

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
DEPUTY JUDGE ADVOCATE GENERAL, UNITED STATES COAST GUARD
AND THE
COMMANDER, NAVAL LEGAL SERVICE COMMAND
REGARDING MUTUAL SUPPORT IN MILITARY JUSTICE MATTERS

A. SCOPE, PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) outlines an agreement between the Judge Advocate General, United States Coast Guard, for the United States Coast Guard and Commander, Naval Legal Service Command, United States Navy, for the United States Navy regarding mutual support in military justice matters.

The purpose of this MOU is to advance professional expertise in the practice of military justice incident to the defense of courts-martial, the representation of personnel at administrative discharge boards, before the parties' service courts and higher courts, and to further overall military readiness by experience gained through cross training.

The statutory basis for mutual support between the Coast Guard and the Navy is 14 U.S.C. §§ 141 and 145; 31 U.S.C § 1535 (FMR 010204 B.1.a(1)).

This memorandum supersedes support agreement 2813233GLA135, signed 17 Apr 2013.

B. POLICY

The Coast Guard will assign a minimum of seven military attorneys (judge advocates) to the Defense Service Offices (DSO), with the understanding that the number of attorneys assigned may change based on the number and complexity of Coast Guard court-martial cases and administrative discharge boards, including boards of inquiry. The location of the assigned Coast Guard judge advocates will be determined by agreement between the Chief of Staff Defense Service Offices, Navy Legal Service Command and the Chief, Office of Legal Policy and Program Development (CG-LPD) and memorialized by amending or superseding this MOU. A request to change the location of Coast Guard judge advocates can be made at any time by either party; however, both parties recognize and agree that billet relocations must be approved through the Coast Guard Resources Staff and can only take place in accordance with existing Coast Guard policies for relocation of billets.

In exchange, the Navy will provide defense counsel and counsel for respondents, along with certain incidental military justice support services, to Coast Guard courts-martial, boards of inquiry, and administrative discharge boards.

C. TERMS

1. Personnel Assignment.

a. Coast Guard judge advocates assigned to the Navy will be certified or qualified for immediate certification under 10 U.S.C. § 827(b). Officers so assigned, whether by permanent change of station, temporary additional duty, or special detail orders, will be under the command of the receiving DSO Commanding Officer. Such judge advocates will be assigned for a minimum period of two years to the respective DSO.

b. The principal duty for Coast Guard judge advocates assigned to a DSO will be as core defense counsel. Collateral duty assignments will be consistent with those assigned to Navy judge advocates also serving as core defense counsel. It is both desired and expected that Coast Guard judge advocates assigned to a DSO will be detailed as defense counsel to Navy courts-martial.

c. The Navy agrees to assign Coast Guard judge advocates duties and cases as Navy core defense counsel, with discretion left to the Navy DSO chain of command of the Coast Guard officers to make specific case assignments.

d. Assignment of Coast Guard officers will be to each DSO, with assignment to a detachment of a DSO meeting the commitment to have a judge advocate assigned to each DSO.

e. The Coast Guard agrees it will maintain the assignment of Coast Guard judge advocates in all four DSO locations with minimal to no gaps in assignment.

2. Responsibility for Cases.

a. Court-Martial Defense. On request, the Navy will assume responsibility for providing defense counsel at courts-martial referred by Coast Guard convening authorities located within the responsible DSO's geographic area of responsibility (AOR). The Coast Guard judge advocate performing defense duties at the servicing DSO will be considered for detail as defense counsel to Coast Guard cases. The decision of whether or not a Coast Guard judge advocate will be assigned as a defense counsel to a Coast Guard court-martial, however, is within the sole discretion of the DSO Commanding Officer. Any assigning decision will be based upon multiple factors such as constraints of case docketing, complexity of the case, and the advancement of the professional growth of assigned Coast Guard and Navy officers. Defense counsel assigned to Coast Guard courts-martial will be detailed by the Coast Guard Office of Member Advocacy and Legal Assistance, Defense Services Division (CG-LMA-D) in accordance with applicable Coast Guard procedures and policies.

b. Article 32 Preliminary Hearings. The Navy will make defense counsel available upon request by CG-LMA-D to represent Coast Guard members at Article 32 Preliminary Hearings. The Coast Guard judge advocate performing defense duties at the servicing DSO will be considered for detail as defense counsel, the final detailing decision being within the sole discretion of the DSO Commanding Officer. The Coast Guard will be responsible for providing all other required personnel and facilities needed for an Article 32 Preliminary Hearing. However,

Coast Guard SJAs may request logistical assistance from the servicing DSO Commanding Officer. DSO Commanding Officers may similarly request logistical assistance from Coast Guard SJAs to support non-Coast Guard cases.

c. Miscellaneous Defense Functions.

