

Army Regulation 27-1

Legal Services

**Judge
Advocate
Legal
Services**

**Headquarters
Department of the Army
Washington, DC
24 January 2017**

UNCLASSIFIED

SUMMARY of CHANGE

AR 27-1
Judge Advocate Legal Services

This major revision, dated 24 January 2017—


- o Updates The Judge Advocate General's statutory authorities (para 2-1*a*).
- o Clarifies, in accordance with GO 2012-01, The Judge Advocate General's authority, certification, and career management of the Judge Advocate General's Corps, which includes officers, enlisted, and warrant officers (paras 2-1*b* and 3-9).
- o Incorporates statutory changes related to Special Victims' Counsel (paras 2-1*e*(5) and 2-1*o*).
- o Updates The Judge Advocate General's provision of legal support to the Army's current force structure, to include direct support to brigade and brigade equivalent elements (para 3-6*d*).
- o Provides policy and guidance on the Consolidated Legal Office for delivery of legal services at installations that have Judge Advocate General Legal Service personnel from different authorization documents (para 4-3).
- o Rewrites provisions for Reserve Component Judge Advocate management, administration, and training (chap 7).
- o Updates information pertaining to transferring an officer Funded Legal Education Program from basic branch upon passing the bar (para 10-10).
- o Revises professional conduct and fitness inquiries, to include establishing a new evidentiary standard for professional conduct and fitness inquiries (clear and convincing vice preponderance) (chap 11).

Legal Services
Judge Advocate Legal Services

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:


GERALD B. O'KEEFE
Administrative Assistant to the
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History. This publication is a major revision.

Summary. This regulation contains essential information concerning the Judge Advocate Legal Service and the Judge Advocate General's Corps. It defines responsibilities; explains policies, objectives, and procedures for the development and maintenance of the Reserve Component Judge Advocate General's Corps officers; details responsibilities for the supervision, training, employment, and administration of Judge Advocate Legal Service personnel; provides procedures for acquiring and maintaining Army law library materials; defines the professional standards and procedures for processing alleged violations of professional standards; provides guidance for applicants for voluntary active duty

with the Judge Advocate General's Corps; and explains and describes the administration of The Judge Advocate General's Funded Legal Education Program.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. It also applies to Department of the Army civilians who are involved in any matter that falls under the responsibility and authority of The Judge Advocate General, regardless of whether such person is a member of the Judge Advocate Legal Service. This publication is applicable during mobilization.

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General, Office of The Judge Advocate General. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field-operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will

be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11-2 and identifies key internal controls that must be evaluated (see appendix B).

Supplementation. Supplementation of this regulation and establishment of command and local forms is prohibited without prior approval from the Judge Advocate General, 2200 Army Pentagon, DAJA-PT, Washington, DC 20310-2200.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to The Judge Advocate General, 2200 Army Pentagon, DAJA-PT, Washington, DC 20310-2200.

Distribution. This regulation is available in electronic media only and is intended for command levels B, C, D, and E for Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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Glossary

Chapter 1 Introduction

1–1. Purpose

This regulation provides general information about the Judge Advocate Legal Service (JALS) and the Judge Advocate General's Corps (JAGC); prescribes the composition, mission, and functions of the JALS; details responsibilities and explains policies, objectives, and procedures for the development and maintenance of the JALS; details responsibilities for the supervision, training, employment, and administration of the U.S. Army Reserve Legal Command (USARLC); provides procedures for acquiring and maintaining Army legal research resources; provides guidance for applicants for service in the JAGC; and explains and describes the administration of The Judge Advocate General's Funded Legal Education Program (FLEP).

1–2. References

See appendix A.

1–3. Explanation of Abbreviations and Terms

See the glossary.

1–4. Responsibilities

Responsibilities are listed primarily in chapter 2.

1–5. Statutory Authority

Statutory authority for this regulation includes Title 5, United States Code, Section 3109 (5 USC 3109); 10 USC 129b; 10 USC 806, 815, 827, 834, 860, 861, 866–870, 873, and 874; 10 USC 938; 10 USC 1044, 1054, and 1089; 10 USC 2004; 10 USC 2733, 2734, 2737; 10 USC 3013, 3036, 3037, 3064, 3065, and 3072; 10 USC 4801–4804, and 4806; 28 USC 2671–2680; 31 USC 3711; 31 USC 3721; 42 USC 2651–2653; and 46 USC 30101.

Chapter 2 Responsibilities

2–1. The Judge Advocate General

a. Authority as legal advisor. TJAG will—

(1) Perform duties prescribed by the Secretary of the Army (SECARMY) and by law (10 USC 3036(d)).

(2) Serve as the legal advisor to the SECARMY and all officers and agencies of the Department of the Army (DA) (10 USC 3037). TJAG provides independent legal advice in coordination with the Army General Counsel to the SECARMY and the Secretariat and directly to the Chief of Staff, U.S. Army (CSA), members of the Army Staff (ARSTAF), and members of the Army generally. Laws, executive orders, and regulations specify the responsibilities of TJAG to provide legal advice in the following areas:

(a) Military justice.

(b) Administration and operation of DA.

(c) Business, property, and financial operations under the jurisdiction of the Army.

(d) Administration, control, discipline, status, civil relations, and activities of DA personnel.

(3) Provide legal advice to the CSA and the ARSTAF in all matters, including environmental law, to include providing technical supervision and technical channel assistance to DA officials and organizations; labor and civilian personnel law, to include exercising oversight and technical supervision of the Army Labor Counselor Program; contract, fiscal and tax law; international law, to include acting as the Army single office of record for international agreements and serving as the Army proponent for review of the legality of weapons under international law; and matters concerning the worldwide deployment of Army forces.

(4) Give independent legal advice to the SECARMY or the CSA; officers and employees of the Department of the Defense (DOD) are prohibited from interfering in the ability of TJAG to do so. (See 10 USC 3037(e)(1)).

b. General responsibilities. TJAG will—

(1) Direct the members of the JAGC and the JALS in the performance of their duties. This includes leading and managing all aspects of worldwide JALS operations.

(2) Exercise technical supervision over the JALS' delivery of legal services in the Army and all JALS personnel under the qualifying authority of TJAG.

(3) Certify all members of the JAGC and approve the professional qualifications of JALS civilian attorneys to ensure that all members maintain the highest levels of ethical and moral behavior and professional proficiency to perform legal duties in the JALS.

(4) Manage the professional legal training within the Army.

(5) Determine the requirements for the Armywide acquisition of legal research materials.

(6) Act as Executive Agent for coordinating automation of the Army legal community. Develop automation standards, policies, and procedures associated with legal support missions.

(7) Serve as proponent for all JAGC personnel positions, to include area of concentration 27A and 27B, warrant officer military occupational specialty 270A, and enlisted military occupational specialty 27D.

(8) Serve as career manager for members of the JAGC, except for general officers, to include managing the recruitment, career development, and worldwide assignment of all JAGC personnel.

(9) Serve as the qualifying authority for all persons recommended for appointment, transfer, reassignment, or promotion as civilian attorneys or law clerk trainees in grades general schedule (GS) -15 and below (except for the elements under the Army Corps of Engineers and U.S. Army Materiel Command (AMC)) and for U.S. Army employees of Joint commands. (See Army Regulation (AR) 690-200, chap 213).

(10) Serve as career manager for all civilian attorneys under the qualifying authority of TJAG, to include managing their recruitment, appointment, assignment, promotion, and discipline, as well as the career development of all JALS civilian attorneys and civilian paraprofessionals.

(11) Provide legal services to the DA.

(12) Secure legal services by appointment of professional consultants, as necessary. (See para 3-10).

c. Legal services. TJAG is the Army proponent for legal services and matters. TJAG has overall responsibility for legal services based on statutory, regulatory, delegated, and general order authority, as well as by designation and assignment. TJAG directs the delivery of Army legal services across a broad spectrum of legal disciplines including, but not limited to, military justice, international and operational law, administrative and civil law, contract and fiscal law, claims, and legal assistance.

d. Judicial responsibilities. TJAG will—

(1) Designate, establish, alter, and dissolve judicial areas and judicial circuits of the U.S. Army Trial Judiciary. (See AR 27-10).

(2) Establish the U.S. Army Court of Criminal Appeals (ACCA), refer cases to the court, instruct convening authorities to take action according to the decisions of the court, and prescribe uniform rules of procedures.

(3) Meet periodically with The Judge Advocates General of the other armed forces to formulate policies and procedures for review of courts-martial in the Service offices of The Judge Advocates General and by the Service Courts of Criminal Appeals, in accordance with Article 66, Uniform Code of Military Justice (UCMJ) (10 USC 866(f)).

(4) Examine all records of trial by general court-martial (GCM) that result in guilty findings not otherwise reviewed under Article 66, UCMJ (10 USC 866), and in which the accused has not waived or withdrawn appellate review under Article 61, UCMJ (10 USC 861). TJAG may modify or set aside the findings or sentence, or both if any part of the findings or sentence is unsupported in law, or if reassessment of the sentence is appropriate. TJAG also may direct review by the ACCA with respect to matters of law. (See Article 69, UCMJ (10 USC 869)).

(5) Receive petitions for a new trial on the grounds of newly-discovered evidence or fraud on the court within two years after approval by the convening authority of a court-martial sentence. If the accused's case is pending before the ACCA or before the U.S. Court of Appeals for the Armed Forces (CAAF), TJAG will refer the petition to the appropriate court for action. Otherwise, TJAG will act on the petition. (See Article 73, UCMJ (10 USC 873); AR 27-10).

(6) Mitigate, remit, or suspend, in whole or in part, any unexecuted portion of a sentence adjudged by a court-martial (including all uncollected forfeitures), other than a sentence of death or dismissal, or one affecting a general officer, prior to completion of appellate review, if appropriate. (See Article 74, UCMJ (10 USC 874); AR 27-10).

(7) Vacate or modify, in whole or in part, the findings and/or sentence in a court-martial case not otherwise reviewed under Article 69, UCMJ (10 USC 869), or by the ACCA, if appropriate, on any of the following grounds:

(a) Newly-discovered evidence.

(b) Fraud on the court.

(c) Lack of jurisdiction over the accused or the offense.

(d) Error prejudicial to the substantial rights of the accused.

(e) Appropriateness of the sentence.

(8) Act on appeals from punishments imposed under Article 15, UCMJ (10 USC 815), by Army commanders when no intermediate superior authority is reasonably available to take this action, pursuant to designation as the next superior authority by the SECARMY. (See AR 27–10).

(9) Return the record to the ACCA for further review or instruct the convening authority to take action, after a decision by the CAAF. (See Article 67, UCMJ (10 USC 867)).

e. Military justice responsibilities. TJAG will—

(1) Be the principal legal advisor to the SECARMY and to the CSA concerning matters pertaining to military justice. Acting through The Assistant Judge Advocate General for Military Law and Operations (AJAG/MLO), TJAG will establish DA policy on military justice and provide legal guidance and staff supervision of the Army’s system of military justice. TJAG, or senior staff members designated by TJAG, will make frequent inspections in the field to supervise the administration of military justice. (See Article 6(a), UCMJ (10 USC 806(a)).

(2) Manage the administration of military justice in the Army, to include the technical supervision of personnel assigned outside a legal office who directly support the military justice mission.

(3) Serve as a member of the Code Committee established by Article 146, UCMJ (10 USC 946).

(4) Receive, revise, and record the proceedings of courts of inquiry and military commissions. (See 10 USC 3037(c)(3)).

(5) Certify as qualified for duty and designate for detail those officers who may serve as military judges (MJJs) (Article 26, UCMJ (10 USC 826)); certify trial counsel and defense counsel of GCMs (Article 27, UCMJ (10 USC 827)); certify Special Victim Prosecutor and Special Victim Noncommissioned Officer (NCO); certify Special Victims’ Counsel (10 USC 1044e)(see para 2–10); and withdraw or suspend (temporarily or indefinitely) the certification of judge advocates (JAs) in accordance with Articles 26 and 27, UCMJ (10 USC 826 and 827), and pursuant to Rules for Courts-Martial (RCM) 109, Manual for Courts-Martial (MCM) when appropriate.

(6) Forward cases reviewed by the ACCA to the CAAF for review as appropriate. (See Article 67, UCMJ).

(7) Detail appellate government counsel and appellate defense counsel. (See Article 70, UCMJ (10 USC 870)).

(8) Establish a branch office under an Assistant Judge Advocate General, if directed by the SECARMY. (See Article 68, UCMJ (10 USC 868)).

(9) Authorize access to records of trial by GCM and records of trial by those special courts-martial in which the sentence, as approved, includes a bad-conduct discharge and the record of trial has been forwarded for appellate review. Requests for records of trial that have not been forwarded for appellate review will be addressed to the staff judge advocate (SJA) of the command that convened the court. TJAG is the initial denial authority for that category of records. (See AR 25–55).

(10) Administer an independent, Armywide trial and appellate judiciary and provide for appellate review and representation. The U.S. Army Legal Services Agency (USALSA), a field operating agency (FOA) under the jurisdiction of TJAG, assists TJAG in managing courts-martial, records, and statistics. The Chief Trial Judge, U.S. Army Trial Judiciary, serves as TJAG’s designee under Article 26, UCMJ; (10 USC 826), RCM 108, RCM 109, and RCM 502(c), MCM; and is responsible for the supervision and administration of the U.S. Army Trial Judiciary and the Military Magistrate Program. (See AR 10–72 and AR 27–10).

(11) Administer an independent, Armywide Trial Defense Service (TDS) to provide representation for Soldiers tried by courts-martial. The Commander, The Judge Advocate General’s Legal Center and School (TJAGLCS) and the Chief, U.S. Army Trial Defense Service (USATDS), assist TJAG in managing the TDS mission. (See AR 27–10.)

(12) Supervise training in military justice for all U.S. Army personnel.

(13) Prescribe rules to govern the supervision and discipline of military trial and appellate judges, JAs, and lawyers who practice in proceedings governed by the UCMJ and RCM 109, MCM.

(14) Provide support as directed to the administration of military commissions.

(15) Direct the Army’s Voting Group representative to the Joint Service Committee on Military Justice, in accordance with Department of Defense Directive (DODD) 5500.17.

f. Administrative law responsibilities. TJAG will—

(1) Provide legal advice relating to—

(a) Organization, powers, functions, and employment of the Army.

(b) Powers and duties of Army officials and the delegation of those powers and duties.

(c) Interpretation and application of laws relating to DA and its members generally.

(d) Questions of law and policy pertaining to appointment, enlistment, reenlistment, promotion, reduction, separation, retirement, mobilization, status (including federal recognition), discipline, and administration of military personnel in both the regular and reserve components, including U.S. Military Academy and Reserve Officers’ Training Corps personnel matters.

(e) Pay and allowances of military personnel and their dependents (other than policy issues).

- (2) Act as—
 - (a) Designee of the SECARMY in making required good-faith findings on claimed marriages.
 - (b) An initial denial authority on requests made pursuant to the Freedom of Information Act (5 USC 552) for records within TJAG's functional area of responsibility. (See AR 25–55).
 - (c) The denial authority on requests made pursuant to the Privacy Act (5 USC 552a) for access to or amendment of records contained within a system of records under TJAG's qualifying authority. (See AR 340–21).
 - (d) The approval authority for Army records, regardless of functional category, related to actual or potential litigation in which the United States has an interest. (See AR 27–40).
 - (e) Designee of the SECARMY for making final dispositions of complaints filed under Article 138, UCMJ (10 USC 938). (See AR 27–10).
- (3) Prepare opinions and furnish advice on questions of law related to the DA personnel security program, prepare allegations in personnel security cases and provide counsel and attorney-advisors for field boards of inquiry.
- (4) Review for legal sufficiency final drafts of proposed Army regulations and other proposed Army publications; identify new SECARMY delegations of authority; and review and prepare comments on or concurrences with proposed regulations and directives of the other military department and DOD. (See AR 25–30.)
- (5) Oversee and administer ethics program requirements as a Deputy Designated Agency Ethics Official (DDAEO) in accordance with the delegation of authority from the Designated Agency Ethics Official (DAEO). Duties include, but are not limited to providing ethics advice; maintaining, reviewing, and certifying financial disclosure reports; granting filing extensions for filers of financial disclosure reports; and other functions assigned to the DAEO that are delegable under law and regulation, to include any matters under 5 Code of Federal Regulations (CFR) parts 2634 through 2641 and part 3601; 41 USC 2101–2107; or the Joint Ethics Regulation (JER).
- (6) Prepare and submit the Army's semi-annual report to the Office of Government Ethics regarding the acceptance of payment from a non-federal source for travel expenses pursuant to 31 USC 1353.
 - g. Legislative responsibilities.* TJAG will—
 - (1) Review proposed legislation; and
 - (a) Comment upon and develop the Army's position on legislation pending before Congress or being proposed from within the DOD, other departments, or other federal agencies.
 - (b) Present necessary testimony, both oral and written, to appropriate congressional committees on military justice legislation and, except on matters of Civil Works, private relief legislation.
 - (2) Prepare—
 - (a) Draft bills with sectional analysis for Army legislative proposals.
 - (b) Drafts of executive orders and proclamations and prepare comments on orders or proclamations prepared by other agencies of the Government.
 - (c) Reports on recently enacted legislation, as required.
 - (3) Investigate private relief legislation, prepare reports to Congress establishing the Army's position on private relief, coordinate the Army's position on such legislation within DOD and with other federal agencies, and recommend approval or veto by the President, except on matters of Civil Works.
 - (4) Comment on regulations and directives proposed by the DOD and military departments to implement new or proposed legislation.
 - (5) Assist in rulemaking functions concerning Army directives that directly affect the public (5 USC 553).
 - h. International law responsibilities.* TJAG will—
 - (1) Act as the primary legal advisor to the ARSTAF on all international law issues arising from deploying and stationing U.S. forces overseas. This includes—
 - (a) The development, drafting, negotiation, and interpretation of international agreements pertaining to all aspects of foreign, comparative, and international law;
 - (b) The negotiation and interpretation of international agreements in general, and arms control and disarmament agreements, as required;
 - (c) The provision of military assistance to other countries, including assistance to foreign armed forces under the Foreign Assistance Act, the Arms Export Control Act, and the North Atlantic Treaty Organization (NATO) Mutual Support Act;
 - (d) Matters affecting military operations overseas, including domestic laws, executive orders, and regulations related to the use of military force;
 - (e) The Law of Armed Conflict (LOAC), including the reporting, investigation, and prosecution of war crimes;
 - (f) Air and space law, and law of the sea as they relate to Army activities; and
 - (g) The Army International Activities Program.

(2) Provide overall legal advice and guidance as the primary legal advisor on LOAC and the Army's implementation of the DOD Law of War Program. This includes—

(a) Support through international law teams or other resources of the reporting, investigation and collection of evidence, and evaluation of alleged war crimes against U.S. personnel;

(b) Support of investigative agencies, and, if necessary, oversight of the prosecution of alleged war crimes committed by U.S. personnel;

(c) Review of all operation and concept plans and rules of engagement for compliance with domestic and international law as part of the ARSTAF review in the Joint review process;

(d) Review of all new weapons for compliance with international law;

(e) Preparation of literature to support the training of Army personnel in the law of war;

(f) Assurance that legal advisors at all echelons of command are educated, trained, and competent to advise commanders on LOAC in order to ensure compliance with the law during all phases of exercises and operations; and

(g) Provision of legal advice and guidance regarding the governing of occupied enemy territory and the treatment of displaced civilians or refugees.

(3) Provide legal advice and guidance on all international law issues arising from deploying and stationing U.S. forces overseas. This includes training U.S. personnel in their rights and obligations in foreign countries, to include compliance with human rights law and policy. It also includes acting as the Army single office of record for and participating in the drafting, negotiation, and interpretation of international agreements pertaining to—

(a) Base rights, facilities, operations, to include environmental law;

(b) Arms control;

(c) Status of Forces; and

(d) Other matters relating to U.S. military activities in foreign countries.

(4) Prepare and conduct courses of instruction in international human rights for use in education and training of U.S. and foreign military and civilian personnel, in coordination with Deputy Chief of Staff for Operations and Deputy Chief of Staff for Logistics. Additionally, deploy JAGC personnel, as required, to provide assistance to foreign countries under security assistance programs in areas related to military law and human rights.

(5) Monitor trials of U.S. Army personnel, civilian component personnel, and dependents by foreign courts and conditions of confinement in foreign prisons to ensure proper treatment of imprisoned personnel in accordance with AR 27–50.

(6) Compile and—

(a) Submit to DOD, as its executive agent, consolidated quarterly reports for the military departments of U.S. personnel confined in foreign prisons pursuant to sentences of foreign courts. (See AR 27–50, para 4–5.)

(b) Forward each year to DOD, as its executive agent, worldwide statistics and a comprehensive report on the exercise of foreign criminal jurisdiction over U.S. personnel for submission to the Senate Armed Services Committee.

(7) Review, as necessary, decisions of military magistrates related to Status of Forces Agreement confinement according to AR 27–10.

(8) Serve as U.S. Army agent for questions relating to the exercise of criminal jurisdiction by foreign courts.

(9) Receive notifications of the apprehension, confinement, or trial by court-martial of foreign nationals serving in the U.S. Army, as provided according to AR 27–52.

i. Operational law responsibilities. TJAG will—

(1) Act as the primary legal advisor to the ARSTAF on all operational law (OPLAW) matters, including all matters related to the training, deployment, stationing, and operations of Army forces in the continental United States (CONUS) and outside the continental United States (OCONUS).

(2) Provide legal advice and guidance on matters related to domestic operations, including martial law, defense and disaster plans, and military aid to civil authorities.

(3) Provide legal advice and guidance on Army counter-drug activities.

j. Intelligence law responsibilities. TJAG will—

(1) Provide, in coordination with the Army General Counsel, intelligence oversight advice to the ARSTAF and monitor intelligence, counterintelligence, and sensitive activities for legality and propriety.

(2) Provide, in coordination with the Army General Counsel, oversight and monitoring of sensitive counterintelligence, criminal and administrative investigations for legality and propriety.

k. Litigation responsibilities. TJAG will—

(1) Initiate, administer, supervise and coordinate the protection and representation of the interests of the Army in litigation and other legal or administrative proceedings, except for matters involving Civil Works. (See AR 27–40).

(2) Authorize the appearance of military personnel and civilian employees of the Army as counsel.

(3) Obtain from the Department of Justice (DOJ) the authority for the employment of private counsel at Government expense.

(4) Act on subpoenas and requests for production of Army documents and for appearance of Soldiers and Army employees as witnesses in private and civil litigation.

(5) Accept service of process on behalf of SECARMY.

l. Procurement fraud responsibilities. TJAG will—

(1) Act as the Procurement Fraud Advisor to the Assistant Secretary of the Army for Acquisition, Logistics, and Technology (ASA(ALT)).

(2) Act as the single authority for proposing, coordinating, and implementing all procurement fraud remedies with other Services and Government agencies.

(3) Oversee the Army debarring and suspending official pursuant to Defense Federal Acquisition Regulation Supplement (DFARS), subpart 209.4 and Army Federal Acquisition Regulation Supplement (AFARS), section 5109.4.

m. Claims responsibilities. TJAG will—

(1) Administer the Army Claims Program (AR 27–20) and provide legal guidance, training, staff supervision, and inspection in the administrative settlement of claims (both by and against the Government) worldwide under statutes, treaties, international agreements, DOD directives, and Army regulations.

(2) Settle claims under the—

(a) Military Claims Act (10 USC 2733).

(b) Federal Tort Claims Act (28 USC 2671–2680).

(c) Use of Government Property Claims Act (10 USC 2737).

(d) National Guard Claims Act (32 USC 715).

(e) International Agreement Claims Act (10 USC 2734a and b).

(f) Army Maritime Claims Settlement Act (10 USC 4801–4804 and 4806).

(g) Foreign Claims Act (10 USC 2734).

(h) Admiralty Extension Act (46 USC 30101).

(i) Postal Agreement between the Postal Service and DOD.

(j) Claims pertaining to nonappropriated fund (NAF) activities. (See AR 27–20).

