

U.S. Army Trial Defense Service Standard Operating Procedures

5 August 2013*



Office of the Chief, USATDS
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	<u>Page</u>
Table of Contents	ii-iii
List of Appendices	iv
Glossary of Acronyms	v-vii
List of Cited References	viii-ix

* This supersedes 2009 USATDS SOP.

TABLE OF CONTENTS

	<u>Paragraph</u>	<u>Page</u>
Chapter 1. GENERAL PROVISIONS		
Purpose and Scope	1-1	1
Authority	1-2	1
Mission	1-3	1
Organization	1-4	1
Duties of USATDS Counsel	1-5	3
Administration and Logistical Support	1-6	6
Emergency Notification	1-7	6
Incident Notification	1-8	6
Release of Information	1-9	6
Professional Standards	1-10	7
Handling of Clients Funds and Property	1-11	8
Defense Counsel Experts	1-12	8
Defense Property Evidence	1-13	9
Classified Cases	1-14	9
Clients in Pre-Trial or Post-Trial Confinement	1-15	9
Chapter 2. PERSONNEL		
Personnel Selection & Assignment	2-1	10
Incoming / Outgoing USATDS Personnel	2-2	11
Addresses	2-3	11
Officer and Noncommissioned Officer Evaluation Reports	2-4	11
Absences From Duty	2-5	13
Temporary Duty (Mission) Travel	2-6	14
Personal Standards	2-7	14
Allegations of Counsel Misconduct	2-8	14
Local Administrative and Personnel Policies	2-9	14
Training Records	2-10	15
Military Awards	2-11	15
Deployment	2-12	17
Requests for Resignation or Retirement	2-13	17
Chapter 3. FIELD OFFICE MANAGEMENT		
Duties of the Senior Defense Counsel	3-1	18
Detail of Trial Defense Counsel	3-2	19
Establishment of Attorney-Client Relationship	3-3	19
Multiple Accused Situations	3-4	19
Conflict of Interests Situations	3-5	21
Maintaining Work Product Confidentiality / Personally Identifiable Information	3-6	21
Married Judge Advocates	3-7	23
Requests for Individual Military Counsel (IMC)	3-8	23
Post-Trial & Appellate Advice	3-9	25
Office Staffing / Duty Rosters	3-10	26

	<u>Paragraph</u>	<u>Page</u>
Requests for Information from OTJAG	3-11	27
Mutual Support Responsibilities	3-12	27
Defense Services at Installations Without a USATDS Counsel	3-13	27
Support for TDY Counsel	3-14	28
Staff Relations	3-15	28
Petitions for Extraordinary Relief	3-16	28
Appellate Remedies Ordered	3-17	29
Chapter 4. REPORTS		
Monthly Management Report	4-1	30
Monthly Report on Projected Expenditures / Personnel Gains & Losses	4-2	30
Quarterly Report	4-3	30
Significant Result Report	4-4	30
Report of Result of Trial	4-5	30
Chapter 5. DEFENSE COUNSEL ASSISTANCE PROGRAM & TRAINING		
Purpose	5-1	31
Mission	5-2	31
Organization	5-3	31
General Responsibilities	5-4	31
Technical Assistance	5-5	31
Policy & Strategic Initiatives	5-6	32
Goals	5-7	32
Centralized Training	5-8	32
Training Responsibilities	5-9	34
Decentralized Training	5-10	35
TJAGLCS and Civilian CLE Courses	5-11	37
Non-USATDS Military CLE	5-12	37
On-The-Job Training for New Counsel	5-13	38
Individual Responsibility	5-14	38
DCAP Document Library	5-15	38
Paralegal Training	5-16	38
Chapter 6. U.S. ARMY RESERVE COMPONENT PERSONNEL		
Purpose	6-1	39
UCMJ Jurisdiction over USAR Personnel	6-2	39
U.S. Army Reserve Trial Defense Service Legal Operations Detachments (LODs)	6-3	39
TDS LOD Services	6-4	40
Training of LOD TDS Personnel	6-5	40
Chapter 7. NATIONAL GUARD COMPONENT TRIAL DEFENSE SERVICE		
Purpose	7-1	41
Organization & Scope of ARNG TDS	7-2	41
Requests for IMC of the ARNG TDS	7-3	41

LIST OF APPENDICES

	<u>Page</u>
Appendix A. USATD Regions & Areas of Responsibility	42
Appendix B. USAR TDS Legal Operations Detachments & Areas of Responsibility. .43	43
Appendix C. Chief’s Critical Information Requirements (CCIR)	44
Appendix D. Temporary Duty (Mission) Travel	45
Appendix E. Authorized Airports for TDY Travel	50
Appendix F. USATDS In-Processing Form	51
Appendix G. USATDS Out-Processing Form	52
Appendix H. Monthly Management Report	53
Appendix I. Sample Mutual Support Agreement	56
Appendix J. USAR Mission Essential Task List for Defense Counsel	60
Appendix K. USATDS Certificate of Appreciation	62

GLOSSARY OF ACRONYMS

AAM	Army Achievement Medal
ABCMR	Army Board for Correction of Military Records
AC	Active Component
ACCA	U.S. Army Court of Criminal Appeals
AD	Active Duty
ADT	Active Duty for Training
ADRB	Army Discharge Review Board
AGR	Active Guard & Reserve
AKO	Army Knowledge Online
AOWC	Army Operating Warfighting Course
APACS	Aircraft and Personnel Automated Clearance System
APFT	Army Physical Fitness Test
AR	Army Regulation
ARCOM	Army Commendation Medal
ARNG	Army National Guard
ARNG TDS	Army National Guard Trial Defense Service
ARNGUS	Army National Guard of the United States
ARPCL	Army Rules of Professional Conduct for Lawyers
AT	Annual Training
AT/FP	Anti-Terrorism Force Protection Training
CAAF	U.S. Court of Appeals for the Armed Forces
CENTCOM	Central Command
CLE	Continuing Legal Education
CJA	Command Judge Advocate
CONUS	Continental United States
DA	Department of the Army
DAD	Defense Appellate Division
DCAP	Defense Counsel Assistance Program
DOD	Department of Defense
DOJ	Department of Justice
DSN	Defense Switched Network
DTS	Defense Travel System
ERB	Enlisted Record Brief
ETS	End of Term of Service
EUCOM	U.S. European Command
FAO	Finance and Accounting Office
FRG	Family Readiness Group
GCM	General Courts-Martial

GCMCA	General Courts-Martial Convening Authority
GOV	Government Vehicle
HRC	Human Resources Command
IAW	In accordance with
IDT	Inactive Duty for Training
ILE	Intermediate-Level Education
IMC	Individual Military Counsel
IO	Investigating Officer
ISOPREP	Isolated Personnel Report
ITAC	Intermediate Trial Advocacy Course
JA	Judge Advocate
JAGC	Judge Advocate General’s Corps
JFTR	Joint Federal Travel Regulations
LOA	Line of Accounting
LOD	Legal Operations Detachment
MCM	Manual for Courts-Martial, United States (2012)
METL	Mission Essential Task List
MILPO	Military Personnel Office
MJO	Military Justice Online
M&I	Meals and Incidentals
MSA	Mutual Support Agreement
MSM	Meritorious Service Medal
MSAF	Army Multi-Source Assessment and Feedback
MTOE	Modified Table of Organization and Equipment
NCO	Non-Commissioned Officer
NCOER	Non-Commissioned Officer Evaluation Report
NGB	National Guard Bureau
NLT	Not later than
OCONUS	Outside the Continental United States
OER	Officer Evaluation Report
OJT	On-the-job training
OML	Order of Merit
ORB	Officer Record Brief
OSJA	Office of the Staff Judge Advocate
OTC	Office of the Chief, USATDS
OTJAG	Office of The Judge Advocate General
PACOM	U.S. Pacific Command
PAO	Public Affairs Office

PCS	Permanent Change of Station
PDS	Permanent Duty Station
PII	Personally Identifiable Information
POV	Privately Owned Vehicle
PPTO	Personnel, Plans & Training Office
QTP	Quarterly Training Plan
RC	Reserve Component
RCM	Rule for Courts-Martial
RDC	Regional Defense Counsel
ROTC	Reserve Officers' Training Corps
SALT	Sexual Assault Leadership Training
SAP	Special Access Programs
SCM	Summary Courts-Martial
SCMJ	State Code of Military Justice
SDC	Senior Defense Counsel
SDP	Senior Defense Paralegal
SERE	Survival, Evasion, Resistance and Escape training
SJA	Staff Judge Advocate
SOP	Standard Operating Procedure
SOUTHCOM	U.S. Southern Command
SPCM	Special Courts-Martial
SVTC	Secure Video Teleconference
TATS	Trial Advocates Tracking System
TC	Trial Counsel
TDA	Table of Distribution & Allowances
TDC	Trial Defense Counsel
TDS LOD	Trial Defense Service Legal Operations Detachment
TDY	Temporary Duty
TJAG	The Judge Advocate General
TJAGLCS	The Judge Advocate General's Legal Center & School
TOE	Table of Organization & Equipment
UCMJ	Uniform Code of Military Justice
USALSA	U.S. Army Legal Services Agency
USAR	U.S. Army Reserve
USATDS	U.S. Army Trial Defense Service
VTC	Video Teleconference
XO	Executive Officer

LIST OF CITED REFERENCES

Statutes

Title 10, United States Code (Including the Uniform Code of Military Justice)

Title 32, United States Code

Executive Order

Manual for Courts-Martial, 2012 Edition

Federal Regulations

Joint Federal Travel Regulations

Army Regulations

- | | |
|-------------|---|
| AR 15-6 | Procedures for Investigating Officers and Boards of Officers |
| AR 25-55 | The Department of the Army Freedom of Information Act Program |
| AR 27-3 | The Army Legal Assistance Program |
| AR 27-10 | Military Justice |
| AR 27-26 | Rules for Professional Conduct of Lawyers |
| AR 135-175 | Separation of Officers |
| AR 135-178 | Enlisted Administrative Separations |
| AR 190-47 | The Army Corrections System |
| AR 350-1 | Army Training and Leader Development |
| AR 360-1 | The Army Public Affairs Program |
| AR 380-5 | Department of the Army Information Security Program |
| AR 600-8-2 | Suspension of Favorable Personnel Actions |
| AR 600-8-10 | Leaves and Passes |
| AR 600-8-19 | Enlisted Promotions and Reductions |

AR 600-8-22 Military Awards
AR 600-8-24 Officer Transfers and Discharges
AR 600-9 The Army Body Composition Program
AR 623-3 Evaluation Reporting System
AR 635-200 Active Duty Enlisted Administrative Separations

Department of the Army Pamphlets

DA Pam 27-9 Military Judges' Benchbook
DA Pam 623-3 Evaluation Reporting System

Other Publications

FM 7-22 Army Physical Readiness Training
TC 3-22.20 Army Physical Readiness Training
JAGC Publication 1-1, Personnel Policies
The Army Lawyer
Military Law Review

CHAPTER 1. GENERAL PROVISIONS

1-1. PURPOSE AND SCOPE.

A. This Standing Operating Procedure (SOP) provides guidance in the daily operation of the U.S. Army Trial Defense Service (USATDS). This SOP does not create any private rights or causes of action. All USATDS personnel, including personnel providing administrative support, will comply with these policies and procedures.

B. Each trial defense counsel (TDC) will read this SOP and refer to the SOP when necessary for guidance. The SOP is found in the USATDS website.