(1) Upon request, the Navy will provide routine defense counsel services to Coast Guard members at DSOs. Such services include, but are not limited to: “Booker” advice; advice to members charged with offenses to be disposed of by Summary Court-Martial; counsel to members held in pretrial confinement during the Initial Reviewing Officer hearing under RCM 305; advice to members on preparing Article 138, UCMJ complaints; and advice to or representation of members concerning involuntary referral to a psychiatric evaluation, to the extent that the Coast Guard member is entitled by law or policy to such advice or representation. The DSO Commanding Officer has the discretion to authorize the formation of an attorney/client relationship between a defense counsel and any Coast Guard member referred to the DSO for advice.

(2) As part of normal defense counsel duties while assigned to a DSO, a Coast Guard judge advocate may be assigned to provide routine defense counsel services to both Navy and Coast Guard members. Such services may include, but are not limited to, the providing of : “Booker” advice; advice to members charged with offenses to be disposed of by Summary Court-Martial; counsel to members held in pretrial confinement during the initial Reviewing Officer hearing under RCM 305; advice on preparing Article 138, UCMJ, complaints; and advice to or representation of a member concerning involuntary referral to a psychiatric evaluation, to the extent that the member is entitled by law or policy to such advice or representation. The DSO Commanding Officer has the discretion to authorize the formation of an attorney/client relationship between the Coast Guard officer defense counsel and any member referred to the DSO for advice.

d. Administrative Discharge Boards.

(1) The Navy will provide counsel for respondents before Coast Guard administrative discharge boards; including boards of inquiry but excluding Commanding Officer/Officer-in-Charge relief for cause proceedings. In the case of Administrative Discharge Boards, Coast Guard judge advocates performing defense duties at the servicing DSO will generally be assigned as respondent’s counsel. Specific assignments within a DSO, however, will be the decision of the receiving DSO Commanding Officer.

(2) Coast Guard judge advocates assigned to a DSO may be detailed as counsel for Navy respondents before administrative discharge boards, including officer boards of inquiry. Under normal circumstances, Coast Guard officers will not be involved in Navy Commanding Officer/Officer-in-Charge relief for cause proceedings.

e. Procedure for Detailing Defense Counsel. CG-LMA-D will initiate requests for counsel by transmitting a memorandum and the initial discovery via email to the cognizant DSO. Absent exceptional circumstances, the DSO will respond via email within 5 working days with the name

of the counsel who will be assigned the case. CG-LMA-D will then issue a detailing letter in memorandum format directly to the assigned counsel. The Navy understands that this detailing letter is required for appearances in Coast Guard courts and administrative proceedings and is required before funding for travel is approved.

f. Continuity of Counsel.

(1) If a Coast Guard accused in a court-martial resolved prior to trial requests the detailed court-martial defense counsel continue representation during any subsequent administrative proceeding based upon the same or related factual events, the DSO will attempt to make such counsel available.

(2) Legal services provided under this memorandum will terminate upon the conclusion of the matter in which they were provided, upon order of a court of competent jurisdiction, or upon the issuance of a letter of withdrawal from CG-LMA-D stating whether or not an attorney-client relationship was formed and good cause for the termination of legal services, provided such termination is not inconsistent with Rule for Courts-Martial 505 or 506.

3. Implementation. The parties agree to implement this MOU within their respective organizations expeditiously.

4. Scope of Responsibility.

a. Courts-Martial. Investigation, case evaluation, forum selection, and provision of pre-referral advice for Coast-Guard courts-martial will continue to be the responsibility of the cognizant Coast Guard command.

b. Authority Over Cases/Counsel. Defense services for Coast Guard cases will be afforded the same priority in docketing and proceeding as other cases handled by the DSO.

c. Individual Military Counsel. If a Coast Guard judge advocate assigned to a DSO is requested as individual military counsel in any case, the DSO Commanding Officer will be considered to be the commanding officer for purposes of determining that counsel's availability. For Coast Guard convened courts-martial or Article 32 preliminary hearings, determinations of availability, and appeals thereof, will be made in accordance with paragraph 3-H-3 of the Military Justice Manual, COMDTINST M5810.1E. However, in a Coast Guard convened court-martial or Article 32 preliminary hearing in which a Navy judge advocate has been requested as individual military counsel, determination of counsel's availability, and appeals therefrom, will be made by the Navy in accordance with the provisions set forth in the Manual of the Judge Advocate General (JAGMAN).

d. Extraordinary Assignments. In extraordinary circumstances, the Commanding Officer of a DSO may request that specific Coast Guard judge advocates be made available for detail to a Navy or Marine Corps case.