(k) Military Personnel and Civilian Employees Claims Act (31 USC 3721).

(l) Health care claims (10 USC 1089(f)).

(m) Legal service claims (10 USC 1054(f)).

(n) Article 139, UCMJ, claims.

(o) Federal Claims Collection Act (31 USC 3711).

(p) Federal Medical Care Recovery Act (42 USC 2651–53).

n. Intellectual property responsibilities. TJAG will—

(1) Supervise and manage the administration, control, protection, and coordination of all patents, copyrights, trademarks, and other intellectual property activities of DA and the Army patent law system, including the implementation of policies. (See AR 27–60).

(2) Act on behalf of the SECARMY in determining rights in employee inventions, and the licensing of Army-owned patents, trademarks, and copyrights.

o. Legal assistance responsibilities. TJAG will—

(1) Administer the Army Legal Assistance Program. (See AR 27–3).

(2) Establish and supervise a Special Victims' Counsel (SVC) program pursuant to 10 USC 1044e and certify individuals as competent to be designated as SVC.

(3) Establish and supervise a Medical/Physical Evaluation Board Soldiers' Counsel Program. (See National Defense Authorization Act (NDAA) 2008, section 1612). Certify attorneys and paralegals performing these duties as Military Disability Law Counsel for all phases of the Integrated Disability Evaluation Process.

p. Contract and fiscal law responsibilities. TJAG will—

(1) Act as primary legal advisor to the ARSTAF and Army headquarters activities on all matters involving contract, fiscal and tax law.

(2) Provide policy guidance and contract-related tax counsel, to include representing the Army (including NAF activities) in negotiation, administrative proceedings, and litigation (per AR 27–40), and serving as agency-designated legal counsel under Federal Acquisition Regulation (FAR) part 29, DFARS part 229, and AFARS part 5129.

(3) Act as Army contracts labor advisor to the ASA(ALT), and advise the ARSTAF and contracting agency officials on federal contract labor matters under FAR part 22, DFARS part 222, and AFARS part 5122.

(4) Represent the Army before the Department of Labor and its administrative boards hearings conducted in accordance with 29 CFR, section 4.10.

(5) Serve as the DA point of contact with organized labor.

q. Contract appeals responsibilities. TJAG will—

(1) Designate the Army Chief Trial Attorney (CTA) and, through the CTA, represent the Army before the Armed Services Board of Contract Appeals (ASBCA) with the exception of appeals involving Army Corps of Engineers contract disputes with a value of less than \$3 million. The CTA is the authorized representative of the SECARMY and has sole authority and responsibility for the conduct and control of litigation of contract disputes docketed with the ASBCA.

(2) Represent the Army in bid protests before the Government Accountability Office (GAO), except for bid protests and procurements conducted by the Corps of Engineers and Army Materiel Command, through the CTA.

(a) The CTA will also support the Department of Justice in all bid protests filed in federal courts, except for bid protests involving procurements conducted by the Corps of Engineers.

(b) The CTA shall designate and supervise one or more lawyers assigned to Contract and Fiscal Law Division to act as trial attorneys for contract appeals and bid protests. Under such rules and procedures as the CTA in their discretion may prescribe, the CTA may authorize attorneys designated by a cognizant head of contracting activity (HCA) to act as trial attorneys in, or to assist in the presentation of, Army cases. When requested, TJAG will present the cases of other Government agencies to the appropriate boards of contract appeals and other forums.

r. Regulatory law responsibilities. TJAG will—

(1) Act as the primary legal advisor to the ARSTAF, and provide legal advice to Army elements, DOD, and other federal executive agencies, on regulatory law matters.

(2) Represent the consumer interests of DA, DOD, and other federal executive agencies in proceedings before state and federal regulatory commissions and courts and in related negotiations.

s. Responsibilities for custody of records. TJAG or designees will serve as the custodians of—

(1) All records of trials by GCM or by special court-martial, as approved by the convening authority, that include a sentence of confinement for at least one year or a punitive discharge (bad-conduct, dishonorable, or dismissal).

(2) All records of courts of inquiry and military commissions.

(3) Records of war crimes against U.S. personnel.

(4) DA records relating to war crime trials.

(5) Assignments, licenses, and other instruments evidencing rights and interests of the Government in patents and trademarks or applications for patents and trademarks.

(6) DA records relating to allegations of professional misconduct and mismanagement processed under AR 27–26 and this regulation.

t. Labor and civilian employment law responsibilities. TJAG will—

(1) Act as the primary legal advisor to the ARSTAF and, in coordination with the Army General Counsel, to the Secretariat on all policies, plans, and programs relating to civilian personnel of DA and NAF activities.

(2) Provide Labor Counselor services to Headquarters, Department of the Army (HQDA) and other serviced activities.

(3) Represent the Army in civilian personnel administrative litigation for HQDA and other serviced activities.

(4) Provide legal advice to the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA(MRA)) on the adjudication of equal employment opportunity cases.

(5) Administer the Army Labor Counselor Program, and exercise technical supervision over all Army labor counselors.

(6) Serve as the Functional Chief's Representative for Career Program 56 for JALS.

u. Responsibilities regarding cooperation with the Office of Special Counsel (OSC). TJAG will act on behalf of the Army General Counsel in all OSC investigations of prohibited personnel practices.

v. Responsibilities for giving legal advice and assistance to certain National Guard officials. Upon request by a State adjutant general or his designee through the National Guard Bureau (NGB), TJAG will consult with the State adjutant general on counseling members of the National Guard whom federal, State, or local agencies may interview, interrogate, or prosecute regarding events that occurred during a period of call into federal service. TJAG will develop appropriate plans for furnishing legal advice and counsel, removal to federal court, and defense by DOJ.

w. Environmental law responsibilities. TJAG will—

(1) Act as the primary legal advisor to the ARSTAF on all environmental legal issues.

(2) Represent the Army in environmental litigation in coordination with the Army General Counsel and DOJ.

(3) Monitor local, state, regional, and federal environmental legislative and regulatory developments affecting Army activities.

(4) Provide advice as to the appropriateness of any taxes, penalties, fees, fines, sanctions, or compliance orders arising from state or federal environmental requirements or enforcement activities.

(5) Represent the Army before local, state, regional, or federal agencies concerning environmental policy, rule-making, or alleged violations of environmental laws or regulations pertaining to Army activities.

x. Cyber law responsibilities. TJAG will—

(1) Act as the primary legal advisor to the ARSTAF on all cyber law matters, to include all matters relating to the training, deployment, manning, equipping, and stationing of Army cyberspace forces.

(2) Provide, in coordination with the Army General Counsel, advice to the ARSTAF on information assurance, technology, and security responsibilities under Titles 10, 40, and 44 of the United States Code.

(3) Ensure that legal advisors assigned to units conducting cyberspace operations are educated, trained, and competent to advise commanders to ensure compliance with policy and law during all phases of exercises and operations.

y. *Discharge of responsibilities.* While TJAG retains overall responsibility for the delivery of legal services to the Army, and possesses authority to do so, the leaders and senior members of TJAG's staff listed in paragraphs 2–2 through 2–10 assist in the discharge of TJAG's responsibilities.

2–2. The Deputy Judge Advocate General

a. *General responsibilities.* The DJAG will—

(1) Advise TJAG on all JALS matters.

(2) Advise the SECARMY and the CSA as necessary.

(3) Serve as chief information officer (CIO) for the JAGC and represents Office of the Judge Advocate General (OTJAG) on the Army CIO Executive Board.

(4) Inspect JA activities as directed by TJAG.

(5) Supervise the Professional Responsibility Branch (PRB) and, as authorized by this regulation or by TJAG, act on professional responsibility and mismanagement matters. The PRB supports DJAG and TJAG in carrying out TJAG's responsibilities to regulate the professional conduct of JAs, JALS civilian lawyers subject to this regulation, all other military and civilian personnel subject to this regulation as members of the JALS, or other lawyers who are subject to the professional responsibility disciplinary authority of TJAG pursuant to RCM 109, MCM. Principal (but non-exclusive) functions of the PRB are to—

(a) Establish policy and operational guidance for all aspects of the JALS professional responsibility program, to include TJAG's Professional Responsibility Committee and annual professional responsibility training of the JALS.

(b) Task or have others task appropriate JAs or civilian lawyers who are members of JALS to conduct inquiries into allegations of professional misconduct or mismanagement by members of the JALS or civilian lawyers subject to TJAG's professional responsibility authority (including attorneys subject to such authority under the provisions of RCM 109), and take or permit appropriate subordinates to take appropriate action in accordance with chapters 11 and 12 of this regulation.

b. *Responsibilities over OTJAG field operating agencies.* DJAG will supervise the following OTJAG FOAs:

(1) United States Army Legal Services Agency (USALSA) with its functions as defined in paragraph 2–3.

(2) The Judge Advocate General's Legal Center and School(TJAGLCS) with its functions as defined in paragraph 2–

5.

2–3. The Commander, United States Army Legal Services Agency, Chief Judge, U.S. Army Court of Criminal Appeals, and Assistant Judge Advocate General for Civil Law and Litigation

The Commander, USALSA, Chief Judge, ACCA, and AJAG/CLL will—

a. Serve as the Commander, USALSA, an FOA of TJAG.

b. Guarantee the independence of Army judges, defense counsel and defense appellate counsel, as Commander, USALSA.

c. Serve as the Chief Judge, U.S. Army Court of Criminal Appeals (ACCA), which performs appellate review of courts-martial pursuant to UCMJ, MCM, and other applicable authorities.

d. Support TJAG in the discharge of TJAG's appellate judicial responsibilities by supervising the activities and functions of the Office of the Clerk of Court/Judicial Advisor.

e. Serve as the AJAG/CLL and in that role, assisted by the Director of Civil Law and Litigation, exercises technical supervision and operational control over the following USALSA activities and their functions:

(1) The Contract and Fiscal Law Division (KFLD).

(2) The Litigation Division (LITDIV).

(3) The Environmental Law Division (ELD).

(4) The Regulatory Law and Intellectual Property Division (RL/IP).

f. Inspect JA activities as directed by TJAG.

2–4. The Assistant Judge Advocate General for Military Law and Operations

The AJAG/MLO will—

a. Supervise and provide technical guidance to the following sections of OTJAG:

(1) The Criminal Law Division.

(2) The Administrative Law Division.

(3) The International and Operational Law Division.

- (4) Contract and Fiscal Actions Division.
- b. Supervise and provide technical guidance to the Government Appellate Division (GAD).
- c. Act as the designee of the SECARMY in taking final action on complaints under Article 138, UCMJ (10 USC 938).
- d. Inspect JA activities as directed by TJAG.

2-5. The Commander, The Judge Advocate General's Legal Center and School

The Commander, TJAGLCS will—

- a. Serve as the Commander, TJAGLCS, a FOA of TJAG, which includes The Judge Advocate General's Legal Center, The Judge Advocate General's School, and the Noncommissioned Officer Academy (NCOA).
- b. Oversee the education and training of JALS and other personnel.
 - (1) Develop and conduct resident military legal and related instruction for JALS personnel, selected foreign officers, and other officers and employees of the U.S. Government.
 - (2) Oversee the Master of Laws program and issue regulations establishing the criteria and procedures for awarding the degree pursuant to 10 USC 4315.
 - (3) Develop courses, material, curriculum, and other legal instructional training materials for the Army Service School System in all core legal practice areas.
 - (4) Monitor all Army court reporter training and productivity; developing court reporter doctrine; test and evaluate court reporter technology; and train JAs, legal administrators (LAs) and paralegal NCOs on courtroom and court reporting technology.
- c. Oversee the management of military legal publications, to include The Military Law Review, The Army Lawyer, field manuals, pamphlets, and other periodicals and permanent publications.
- d. Support TJAG's JAGC modernization and hold primary duties and responsibilities relative to doctrine, training, leadership and education, and related requirements.
- e. Supervise the Center for Law and Military Operations (CLAMO), Training Developments Directorate, and Future Concepts Directorate.
- f. Provide oversight for TJAG's strategic planning.
- g. Supervise and provide technical guidance to the Defense Appellate Division (DAD).
- h. Supervise and provide technical guidance to TDS.
- i. Inspect JA activities as directed by TJAG.

2-6. Director, Civilian Personnel, Labor and Employment Law

The DCPLEL will—

- a. Serve as Chief, Labor and Employment Law Division for OTJAG.
- b. Be TJAG's designee as the Functional Chief's Representative for Career Program 56 for JALS.
- c. Serve as TJAG's Director of Civilian Personnel.

2-7. Director, Soldier and Family Legal Services

The DSFLS will—

- a. *Legal assistance responsibilities.*
 - (1) Serve as the program director for the Army Legal Assistance Program. (See AR 27-3).
 - (2) Exercise technical oversight over the judge advocates and civilian attorneys serving as Soldiers' Counsel with the U.S. Army Medical Command.
 - (3) Provide technical guidance over attorneys serving as Special Victims' Counsel.
- b. *Claims responsibilities.* Serve as program director for the Army Claims Program. (See AR 27-20.)
- c. *Suspension and debarment responsibilities.* Serve as the Army Suspension and Debarment Official and performs suspension and debarment of contractors duties in accordance with FAR subpart 9.4 and relevant DOD and Army supplements (DFARS and AFARS).
- d. *Procurement fraud responsibilities.* Exercise technical supervision and operational control over Procurement Fraud Division, OTJAG.

2-8. Chief, Personnel, Plans, and Training Office

The Chief, PPTO will act pursuant to authority delegated by TJAG in carrying out TJAG's statutory authority (10 USC 806) to manage and direct the JAGC.

2-9. Chief Warrant Officer of the Corps, Office of The Judge Advocate General

The CWOC, OTJAG, will—

- a. Serve as the principal warrant officer advisor to TJAG and to TJAG's senior staff on warrant officer issues, law office management, and JAGC knowledge management.
- b. Serve as a standing member of the Army Senior Warrant Officer Advisory Council.

2-10. Regimental Command Sergeant Major of the Corps, Office of The Judge Advocate General

The RCSM of the JAGC, OTJAG, is the principal enlisted advisor to TJAG and to TJAG's senior staff on enlisted issues. The RCSM of the JAGC, OTJAG will—

- a. Serve as the Command Sergeant Major of USALSA.
- b. Serve as a principal advisor to the Sergeant Major of the Army.

2-11. Supervisory Judge Advocates

a. Designation of Supervisory Judge Advocates.

(1) The JALS provides legal services to military commands through legal offices and legal sections headed by JAs. JAs are on the staffs of the commanders of units or commands. A JA assigned, as prescribed in Article 6a, UCMJ (10 USC 806(a)), as the senior JA on the staff of a commander authorized to convene GCMs will be the SJA. Position descriptions may be used based on the level of command, such as "Theater Staff Judge Advocate," or "Division Staff Judge Advocate." Other officers of the JAGC also may be designated as Supervisory JAs, and where appropriate, a description of their command or of their function may be included in their designation, such as "Command Judge Advocate," "Center Judge Advocate," or "Brigade Judge Advocate." Only an officer commissioned in, or assigned or detailed to the JAGC will be designated an SJA or other Supervisory JA.

(2) "Supervisory JA" means a JA within an office or organization with authority over, or responsibility for, the direction, coordination, evaluation, or assignment of responsibilities and work of subordinate lawyers, paralegals and other non-lawyer assistants.

(3) When an SJA or other Supervisory JA is prevented, due to a conflict of interest, from providing advice to a commander on a particular case, the Army command (ACOM), Army service component command (ASCC), or direct reporting unit (DRU) SJA may appoint another JA within the ACOM, ASCC, or DRU to advise the commander on that case.

(4) Civilian heads of legal offices within the Army serve with the same authorities and duties of an SJA or Supervisory JA, except in relation to the military justice program. References to SJAs or Supervisory JAs throughout this regulation apply equally to them, except for those references related to military justice.

b. Responsibilities of Supervisory Judge Advocates.

(1) *General.* The Supervisory JA of a command is the legal advisor to the commander, a member of the commander's personal staff, and assists the commander in exercising their duties. The Supervisory JA will assist the commander by identifying legal problems and by rendering legal advice in support of the commander's decisionmaking process. The Supervisory JA furnishes legal advice, assistance, support, and preventative law programs across the broad spectrum of military and federal practice, including but not limited to administrative law, claims, contract and fiscal law, international and operational law, legal assistance, and military justice.

(2) *Command support.* The Supervisory JA will ensure adequate logistical resources, administrative support, office space, and courtroom facilities are available for the legal programs that support the command but are not under the technical supervision of the Supervisory JA, including: the Special Victim Prosecutor Program, Trial Defense Service, Trial Judiciary.

(3) *Programs.* As appropriate, the Supervisory JA will provide legal support to programs, including but not limited to: Army Family Advocacy Program, Army Sexual Harassment and Sexual Assault Prevention and Response, DA Labor Counselor Program, Federal Magistrate Court Program, and Financial Disclosure Management Program.

c. Leadership, Supervision, and Management. Supervisory JAs are responsible for the efficient, effective, and ethical delivery of legal services to their commanders, commands, Soldiers, Family members, and other authorized clients. Supervisory JAs will create and maintain rating/supervisory chains that comply with applicable Army standards and ensure effective leadership of all legal personnel of the command. SJAs, as Supervisory JAs, are typically assisted in these responsibilities by a deputy SJA, an LA, a command paralegal NCO, and a senior civilian (who is designated by the SJA from among the civilian staff of the legal office.). Supervisory JAs will—

(1) Ensure legal personnel are adequately trained to accomplish the legal mission, including through local training and through attendance at TJAGLCS courses. This includes ensuring that all JALS attorneys accomplish continuing legal education (CLE) required by their licensing authorities.

(2) Ensure that all civilian attorneys within legal offices are under the immediate supervision and rating chain of another attorney.

(3) Serve as the selecting official for civilian attorneys hired within the legal office and coordinates this selection with OTJAG.

(4) Ensure that all civilian employees have a current Individual development plan that is discussed annually with their immediate supervisors.

(5) Ensure that civilian paraprofessionals assigned outside of the servicing legal office perform their legal services related duties competently and with appropriate legal office supervision to avoid the unauthorized practice of law. To ensure this, Supervisory JAs should—

(a) Require attendance at pertinent professional development events and request attendance at appropriate organization meetings/functions.

(b) Coordinate with the civilian employee's rating chain to provide input regarding legal service performance and offer suggestions for the employee's individual development plan.

(c) Review that portion of the employee's position description related to the delivery of legal services to ensure that it accurately reflects the limited duties appropriate for the position.

(d) If deemed necessary, SJAs may temporarily disqualify individuals from supporting the legal services mission if the SJA finds a lack of competence in the performance of the legal services related duties or if the individual has engaged in the unauthorized practice of law, pending resolution for the concern through appropriate regulatory procedures.

d. Technical assistance. The Supervisory JA of any command may communicate directly with the Supervisory JA of a superior or subordinate command or with TJAG (Art. 6(b), UCMJ (10 USC 806(b))). They may receive and give technical guidance through these channels. The Supervisory JA is, however, primarily a staff officer, responsible to their commander and subject to their command just as any other command member. No officer or employee of the DOD may interfere with the ability of JA assigned or attached to, or performing duty with, military units to give independent legal advice to commanders (10 USC 3037(e)).

Chapter 3

Judge Advocate Legal Service

3–1. Personnel and facilities

The JALS consists of—

- a. Officers, warrant officers, enlisted personnel, and other members of the Army detailed to the JAGC.
- b. Civilian attorneys for whom TJAG is the qualifying authority (see AR 690–200, subchapter 213) and executive level civilian attorneys who are under the technical supervision of TJAG.
- c. Professional consultants, legal technicians, civilian employees, and other personnel on duty with the JALS.
- d. Facilities, supplies, and equipment necessary to carry out its mission and functions.

3–2. Mission

The JALS supports the total army mission by administering the military justice system and providing other quality legal services that meet the highest professional standards. TJAG is responsible for developing and executing plans and programs across the full spectrum of legal disciplines, including those described in paragraph 2–1 of this regulation.

3–3. Practice of law

a. Unless otherwise specifically authorized by TJAG, Army Regulation or other DA publication, only attorneys of the JALS and attorneys under the qualifying authority of the General Counsel of the Army, the Chief Counsel of the Army Corps of Engineers, or the Command Counsel of the Army Materiel Command are authorized to—

(1) Engage in the practice of law on behalf of any Army command, unit, agency, office, element, or other Army entity; or

(2) Be assigned against any authorization or requirement for an attorney within any Army command, unit, agency, office, element, or other Army entity; or

(3) Provide legal instruction or training to any Army command, unit, agency, office, element, or other Army entity.

b. An Army officer who is not a judge advocate but who is assigned to perform duties involving professional work in the field of law must have the education, training, and experience equal to or similar to that required of other members of the legal profession (10 USC 3065(e)). Such Army officers may not engage in the practice of law in the Army unless the officer is in good standing as defined in paragraph 3–3d and has approval by the appropriate qualifying authority.

c. An attorney of the JALS will not engage in private law practice without the prior written approval of TJAG or TJAG's designee. This requirement does not apply to Reserve Component (RC) members of the JAGC unless they are ordered to active duty for more than 30 consecutive days. See AR 27–3, AR 27–40, and AR 27–26 for further guidance on the conduct of attorneys in the JALS.

d. While each licensing authority granting the certification or privilege to practice law within the jurisdiction defines the phrase “in good standing” based on its own rules, at a minimum for JALS personnel, it means that the individual has been admitted to practice law before the highest court of that State, Territory, Commonwealth, or the District of Columbia; is subject to the jurisdiction’s disciplinary review process; has not been suspended or disbarred from the practice of law within the jurisdiction; is up-to-date in the payment of all required fees; has met applicable CLE requirements which the jurisdiction has imposed (or the cognizant authority has waived those requirements in the case of the individual); and has met such other requirements as the cognizant authority has set to remain eligible to practice law.

3–4. Duty to avoid conflicts of interest

a. JALS attorneys should not provide legal advice to others when doing so may result in a conflict of interest with their primary duties.

b. Only JAs properly detailed by the Chief, USATDS or made available as individual defense counsel may provide advice and assistance to Soldiers suspected, accused, or convicted of violations of the UCMJ on matters relating to those violations or suspected violations. The assistance provided will comply with the policies of superiors responsible for supervising the defense function. When qualified defense counsel are not available, staff and command JAs will first obtain the approval of the ACOM/ASCC/DRU SJA, who will consult with the Chief, USATDS, before authorizing attorneys to provide defense advice or defense assistance to Soldiers.

3–5. The Judge Advocate General’s Corps

a. The JAGC is constituted by 10 USC 3072. It is a special branch of the Army in accordance with 10 USC 3064(a)(2).

b. Pursuant to 10 USC 3072 the Army JAGC consists of the following individuals:

(1) General officers serving as— The Judge Advocate General; the Deputy Judge Advocate General; the Assistant Judge Advocate General for Military Law and Operations; the Commander, U.S. Army Legal Services Agency/Chief Judge, U.S. Army Court of Criminal Appeals/Assistant Judge Advocate General for Civil Law and Litigation; the Commander, The Judge Advocate General’s Legal Center and School; the Commander, U.S. Army Reserve Legal Command (a member of the U.S. Army Reserve (USAR) who is assigned to the JAGC); the Chief Judge Individual Mobilization Augmentee (IMA), U.S. Army Court of Criminal Appeals (a member of the USAR who is assigned to the JAGC); the USAR Assistant Judge Advocate General for Military Law and Operations (IMA) (a member of the USAR who is assigned to the JAGC); the Special Assistant to The Judge Advocate General (a member of the Army National Guard (ARNG)/Army National Guard of the United States (ARNGUS) who is detailed to the JAGC); or in any position filled by an officer appointed from the Army JAGC.

(2) Commissioned officers with primary military occupational specialty (PMOS) 27A or 27B who are—

(a) Members of the Regular Army (RA) and appointed in the JAGC; or

(b) Members of the USAR and assigned to the JAGC; or

(c) Members of the ARNGUS and assigned to the JAGC.

