



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
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IN REPLY REFER TO:
JAGINST 5813.4J
Code 52
DEC 19 2017

JAG INSTRUCTION 5813.4J

From: Judge Advocate General

Subj: NAVY-MARINE CORPS TRIAL JUDICIARY

Ref: (a) SECNAVINST 5430.27 (series)
(b) SECNAVINST 5400.40 (series)
(c) SECNAVINST 1640.9 (series)
(d) JAGNOTE 5450
(e) JAGINST 5803.1 (series)
(f) JAGINST 5800.7 (series)
(g) JAGINST 5817.1 (series)
(h) Article 26, UCMJ, as amended by Section 5184 of the Military Justice Act 2016

Encl: (1) Judicial Circuits

1. Purpose. In accordance with references (a) and (b), implement the provisions of references (c) through (g) regarding the Navy-Marine Corps Trial Judiciary (hereinafter the "Trial Judiciary"). This instruction serves as interim guidance, pending implementation of the provisions of reference (h) on 1 January 2019.

2. Cancellation. JAGINST 5813.4I.

3. Mission and Functions. The Trial Judiciary shall:

a. Provide military judges from the Active Component and the Reserve Component to preside over all general and special courts-martial. The Trial Judiciary has an affirmative duty to ensure that each referred general and special court-martial, and any required post-trial proceeding, is tried in an expeditious manner, consistent with the needs of fundamental fairness and due process. Records of trial and other proceedings shall be carefully, but expeditiously, authenticated upon receipt by the military judge.

b. Provide military trial judges to conduct post-trial proceedings or to satisfy other compliance mandates as directed by proper authority, such as *Dubay* fact-finding proceedings.

c. Upon request of competent authority, and when approved by the Chief Judge of the Navy-Marine Corps Trial Judiciary (Chief Trial Judge), provide judges to serve as Article 32 hearing officers consistently with Article 26(d), UCMJ. General and special courts-martial shall take precedence over Article 32 hearings. The Chief Trial Judge may delegate the authority to detail

military judges as Article 32 hearing officers to the Circuit Military Judge of the judicial circuit in which the hearing is to be conducted.

d. When requested by competent authority and approved by the Chief Trial Judge or the cognizant Circuit Judge, provide military trial judges to serve as summary courts-martial. General and special courts-martial and Article 32 hearings shall take precedence over summary courts-martial.

e. When approved by the Chief Trial Judge or the cognizant Circuit Judge, provide judges for hearings required under Article 7407 of reference (c) for the psychiatric transfer of prisoners.

f. Participate in regional planning regarding the provision of legal services.

g. Perform other duties as prescribed by the Chief Judge, Department of the Navy, or the Chief Trial Judge.

4. Authority and Responsibility. In order to accomplish the missions and functions of the Trial Judiciary, authority and responsibility are prescribed for specified personnel as follows:

a. Chief Judge, Department of the Navy (CJDON)

(1) CJDON serves as Rules Counsel for any complaints of misconduct or incompetence of military trial judges, proceeding in accordance with reference (e) and Rule for Court-Martial (R.C.M.) 109. Per reference (d), the CJDON is a designee of the JAG as that term is used in Article 26, UCMJ, R.C.M. 108, and R.C.M. 502(c). The CJDON will exercise primary supervisory authority over the Chief Trial Judge. The CJDON will chair the Judicial Screening Board's selection and nomination of military trial judges, and provide professional training and development.