C. USATDS encourages improvements to this policy. Forward recommended changes through the supervisory chain to the Executive Officer (XO), USATDS.

1-2. AUTHORITY. Chapter 6, Army Regulation (AR) 27-10, Military Justice.

1-3. MISSION. Provide competent/ethical defense counsel services for Army personnel, whenever required by law or regulation and authorized by The Judge Advocate General (TJAG). Promote programs and policies that enhances the effective and efficient use of defense counsel resources, including the professional qualifications of all personnel providing defense services.

1-4. ORGANIZATION. United States Army Legal Services Agency (USALSA), a field operating agency of TJAG, provides manpower, budgetary and administrative support to USATDS. USATDS may also receive manpower support from sustainment brigades, defense legal operations detachments, the Office of the Staff Judge Advocate (OSJA), command judge advocate offices and other applicable support units. The Commander and Commandant, The Judge Advocate General's Legal Center & School (TJAGLCS) provides professional control and supervision of USATDS and its members, including awards and UCMJ authority. The Commander, USALSA, exercises other command functions for TDCs. All TDCs are either assigned to the USALSA Table of Distribution & Allowances (TDA), with duty stations at specified installations and organizations or to TOE organizations. TDCs assigned to TOE organizations will be supervised and rated within USATDS in the same manner as counsel assigned to USALSA.

A. Geographical Organization.

1. Office of the Chief (OTC). OTC, USATDS is located at 9275 Gunston Road, Suite 3100, ATTN: USATDS, Fort Belvoir, Virginia 22060 and is responsible for ensuring that the USATDS mission is accomplished worldwide.

2. Region. The region is the major subordinate supervisory and control element of USATDS. It encompasses a geographical area as shown in Appendix A of this SOP, and each region will be responsible for the delivery of defense legal services to Soldiers stationed in that region. In areas other than those designated in Appendix A, responsibility for the delivery of defense legal services will be as directed by the Chief, USATDS.

3. Field Office. A field office is a subordinate operating element of a region. A field office provides defense counsel services for specified organizations and/or geographical areas.

4. Branch Office. A branch office is subordinate to a field office and is the smallest USATDS operational element.

B. Supervisory and Personnel Organization.

1. Chief, USATDS. The Chief, USATDS, is designated by TJAG and exercises supervision, control, and direction of defense counsel services in the Army. In the absence of the Chief, the XO, USATDS, will exercise the functions of the Chief.

2. Regional Defense Counsel (RDC).

a. A RDC is a JA designated by TJAG responsible for the performance of the USATDS mission within a region and is the supervisor of all senior defense counsel (SDC) within the region.

b. The RDC:

(1) Provides training in military justice, trial tactics, and professional responsibility as directed by the Chief, USATDS;

(2) Maintains continuing liaison with Staff Judge Advocates (SJAs), military judges, commanders, and convening authorities;

(3) Makes periodic visits to all field and branch offices within the region (each office should be visited at least quarterly subject to the availability of funding);

(4) Monitors workload and directs TDC travel as required;

(5) Recommends replacements for departing TDC;

(6) May represent clients in any matter when they can do so without substantially interfering with their management duties. Under no circumstances should a RDC detail themselves as first or second chair to cases with co-accused.

(7) May detail TDC to assist and/or represent clients in any case, except the detail of TDC to represent members of sister services at courts-martial, non-judicial and administrative separation procedures. See paragraphs 3-2A and 3-13D of this SOP.

3. Acting RDC. The RDC or higher authority will designate a SDC to serve as acting RDC during absences of the RDC. The acting RDC will perform the duties of the RDC when, and to the extent, directed by the RDC or higher authority. The acting RDC may be junior in date of rank to other TDC within the region.

4. SDC.

a. An SDC is designated by the Chief, USATDS, and is responsible for the performance of the USATDS mission within the area and for organizations serviced by a field office. A SDC is the direct supervisor of all TDC within a field office and its subordinate branch offices.

b. The SDC:

(1) Details TDC, except in those cases where death is a possible authorized punishment, a general officer is the client, or when conflicts or multiple accused dictate the necessity of assigning outside TDC. In those excepted cases, the SDC should contact the RDC immediately so that the RDC can detail a TDC (see paragraphs 3-2, 3-5 and 3-13D of this SOP);

(2) Provides technical advice to TDC;

(3) Acts as the primary USATDS liaison with SJAs, commanders, and convening authorities of organizations served by the field office;

(4) Represents Soldiers in courts-martial, administrative boards, and other adverse proceedings; and

(5) Acts as consulting counsel as prescribed by the RDC or Chief, USATDS.

5. Acting SDC. The acting SDC is the TDC next senior to the SDC in rank, unless otherwise directed by the RDC. In the absence of the SDC, the acting SDC will assume the duties of the SDC without further action by the RDC.

6. TDC. TDCs perform duties in accordance with (IAW) Article 27, UCMJ, paragraph 5-7 of AR 27-10, and paragraph 1-5, USATDS SOP. TDCs perform other defense-related duties as prescribed by the Chief, USATDS.

7. Defense Paralegal. Enlisted or civilian personnel not assigned to USATDS but attached to and performing duties in USATDS will be considered as full members of the USATDS IAW paragraph 6-4*h*, AR 27-10, and will conform to the professional responsibility requirements of AR 27-26. Each RDC will designate a Senior Defense Paralegal (SDP) to liaise on all paralegal related issues, such as training, professional development, etc.

1-5. DUTIES OF USATDS COUNSEL. TDCs will perform the following functions in order of priority.

A. Priority I Duties. Duties that must be performed by TDCs, unless otherwise directed by the Chief, USATDS.

1. General courts-martial (GCM) representation;
2. Special courts-martial (SPCM) representation;
3. Article 32, UCMJ, representation; and
4. Counseling of pretrial confinees.

B. Priority II Duties. The following duties are the responsibility of TDC.

1. Counseling IAW Article 31/Miranda/Tempia requirements;
2. Representation and/or counseling in line-up situations;
3. Counseling suspects on criminal matters when the exercise of military jurisdiction is possible (even though jurisdiction has not been exercised);
4. Counseling with regard to Summary Courts-Martial (SCM);
5. Formal Article 15, UCMJ, counseling;
6. Representation and counseling of officers recommended for elimination IAW AR 600-8-24.
 7. Counseling of officers desiring to submit a resignation in lieu of administrative elimination or Resignation for the Good of the Service Pending General Court-Martial IAW AR 600-8-24 (since resignations for the good of the service require preferred charges, they begin as Priority I Duties);
 8. Representation and counseling of Soldiers recommended for involuntary separation IAW AR 635-200 and AR 600-8-24 (since discharges in-lieu of court-martial require preferred charges they begin as Priority I Duties);
 9. Representation and counseling of inmates at sentence vacation hearings pursuant to Article 72, UCMJ;
 10. Representation and counseling of inmates at disciplinary and adjustment boards pursuant to AR 190-47, The Army Corrections System; and
 11. Grade reduction boards IAW Chapter 10, AR 600-8-19.
 12. Additionally, IAW paragraph 3-6g(2), AR 27-3, TDCs should ordinarily assist Soldiers on military administrative actions not listed in paragraphs 1 through 8 above when such actions are:
 - a. Initiated on the basis of alleged violations of the UCMJ; or

b. Related to impending, pending, or recently completed UCMJ proceedings.

C. Priority III Duties. Priority III duties are all duties not listed as Priority I or II the supported SJA. A non-exhaustive list of such duties can be found in AR 27-3, paragraph 3-6g(4). Pursuant to paragraph 6-8, AR 27-10, SDCs may agree upon the extent, if of any, to which local TDC will perform Priority III duties. Proposed memoranda of mutual support agreement should be coordinated with the RDC.

D. Limitations.

1. TDCs will not provide defense services for non-active duty personnel, including ROTC cadets, except in the following circumstances:

a. TDCs will provide representation to Article 2(a)(10), UCMJ, personnel against whom charges have been preferred to the same extent as any other persons subject to the UCMJ jurisdiction. See also AR 27-10, Chapter 27.

b. TDCs may continue to assist clients who are presently in an involuntary excess leave status insofar as such assistance relates to the court-martial for which the original representation was undertaken;

c. TDCs may assist former clients in applications to the Army Discharge Review Board (ADRB) and the Army Board for Correction of Military Records (ABCMR);

d. If the active Army is investigating a member of the Army Reserve Component (RC) (in active or inactive duty status) with a view toward taking disciplinary action, TDC may assist that Soldier. If the RC is conducting the investigation with a view toward taking disciplinary action, the RC TDC has primary responsibility for assisting the RC member. When an RC Soldier requests assistance from USATDS for a matter that is primarily the responsibility of RC TDC, USATDS TDC will ensure that the RC member makes timely contact with the RC TDC (see also paragraph 6-4 of this SOP).

e. The Chief, USATDS, may grant further exceptions on a case-by-case basis as deemed appropriate.

2. TDCs will provide representation or counseling only when authorized by Army Regulation or directed by the Chief, USATDS. TDCs and their support personnel will not normally provide counseling for summarized Article 15 proceedings nor appear at formal Article 15 proceedings and Summary Courts-Martial except under the following conditions:

a. SDCs, or any higher authority, may, on a case-by-case basis, authorize TDCs to counsel Soldiers pending summarized Article 15 proceedings.

b. SDCs, or any higher authority, may, on a case-by-case basis, authorize TDCs to act as spokespersons for Soldiers at formal Article 15 proceedings.

c. RDCs, or any higher authority, may, on a case-by-case basis, authorize TDCs to represent Soldiers at Summary Court-Martial hearings. For example, it may be appropriate to authorize such representation when the case was referred to a higher level court-martial and then subsequently withdrawn and re-referred to the Summary Court-Martial.

3. TDCs will not represent clients before any civilian courts including Magistrate's Court, foreign courts, or grand juries. Military personnel who are charged or indicted by civilian authorities are not normally entitled to USATDS representation except for advice or representation for administrative separations under AR 600-8-24 or AR 635-200, or other administrative actions based upon the conviction by a civilian court. However, TDCs may provide counseling IAW paragraph 1-5B3 of this SOP.

4. TDCs will not provide advice to clients under investigation or prosecution by the Department of Justice (DOJ) unless DOJ and the Department of the Army (DA) have concurrent jurisdiction. In those cases, TDCs may provide representation and advice to protect the client from pending or potential judicial, nonjudicial, or adverse administrative actions within DA.

1-6. ADMINISTRATION AND LOGISTICAL SUPPORT.

A. All administrative and logistical support to USATDS in the field will conform to paragraph 6-4, AR 27-10.

B. Support Personnel. To the extent possible, Defense Paralegals will be rated by their supervisory chain in the USATDS office.

C. Funding Responsibilities. Every TDC should be familiar with the funding responsibilities of paragraph 6-5, AR 27-10. The RDC, or Acting RDC, must authorize all TDY travel for TDCs in the region, including travel funded by the command. If the RDC and Acting RDC are unavailable, the XO, USATDS must authorize such travel. The RDC may delegate authority to a SDC to authorize travel of less than 12 hours.

1-7. EMERGENCY NOTIFICATION. All RDCs, SDCs and TDCs will maintain up-to-date telephone numbers and e-mail addresses of their personnel at all times. RDCs are required to maintain an on-call emergency system within their regions. These rosters will also be forwarded to the Senior Paralegal NCO, OTC, USATDS when changes are made.

1-8. INCIDENT NOTIFICATION. RDCs will immediately notify the Chief and XO, USATDS, of any incidents listed in the Chief's Critical Information Requirements contained in Appendix C of this SOP.