(3) Warrant Officers with PMOS 270A who are certified as LAs and are—

(a) Members of the Regular Army and appointed in the JAGC; or

(b) Members of the USAR and assigned to the JAGC; or

(c) Members of the ARNGUS and assigned to the JAGC.

(4) Enlisted Soldiers with the military occupational specialty (MOS) 27D who are—

(a) Members of the Regular Army and assigned in the JAGC; or

(b) Members of the USAR and assigned to the JAGC; or

(c) Members of the ARNGUS and assigned to the JAGC.

(5) Other members of the Army assigned to the JAGC by the SECARMY under 10 USC 3072(5).

3–6. Use of Judge Advocate Officers

a. JAs perform their duties under commanders of their assigned or attached commands and under other Supervisory JAs, such as: Staff Judge Advocates; Chief, Trial Judiciary; or Chief, USATDS.

b. JAs receive technical legal supervision from TJAG through Supervisory JAs.

c. Unless approved by a Supervisory JA, JAs will perform only professional legal duties for which they are trained. They should not perform any nonlegal duties, such as officer of the day, inventory officer, range officer, casualty notification officer, casualty assistance officer, or any other duties that would interfere with their primary assigned legal duties or create a potential conflict of interest.

d. Legal support to brigade combat teams (BCT), regiments, groups, and other brigade equivalents:

(1) *Applicability.* For the purposes of this paragraph, BCTs include all brigades, regiments, groups and other brigade equivalent units. The BCT legal section is led by the Brigade/Regimental/Group/Command Judge Advocate (hereinafter

BJA), who is the senior legal officer assigned. These provisions address JAs assigned to BCTs and all other brigades. Use of the term “SJA” within these provisions refers to the SJA servicing a BCT’s General Court-Martial Convening Authority (GCMCA) at home station or while deployed.

(2) *Relationship with servicing Office of the Staff Judge Advocate (OSJA).* Whether deployed or in garrison, BCT legal offices are not resourced nor intended to function wholly independent of support from an OSJA. BCT legal services must be integrated with the GCMCA servicing OSJA.

(3) *BCT legal section responsibilities.* The BCT legal section is responsible for the legal services required by the BCT. Where the BCT legal section’s requirements exceed capabilities, the BJA will coordinate with the OSJA for support. CPTs serving as trial counsel (TC) in BCT legal sections are primarily responsible for administering military justice matters for the BCT.

(4) *Duty location.* The BJA, TC, and, where authorized, additional JAs are all assigned to the BCT. The BJA normally will work at the brigade headquarters and lead the BCT legal section, consistent with paragraph 4–3, Consolidated Legal Office (CLO). In garrison, the TC will work at the OSJA military justice section and regularly interact with the BCT commander and staff to accomplish the military justice mission. This arrangement fosters effective training and ensures consistency in the quality of legal services delivered. Additional authorized JAs will also work in the OSJA. The SJA may authorize the additional JAs to work at the brigade headquarters legal section if the SJA determines, in his/her sole discretion that the additional JA has the training and experience to perform competently at that location.

(5) *Dual supervisory chain.* The BJA is a member of the BCT commander’s personal and special staff, with a direct line of communication to that commander. The BCT commander determines the BJA’s routine, day-to-day duties; however, the SJA has tasking authority over the BCT legal section (see para 3–6a). The SJA provides technical guidance to the BJA, TC, and additional JAs, as necessary. The TC will be supervised by the BJA during training exercises and operational missions, but supervised by the Chief of Justice in garrison. The additional JA will be supervised by the BJA during training exercises and operational missions, and while working in the OSJA, will be supervised as the SJA directs.

(6) *Rating scheme.* The rating schemes for the BJA and TC will be in accordance with AR 623–3, appendix D. Specifically, whenever possible, the BJA will, whenever possible, be rated by the SJA and senior rated by the BCT or brigade commander. The TC will normally be rated by the BJA and senior rated by the SJA. If necessary, the SJA and the BCT commander will determine an intermediate rater for the TC. The SJA will determine the rating scheme for any additional JAs. These rating schemes ensure JAs receive both leadership and mentoring from their unit chain of command and professional guidance and development in the practice of law from a senior JA. These rating schemes accomplish these goals, while providing maximum flexibility to the SJA and to the BCT chain of command, under the AR 623–3 concept of dual supervision.

(7) *Length of assignments.* The BJA will ordinarily be assigned to the BCT or brigade for two years. Tour lengths for JAs assigned to a BCT or other brigade will be based upon the needs of the Army JAGC and the professional developmental needs of the officer. TJAG, through PPTO, controls the assignment of JAs assigned to a BCT or other brigade.

3–7. Use of 270A warrant officers (legal administrators)

- a. LAs will perform their duties under the direction of a Supervisory JA, as defined in paragraph 2–11.
- b. LAs receive technical supervision from TJAG, the Chief Warrant Officer of the Corps, and SJAs of superior commands through Supervisory JAs.
- c. Unless approved by an SJA in the technical chain of supervision, LAs will perform only professional legal administrator duties for which they are trained. They should not perform nonlegal administrator duties, such as charge of quarters (CQ), range detail, casualty notification officer, casualty assistance officer, guard duty, or any other duties that would interfere with their primary legal duties.
- d. Warrant officers of the JAGC will be consolidated in the OSJA supporting a commander authorized to exercise GCMCA. If a warrant officer of the JAGC is assigned to a major subordinate command (MSC) that does not exercise GCMCA, they will be attached to the organization exercising senior commander responsibilities (as defined by AR 600–20) and prescribed duties by that organization’s SJA (notwithstanding deployment of the MSC to an operation or exercise in which the MSC could exercise GCMCA.)

3–8. Use of paralegal Soldiers with primary military occupational specialty of 27D

- a. Paralegal Soldiers will perform their duties under the direction of Supervisory JAs, as defined in paragraph 2–11.
- b. Paralegals receive technical supervision from TJAG, the Regimental Command Sergeant Major, SJAs and Chief or Command Paralegal NCOs of superior commands through Supervisory JAs.
- c. Unless approved by a Supervisory JA or Chief/Command Paralegal NCO in the technical chain of supervision, paralegal Soldiers will perform only professional paralegal duties for which they are trained. They should not perform non-

paralegal duties, such as CQ, range detail, casualty assistance officer, guard duty, or any other duties that would interfere with their primary legal duties.

d. Paralegal Soldiers documented on tables of distribution and allowance (TDAs), tables of organization and equipment (TOEs), or mission tables of organization and equipment (MTOEs) down to the battalion level are assigned against those authorizations. While in garrison, however, paralegal Soldiers will be consolidated within a legal office at the brigade, brigade equivalent, or higher level, to include within the OSJA. For example, when consolidated at the brigade level, paralegal Soldiers will be consolidated within the brigade legal section under the direct supervision of the Brigade Judge Advocate (BJA) and the Brigade Senior Paralegal NCO, to ensure timely and efficient legal support to all supported units, and to facilitate paralegal training. Paralegals with the C5 skill identifier (court reporter) and assigned with court reporter duties will work within the GCMCA servicing OSJA.

e. Unless assigned to a BCT, the rating scheme for all 27D Paralegal NCOs will be in accordance with AR 623–3. The Brigade Senior Paralegal NCOs will, wherever possible, be rated by the BJA and senior rated by the brigade commander. These rating schemes are designed to ensure Brigade Senior Paralegal NCOs receive both leadership and mentoring from their unit chain of command, as well as professional guidance and development from JAG Corps leaders. These rating schemes are intended to accomplish these goals, while providing maximum flexibility to the BCT.

3–9. Status of Judge Advocate Legal Service members

a. Judge advocates. JAs, designated as MOS 27A, can practice in the JALS upon graduation from Judge Advocate Officer Basic Course (JAOBC) at TJAGLCS and upon written certification by TJAG. Certification remains conditioned upon the officer maintaining qualifications for service in the JALS, including maintaining good standing with the licensing authority admitting the individual to the practice of law before the highest court of the State, Territory, Commonwealth, or the District of Columbia, as further defined in paragraph 3–3*d*. TJAG certification also verifies that the officer meets the requirement of Article 27(b), UCMJ, and it remains conditioned upon the officer maintaining those qualifications. TJAG’s certification includes an assessment and acknowledgement that all JAs must maintain the highest levels of ethical, professional and personal conduct, moral behavior, and legal proficiency. Judge advocates who successfully graduate from the Military Judge Course may be certified by TJAG or their designee as MOS 27B, Military Judge.

b. Warrant officers. Warrant officers can serve in the JALS upon graduation from Warrant Officer Basic Course and upon written certification by TJAG. Certification remains conditioned upon the officer maintaining qualifications for service in the JALS, including maintaining the qualifications for the award of MOS 270A, Legal Administrator. TJAG’s certification includes an assessment and acknowledgement that all warrant officers must maintain the highest levels of ethical, professional and personal conduct, moral behavior, and legal proficiency.

(1) Warrant officers who meet the graduation requirements of the Judge Advocate Warrant Officer Basic Course, MOS 270A, Legal Administrator, and the requirements set forth by Department of the Army pamphlet (DA Pam) 611–21, may be considered for certification in writing by TJAG.

(2) LAs who previously graduated from an approved 270A Basic Course, currently serve in the MOS 270A, Legal Administrator, and meet the qualifications of DA Pam 611–21 may be deemed certified by TJAG.

c. Paralegal Soldiers. Paralegal Soldiers can perform the duties of MOS 27D, Paralegal Specialist and can serve in the JALS upon written certification by TJAG. Paralegal specialists can perform the duties of court reporter in the JALS upon written certification by TJAG that they have completed the requisite qualification for the skill identifier C5. TJAG’s certification includes an assessment and acknowledgement that all paralegal Soldiers and court reporters must maintain the highest levels of ethical, professional, and personal conduct, moral behavior, and MOS proficiency.

(1) Soldiers who meet the graduation requirements of Advanced Individual Training for MOS 27D, Paralegal Specialist, and the requirements set forth by DA Pam 611–21, may be considered for certification in writing by TJAG or their designee. Paralegal Soldiers who further graduate from the Court Reporter Course for skill identifier C5, Court Reporter, may be considered for certification by TJAG or their designee.

(2) Paralegal Soldiers who previously graduated from 27D AIT course, currently serve in the MOS 27D Paralegal Specialist, and meet the qualifications of DA Pam 611–21 may be deemed certified by TJAG.

d. Civilian attorneys. TJAG reviews for approval the professional qualifications of JALS civilian attorneys in the grade of GS–15, or equivalent, and below.

(1) Approval of qualifications is a continuing condition of employment.

(2) A civilian may not be employed by DA as an attorney if a qualifying authority under AR 690–200, chapter 213, has withdrawn approval of that attorney’s qualifications.

e. Withdrawal of certification.

(1) For attorney members of JALS (JAs, military judges, and civilian attorneys), see chapter 11.

(2) TJAG may withdraw TJAG certification of LAs, paralegal Soldiers, and court reporters based on a completed adverse action taken against the subject. Upon the completion of the adverse action, the subject’s SJA or other Supervisory

SJA will take the actions prescribed in subparagraph (3). Adverse actions include conviction by court-martial, including summary court-martial; nonjudicial punishment imposed under UCMJ, Article 15; administrative letters of reprimand, admonition, or censure administered under AR 600–37; or referred or adverse reports under AR 623–3.

(3) Before withdrawing TJAG certification, the subject will be provided with written notice by the SJA or other Supervisory JA stating that, as a result of the completed adverse action, the subject’s certification may be withdrawn in accordance with this paragraph. The subject will have 10 calendar days to show cause, in writing, why TJAG should not execute the withdrawal action. The subject’s SJA or other Supervisory JA will provide a recommendation to TJAG regarding disposition. The subject’s response and the SJA’s or other Supervisory JA’s recommendation will be staffed through the RCSM for paralegal Soldiers and the CWOC for LAs. TJAG shall ensure compliance with the substantive and procedural due processes required by any law, regulation, directive, or policy which may be relevant to the action, for example, provisions of AR 600–37, which require notice and the opportunity to comment.

(4) TJAG will consider any timely written response by the subject before reaching a decision. The subject will be informed of the decision in writing. TJAG’s action is final and not subject to a request for reconsideration or appeal unless such an action is provided for under another applicable law, regulation, directive, or policy.

3–10. Use and qualifications of professional legal consultants

a. TJAG or TJAG’s designees are authorized to secure legal services by appointment of professional consultants when those services are required in matters that come under the duties and responsibilities of TJAG under this regulation, other regulations, or statute, including claims settlement and approving authorities designated by AR 27–20.

b. Except as provided in subparagraph *c*, to be eligible for appointment, a professional consultant must meet all of the following criteria:

- (1) Be a graduate of a law school approved by the American Bar Association (ABA).
- (2) Be a member of the bar in good standing with the licensing authority admitting the individual to the practice of law before the highest court of the State, Territory, Commonwealth, or the District of Columbia, as further defined in paragraph 3–3*d*.
- (3) Be a U.S. citizen.

c. TJAG or TJAG’s designees may decide to appoint professional consultants who do not have qualifications stated in paragraph 3–10*b*. These professional consultants must, in the opinion of TJAG or TJAG’s designees, be reputable and have the professional competence and expertise to provide sound advice in matters for which their services may be required.

d. Approval authorities for appointments and extensions are described in AR 690–300, chapter 304.

e. As a general rule, the temporary or intermittent employment of professional consultants is by appointment under AR 690–200, chapter 304, subchapter 1, rather than by contract. If, however, such an appointment cannot provide the necessary services, then TJAG may contract for the services if it is otherwise authorized under applicable FAR and AFARS sections.

3–11. Command

JAGC members may assume command under AR 600–20 upon written approval from TJAG or TJAG’s designee.

Chapter 4 Agency Legal Offices

4–1. General duties and staffing

TJAG is responsible for developing policies that will be implemented by Army legal offices for which TJAG is the legal advisor (see para 2–1) or for which the Army has executive agency.

4–2. Establishment, modification, and elimination of legal offices and positions

a. Before establishing a legal office, a new position of legal advisor, or a civilian attorney position under the qualifying authority of TJAG, the head of the organization concerned will forward to OTJAG, PPTO (DAJA–PT), 2200 Army Pentagon, Washington, DC 20310–2200, a request for authority to establish the office or position.

b. Proposed additions, deletions, or modifications of TDA, TOE, or MTOE authorization coded for MOS 27A, 27B, 270A, 27D, civilian attorney (0905 or 1222 series), or a non-attorney civilian position in the legal office under TJAG’s authority will be coordinated with PPTO prior to effecting such additions, deletions, or modifications.

4–3. Consolidated legal office

a. Legal services for mission and garrison organizations are through the CLO, which combines judge advocate/legal assets from MTOE and TDA (to include, but not limited to augmentation (AUG) TDA, mobilized TDA, and Installation Management Command (IMCOM) TDA) documents. There will be CLOs at installations that have units from ACOMs, ASCCs and/or DRUs, have a designated senior commander, and have legal authorizations from the MTOE/mission TDA and IMCOM TDA.

b. The CLO is headed by the SJA, Command Judge Advocate (CJA), Post Judge Advocate (PJA), or command counsel (CC) of the senior commander (SC). It provides a full range of legal services to all units, commanders, Soldiers, Families, and retirees in and near the installation.

(1) The CLO SJA/CJA/PJA/CC (hereinafter the CLO SJA) determines the distribution and allocation of all assets within the CLOs (to include deploying any of those assets) and has full Supervisory responsibility over CLO personnel.

(2) The CLO falls directly under and reports to the SC, not to the garrison commander (GC). However, the CLO provides full services to the GC and staff, and the GC will continue to receive full legal support should CLO legal assets deploy. The GC or their designee, as appropriate, provides ratings input for IMCOM TDA personnel that the CLO SJA determines should provide primarily garrison legal functions.

(3) The CLO combines personnel from different authorization documents (MTOE, mission and AUG TDAs, garrison (IMCOM) TDA, and mobilized TDA), and is staffed by a CLO SJA, a Deputy Staff Judge advocate (DJSA), LA, chief paralegal NCO, and typically the following divisions: criminal law (military justice); administrative and civil law (which generally includes contract and fiscal law); legal assistance; claims; and operational and international law. All divisions provide legal services to both “mission” and “garrison” functions.

(4) Tenant units with legal assets assigned exclusively to them will retain their SJA/CJA/PJA/CCs and appropriate legal staff, and will continue to provide legal advice to the commanders of those tenant units. For BCTs, see paragraph 3–6*d* for policy on the duty location for assigned judge advocates, and paragraph 3–8*d* for paralegals.

(5) The CLO SJA has final authority to render legal advice and opinions on any legal questions that affect the installation and not simply the tenant units.

Chapter 5 Logistical Support for the Judge Advocate Legal Service

5–1. General

a. Commanders and their Supervisory JAs will provide adequate personnel and logistical support of the JALS, both in garrison and during deployments.

b. Logistical support for the JALS includes adequate personnel, facilities, supplies, and equipment necessary to carry out its mission and functions in the most professional, efficient, and effective manner possible. (See AR 5–9 and AR 405–70). Minimum logistical support will include—

(1) Sufficient private work space for attorneys, and when required, for support staff that ensures freedom from unnecessary distractions and provides for client confidentiality and privacy. Privacy is essential for attorneys and legal support staff who deal with individual clients.

(2) Locking file cabinets will be provided to ensure the privacy of records. Computer hardware and software used to maintain client records will also be restricted to authorized personnel only. (See Rule 1.6 (Confidentiality of Information) of the Army Rules of Professional Conduct for Lawyers (AR 27–26)).

(3) Sufficient attorneys and qualified administrative, paralegal, and clerical support personnel to accomplish workload.

(4) Computers for each assigned JA, paralegal, and LA; software, peripherals, networking, telecommunication equipment, to include non-secure internet protocol router network (NIPRNet) access and, where required, secure internet protocol router network (SIPRNet) access. Maintenance and supplies for computer hardware and software, to include training for personnel.

(5) Sufficient, appropriate, and private client waiting areas in legal assistance and trial defense service offices.

(6) Standard legal office equipment, such as copiers, telephones, digital senders, digital dictation systems, court reporting equipment and software, and courtroom presentation equipment.

(7) Access to digital libraries, including general research material and legal services for specialized topics, and adequate funding and resources for essential access to computer automated legal research capabilities.

(8) Adequate funding for CLE for all assigned and attached attorneys, sufficient to satisfy CLE requirements of each attorney’s primary jurisdiction of bar membership. Provide funding for additional specialty or assignment training for attorneys and support staff.

(9) Cellular telephones and similar devices as determined by the SJA to support legal mission requirements.

(10) Adequate transportation support.

5–2. Specific requirements

a. Military judges. AR 27–10 addresses the administrative and logistical support required by AR 5–9. This support includes, but is not limited to, sufficient private office space and furnishings, and clerical and administrative support. Additionally, installations with a GCMCA must have a suitable, appropriately designed, and well-constructed courtroom facility with appropriate security measures consistent with the installation security and threat assessments, as determined by the senior commander. The facility must include appropriate witness waiting areas, which include separate areas for victims and defense witnesses.

b. Defense Counsel.

(1) AR 27–10 addresses installation administrative and logistical support of U.S. Army Trial Defense Service (USATDS) counsel and requires providing private offices, soundproofed space for attorneys and appropriate office space for paralegals to protect client confidentiality, furniture, equipment, supplies, class A telephone service, electronic research capacity, library and reference materials, and clerical, administrative, and logistical support with appropriate security measures consistent with the installation security and threat assessments, as determined by the senior commander. This includes technology, such as wireless laptops; personal computers; copiers; printers; internet access; scanners; electronic mail accounts; facsimile machines; cellular telephones, and webmail access services to allow the provision of defense services to continue during periods of mission related travel by the defense counsel. Commanders, Supervisory JAs and SJAs of supported units are responsible for providing resources that meet minimum standards set forth in AR 27–10. These resources are to be provided to the same degree as provided to trial counsel, legal assistance officers, and other attorneys assigned to the local legal office or greater if required to support the TDS mission.

(2) The requirements for privacy and preservation of client confidences that apply to attorney offices apply to USATDS offices. (See Rule 1.6 (Confidentiality of Information) of the Army Rules of Professional Conduct for Lawyers (AR 27–26)). USATDS offices will be given independence and equality in their operations and facilities.

(3) Specific installation support issues should be addressed to the Chief, USATDS, through appropriate channels. Wherever feasible, USATDS offices, file storage spaces, briefing rooms, and client waiting rooms should be physically segregated from local legal offices but have ready access to adequate research materials and be easily accessible by clients. USATDS offices should have skilled and experienced clerical and support personnel who are not assigned other duties within the local legal office. Such personnel should be under the direct supervision of the senior defense counsel. (See AR 27–10).

Chapter 6 Army Legal Research Resources

6–1. General

TJAG formulates policies governing the establishment, means, methods, and content of Army legal research capabilities provided to the JALS. TJAG determines the requirements for acquisition of access to all legal research publications, including legal and legislative publications. The Commander, TJAGLCS, assists and acts on behalf of TJAG in carrying out these responsibilities. The Army provides resources for legal research primarily through the use of computer-assisted legal research (CALR) tools. These tools consist of commercially procured legal research services, compilations of materials produced by TJAGLCS and the OTJAG Information Technology Division (ITD), and materials distributed through the internet on military and non-military networks. The continued proliferation and availability of digital resources diminishes the need for centralized purchase and distribution of hard copy materials.

6–2. Centrally funded resources

a. The JALS manages centralized funding of a CALR contract to provide comprehensive access to legal references in electronic form. Based upon availability of funds at the OTJAG level, legal offices may be asked to contribute funds to this centralized contract. Users throughout the JALS are provided accounts and access codes through systems managed by the ITD.

b. Hard copy resources are not centrally funded as a general rule. However, specialized electronic libraries (for example, Bureau of National Affairs and like resources), hard copy compilations needed for deployment (for example, TJAGLCS publications), and other specialized resources may be centrally funded on a case-by-case basis. The Commander, TJAGLCS, is the approval authority for requests for access to these materials, provided funding is available, and manages access to electronic resources in coordination with the ITD.

6–3. Status of Army law libraries

a. Army law libraries containing numerous hard copy volumes are no longer considered necessary because of widely available electronic research resources. However, Supervisory JAs or the head of the activity may choose to procure hard copy resources that are not centrally funded. Supervisory JAs are responsible for acquiring, funding, and managing hard copy legal materials at the local level in accordance with paragraph 6–4. Such materials are not accountable library items per AR 735–17, para 1–5b(5). Supervisory JAs will maintain accountability of purchased materials under the provisions of this regulation.

b. If more than one legal office exists at an installation or activity, the Supervisory JAs in charge of those offices should consider sharing hard copy resources to avoid unnecessary duplication of material.

6–4. Acquisition and accountability of legal research materials

a. Legal research materials that are needed in hard copy, but not provided pursuant to paragraph 6–2, must be procured locally with local funds. Supervisory JAs will designate an accountable officer to manage and maintain these materials as normal Army property in accordance with AR 735–5 and other applicable property accountability regulations.

b. Accountable officers will maintain records and accountability of items purchased consistent with the procedures specified in AR 735–5.

Chapter 7

Reserve Component Judge Advocate Management, Administration, and Training

Section I

General Responsibilities

7–1. The Judge Advocate General

a. TJAG has overall authority and responsibility for technical management and administration, as well as the professional training of RC JAGC units and personnel. (10 USC 3037(c)(2)).

b. TJAG or a TJAG representative will make frequent inspections to evaluate RC JA training and readiness. (10 USC 806(a)).

c. JAGC Active Army(AA)/RC General Officer Steering Committees, the Commander, USARLC; Chief Judge (IMA) of the Army Court of Criminal Appeals; the USAR Assistant Judge Advocate General for Military Law and Operations (IMA); the Special Assistant to The Judge Advocate General (a member of the ARNG/ARNGUS); and the Chief, PPTO, shall make recommendations to TJAG and DJAG concerning the organization, administration, training, readiness, and mobilization of RC JAGC units and personnel, and through strategic planning, continue the integration of Active and Reserve elements of the JAGC.

