SECNAV INSTRUCTION 5430.27E

From: Secretary of the Navy


Ref: (a) GC memo of 3 February 2011 (NOTAL)
(b) DoD Instruction 5500.17 of 21 February 2018
(c) SECNAVINST 3052.2
(d) 10 U.S.C. §1044
(e) 10 U.S.C. §806
(f) SECNAVINST 5430.7R CH-1
(g) 10 U.S.C. §8088
(h) 10 U.S.C. §8046
(i) U.S. Navy Regulations 1990, Article 0331
(j) JAGINST 5803.1E
(k) 10 U.S.C. Ch. 47
(l) SECNAVINST 5000.34F
(m) SECNAVINST 5720.42G
(n) SECNAVINST 5211.5E
(o) SECNAVINST 5820.8A
(p) SECNAVINST 5430.25E
(q) SECNAVINST 3820.3E
(r) Article 26, Uniform Code of Military Justice
(t) 10 U.S.C. §1044e
(u) SECNAV M-5214.1

Encl: (1) Responsibilities
(2) Relationships between the JAG, the SJA to CMC, and the General Counsel

1. Purpose. In accordance with references (a) through (t), this instruction prescribes the responsibility of the Judge Advocate General of the Navy (JAG) for the supervision of certain legal services in the Department of the Navy (DON), sets forth the responsibilities of the Staff Judge Advocate to the Commandant of
the Marine Corps (SJA to CMC), and delineates the relationships and respective responsibilities of the JAG, the SJA to CMC, and the General Counsel of the Department of the Navy (GC). Nothing in this instruction is intended to infringe upon the overall departmental responsibilities of the JAG or the GC as defined by the references.

2. **Cancellation.** SECNAVINST 5430.27D and SECNAVINST 5400.40A.

3. **Applicability.** This instruction applies to the Offices of the Secretary of the Navy (SECNAV), the Chief of Naval Operations (CNO), the Commandant of the Marine Corps (CMC), and all U.S. Navy and U.S. Marine Corps installations, commands, activities, field offices, and all other organizational entities within the DON.

4. **Policy.** It is the policy of the DON to provide legal services that ensure the ability of Navy and Marine Corps forces to accomplish their missions within the rule of law and protect the rights of all naval personnel.

5. **Responsibilities.** See enclosure (1). The relationships between the JAG, the SJA to CMC, and the GC are delineated in enclosure (2).

6. **Records Management**

   a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page: https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx/.

   b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.
7. **Reports.** The reporting requirement contained in enclosure (1), paragraph 1e(1)(b) is exempt from information collection control, per reference (u), Part IV, paragraph 7n.

THOMAS B. MODLY  
Under Secretary of the Navy

Distribution:  
RESPONSIBILITIES

1. Responsibilities of the JAG. The JAG is the senior uniformed attorney of the DON and commands the Office of the Judge Advocate General. The legal opinions issued by the JAG on matters within his or her cognizance are controlling legal opinions within the DON.

   a. The JAG has primary responsibility for ensuring the ethical and professional practice of law by judge advocates and certain other covered U.S. Government (USG) and non-USG attorneys, as outlined in reference (j). This supervision extends to active-duty and Reserve judge advocates in the Navy and Marine Corps. It also extends to the following attorneys when they practice under the cognizance of the JAG: uniformed attorneys from other Services, civilian USG attorneys, and non-USG attorneys.

   b. The JAG is responsible for certifying that military trial counsel, military defense counsel, and military judges detailed to DON courts-martial proceedings are competent and qualified. Civilian defense counsel who represent Sailors and Marines before DON courts and administrative tribunals must also be appropriately qualified and follow the JAG’s rules of professional responsibility. Within the Navy, the JAG, and within the Marine Corps, the SJA to CMC, is responsible for certifying that victims’ legal counsel detailed to DON courts-martial proceedings are competent and qualified, in accordance with reference (t).