1-9. RELEASE OF INFORMATION.

A. RDCs and SDCs are encouraged to tell the USATDS story. As such, they should seek out opportunities in print, audio and video media to publish organizational enhancing information about USATDS' mission, structure, independence, history and services provided.

B. The release of information to the public, media, or installation Public Affairs Office (PAO) by USATDS personnel concerning past, present or future criminal or administrative proceedings, however, is generally inappropriate but may be proper in unusual circumstances where it is in the client's best interest and where the release complies with applicable regulations, rules of professional responsibility, the Privacy Act and other pertinent statutes. In those unusual circumstances, TDCs and/or SDCs will consult with their RDC to discuss the advisability of releasing information to the public, and obtain approval from their RDC prior to releasing any information even if it appears to be in the client's best interest. The RDC may contact OTC, USATDS to discuss the release and to receive advice regarding whether the release appears to be in the client's best interest.

C. No member of USATDS will, under any circumstances, prepare a written statement for publication, provide information for publication, or permit him/herself to be quoted on such proceedings without first discussing the matter with the RDC and OTC, USATDS. If a decision is made to release information to the public or media, the TDC will consult with PAO regarding the release or request that personnel from PAO be designated to assist them with the case.

D. If the PAO contacts a member of USATDS for information or comments about official or legal matters, that person will direct the PAO to the OSJA as the appropriate office to supply information on such matters. If the PAO persists in requesting information or comments from a member of USATDS, that person should ask the PAO to submit the request in writing.

E. References. In releasing information, USATDS personnel will adhere to the policies of AR 25-55, The Department of the Army Freedom of Information Act Program, paragraph 5-101d; AR 360-1, The Army Public Affairs Program, Chapter 5; AR 27-26, Rules of Professional Conduct for Lawyers; their state bar ethics rules; and this SOP.

F. Congressional Inquiries. Generally, the release of information in response to Congressional, White House, or other state or federal agency inquiries concerning military justice issues, is the responsibility of the local OSJA. Any requests by the OSJA for TDC to assist in that responsibility will first be discussed with the RDC and Chief, USATDS.

G. Congressional Correspondence for a Client. Infrequently in the representation of a client, it may be appropriate for the TDC to assist the client to communicate with his elected representative. As a general rule, correspondence to a client's elected representative will be prepared for the client's signature. In those exceptional cases where TDC believes Congressional correspondence over counsel signature to be in the client's best interest, the correspondence will begin with the following disclaimer ("I am writing on behalf of X in my capacity as his Trial Defense Attorney. X requests your assistance . . .") and will be reviewed in advance by the RDC.

1-10. PROFESSIONAL STANDARDS. All members of USATDS will conduct themselves professionally and ethically. AR 27-26, Army Rules of Professional Conduct for Lawyers (ARPCL), sets forth the ethical requirements of all Army lawyers and their support personnel. All members of USATDS will thoroughly review this regulation immediately after reporting to their assigned field office, and will consult it, as well as their USATDS supervisory chain of command, as needed. TDCs will ensure that Defense Paralegals maintain appropriate standards

under AR 27-26. Below are specific applications of the ARPCL to USATDS practice:

A. Rule 3.5, ARPCL. Defense Counsel will read Rule 3.5 carefully. USATDS policy is that Rule 3.5 does not prohibit post-trial contact with members. Defense counsel will not seek to influence judges or court members improperly. Defense counsel will not speak ex parte with judges or court members about a case while that case is pending before the court-martial, except in very extraordinary circumstances. A case is pending before a court-martial from the time of referral until the time the members are excused (for court members) and authentication (for military judges). USATDS policy allows defense counsel to approach court members after the court-martial has been adjourned to seek a clemency recommendation for the accused or to get appropriate feedback on a counsel's performance. Defense counsel must be very careful. First, the court member cannot reveal how he or she voted or how any other member voted. Second, the court member cannot repeat anything discussed in the deliberation room. The court member may discuss his or her personal observations of what happened in the courtroom and the process of how a court-martial functions. (See Instruction 2-6-13, Military Judges' Benchbook) A court member may make a recommendation for clemency after the sentence has been announced. (See Instruction 2-7-17, Military Judges' Benchbook) Seeking a clemency recommendation or feedback on what happened in the courtroom are ex parte communications authorized by law, but must be done very carefully. Defense counsel will comply with these parameters and seek guidance when necessary.

B. Rule 4.4, ARPCL. Defense counsel are not required to read Article 31 rights when conducting an interview of a witness on behalf of the client, even if he/she suspects the witness committed a criminal offense. See TJAG's PRC Opinion 90-2; *United States v. Howard*, 17 C.M.R. 186 (C.M.A. 1954); *United States v. Marshall*, 45 C.M.R. 802 (N.M.C.M.R. 1972).

C. Rule 4.4, ARPCL. Army Rule 4.4 does not contain a subsection (b) found in Model Rule 4.4. Defense Counsel will comply with Model Rule 4.4(b) when a defense counsel finds himself or herself in possession of inadvertently disclosed information from the trial counsel. Rule 4.4(b) requires a lawyer who receives information relating to the representation of his client and knows (or should know) that the information was sent to him inadvertently to promptly notify the sender. USATDS policy is that TDC should not read this inadvertently disclosed information.

1-11. HANDLING OF CLIENT FUNDS AND PROPERTY. TDCs will never take possession or control of a client's money or other property. Clients should request assistance from their unit or make other arrangements if they need assistance with their money or property. It is also the client's responsibility to directly pay all bills associated with his defense when represented by civilian counsel, make restitution for stolen or misappropriated funds, and, if applicable, directly pay expert witnesses or contracted members of the defense team.

1-12. DEFENSE COUNSEL EXPERTS. TDCs will not enter into contracts to engage the services of experts to assist the defense (either as an expert member of the defense team or an expert witness). Further, TDCs will not obligate the Army, the command prosecuting the client, or USATDS to pay for the services of an expert. Before TDC interview prospective experts to determine their potential as a team-member or witness for the defense, the TDC will inform the

expert of this policy and Rule for Courts-Martial (RCM) 703 concerning production of witnesses. During the initial interview with the prospective expert, or immediately thereafter, the TDC should memorialize this information in writing and provide the writing to the prospective expert. In circumstances where a client wishes to pay and contract an expert to assist the defense, such contracts should be executed between the client and the expert.

1-13. DEFENSE PROPERTY EVIDENCE. TDC may be advised of the existence of physical evidence which may be exculpatory or inculpatory to their client's case. In rare circumstances, TDC may be asked to receive the physical evidence that may be helpful or harmful to the client. Actual receipt of the evidence should be avoided in most instances. TDC will contact the SDC or RDC for ethical guidance before receiving physical evidence from any source.

1-14. CLASSIFIED CASES.

A. General Policy. TDC will notify their SDC and RDC immediately upon forming an attorney-client relationship in a potential classified case. Government classification levels include Confidential, Secret, and Top Secret. Special Access Programs (SAP) may further restrict access to information. TDCs should be familiar with AR 380-5, Department of the Army Information Security Program.

B. Guidance. TDC may want to maintain two files when working on a classified case - a non-classified working papers file and a file containing classified documents. The TDC will ensure that the OSJA provides sufficient facilities or equipment to store classified documents IAW security procedures. TDCs will comply with M.R.E. 505(h)(1) by notifying the trial counsel in writing if they intend to disclose classified material at a court-martial.

C. Further Guidance. The guidance provided above is not all-inclusive. The TDC involved in these cases will need to contact the appropriate command security personnel to determine the requirements for obtaining, transporting, holding and disposing of classified documents and classified information.

1-15. CLIENTS IN PRE-TRIAL OR POST-TRIAL CONFINEMENT. TDCs must comply with rules and orders concerning prisoner security issued by military judges and confinement facility commanders. When prisoners are outside the confinement facility, confinement facility commanders may require hand and/or leg restraints on the prisoners. TDCs may request the confinement facility commander to remove hand restraints during confidential consultations so that the client can adequately assist with his defense. TDCs will not, as a condition for granting such a request or for any other reason, accept responsibility for prisoner security. If such a request is approved, however, the TDC must take reasonable precautions to minimize opportunities for the client to escape or injure someone. This may include stationing guards from the unit close at hand during the consultation.

CHAPTER 2. PERSONNEL

2-1. PERSONNEL SELECTION & ASSIGNMENT.

A. OTC and RDC Responsibilities. The Chief, USATDS, will coordinate with Personnel, Plans and Training Office (PPTO), Office of The Judge Advocate General (OTJAG) on the assignment of new RDCs. The XO and the Operations Officer, USATDS, maintains liaison with PPTO, concerning all personnel requirements of USATDS, to include mobilization of reserve component personnel. RDCs maintain liaison with PPTO and SJAs concerning incoming and departing TDCs/SDCs.

B. Stationing. Stationing of TDCs, including transfer within USATDS, is made by PPTO after coordination with USATDS. RDCs will coordinate with PPTO and ensure that the assignment instruction and orders of incoming TDCs accurately reflect the correct duty assignment and stationing. Special care and consideration should be used for TDC assignments to Sustainment Brigades and Commands as they are only assigned to those units for administrative and logistical support, not disciplinary authority under the UCMJ.

1. USALSA/TDA Positions:

a. Assignment Language: “Assigned to: United States Army Trial Defense Service (W0KEXX), Fort XXXXX, XX 12345.”

b. Special Instructions: “None.”

2. MTOE Positions:

a. Assignment Language: “Assigned to: XYZ HHC Sustainment Brigade (WXYZAA) Fort XXXXX, XX 12345.”

b. Special Instructions: “The Judge Advocate (27A) in the Trial Defense Section is assigned to the XYZ HHC Sustainment Brigade; however, in accordance with AR 27-10, Chapter 6 and FM 1-04, the Commander, U.S. Army Legal Services Agency (SEW0KEAA) provides administrative support to personnel assigned to United States Army Trial Defense Service. Further the Judge Advocate is attached to the U.S. Army Judge Advocate General Legal Center and School for professional control and supervision to include UCMJ and disciplinary authority. The Chief, U.S. Army Trial Defense Service exercises independent supervision, control, and direction over all Trial Defense Service personnel and their mission. Personnel actions such as DA Form 4187s and awards will be processed through supervisory channels to the Commander, U. S. Army Judge Advocate General’s Legal Center & School for action/approval. While performing Trial Defense Service duties, all Trial Defense Service personnel will wear the unit patch of the U.S. Army Trial Defense Service.”

C. Tour Lengths. The normal tour for TDCs is 18-24 months, except in short tour areas. The normal tour for SDCs and RDCs is two years. USATDS officers requesting relief as TDC and reassignment will submit the request, with appropriate justification, through USATDS

supervisory channels to the Chief, USATDS, for appropriate action. The normal tour for enlisted Defense Paralegals will be 12 months or longer.

D. UCMJ Authority. IAW AR 27-10, paragraph 6-3, the Commander, TJAGLCS, exercises UCMJ authority over all USATDS personnel. The Commander, Military District of Washington, exercises GCM jurisdiction over all USATDS personnel.

2-2. INCOMING / OUTGOING USATDS PERSONNEL.

A. Newly Assigned USATDS Personnel & Families.

1. RDCs will ensure that a sponsor is appointed for each newly assigned USATDS personnel. RDCs will make every effort to ensure that family members are connected with a family readiness group (FRG) (either an informal USATDS group or the local command or OSJA FRG).