7–2. Personnel, Plans and Training Office

The Chief, PPTO, is responsible for developing personnel policies for the management and administration of RC JAGC units and personnel, to include supervising assignments, tenure, and career management of all RC JA commissioned officers and positions, developing and executing strategic plans, determining mobilization policy and execution guidance, and other duties that TJAG may assign. The Commander, USARLC; Chief Judge (IMA) of the Army Court of Criminal Appeals; the USAR Assistant Judge Advocate General for Military Law and Operations (IMA); the Special Assistant to The Judge Advocate General (a member of the ARNG/ARNGUS); and Chief Counsel (NGB) may make recommendations to the Chief, PPTO regarding personnel policies for the management and administration of RC units and personnel.

7–3. U.S. Army Reserve Legal Command

The Commander, USARLC will train, administer, and supervise operations of legal operations detachments (LODs) and their constituent teams based upon guidance received from TJAG and the USARLC's operational chain of command.

7–4. The Judge Advocate General's Legal Center and School

a. TJAGLCS will develop and administer the following training programs:

- (1) The Judge Advocate Officer Advanced Course (JAOAC), to include an annual resident phase.
- (2) The Distributed Learning Program.

b. TJAGLCS, in coordination with the Commander, USARLC; the SJA, U.S. Army Reserve Command (USARC), RC SJAs, and the Chief, PPTO, facilitates TJAG's on-site training program.

7-5. Active Component Staff Judge Advocates

a. Active Component (AC) JA offices scheduled to host the annual training (AT) of RC units and personnel will prepare and execute training in accordance with AR 140-145.

b. AC SJAs with assigned drilling individual mobilization augmentees (DIMAs) have supervisory responsibility for ensuring technical and professional development of their DIMAs and for coordinating and executing each DIMA's AT. This responsibility includes the following duties:

(1) Preparing and executing training in accordance with AR 140-145.

(2) Initiating DA Form 2446 (Request for Orders) and forwarding them to the U.S. Army Human Resources Command (HRC), ATTN: DARP-MSB-IM, 1600 Spearhead Division Ave, Fort Knox, KY 40122, through appropriate channels not later than 60 days before the DIMA's reporting date.

Section II

Organization

7-6. Reserve Component Judge Advocate General's Corps legal support

a. *RC JA personnel.* Many JA personnel are assigned and to USAR (other than U.S. Army Reserve Legal Command) and ARNG TOE and TDA units (other than ARNG TDS teams) who train during peacetime to mobilize with their units. Such "embedded" RC JA personnel are subject to the mission command of the unit commander, and the technical direction and supervision of either the senior JA present in the unit or the Senior Supervisory JAs in the unit's chain-of-command, as well as TJAG or TJAG's designee for the delivery of legal services as outlined in this regulation and in accordance with 10 USC 806. The mission of embedded personnel is to perform the traditional JA function of providing legal support to their respective commands in the six core legal disciplines: administrative and civil law, contract and fiscal law, claims, international and operational law, legal assistance, and military justice.

b. *U.S. Army Reserve Legal Command.*

(1) *General.* The USARLC is comprised of subordinate MTOE LODs. The majority of LODs are multifunctional (LOD-M). The balance consists of trial defense LODs, military judge LOD, and one LOD-E (Expert). The Commander, USARLC, exercises mission command over assigned and attached LOD-Ms and the LOD-E.

(2) *Multifunctional LODs.* LOD-Ms provide general legal services in all JALS disciplines with the exception of trial defense services and judicial functions. LOD-Ms provide professional and responsive legal services and support to commanders and Soldiers not otherwise provided organic legal support (including, but not limited to, theater armies, ASCCs, theater support commands) and augment embedded JAGC assets as required.

(3) *Trial Defense LODs.* TD-LODs provide defense counsel services to Army personnel at administrative boards, non-judicial punishment proceedings under Article 15, UCMJ, at courts-martial, and when otherwise required by law or regulation and authorized by TJAG or TJAG's designee.

(4) *Military judge LODs.* MJ-LODs provide judges to preside at general and special courts-martial, perform duties as military magistrates, and serve in various other judicial capacities.

(5) *LOD-Expert.* The LOD-E provides specialized legal expertise to the various offices and departments within OTJAG, USALSA, and TJAGLCS.

c. *Army National Guard Trial Defense Service.* ARNG TDS provides defense counsel services to Army National Guard Soldiers at administrative boards, nonjudicial punishment proceedings and courts-martial conducted pursuant to a Soldier's State Code of Military Justice and when otherwise required by law or regulation and authorized by TJAG or TJAG's designee.

7-7. Command, control, and technical legal supervision of U.S. Army Reserve legal command units and organic Reserve Component personnel

a. *Mission command of USARLC units other than when mobilized.*

(1) The Commander, USARLC, exercises technical supervision over delivery of legal services by—

(a) Establishing training priorities for LODs, in accordance with the directives and policies of TJAG and Commander, USARLC.

(b) Ensuring LODs (including the TD and MJ LODs) meet Army training requirements. (See AR 350-1). The Commander, USARLC, has authority to direct, monitor, and supervise such training.

(2) The Chief, USATDS, is responsible for training and technical-channel legal supervision over TD-LODs.

(3) The Chief Trial Judge, U.S. Army Trial Judiciary, is responsible for training and technical-channel legal supervision over MJ-LODs.

b. *Technical supervision of organic RC personnel other than when mobilized.*

(1) The SJA, USARC, is responsible for technical-channel legal supervision over subordinate embedded JAGC sections, including directing, monitoring, and supervising USAR legal training.

(2) The SJA, USARC prepares USARC command legal training policy guidance; exercises responsibility for training readiness; develops, in coordination with the Commander, USARLC; the SJA, U.S. Army Forces Command (FORSCOM); the SJA, First U.S. Army (FUSA) and the SJA, U.S. Army Special Operations Command (USASOC) (for Special Operations Forces (SOF)), training strategy, including defining the mission, goals and intent of USAR legal training; and allocates training resources to execute the strategy.

(3) The SJA, USARC will monitor overseas deployment training (ODT) for JAGC sections of other non-SOF troop program units (TPUs) in accordance with AR 350–9.

(4) The SJA, FORSCOM is responsible for overseeing the technical-channel legal supervision provided by the SJA, USARC.

(5) The SJA, USASOC is responsible for technical-channel legal supervision over RC JAGC personnel assigned or attached to subordinate SOF units and for technical-channel legal supervision over USASOC RC JAGC personnel, including the direction, monitoring and supervision of RC SOF JAGC legal training. (SOF units include any unit performing a special operations activity as defined in 10 USC 167(j), or which is under the mission command of USASOC.)

(6) The SJA, FUSA shall coordinate with the SJA, USARC, on non-active duty training of RC JAGC assets to ensure uniformity of training and availability of common RC JAGC skills throughout the entire RC JAGC.

(7) The SJA, FORSCOM shall provide technical-channel legal supervision for ARNGUS JAGC units and personnel, and for directing, monitoring and supervising RC JAGC training in ARNGUS JAGC units and personnel.

(8) The Chief, ARNG TDS, in coordination with the Chief, USATDS, is responsible for exercising technical supervision, including evaluations, management and direction over ARNG TDS personnel while in Title 32 (non-federal) status consistent with professional responsibility and state ethics requirements.

c. Mission command and technical supervision of USARLC units and organic RC personnel when mobilized.

(1) The Commander, FUSA, commands and controls mobilized USAR units until such units are assigned, attached to, or placed under the operational control of another unit.

(2) The SJA, FUSA, is responsible for technical-channel legal supervision over RC JAGC sections of mobilized subordinate units, including directing, monitoring and supervising legal training, until such mobilized units are assigned, attached to, or placed under the operational control of another unit.

(3) The SJA, FORSCOM is responsible for overseeing the technical-channel legal supervision provided by the SJA, FUSA.

Section III

Educational Requirements

7–8. Educational requirements for newly appointed Reserve Component officers assigned to the Judge Advocate General’s Corps

a. Rank. Except for USAR officers granted conditional assignment to the JAGC and ARNGUS officers granted conditional JAGC branch educational qualification for federal recognition as described in paragraph 7–9:

(1) Appointment to the rank of first lieutenant or captain requires credit for the Judge Advocate Officer Basic Course (OBC) and Direct Commission Course (DCC).

(2) Appointment to the rank of major or above requires credit for the Judge Advocate Officer Graduate Course or the Judge Advocate Officer Advanced Course.

b. Assignment to JA positions. Except for officers granted conditional assignment or conditional JAGC branch educational qualification for federal recognition as described in paragraph 7–9, or otherwise approved for assignment to a JA position by TJAG, RC JA officers must be educationally qualified before assignment to a JA position.

c. Responsibilities of commanders.

(1) Commanders of TPUs will not assign non-JA officers to JA positions and will remove from JA positions any non-JA officers who are found to have been so assigned.

(2) A RC officer assigned to a JA position will be reassigned to a non-JA position if they are not educationally qualified for the position, or if the officer received a conditional appointment or conditional federal recognition under paragraph 7–9 and they are not making satisfactory progress in a course of instruction leading to such qualification as determined by the Chief, PPTO, in coordination with the Dean, TJAGLCS.

7–9. Conditional assignment or conditional Judge Advocate General’s Corps educational branch qualification for Federal recognition

a. USAR officers. USAR officers who are otherwise qualified, but who have not completed the educational requirements specified in paragraph 7–8, may receive conditional assignment to the JAGC. To do so, such officers must complete the following educational requirements:

(1) Officers in the grade of first lieutenant or captain must complete the JAOBC (OBC and DCC) within 12 months of the date of conditional assignment.

(2) Captains within 42 months of their promotion eligibility date must complete the JAOAC or the Judge Advocate Graduate Course within 24 months of the conditional assignment or completion of the JAOBC, whichever is later.

(3) Officers in the grade of major or above must complete the JAOAC or the Judge Advocate Graduate Course within 24 months of the date of the conditional appointment or completion of the JAOBC, whichever is later.

b. ARNG officers. Pursuant to AR 135–100, ARNG officers who apply for federal recognition and associated appointment as Reserves for service as members of the ARNGUS (see 10 USC 12211) and are otherwise qualified, but have not completed the educational requirements specified in paragraph 7–8, may receive conditional JAGC educational branch qualification for the purpose of federal recognition and assignment to the JAGC. In order to qualify, such officers must complete the following educational qualifications:

(1) Officers in the grade of first lieutenant or captain must complete the JAOBC (OBC and DCC) within 12 months of the date of conditional assignment.

(2) Captains within 42 months of their promotion eligibility date must complete the JAOAC or the Judge Advocate Graduate Course within 24 months of the conditional assignment or completion of the JAOBC, whichever is later.

(3) Officers in the grade of major or above must complete the JAOAC or the Judge Advocate Graduate Course within 24 months of the date of the conditional appointment or completion of the JAOBC, whichever is later.

c. Completion requirements. Failure to complete educational requirements in the time specified may result in termination of the officer’s assignment and termination of federal recognition.

7–10. Educational requirements for promotion

For USAR promotion or federal recognition of ARNG state promotion, JA officers must meet the educational requirements for promotion to the next higher grade as stated. USAR officers conditionally assigned to the JAGC with a military education stipulation under paragraph 7–9 will be educationally qualified for promotion to grades below lieutenant colonel if they are progressing satisfactorily (as determined by TJAG or TJAG’s designee) toward completion of required military education at the date the promotion or federal recognition board convenes. Progressing satisfactorily for purposes of this regulation means completion of all course work for JAOBC (for promotion to captain (CPT)) and JAOAC (for promotion to major), but still pending graduation from the residence phase.

Section IV

Administration and Personnel Assignments

7–11. U.S. Army Reserve assignments and tenure

a. Tenured positions. All USAR JA positions in the grades of O–5 and O–6 are tenured positions. All USAR JA DIMA LOD–E positions, SJA, CJA, and BJA positions, regardless of grade, are tenured positions. Assignment to all tenured positions will not exceed three years. TJAG or TJAG’s designee will determine processes and procedures for selection of officers to fill tenured positions.

b. Military judge selections. As TJAG’s designee, the Chief Trial Judge, U.S. Army Trial Judiciary, nominates military judges from eligible officers who apply to advertised vacancies. Selected officers must satisfactorily complete the next scheduled military judge’s course or be removed from the military judge position unless previously certified for military judge assignments by TJAG.

c. Non-tenured assignments. TJAG or TJAG’s designee will publish processes and procedures for selection of officers to fill non-tenured positions.

7–12. U.S. Army Reserve overgrade assignments and promotions

a. USAR JAs will be assigned to positions equal to or higher than the officer’s current grade.

b. USAR JAs may be assigned to a position one grade lower than the current grade of the officer only upon the prior written approval of TJAG or TJAG’s designee. The duration of an overgrade assignment will be at the discretion of TJAG but will normally not exceed one year. The criteria used to evaluate a request for an overgrade assignment includes the following:

- (1) The needs of the JAGC and the command;
 - (2) Whether the officer is an incumbent SJA or CJA in a tenured position and the amount of time remaining in their tenure;
 - (3) The availability of other JAs in the grade of the vacant position;
 - (4) The availability of other JA positions in the requesting officer's grade or the grade to which the officer has been selected for promotion within the Regional Support Command/geographical area; and,
 - (5) The officer's past performance.
- (6) Officers requesting approval of an overgrade assignment must submit requests by memorandum to The Judge Advocate General (DAJA–PT/Army Reserve Management), 2200 Army Pentagon, Washington, DC 20310–2200.
- c. Officers selected for promotion, but not assigned to positions requiring the higher grade for which they were selected, who have been ordered to active duty may be promoted overgrade if the following criteria are met:
- (1) The officer is on the reserve active status list (RASL) in the grade of first lieutenant through lieutenant colonel;
 - (2) The officer is assigned to a TPU or DIMA position that requires an authorized grade lower than the grade for which the officer has been selected by an approved mandatory selection board promotion list established under 10 USC 14308(a);
 - (3) The officer is serving in an OCONUS duty location and in support of a named contingency on a period of active duty for more than 90 days pursuant to 10 USC 12301(a) or (d), 12302, or 12304; and
 - (4) Officers will be assigned to the individual ready reserve (IRR) 180 days after release from active duty (REFRAD) unless assigned to a position requiring the grade to which they were promoted under this policy, or a higher grade.
 - (5) Eligible officers seeking an overgrade assignment under this policy must submit a request endorsed by their Supervisory JA to the Office of The Judge Advocate General (DAJA–PT/Army Reserve Management), 2200 Army Pentagon, Washington, DC 20310–2200.

7–13. Non-Judge Advocate General's Corps assignments

- a. As special branch officers, RC JAs are expected to perform legal duties for their entire career. In exceptional cases, based on the needs of the Army, an RC JA may be approved to serve in a non-JA position. The written approval of TJAG or TJAG's designee must be obtained before any RC JA is detailed to another branch or otherwise assigned to a non-JAGC position. Non-JAGC assignments, when approved, will not exceed three years. When approved, RC JAs will normally serve in not more than one non-JAGC assignment during their careers.
- b. RC officers requesting approval of a non-JAGC assignment must submit requests by memorandum through their first Supervisory JA, to the Office of The Judge Advocate General, PPTO, (DAJA–PT), 2200 Army Pentagon, Washington, DC 20310–2200. Each request must also include a statement from the prospective gaining commander.
- c. The written approval of TJAG or TJAG's designee is required before any RC JA officer submits a request to be considered for a non-JAGC boarded position.
- d. The criteria used to evaluate each request will include, but are not limited to the following:
- (1) The needs of the Army and the JAGC to include JAGC vacancies within the relevant geographic area;
 - (2) The needs of the requesting command;
 - (3) The professional development of the requesting officer, including the amount of time the officer has served as a JA;
 - (4) The availability of non-JAs to fill the position;
 - (5) The requesting officer's past performance and demonstrated leadership skills;
 - (6) Whether the officer served in another branch before being appointed as a JA; and
 - (7) Whether the officer has received any training relevant to the non-JAGC assignment.

7–14. Position vacancy board promotions

No USAR JAGC officer may be considered for promotion by an Army Reserve position vacancy board without advance, written permission from TJAG.

Chapter 8

Mobilization and employment of Reserve Component Judge Advocate units and personnel

Section I

Employment

8-1. Employment objectives during periods of mobilization

RC JA elements (including LODs and their integral legal operation teams (LOTS)) are normally integrated into and work under the direction of the SJAs of major headquarters when mobilized. They augment the resources of existing or new JA offices.

8-2. Assignments and attachments during periods of mobilization

When mobilized, RC JA elements should be attached or assigned to echelons above the brigade level. They may be attached or assigned for operational control and administration to a subordinate headquarters under that headquarters SJA.

8-3. Operational control during periods of mobilization

Except for trial defense and military judge LODs and teams, RC elements function under and are responsible to the SJA of the headquarters to which attached or assigned. RC JA personnel augment the SJA section as an integral part of the section, work as a remote team, or may be employed separately as individuals.

8-4. Employment of U.S. Army Reserve Legal Command legal operations teams during mobilization

a. Legal operation teams (LOTs). These units, when attached for operational control to a headquarters with an SJA, normally should be merged with that section. They may also become the SJA section of a provisional headquarters that does not have an SJA section, or they may work subject to the operational control of the first SJA in their chain of command, as a remote detachment.

b. Trial and regional defense teams. These teams come under the full supervision and control of the Chief, USATDS, upon mobilization and will be attached to echelons above their division. These teams may be further attached to subordinate units as required. When not serving on active duty, in order to maintain their independence, trial defense LODs and their subordinate teams operate under the technical supervision of the Chief, USATDS.

c. Military judge and judicial operations support teams. These teams come under the full supervision and control of the Chief Trial Judge, U.S. Army Trial Judiciary and USALSA upon mobilization. They may be attached to echelons above their division and further attached to subordinate units as required. When not serving on active duty, to maintain their independence, the military judge LOD and its subordinate teams operate under the technical supervision of the U.S. Army Trial Judiciary.

Section II

Mobilization Guidance

8-5. General

a. TJAG, through PPTO, will determine and direct the method of mobilizing, sourcing, and filling all RC JA vacancies and requirements within AC, USAR, or ARNG units, including replacement operations and multi-component units. Mobilization determinations will be based upon current operational concerns, available mobilization authorities, the best interests of the Army, available funding, and available active and reserve JAGC assets. PPTO's determination and directives relating to this decision are binding on other HQDA staff sections, ACOMs, ASCCs, DRUs, FORSCOM, USARC, and NGB.

b. Methods of filling vacancies may include, at the discretion of PPTO—

- (1) Cross-leveling of RC JAGC personnel between TPU;
- (2) Attaching individual RC JAGC personnel for duty with a gaining unit pursuant to available mobilization authorities;
- (3) Deploying AC or AGR JAGC personnel; or
- (4) Mobilizing an LOD or its teams under its own or derivative unit identification code to be attached to or placed under the operational control of the gaining unit for duty purposes and administrative support (also known as a unit-level fill).

8–6. Cross-leveling of Reserve Component Judge Advocate General’s Corps personnel

RC JAGC personnel may neither be cross-leveled between units nor transferred between duty statuses (for example TPU, DIMA, or IRR) to fill positions without the prior approval of PPTO. The Commander, USARLC is authorized to direct the cross-leveling of personnel within the USARLC.

8–7. Trial defense or military judge mobilization requirements

Where a mobilizing USAR, ARNG, or multi-component unit has MTOE or TDA authorizations for trial defense or trial judiciary RC JAGC personnel, the following special rules apply, as often, this specialized support is provided in an area or jurisdictional basis from pooled resources, obviating the requirement for a specific unit to deploy with its own organic TDS or military judge assets:

a. USATDS, through USALSA, provides defense counsel and paralegal support to AC and mobilized RC personnel. AC Regional Defense Counsel exercise overall responsibility for the defense function at installations and commands in their regions. The Senior Defense Counsel of the installation or command’s TDS office, regardless of rank, remains responsible for defense services operations and support. In accordance with AR 27–10, the Chief, USATDS, has the authority to designate defense services on an installation and retains that authority over any defense counsel assigned to deploying units. Upon mobilization, defense counsel teams are operational control to the USATDS.

b. The U.S. Army Trial Judiciary, through USALSA, provides military judge support for mobilizing units, installations/Power Projection Platforms, as well as augmenting trial judiciary assets throughout the world. The senior military judge of a General Court-Martial Convening Authority jurisdiction controls the court docket and assignment of military judge support for all special and general court-martial cases in the jurisdiction. Upon mobilization, and in accordance with 10 USC 826(c), military judge teams are reassigned to the U.S. Army Trial Judiciary, will come under the supervision and control of USALSA, and will be employed as directed by the Chief Trial Judge, trial judiciary and attached, as required.

Chapter 9

Judge Advocate General’s Corps Recruiting and Accessions

9–1. General duties

TJAG is responsible for selecting candidates for duty with the JAGC in the AC and in the RCs (USAR and ARNG). Recruiting, selection, and accession of new JAs is managed by the Judge Advocate Recruiting Office (JARO), under the supervision of the Chief, PPTO.

9–2. Eligibility for appointment as a Judge Advocate as a Regular Army officer

Applicants must have the following qualifications for appointment:

- a. Citizenship.* Applicants must be a citizen of the United States pursuant to 10 USC 532(a)(1).
- b. Age.* Applicants must be at least 21 years of age and be able to complete 20 years of active commissioned service before their 62nd birthday in pursuant to 10 USC 532(a)(2).
- c. Character.* Applicants must be of high moral character in accordance with 10 USC 532(a)(3).
- d. Physical fitness.* Applicants must meet Army Physical Fitness Test standards. All applicants must meet the retention weight standards of AR 600–9. Applicants must otherwise be physically qualified for active service in pursuant to 10 USC 532(a)(4).
- e. Leadership ability.* Applicants must be qualified for potential leadership positions and have the ability to deal effectively with people.
- f. Personnel security requirements.* Applicants must have, at a minimum, a SECRET security clearance before receiving an appointment. As an exception, an applicant may receive a commission before completion of a national agency check with local records and credit check (NACLC) or an equivalent investigation under these conditions:
 - (1) An NACLC or equivalent investigation has begun by the time the applicant enters active duty; and
 - (2) The applicant agrees in writing that, if the results of the investigation are unfavorable, they will be subject to discharge if found ineligible to hold a commission.
 - (3) Waivers of these two conditions will not be granted.
- g. Law degree.* Applicants must have earned a Juris Doctor (J.D.) degree from a law school accredited by the American Bar Association at the time the applicant received the degree. A student in their last year in law school may apply for a commission before either graduation or admission to the bar. To receive a commission, an applicant must meet all bar admission requirements before appointment or detail.
- h. Admission to practice.*

(1) Applicants must be admitted to practice and be in good standing with the licensing authority admitting the individual to the practice of law before the highest court of the State, Territory, Commonwealth, or the District of Columbia, as further defined in paragraph 3–3*d*.

(2) Officers appointed in, assigned to, or detailed to the JAGC must be in good standing with the licensing authority admitting the individual to the practice of law before the highest court of the State, Territory, Commonwealth, or the District of Columbia, as further defined in paragraph 3–3*d*.

9–3. Eligibility for assignment as a Judge Advocate as a Reserve officer of the Army

a. Applicants must be a citizen of the United States, or be lawfully admitted for permanent residency in the United States, or have previously served in the Armed Forces of the United States in accordance with 10 USC 12201(b).

b. Applicants must meet the minimum and maximum age limitations set forth in AR 135–100 or as otherwise specified by the Secretary of Army for the appointment of persons as Reserves of the armed forces. An applicant who cannot complete 20 years of active reserve service before their 62nd birthday is eligible for appointment provided the applicant signs a statement of understanding that the applicant’s age precludes him or her from qualifying for retired pay in the Reserve of the Army.

c. Applicants must meet the remaining eligibility requirements of paragraph 9–2 of this regulation.

d. An applicant recommended for appointment in the ARNG and approved by TJAG for assignment as a JA must apply for appointment in and federal recognition in the ARNG through the appropriate state ARNG Headquarters.