5. Situs of Proceedings. A court-martial convened by a Coast Guard command generally will be tried in courtrooms provided by the Coast Guard. However, in appropriate cases the Coast Guard may request the use of a courtroom provided by a Regional Legal Service Office. Conversely, in appropriate cases the Navy may request the use of a Coast Guard courtroom for a Navy or Marine Corps case.

6. Security of Proceedings. For military justice proceedings convened by a Coast Guard command, the security of the courtroom or proceeding *situs* will be the responsibility of the Coast Guard. Defense Service Offices will ensure that Coast Guard or Navy attorneys assigned as Defense Counsel for Coast Guard proceedings comply with the requirements of Commander, Naval Legal Service Command's Physical Security Program and that all security concerns are addressed before counsel assigned to the DSO participate in a Coast Guard proceeding.

7. Rules of Court. A court-martial convened by a Coast Guard command will be tried in accordance with the Coast Guard Court Rules of Practice and Procedure for General and Special Courts-Martial, enclosure (16a) to the Military Justice Manual, COMDTINST M5810.1E, even if the presiding military judge is provided by the Navy.

8. Military Judge. The Coast Guard will normally provide the military judge for all Coast Guard cases. Occasionally, circumstances may require the assignment of specific cases to Navy-Marine Corps Trial Judiciary judges. Detailing of Navy-Marine Corps Trial Judiciary judges to Coast Guard cases or Coast Guard judges to Navy or Marine Corps cases will be coordinated between the Chief Judge of the Navy-Marine Corps Trial Judiciary and the Chief Trial Judge of the Coast Guard.

9. Court Members. Court-martial members for courts convened by Coast Guard convening authorities will be provided by those authorities.

10. Court Reporting. The Coast Guard will provide court reporting services for all Coast Guard cases. In the event of unusual court-reporting backlogs, the Coast Guard may request the Navy provide court reporting support on a short-term basis.

11. Travel/Funding. The Coast Guard will be responsible for funding travel of military judges, accused, counsel, witnesses, court reporters, members, bailiffs, escorts and other necessary court personnel incident to Coast Guard convened courts-martial, as well as respondents, counsel for the respondents, witnesses and Board members in Coast Guard administrative separation cases, including boards of inquiry.

The Office of the Judge Advocate General, United States Coast Guard, through CG-LPD, provides funding for defense counsel travel to any proceeding at which a Coast Guard respondent or accused has a right, under law or policy, to have counsel present, such as administrative separation boards, boards of inquiry, initial review officer hearings regarding pre-trial confinement, hearings under Article 32, UCMJ, and courts-martial hearings and trials. This Office also provides travel expense funding for investigations performed by Defense Litigation Support Specialists assigned to DSOs. Additional defense counsel travel requests for matters not requiring

an appearance, such as meetings with clients, interview of witnesses, inspection of crime scenes, will be funded by the appropriate Coast Guard Convening Authority.

12. Coast Guard Funding for Defense Counsel Travel.

a. U.S. Coast Guard Responsibilities:

(1) Funding Responsibility. The office responsible for providing funding is the CG-LPD via the Budget Office.

(2) Funding. The USCG shall submit an estimated (based on prior years) advance payment to NLSC Code 64 for travel related costs of Navy Defense Counsel Travel. Payments to the DSOs through NLSC, via MIPR will be executed on or before October 10th of each fiscal year or as soon thereafter as practicable depending upon availability of sufficient funds. Expenses in excess of amounts provided to NLSC Code 64 must be approved by CG-LPD.

(3) Unused Funding. The USCG reserves the right to amend the MIPR funding as needed to add additional funds or recover unused funding at the beginning of the fourth quarter of each Fiscal Year.

b. NLSC Code 64 and JAG Consolidated Administrative Business (JCAB) Office Responsibilities:

(1) Tracking Costs. NLSC shall submit a monthly report to the Coast Guard Office of the Judge Advocate General (CG-LPD Budget Office) to retain as permanent records. Code 64 shall provide a point of contact to the USCG CG-LPD Budget Office for cost tracking purposes.

(2) Travel for Hearings & Investigations. Prior to travel for any of the hearings or investigations described in paragraph 11 above, DSO members must obtain a detailing letter from CG-LMA-D and submit a TDY request for funding to be approved by CG-LMA. Upon receiving approval, DSO Judge Advocates will work with JCAB to receive official travel orders based on the authorizations granted in the TDY request for funding. DSO travel shall be in accordance with Joint Travel Regulations.