   c. The JAG is the qualifying authority for civilian attorneys per the delegation by the GC, reference (a). Thus, prior to the establishment, promotion, elimination, or revision of any civilian attorney position and associated position description under the JAG’s cognizance, such action must be coordinated through the JAG.

   d. The JAG serves as a Staff Assistant to SECNAV and performs duties relating to legal matters arising in the DON as assigned.

   e. The JAG is responsible for providing and supervising the provision of legal advice and related services throughout the DON in the following areas:
(1) Military Justice

(a) The JAG is responsible for the military justice function within the DON. The military justice function includes, but is not limited to, promulgating regulations for non-judicial punishment and the execution, management, and oversight of the military criminal justice system at the trial and appellate levels, including national security court-martial litigation. In performing this function, the JAG responsibilities include:

1. Inspecting legal offices within the JAG’s cognizance;

2. Certifying military judges for practice on the bench;

3. Certifying trial and defense counsel for practice in military courts-martial;

4. Taking action in certain courts-martial if the convening authority fails to do so;

5. Receiving records of trial from military courts-martial;

6. Reviewing the records of trial of general courts-martial in cases where the accused is not entitled to appellate review;

7. Reviewing applications for relief and for new trials;

8. Establishing, staffing, and resourcing the Navy and Marine Corps Trial Judiciary, in accordance with references (r) and (s);

9. Establishing and staffing the Navy and Marine Corps Court of Criminal Appeals;

10. Staffing the Office of Military Commissions and U.S. Court of Military Commissions Review; and
11. Ordering certain cases be sent to the Court of Appeals for the Armed Forces for review.

12. Within the U.S. Navy, certifying victim’s legal counsel for practice in military courts-martial, in accordance with reference (t).

(b) In executing the responsibility for the military justice function within the DON, the JAG will convene a Military Justice Oversight Council (MJOC) no less than quarterly, to evaluate the practice of military justice within the DON. The MJOC will ensure thorough visibility and communication at the flag and general officer level regarding the military justice function in the DON. The MJOC will evaluate the practice of military justice and the effectiveness of the military justice system, assess any potential impediments, and facilitate such action as is necessary to ensure a fair, effective, efficient, and responsive military justice system. The MJOC will be co-chaired by the JAG and the SJA to CMC, and include those members appointed by the JAG in coordination with the SJA to CMC. The JAG will also provide an annual report to the SECNAV, CNO, and CMC on the state of military justice within the DON. Additionally, per reference (b), the JAG, or the JAG's designated representative, will serve as a voting member of the Joint Service Committee on Military Justice.

(2) National Security Law

(a) The JAG provides legal advice and training on those National Security law issues of interest to the DON. National Security law includes, but is not limited to:

1. Those fundamental principles of international and domestic law that govern or affect U.S. naval operations;

2. Matters of jurisdiction and sovereignty exercised by nations over various parts of the world’s oceans;

3. The international legal status and navigational rights of warships and military aircraft;

4. International agreements not within the cognizance of the Office of the GC (OGC);
5. Protection of persons and property at sea;

6. Environmental compliance of operational forces per paragraph 2.b of enclosure (2);

7. The safeguarding of national interests in the maritime environment;

8. Principles of law that apply during any period in which U.S. naval forces are engaged in armed conflict, both at sea and ashore, to include information operations and cyberspace operations as defined in reference (c) and per paragraph 2.d of enclosure (2); and

9. In coordination with the GC, intelligence and intelligence-related activities.

(b) When appointed by the Secretary of Defense, the JAG also serves as the Department of Defense (DoD) Representative for Ocean Policy Affairs. In this capacity, the JAG:

1. Serves as the central point of contact for analysis of ocean policy matters within the DoD;

2. Monitors trends in ocean law and policy to develop DoD positions to enhance the positive development of ocean and maritime policy;

3. Monitors and coordinates the Navy’s Freedom of Navigation program;

4. Compiles, catalogs, and disseminates current information on foreign maritime claims and developments in ocean law and policy that affect military operations; and

5. Serves as an interagency point of contact for coordination of technical matters relating to ocean policy and maritime matters.