9–4. Submission of application

a. Detailed information (including point-of-contact data), application forms, and instructions, are available at the JARO Web site: <http://www.goarmy.com/jag.html>.

b. Applicants for appointment in the JAGC as a Regular Army and USAR officers must—

(1) Complete the electronic application using JARO’s online application system located at www.jagcnet.army.mil.

(2) Attach all required documents to the online application as explained in the application instructions.

(3) Arrange for and complete an interview with a field screening officer (FSO).

c. Applicants who are current members of the Armed Forces must send a request for branch transfer or release from current unit through proper channels according to appropriate regulations. The request will state that the branch transfer or release is contingent upon the applicant’s selection for the JAGC.

d. Reserve Officers’ Training Corps (ROTC) graduates granted an educational delay from active duty to attend law school will complete the electronic application using JARO’s electronic online application system located at www.jagcnet.army.mil during the fall semester of their final year of law school and must complete an interview with an FSO.

e. Applicants for appointment in the ARNG must complete NGB Form 62E (Application for Federal Recognition as an Army National Guard Officer or Warrant Officer and Appointment as a Reserve Commissioned Officer or Warrant Officer of the Army in the Army National Guard of the United States) and submit it, along with all required enclosures to their respective state guard headquarters and through the NGB to JARO at the address provided on the JARO Web site. The documents required for complete application are specified by JARO in the checklist accompanying the application form posted on the JARO Web site.

9–5. Applicant interview procedures

a. Regular Army applicants. An applicant for appointment in the JAGC as a Regular Army officer will interview with an active duty JA FSO.

(1) The applicant will arrange for the interview. To obtain the name, contact information, and location of the nearest FSO, the applicant should consult the JARO Web site. Applicants will not be reimbursed for travel or incidental expenses incurred to complete the interview requirement.

(2) Applicants will list the date and place of the interview and identify the interviewing officer on the online application.

(3) FSOs will contact ABA-accredited law schools to arrange interviews with prospective JAGC applicants.

(4) FSOs will use the online FSO management tools to submit FSO reports of applicant interviews.

b. Reserve Component applicants.

(1) An applicant for appointment in the USAR or ARNG and assignment to the JAGC will interview with a RC Judge Advocate. The interviewing officer will prepare an interview report using DA Form 5000–R (Applicant’s Interview Report – Judge Advocate General’s Corps). The interview report may be sent directly to JARO or submitted with the candidate’s application packet. The interviewing officer may also use the online FSO management tools to submit their reports.

(2) Chapter 7 of this regulation contains guidance regarding conditional assignment (USAR applicants) or conditional JAGC educational branch qualification for federal recognition (ARNG applicants.)

9–6. Selection of applicants

A board convened by TJAG will consider all applications. The board will make recommendations to TJAG who will make final selections. Offers of an appointment are contingent on applicants meeting all qualifications for appointment and on the actual number of positions available in that fiscal year.

9–7. Offer of appointment in or assignment to the Judge Advocate General's Corps

a. Applicants must be admitted to the practice of law by the highest court of a state, territory, commonwealth, or the District of Columbia before appointment in or assignment to the JAGC. Law students who apply during their final year in law school may be selected for and offered an appointment contingent upon graduating from an accredited ABA law school and admission to practice law.

b. TJAG or TJAG's designee may revoke an offer of an appointment if it is later determined that the applicant does not meet eligibility requirements, fails to respond to an offer of appointment within a reasonable time as designated in the offer of appointment, fails to successfully pass the bar examination, is denied admission to practice on other grounds, fails to secure membership in good standing with the licensing authority admitting individuals to the practice of law before the highest court of the State, Territory, Commonwealth, or the District of Columbia as detailed in paragraph 3–3*d*, or in the judgment of TJAG, has become unqualified or unsuitable to perform duties as a JA.

c. Applicants who have twice been unsuccessful in bar examinations (regardless of whether one or more jurisdictions are involved) will be ineligible for appointment in or assignment to the JAGC unless granted a waiver by TJAG.

9–8. Service commitment

a. Applicants who accept appointment must serve in the Regular Army for such periods of active duty and in the USAR or ARNG for such periods not on active duty as are specified by the Secretary of the Army at the time the applicant is accessed.

b. Applicants who received ROTC scholarships and who have not yet fulfilled their service obligations must serve on active duty for a minimum of four years, if in the best interest of the JAGC and U.S. Army, and then complete any remaining service obligation with the USAR or ARNG not on active duty. (See AR 135–91.)

c. Officers who enter active duty with duty in JAGC may remain on active duty beyond their initial period of service obligation until released from active duty at the officer's request, if in the best interests of the JAGC and U.S. Army, or until involuntarily released from active duty in accordance with regulation and policy established by the Secretary of the Army.

9–9. Entry grade

a. The entry grade of JAGC officers will be determined in accordance with regulations prescribed by the Secretary of the Army, including AR 600–8–29. Officers appointed in the JAGC as Regular Army officers will be appointed in accordance with AR 601–100. RC officers will be appointed in accordance with the provisions of AR 135–100.

b. Former commissioned officers appointed as RC officers will be appointed in the highest grade for which they qualify based on the total constructive service credit allowed under AR 135–100.

c. RC commissioned officers of an Armed Force other than the Army approved for interservice transfer may be appointed in the Reserve of the Army. These officers will be given the same grade and date of rank as held in the former Armed Force in accordance with AR 135–100 and AR 614–120.

Chapter 10

The Judge Advocate General's Funded Legal Education Program

10–1. General

a. TJAG is responsible for selecting up to 25 Army officers each fiscal year on a competitive basis to attend the regular course of instruction leading to a J.D. or a bachelor of laws degree at an approved civilian law school through the FLEP. This course, normally three academic years, will be at the Government's expense (10 USC 2004). TJAG will direct FLEP officer assignments during the period that they are attending law school and awaiting assignment to or appointment in the JAGC.

b. Officers selected for FLEP are detailed to the JAGC and will comply with the provisions of this regulation.

10-2. Nonwaivable eligibility requirements

Applicants must be U.S. citizens on active duty on the active duty list (ADL) as commissioned Army officers in the grade of O-1 through O-3, while applying and at the time of FLEP selection. Active and traditional ARNG and USAR Soldiers are not eligible for this program (see AR 621-1). Applicants must also—

- a. Have graduated from an accredited college or university with a baccalaureate (or equivalent) degree.
- b. Have not less than two years or more than six years of active duty on the ADL, including prior active warrant officer and enlisted service, and be serving in the grade of O-1 through O-3 at the time legal training commences. Legal training commences on the first day of formal classroom instruction at the law school.
- c. Qualify for appointment in the JAGC according to the requirements of AR 601-100 after successfully completing law school.
- d. Have at least a SECRET security clearance.

10-3. Law School Admission Test

FLEP applicants must take the Law School Admission Test (LSAT), a half-day standardized test administered four times each year at designated testing centers throughout the world by Law School Admissions Council (662 Penn Street, Newtown, PA 18940-0998, www.lsac.org). The following procedures apply to LSAT:

- a. Applicants are responsible for arranging to take the LSAT at their own expense.
- b. Applicants will send copies of all LSAT scores directly to OTJAG, PPTO, ATTN: FLEP Administrator, 2200 Army Pentagon, Washington, DC 20310-2200, before the FLEP selection board convenes. The selection board will not consider an application without an LSAT score.
- c. Applicants may retake the LSAT if they desire, but must provide all LSAT scores to the selection board.

10-4. Application procedures

- a. *Applicants must—*
 - (1) Apply for detail to the JAGC under the FLEP in written memorandum format (in accordance with AR 25-50, chapter 2).
 - (2) Submit the original application through the applicant's chain of command to the first colonel (O-6) for endorsement. General officer endorsements are not required. Forward the endorsed application to the following address: OTJAG, PPTO; 2200 Army Pentagon, Washington, DC 20310-2200. The use of ring/spiral binders, document protectors, and/or non-standard paper is discouraged. Application materials will not be returned to the applicant.
 - (3) Submit a duplicate, endorsed application to the Commander, U.S. Army Human Resources Command, ATTN: (AHRC - [appropriate career management division]), 1600 Spearhead Division Avenue, Fort Knox, KY 40122. The appropriate career management division of HRC will endorse the application and forward the endorsement to PPTO. AHRC will not process applications lacking chain of command endorsements.
- b. *Application packets will include—*
 - (1) Applicant's telephone numbers (DSN and commercial), current home address, military mailing address, and military e-mail address. Applicants must notify PPTO of all changes of address and telephone numbers.
 - (2) Official transcripts of all college-level and higher education. Transcripts will show the class standing of the applicant if available.
 - (3) All officer evaluation reports (OERs). Academic evaluation reports (AERs) are discouraged, unless an officer has yet to receive an OER.
 - (4) A description of any legal studies completed and any legal experience in civilian or military life.
 - (5) Date of expected return to the United States, if applicable.
 - (6) The applicant's motivation for attending law school and for applying for the FLEP. The applicant may list any special circumstances that the selection board should consider. Limit motivation statements to one page in length as part of the application memorandum.
 - (7) A list of law schools to which applicant has applied or will apply.
 - (8) A current Department of the Army Official Photograph.
 - (9) An LSAT score or date of test. The applicant may submit an application without an LSAT score, but must provide the score separately before the selection board convenes.
 - (10) A total active federal service statement as follows: "On 1 September (year), I will have (number of) years and (number of) months of active federal commissioned service and (number of) years and (number of) months of prior active warrant officer and/or enlisted service for a total of (number of) years and (number of) months of total active federal service." Applicants should calculate their active federal service as of the year in which legal training will begin if the applicant is selected for the FLEP.

(11) The date and location of the SJA interview described in paragraph 10–4c, along with the name of the SJA conducting the interview.

(12) A statement that the applicant has at least a SECRET clearance.

(13) A current “Board” officer record brief (ORB). Submission of a regular ORB is discouraged.

(14) A current DA Form 705 (Army Physical Fitness Test Scorecard).

(15) For aviation officers, a request for voluntary permanent disqualification for aviation service, to be processed later, if selected for the FLEP (see AR 600–105 and AR 614–100).

(16) Letters of recommendation (LORs), if submitted in support of the FLEP application. LORs are not required. If included, applicants are encouraged to submit no more than three LORs. LORs from past raters and senior raters are discouraged, as the comments from past OERs will be considered by the board.

c. The SJA or acting SJA of the applicant’s command must personally interview the applicant. The interviewing SJA will—

(1) Make specific candid comments concerning the applicant’s motivation for attending law school, motivation for service as a career JA, potential as a JA, military bearing, sincerity, general physical appearance and condition, oral communicative skill, reputation in the command, and any other matters considered appropriate, using the format provided by PPTO. Provide a numerical ranking of the officer in comparison to other applicants if appropriate.

(2) Send the assessment of the applicant directly to PPTO. The SJA will not forward the assessment to the applicant.

d. Applications—

(1) Must be received by the applicant’s career management branch and PPTO not earlier than 1 August and not later than 1 November of the application year.

(2) Will not be accepted by PPTO or the applicant’s branch after 1 November.

10–5. Selection of Law School

a. FLEP selectees must—

(1) Apply to and be accepted by a law school in the United States accredited by the ABA. Selectees will normally attend an institution in their State of legal residency or an institution that will grant in-state tuition rates to out-of-State students.

(2) Pay all expenses incurred by applying to a law school.

b. TJAG will determine which law schools selectees will attend and may direct that selectees apply to additional schools.

10–6. Assignments

a. Upon receiving notice from PPTO that an applicant has been selected for detail to the JAGC under this regulation, the commander having jurisdiction over the applicant will issue assignment instructions as directed by TJAG.

b. While attending law school, officers will be assigned to the U.S. Army Student Detachment, Building 5450, Strom Thurmond Soldier Service Center, Fort Jackson, SC 29207. All assignment orders will state specifically the purpose of the assignment.

c. FLEP officers will attend law school in accordance with a standard academic year calendar without acceleration or deceleration, unless TJAG makes an exception in an individual case.

d. Each officer will perform on-the-job training (OJT) under the supervision of an SJA or legal officer, as designated by TJAG when school is not in session. Training is mandatory during the summer vacation period. During other breaks in the school year of five days or longer, TJAG may direct officers to perform OJT.

10–7. Evaluation reports

a. After each academic session of each academic year, officers will send a law school transcript or copy of the grade report issued by the law school directly to PPTO. Within 180 days of graduation, officers will send a consolidated transcript of all law school work, with a notation of degree conferred, to PPTO. The transcript will show the officer’s class standing, if available.

b. The transcript and grade report are in addition to DA Form 2125 (Report to Training Agency), which is submitted to Commander, U.S. Army Human Resources Command, ATTN: AHRC–OPL–L, 1600 Spearhead Division Ave., Fort Knox, KY 40122. The officer must submit a DA Form 2125 to HRC/OPL–L when the first academic term of legal training commences (that is, semester or quarter) and upon the conclusion of each academic term thereafter.

c. Academic reports on DA Form 1059–1 (Civilian Institution Academic Evaluation Report) are not normally required. However, a DA Form 1059–1 will be prepared at least annually for FLEP officers attending a civilian academic institution if not performing OJT (see AR 623–3).

d. Summer OJT for periods of more than 30 days requires an Officer Evaluation Report. (See AR 623–3) The officer evaluation report will cover the non-rated time spent at law school and the rated time during the OJT.

10–8. Maintenance of records

a. The U.S. Army Student Detachment will maintain officers' personnel and finance records while officers are attending law school.

b. FLEP officers will retain their medical and dental records while they are attending school and performing OJT.

10–9. Bar admission

a. In jurisdictions that require passing a bar examination as a condition to admission to practice, the following rules apply:

(1) FLEP officers must take the first bar examination offered after graduation in the jurisdiction of the law school attended or in the jurisdiction of the officer's domicile.

(2) FLEP officers may only take the bar examination in another jurisdiction provided that it will not interfere with their report date, and upon notification to PPTO.

(3) FLEP officers may take the bar examination during their final year of law school if the jurisdiction concerned permits it.

(4) FLEP officers who fail to pass the first bar examination will take the next bar examination in the same jurisdiction, or they may, with TJAG approval, take the next available bar examination in any other jurisdiction.

b. In jurisdictions that do not require passing a bar examination as a condition for admission to practice, FLEP officers will apply for admission to practice as soon as they are eligible.

c. FLEP officers will provide evidence of admission to practice to PPTO as soon as they are admitted. They will not be certified as counsel under UCMJ, Article 27(b), until they have furnished evidence of admission to practice.

d. The Department of the Army will not pay any expenses incident to any review course for the bar examination, the bar examination, or admission to practice. A FLEP officer will not be reassigned to an OJT site in the State in which they hope to gain admittance solely for the purpose of taking a bar review course.

10–10. Appointment in or detail to the Judge Advocate General's Corps

a. Officers participating in the FLEP will be detailed to the JAGC but will remain under the control of their basic branch for promotions while attending law school.

b. Officers are "authorized to practice in the JAGC" when they graduate from law school, pass the bar exam and/or are admitted to practice, complete the Judge Advocate Officer Basic Course, and are certified by TJAG in accordance with UCMJ, Article 27(b).

c. Officers who complete the FLEP and are authorized to practice in the JAGC will remain detailed to the JAGC for at least one year for observation and evaluation of their qualifications for appointment in the JAGC. These officers will be assigned to legal duties and considered members of the JAGC during this observation period. After at least one year, a board of officers will automatically consider records of these officers to determine whether they are fully qualified to continue serving as JAs. During this 1-year time period, the officer will be considered part of the JAGC competitive category for promotion consideration. Officers found fully qualified will be tendered appointments in the JAGC. Officers remain detailed to the JAGC until they execute their JAGC oath.

d. FLEP officers will be considered for promotion in the Judge Advocate Competitive Category and not the Army Competitive Category upon graduation from law school and the fulfillment of conditions for bar admission.

e. FLEP officers who fail bar examinations twice in one or more jurisdictions may be released from their JAGC detail. Officers released from their JAGC detail will be returned to their basic branch for assignment and completion of any service obligation.

f. FLEP officers detailed to the JAGC who are not selected for promotion from Active Competitive Category the primary zone of consideration may, at TJAG's discretion, be returned to their basic branch for assignment and completion of any service obligation.

g. FLEP officers who complete law school under the FLEP and who are admitted to practice are required to accept appointment in the JAGC if appointment is tendered.

h. FLEP officers who refuse to accept appointment when tendered, or who otherwise fail to qualify for appointment in the JAGC, may, at the discretion of TJAG, be retained in a JAGC detail status to complete their active duty service obligation (ADSO), or be returned to their basic branch to complete their ADSO. Officers who remain detailed to the JAGC after the 1-year evaluation period will continue to perform legal duties as assigned (see AR 27–3 for limitations on those authorized to provide legal assistance), provided they meet the qualifications to practice law in the Army, and will remain in the JAGC competitive category (see AR 600–8–29, definition of competitive category). FLEP officers returned to their

basic branch will reimburse the Government for all costs of advanced education, or portion thereof, as determined by the SECARMY.

i. FLEP officers who fail to complete their FLEP ADSO as a result of action not initiated by the Government will reimburse the Government for all costs of advanced education or portion thereof, as determined by the SECARMY. Separation as a result of misconduct, moral or professional dereliction, in the interests of national security, or substandard performance of duty is not an action “initiated by the Government” for the purpose of this paragraph (See AR 600–8–24).

j. FLEP officers may be removed from the FLEP using the removal procedures of this chapter and returned to the control of their basic branch, for substandard academic performance, misconduct, moral or professional dereliction, in the interests of national security, or derelictions indicative of failure to meet the personal and professional standards for appointment in the JAGC, including applicable height, weight, and physical fitness standards. FLEP officers so removed will reimburse the Government for all tuition and other education costs or portions thereof as determined by the SECARMY.

10–11. Removal procedures

a. If TJAG determines there is evidence of substandard academic performance, or adverse conduct, as described in paragraph 10–10j, TJAG will notify the officer in writing that they are being considered for removal from the FLEP. The written notification will include the reason and explain that the officer has the right to—

(1) Request removal from the FLEP.

(2) Submit matters in the officer’s own behalf no later than 14 calendar days after receiving notification that the officer is being considered for removal.

b. TJAG will determine the duty status of the officer during any investigation.

c. Ordinarily, conclusion of an investigation and a decision by TJAG regarding the officer’s status will not be delayed while waiting for the final disposition of any criminal proceedings arising out of the same general matter.

d. An officer may be relieved from the FLEP for the reasons stated in paragraph 10–10j. If the misconduct resulted in criminal charges by military or civil authorities, and the charges are later dismissed or the officer is later acquitted in court, the officer may request that TJAG reconsider the case with a view toward reinstatement in the program. Dismissal of the charges or acquittal will not, however, necessarily entitle the officer to favorable reconsideration.

e. The removal procedures in subparagraphs a through d do not apply to cases in which an officer—

(1) Is relieved from detail to the JAGC and returned to the officer’s basic branch for failure to be found fully qualified for JAGC appointment after completing one year of duty with JAGC after admission to the bar.

(2) Is removed for twice failing a bar examination or for non-selection for promotion.

f. If TJAG removes an officer from the FLEP, the officer is returned to the control of their basic branch. FLEP officers so removed will reimburse the Government for all tuition and other education costs or portions thereof as determined by the SECARMY.

10–12. Service obligations

a. FLEP officers must sign a Service Obligation statement (as described in figure 10–1) before final acceptance into the FLEP and detail to the JAGC.

b. FLEP officers incur a 2-year ADSO for each academic year (or part thereof) spent in law school under the program, except as provided in paragraph h.

c. FLEP officers will serve the ADSO incurred by participating in the FLEP by performing legal duties pre-scribed by TJAG. These duties will commence at the time the service obligation begins (see subparagraph 10–12d); normally, they will continue without interruption by performance of other duties not prescribed by TJAG.

d. Service in satisfaction of the FLEP ADSO following graduation from law school begins on the date the FLEP officer either starts performing legal duties, as prescribed by TJAG, or reports to the JAOBC, whichever is earlier.

e. The FLEP ADSO runs consecutively and not concurrently with any other ADSO. Requests for waiver of non-statutory ADSOs, and requests made as to the method and time of fulfillment incurred, will be forwarded via the Supervisory JA to PPTO.

f. Time spent in law school does not satisfy the ADSO; however, the period between graduation from law school and reporting to JAOBC or commencing performance of legal duties will count toward satisfaction of preexisting ADSOs.

g. Time spent on OJT does not satisfy the FLEP ADSO, but may count toward satisfying other preexisting ADSOs.

h. If the officer’s participation in the FLEP ends by the officer’s request before completion of legal studies, the officer will incur a 1-year ADSO in their basic branch for each year or part thereof spent in law school under the FLEP, or in preparing for and taking the bar examination. This rule also applies if TJAG terminates the officer’s participation for the convenience of the Government before appointment in the JAGC. Termination of participation in the FLEP, however, is at the discretion of TJAG. Officers have no right to termination from the FLEP.

10–13. Outside employment

Officers detailed to law school under the FLEP will not engage in outside employment, except as provided by AR 621–1 and with prior written approval from TJAG.

10–14. Direct communication

Officers who contemplate applying for the FLEP or who are selected for participation in FLEP are authorized to correspond directly with PPTO.

10–15. Publicity

This chapter will receive the widest publicity among active duty Army officers.

10–16. Insignia

FLEP officers will not wear the JAGC insignia until authorized to practice in the JAGC in accordance with this chapter.

Service Obligation Statement

In consideration of being assigned to law school to obtain a J.D. degree, I hereby accept detail to the Judge Advocate General's Corps (JAGC), effective upon my assignment to law school. I understand that my detail to the JAGC will continue throughout law school and thereafter until my appointment in the JAGC, unless The Judge Advocate General (TJAG) affirmatively terminates my detail earlier or my detail is terminated by operation of law or regulation. Further, I agree to:

- a. Complete the civilian educational course of legal training
- b. Make prompt application for admission to practice before the highest court of a State, Territory, Commonwealth, or the District of Columbia.
- c. Serve on active duty for 2 years for each academic year or part thereof spent in law school under this program.
- d. Accept appointment in the JAGC if appointment is tendered.
- e. Reimburse the Government for all costs of advanced education if I voluntarily (including separation as a conscientious objector) or as a result of misconduct, moral or professional dereliction, or substandard performance (including separation based on drug abuse, alcohol abuse, or failure to maintain Army weight standards) fail to complete the appropriate service obligation.
- f. Serve as an Army Judge Advocate performing legal duties prescribed by TJAG during the obligated period of service following law school, if so ordered.

Any other provision of this agreement notwithstanding, time spent in law school will not be considered to have been served in satisfaction of any active duty service obligation I may have. "Time spent in law school" is time during the "academic year" from the first day of class in the fall until the final class and/or examination in the spring, but does not include periods actually spent in an on-the-job training (OJT) status. Additionally, periods spent in an OJT status will not be considered to have been served in satisfaction of the service obligation incurred as a result of participation in the FLEP; however, periods spent in an OJT status under this program, as well as the time between academic years and time spent between graduation and the date I begin discharging my FLEP obligation, will be considered to have been served in satisfaction of any other active duty service obligation I may have (other than the FLEP obligation).

I understand that I will not begin to satisfy the service obligation incurred as a result of participation in the FLEP until the date I begin performing legal duties as prescribed by TJAG or the date I report for attendance at the Judge Advocate Officer Basic Course (JAOBC), whichever is earlier. Further, I understand that I must be performing legal duties prescribed by TJAG (including attendance at JAOBC) in order to satisfy this service obligation and that, once service in satisfaction of this obligation has begun, it must normally continue, uninterrupted, until the obligation is fully satisfied.

Any period of time that is served in satisfaction of my FLEP obligation may not be applied in satisfaction of any other active duty service obligation. If I have another active duty service obligation when I begin satisfying my FLEP obligation, I understand that I cannot satisfy any part of such obligation until after I have satisfied my FLEP obligation. I also understand that any future active duty service obligations I may incur may run consecutively with the FLEP active duty service obligation pursuant to AR 27-1, paragraph 10-12(e).