(2) The CJDON is the reporting senior for the Chief Trial Judge, and shall provide any required second-level review for any military trial judge requiring such review, including Marine Corps trial judges evaluated by the Chief Trial Judge as reporting senior and flag review of fitness reports for Navy trial judges in pay grade 0-6.

b. Chief Judge, Trial Judiciary. The Chief Trial Judge is the Officer-in-Charge of the Trial Judiciary and shall exercise direct supervisory authority over the Trial Judiciary. The Chief Trial Judge is a designee of the JAG as that term is used in Article 26(c), UCMJ, R.C.M. 108, and R.C.M. 502(c). The Chief Trial Judge shall oversee and administer the Trial Judiciary in the fair and timely rendering of judicial services, supervise and coordinate the activities of all active and reserve component judiciary personnel, issue comprehensive standard operating procedures, ensure the effective interchange of information and services among military judges, liaise with other service Chief Trial Judges, ensure the effective accession training and continuing judicial education for all trial judges, and perform other duties as may be directed by the CJDON. The Chief Trial Judge may reassign the responsibilities of subordinate judges on a temporary basis. The Chief Trial Judge shall designate the Deputy Chief Trial Judge. Unless impractical, the Deputy Chief Trial Judge should ordinarily be from the other service within the

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Department of Navy from which the Chief Trial Judge is appointed. The Chief Trial Judge serves as the reporting senior of the Deputy Chief Trial Judge, Circuit Judges, and the Commanding Officer/Officer-in-Charge of the Reserve Trial Judiciary units.

c. Deputy Chief Trial Judge. The Deputy Chief Trial Judge assists the Chief Trial Judge in performing the Chief Trial Judge's worldwide duties. The Deputy Chief Trial Judge shall assume and discharge all responsibilities of the Chief Trial Judge in the latter officer's absence or by direction. The Deputy Chief Trial Judge may be contemporaneously assigned as Circuit Military Judge, Northern Judicial Circuit. The Deputy Chief Trial Judge shall serve as Reserve Coordinator and will coordinate, organize and administer assignment of Reserve Component military judges to judicial circuits and other judicial duties as appropriate and necessary. Additionally, in accordance with paragraph 3(b) of reference (d), the Deputy Chief Trial Judge is the official designated to respond to judicial ethics inquiries arising within the Trial Judiciary.

d. Circuit Judge. The Chief Trial Judge shall designate the Circuit Military Judge of each judicial circuit. The Circuit Military Judge is responsible for the administration and internal organization of the assigned circuit, and shall assist the Chief Trial Judge as required. Circuit Military Judges shall coordinate with appropriate local authorities to ensure military judges receive all court-martial charge sheets and all documentation required for trial or post-trial proceedings as soon as possible after referral or an order to conduct post-trial proceedings, including *DuBay* fact-finding hearings. Within each circuit, the Circuit Military Judge details military trial judges to preside over courts-martial proceedings as provided in paragraph 6.

e. Establishment of Judicial Circuits. Judicial circuits are the geographic areas of responsibility for the trial judiciary. The name, location of the principal office, and the geographic responsibilities of the various judicial circuits are detailed in enclosure (1). The alignment of Navy-Marine Corps Judicial Circuits shall in no way affect the jurisdiction of any court-martial, and neither creates nor serves as the basis for the assertion of any substantive right by the government or by an accused.

5. Selection and Assignment of Military Trial Judges

a. Military trial judges in the Department of the Navy have historically not been appointed to set terms with tenure, as is the norm for civilian judges. Instead, military trial judges have remained eligible for reassignment, either for professional military development or for reasons of military necessity. The U.S. Supreme Court has acknowledged the unique needs of the armed services in holding that a lack of tenure by military trial judges does not violate due process. *Weiss v. United States*, 510 U.S. 163 (1994). The Court reasoned that the Uniform Code of Military Justice and Service regulations have adequately insulated military trial judges from convening authorities and any other inappropriate influence. This instruction constitutes part of the regulatory process by which the independence of the Trial Judiciary and its assigned judges is assured.

b. Under the provisions of reference (h), which will be fully implemented no later than 1 January 2019, military trial judges will be assigned for minimum tour, and re-assignment during their judicial assignment will be more highly regulated. In the interim, continuity and