(3) Naval Administration

(a) Administrative Law. The JAG provides legal advice on the operation of the DON as a governmental entity, including military personnel matters, certain legislative and
regulatory matters, associated litigation, homeland security matters, and professional supervision of attorneys practicing under the cognizance of the JAG.

(b) Civil Law. The JAG provides legal advice on issues including admiralty tort and salvage claims and associated litigation, maritime law, claims issues and associated litigation involving the Federal Tort Claims Act, Military Claims Act, Medical Care Recovery Act, Personnel Claims Act and Foreign Claims Act, Federal Claims Collection Act, Non-Scope Claims Act, and general litigation under the cognizance of the JAG.

(c) Freedom of Information Act (FOIA) and Privacy Act (PA). The JAG is jointly responsible with the GC for adjudication of administrative appeals pursuant to the FOIA and PA and any associated litigation.

(d) Litigation. The JAG is responsible for litigation involving matters under the JAG’s practice areas. The JAG is jointly responsible with the GC for ensuring that requests for information and witnesses related to litigation are properly processed.

(e) Intelligence Law and Oversight of Intelligence Activities, Intelligence-Related Activities, Special Access Programs, and Sensitive Activities. The GC, in coordination with the JAG and SJA to CMC, shall be responsible for ensuring that all intelligence activities, intelligence-related activities, Special Access Programs, and sensitive activities are conducted in a legal manner. The GC, JAG, and SJA to CMC shall discharge these responsibilities, in part, as principal members of the Senior Review Board (SRB), and through their representatives at the Sensitive Activities Oversight Committee (SAOC), Special Programs Review Group (SPRG), and Sensitive Activities Review Group (SARG). Furthermore, per paragraph 9.b(4) of reference (q), the JAG, SJA to CMC, and the GC are also responsible for advising on significant legal issues that pertain to intelligence activities that are forwarded from subordinate units.

(4) Legal Assistance. The JAG is responsible for the provision of legal assistance services within the Navy to Service Members, their dependents, retired military members, and other authorized people to promote readiness.
f. Responsibility of the JAG to the CNO

(1) The JAG advises and assists the CNO in formulating and implementing policies and initiatives pertaining to the provision of legal services within the Navy.

(2) For matters within the JAG’s cognizance per this instruction, the JAG acts as the Office of the CNO (OPNAV) point of contact for CNO operating forces and shore activity commanders to ensure consistency of legal compliance, guidance, policies, procedures, objectives, training, and support.

(3) The JAG is the Chief of the Navy JAG Corps. The JAG is the capability sponsor for the Navy JAG Corps, and is responsible for maintaining the JAG Corps legal community and determining the best possible allocation of available JAG Corps community assets.

2. Responsibilities of the SJA to CMC. The SJA to CMC is the senior uniformed attorney in the Marine Corps. He or she provides independent legal advice to SECNAV on matters delineated in this paragraph and on matters assigned by SECNAV. Additionally, the SJA to the CMC advises CMC and other officers and officials of the Marine Corps on any matter within SJA to CMC’s cognizance. The legal opinions issued by the SJA to CMC on matters within his or her cognizance are controlling legal opinions within the Marine Corps.

a. The SJA to CMC supervises and manages legal matters arising in the Marine Corps in the following areas:

(1) Military Justice. Consistent with the JAG’s responsibilities under reference (e), the SJA to CMC is responsible for the military justice function within the Marine Corps, to include:

(a) Serving as the principal legal advisor to the CMC on matters pertaining to military justice;

(b) The execution, management, and oversight of the military criminal justice system at the trial level, and post-trial processing, until a case is docketed at the Navy-Marine Corps Court of Criminal Appeals;
(c) Serving as the co-chair of the MJOC;

(d) Per reference (b), serving or appointing a designated representative to serve as a voting member of the Joint Service Committee on Military Justice;

(e) Supervising training in military justice for Marine Corps personnel; and

(f) The frequent inspection of legal offices within the SJA to CMC’s cognizance.