Figure 10-1. Sample Service Obligation Statement for Applicants for the Funded Legal Education Program

I also understand that my detail to JAGC (and, if I am still in law school, my attendance at law school) may be terminated if: I am unable to maintain acceptable grades, or I abandon the study of law; I twice fail to pass the bar examination, or I am otherwise subject to the removal procedures stated in AR 27-1. In case of termination from the FLEP before admission to practice, I will begin serving in satisfaction of the obligation incurred as a result of participation in this program; effective on the date my participation is terminated.

I also understand that should my participation in the FLEP be terminated for any reason (including voluntary withdrawal or termination by TJAG for convenience of the Government) before completion of law school, I will incur a 1-year obligation in my basic branch, or another branch to which I may be detailed or assigned, for each academic year or part thereof during which I attended law school under FLEP.

I agree that if I am twice non-selected for promotion I will remain on active duty until such time as I have fulfilled the term of continuous active duty agreed to above, even if that obligation will extend me beyond what would otherwise be the date of my release from active duty as a result of non-selection for promotion. Until such time as I have fulfilled the term of continuous active duty agreed to above, I also agree to accept selective continuation on active duty, if offered, rather than elect to be discharged as a result of being twice non-selected for promotion.

Any regulation or policies concerning service obligations inconsistent with the terms of this agreement does not apply.



(Signature)

Jane doe, Cpt.

(Print Name, Grade)

May 11, 2016

(Date)

Figure 10–1. Sample Service Obligation Statement for Applicants for the Funded Legal Education Program—continued

Chapter 11 Professional Conduct and Fitness Inquiries

11–1. General

a. This chapter establishes procedures for processing alleged or suspected violations of AR 27–26 or other applicable ethical standards by—

- (1) JAs.
- (2) JALS civilian lawyers subject to this regulation.
- (3) All other military and civilian personnel subject to this regulation as members of the JALS.
- (4) Other lawyers who are subject to the professional responsibility disciplinary authority of TJAG pursuant to RCM 109, MCM.

b. This chapter applies whether the alleged or suspected violation occurred in a military or civilian status in the course of the lawyer's activities as a lawyer or otherwise, whether committed within or outside the scope of professional duties that involve the U.S. Army, or whether on or off-duty.

c. The policies and procedures in this chapter apply to trial and appellate military judges, and military magistrates performing magistrate duties, consistent with RCM 109, MCM, and Article 6a, UCMJ. To the extent it does not conflict with the UCMJ, the MCM, directives, regulations or rules, the Code of Judicial Conduct for Army Trial and Appellate Judges applies to all JAs and civilian lawyers when serving in a judicial assignment or performing judicial functions.

d. Nothing in this chapter limits or infringes on the authority of TJAG to issue or suspend temporarily or withdraw any certification of qualification to act as a military judge, to issue or suspend (temporarily or indefinitely) any certification of competency to act as counsel before courts-martial or the Army Court of Criminal Appeals, to suspend (temporarily or indefinitely) any JA or civilian lawyer from performing JA duties, legal duties, or any other duties, or to exercise any authority provided by any other authorities, statutes, directives, regulations, or rules.

e. SJAs, the Chief, TDS, the Chief Counsel (NGB), and the Chief, PPTO are authorized to temporarily suspend any certification of competency to act as counsel, or to temporarily suspend any JA or civilian lawyer from performing their legal duties or any other duties, pending resolution of an allegation, or a concern regarding competence or fitness, that, if substantiated, would reflect adversely on fitness for duties as a lawyer. Nothing in this chapter prevents TJAG, DJAG, or an SJA from referring a case to command channels for consideration of disciplinary action. (See also paragraphs 11-1f, 11-3b, and 11-3c).

(1) Any temporary suspensions should be reported through technical channels to the Chief, PRB.

(2) Only TJAG can suspend (temporarily or indefinitely) an SJA or military judge.

f. TJAG's professional responsibility program and this chapter are intended to address issues that reflect adversely on the practice of law or on fitness as a lawyer or military judge. The procedures in this chapter are implicated in situations where an administrative or criminal investigation substantiates misconduct that involves a matter of significance to the military practice of law, or raises a question as to a subject lawyer's honesty, trustworthiness, or fitness as a lawyer (or military judge) in other respects. TJAG's professional responsibility program and this chapter, however, are not intended to substitute for command disciplinary action where such is appropriate. (See paragraphs 11-3b and c).

g. Chapter 12 of this regulation prescribes procedures for handling allegations or complaints of mismanagement, which are substantially the same as the procedures in this chapter. When an allegation or complaint of mismanagement is coupled with an allegation of a violation of the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Judges, or other applicable ethical standards, the procedures in this chapter will be followed. (See para 12-2c).

h. The PRB is responsible for managing TJAG's professional responsibility program. Specifically, PRB is responsible for the formulation of policy and guidance, tasking and oversight of credibility determinations and preliminary screening inquiries (PSIs), professional responsibility legal and policy advice to TJAG, DJAG, the AJAGs, and Senior Supervisory JAs, and administrative support to the Professional Responsibility Committee (PRC).

i. In the event the Chief Counsel (NGB) is not an Army JA, the alleged or suspected violation by individuals listed in paragraphs 11-1a(1) through (4) will be processed by the Chief, PRB who will, in coordination with Chief Counsel (NGB), take appropriate actions consistent with this regulation.

j. Nothing in this chapter limits or infringes on the authority of a civilian lawyer's supervisory chain to take administrative action for any conduct giving rise to a professional responsibility inquiry.

11-2. General Duties

a. *Compliance.* TJAG and supervisory lawyers (as defined in this regulation and AR 27-26) are responsible for making reasonable efforts to ensure that all lawyers in the JALS conform to the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Judges, and other applicable ethical standards.

b. *Administrative Flags.* Only TJAG or TJAG's designee may impose or remove a flag on JAs, military trial and appellate judges, LAs, and military paralegals, for reasons related to their professional licensing or certification of competency or qualification, as appropriate, or for reasons related to the delivery of legal services. (See AR 600-8-2).

c. *Credibility Determination.* Supervisory lawyers at all levels are responsible for receiving and reviewing all alleged or suspected violations of the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Judges, or other applicable ethical standards by subordinates that come to their attention to determine if they are credible. An alleged or suspected violation is "credible" if the information received provides a reasonable belief that such violation occurred.

(1) Supervisory lawyers will report, through technical channels to the Chief, PRB, OTJAG, for action under this chapter, alleged or suspected violations that they have determined are credible and that, if substantiated, would raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(2) Reports of alleged or suspected violations against military trial or appellate judges will be reported directly through DJAG to TJAG or to the Chief Trial Judge and Chief Judge, ACCA, respectively, for processing in accordance with RCM 109, MCM, and this chapter. (See also paragraph 11–1c).

(3) If a supervisory lawyer, upon initial review, determines that a third party complaint of a violation is not credible, a copy of the complaint and any response to the complainant, with all associated documentation, will be retained in accordance with applicable filing regulations. Any response to the complainant will state that the review of their allegation is complete, but the Privacy Act prevents disclosing the results of the review.

(4) If the allegation is determined to be credible but, if substantiated, would not raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, the allegation will be processed in accordance with paragraph 11–5.

(5) If the allegation is determined to be not credible, or is determined to be credible but if substantiated would not raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, but is noteworthy or sensitive for other reasons, the allegation should be reported through technical channels to the Chief, PRB.

(6) While the intent of this paragraph is to provide guidance on the reporting of alleged or suspected violations, nothing herein prohibits the reporting of an alleged or suspected violation to PRB, DJAG, or TJAG, whether directly or through technical channels.

d. Training.

(1) Supervisory lawyers within an Army legal office and at higher echelons in the technical chain are responsible for ensuring that all Army lawyers under their jurisdiction receive annual training on the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Judges, and other applicable ethical standards, as appropriate.

(2) At a minimum, each lawyer should receive three hours of professional responsibility training each year, unless TJAG directs otherwise.

(3) Supervisory lawyers will provide nonlawyer assistants with appropriate instruction and supervision concerning the ethical aspects of their duties, particularly regarding the obligation not to disclose information relating to representation of a client and the unauthorized practice of law.

(4) Supervisory lawyers are encouraged to make maximum use of temporary duty to allow Army lawyers to attend civilian ethics, professional responsibility, and judicial conduct training courses.

11–3. Policies

a. Credible alleged or suspected violations of the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Military Judges, or other applicable ethical standards that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects will be informally investigated by means of a PSI.

(1) An inquiry into judicial misconduct or unfitness under the provisions of RCM 109, MCM, can, depending on the circumstances, satisfy the PSI requirement.

(2) A PSI may only be directed by TJAG, DJAG, Chief Counsel (NGB) for ARNG JAs in Title 32 status (see paragraph 11–4b(8), or the Chief, PRB).

(3) Tasking documents and other administrative directions related to a PSI will be issued by PRB on behalf of TJAG.

b. A PSI is not intended and should not be used to supplant command or other criminal or administrative investigations that are more appropriate for inquiries into allegations unrelated to or otherwise not unique to either the practice of law or fitness as a lawyer or judge, although a PSI may be appropriate after command or other investigations are complete if there are findings of misconduct that implicate the practice of law or fitness as a lawyer or judge. A PSI normally will not be conducted if the alleged or suspected violation—

(1) Is being investigated as criminal misconduct by the lawyer, punishable under the UCMJ, until initial action adjudicating guilt, or administrative action tantamount thereto, is completed;

(2) Involves conduct for which there exists a clear avenue of review that does not interfere with TJAG's supervision of lawyers under their jurisdiction, for example, appellate review of a court-martial conviction or non-judicial punishment, on-going civil litigation, or the contesting of an efficiency report, until that review has occurred;

(3) Involves purely discretionary conduct of an administrative nature, for example, an award recommendation; or

(4) Has been thoroughly investigated under another procedure, such as an AR 15–6 investigation. The investigations or reviews resulting from subparagraphs 11–3b(1), b(2), and this subparagraph will be provided to the Senior Supervisory JA for action under paragraph 11–5.

c. The Senior Supervisory JA should receive a copy of and review any criminal or administrative investigation into a JA, or JALS civilian lawyer, in order to determine whether the findings and recommendations implicate the military practice of law or fitness as a lawyer or judge.

(1) The Senior Supervisory JA will coordinate with PRB as to the propriety of a PSI. TJAG, DJAG, or PRB are authorized to decide whether to conduct a PSI.

(2) If a PSI is directed, the relevant portions of any criminal or administrative investigations will be incorporated into the PSI, and the Senior Supervisory JA will gather any additional evidence, as necessary, and analyze, or cause to be gathered and analyzed, the facts, findings, and any command discipline if imposed in light of the Army Rules of Professional Conduct for Lawyers or other applicable ethical standards, and submit the PSI report to PRB with a recommendation, as appropriate, in accordance with paragraph 11–5.

d. In arriving at their findings regarding professional responsibility or other applicable ethical standards, PSI officers, Senior Supervisory JAs, and the PRC will use a “clear and convincing evidence” standard of proof.

11–4. Preliminary Screening Inquiry

a. Scope. The purpose of the PSI is to assist Senior Supervisory JAs and PRB in determining whether the questioned conduct occurred and, if it did, whether it constituted a violation of the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Judges, or other applicable ethical standards, and in recommending appropriate action in cases regardless of whether any violations are substantiated.

(1) A PSI will not normally be conducted unless an alleged or suspected violation has been determined to be credible and, if substantiated, would raise a substantial question as to a lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects. However, the Chief, PRB, TJAG, or DJAG may direct that a PSI be conducted in the absence of a prior credibility determination. The Chief Counsel (NGB), in the case of a member of JALS working in or assigned to NGB, may direct that a PSI be conducted in the absence of a prior credibility determination.

(2) The PSI is not intended to constitute an ethical investigation that most licensing authorities normally require lawyers to report to them. Nevertheless, it is the responsibility of the subject of the PSI to know and comply with the reporting requirements of their licensing authority or authorities.

b. Senior Supervisory JA.

(1) *General.* The Senior Supervisory JA is the SJA of an ACOM, ASCC, or a DRU; the Chief, U.S. Army Trial Defense Service; Chief Trial Judge of the Trial Judiciary; Chief Counsel (NGB); or other JA in an equivalent supervisory position or as designated by TJAG, DJAG, or the Chief, PRB.

(2) *Chief, PRB duties.* The Chief, PRB, may also perform the duties of the Senior Supervisory JA when appropriate under the circumstances, and may at any time assume full responsibility over a case and take action as appropriate.

(3) *JA designation.* TJAG, DJAG, or the Chief, PRB, may at any time designate a particular JA to serve as the Senior Supervisory JA for a particular case.

(4) *JALS civilian lawyer appointment.* A JALS civilian lawyer may be appointed by TJAG, DJAG, or the Chief, PRB, to perform the duties of the Senior Supervisory JA when appropriate under the circumstances.

(5) *RC personnel in Title 10, Mobilization, or DIMA Status.* The Senior Supervisory JA for alleged or suspected violations involving RC personnel is the ACOM, ASCC, or DRU SJA or equivalent Supervisory JA having responsibility for the installation or activity at which the training or duty was conducted if the RC JA was serving—

(a) Pursuant to orders issued under Title 10, U.S. Code, during AT, active duty for training, or extended active duty;

(b) Pursuant to mobilization orders; or

(c) In a drilling individual mobilization augmentee (DIMA) status.

(6) *RC personnel in Ready Reserve, Standby Reserve, and Retired Reserve.* The Senior Supervisory JA for alleged or suspected violations (except as stated in para b(5)) involving members of the Ready Reserve, Standby Reserve, and Retired Reserve (to include RC TPU and IRR members) is the SJA, USARC.

(7) *ARNG personnel in Title 10 status.* The Senior Supervisory JA for alleged or suspected violations involving ARNG personnel is the ACOM, ASCC, or DRU SJA or equivalent Supervisory JA having responsibility for the installation or activity at which the training or duty was conducted if the ARNG JA was serving pursuant to orders issued under Title 10, U.S. Code, or pursuant to mobilization orders. The Chief Counsel (NGB) is the Senior Supervisory JA for ARNG JAs assigned to NGB.

(8) *ARNG personnel in Title 32 status.* If an alleged or suspected violation involves conduct of an ARNG JA not committed while performing federal duties under Title 10, U.S. Code, it will be referred to the Chief Counsel (NGB) who will serve as the Senior Supervisory JA. The Chief Counsel (NGB) may direct a PSI but will consult with the Chief, PRB immediately after doing so. Allegations will be processed in accordance with the procedures in this chapter. (See paragraph 11–3a(2)). Allegations of misconduct or suspected violations involving ARNG JAs serving as defense counsel will be referred to Chief, U.S. Army Trial Defense Service, who will exercise Senior Supervisory JA authority in accordance with paragraph b(1).

(9) *Military judges.*

(a) The Chief Trial Judge, U.S. Army Trial Judiciary, will serve as the trial judges' Senior Supervisory JA for allegations of judicial misconduct or unfitness, or for violations of the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Military Judges, or other applicable ethical standards, made against military trial judges and military magistrates in the performance of their magistrate duties.

(b) The Senior Supervisory JA for allegations of judicial misconduct or unfitness, or for violations of the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Military Judges, or other applicable ethical standards, made against military appellate judges will be determined on a case specific basis.

(c) In all cases involving allegations against military trial and appellate judges and military magistrates in the performance of their magistrate duties, the procedures set forth in this regulation and in RCM 109, MCM, will be followed. (See also paragraphs 11-1c and 11-2c(2)).

(10) *Civilian lawyers in JALS.*

(a) The Senior Supervisory JA for alleged or suspected violations involving civilian lawyers who are members of the JALS is the ACOM, ASCC, DRU SJA, or Chief Counsel (NGB) or equivalent Supervisory JA having responsibility for the installation or activity at which the civilian lawyer's duties were performed, or as designated by TJAG, DJAG, or the Chief, PRB.

(b) A JALS civilian lawyer may be appointed by TJAG, DJAG, or the Chief, PRB, to perform the duties of the Senior Supervisory JA when appropriate under the circumstances.

(11) *Civilian lawyers subject to TJAG's professional responsibility authority under the provisions of RCM 109, MCM.*

(a) The Senior Supervisory JA for alleged or suspected violations involving civilian lawyers who fall under TJAG's jurisdiction pursuant to RCM 109, MCM, is the ACOM, ASCC, DRU SJA, or Chief Counsel (NGB) or equivalent Supervisory JA having responsibility for the installation or activity at which the civilian lawyer's duties were performed, or as designated by TJAG, DJAG, or the Chief, PRB.

(b) A JALS civilian lawyer may be appointed by TJAG, DJAG, or the Chief, PRB, to perform the duties of the Senior Supervisory JA when appropriate under the circumstances.

c. *Appointment.*

(1) Normally, upon receipt of a tasking document or verbal approval from the PRB, the Senior Supervisory JA will appoint a PSI officer.

(2) In unusual cases, or cases where there is no clearly identifiable Senior Supervisory JA, the PSI officer will be appointed by TJAG, DJAG, or the Chief, PRB, as appropriate.

(3) When PRB performs the duties of the Senior Supervisory JA, PRB will appoint the PSI officer.

(4) The individual designated to conduct a PSI inquiry involving a military trial judge will be a military trial judge or an individual with experience as a military trial judge, if practicable. The individual designated to conduct an inquiry involving an appellate military judge will have experience as an appellate military judge, if practicable.

(5) A JALS civilian lawyer may also be appointed as a PSI officer, when appropriate, but the Senior Supervisory JA will consult with PRB before making such appointment.

(6) The PSI officer will be senior to the subject of the inquiry.

(7) Absent coordination with the Chief, PRB, the Senior Supervisory JA will not serve as the PSI officer.

d. *Procedure.*

(1) The PSI will be conducted according to the procedures set forth in this regulation. Where this regulation is silent, the PSI officer will follow the rules governing informal investigations under the provisions of AR 15-6.

(2) The PSI officer will determine the facts and circumstances of the alleged or suspected violation and, if appropriate, make recommendations. A subordinate officer may be detailed to gather the facts, question individuals, and collect pertinent documents, but the PSI officer must independently review the facts and make written findings and recommendations.

(3) The PSI officer will provide the Senior Supervisory JA, Chief, PRB, DJAG, and/or TJAG, as appropriate, with a written report which will summarize the facts, provide conclusions (findings) as to whether a violation occurred, and, as appropriate, recommend corrective or disciplinary action. (See para 11-3c.)

(4) The PSI officer's report may, in some instances, contain conclusions, observations, or recommendations concerning a subject's conduct or performance that are unrelated to an alleged or suspected violation that is the focus of the inquiry. Such conclusions, observations, or recommendations will be included if—

(a) A reasonable person would consider them to be adverse to the subject,

(b) They are substantiated by clear and convincing evidence, and

(c) They are relevant to the subject's service in the JALS or, as regards civilian lawyers subject to TJAG's professional responsibility authority under the provisions of RCM 109, MCM, to the subject's service in matters in which they are so subject.

(5) Copies of documentary evidence and witness statements will be attached as exhibits.

(6) Privacy Act statements should be used, as appropriate, and attached to the PSI report.

11–5. Senior Supervisory Judge Advocate action

a. Upon receipt of the PSI report, the Senior Supervisory JA will determine if the report is complete. If not, the Senior Supervisory JA will return it to the PSI officer for further inquiry. Once satisfied that the PSI report is complete, the Senior Supervisory JA will take one of the following actions:

(1) If the report concludes that no professional responsibility or other applicable ethical violation occurred, the Senior Supervisory JA may determine that the allegation is unsubstantiated, and will coordinate with the Chief, PRB, before closing the case (see paragraph b).

(a) Upon case closure, the Senior Supervisory JA will inform the subject in writing that the case is closed, and will provide a copy of the PSI report and subsequent correspondence to the Chief, PRB.

(b) The Senior Supervisory JA will inform the complainant, if any, in writing that the review of their allegation is complete, but the Privacy Act prevents disclosing the results of the review.

(2) If the report shows that only a minor or technical professional responsibility or other applicable ethical violation occurred, the Senior Supervisory JA may substantiate the allegation and determine that counseling is appropriate.

(a) In this case, the Senior Supervisory JA will first coordinate with the Chief, PRB, (see paragraph b) and then refer a copy of the PSI report (or its equivalent) to the subject for comment.

(b) The subject will be given a reasonable time (normally 14 to 21 calendar days) to provide comments. The Senior Supervisory JA may grant an extension(s) of time for good cause (for example, for reasons beyond the subject's control).

(c) Failure to provide comments in the time provided, or any extension thereof, will constitute waiver of the opportunity to comment.

(d) This referral of a copy of the PSI report (or its equivalent) to the subject is in addition to any other referral of matters to the subject that may be required by law or regulation applicable to the imposition of judicial, non-judicial, disciplinary, administrative, or other corrective action.

(e) Upon receipt of the subject's comments, if any, the Senior Supervisory JA will review and analyze them in the context of the PSI report and determine whether the allegation should remain substantiated as minor or technical and whether counseling remains appropriate. If so, the Senior Supervisory JA will ensure that the counseling takes place and close the case.

(f) The Senior Supervisory JA will inform the subject in writing that the case is closed, and will provide a copy of the PSI report and subsequent correspondence to the Chief, PRB.

(g) The Senior Supervisory JA will inform the complainant, if any, in writing that the review of their allegation is complete, but the Privacy Act prevents disclosing the results of the review.

(h) The finding of even a minor or technical violation may trigger a reporting requirement imposed by the subject's licensing authority, even if initiation of a PSI did not require a report by the subject to their licensing authority. It is the responsibility of the subject of the PSI to know and comply with the reporting requirements of their licensing authority or authorities (see para 11–4a(2)).

(3) If the report shows that more than a minor or technical professional responsibility or other applicable ethical violation occurred, the Senior Supervisory JA will refer the PSI report (or its equivalent) to the subject for comment.

(a) The subject will be given a reasonable time (normally 14 to 21 calendar days) to provide comments; the Senior Supervisory JA may grant an extension(s) of time for good cause, for example, for reasons beyond the subject's control.

(b) Failure to provide comments in the time provided, or any extension thereof, will constitute waiver of the opportunity to comment.

(c) This referral of a copy of the PSI report (or its equivalent) to the subject is in addition to any other referral of matters to the subject that may be required by law or regulation applicable to the imposition of judicial, non-judicial, disciplinary, administrative, or other corrective action.

(d) Upon receipt of the subject's comments, if any, the Senior Supervisory JA will review and analyze them in the context of the PSI report and determine whether the allegation should remain substantiated as more than minor or technical.

(e) If the allegation remains substantiated, the Senior Supervisory JA will provide their own written findings and recommendations, together with the PSI report, to the Chief, PRB, for further action.

(f) If the allegation does not remain substantiated as more than a minor or technical violation, the Senior Supervisory JA will follow the procedures in paragraphs a(1) and a(2), as appropriate.

b. The Chief, PRB, may take any and all of the same actions that the Senior Supervisory JA may take regarding a PSI and the report. The Chief, PRB, is not, however, bound by the PSI report or by any action of the Senior Supervisory JA or other supervisory lawyers over the subject. Among other actions, the Chief, PRB, may enter substitute conclusions, findings, and recommendations.

c. At the time a case is coordinated with the Chief, PRB, under paragraphs a(1) through a(3), or at any other time, TJAG, DJAG, or the Chief, PRB, as appropriate, retains the authority to assume full responsibility over the case and take further action, as deemed appropriate under the circumstances.

d. The facts of a particular case may warrant deviation from the procedures prescribed in this paragraph and call for action to be taken by the Chief, PRB, DJAG, or TJAG rather than a Senior Supervisory JA, or call for other action as deemed appropriate under the circumstances. In the event that such deviation or other action occurs, however, in no circumstance will the subject be denied the due process rights of notice and opportunity to comment as provided in this chapter or as otherwise required by law or regulation applicable to the imposition of judicial, non-judicial, disciplinary, administrative, or other corrective action.