2. Incoming USATDS personnel must complete the USATDS In-Processing Form (see Appendix F or the link “New to TDS?” in the USATDS website) within 10 days from reporting into their new duty station and send it along with a copy of the PCS orders, ORB/ERB, and last OER/NCOER to the OTC, USATDS to the following personnel actions central mailbox - usarmy.pentagon.hqda-otjag.mbx.usalsa-usatds-personnel-actions@mail.mil. In addition, incoming USATDS personnel must ensure they have been registered/transferred into the Defense Travel System (DTS) prior to or immediately upon their arrival, and must have their government travel card activated or transferred from their previous duty station. Incoming personnel must also update their JAGCnet profiles and be released from their previous unit’s hierarchy in the Trial Advocates Tracking System (TATS) and Military Justice Online (MJO).

B. Outgoing Personnel. RDCs/SDCs will follow the provisions in paragraphs 3-2B and 3-8G of this SOP regarding the detailing of outgoing TDCs to courts-martial or administrative boards. Outgoing USATDS personnel must complete the USATDS Out-Processing Form (See Appendix G or the link “Leaving TDS?” in the USATDS website) before departing and send it along with a copy of the PCS orders to the OTC, USATDS to the following personnel actions central mailbox - usarmy.pentagon.hqda-otjag.mbx.usalsa-usatds-personnel-actions@mail.mil. Outgoing personnel must settle all outstanding travel documents in DTS and pay all outstanding Citibank/Government Travel Card balances before departing USATDS.

2-3. ADDRESSES. Each TDC will have an official duty station address. To prevent delay of mail, USATDS personnel should ensure that locators and correspondents are informed that, although assigned to USATDS in Fort Belvoir, VA, their address is at the local station. TDCs should check with local installation mail personnel regarding exact mailing addresses for USATDS field offices to ensure mail is properly routed.

2-4. OFFICER AND NONCOMMISSIONED OFFICER EVALUATION REPORTS.

A. Policy. RDCs will establish OER and NCOER suspense and control systems to ensure timely completion and submission of OERs and NCOERs to the OTC, and ensure that

personnel are aware of individual evaluation responsibilities, suspense dates, and the purpose and principles of the evaluation process. OTC will assist RDCs in meeting the suspenses for any evaluations that must be processed at OTC or TJAGLCS.

B. Evaluation Process. AR 623-3 and DA Pam 623-3 will be followed.

1. Initial Counseling. For OERs, initial counseling (within 30 days of the beginning of the rating period) including a review of the front side of the OER Support Form (DA Form 67-9-1). Thereafter, continued discussion of performance and objectives as well as the mandatory counseling required by AR 623-3, are vitally important to this process. For NCOERs, initial counseling (within 30 days of each rating period) and continued counseling (at a minimum, quarterly counseling IAW AR 623-3, paragraph 1-8e) must be conducted.

2. Support Forms. USATDS personnel must ensure that Support Forms are initiated in a timely fashion. The completed Support Forms must be forwarded to the rater within 30 days of the end of the rating period. For USATDS personnel who are PCSing or ETSing, the completed Support Form must be forwarded to the rater NLT 30 days before the end of the rating period. As a general rule, rated personnel will have their evaluation completed by the time of the PCS/ETS.

3. Evaluation Forms. For any evaluations that have a rating chain member at OTC, USATDS or TJAGLCS, raters must send a draft and unsigned evaluation form, including the rated officer's Support Form, to the Chief and XO, USATDS, NLT 30 days after the thru date. In those cases in which the rated officer is PCSing or ETSing, the draft and unsigned evaluation form, including the Support Form, must be sent to the Chief and XO, USATDS, NLT 20 days before the thru date. After the Chief and XO, USATDS review the draft evaluation, it will be returned to the rating chain for signature. All completed and signed (by the rating chain and ratee) evaluations must be further sent to OTC, USATDS to the following personnel actions central mailbox – usarmy.pentagon.hqda-otjag.mbx.usalsa-usatds-personnel-actions@mail.mil. OTC, USATDS will then forward the completed evaluation to HRC via the My Forms portal on AKO. The completed rating will be provided to the rated officer and processed to HRC within 90 days following the end of the rating period.

4. IAW AR 623-3, paragraph 3-7a(3)(e), all officers are required to initiate the Army Multi-Source Assessment and Feedback/360 (MSAF) and the rater must include as a last statement in part V, block b of the OER that “The rated officer has completed or initiated an Army multi-source assessment and feedback as required by AR 350-1.”

5. OER/NCOER Counseling. Leaders will counsel their personnel on performance and potential. RDCs and SDCs are expected to be familiar with the career aspirations, potential and selection boards of all USATDS personnel under their responsibility. Draft NCOERs should be coordinated with the Senior Paralegal NCO, USATDS.

C. Rating Scheme.

1. RDCs will publish a quarterly rating scheme for all personnel whose rating

chain is within the region. A copy of each rating scheme will be forwarded to the Legal Administrator, OTC, USATDS.

2. The Legal Administrator, OTC, USATDS with the approval of the Chief, USATDS will publish the rating scheme for all USATDS personnel rated or senior rated by OTC personnel and will maintain a copy of all the published rating schemes within each region and Legal Operations Detachment (LOD).

3. As a general rule, TDCs (Active Component and mobilized counsel) will be rated by their SDC and senior rated by their RDC; SDCs will be rated by the RDC and senior rated by the Chief, USATDS; RDCs are rated by the Chief, USATDS and senior rated by the Commander, TJAGLCS.

2-5. ABSENCES FROM DUTY.

A. Policy. All personnel will be encouraged to take leave throughout the year whenever possible to prevent the accumulation of use or lose leave. It should be rare that personnel ever lose leave at the end of a fiscal year. Only the Chief, USATDS, can approve leave in excess of 30 days, except in the case of maternity or other medical leave.

B. Leave. DA Form 31 will be used to request and authorize all leave. The DA Form 31 is used by the servicing FAO to maintain individual leave accounts. The RDC will approve all leave requests (up to 30 days)

1. Approval of leave within the region. The RDC may authorize SDCs to sign the leave requests of TDCs. Prior to approving leave, the SDC and RDC will ensure that the absence of the TDC will not impair the orderly performance of the field office's mission.

2. Processing of DA Form 31. Each SDC will determine the policies for processing the DA Form 31 with the supporting command/MILPO and the FAO. Prior to commencing leave and upon returning from leave, TDCs will notify the SDC or RDC. TDCs will complete applicable portions of DA Form 31. IAW AR 27-10, Chapter 6, paragraph 6-4, commanders of installations or organizations and their respective SJAs will provide administrative support in processing leave records. DA Forms 31 will be submitted for processing prior to the starting date of the leave. The local command (MILPO/FAO) will provide maintenance support (control numbers) for DA Form 31 to ensure leave is properly deducted from TDC's leave balances. Commanders to whom USATDS personnel are attached will not usually be leave approval authorities; however, RDCs/SDCs are authorized to negotiate local variations as necessary.

3. Ordinary Leave Procedure for RDCs. The Chief or the XO, USATDS recommends approval of all leave requests of RDCs and processed through the local command. RDCs will notify the XO, USATDS of any scheduled or unscheduled leave and the name and contact information for the acting RDC during their absence.

4. Emergency Leave. TDCs and Defense Paralegals may obtain approval by

telephone for emergency leave from their SDC prior to commencing leave. SDCs will immediately notify the RDC and process the DA Form 31. SDCs requesting emergency leave may obtain approval by telephone from the RDC, who will process the DA Form 31 and notify the XO or Chief, USATDS. RDCs requesting emergency leave may obtain approval by telephone from the XO or the Chief, USATDS. When the requestor is unable to reach the supervisory chain, the requestor will contact the XO or Chief, USATDS regarding the emergency leave situation.

5. Terminal Leave. Terminal leave periods must be approved by the Chief, USATDS.

6. All Other Leave. Other periods of leave, including permissive TDY, will be processed IAW AR 600-8-10.

C. Passes and Administrative Absences. SDCs may approve special passes and administrative absences not exceeding 1 duty day (plus allowable non-duty days). The RDC or higher authority must approve administrative absences exceeding one duty day. Other periods of absence, such as quarters or hospitalization of TDC, which exceed one day, will be reported to the RDC.

2-6. TEMPORARY DUTY (MISSION) TRAVEL. All travel will comply with the Joint Federal Travel Regulations (JFTR) and with TDS Policy Memorandum 2013-01: USATDS Defense Travel System (DTS) Policy, dated 24 January 2013, unless amended or rescinded. It is the general policy of USATDS to use TDY only when necessary to accomplish an assigned defense related mission. DTS will be used to process all USATDS travel. See Appendix D of this SOP for further guidance.

2-7. PERSONAL STANDARDS. Each USATDS personnel will maintain Army standards of weight, personal appearance and physical fitness. Supervisors will ensure that USATDS personnel are aware of the Army standards and have sufficient time and support to reach and maintain the standards.

2-8. ALLEGATIONS OF COUNSEL MISCONDUCT. Prior to alleging misconduct or ethical/professional responsibility violations against another counsel, USATDS personnel will notify the Chief, USATDS, through the supervisory chain. All such complaints will be handled IAW AR 27-1.

2-9. LOCAL ADMINISTRATIVE AND PERSONNEL POLICIES.

A. USATDS Policy. USATDS personnel will normally comply with supporting unit administrative and personnel policies including, but not limited to, local duty hours, weapons qualification, physical and military training, the Army Physical Fitness Test (APFT), and similar requirements fulfilled by the local OSJA. The SDC is responsible for ensuring that USATDS personnel receive timely notification of all scheduled training from unit officials or the local OSJA. In addition to the foregoing policies, USATDS enlisted personnel will, to the maximum extent possible, participate in all Soldier training programs and meet all Soldier and unit

requirements. Attendance and instruction at Officer Professional Development provided by the local OSJA is also encouraged.

B. Exceptions. The RDC may permanently excuse TDC from compliance with local administrative policies when the policies directly conflict with the USATDS mission. The SDC may temporarily excuse TDC from compliance. Excusals, on other than a limited or temporary basis, will be immediately reported to the Chief, USATDS.

2-10. TRAINING RECORDS.

A. OTC and RDC Responsibility. The RDC and OTC will review maintenance of physical fitness, weight standards, and Soldier training in field offices during their periodic visits.

B. SDC Responsibility. The SDC is responsible for maintaining accurate and timely training records on each TDC's compliance with Army weight standards, and the requirement for a semi-annual APFT. The SDC will ensure that each TDC is weighed in conjunction with the semi-annual APFT, or more often, if necessary.

C. APFT. At a minimum, each TDC will take the APFT every six months. TDCs, except for those with a temporary or permanent medical profile that prohibits physical activity, are required to participate in physical fitness/readiness training IAW FM 7-22, Army Physical Readiness Training, and TC 3-22.20, Army Physical Readiness Training. If a TDC receives a medical profile which limits physical activity for a period greater than 30 days, the SDC will immediately forward a copy of the DA Form 3349 to the RDC. SDCs will ensure that TDCs with medical profiles train and/or perform only within the limits of their medical profile.

2-11. MILITARY AWARDS.

A. Policy. Military award recommendations will comply with the provisions of AR 600-8-22, Military Awards, and will be approved on an individual basis in recognition of, and as a reward for, extraordinary, outstanding, and meritorious acts, achievements, and services. The Army awards system does not presuppose that an individual is entitled to a merit, service, or achievement award upon departure from an organization, unless his achievements warrant the award. SDCs and RDCs may recommend awards for their USATDS personnel to Commander, TJAGLCS, or to the local command after coordination with the Chief, USATDS. If an award recommendation is submitted to the Commander, TJAGLCS, the award recommendation must be submitted through the Chief, USATDS.