(g) Within the Marine Corps, certifying victim’s legal counsel for practice in military courts-martial, in accordance with reference (t).

(2) Operational and International Law. The SJA to CMC provides legal advice and training on those international and operational law issues of interest to the Marine Corps. These areas of law include, but are not limited to:

(a) Those fundamental principles of international and domestic law that govern or affect Marine Corps operations;

(b) Matters of jurisdiction and sovereignty;

(c) The international legal status and navigational rights of military aircraft;

(d) International agreements not within the cognizance of the OGC;

(e) Protection of persons and property;

(f) Principles of law that apply during any period in which Marine Corps forces are engaged in armed conflict, both at sea and ashore, to include information operations and cyberspace operations as defined in reference (c) and per paragraph 2.d of enclosure (2); and

(g) In coordination with the GC, intelligence and intelligence related activities.

(3) Civil and Administrative Law
(a) Administrative Law. The SJA to CMC provides legal advice on the operation of the Marine Corps as a governmental entity, including military personnel matters, certain legislative and regulatory matters, associated litigation, homeland security matters, and professional supervision as Rules Counsel for cases involving Marine Corps judge advocates or civil service and contracted civilian attorneys who perform legal services under his or her cognizance.

(b) Civil Law. The SJA to CMC provides legal advice on issues including claims and associated litigation involving the Federal Tort Claims Act, Military Claims Act, Medical Care Recovery Act, Personnel Claims Act and Foreign Claims Act, Federal Claims Collection Act, Non-Scope Claims Act, and general litigation under the cognizance of the JAG.

(4) Intelligence Law and Oversight of Intelligence Activities, Intelligence-Related Activities, Special Access Programs, and Sensitive Activities. The SJA to CMC is jointly responsible with the GC and the JAG for ensuring that all intelligence activities, intelligence-related activities, Special Access Programs, and sensitive activities are conducted in a legal manner. The SJA to CMC shall discharge these responsibilities, in part, as a principal member of the SRB, SAOC, SPRG, and SARG. Per paragraph 9.b(4) of reference (q), the SJA to CMC, JAG, and GC are also responsible for advising on significant legal issues that pertain to intelligence activities that are forwarded from subordinate units.

(5) Legal Assistance. The SJA to CMC is responsible for the provision of legal assistance services within the Marine Corps to Service Members, their dependents, retired military members, and other authorized people.

(6) Any other legal matters as directed by SECNAV and CMC, consistent with the responsibilities of the SJA to CMC under title 10, U.S. Code. As legal advisor to CMC, the SJA to CMC provides independent legal advice to CMC and Headquarters, Marine Corps (HQMC). The SJA to CMC directly supervises and manages all military and civilian attorneys providing legal advice and support to CMC and HQMC on matters falling under the SJA to CMC’s cognizance.

b. The SJA to CMC serves as Director, Judge Advocate Division. In this capacity, the SJA to CMC directly supervises
and manages the following branches: Military Justice, International and Operational Law, Civil and Administrative Law, Legal Assistance, Plans and Innovation, Military Personnel Policy, Reserve Legal Support, Defense Services Organization, and Victim's Legal Counsel Organization.

c. The SJA to CMC formulates, implements, supervises, and inspects the use of standard policies and procedures for the delivery of legal services throughout the Marine Corps, with the exception of those matters assigned to the GC.

d. The SJA to CMC also serves as Rules Counsel for matters of professional responsibility involving Marine Corps judge advocates or civilian attorneys under his or her cognizance and reports to the JAG regarding oversight of professional responsibility matters in the Marine Corps. The SJA to CMC has professional supervisory authority over all active-duty and Reserve Marine Corps judge advocates, legal administrative officers, and legal services specialists.

e. The SJA to CMC is the qualifying authority for civilian attorneys per the delegation by the GC, reference (a). Thus, before the establishment, promotion, elimination, or revision of any civilian attorney position and associated position description under the SJA to CMC’s cognizance as set forth in this instruction, such action must be coordinated through the SJA to CMC.