11-6. Action at Office of the Judge Advocate General

a. Upon receipt of the PSI report (or its equivalent) together with the Senior Supervisory JA's findings and recommendations, the Chief, PRB, may take the following actions:

- (1) Determine that no further action is appropriate and close the case.
- (2) Determine that further inquiry is warranted and return the case to the Senior Supervisory JA with appropriate instructions.
- (3) Determine that substituted findings and/or recommendations are warranted and make such substitutions as may be supported by the evidence.
- (4) Determine that final action below the OTJAG level is appropriate and return the case to the Senior Supervisory JA with instructions to take action as they deem appropriate.
- (5) Determine that action by TJAG or DJAG is appropriate.

b. For cases involving trial and/or appellate military judges, prior to taking actions in accordance with paragraph a, TJAG must be notified. (See RCM 109(c)(5)(D)).

c. In any case in which the Chief, PRB, determines that action by TJAG or DJAG is appropriate, the Chief, PRB, will provide a memorandum of legal advice to TJAG and/or DJAG, as appropriate, along with the PSI report, the subject's comments or other rebuttal materials, and the Senior Supervisory JA's findings and recommendations.

- (1) Upon receipt of those documents, TJAG or DJAG, as appropriate, will determine the appropriate action to be taken.
- (2) Neither TJAG nor DJAG is bound by the findings or recommendations of the PSI officer, the Senior Supervisory JA, the Chief, PRB, a subordinate within JALS, or the PRC. TJAG is not bound by any findings and recommendations made by DJAG.

d. In addition to the respective actions listed in subparagraphs e and f, TJAG or DJAG may—

- (1) Return the case to the Chief, PRB or Senior Supervisory JA for further inquiry or consideration.
- (2) Appoint a new PSI officer for a supplemental inquiry.
- (3) Determine there was no violation and return the case to the Chief, PRB, to close the case and notify the subject of such action.
- (4) Determine that the violation is minor or technical and either—
 - a*) Take appropriate action as described in subparagraphs e and f, or
 - b*) Direct referral to the appropriate Senior Supervisory JA, or other supervisory lawyer for specified action or action deemed appropriate.

(5) Determine that more than a minor or technical violation appears to have been committed and refer the case to the PRC for opinion. Upon receipt of a PRC opinion, take action, as appropriate, under subparagraphs e and f. (See also paras 11-7 and 11-8).

(6) Determine that more than a minor or technical violation is clearly shown and substantiate the allegation.

(7) Issue a written or verbal counseling, censure, admonition, or reprimand, and direct that a written reprimand be filed in a Soldier's Army Military Human Resource Record (AMHRR) in accordance with AR 600-37.

e. In addition to the actions listed in subparagraph d, and in accordance with procedures set forth in applicable law, regulation, directive, and policy, DJAG may take only the following disciplinary, administrative, corrective, or management actions:

(1) Temporarily suspend a JA (not including an SJA or military judge) or JALS civilian lawyer from performing duties. A temporary suspension is normally a management decision rather than a disciplinary action.

(2) Refer a case to TJAG for action TJAG deems appropriate.

f. In addition to the actions listed in subparagraph d, and in accordance with procedures set forth in applicable law, regulation, directive, and policy, TJAG may take the following disciplinary, administrative, corrective, or management actions that may include, but are not limited to—

(1) Temporarily suspend a JA (including an SJA or military judge) or JALS civilian lawyer from performing duties. A temporary suspension is normally a management decision rather than a disciplinary action.

(2) Indefinitely suspend a JA from performing JA duties.

(3) Indefinitely suspend a JA or a civilian lawyer who is subject to the disciplinary authority of TJAG pursuant to RCM 109, MCM, from practicing in courts-martial and in ACCA, under the provisions of RCM 109.

- (4) Withdraw a JA's (or former JA's) Article 27(b), UCMJ certification.
- (5) Withdraw a JA's (or former JA's) certification of qualification as a military judge under Article 26(b), UCMJ and RCM 109(c).
- (6) Withdraw the previously approved qualifications of a JALS civilian lawyer for whom TJAG is the qualifying authority under the provisions of AR 690–200, chapter 213 (approval of a JALS civilian lawyer's qualifications by TJAG is a continuing condition of employment).
- (7) If warranted by the seriousness of the violation or otherwise appropriate, determine that the matter, to include TJAG's action on the matter, should be reported to the subject lawyer's State or local bar or other licensing authorities.
 - (a) TJAG may make such notification personally or cause the Chief, PRB, to report TJAG's decision and action on the case to the lawyer's licensing authorities.
 - (b) Before reporting the matter to a lawyer's licensing authority, the lawyer will be given notice and the opportunity to comment as provided for in paragraph g.
 - (c) Once a decision is reached, TJAG or the Chief, PRB, will inform the subject lawyer of the decision in an appropriate form.
 - (d) If a subject lawyer's licensing authority initiates contact with the Army (OTJAG), seeking information about the lawyer while a case is open under this chapter, PRB may, in accordance with its Privacy Act System of Records Notice, inform them of the nature of the allegation and that a case is open, without first having to provide the subject lawyer with notice and opportunity to comment. This information sharing, while in support of the public policy protections underlying reciprocal discipline, does not supplant the notice and opportunity to comment requirements provided for in paragraph g if TJAG decides to report the matter and their action on the matter to the lawyer's licensing authority.
- (8) Exercise reciprocal professional responsibility discipline, if appropriate, pursuant to discipline imposed by another of the subject lawyer's licensing authorities.
- (9) Request the Central Adjudication Facility (CAF) to suspend a subject lawyer's security clearance, if appropriate, under the provisions of AR 380–67, or for any other criteria listed in that Army regulation or its successor.
- (10) Revoke additional skill identifier (ASI).
 - g. In each case, TJAG or DJAG shall ensure compliance with the substantive and procedural due processes required by law, regulation, directive, and policy relative to any such action contemplated (for example, any action under AR 600–37 or RCM 109, MCM, that requires notice and the opportunity to comment).
 - (1) Before reporting a lawyer's conduct to their licensing authority or authorities, indefinitely suspending a JA from performing JA duties, withdrawing a JA's Article 27(b) certification, withdrawing a JA's certification of qualification as a military judge under Article 26(b), or withdrawing the qualifications of a JALS civilian lawyer, TJAG or TJAG's delegate will advise the subject lawyer of the contemplated action, provide the lawyer with a copy of the PSI report (or its equivalent), and give him or her 10 calendar days to show cause why TJAG should not take such action. With respect to any JALS civilian lawyer who is a member of a bargaining unit, any such action must comply with all applicable labor obligations.
 - (2) If TJAG's disciplinary action against a lawyer, regardless of its severity, is a matter of reciprocal discipline based on discipline imposed by another licensing authority, TJAG or TJAG's delegate will advise the subject lawyer of the contemplated action, provide the lawyer with a copy of the PSI report or its equivalent, and give him or her 10 calendar days to show cause why TJAG should not take such action. With respect to any JALS civilian lawyer who is a member of a bargaining unit, any such action must comply with all applicable labor obligations.
 - (3) Notices to the subject lawyer under this paragraph may be combined together but they are in addition to the notice from the Senior Supervisory JA required by paragraph 11–5a(2) or (3).
 - (4) TJAG or DJAG may, as appropriate, substantiate an allegation against a subject lawyer but take no action under AR 600–37 or RCM 109, not report the subject lawyer's conduct to their licensing authority, not indefinitely suspend the subject lawyer from performing JA duties, not withdraw their Article 27(b) certification, not withdraw their qualifications as a JALS civilian lawyer, or, if the subject is a military judge, not withdraw their certification of qualification as a military judge under Article 26(b). In those cases, the subject lawyer will be advised of the decision to substantiate the allegation, but there is no requirement under this regulation to give him or her notice and an opportunity to comment thereupon. Appropriate administrative and regulatory due process will have been provided when the Senior Supervisory JA refers a copy of the PSI report (or its equivalent) to the subject for comment under paragraph 11–5.
 - h. Noncompliance with the requirement to be in good standing (see para 3–3d) is a basis for the suspension of authority to perform legal duties. Suspension based on lack of good standing does not invoke the notice and opportunity to comment requirements of due process provided for in paragraph g, unless such suspension is the result of TJAG's exercise of reciprocal disciplinary action pursuant to paragraph f(8).

i. Any final action taken by TJAG or DJAG, as appropriate, is final and not subject to a request for reconsideration or appeal unless such action is under the purview of another law, regulation, directive, or policy that provides for such request for reconsideration, appeal, or other like due process.

j. Upon completion of final action at HQDA (OTJAG), PRB will close the case, notify the subject of the inquiry in writing that the case is closed (unless written notice of case resolution is part of TJAG's or DJAG's correspondence with the subject), and inform the complainant, if any, in writing that the review of their allegation is complete, but the Privacy Act prevents disclosing the results of the review.

11-7. Professional Responsibility Committee

a. Mission.

(1) A PRC may be convened at any time to provide an advisory opinion to TJAG, DJAG, the Chief, PRB, or any other member of the JALS, on any provision of the Army Rules of Professional Conduct for Lawyers or other applicable ethical standards.

(a) A PRC advisory opinion is not an authoritative Army interpretation of the Army Rules (Rule 9.1(a), appendix B, AR 27-26), and is binding on personnel under TJAG's professional responsibility jurisdiction only if TJAG approves the advisory opinion.

(b) An authoritative Army interpretation may only be issued by the DA Professional Conduct Council.

(c) Requests for advisory opinions by a member of the JALS should be forwarded through technical channels to OTJAG, ATTN: Chief, Professional Responsibility Branch (PRB).

(d) Forwarding SJAs or Supervisory JAs will provide their recommendations as to whether the request should be submitted to the PRC.

(e) TJAG or DJAG will make the final decision on referral to the PRC, but only TJAG may approve the resulting advisory opinion and make the decision to publish it in an appropriate form.

(f) This same procedure will be followed when an Army lawyer under TJAG's jurisdiction desires an authoritative interpretation of the Army Rules by the DA Professional Conduct Council (Rule 9.1(e)-(f), appendix B, AR 27-26).

(2) A PRC may also be convened at any time to advise TJAG, DJAG, or the Chief, PRB, on alleged or suspected violations of professional responsibility or other applicable ethical standards.

(a) When performing this function, the PRC has no investigative powers and will neither allow appearances by, nor communicate with, the subject lawyer, counsel, or witnesses.

(b) The PRC will report any attempts by such parties to communicate with it to the Chief, PRB. TJAG or DJAG will make the final decision on referral to the PRC.

(c) The resulting advice from the PRC is not binding.

b. Composition. The PRC will consist of three members appointed ad hoc by TJAG or DJAG for a particular case.

(1) The members will be JAs of the grade usually no lower than lieutenant colonel, and JALS civilian lawyers of the grade usually no lower than GS-14, and will possess expertise in a particular legal field or other expertise or experience relevant to the matter being presented to the PRC.

(2) When a PRC is convened to advise TJAG, DJAG, or Chief, PRB on an alleged or suspected violation of an ethical standard by a lawyer or military judge, the PRC members shall be, if practicable, senior to the subject whose conduct is being reviewed by the PRC. The officers should be senior in rank to the officer under review and a civilian member should be in a higher pay grade than a civilian under review.

(3) When the conduct of a military trial judge is being considered, the majority of the PRC should be trial judges or individuals with experience as a military trial judge. When the conduct of a military appellate judge is being considered, the majority of the PRC should be appellate judges or individuals with experience as a military appellate judge. In such a case, or in any case when a military judge is to be placed on the PRC as a member, the Chief, PRB, should request nominations from the Chief Trial Judge, U.S. Army Trial Judiciary or the Chief Judge, U.S. Army Court of Criminal Appeals, as appropriate.

(4) When the conduct of a JALS civilian lawyer, or of a civilian lawyer who is subject to the professional responsibility authority of TJAG pursuant to RCM 109, MCM, is being considered, the majority of the PRC will be JALS civilian lawyers. In such a case, the Chief, PRB, will request nominations from the Director, Civilian Personnel, Labor and Employment Law, OTJAG.

(5) In cases involving ARNG JAs, the Chief Counsel (NGB) may nominate members for the PRC.

(6) In the case of refusal, illness, conflict of interest, or military necessity, any member of the PRC may be replaced by direction of TJAG or DJAG.

(7) When a PRC is convened for purposes of providing an advisory opinion, the members do not have to be senior to the person requesting the opinion.

(8) A PRC will have an executive secretary, appointed by or from PRB, to provide administrative support to the committee.

c. Procedures. The senior member on the PRC will serve as President; two members, including the President, constitute a quorum. The PRC will meet at the call of the President, who will assign responsibilities for research and writing to committee members, and establish other operating procedures necessary to accomplish the committee's mission within the time prescribed.

d. Opinions.

(1) Advisory opinions will be in memorandum form and addressed through the Chief, PRB, and DJAG to TJAG in cases in which TJAG referred the matter to the PRC, and through the Chief, PRB, to DJAG in cases in which DJAG referred the matter to the PRC. Any member dissenting from the opinion of the other two members may file a minority opinion in any case.

(2) Opinions on alleged or suspected violations of professional responsibility or other applicable ethical standards will be in the format prescribed by the Chief, PRB, will make specific findings and recommendations, and will be addressed through the Chief, PRB, and DJAG to TJAG, or through the Chief, PRB to DJAG, as appropriate. Any member dissenting from the opinion of the other two members may file a minority opinion in any case. The PRC will use a clear and convincing evidence standard of proof (see para 11-3*d*).

(3) If the PRC determines that it has insufficient information on which to base an opinion, it will so advise the Chief, PRB. If available, the requisite information will be obtained and provided to the PRC.

11-8. Action on Professional Responsibility Committee opinions

a. General.

(1) Advisory opinions prepared by the PRC will be reviewed by the Chief, PRB, and by TJAG or DJAG, as appropriate. Only TJAG may approve the advisory opinions as binding on personnel under his or her professional responsibility jurisdiction and decide if and how such opinions will be published.

(2) Upon receipt of a PSI file and PRC opinion related to alleged or suspected violations of professional re-sponsibility or other applicable ethical standards, TJAG or DJAG, as appropriate, will determine the appropriate action to be taken (see para 11-6). In this regard, neither TJAG nor DJAG, nor the Chief, PRB, is bound by the findings or recommendations of the PRC.

b. Finality. Any final action taken by TJAG or DJAG, as appropriate, based in whole or in part on a PRC opinion, is final and not subject to a request for reconsideration or appeal unless such action is under the purview of another law, regulation, directive, or policy that provides for such request for reconsideration, appeal, or other like due process.

11-9. Release of information

a. Professional conduct files contain sensitive personnel information which is compiled—

(1) To protect the integrity of the Army and government legal profession.

(2) To assist TJAG in the evaluation, management, administration, and regulation of, and inquiry into, the delivery of legal services by offices and personnel under TJAG's jurisdiction.

(3) To document founded violations of the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Judges, or other applicable ethical standards.

(4) To document founded allegations of mismanagement.

(5) To take adverse action and appropriate disciplinary action against those found to have violated the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Judges, or other applicable ethical standards, or to have committed mismanagement.

(6) To record disposition of professional responsibility and mismanagement allegations and complaints.

(7) To report founded violations of the rules of professional conduct to professional licensing authorities and to current and prospective government employers.

b. Requests for information will be processed in accordance with AR 25-55 and AR 340-21.

(1) Requests for the release of information obtained under the procedures of chapter 11 or 12 of this regulation will be forwarded to the Professional Responsibility Branch, OTJAG (HQDA (DAJA-PR)).

(2) TJAG has delegated to the Chief, PRB, the initial denial authority by TJAG for all requests for Army records that pertain to TJAG's professional responsibility program (for example, professional conduct and mismanagement files).

(3) PRB's records retention and disposition authority is in accordance with, and found in, the Army Records Information Management System (ARIMS).

c. Substantiated allegations under this chapter, chapter 12, or any other substantiated information that is determined by DJAG or TJAG to be relevant to an individual's potential as a member of the JALS may be documented (normally by a final action document) in the individual's professional local file maintained by PPTO, OTJAG. Such documents will be

available to assignment managers and TJAG for all future personnel actions, subject to constraints imposed by the SECARMY with regard to HQDA selection boards.

d. Documentation relating to professional conduct or mismanagement that is to be filed in the PPTO professional local file of a member of the JALS will be referred to the subject for acknowledgment and comment prior to any filing decision.

11–10. Reporting requirements

a. Any lawyer governed by this regulation will promptly notify the Professional Responsibility Branch (PRB), OTJAG, upon learning or being notified that they are being investigated by any of their licensing authorities under circumstances that could result in the lawyer being disciplined as a lawyer or a judge, and upon being so disciplined as a lawyer or judge by their licensing authority, or upon other disposition or case closure.

(1) Reportable discipline does not include censure by a judge during a judicial proceeding unless made a matter of record in the proceeding.

(2) If a lawyer's licensing authority or authorities require self-reporting for any substantiated violation—whether minor, technical, or more than minor or technical—and the lawyer so self-reports to his licensing authority or authorities, the lawyer will also report the same, if it is not already an Army case, to their supervising lawyer, who will inform the technical chain up to the Chief, PRB.

b. Any lawyer in JALS who has been charged with a criminal offense (other than misdemeanor traffic offenses) in any state, territory, commonwealth, or possession of the United States or in any federal court of the United States or the District of Columbia shall immediately inform, through appropriate technical channels, the Chief, PRB, of the charge. The lawyer shall thereafter promptly inform the Chief, PRB, of the disposition of the matter.

c. All members of the JALS are responsible for knowing and complying with all applicable professional responsibility and ethical standards, for meeting training requirements imposed by their licensing authorities and TJAG, and for reporting alleged or suspected violations of professional responsibility or other ethical standards to their supervisors or to PRB in compliance with the Army Rules of Professional Conduct for Lawyers and this chapter. (See Rules 8.3 (Reporting Professional Misconduct), and 10.1 (Enforcement), appendix B, AR 27–26).

d. In a matter that involves the U.S. Army, prior to reporting any alleged or suspected violation of ethical standards to the governing body of a lawyer, any member of the JALS will inform PRB through normal technical channels, regardless of whether the lawyer concerned is subject to the Army Rules of Professional Conduct for Lawyers. (See also Rule 8.3 (Reporting Professional Misconduct), appendix B, AR 27–26).

11–11. Reprisal prohibited

No SJA, deputy, supervisor, or other official may take or fail to take any action in regard to a complainant as a reprisal for alleging or otherwise reporting a suspected violation of the Army Rules of Professional Conduct for Lawyers, the Code of Judicial Conduct for Army Trial and Appellate Judges, or other applicable ethics standards. (See 5 USC 2301(b)(9) and 5 USC 2302(b)(8)). 10 USC 1034(b) protects Soldiers from reprisals for communications to an inspector general; Member of Congress; member of a DOD audit, inspection, investigation, or law enforcement organization; any person or organization in the chain of command; a court-martial proceeding; or any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.

Chapter 12 Mismanagement Inquiries

12–1. General

This chapter establishes the procedures for processing allegations or complaints of mismanagement in Army legal offices that are under the technical supervision of TJAG, and allegations or complaints of mismanagement against a member of the JALS serving in a supervisory capacity in non-Army (for example, joint) legal offices.

12–2. Scope

a. Mismanagement involves any action or omission, either intentional or negligent (more than simple negligence), which adversely affects the efficient and effective delivery of legal services, or any misuse of government resources (personnel or materiel), or any activity contrary to operating principles established by Army regulations or TJAG policy memoranda. Mismanagement does not include mere disagreements over management “styles,” management decisions that are merely debatable, action or inaction that constitutes simple negligence or minor errors, or isolated instances of matters that have their own clear course of appeal and resolution (for example, an OER or noncommissioned officer evaluation report (NCOER) appeal) or that are purely discretionary (for example, an award recommendation).

b. Allegations of mismanagement will only be considered for review if made against a member of the JALS who, at the time of the alleged mismanagement, was actually serving in a supervisory capacity. In accordance with the definition of the JALS in paragraph 3–1 of this regulation, this includes commissioned and warrant officers, enlisted personnel, and civilian personnel who meet the above criteria.

c. If an allegation or complaint of mismanagement is coupled with an allegation of a violation of professional responsibility or other applicable ethical standards, any inquiry will be governed by the procedures set forth in chapter 11 of this regulation.

12–3. Procedures

a. *Complaints.* Supervisory lawyers at all levels are responsible for receiving and reviewing allegations or complaints of mismanagement that come to their attention to determine if they meet the criteria of paragraph 12–2, and are credible.

b. *Credibility Determination.* An allegation or complaint is “credible” if the information received provides a reasonable belief that mismanagement as defined in paragraph 12–2 occurred. If a complaint is determined to be credible, it will be reported through technical channels to the Chief, PRB, OTJAG, for action under this chapter. If a complaint is determined to be not credible, a copy of the complaint and any response to the complainant, with all associated documentation, will be retained in accordance with applicable filing regulations. Any response to the complainant will inform the complainant that the review of their allegation or complaint is complete, but the Privacy Act prevents disclosing the results of the review. If a complaint is determined to be not credible but the allegation or alleged conduct is noteworthy or sensitive for other reasons, the complaint should be reported through technical channels to the Chief, PRB. While the intent of this paragraph is to provide guidance on the reporting of a complaint of mismanagement, nothing herein prohibits the reporting of a complaint of mismanagement directly or through technical channels to PRB, DJAG, or TJAG.

c. *Mismanagement Inquiry.* Upon receipt of an allegation or complaint of mismanagement that is credible, the Chief, PRB, will direct a mismanagement inquiry, as follows:

(1) As the designee of TJAG, the Chief, PRB, is authorized to task one or more JAs as inquiry officer(s) to conduct (or cause to be conducted) an inquiry into the allegation or complaint according to the procedures set forth in this regulation. Where this regulation is silent, the mismanagement inquiry officer will follow the rules governing informal investigations under the provisions of AR 15–6.

(2) Normally, the Chief, PRB, will refer allegations or complaints of mismanagement to the appropriate Senior Supervisory JA, or other JA in an equivalent supervisory position (see para 11–4b), or as designated by TJAG, DJAG, or the Chief, PRB.

(a) The Chief, PRB, may also perform the duties of the Senior Supervisory JA when appropriate under the circumstances, and may at any time assume full responsibility over a case and take action as appropriate.

(b) TJAG, DJAG, or the Chief, PRB, may at any time designate a particular JA to serve as the Senior Supervisory JA for a particular case.

(c) A JALS civilian lawyer may be appointed by TJAG, DJAG, or the Chief, PRB, to perform the duties of the Senior Supervisory JA when appropriate under the circumstances.

(3) The Senior Supervisory JA will appoint an inquiry officer. In unusual cases, or cases where there is no clearly identifiable Senior Supervisory JA, the inquiry officer will be appointed by TJAG, DJAG, or the Chief, PRB, as appropriate.

(a) When PRB performs the duties of the Senior Supervisory JA, PRB will appoint the inquiry officer.

(b) A JALS civilian lawyer may be appointed as an inquiry officer, when appropriate, but the Senior Supervisory JA will consult with PRB before making such appointment.

(c) A subordinate officer may be detailed to gather the facts, question individuals, and collect pertinent documents, but the inquiry officer must independently review the facts and make their own written findings and recommendations.

(4) The inquiry officer should normally be senior to the subject of the inquiry, and have had a recent assignment in a supervisory position. When the conduct of a trial or appellate military judge is being investigated, the inquiry officer will be a current military judge, if practicable. Absent coordination with the Chief, PRB, the Senior Supervisory JA should not serve as the inquiry officer.

(5) The inquiry officer will conduct a complete inquiry of the allegations or complaint, determining the facts and circumstances.

(a) The statements of witnesses will be preserved in summarized form, at a minimum, and signed by either the witness or the inquiry officer.

(b) The inquiry officer will provide the appointing authority with a written report that will summarize the facts, provide conclusions (findings) as to whether mismanagement occurred, and, as appropriate, recommend corrective or disciplinary action.