(3) Travel for Other Than Hearings & Investigations. For travel other than for the matters described in paragraph 11 above, the cognizant Coast Guard Convening Authority must first approve the requested travel. DSO members must submit a TDY request for funding to the cognizant Convening Authority's SJA. Convening Authorities are responsible for transmitting estimated travel expenses directly to NLSC JCAB via MIPR. Upon receiving Convening Authority approval, DSO Judge Advocates will work with JCAB to receive official travel orders based on the authorizations granted in the TDY request for funding. DSO travel shall be in accordance with Joint Travel Regulations.

c. Severance. Nothing regarding the provision of funding is intended to conflict with current law or regulation or the directives of the United States Coast Guard, the Department of Homeland Security, or the Department of the Navy. If a term of this agreement is inconsistent with such authority, then that the offending portion of that term shall be invalid, but the remaining

portion of that term and the remaining terms and conditions of this agreement shall remain in full force and effect.

13. Training. Coast Guard judge advocates assigned to DSOs will be permitted to participate in all training evolutions open to officers at the DSO, whether on or off site. To the extent that such training opportunities involves travel, per diem and/or tuition expenditures, the Coast Guard agrees to fund all such costs for these officers if such funding is available and approved by competent authority. Coast Guard funding must be approved in advance for any training proposed to be funded by the Coast Guard. Funding requests for Coast Guard judge advocates assigned to DSOs shall be made to CG-LMA-D. Requests for funding for Coast Guard judge advocates who are detailed to a DSO on a temporary/TDY basis shall be made to the Coast Guard Legal Office to which the officer is assigned permanently. In addition, the Navy may fund such training at its option.

14. Officer Evaluation Reports and Command Endorsements.

a. Commanding Officers of DSOs with assigned Coast Guard personnel will designate supervisors who will prepare Officer Evaluation Reports for Coast Guard judge advocates under their supervision in accordance with the timelines established by the Coast Guard Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A. The Reviewer for all judge advocates assigned to DSOs will generally be the Deputy Judge Advocate General of the Coast Guard. Coast Guard officers assigned to DSOs will provide the guidance and advice regarding preparation of such reports to the cognizant command. CG-LMA-D will be available to advise and assist in the preparation of Officer Evaluation reports and will coordinate the submission of the evaluations to the Reviewer and to Coast Guard Officer of Personnel Management (OPM-3).

b. On occasion, a Coast Guard judge advocate will require a command endorsement for an assignment or a selection panel. In these circumstances, CG-LMA-D is available to advise and assist the DSO Commanding Officer regarding process and content for such endorsements.

15. Local Liaison. Subject to the terms of this agreement and any implementing guidance issued by higher authority, direct liaison between the DSOs, RLSOs, and Coast Guard Staff Judge Advocates is authorized and encouraged. Nothing in this agreement shall be construed to prevent the local assignment of additional Coast Guard attorneys to a nearby DSO or RLSO for training and litigation experience under such terms as may be mutually agreeable between the Coast Guard Staff Judge Advocate and the Commanding Officer of the DSO or RLSO.

16. Review/Modification. This MOU will be reviewed annually on or around the anniversary of its effective date for financial impacts and in its entirety at least once every two years by the Chief of Staff, Defense Service Offices, CG-LMA and CG-LPD to ensure it continues to meet the needs of both the Coast Guard and the Navy. Staff members may recommend to the Judge Advocates General changes to the agreement during this review process. In the event the number of Coast Guard court-martial cases or administrative discharge boards, including boards of inquiry, continues to materially increase or decrease in quantity and complexity during any one year period while this MOU is in effect, the Navy reserves the right to request additional Coast

Guard officers qualified to serve as described herein, while the Coast Guard reserves the right to request a reduction to the number of Coast Guard officers required.

17. Effective Date/Termination. This MOU is effective upon signature of both parties and may be cancelled at any time by mutual consent of the parties. This agreement may also be cancelled by either party upon giving at least 180 days written notice to the other party. In the event of termination, all existing counsel assignments will be carried through to their formerly agreed completion date.

18. SIGNATURES.

For the:
U.S. Coast Guard

For the:
U.S. Navy

C.M. Lederer
Deputy Judge Advocate General U.S. Coast
Guard

J. G. Hannink, RADM
Commander, Naval Legal Service Command

Signature:  _____

Signature:  _____

Date: 31 August 2016

Date: 29 August 2016