



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
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IN REPLY REFER TO

JAGINST 5815
Code 51
SEP 08 2010

JAG INSTRUCTION 5815

Subj: NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

Ref: (a) Uniform Code of Military Justice, 10 U.S.C. §§ 866-873
(b) ABA Code of Judicial Conduct
(c) JAGINST 5400.1 (series)
(d) JAGINST 1150.2 (series)
(e) JAGINST 5817.1 (series)

1. Purpose. To set forth the mission, structure and function of the Navy-Marine Corps Court of Criminal Appeals (NMCCA) in accordance with reference (a), and to implement the provisions of references (b) through (e) regarding the court.

2. Cancellation. JAGINST 5814.1, NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS.

3. Mission and Functions. The NMCCA is the intermediate appellate court that reviews United States Navy and Marine Corps courts-martial that fall within its jurisdiction under reference (a).

a. The NMCCA has the statutory responsibility to review all Navy and Marine Corps courts-martial resulting in a sentence of death, a punitive discharge or dismissal, or a sentence of one year or more of confinement. In addition, the NMCCA shall review all other matters over which the court determines it has jurisdiction, pursuant to reference (a), such as Government interlocutory appeals. Upon jurisdiction attaching, appellate review shall be accomplished fairly, impartially, and as expeditiously as possible, consistent with due process and fundamental fairness, and according to the law and applicable regulations.

b. Appellate review of courts-martial includes the reading of the record and allied documents in each case, including the appellate pleadings of the parties, conducting legal research necessary to promptly and correctly dispose of any issue, participating in oral arguments, and the drafting and promulgation of orders or other decisions, including summary

dispositions, unpublished and published decisions of the court, either by a panel or *en banc*, as necessary to complete appellate review. Except as set forth in paragraphs 3.c., 3.d. and 3.e., these duties of judicial office take precedence over all other activities of the NMCCA judges.

c. When so appointed by competent authority, and with the concurrence of the Judge Advocate General, the judges of the NMCCA may be made available to investigate, draft, or review cases of judicial misconduct or other matters that require the specific qualifications, expertise or experience of an appellate judge.

d. When so appointed by competent authority, the judges of the NMCCA shall also serve as appellate military judges of other Department of Defense appellate judiciaries, including the U.S. Court of Military Commission Review. Upon appointment, duty on such a Department of Defense court shall become that judge's primary duty.

e. Those appellate judges that have previously served as trial judges may be detailed by the Chief Judge of the Navy-Marine Corps Trial Judiciary to preside over a general court-martial only when determined by that Chief Judge to be necessary. ~~Such a detail must have the concurrence of the Chief Judge of NMCCA, who will concur only if such detail does not interfere with the timely appellate review of any pending case. Prior to any such detailing, both chief judges must inform the Judge Advocate General, via the Assistant Judge Advocate General, Chief Judge (AJAG-CJ), of the circumstances necessitating such a detail, and the impact on the NMCCA, including the potential for recusal of the detailed appellate judge from any future case on appeal.~~

f. Appellate judges of the NMCCA may participate in public and academic events appropriate for members of the appellate judiciary, as set forth in reference (b), including presiding over moot courts sponsored by the Army, Navy, and Air Force justice schools, civilian law schools or bar associations; Navy-sponsored recruiting events; and professional teaching, lecturing, and writing. Participation in such activities by NMCCA judges shall be as authorized by the AJAG-CJ, and only when consistent with the timely review of courts-martial.

4. Authority and Responsibility. To accomplish the mission and functions of the NMCCA, authority and responsibility are prescribed for specified personnel as follows:

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a. Chief Judge. The Chief Judge of the NMCCA is denominated Division Director of Code 51. Reference (c) pertains. The Chief Judge is responsible for the fair, efficient, and effective management of the court, including ensuring the fair and timely disposition of all matters pending before it. The authority of the Chief Judge extends to all management and administrative functions of the court. In addition to those duties otherwise assigned in this instruction, the Chief Judge shall:

(1) Dispose promptly of the business of the court, maintain professional competence, and adhere to the standards set forth in reference (b);

(2) Serve as Rating Official of the Clerk of Court, and the second level reviewer for all other civilian personnel of the court as required by governing civilian personnel regulations;

(3) Serve as reporting senior for active duty and contract staff attorneys, clerks and paralegals assigned to the court;

(4) Provide for the continuous professional development of NMCCA judges;

(5) Designate one judge of each panel of the court to serve as Senior Judge;

(6) Diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel;

(7) Monitor the timeliness and productivity of the court and adjust, provide or request resources needed to maintain fair, impartial and timely disposition of all matters;

(8) Whenever the simultaneous appointment of an NMCCA judge to a collateral duty occurs, the NMCCA Chief Judge shall report to the AJAG-CJ the impact on NMCCA's ability to timely discharge its responsibilities, and shall request such additional resources as are required;

(9) Exercise administrative supervisory authority over all cases under review by the judges of the NMCCA, taking

reasonable measures consistent with reference (b) to ensure the judges of the court perform their duties timely and effectively;

(10) Report quarterly to the AJAG-CJ on the status of the court's productivity and capability as it relates to the court's current and anticipated case load; and

(11) Annually, prepare such NMCCA information as is required for the Annual Report to the ABA and the Annual Report to the Court of Appeals for the Armed Forces.

b. Senior Judge. Upon designation by the Chief Judge, the Senior Judge of a panel shall:

(1) Dispose promptly of the business of the court, maintain their professional competence, and adhere to the standards set forth in reference (b).