(c) Findings with respect to mismanagement will be based on a preponderance of the evidence standard of proof. Under this standard, findings must be supported by a greater weight of the evidence than supports a contrary conclusion, that is, the evidence must point to a particular conclusion as being more credible and probable than any other conclusion.

(d) If an allegation or complaint of mismanagement is coupled with an allegation of a violation of professional responsibility or other applicable ethical standards, the inquiry will be governed by the procedures set forth in chapter 11 of this regulation. The evidentiary standard of proof for mismanagement is preponderance of the evidence, while the evidentiary standard of proof for professional responsibility or other applicable ethical standards is clear and convincing (see para 11-3d).

(6) Copies of documentary evidence and witness statements will be attached as exhibits.

(7) Privacy Act statements should be used, as appropriate, and attached to the inquiry report.

(8) The inquiry officer's report may, in some instances, contain conclusions, observations, or recommendations concerning a subject's conduct or performance that are unrelated to an allegation or complaint of mismanagement that is the focus of the inquiry. Such conclusions, observations, or recommendations will be included when—

(a) A reasonable person would consider them to be adverse to the subject,

(b) They are substantiated by a preponderance of the evidence standard of proof for mismanagement or a clear and convincing evidence standard of proof for professional responsibility or other applicable ethical standards, and;

(c) They are relevant to the subject's service in the JALS.

(9) Upon receipt of the report, the Senior Supervisory JA will determine whether it is complete. If not, they will return it to the inquiry officer for further inquiry. Once satisfied that the report is complete, the Senior Supervisory JA will forward the report to the Chief, PRB.

d. Action below HQDA (OTJAG). Complaints against a supervisor in JALS, other than an SJA or the equivalent principal JA legal advisor, however titled (such as legal advisor, legal counsel, Command JA).

(1) Unfounded. If the inquiry officer's report concludes that the allegation or complaint is unfounded and the Senior Supervisory JA concurs, the Senior Supervisory JA may, after coordination with the Chief, PRB, close the case.

(a) The Senior Supervisory JA will notify the subject of the inquiry in writing when the case is closed, and will inform the complainant, if any, in writing that the review of their allegation or complaint is complete, but the Privacy Act prevents disclosing the results of the review.

(b) A copy of the report and subsequent correspondence will be provided to TJAG, ATTN: DAJA-PRB.

(2) Founded but minor in nature. If the inquiry officer's report concludes that the allegation or complaint is founded but that the mismanagement is minor in nature and can be resolved by counseling below OTJAG level, and the Senior Supervisory JA concurs, the Senior Supervisory JA will, after coordination with the Chief, PRB, refer a copy of the report to the subject for comment.

(a) The subject will be given a reasonable time (normally 14 to 21 calendar days) to provide comments.

(b) The Senior Supervisory JA may grant an extension(s) of time for good cause (for example, for reasons beyond the subject's control).

(c) Failure to provide comments in the time provided (or any extension thereof) will constitute waiver of the opportunity to comment.

(d) This referral of a copy of the report to the subject is in addition to any other referral of matters to the subject that may be required by law or regulation applicable to the imposition of judicial, non-judicial, disciplinary, administrative, or other corrective action.

(e) Upon receipt of the subject's comments, if any, the Senior Supervisory JA will review and analyze them in the context of the report and determine whether the allegation should remain founded as minor and whether counseling below OTJAG level remains appropriate.

(f) If the allegation remains founded, the Senior Supervisory JA will ensure that the counseling takes place and close the case, will inform the subject of the inquiry in writing that the case is closed, and will inform the complainant, if any, in writing that the review of their allegation or complaint is complete, but the Privacy Act prevents disclosing the results of the review.

(g) A copy of the report and subsequent correspondence will be provided to TJAG, ATTN: DAJA-PRB.

(3) Founded and more than minor in nature. If the inquiry officer's report concludes that the allegation or complaint is founded and the mismanagement is more than minor in nature and thus should not be resolved by counseling below OTJAG level, and the Senior Supervisory JA concurs, the Senior Supervisory JA will, after coordination with the Chief, PRB, refer a copy of the report to the subject for comment.

(a) The subject will be given a reasonable time (normally 14 to 21 calendar days) to provide comments on the report and to submit any matters in rebuttal. The Senior Supervisory JA may grant an extension(s) of time for good cause (for example, for reasons beyond the subject's control).

(b) Failure to provide comments in the time provided (or any extension thereof) will constitute waiver of the opportunity to comment.

(c) This referral of a copy of the report to the subject is in addition to any other referral of matters to the subject that may be required by law or regulation applicable to the imposition of judicial, non-judicial, disciplinary, administrative, or other corrective action.

(d) Upon receipt of the subject's comments, if any, the Senior Supervisory JA will review and analyze them in the context of the report and determine whether the allegation should remain founded as more than minor in nature and whether counseling below OTJAG level remains inappropriate.

(e) If the allegation remains founded and more than minor in nature, the Senior Supervisory JA will provide written findings and recommendations, together with the report and the subject's rebuttal, to the Chief, PRB, for further action.

e. Complaints against an SJA or equivalent principal JA legal advisor.

(1) Unfounded. If the inquiry officer's report concludes that the allegation or complaint is unfounded and the Senior Supervisory JA concurs, the Senior Supervisory JA will forward the report to the Chief, PRB, accompanied by written recommendations.

(2) Founded. If the inquiry officer's report concludes that the allegation or complaint is founded but that the mismanagement is minor in nature, or is founded and the mismanagement is more than minor in nature, and the Senior Supervisory JA concurs, the Senior Supervisory JA will, after coordination with the Chief, PRB, refer a copy of the report to the subject for comment.

(a) The subject will be given a reasonable time (normally 14 to 21 calendar days) to provide comments on the report and to submit any matters in rebuttal. The Senior Supervisory JA may grant an extension(s) of time for good cause (for example, for reasons beyond the subject's control).

(b) Failure to provide comments in the time provided (or any extension thereof) will constitute waiver of the opportunity to comment.

(c) This referral of a copy of the report to the subject is in addition to any other referral of matters to the subject that may be required by law or regulation applicable to the imposition of judicial, non-judicial, disciplinary, administrative, or other corrective action.

(d) Upon receipt of the subject's comments, if any, the Senior Supervisory JA will review and analyze them in the context of the report and provide their own written findings and recommendations, together with the report and subject's rebuttal, to the Chief, PRB, for further action.

f. Further action. At the time a case is coordinated with the Chief, PRB, under this paragraph, or at any other time, TJAG, DJAG, or the Chief, PRB, as appropriate, may assume full responsibility over the case and take further action, as deemed appropriate under the circumstances.

12-4. Action at Office of the Judge Advocate General

a. When a report of inquiry is received at PRB for further action, PRB will review it and provide the inquiry report, with a memorandum of legal advice, to DJAG. DJAG will, in their discretion, determine the appropriate action in each case, and will not be bound by the recommendations of the inquiry officer, intermediate JAs or other military or civilian supervisors, or the Chief, PRB. If TJAG reserves action in a given case, the Chief, PRB, will forward the case through DJAG to TJAG. TJAG will, in their discretion, determine the appropriate action in such cases, and will not be bound by the recommendations of others.

b. If DJAG (or TJAG) determines that an action adverse to the interests of the subject of the complaint is appropriate (other than action under the UCMJ, AR 600-37, or other regulations or directives that contain their own procedural safeguards), DJAG (or TJAG) or a designated delegate will inform the subject of the contemplated action, and will cause a copy of the report to be served on the subject for comment.

(1) This notice and opportunity to comment is in addition to the notice from the Senior Supervisory JA.

(2) The subject will be given 10 calendar days to provide comments on the report or any proposed action and to submit any materials in rebuttal to the findings of the report. PRB may grant an extension(s) of time for good cause (for example, for reasons beyond the subject's control).

(3) Failure to provide comments in the time provided, or any extension thereof, will constitute waiver of the opportunity to comment.

(4) This referral of a copy of the report to the subject is also in addition to any other referral of matters to the subject that may be required by law or regulation applicable to the imposition of judicial, non-judicial, disciplinary, administrative, or other corrective action.

c. Any final action taken by DJAG, or TJAG (if TJAG has reserved action in the case, as noted in paragraph 12-4a), is final and not subject to a request for reconsideration or appeal unless such action is under the purview of another law, regulation, directive, or policy that provides for such request for reconsideration, appeal, or other like due process.

d. Upon completion of final action at HQDA (OTJAG), PRB will close the case, notify the subject of the inquiry in writing that the case is closed (unless written notice of case resolution is part of TJAG's or DJAG's correspondence with the subject), and inform the complainant, if any, in writing that the review of their allegation or complaint is complete, but the Privacy Act prevents disclosing the results of the review.

12-5. Reprisal prohibited

No SJA, deputy, supervisor, or other official may take or fail to take any action in regard to a complainant as a reprisal for alleging or complaining of mismanagement. (See 5 USC 2301(b)(9) and 5 USC 2302(b)(8)). 10 USC 1034(b) protects Soldiers from reprisals for communications to an IG; member of Congress; member of a DOD audit, inspection, investigation, court-martial proceeding, or law enforcement organization; any person or organization in the chain of command; or any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.

12-6. Release of information

Release of information from files generated under this chapter will be in accordance with the rules and procedures set out in paragraph 11-9 of this regulation.

Appendix A

References

Section I

Required Publications

AFARS

Army Federal Acquisition Supplement (Cited in para 2–1*l*(3).)

AR 5–9

Area Support Responsibilities (Cited in para 5–1*b*.)

AR 15–6

Procedures for Investigating Officers and Boards of Officers (Cited in para 11–3*b*(4).)

AR 25–50

Preparing and Managing Correspondence (Cited in para 10–4*a*(1).)

AR 25–55

The Department of the Army Freedom of Information Act Program (Cited in para 2–1*e*(9).)

AR 27–3

The Army Legal Assistance Program (Cited in para 2–1*o*(1).)

AR 27–10

Military Justice (Cited in para 2–1*d*(1).)

AR 27–20

Claims (Cited in para 2–1*m*(1).)

AR 27–26

Rules of Professional Conduct for Lawyers (Cited in para 2–1*s*(6).)

AR 27–40

Litigation (Cited in para 2–1*f*(2)(*d*).)

AR 27–50/SECNAVINST 5820.4G

Status of Forces Policies, Procedures, and Information (Cited in para 2–1*h*(5).)

AR 27–52/SECNAVINST 5820.6/AFR 110–13

Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice (Cited in para 2–1*h*(9).)

AR 27–60

Intellectual Property (Cited in para 2–1*n*(1).)

AR 135–91

Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures (Cited in para 9–8*b*.)

AR 135–100

Appointment of Commissioned and Warrant Officers of the Army (Cited in para 7–9*a*.)

AR 135–155

Promotion of Commissioned Officers and Warrant Officers Other Than General Officers (Cited in para 7–10.)

AR 140–145

Individual Mobilization Augmentation (IMA) Program (Cited in para 7–5*a*.)

AR 340–21

The Army Privacy Program (Cited in para 11–9*b*.)

AR 350–1

Army Training and Leader Development (Cited in para 7–7*a*(1)(*b*).)

AR 350–9

Overseas Deployment Training (Cited in para 7–7*b*(3).)

AR 380-67

Personnel Security Program (Cited in para 11-6f(9).)

AR 405-70

Utilization of Real Property (Cited in para 5-1b.)

AR 600-8-2

Suspension of Favorable Personnel Actions (FLAG) (Cited in para 11-2b.)

AR 600-8-29

Officer Promotions (Cited in para 9-9a.)

AR 600-9

The Army Body Composition Program (Cited in para 9-2d.)

AR 600-20

Army Command Policy (Cited in para 3-7d.)

AR 600-37

Unfavorable Information (Cited in para 3-9e(2).)

AR 600-105

Aviation Service of Rated Army Officers (Cited in para 10-4b(15).)

AR 601-100

Appointment of Commissioned and Warrant Officers in the Regular Army (Cited in para 9-9a.)

AR 614-100

Officer Assignment Policies, Details, and Transfers (Cited in para 10-4b(15).)

AR 621-1

Training of Military Personnel at Civilian Institutions (Cited in para 10-1b.)

AR 623-3

Evaluation Reporting System (Cited in para 3-6d(6).)

AR 690-200

General Personnel Provisions (Cited in para 2-1b(9).)

AR 735-5

Property Accountability Policies (Cited in para 6-4a.)

AR 735-17

Accounting for Library Materials (Cited in para 6-3a.)

DA Pam 611-21

Military Occupational Classification and Structure (Cited in para 3-9b(1).)

DFARS

Defense Federal Acquisition Supplement (Cited in para 2-1l(3).)

DODD 5500.17

Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice, October 31, 2006 (Cited in para 2-1e(15).)

FAR

Federal Acquisition Regulation (Cited in para 2-1p(2).)

MCM 2012

Manual for Courts-Martial (Cited in para 2-1e(5).)

Section II

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 11-2

Managers' Internal Control Program

Section III

Prescribed Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate (APD) Web site (<http://www.apd.army.mil/>).

DA Form 5000-R

Applicant Interview Report Judge Advocate General's Corps (Prescribed in para 9-5.)

Section IV

Referenced Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate (APD) Web site (<http://www.apd.army.mil/>).

DA Form 11-2

Internal Control Evaluation Certification

DA Form 67-10-1

Company Grade Plate Officer Evaluation Report

DA Form 67-10-2

Field Grade Plate Officer Evaluation Report

DA Form 705

Army Physical Fitness Test Scorecard

DA Form 1059-1

Civilian Institution Academic Evaluation Report

DA Form 2028

Recommended Changes to Publications and Blank Forms

DA Form 2125

Report to Training Agency

DA Form 2166-8

NCO Evaluation Report

DA Form 2446

Request for Orders

NGB Form 62E

Application for Federal Recognition as an Army National Guard Officer or Warrant Officer and Appointment as a Reserve Commissioned Officer or Warrant Officer of the Army in the Army National Guard of the United States (Available at <http://www.ngbpdc.ngb.army.mil/forms.>)

Appendix B

Internal Control Evaluation

B–1. Function

The function covered by this evaluation is the management and administration of OSJA legal research resources, to include the Army Law Library.

B–2. Purpose

The purpose of this evaluation is to assist the Supervisory Judge Advocate/Staff Judge Advocate and the accountable officer in evaluating their key management controls. It is not intended to cover all controls.

B–3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, positive control). Answers that indicate deficiencies must be explained and the corrective action identified in supporting documentation. These internal controls must be evaluated at least once every five years. Certification that the evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

B–4. Test questions

a. Has the Supervisory Judge Advocate/Staff Judge Advocate appointed in writing an accountable officer to ensure the organization’s law library and legal research capabilities meet the requirements of AR 27–1 and other applicable regulations?

b. Has the accountable officer conducted an inventory at least once each year, upon change of accountable officer, or as directed by the Supervisory Judge Advocate/Staff Judge Advocate?

c. Has the accountable officer, in coordination with the OSJA LA if one is assigned, ensured new office personnel have access to centrally procured CALR tools (for example Westlaw)?

B–5. Supersession

This checklist replaces the checklist for management control evaluation previously published in the 30 September 1996, RAR 13 September 2011, edition of AR 27–1.

B–6. Comments

Help make this a better tool for evaluation internal controls. Submit comments to Office of The Judge Advocate General, ATTN: DAJA–PT, 2200 Army Pentagon, Washington, DC 20310.

Glossary

Section I

Abbreviations

AA

Active Army

ABA

American Bar Association

AC

Active Component

ACCA

Army Court of Criminal Appeals

ACOM

Army command

ADL

active duty list

ADSO

active duty service obligation

AER

academic evaluation report

AFARS

Army Federal Acquisition Regulation Supplement

AHRC

Army Human Resources Command

AJAG/CLL

Assistant Judge Advocate General for Civil Law and Litigation

AJAG/MLO

Assistant Judge Advocate General for Military Law and Operations

AMC

U.S. Army Materiel Command

AMHRR

Army Military Human Resource Record

APFT

Army physical fitness test

AR

Army Regulation

ARIMS

Army Records Information Management System

ARNG

Army National Guard

ARNGUS

Army National Guard of the United States

ARSTAF

Army Staff

ASA(ALT)

Assistant Secretary of the Army for Acquisition, Logistics, and Technology

ASA(MRA)
Assistant Secretary of the Army for Manpower and Reserve Affairs

ASBCA
Armed Services Board of Contract Appeals

ASCC
Army service component command

ASI
additional skill identifier

AT
Annual training

AUG
augmentation

BCT
Brigade Combat Team

BJA
Brigade Judge Advocate

CAAF
U.S. Court of Appeals for the Armed Forces

CAF
Central Adjudication Facility

CALR
computer assisted legal research

CC
command counsel

CFR
Code of Federal Regulations

CIO
chief information officer

CJA
Command Judge Advocate

CLAMO
Center for Law and Military Operations

CLE
continuing legal education

CLO
Consolidated Legal Office

CONUS
Continental United States

CPT
captain

CQ
charge of quarters

CSA
Chief of Staff, Army

CTA
chief trial attorney

CWOC
Chief Warrant Officer of the Corps

DA
Department of the Army

DA Pam
Department of the Army pamphlet

DAD
Defense Appellate Division

DAEO
Designated Agency Ethics Official

DCC
Direct Commission Course

DCPLEL
Director, Civilian Personnel, Labor, and Employment Law (DCPLEL)

DDAEO
Deputy Designated Agency Ethics Official

DFARS
Defense Federal Acquisition Regulation Supplement

DIMA
drilling individual mobilization augmentee

DJAG
Deputy Judge Advocate General

DOD
Department of Defense

DOJ
Department of Justice

DRU
direct reporting unit

DSFLS
Director, Soldier and Family Legal Services

ELD
Environmental Law Division

FAR
Federal Acquisition Regulation

FLEP
Funded Legal Education Program

FOA
field operating agency

FORSCOM
Forces Command

FSO
field screening officer

FUSA
First U.S. Army

GAD
Government Appellate Division

GAO
General Accounting Office

GC
garrison commander

GCM
general court-martial

GCMCA
General Court-Martial Convening Authority

GS
general schedule

HCA
head of contracting activity

HQDA
Headquarters, Department of the Army

HRC
Human Resources Command

IMA
individual mobilization augmentee

IMCOM
Installation Management Command

IRR
individual ready reserve

ITD
Information Technology Division

J.D.
juris doctor

JA
judge advocate

JAG
Judge Advocate General

JAGC
Judge Advocate General's Corps

JALS
Judge Advocate Legal Service

JAOAC
Judge Advocate Officer Advanced Course

JAIBC
Judge Advocate Officer Basic Course

JARO
Judge Advocate Recruiting Office

JER
Joint Ethics Regulation

KFLD
Contract and Fiscal Law Division

LA
legal administrator

LITDIV
Litigation Division

LOAC
Law of Armed Conflict

LOD
legal operations detachment

LOD-E
legal operations detachment-expert

LOD-M
legal operations detachment-multifunctional

LOR
letter of recommendation

LOT
legal operations team

LSAT
Law School Admission Test

MCM
Manual for Courts-Martial

MJ
military judge

MJ-LOD
military judge-legal operations detachment

MOS
military occupational specialty

MSC
major subordinate command

NACLC
national agency check with local records and credit check

NAF
nonappropriated funds

NATO
North Atlantic Treaty Organization

NCO
noncommissioned officer

NCOA
Noncommissioned Officer Academy

NCOER
noncommissioned officer evaluation report

NGB
National Guard Bureau

OBC
officer basic course

OCONUS
outside the continental United States

ODT
overseas deployment training

OER
officer evaluation report

OJT
on-the-job training

OPLAW
Operational Law

ORB
officer record brief

OSC
Office of Special Counsel

OSJA
Office of the Staff Judge Advocate

OTJAG
Office of The Judge Advocate General

PJA
Post Judge Advocate

PMOS
primary military occupational specialty

PPTO
Personnel, Plans, and Training Office

PRB
Professional Responsibility Branch

PRC
Professional Responsibility Committee

PSI
Preliminary Screening Inquiry

RA
Regular Army

RASL
reserve-active status list

RC
Reserve Component

RCM
rules for courts-martial

RCSM
Regimental Command Sergeant Major of the Judge Advocate General's Corps

REFRAD
release from active duty

RL/IP
Regulatory Law and Intellectual Property Division

ROTC
Reserve Officers' Training Corps

SC
senior commander

SECARMY
Secretary of the Army

SJA

Staff Judge Advocate

SOF

special operations forces

SVC

Special Victims' Counsel

TC

trial counsel

TDA

table of distribution and allowance

TD-LOD

trial defense-legal operations detachment

TDS

Trial Defense Service

TJAG

The Judge Advocate General

TJAGLCS

The Judge Advocate General's Legal Center and School

TOE/MTOE

table of organization and equipment/mission table of organization and equipment

TPU

troop program unit

UCMJ

Uniform Code of Military Justice

USALSA

U.S. Army Legal Services Agency

USAR

U.S. Army Reserve

USARC

U.S. Army Reserve Command

USARCS

U.S. Army Claims Service

USARLC

U.S. Army Reserve Legal Command

USASOC

U.S. Army Special Operations Command

USATDS

U.S. Army Trial Defense Service

USC

United States Code

Section II**Terms****Accountable officer**

The officer, warrant officer, or DOD civilian employee (GS-9 or equivalent grade or higher) responsible for the supervision and accountability of materials at a specific Army law library.

Army law library

A collection of law library materials maintained by an accountable officer at a command, installation, or activity. Law library materials are for legal reference and research in support of the mission at a command, an installation, or an activity.

Branch qualification

The satisfaction of those educational requirements for assignment to a judge advocate position of a specified grade or for certification for the designated specialty of military judge. Branch qualification is not necessarily the same as promotional qualification (AR 135–155), appointment qualification (AR 135–100), or qualification for Federal recognition (see NGR 600–100).

Dual supervision

A situation in which an officer or warrant officer who, during the entire period of evaluation, is assigned separate responsibilities and receives supervision from two different chains of command or supervision. This provision does not apply to NCO rating schemes, NCOERs, or AERs.

Good Standing

While each licensing authority granting the certification or privilege to practice law within the jurisdiction defines the phrase “in good standing” based on its own rules, at a minimum it means that an individual has been admitted to practice law before the highest court of at that State, Territory, Commonwealth, or the District of Columbia; is subject to the jurisdiction’s disciplinary review process; has not been suspended or disbarred from the practice of law within the jurisdiction; is up-to-date in the payment of all required fees; has met applicable continuing legal education requirements which the jurisdiction has imposed (or the cognizant authority has waived those requirements in the case of the individual); and has met such other requirements as the cognizant authority has set to remain eligible to practice law.

Inventory

A physical count of property on hand.

Judge Advocate position

An officer’s position in the 27 series military occupational specialty (MOS).

Military Judge

A judge advocate who has been certified by TJAG as qualified to preside over General Courts-Martial or Special Courts-Martial.

Operational Law

That body of domestic, foreign, and international law that specifically pertains to the activities of military forces across the entire conflict spectrum.

Reserve Components

For the purposes of this regulation, the Army National Guard (ANG)/Army National Guard of the United States (ARNGUS) and the United States Army Reserve (USAR).

Senior Supervisory Judge Advocate

The Senior Supervisory JA is the Staff Judge Advocate of an Army command (ACOM), Army service component command (ASCC), or a direct reporting unit (DRU); the Chief, U.S. Army Trial Defense Service; Chief Trial Judge of the Trial Judiciary; Chief Counsel (NGB); or other JA in an equivalent supervisory position or as designated by TJAG, DJAG, or the Chief, Professional Responsibility Branch (PRB).

Supervisory Judge Advocate

A judge advocate within an office or organization with authority over, or responsibility for, the direction, coordination, evaluation, or assignment of responsibilities and work of subordinate lawyers, paralegals and other non-lawyer assistants.

Supervisory Lawyer

A lawyer within an office or organization with authority over or responsibility for the direction, coordination, evaluation, or assignment of responsibilities and work of subordinate lawyers, paralegals and other non-lawyer assistants.

Section III**Special Abbreviations and Terms**

This section contains no entries.

UNCLASSIFIED

PIN 002999-000