



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
200 STOVALL STREET
ALEXANDRIA, VA 22332

IN REPLY REFER TO

JAGINST 5817.5D
JAG:62

19 SEP 1985

JAG INSTRUCTION 5817.5D

From: Judge Advocate General

Subj: CERTIFICATION OF INACTIVE DUTY NAVY AND MARINE CORPS OFFICER-LAWYERS AS TRIAL/DEFENSE COUNSEL OR MILITARY JUDGE

1. Purpose. To promulgate the policy of the Judge Advocate General regarding the certification of inactive duty Naval and Marine Corps Reserve officer-lawyers as trial/defense counsel pursuant to Article 27(b) of the Uniform Code of Military Justice (UCMJ), certification of inactive duty officer-lawyers as military judges pursuant to Article 26(b) of the UCMJ, and to set forth procedures to be followed in applying for certification.
2. Cancellation. JAGINST 5817.5C.
3. Background. The UCMJ sets forth qualifications required for individuals detailed to serve as trial and defense counsel for courts-martial (pursuant to Article 27(b) of the UCMJ) and as a general or special court-martial military judge (pursuant to Article 26(b) of the UCMJ). Individuals detailed must be certified competent to perform such duties by the Judge Advocate General.
4. Coverage. This instruction is applicable to inactive duty officer-lawyers of the Naval and Marine Corps Reserves. Coast Guard Reserve officers may take the 2-week basic military justice course for Reserve lawyers, but the prerequisites set forth herein shall not apply unless the Commandant of the Coast Guard shall so direct.
5. Objective and Policy. To utilize fully the professional capabilities of inactive duty officer-lawyers upon their reporting for active duty or active duty for training (ACDUTRA), it is desirable they be certified for court-martial trial/defense counsel duties prior to reporting for duty. Accordingly, it is the policy of the Judge Advocate General to certify as trial/defense counsel inactive duty officer-lawyers who have met the statutory requirements and have achieved a working knowledge of military law and court-martial procedures. Unless they are attached or will be attached to a judicial circuit as a military judge (Marine Corps) or to the Naval Reserve trial judiciary unit (Navy), inactive duty judge advocates will not be certified as military judges.
6. Certification Requirements. Certifications are predicated on statutory compliance and the following shall be considered:
 - a. Statutory. Articles 27(b) and 26(b), UCMJ.
 - b. Military Experience. Inactive duty Naval Reserve officer-lawyers without previous active duty Navy service must satisfactorily complete the correspondence course Naval Orientation (NAVEDTRA 16138-H).

c. Academic and ACDUTRA Training. Certification shall be based upon an applicant's membership in the Ready Reserve and having acquired sufficient knowledge and experience in military law and fitness, in the opinion of the Judge Advocate General, for performance of the respective duties.

(1) Trial/Defense Counsel:

(a) An inactive duty officer-lawyer may be certified as a court-martial trial/defense counsel under Article 27(b) of the UCMJ upon recommendation by his or her commanding officer after:

1 satisfactory completion of the regular 8-week Naval Justice School lawyer's course customarily taken by active duty officer-lawyers upon entering active duty, or the 2-week basic military justice course for Reserve lawyers; and

2 satisfactory completion of ACDUTRA, temporary active duty (TEMAC) or special active duty (SPECAC) of at least 2 weeks' duration, performed at a Naval Legal Service Office in the Military Justice Division (if a Naval Reserve officer-lawyer); or in the trial section of a general court-martial command (if a Marine Corps Reserve officer-lawyer).

(b) Prior to attending the 2-week basic military justice course for Reserve lawyers, all inactive duty Naval and Marine Corps Reserve officer-lawyers shall satisfactorily complete the following correspondence courses:

1 Uniform Code of Military Justice (NAVEDTRA 10971-B2) and

2 Military Justice in the Navy (NAVEDTRA 10993-C1). Applications for ACDUTRA at the 2-week basic military justice course for Reserve lawyers shall affirm that the applicant has satisfactorily completed the above requirements. Inactive duty Reserve officers who are certified may take the basic military justice course for Reserve lawyers as a refresher, without satisfying the prerequisites set forth above. In such case, the ACDUTRA application shall affirm that the applicant is already certified. These correspondence courses are not prerequisites to attendance at any refresher or advance course.

(2) Military Judge:

(a) An inactive duty officer-lawyer may be certified as a military judge under Article 26(b) of the UCMJ upon recommendation of the Chief Judge, Navy-Marine Corps Trial Judiciary and subject to the following criteria:

1 is designated a judge advocate and certified under Article 27(b), UCMJ;

2 has satisfactorily completed a formal course of instruction for military judges either at the Naval Justice School or at The Judge Advocate General's School within 3 years immediately preceding certification;

3 has participated in pretrial investigation, trial, or review of courts-martial within 3 years immediately preceding certification during periods of inactive duty drills, ACDUTRA, TEMAC, or SPECAC, or has otherwise demonstrated competence and experience in the field of military justice and judicial temperament necessary for service as a military judge; and

4 is a Lieutenant Commander/Major (O-4) or above.

(b) No inactive duty judge advocate will be certified as military judge, unless he or she is a member of the Marine Corps trial judiciary Reserve augmentation unit, the Naval Reserve trial judiciary unit, or has been selected for assignment thereto.

d. Time to Complete Requirements. In the case of Article 27(b) certifications, the maximum period for completing all requirements for certification is 4 years after the date of commissioning or change of designator. There are no time constraints upon Article 26(b) certification after certification under Article 27(b).

e. Waiver. In special circumstances, any requirements contained herein may be waived by the Judge Advocate General upon the showing of those circumstances supported by compelling reason.

7. Procedure. An inactive duty officer-lawyer desiring certification as trial/defense counsel or military judge, or both, shall submit a request for certification to the Judge Advocate General in letter form. The letter shall set forth a detailed description of the applicant's professional and military background, experience, and qualifications. In the case of Naval Reserve officer-lawyers, the request shall be submitted to the Judge Advocate General via (1) the applicant's commanding officer and (2) the commander of the cognizant Readiness Command (Attention: Staff Judge Advocate). A Selected Marine Corps Reserve officer-lawyer's request shall be submitted to the Judge Advocate General via (1) the applicant's commanding officer; (2) the Commanding General, 4th Marine Division or Aircraft Wing, as appropriate; and (3) the Commandant of the Marine Corps (JA). A Marine Individual Ready Reservist's request shall be submitted to the Judge Advocate General via (1) the Director, Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, Kansas 66211, and (2) the Commandant of the Marine Corps (JA). All requests for certification as a military judge shall, in addition to the foregoing be submitted via the Chief Judge, Navy-Marine Corps Trial Judiciary.

8. Action. Addressees are requested to disseminate the contents of this instruction to inactive duty officer-lawyers under their cognizance. In forwarding an application for certification, addressees are requested to include information and recommendations as may be appropriate to guide the Judge Advocate General in determining whether certification of the applicant is warranted. Endorsements should include a statement of whether the applicant is

JAGINST 5817.5D
19 September 1985

considered adequately trained in military law and procedure to warrant certification by the Judge Advocate General.

9. Prior Certification. Certifications as trial/defense counsel and military judge issued prior to the date of this instruction remain in effect.


T. E. FLYNN

Distribution:

SNDL A2A (Office of the Judge Advocate) (100)
FO1 COMNAVLEGSVCCOM (20)
FO2 NAVLEGSVCOFF (1 each)
E1B NAVMARTRIJUDIC FR9 NAVRESREDCOM REG (5)
FF62 CNAVRES (5)