f. The SJA to CMC is the occupational field sponsor for, and oversees the professional development, training, and education of, all Marine judge advocates, legal administrative officers, and legal services specialists. The SJA to CMC is responsible for making recommendations on legal structure and alignment within the Marine Corps. In addition, due to the unique requirements of the legal mission and the professional development of the legal community, the SJA to CMC advises the Deputy Commandant, Manpower and Reserve Affairs, regarding which Marine judge advocates, legal administrative officers, and legal services specialists are best suited to fill particular billets within the Marine Corps.

g. The SJA to CMC oversees the Chief Defense Counsel of the Marine Corps.

h. The SJA to CMC oversees the Officer-in-Charge, Victims’
Legal Counsel Organization.

i. The SJA to CMC is the doctrine proponent for Marine Corps legal service support doctrine.

j. The SJA to CMC also has responsibility for coordination with other uniformed services and, consistent with paragraphs 1 and 3 of enclosure (2), other departments and agencies of the government on matters within the SJA to CMC’s cognizance.
RELATIONSHIPS BETWEEN THE JAG, THE SJA TO CMC, AND THE GC

1. GC, JAG, and SJA to CMC. The GC, JAG, and the SJA to CMC will maintain a cooperative and close working partnership in formulating and implementing policies and initiatives pertaining to the provision of legal services within the DON, and on judge advocates assigned to GC offices.

2. GC and JAG. The JAG is responsible for providing independent legal advice and opinions to SECNAV, CNO, and other officers and officials of the DON. The JAG reports directly to SECNAV, CNO, and CMC, and is responsible for Departmental and Service duties and responsibilities as assigned. The responsibilities assigned to the GC do not affect determinations required by law to be made by the JAG. The JAG also has responsibility for coordination with other departments and agencies of the government in matters within the JAG’s responsibilities or cognizance. Consistent with paragraph 1 of this enclosure, the JAG will maintain a close working relationship with the GC on matters of common interest, including:

   a. Government Ethics and Standards of Conduct. Together with the GC, the JAG provides legal advice on standards of conduct and government ethics, including the outside practice of law, post-government service employment restrictions, interaction with non-federal entities, and the permissible use of government assets and personnel. The JAG serves as the Alternate Designated Agency Ethics Official for the DON. Additionally, the JAG provides standards of conduct training, reviews public financial disclosure reports, and reviews and maintains confidential financial disclosure reports filed by uniformed personnel of the Navy.

   b. Environmental Law. Consistent with reference (f) and together with the GC, the JAG provides legal advice, assistance, research, and representation on laws protecting human environment, natural resources, and historic and cultural resources to the Office of the Assistant Secretary of the Navy (Energy, Installations, & Environment).

   c. Litigation within the DON. The JAG keeps the GC informed of the status of all litigation under the JAG’s cognizance, including all proposed appeal recommendations to the Department.
of Justice. In appropriate cases, the GC will share responsibility with the JAG for liaison with the Attorney General and the Department of Justice in connection with such cases.

d. Cyber Law. Together with the GC, the JAG provides legal advice, assistance, and research in the field of cyber law to cognizant offices within the Office of the SECNAV and OPNAV. Together with the GC, the SJA to CMC provides legal advice, assistance, and research in the field of cyber law to cognizant offices within the Office of the SECNAV and HQMC with regard to cyber law issues pertaining to the Marine Corps.

3. GC and SJA to CMC. The SJA to CMC will maintain a close working relationship with the GC on matters of common interest. Together with the GC, the SJA to CMC provides legal advice on standards of conduct and government ethics, including the outside practice of law, post-government service employment restrictions, interaction with non-federal entities, and the permissible use of government assets and personnel, and other matters described in this directive. The SJA to CMC serves as a Deputy Designated Agency Ethics Official for the Marine Corps, and with the OGC provides standards of conduct training, reviews public financial disclosure reports, and reviews and maintains confidential financial disclosure reports filed by personnel of the Marine Corps.