B. Award Recommendations & Processing

1. For the Army Achievement Medal (AAM), the Army Commendation Medal (ARCOM), and the Meritorious Service Medal (MSM) the approval authority is Commander, TJAGLCS. This authority was granted by TJAG for a period of two years by memorandum, dated 13 June 2013.

2. The Chief, USATDS will recommend approval or disapproval for an award submitted to the Commander, TJAGLCS. The Chief, USATDS normally will not recommend approval of an award for a person who is PCSing to the local SJA, unless the SJA has a practice of routinely awarding personnel who PCS to USATDS. If the SDC does not recommend an end-of-tour award for a person PCSing to the local OSJA, the SDC will prepare a memorandum for the SJA that details the accomplishments of that Soldier.

3. DA Form 638 will be used to recommend awards. The immediate supervisor of the award recipient will prepare and forward the DA Form 638 for approval through the supervisory chain to OTC, USATDS, to the following personnel actions central mailbox - usarmy.pentagon.hqda-otjag.mbx.usalsa-usatds-personnel-actions@mail.mil. OTC, USATDS will further staff the award action to the appropriate approving authority. A template for DA Form 638 is available on the USATDS website.

4. Supervisors should submit all award recommendations in a timely manner. AAM or ARCOM recommendations should be received at OTC, USATDS NLT 45 days before the proposed presentation date. MSM recommendations must arrive at OTC, USATDS NLT 60 days before the proposed presentation date. An untimely submission will not affect the OTC, USATDS recommendation, but may preclude timely approval to meet the proposed presentation date. Supervisors should allow additional processing time for mailing awards (7-10 days).

5. Award recommendations will not be submitted for Soldiers who are flagged IAW 600-8-2 unless there are extraordinary circumstances.

6. RDC/SDC will recommend USATDS personnel for impact awards immediately following the achievement to be recognized.

7. The RDC will recommend approval, downgrade, or disapproval. The RDC will propose a desired presentation date and indicate whether the award recipient complies with the weight standards contained in AR 600-9.

8. In unusual cases, where the award recipient has departed USATDS prior to presentation, OTC, USATDS, will forward the award to that recipient's new location. In cases where the recipient may be leaving the Army prior to the award's presentation, the supervisor should include a forwarding address for the recipient.

9. The proposed citation will be limited to no more than six lines. The description of the recipient's performance must be concise and factual.

10. It is important that all information contained in DA Form 638 be accurate. SDC/RDC should review the ORB and verify that the previous awards (with oak leaf clusters) are correctly listed as well as whether the award is for achievement (impact), PCS, or ETS.

11. To avoid possible embarrassment in the event of the award's disapproval or downgrade, premature disclosure of information to the proposed recipient should be avoided.

C. USATDS Certificate of Appreciation. When the RDC believes some form of recognition is warranted but a military award is not appropriate at the time, e.g., when an enlisted Defense Paralegal completes a 12 month tour in USATDS and returns to OSJA without reassignment, a certificate of appreciation may be requested from OTC, USATDS (See Appendix J).

2-12. DEPLOYMENT. OTC, USATDS will develop a support plan for deployed units in consultation with SJAs, RDCs, and PPTO. The forward deployed RDC will coordinate with OTC, USATDS, SJAs at deploying units, and supporting units in theater to ensure there are appropriate authorized billets in theater to meet defense support requirements. The RDC and Chief, USATDS will evaluate workload requirements in deployed environments and determine the appropriate TDC and paralegal support requirements. RDCs and the Chief, USATDS will determine the number of TDCs that will deploy. RDCs, Chief, USATDS, and PPTO will identify who will deploy as well as make a determination about the duration and location of the deployment.

A. Training. To maintain readiness, TDCs designated for possible deployment should, to the extent possible, take advantage of local training opportunities to prepare for deployment. TDCs designated to deploy will comply with all pre-deployment requirements for training, fitness, and readiness. Deploying personnel will process through the U. S. Army Continental United States Replacement Center (CRC) at Fort Benning, Georgia.

B. Deployment. Deployed TDCs, unless otherwise directed, will be rated by the SDC in theater and senior rated by the RDC in theater. The RDC into whose region the TDC is deployed (receiving RDC) will provide technical and ethical advice to the TDC, assign cases to the TDC, and manage the workload of the TDC while deployed. Prior to deployment, the RDC of the deploying TDC will coordinate through XO and Operations Officer, OTC, USATDS to the "receiving" RDC and provide the name of deploying counsel, the time and date of arrival, probable location, and the projected duration of the deployment.

C. Priority III Duties. When a supported command is preparing for, or engaged in, deployment operations, the deploying TDC is authorized to perform Priority III duties to the extent that these duties do not interfere with the performance of Priority I and II duties.

2-13. REQUESTS FOR RESIGNATION OR RETIREMENT. TJAG policy concerning requests for unqualified resignation or retirement is set forth in JAGC Publication 1-1, Personnel Policies, found at the PPTO Portal in JAGCnet. Such requests by TDC will be forwarded to OTJAG IAW the applicable regulations. RDCs will initially inform OTC, USATDS of any resignations or retirements and continue to provide updates on approved separations and extensions. The RDC will interview TDCs who are leaving active service to ascertain their interest in participating in the Reserve Component and the reason for their departure from active service. This information will be forwarded to the OTC, USATDS to the following personnel actions central mailbox – usarmy.pentagon.hqda-otjag.mbx.usalsa-usatds-personnel-actions@mail.mil.

CHAPTER 3. FIELD OFFICE MANAGEMENT

3-1. DUTIES OF THE SENIOR DEFENSE COUNSEL (SDC).

A. General. The SDC, or in his absence the acting SDC, will supervise all USATDS activities and personnel in the field office, to include defense counsel on TDY and RC defense counsel.

B. Specific Duties. In addition to other duties set forth in this SOP, the SDC will:

1. Monitor the professional development of TDCs and Defense Paralegals;
2. Detail USATDS counsel IAW paragraphs 1-4B4, 3-3, and 3-4 of this SOP;
3. Advise USATDS counsel in their preparation for trials, board actions, and other proceedings;
4. Conduct training with regard to trial tactics, ethics, procedures, counseling, and assist the RDC in regional workshops;
5. Perform duties as defense counsel;
6. Act as defense liaison with the SJA on matters of mutual interest;
7. Ensure the orderly provision of defense services in his jurisdiction, to include designation of an acting SDC in his absence;
8. Act as the initial contact to receive complaints concerning the defense function and take appropriate action where necessary;
9. Monitor the adequacy of administrative and logistical support and report deficiencies to the RDC;
10. Ensure that TDCs comply with personal appearance standards, physical fitness, and Soldier and training requirements;
11. Ensure that pretrial confinees are counseled by a TDC prior to or as soon after incarceration as possible, but in no event, later than 72 hours;
12. Coordinate with the SJA concerning mobilization and deployment planning and resource allocation;
13. Maintain a current copy of USATDS SOP and all OTC, USATDS, policies and administrative mailings in the field office library;
14. Provide career guidance to subordinate personnel;

15. Supervise and train Defense Paralegals; and

16. Perform other duties in furtherance of the USATDS mission.

17. Initiate discussions with supporting OSJA over the terms of a memorandum of Mutual Support Agreement (MSA) and, where beneficial to the USATDS mission, execute the MSA. See Appendix I for sample MSA.

3-2. DETAIL OF TRIAL DEFENSE COUNSEL.

A. Delegation of Authority. The Chief, USATDS, delegates the authority for the detail of TDCs in courts-martial, Article 32 investigations, and in other judicial and adverse administrative proceedings requiring such detail to all RDCs, SDCs, except for detailing counsel to represent or assist military personnel from sister services at courts-martial, nonjudicial or administrative separation procedures (See paragraph 3-13D of this SOP).

B. Detailing of TDC. Detail of defense counsel must be done in writing using DCAP Form 6 and IAW TDS Policy Memorandum 2012-01: Detailing of Defense Counsel and Formation of Attorney-Client Relationships Within the Trial Defense Service, dated 9 November 2012, unless amended or rescinded. TDCs who are ETSing, PCSing or transferring to non-USATDS duties should not be detailed to represent new courts-martial clients (pre- or post-trial) within 90 days of the ETS/PCS or transfer or administrative board clients within 45 days of the PCS or transfer. In those cases, RDCs/SDCs should exercise caution and consider factors such as complexity of the case, likelihood of a negotiated pre-trial agreement, relative abilities of Trial Counsel and Defense Counsel to bring the case to trial, state of the docket, among many other factors.

C. Assistant TDCs. One or more assistant TDC may be detailed to an individual case at the discretion of the detailing authority when warranted by the circumstances. Factors to be considered include, but are not limited to, the seriousness of the charges, the complexity of the case, the experience of the detailed TDC, the experience of the trial counsel, the availability and workload of other TDCs, and the need to train other TDCs. The detailing authority will detail assistant TDC in any case involving the death of a human being or if the maximum sentence is life imprisonment or death.

3-3. ESTABLISHMENT OF ATTORNEY-CLIENT RELATIONSHIP. TDCs will follow the provisions contained in TDS Policy Memorandum 2012-01: Detailing of Defense Counsel and Formation of Attorney-Client Relationships Within the Trial Defense Service, dated 9 November 2012, unless amended or rescinded.

3-4. MULTIPLE ACCUSED SITUATIONS. TDCs should not represent more than one client in conflict situations.

A. SDC Responsibilities. The SDC must ensure that all suspects or accused are promptly provided required counsel. Before forming an attorney-client relationship with any suspect or accused, the SDC should adhere to the following guidance:

1. **Make a Preliminary Assessment.** The number of suspects initially involved may be greater than the number whose cases are eventually referred to trial. USATDS counsel will not be provided on a TDY basis in connection with administrative or nonjudicial actions at USATDS expense. For these reasons, the SDC must make a preliminary assessment of the situation to determine (a) the total number of clients potentially involved, and (b) the likelihood that individual cases will be referred to court-martial, as opposed to administrative or nonjudicial action. During the preliminary assessment process, it may be appropriate to advise the suspects or accused on the USATDS organization and their rights to counsel. The SDC should consult the following sources to obtain information in order to make the preliminary assessment:

- a. The SJA and staff;
- b. Investigative police reports and witness statements; and
- c. Other USATDS counsel who are representing co-accused (provided no privileged information is requested or received).

2. **No Outside Counsel Requirements.** If the preliminary assessment indicates that the USATDS field office can provide representation to each suspect or accused, the SDC will then assign counsel to each suspect or accused.

3. **Outside Counsel Requirements.** If the preliminary assessment indicates a likelihood that the USATDS field office cannot provide representation to each suspect or accused, the SDC will immediately advise the RDC of the results of the preliminary assessment. If the RDC is unavailable, the SDC will contact the Acting RDC. If both the RDC and Acting RDC are unavailable, the SDC will contact the XO, USATDS. The SDC should explain to those suspects or accused needing detailed counsel from other installations the reasons for delay, actions being taken to secure counsel, and the time needed for a proper defense. The SDC should advise the suspects or accused to remain silent until the detailed counsel contacts them. The SDC will not form an attorney-client relationship with these suspects or accused during this advice.

