiction and sovereignty exercised by nations over various parts of the world's oceans; the international legal status and navigational rights of warships and military aircraft; international agreements not within the cognizance of OGC; protection of persons and property at sea; environmental compliance of operational forces in accordance with paragraph 6.b(2); and the safeguarding of national interests in the maritime environment. Operational law also includes principles of law that apply during any period in which U.S. naval forces are engaged in armed conflict, both at sea and ashore, to include information operations and cyberspace operations as defined in reference (p) and in accordance with paragraph 6.b(5). When appointed by the Secretary of Defense, the JAG also serves as the Department of the Defense Representative for Ocean Policy Affairs (REPOPA) for the Department of Defense (DoD). In this capacity, the JAG serves as the central point of contact for analysis of ocean policy matters within the DoD; monitors trends in ocean law and policy to develop DoD positions to enhance the positive development of ocean and maritime policy; monitors and coordinates the Navy's Freedom of Navigation program; compiles, catalogs, and disseminates current information on foreign maritime claims and developments in ocean law and policy that affect military operations; and serves as an interagency point of contact for coordination of technical matters relating to ocean policy and maritime matters.

### (3) Naval Administration

(a) Administrative Law. The JAG provides legal advice on the operation of the Department of the Navy as a governmental entity, including military personnel matters, certain legislative and regulatory matters, associated litigation, homeland security matters, and professional supervision of attorneys practicing under the cognizance of the JAG.

(b) Civil Law. The JAG provides legal advice on issues including admiralty tort and salvage claims and

associated litigation, maritime law, claims issues and associated litigation involving the Federal Tort Claims Act, Military Claims Act, Medical Care Recovery Act, Personnel Claims Act and Foreign Claims Act, general litigation under the cognizance of the JAG, and intelligence law.

(c) Freedom of Information Act (FOIA) and Privacy Act (PA). The JAG is jointly responsible with the General Counsel for adjudication of administrative appeals pursuant to the FOIA and PA and any associated litigation.

(d) Litigation. The JAG is responsible for litigation involving matters under the JAG's practice areas. The JAG is jointly responsible with the General Counsel for ensuring that requests for information and witnesses related to litigation are properly processed.

(e) Intelligence Oversight. The JAG is jointly responsible with the General Counsel for ensuring that compartmented programs and sensitive activities within the Department of the Navy are conducted in a legal manner. The General Counsel and JAG shall discharge these responsibilities in part as principal members of the Senior Review Board and as members of the Special Access Program Oversight Committee, and by designating their deputies as principal members of the Special Programs Review Group and Sensitive Activities Review Board.

(4) Legal Assistance. Pursuant to reference (i), the JAG is responsible for the provision of personal legal assistance services to active duty and reserve military members, their dependents, retired military members, and others specifically authorized by reference (i), to promote individual service member and unit readiness.

f. Responsibility of the JAG to the CNO

(1) The JAG advises and assists the CNO in formulating and implementing policies and initiatives pertaining to the provision of legal services within the Navy.

(2) For matters within the JAG's cognizance per this instruction, the JAG acts as the OPNAV point of contact for CNO operating forces and shore activity commanders to ensure consistency of legal compliance, guidance, policies, procedures, objectives, training, and support.

(3) The JAG is the Chief of the JAG Corps. The JAG is the capability sponsor for the Navy JAG Corps, and is responsible for maintaining the JAG Corps legal community and determining the best possible allocation of available JAG Corps community assets.

5. Responsibilities of the SJA to CMC. The SJA to CMC is the senior uniformed attorney in the Marine Corps and is responsible for providing independent legal advice to the Secretary on matters delineated in this paragraph and as assigned by the Secretary, and to the CMC and other officers and officials of the Marine Corps. The SJA to CMC's responsibilities include:

a. The SJA to CMC directly supervises and manages legal matters arising in the Marine Corps regarding military justice, civil and administrative law, operational law, legal assistance matters, and any other matters as directed by the SECNAV and the CMC, consistent with the responsibilities of JAG under title 10, U.S. Code. For matters under the cognizance of the SJA to CMC, the SJA is the legal advisor to Headquarters, Marine Corps;

b. The SJA to CMC serves as Director, Judge Advocate Division (JAD). In this capacity, SJA to CMC directly supervises and manages the following branches: Military Justice, International and Operational Law, Research and Civil Law, Legal Assistance, Judge Advocate Support, and Judge Advocate Information, Plans, and Programs;

c. The SJA to CMC formulates, implements, supervises, and inspects the use of standard policies and procedures for the delivery of legal services throughout the Marine Corps, with the exception of those matters assigned to the General Counsel.

d. Consistent with the JAG's responsibilities under references (d) and (i), the SJA to CMC is responsible for the military justice and legal assistance functions within the Marine Corps. The SJA to CMC exercises supervision over the administration of military justice within the Marine Corps to include conducting, within the Marine Corps, frequent inspections under reference (d), consistent with the authority assigned to the JAG. The military justice function includes, but is not limited to, the execution, management, and oversight of the military criminal justice system at the trial level, and post-trial processing, until a case is docketed at the Navy-Marine Corps Court of Criminal Appeals. The SJA to CMC shall serve as Co-Chair of the MJOC. Additionally, in accordance with reference (h), the SJA to CMC, or the SJA to CMC's designated

representative, will serve as a voting member of the Joint Service Committee on Military Justice;

e. The SJA to CMC also serves as Rules Counsel for matters of professional responsibility involving Marine Corps judge advocates or civilian attorneys under his cognizance and reports to the JAG regarding oversight of professional responsibility matters in the Marine Corps. The SJA to CMC has professional supervisory authority over all active-duty and reserve Marine Corps judge advocates, legal administrative officers, and legal service specialists.