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predictability in the assignment of military trial judges remain necessary to ensure against any perception of improper influence in such assignment or reassignment. A regular assignment policy is also important for the stability of the judiciary as an institution, and to assure development of expertise on the trial bench. In order to properly balance the competing interests discussed above, the following policy governs assignment to the Navy-Marine Corps Trial Judiciary pending implementation of reference (h):

(1) Selection. The selection of judicial candidates is governed by reference (f). Active and Reserve Component candidates shall apply for appointment to the Trial Judiciary through the Judicial Screening Board, which will recommend to the Judge Advocate General the appointment of those officers who meet the governing criteria. Marine Corps candidates recommended by the Judicial Screening Board will be forwarded to the Judge Advocate General via the Staff Judge Advocate to the Commandant of the Marine Corps.

(2) Assignment. Upon selection, judicial nominees may be detailed to an active or reserve judicial billet through the routine Service assignment process, with the exception that orders to the billet of Chief Trial Judge must be approved by the Judge Advocate General. Orders to trial judiciary billets will ordinarily be for a minimum of three years and military judges will be reassigned only in accordance with paragraph 5.b. (3) below. The Judge Advocate General's certification of a military trial judge may not be delivered, and will not be effective, until the selected officer has successfully completed the Military Judges Course sponsored by The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia. Additionally, the Judge Advocate General may temporarily appoint and assign former military trial judges to the Trial Judiciary. The temporary appointment of Marine Corps judge advocates will be accomplished in coordination with the Staff Judge Advocate to the Commandant of the Marine Corps.

(3) Reassignment. Upon certification by the Judge Advocate General and appointment to the Trial Judiciary, military trial judges may only be reassigned from the Trial Judiciary as follows:

(a) Routine Reassignment. Military trial judges will be reassigned by the cognizant Service detailing authority in the ordinary course of the assignments process upon the expiration of permanent change of station orders.

(b) Voluntary Reassignment. The military trial judge requests in writing to be reassigned to other duties, and the cognizant detailing authority, in consultation with the Judge Advocate General, approves such a reassignment.

(c) Retirement. The military trial judge retires or otherwise voluntarily separates from the armed forces.

(d) Non-Routine Reassignment. Military trial judges may be reassigned by the cognizant Service detailing authority when such reassignment is required based on military necessity. In these early reassignments that are not initiated by the trial judge, the detailing

authority shall provide written notice to the Judge Advocate General specifying why reassignment is necessary.

(e) Removal For Cause. Military trial judges may be removed from judicial service and made available for reassignment by the Judge Advocate General for good cause, consistent with R.C.M. 109 and reference (e).

6. Detailing Military Judges to Courts-Martial

a. Pursuant to section 0130 of reference (g), military trial judges may be detailed to preside over courts-martial proceedings by the Chief Trial Judge, a Circuit Military Judge, or designee of that officer. To be detailed, a Navy or Marine Corps officer must meet the qualifications prescribed in R.C.M. 502(c), MCM, and must be assigned permanently or temporarily to the Trial Judiciary. The Chief Trial Judge is authorized to further limit which judge may be detailed to a court-martial and under what circumstances.

b. The Circuit Military Judge (or a designee) details military judges to courts-martial within the assigned circuit. When a court-martial proceeding is to convene or assemble at a location not within the area of any judicial circuit, the Chief Trial Judge will detail a military trial judge, or may delegate the responsibility for the detailing of a military judge to any Circuit Military Judge.

c. The Chief Trial Judge has the sole authority to detail across circuits. A Circuit Military Judge may not detail a judge to a case outside his/her assigned judicial circuit.

d. The Chief Trial Judge shall be the detailing authority for reserve component judges, unless such judge is on active duty and assigned to a circuit. The Circuit Military Judge shall be the detailing authority for any reserve component judge serving on active duty and assigned for duty within that Circuit Military Judge's judicial circuit.

7. Rules of Court. The Chief Trial Judge shall establish such rules of court as are appropriate for trial by courts-martial throughout the Naval Service and may authorize Circuit Military Judges to establish additional rules to accommodate practice within their circuits.