B. **RDC Responsibilities.** Upon receipt of a multiple accused case report from a SDC, the RDC will assess the need for furnishing counsel on a TDY basis. The RDC will monitor TDY travel for counsel who are required to provide defense services at another field office within the region. The RDC will accomplish any necessary coordination with the XO, USATDS, and promptly advise the SDC of the identity of TDY counsel.

C. **Responsibilities of OTC, USATDS.** In conjunction with the concerned RDCs, the Legal Administrator and XO, USATDS will monitor TDY travel for counsel who are required to provide defense services at another field office in another region. This process will not be delayed because action is required after normal duty hours, on holidays, or on weekends. Direct communication, at all times, among the SDC, RDC, USATDS Legal Administrator and XO, and designated TDY counsel, is encouraged.

D. Advice. RDCs and members of OTC, USATDS are available at all times to give legal and tactical advice concerning representation of a client to TDCs and SDCs. TDCs and SDCs must avoid discussing cases with other TDCs and SDCs who may have actual or potential conflicts of interest. This policy is particularly crucial early in a case when it may not be clear whether multiple-accused are involved.

E. Role of SDC as counsel in multiple accused cases. AR 27-26, Rule 1.7 provides that a lawyer shall not represent a client where the representation may be materially limited by the lawyer's own interests. If a SDC is representing a co-accused, and one of his/her TDCs is also representing a co-accused in the same case, that TDC's interest in having a favorable rating may constitute a potential conflict of interest. Accordingly, where the SDC is considering assigning himself as counsel to an accused in a multiple accused case, one of the following alternatives must be followed:

1. Disclosure and consent. AR 27-26, Rule 1.7 indicates that the lawyer may represent a client where the lawyer's interests are involved if (1) he reasonably believes the representation will not be adversely affected, and (2) the client consents after consultation. TDCs will review the specifics of the case and determine if they reasonably believe that their own interests will not adversely affect representation of the client. Where TDCs make this determination, they will advise the client of the situation and obtain the client's written consent. In such cases, the RDC will provide necessary guidance and assistance to the TDC, as circumstances require.

2. Outside counsel. Where TDCs cannot make the determination of no adverse impact or where the client does not consent, the SDC will notify the RDC, who will assign counsel from outside the field office to assume the client representation that would otherwise have been undertaken by the SDC. Procedures outlined in paragraph 3-4A(3), B, and C of this SOP will be followed.

3-5. CONFLICT OF INTEREST SITUATIONS. If a TDC feels that he/she has inadvertently put him/herself in a conflict of interest situation, the TDC must report it to the SDC. If the SDC is representing a client with conflicting interests, the TDC will not discuss the underlying facts and circumstances leading to the conflict. Upon determining that there is a conflict, or a strong potential for a conflict, the SDC will solve the conflict by assigning different counsel from within the field office. The SDC will inform the RDC as soon as possible of the situation and the resolution. If the SDC cannot resolve the conflict from within the field office, the RDC will resolve the conflict by assigning counsel from within the region. If the conflict cannot be resolved in the region, the RDC will ask the XO, USATDS to resolve the conflict from outside the region.

3-6. MAINTAINING WORK PRODUCT CONFIDENTIALITY / PERSONALLY IDENTIFIABLE INFORMATION

A. Maintaining Confidentiality. USATDS personnel have the responsibility to maintain both the security and confidentiality of client information.

1. Privileged communication. USATDS personnel must comply with the provisions of AR 27-26, Rules of Professional Conduct for Lawyers, in regards to safeguarding confidentiality of communication and information between the client and the TDC. SDCs will ensure that Defense Paralegals are properly trained on the ethical/legal obligations of maintaining client confidentiality.

2. Conflicts of interest. USATDS may require that TDC working in the same office represent clients with conflicting interests. The SDC will establish policies and procedures to ensure that Defense Paralegals, investigators, and other support personnel understand that work performed for an individual TDC is for that counsel alone and they must avoid interaction that will violate client confidentiality requirements.

3. Personally Identifiable Information (PII). All members of the DOD, including USATDS personnel, have a responsibility to safeguard PII and prevent identity theft.

a. PII is any information about an individual which can be used to distinguish or trace a person's identity such as name, social security number, age, date and place of birth, military rank, marital status, race, mother's maiden name, or biometric records, including any other personal information which is linked or linkable to a specified individual. PII can be contained in hard copy (paper records) or digital/electronic format, stored on computers, laptops, and electronic devices such as Blackberries or cellular phones, and found within databases. This includes, but is not limited to, criminal or investigative records obtained as part of discovery, education records, financial transactions, medical files, personnel records or history.

b. The SDC/RDC will ensure that field offices have best practice systems in place for the secure handling of PII, such as – locks on doors, cabinets, and/or desk drawers where documents containing PII are safeguarded; encryption of sensitive information in emails or in digital storage devices/databases; shredding of documents containing PII when no longer needed; have controls regarding remote access to computer databases; provide time-out function for information systems or computers; use of privacy screen on PCs or laptops; clear desk surface of documents containing PII that are not being used; and/or, eliminate any unnecessary collection of social security numbers. This list of general best practices is not exhaustive. Advancements in technology require USATDS personnel to be vigilant to ensure that PII is protected and not lost while managing physical and digital/electronic documents.

B. Management of Client Files. Client files belong to the individual TDC while that counsel is assigned to the field or branch office. Client files, privileged material, material containing PII, individual work product, including those in digital format, will be safeguarded and protected in a manner similar to that prescribed for Army Legal Assistance Offices (see Chapter 5, AR 27-3) while those materials are maintained in the field or branch office, or while in the possession of USATDS personnel. The TDC will remove all personal case files when re-assigned from the field or branch office. TDCs who have completed their assignments in USATDS will retain their case files, including but not limited to .pst files, electronic mail, or other digital documents relevant to the representation of the client IAW any state bar

requirements, or for the duration of any possible appellate processing or administrative relief actions, whichever is longer.

C. Client Access to Files. Clients are entitled to have access to materials contained in their case files, including copies of .pst files containing electronic mail relevant to the representation of the client. If a TDC believes that there is justification for not releasing information to a client or former client when so requested, the TDC should contact the SDC for guidance.

D. Use of Electronic Mail (Email). TDCs should always advise clients of the need to communicate with counsel in a manner that protects the confidentiality of information, especially that transmitted via email. Clients should understand that by using a DoD information system, they are consenting to monitoring of their email. Although the DoD information systems user agreement acknowledges that such consent does not affect the protected nature of attorney-client communications, it is best to avoid transmitting client sensitive information on such systems. This should be addressed when completing the DCAP Form 7 with the client.

3-7. MARRIED JUDGE ADVOCATES. The assignment of married judge advocates to the same installation may create the potential for conflicts of interest. The following situations are examples:

A. Spouse Trial Counsel (TC) on the Same Installation. The spouse of a TDC is assigned to criminal law duties on the same installation (e.g., TDC in Fort Bragg Field Office, spouse assigned as TC in OSJA, 82d ABN Division). The SDC will immediately report to the RDC the assignment of a TDC's spouse to criminal law duties. The RDC will inform OTC, USATDS. (In this example, the SDC should not allow the TDC to defend Soldiers assigned to the 82d ABN Division. This may require moving the TDC to another field office or out of USATDS.)

B. Spouse TDC on the Same Installation. The spouse of a TDC is assigned as another TDC in a different branch office on the same installation (e.g., both spouses assigned to the Fort Hood Field Office but one spouse works at the 1st Cav Branch Office and the other spouse works at the III Corps Branch Office). The SDC will ensure that the spouses are not allowed to defend Soldiers with conflicting interests.

C. Spouse's Primary Duties Are Not Criminal Law. The spouse of a TDC is assigned to non-criminal law duties in same or different GCMCA. The SDC and TDC must ensure that no conflicts arise out of extra duties assigned to the non-USATDS spouse (e.g., Article 32 Investigation Officer (IO), legal advisor to Article 32 IO, legal advisor to AR 15-6 board, advisor to discharge boards, or part-time military magistrate).

3-8. REQUESTS FOR INDIVIDUAL MILITARY COUNSEL (IMC).

A. The SDC is responsible for processing all requests for IMC initiated by his field office. The procedures in RCM 506b(2) and paragraphs 5-7 and 6-10 of AR 27-10 will be

followed. The RDC is responsible for monitoring such requests, and providing information and recommendations to the Chief, USATDS.

B. Policy Considerations. USATDS counsel will not solicit or encourage requests for their service as IMC. Prior to a determination of availability, USATDS counsel will not form an attorney-client relationship, either directly with a client or indirectly through his detailed counsel. This policy does not affect any duty or obligation a counsel may have due to an existing attorney-client relationship.

C. Advice to Client. When advising a client concerning his IMC request, detailed USATDS counsel should explain that a client is normally entitled to only one military lawyer, and that detailed counsel will ordinarily be excused if the IMC request is approved. The client may request that detailed counsel remain as assistant TDC, but the request need not be granted. Counsel should memorialize the client's choice in writing, preferably signed by the client.

D. Responding to Requests for Information. USATDS counsel will not give prospective clients informal opinions, conclusions, or estimates as to their current or future availability to serve as an IMC. However, in responding to official requests for information from the RDC or OTC, USATDS counsel will provide factual data concerning their current workload.

E. Requests for USATDS Counsel in Same Field Office. If a client requests another USATDS counsel in the same field office as the counsel initially assigned or detailed to represent the client, the SDC will make a preliminary assessment of availability of the requested counsel. The SDC will also immediately notify the RDC and make recommendations concerning the following:

1. Whether to grant the request based on the preliminary assessment of availability;
2. Whether to detail the requested counsel or process an IMC (based on the likelihood of the client making another IMC request if the requested counsel is detailed);
3. Whether to excuse the detailed counsel if the client desires that the detailed counsel remain on the case. This determination will be made based on the complexity of the case, the experience level of the detailed counsel, the experience level of the requested counsel, the case load of all counsel in the field office, and any other factors deemed relevant by the RDC.

F. Requests for non-USATDS Counsel. If the client requests a non-USATDS counsel as IMC, the SDC will refer the request to the convening authority (ATTN: SJA) for further action IAW paragraphs 5-7 and 6-10, AR 27-10.

G. IMC Requests for Departing TDC. TDC PCSing or transferring to non-USATDS duties within 90 days should not be detailed to represent new courts-martial (pre- or post-trial). Unless the TDC has entered an appearance before a court-martial, TDC with an existing attorney-client relationship is normally excused from further representation upon transfer from USATDS. The responsible detailing authority will detail a new TDC to represent the client. If a

client facing a court-martial desires the original TDC to continue representing him/her, the client must submit an IMC request IAW AR 27-10, paragraph 5-7. The new TDC should advise the client of these matters and assist the client in preparing any IMC request.

H. Forwarding IMC Requests to the Chief, USATDS. Except when informal communications are specifically authorized, IMC requests to the Chief, USATDS, will be in writing and sent by the RDC to OTC, USATDS, to the following general actions mailbox - usarmy.pentagon.hqda-otjag.mbx.usalsa-usatds-general-actions@mail.mil. At a minimum, the following information will be furnished:

1. Name, grade, and station of the requested counsel;
2. Name, grade, and station of the client and his detailed TDC;
3. UCMJ Article(s) allegedly violated and a summary of the alleged offense(s) and a discussion of the known facts of the case;
4. Date charges preferred and status of case (e.g., pending investigation IAW Article 32, UCMJ, referred for trial by GCM or SPCM, etc);
5. Date and nature of pretrial restraint, if any;
6. Anticipated date and length of trial or hearing (if known);
7. Existence of an attorney-client-relationship between requested counsel and the client, in this or any prior case; and
8. Special circumstances or other factors relevant to an availability determination.