f. The SJA is the qualifying authority for civilian attorneys per the delegation by the General Counsel, reference (e). Thus, prior to the establishment, promotion, elimination, or revision of any civilian attorney position and associated position description under the SJA to CMC's cognizance as set forth in this instruction, such action must be coordinated through the SJA to CMC.

g. The SJA to CMC is the occupational field sponsor for, and oversees the professional development, training, and education of, all Marine judge advocates, legal administrative officers, and legal service specialists. The SJA to CMC is responsible for making recommendations on legal structure and alignment within the Marine Corps. In addition, due to the unique requirements of the legal mission and the professional development of the legal community, the SJA to CMC advises the Deputy Commandant, Manpower and Reserve Affairs, regarding which Marine judge advocates, legal administrative officers, and legal service specialists are best suited to fill particular billets within the Marine Corps;

h. The SJA to CMC oversees the Chief Defense Counsel of the Marine Corps;

i. The SJA to CMC is responsible for the operational and, in conjunction with the General Counsel, the international law functions within the Marine Corps. The SJA to CMC is also the doctrine proponent for Marine Corps legal service support doctrine; and

j. The SJA to CMC shall also have responsibility for coordination with other uniformed services and, consistent with paragraphs 1 and 6.a. and 6.c., other departments, and agencies of the government in matters within the SJA to CMC's responsibilities or cognizance.

## 6. Relationships

a. JAG and the SJA to CMC. The JAG and the SJA to CMC shall maintain a cooperative and close working partnership in formulating and implementing policies and initiatives pertaining to the provision of legal services within the Department of the Navy.

b. General Counsel and the JAG. The JAG is responsible for providing independent legal advice and opinions to the SECNAV, the CNO, and other officers and officials of the Department of the Navy. The JAG reports directly to the SECNAV, the CNO, and the CMC, and is responsible for Departmental and Service duties and responsibilities as assigned. The responsibilities assigned to the General Counsel do not affect determinations required by law to be made by the JAG. The JAG shall also have responsibility for coordination with other departments and agencies of the government in matters within the JAG's responsibilities or cognizance. Consistent with paragraph 1, the JAG will maintain a close working relationship with the General Counsel on matters of common interest, including:

(1) Government Ethics and Standards of Conduct.

Together with the General Counsel, the JAG provides legal advice on standards of conduct and government ethics, including the outside practice of law, post-Government service employment restrictions, interaction with non-federal entities, and the permissible use of government assets and personnel. The JAG serves as the Alternate Designated Agency Ethics Official for the Department of the Navy. Additionally, the JAG provides standards of conduct training, reviews public financial disclosure reports, and reviews and maintains confidential financial disclosure reports filed by uniformed personnel;

(2) Environmental Law. Consistent with reference (j) and together with the General Counsel, the JAG provides legal advice, assistance, research, and representation on laws protecting human environment, natural resources, and historic and cultural resources to the Office of the Assistant Secretary of the Navy (Energy, Installations and Environment);

(3) Litigation within the Department of the Navy. The JAG keeps the General Counsel informed of the status of all litigation under the JAG's cognizance, including all proposed appeal recommendations to the Department of Justice. In appropriate cases, the General Counsel will share responsibility

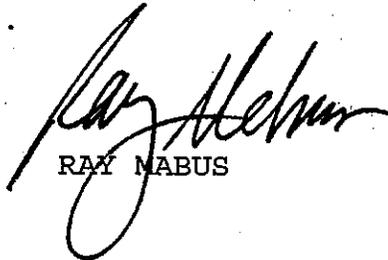
with the JAG for liaison with the Attorney General and the Department of Justice in connection with such cases; and

(4) Civilian Personnel Law. Together with the General Counsel, the JAG shall provide legal services in the field of civilian personnel law, including labor-management relations and equal employment opportunity matters.

(5) Cyber Law. Together with the General Counsel, the JAG provides legal advice, assistance, and research in the field of cyber law to cognizant offices within the Office of the Secretary of the Navy and the Office of the Chief of Naval Operations. Together with the General Counsel, the SJA to CMC provides legal advice, assistance, and research in the field of cyber law to cognizant offices within the Office of the Secretary of the Navy and Headquarters Marine Corps with regard to cyber law issues pertaining to the Marine Corps.

c. General Counsel and the SJA to CMC. The SJA to CMC will maintain a close working relationship with the General Counsel on matters of common interest. Together with the General Counsel, the SJA to CMC provides legal advice on standards of conduct and government ethics, including the outside practice of law, post-Government service employment restrictions, interaction with non-federal entities, and the permissible use of government assets and personnel. The SJA to CMC serves as a Deputy Designated Agency Ethics Official for the Marine Corps, and with the Office of General Counsel provides standards of conduct training, reviews public financial disclosure reports, and reviews and maintains confidential financial disclosure reports filed by personnel of the Marine Corps.

7. Records Management. Records created as a result of this instruction, regardless of media and format, shall be managed in accordance with reference (q).



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