8. Training. The Chief Trial Judge shall establish a program for the continuing legal education (CLE) and professional development of members of the Trial Judiciary. This program shall include professionally presented programs of CLE and periodic organizational meetings. An annual training plan shall be provided to the CJDON.

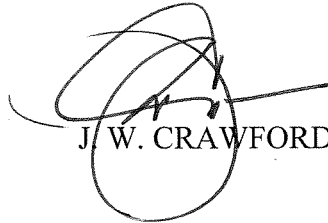
9. Field Inspections. The CJDON and Chief Trial Judge (or designee) shall make regular, periodic visits to all locations within the various judicial circuits as are considered necessary or appropriate in discharging their supervisory judicial responsibilities, and shall report the results of such visits to the JAG.

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10. Funding. Funds allocated by the Office of the Judge Advocate General for the operation of the Trial Judiciary shall be expended at the discretion of the Chief Trial Judge, consistent with all regulations pertaining to the commitment and disbursement of such funds.

11. Records Management. Records created as a result of this instruction, regardless of media and format, must be managed per Secretary of the Navy Manual 5210.1 (series).

12. Review and Effective Date. Per OPNAVINST 5215.17A, Office of the Judge Advocate General, Code 52, will review this instruction annually on the anniversary of its effective date to ensure applicability, currency, and consistency with Federal, and Department of Defense policy and statutory authority using OPNAV 5215/40 Review of Instruction. As the instruction nears its five-year anniversary and it is still required, it will be reissued. Otherwise, if the instruction is no longer required, it will be processed for cancellation as soon as the cancellation is known following the guidance in E.O. 13526.



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Distribution:

Electronic only, via Navy Directives website, <http://doni.daps.dla.mil>; and the OJAG website <http://www.jag.navy.mil>.

NAVY-MARINE CORPS TRIAL JUDICARY JUDICIAL CIRCUITS AND AREAS OF RESPONSIBILITY

| Circuit Name | Principal Offices | Normal Areas of Responsibility |
|--------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Northern | Washington Navy Yard, DC / MCB Quantico, VA | The Naval District Washington, D.C., Quantico and Dahlgren, Virginia. Marine Corps Forces Reserve, New Orleans, Louisiana. Arkansas, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, West Virginia, and Wisconsin. |
| Central | Norfolk, VA | Virginia (except those areas within the Northern Circuit). |
| Eastern | Camp Lejeune, NC | North Carolina. |
| Southern | Jacksonville / Mayport, FL Parris Island, SC | Alabama, Florida, Georgia, Mississippi, Oklahoma, South Carolina and Texas. Louisiana (except for Marine Corps Forces Reserve, New Orleans, Louisiana). Guantanamo Bay, Cuba, Panama, and Puerto Rico. |
| Western | Camp Pendleton, CA | All cases convened by USMC Convening Authorities in Alaska, Arizona, California, Colorado, Idaho, Nevada, New Mexico, Montana, Oregon, Utah, Washington and Wyoming. |
| Northwest | Bremerton, WA | All cases convened by USN Convening Authorities in Alaska, Idaho, Montana, Oregon, Washington and Wyoming. |
| Southwest | San Diego, CA | All cases convened by USN Convening Authorities in Arizona, California, Colorado, Nevada, New Mexico and Utah. |
| WESTPAC | Okinawa, Japan Yokosuka, Japan | Japan, Guam, Korea, Australia, Diego Garcia, New Zealand, and Philippines. |
| EURAFSWA | Naples, Italy | Europe, Africa, countries of the Middle East and Southwest Asia, Iceland, the Arabian Gulf, the Mediterranean and Red Seas, and all Atlantic Ocean areas not assigned to another circuit. |
| Hawaii | Kaneohe Bay, HI Pearl Harbor, HI | Hawaii. |