Attach to the IMC request a copy of the DCAP Form 7 addressing the scope of the representation.

I. Duty To Client Pending IMC Determination. The TDC detailed to represent a client will continue to do whatever is necessary to protect the client's rights while an IMC request is pending. The detailed TDC must keep the client informed of changes in the case. The detailed TDC will brief the IMC about the case once the IMC is granted.

3-9. POST-TRIAL & APPELLATE ADVICE. In addition with the provisions of paragraph 12-4, AR 27-10, the following policies and procedures are prescribed:

A. Timing. The TDC will explain to the client the post-trial (RCM 1105 and 1106) and appellate rights that apply to the case and use the current version of DCAP Form 3.3 to memorialize the advice and document the client's elections. A discussion of post-trial and appellate rights well before trial is recommended, however, in all cases, the client will be advised of his post-trial and appellate rights before he receives the advice from the military judge pursuant to RCM 1010.

B. If the TDC who was originally detailed to represent the client at trial has been excused from further participation in the case pursuant to RCM 505(d)(2)(B), a fully qualified counsel will be detailed to provide the required post-trial and appellate advice. The excused counsel will consult with the client and formally terminate the attorney-client relationship. The excused attorney will transfer the case file to the newly detailed counsel and brief the newly detailed counsel on the representation. The newly detailed counsel will consult with the client and form an attorney-client relationship.

C. Waiver or Withdrawal of Post-Trial or Appellate Rights. The TDC should rarely advise a client to waive post-trial or appellate rights. If the TDC believes that it may be in the best interest of his client to waive post-trial or appellate rights, he/she will first discuss the matter with the SDC (unless the SDC has a conflict) and the RDC. The RDC will immediately notify OTC, USATDS of any client who wishes to waive post-trial or appellate rights. A waiver of post-trial or appellate rights will be reduced to writing and signed by the client. See Appendices 19 and 20 of the Manual for Courts-Martial (MCM) for forms to waive appellate review.

D. Means of Communication. The TDC detailed to represent the client for post-trial submissions (this may be a different TDC from the TDC who represented the client at trial) will consult with the client concerning matters to be submitted to the convening authority. The TDC will recommend what matters to submit but, ultimately, the client decides what matters to be submitted IAW United States v. Hood, 47 M.J. 95 (1998). Whenever possible, the TDC will communicate with the client in person. If the client has been transferred to another location and other means of communication (e.g., telephone, facsimile, teleconference) are inadequate, the TDC may request TDY travel to meet with the client.

E. Maintenance of Records. The TDC shall maintain copies of the DCAP Form 3.3 and any other document where the client elected to exercise or waive post-trial or appellate rights with other files pertaining to the client. The TDC should note on all copies the destination, date, and means of transmittal of the forms. The TDC will maintain the client's case file, including any email correspondence saved to a .pst file, until the later of (1) final action or (2) the date required by the TDC's state bar. The TDC will secure the case file in a manner consistent with the duty to maintain client confidentiality.

3-10. OFFICE STAFFING / DUTY ROSTERS.

A. Policy. TDCs will, within their capability, provide defense services at all times, including non-duty periods. Field and branch offices will maintain the same regular duty hours as the local OSJA. Field and branch offices will remain open during regular duty hours. The SDC will use answering machines and voice mail whenever counsel or clerical personnel are not available to answer telephones. Oral greetings on such machines will not make statements which could be taken as offering legal advice to the general public. In addition to administrative announcements, e.g., office hours, advice to potential clients should be as follows: "If you have been read your rights, you may wish to consider invoking them until you have an opportunity for a military defense counsel to explain your rights more fully and provide you with legal advice."

B. Duty Rosters. TDCs will not perform duty as installation Staff Duty Officer or on-call officer for the OSJA. The SDC will, in conjunction with the RDC, establish a written policy to provide defense services during non-duty hours commensurate with the number of TDCs available in the field office. A copy of this policy will be provided to the OSJA.

3-11. REQUESTS FOR INFORMATION FROM OTJAG. Requests for information, opinions, or guidance from divisions and offices within OTJAG shall be forwarded through the SDC, RDC and Chief, USATDS. This does not preclude direct communication with PPTO regarding individual career matters, nor does it preclude direct communication with appellate counsel.

3-12. MUTUAL SUPPORT RESPONSIBILITIES. As the mission requirements allow, the SDC may allow TDCs to perform Priority III duties for the supported SJA that are not inconsistent with the USATDS mission.

3-13. DEFENSE SERVICES AT INSTALLATIONS WITHOUT USATDS COUNSEL.

A. USATDS Responsibilities. The RDC, after consulting with the SJA or CJA at the installation without TDC, will devise a plan to provide defense services to Soldiers at that installation. USATDS will not provide TDC on a TDY basis at USATDS expense in matters that are non-judicial or administrative in nature. The plan may include the command transporting the Soldiers to a field or branch office at another installation. The plan may also include counseling by video teleconference or telephone and facsimile funded by the command.

B. Assistance from Staff Judge Advocates. If the defense workload at an installation temporarily exceeds the capability of the USATDS office to perform its mission, the SJA may, within the SJA's capability, provide non-USATDS counsel to assist in providing defense services. Non-USATDS counsel will not be detailed to a USATDS field office by an SJA without the approval of the Chief, USATDS, and when detailed will perform defense duties under the supervision of the SDC. Normally such duties will not involve representation at courts-martial or Art. 32 investigations. These duties may include providing USATDS information memoranda and video tape briefings pertaining to Article 15, UCMJ, administrative elimination actions, and any other administrative adverse actions. This non-USATDS liaison will coordinate with the RDC and the SDC at the USATDS field office supporting the respective installation. As situations arise requiring the presence of USATDS counsel, the non-USATDS liaison will promptly notify the RDC or SDC, as appropriate. Non-USATDS lawyers providing any defense services will be trained and supervised by USATDS counsel. The non-USATDS counsel may not be detailed to a matter in which a USATDS counsel already has an ongoing attorney-client relationship.

C. Post or Activity Judge Advocate Responsibilities. When no TDC is assigned to a particular duty station or installation, the post or activity judge advocate should designate a lawyer on his staff (non-USATDS liaison) to perform defense-related duties. These duties should include providing USATDS information memoranda and video tape briefings pertaining to Article 15, UCMJ, administrative elimination actions, and adverse actions. This non-USATDS liaison will coordinate with the RDC and the SDC at the USATDS field office

supporting the post without TDC. As situations arise requiring the presence of TDC, the non-USATDS liaison will promptly notify the RDC or SDC, as appropriate. Non-USATDS counsel providing any defense services will be trained and supervised by a USATDS counsel.

D. Assistance By and To Other Services. Occasionally, USATDS counsel provides support to other services and JAs from other services provide defense counsel services to Soldiers. When it appears that this situation will occur more than occasionally in a particular geographic location, the SDC/RDC concerned should enter into a mutual support agreement (MSA) with their JA counterparts from these other services to provide mutual support (see also RCM 503(c)(3)). The Chief, USATDS has reserved authority to detail USATDS counsel to military personnel from sister services (see also paragraph 3-2A of this SOP) and any proposed MSA must receive approval from the Chief, USATDS prior to implementation.

3-14. SUPPORT FOR TDY COUNSEL. Upon notification that TDC will be arriving at an installation in support of the USATDS mission, the SDC will immediately contact the counsel and make appropriate support arrangements for the visit.

3-15. STAFF RELATIONS.

A. SJA Relations. Requests or actions requiring the personal attention of the GCMCA or Chief of Staff should be routed through or coordinated with the SJA. Such matters should never be handled informally. TDC may, however, deal directly with other staff elements, unit legal sections, SPCM convening authorities, and subordinate commanders on routine judicial and administrative matters. SDCs will coordinate with SJAs in developing mutually acceptable local policies in this area.

B. Command Visits and Interaction with Local Command. All TDCs are expected to visit commanders and staff elements routinely, attend officer calls, on and off duty social events and social functions when invited, volunteer their services, and otherwise take an active role in the military community.

3-16. PETITIONS FOR EXTRAORDINARY RELIEF.

A. Appointment of Defense Appellate Division (DAD) Counsel. To ensure experienced representation before the appellate court, each petition for extraordinary relief submitted by USATDS counsel to ACCA or CAAF should request the appointment of appellate defense counsel from DAD to represent the petitioner. The following provision should be included as a final paragraph in all such petitions:

"Petitioner further requests that pursuant to Article 70, UCMJ, The Judge Advocate General appoint appellate defense counsel to represent (her) (him) in any proceedings concerning this petition before this Honorable Court (CAAF or ACCA)"

If the USATDS counsel is not a member of CAAF or ACCA, the counsel should separately move to appear *pro hac vice* or apply for membership with the court with which the petition has been filed.

B. Procedures. TDCs will coordinate any petitions through their supervisory chain to DCAP (see also paragraphs 5-2 and 5-5C of this SOP). TDCs should also coordinate the submission of motions, briefs, and other matters relating to the petition with appellate defense counsel. TDCs will forward a copy of each petition for extraordinary relief and any supporting briefs or motions to the Chief, DCAP and Chief, USATDS, at the time of their submission to the appellate court. For docketing, CAAF and ACCA will accept electronically submitted petitions. TDCs will assure compliance with appropriate rules of court (available on court website or through JAGCnet: www.armfor.uscourts.gov (CAAF) or www.jagcnet.army.mil/acca (ACCA)).

3-17. APPELLATE REMEDIES ORDERED. An appellate court may order a variety of remedies, e.g., a DuBay hearing, or a rehearing on findings or on sentence. In such cases, TDCs will be appointed and will work with appellate defense counsel.

CHAPTER 4. REPORTS

4-1. MONTHLY MANAGEMENT REPORT. The web-based USATDS management reporting system provides data from each field office concerning workload. RDCs are responsible for the accuracy of the report and the timely submission. The reports are designed to be management tools for the Chief, USATDS, RDCs, and SDCs. Appendix H establishes the procedures for submission of the monthly management report.

4-2. MONTHLY REPORT ON PROJECTED EXPENDITURES / PERSONNEL GAINS & LOSSES. The first duty day of every month, each RDC will submit, in Microsoft Excel format, a monthly budget report showing the Region's projected or estimated expenses for that month, to include projected personnel gains and losses for that month. The budget portion of the report will show the purpose of travel, location of travel, a justification for the expense, estimated cost, and names of travelers. The personnel portion of the report will be divided into two lists, one for personnel gains and the other for personnel losses. Each list will show the name, field office, and projected date of the gain or loss. The report will be submitted to OTC, USATDS to the following general actions mailbox – usarmy.pentagon.hqda-otjag.mbx.usalsa-usatds-general-actions@mail.mil

4-3. QUARTERLY REPORT.

A. General. SDCs will submit to the RDC a quarterly activity report, in memorandum format, within 5 duty days of the end of each quarter. The RDC will complete the regional quarterly report within 10 duty days of the end of each quarter and will attach all SDC reports and submit the consolidated report to OTC, USATDS to the following general actions mailbox – usarmy.pentagon.hqda-otjag.mbx.usalsa-usatds-general-actions@mail.mil.

B. Contents. This report will be a narrative discussion of significant activities within their region or field office. Topics may include management issues, personnel moves and requirements, litigation activity (e.g., cases, boards), site visits, training, logistical support, and SJA relationships. The Quarterly Training Plans (QTPs) submitted by each SDC will be attached to the report.