(2) Diligently discharge administrative responsibilities as assigned by the Chief Judge, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of the assigned panel judges and court personnel;

~~(3) Exercise administrative supervisory authority over the cases assigned to panel judges, taking reasonable measures consistent with reference (b) to ensure the judges of the panel perform their duties timely and effectively;~~

(4) Monitor the timeliness and productivity of the panel, and periodically, as directed by the Chief Judge, report the status of the panel's case load and request any resource needed to maintain the fair, impartial and timely disposition of all panel matters.

c. Judges. The judges of the NMCCA shall dispose promptly of the business of the court, diligently discharge any administrative responsibilities assigned by the Chief Judge or the Senior Judge of their assigned panel, maintain their professional competence, and adhere to the standards set forth in reference (b).

d. Clerk of Court. The Clerk of Court shall supervise the day-to-day operations of the court, implement the policies and procedures of the court, issue and authenticate all court orders and decisions, manage the case-tracking database on behalf of the court, and perform such other duties as assigned by the

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Chief Judge. The Clerk of Court is the custodian of the seal of the court, and serves as the Rating Official of the court's civilian staff. The Clerk of Court maintains records related to the court's bar and processes applications for admission to the court's bar.

e. Senior Law Clerk. The senior law clerk shall ordinarily be an active duty judge advocate in the pay grade of O-4 or O-5 who serves as the court's principal military administrative assistant, providing general supervision and administrative support to the court and military staff. The Senior Law Clerk assists the Clerk of Court, serves as the Chief Judge's law clerk, and performs those other duties as assigned by the Chief Judge.

f. Staff Attorneys, Law Clerks, Paralegals, and Other Support Staff. Active duty staff shall perform those duties assigned by the Chief Judge. Civilian support staff, whether Department of the Navy or contract personnel, shall perform those duties assigned by their individual position description or contract.

5. Composition of the Court. The NMCCA shall be composed of one or more panels of three appellate judges. Each panel will ~~review those cases assigned to it, or the court may sit en banc~~ according to the rules of court, including any internal rules promulgated by the Chief Judge. The judges of the NMCCA shall include both Navy and Marine Corps judge advocates. Unless otherwise determined by the Judge Advocate General at least one-third of the active-duty judges, exclusive of the Chief Judge, will be former trial judges, or designated as Military Justice Litigation Career Track officers per reference (d).

6. Establishment of Branch Offices. The NMCCA shall sit at the Washington Navy Yard, Washington, D.C. As directed by the Chief Judge, a panel, or the court *en banc*, may conduct "out-reach" oral arguments at suitable locations in the community, to foster greater community understanding of the military justice process, and greater visibility of the NMCCA as a component of military justice. Additionally, in accordance with reference (a), the Judge Advocate General may establish panels in other geographic locations. Such other panels will be established by JAG NOTE or by modification of this instruction.

7. Qualification, Certification and Appointment of Judges. Appellate judges will be appointed by the Judge Advocate General consistent with the reference (e) Judicial Screening Board.

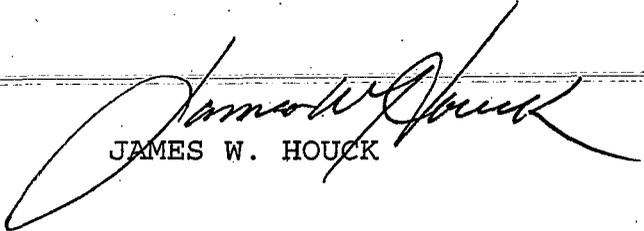
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Marine Corps judges will be appointed from judge advocates recommended by the Staff Judge Advocate to the Commandant of the Marine Corps. Appointments will not be delivered until the selected officer has successfully completed the Military Judges Course sponsored by The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia, and certified by the Judge Advocate General.

8. Rules of Court. The Chief Judge is authorized to promulgate such rules of practice and procedure before the NMCCA as are deemed necessary or appropriate, including internal rules which are not inconsistent with the joint Courts of Criminal Appeals Rules of Practice and Procedure.

9. Training. The Chief Judge shall establish a program for the continuing professional education and development of the judges, clerks and staff of the NMCCA. An annual training plan shall be provided to the AJAG-CJ.

10. Funding. Funds available for the operation of the NMCCA shall be expended at the discretion of the Chief Judge, consistent with all regulations pertaining to the commitment and disbursement of such funds.



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