

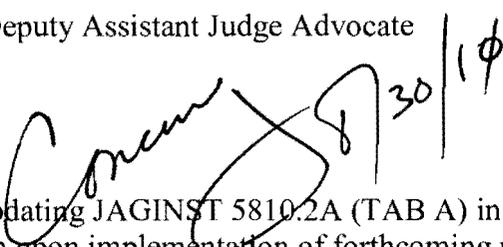
ACTION MEMO

August 13, 2010

FOR: VADM J. W. Houck, Judge Advocate General

FROM: CDR D. M. Harrison, JAGC, USN, Deputy Assistant Judge Advocate General (Criminal Law) *DMH*

SUBJECT: JAGINST 5810.2A REVIEW

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- Respectfully request that you forego updating JAGINST 5810.2A (TAB A) in anticipation of canceling the instruction upon implementation of forthcoming revisions to JAGMAN, Chapter 1.
 - The provisions of JAGINST 5810.2A were originally found in JAGMAN, Chapter 1. The drafters of JAGINST 5810.2 created that instruction with provisions of the JAGMAN that had no applicability outside the legal community. See TAB B. Twenty years later, JAGMAN, Chapter 1 is a primary resource for military justice practitioners and the most appropriate authority to address the provisions originally found therein but now contained in JAGINST 5810.2A.
 - Proposed changes to JAGMAN, Chapter 1 will subsume most of the content of JAGINST 5810.2A. The one provision that will not be addressed in the JAGMAN after the changes are implemented is contained in NAVMARTRIJUDACTINST 5813.4A, App. B, the Uniform Rules of Practice Before Navy-Marine Corps Courts-Martial.
 - The following compares JAGINST 5810.2A with proposed JAGMAN, Chapter 1 and NAVMARTRIJUDACTINST 5813.4A:
 - Rules of Practice Before Courts-Martial: Paragraph 4 of JAGINST 5810.2A references NMCTJINST 5810.5A (Uniform Rules of Practice), which was superseded by NAVMARTRIJUDACTINST 5813.4A, App. B, 26 January 2009, the Uniform Rules of Practice Before Navy-Marine Corps Courts-Martial. The content of paragraph 4 is incorporated in NAVMARTRIJUDACTINST 5813.4A.
 - Maintenance of Records of Oaths of Court Reporters: Paragraph 5 of JAGINST 5810.2A is addressed in section 0130d(3) of the current JAGMAN and any content not currently in JAGMAN 0130 will be incorporated in the proposed revisions to Chapter 1 of the JAGMAN.
 - Post-trial Representation of a Convicted Accused: Paragraph 6 of JAGINST 5810.2A is incorporated in proposed JAGMAN section 0148. The cases cited in paragraphs 6.c (Relief of Defense Counsel) and 6.d (Waiver or Withdrawal of Appellate Review) of JAGINST 5810.2A and in proposed JAGMAN sections 0148c and 0148d are still good law.

- Submission of Matters Under R.C.M. 1105: Paragraph 6.a of JAGINST 5810.2A is incorporated in proposed JAGMAN, Chapter 1 section 0148a.
- Substitution of Discharge Under Article 74(b); Preparation Guidance: Paragraph 7 and enclosure 2 of JAGINST 5810.2A are incorporated in proposed JAGMAN, Chapter 1, section 0167a.
- Rules for Government Appeals Under Article 62, UCMJ, and for filing Petitions for Extraordinary Relief: Enclosure 1 of JAGINST 5810.2A is incorporated in proposed JAGMAN section 0140.
- Appellate Rights Statement/Advice: Enclosure 3 of JAGINST 5810.2A is incorporated as an Appendix in proposed JAGMAN, Chapter 1.
- Special Power of Attorney: Enclosure 4 of JAGINST 5810.2A is incorporated as an Appendix in the proposed JAGMAN, Chapter 1.
- JAGINST 5810.2A has fallen into obscurity while Chapter 1 of the JAGMAN has become primary authority for military justice practitioners. Because the provisions of JAGINST 5810.2A will be implemented in the revised JAGMAN, Chapter 1, JAGINST 5810.2A should be cancelled in order to avoid duplication and to simplify the process of keeping authority uniform and current.

RECOMMENDATION: Make no revisions to JAGINST 5810.2A at this time. Instruction will be cancelled when Chapter 1 of the JAGMAN is update later this fall.

COORDINATION: None.

Attachments: None.

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