4-4. SIGNIFICANT RESULT REPORT. As soon as practicable, SDCs will immediately report to the RDC any significant result in a case which marks an outstanding performance by the counsel, such as an acquittal, non-capital referral, pre-trial dismissal, disposition at an Article 15, or retention or favorable discharge at an administrative separation board. RDCs will forward by email to Chief and XO, USATDS, any results which in their opinion merit specific congratulations from Chief, USATDS; the forwarding email will include the email address of the counsel to be congratulated.

4-5. REPORT OF RESULT OF TRIAL. SDCs will ensure compliance with TDS Policy Memorandum 2013-03 (unless amended or rescinded), dated 24 June 2013, which requires forwarding of Report of Result of Trial to OTC, USATDS, within two business days of receipt from the Trial Counsel. The report of result of trial will be forwarded to the general actions mailbox – usarmy.pentagon.hqda-otjag.mbx.usalsa-usatds-general-actions@mail.mil.

CHAPTER 5. DEFENSE COUNSEL ASSISTANCE PROGRAM & TRAINING

5-1. PURPOSE. This chapter governs the operations of the Defense Counsel Assistance Program (DCAP). It sets forth information, policies, and procedures applicable to the support of defense counsel throughout the Army.

5-2. MISSION. DCAP provides training, resources, and assistance for Army defense counsel worldwide. DCAP assists the Chief, USATDS on the development of USATDS policy and strategic initiatives. DCAP serves as the liaison between defense counsel and DAD concerning Extraordinary Writs as discussed in section 5-5, below.

5-3. ORGANIZATION. DCAP functions as part of OTC, USATDS and is an activity of USALSA, a field operating agency of TJAG. The office is composed of a chief, a deputy-chief, highly qualified experts, and training officers.

5-4. GENERAL RESPONSIBILITIES.

A. The Chief, USATDS is responsible for developing programs and policies to enhance the professional qualifications of defense counsel. DCAP is an internally developed program that aids in this process.

B. DCAP assists the RDCs with their regional training conferences (normally two per calendar year). RDCs, with the assistance of DCAP, are responsible for the content of these training conferences. DCAP also plans a Leadership Conference once a year that includes at a minimum all RDCs and SDCs from CONUS, all RDCs and SDCs from Korea and Germany, and the RDC from CENTCOM. In addition, DCAP will facilitate defense counsel attending non-Department of Defense training courses.

C. RDCs and SDCs, along with the support of their respective SJA, commands, and the Army Judiciary, should make every effort for defense counsel to attend USATDS training opportunities.

D. DCAP provides training through resources like DCAP Sends and Alerts; and the USATDS Document Library on JAGCnet, a library containing on-line motions, information papers, expert pages, and new developments in the areas of law that are pertinent to the practice of a defense counsel.

5-5. TECHNICAL ASSISTANCE.

A. Defense counsel may request technical assistance or guidance from DCAP. These requests may be made by telephone or email to any DCAP member, or by email to the DCAP website at usarmy.pentagon.hqda-otjag.mbx.usalsa-dcap@mail.mil.

B. DCAP assists defense counsel with legal issues that may arise in their cases. This assistance can be given by either researching case law, answering specific questions, or giving examples of motions. Chief, USATDS is the approval authority for a defense counsel assigned

to DCAP to be detailed as a defense counsel for any matter.

C. **Writs/Article 62 Appeals.** Defense counsel will immediately notify both DCAP and DAD if they believe that an issue worthy of a Petition for Extraordinary Relief should be filed or if they anticipate that the Government will file an Article 62 Appeal. DCAP will be notified via email at - usarmy.pentagon.hqda-otjag.mbx.usalsa-dcap@mail.mil with a follow-up phone call to a DCAP representative. DAD will be notified with a phone call to the writ-coordinator, or any member of DAD who will direct counsel to the writ coordinator. DCAP and the DAD writ-coordinator will discuss the issue and contact the defense counsel with further guidance or instruction. DCAP will work with defense counsel to ensure DAD is provided with all required information.

5-6. POLICY & STRATEGIC INITIATIVES. Chief, USATDS, with the assistance of the Chief, DCAP ensures that USATDS policies stay current and that all areas of training are conducted efficiently. DCAP helps the Chief, USATDS in proposing updates to legislation, Executive Orders, Army Regulations, Army Pamphlets, and other policy and procedures affecting USATDS operations including changes to the UCMJ, the MCM, AR 27-10, and the USATDS SOP.

5-7. GOALS.

A. **Legal Training.** The principal goal is to enhance the professional qualifications of all assigned personnel by providing training on substantive criminal law and trial advocacy. USATDS counsel has a special duty to the Army and to the Soldier clients to provide professional services of the highest quality. USATDS is committed to providing defense services, through a separate organization, in a competent, ethical, and efficient manner. To meet this responsibility, USATDS must teach not only substantive criminal law but also effective leadership and management techniques.

B. **Military Goals.** USATDS military personnel must always remember that they are Soldiers and must continue to develop their Soldier skills during their USATDS tour. TDCs are expected to participate in any Army programs to develop their skills as Soldiers such as ILE/AOWC or other military classes. USATDS enlisted personnel will be expected to participate in Army recognition programs, such as Soldier of the Quarter and other potentially career enhancing credentials, such as combat lifesaver courses or other qualifications that will support "Excellence" on an NCOER. They are also encouraged to take advantage of formal, as well as, informal education opportunities, whether military (e.g., Warrior Leaders Course) or civilian (e.g., University of Maryland classes) and will be given maximum possible support in the furtherance of these activities. Supervisors must assure these military goals are made a priority.

5-8. CENTRALIZED TRAINING. The centralized training program consists of several key elements:

A. **Centralized USATDS Training.** Centralized training involves training offered by DCAP and normally includes two or more RDC regions. The Chief, DCAP will coordinate all

centralized training with the RDCs. Centralized training includes, but is not limited to: DC 101, the Sexual Assault Leadership Training (SALT), the Sexual Assault Trial Advocacy Course, the Joint Advocacy Seminar, DC 201, and other DCAP offered courses. Centralized USATDS training will be posted on the DCAP Training calendar. Attendance at DC 101 is mandatory for all new defense counsel.

B. Decentralized Training. RDCs implement the training programs within their region. The program gives them discretion to address special circumstances in each region and encourages different training approaches within a broad framework as deemed appropriate and necessary by the RDC. Internally developed USATDS programs will generally require the active participation of all counsel in small, group-training sessions. Workshops will focus on the improvement of basic advocacy skills, ethics training, and management techniques.

C. TJAGLCS Courses. Each RDC will submit order of merit lists (OMLs) for attendance by their counsel at specified TJAGLCS courses, such as the Intermediate Trial Advocacy Course (ITAC), to the Chief, DCAP. The Chief, DCAP will review the OMLs and approve all defense slots at TJAGLCS courses, in coordination with the Chief, USATDS, and TJAGLCS.

D. Civilian Criminal Law Courses. On occasion, non-DOD civilian criminal law courses may exist that would enhance defense counsel training. Any request to attend non-DOD civilian courses must comply with paragraph 5-11 of this SOP.

E. Planned Approach to Training. RDCs will continually monitor the training status of each subordinate attorney by using the Trial Advocates Tracking System (TATS). RDCs must ensure that each TDC fully participates in a systematic program of regular and mandatory training.

F. On-the-job training (OJT). RDCs and SDCs are responsible for effective OJT, including active assistance to newly assigned TDC. Constructive criticism and guidance is critical for all subordinate counsel.

G. Publication of Training Memorandum and Review of Articles for Publication. In addition to the requirements in paragraph 5-15 of this SOP, TDCs are encouraged to submit practice tips, case notes, administrative notes, and lessons learned from courts-martial to the Chief, DCAP. DCAP will in turn include these submissions, as appropriate, in either DCAP Sends or Alerts. TDCs are also encouraged to submit articles for publication in The Army Lawyer or the Military Law Review. DCAP will review articles submitted by TDC for publication.

H. Motions & Experts Information. TDCs are encouraged to submit motions or information regarding favorable experts, to include the expert's Curriculum Vitae, fee cost, and prior testimony, to DCAP for inclusion in the USATDS Document Library on JAGCnet. See paragraph 5-15 of this SOP for further guidance and requirements.

5-9. TRAINING RESPONSIBILITIES.

A. The Chief, USATDS:

1. Exercises responsibility for policy and management of the USATDS training program;
2. Exercises approval authority for all requests submitted by TDCs to attend TJAGLCS courses, which can be delegated to the Chief, DCAP; and
3. Reviews requests submitted by TDCs to attend civilian CLE courses at government expense and coordinates with the XO, USALSA on attendance and funding approval.

B. The Chief, DCAP:

1. Formulates and recommends policy for the USATDS training programs to the Chief, USATDS;
2. Implements the DCAP centralized training program
3. Monitors and coordinates implementation of the USATDS decentralized training program with the RDCs.
4. Prepares periodic advisory and informational training memoranda designed to inform counsel at field locations of recent appellate decisions, trends, and other new developments in the law, and to advise counsel on trial techniques, ethical problems, and other matters deemed appropriate through DCAP Sends and Alerts;
5. Processes all requests from USATDS counsel to attend military and civilian CLE courses, and makes recommendations to the Chief, USATDS;
6. Provides available research materials to USATDS counsel upon request, such as copies of appellate briefs, sample pleadings, opinions, decisions and law review articles;
7. Maintains a database on expert witnesses and acts as a clearinghouse for networking litigation support;
8. Provides advice to USATDS counsel by email or telephone, when requested;
9. Assists the Chief, USATDS, in coordinating the scheduling of RDC workshops;
10. Assists the RDC with regional workshops by providing materials, instruction and suggested workshop formats;

11. Maintains and augments the USATDS Document Library on JAGCnet; and
12. Develops appropriate fiscal controls for the training program.

C. RDCs:

1. Plan and implement the USATDS training program within their respective region;
2. Present a regional workshop at least once each fiscal year;
3. Encourage participation in non-USATDS military CLE resources within the region; and
4. Recommend counsel within their region for attendance at military and civilian CLE courses.

D. SDCs:

1. Supervise, monitor, and coordinate implementation of the USATDS training program within the field office
2. Plan and execute installation workshops;
3. Recommend TDCs for attendance at military and civilian CLE courses;
4. Maintain and evaluate current information concerning the training status of each USATDS counsel in the field office;
5. As necessary, initiate TDC training requests to ensure the maintenance of appropriate expertise; and
6. Monitor the individual professional development of each TDC.

5-10. DECENTRALIZED TRAINING.

A. Procedures. All conferences will comply with all policies issued by the Department of Defense and/or the Department of the Army. RDCs will ensure maximum participation in regional and installation legal workshops and mandatory military training. RDCs and SDCs should use resources within their regions as much as possible. RDCs should also call upon the expertise of counsel who have attended pertinent military or civilian CLE courses, and who have gained particular expertise through litigation experience.

B. Coordination with SJA. Each SDC will inform the SJA prior to any curtailment of normal field office activities caused by any training. The SDC will notify the RDC of pending installation workshops, instructional topics, schedules, and other relevant information.

C. Minimize Costs. RDCs and SDCs should plan workshops so as to limit TDY expenses to a reasonable level. Where separate USATDS field offices are in close proximity, as in Europe, SDCs should jointly conduct installation workshops. This will permit expanded participation and subject matter coverage for a greater number of counsels, while minimizing curtailment of defense services to local commanders. RDCs will check with DCAP to ensure that funds are available for any regional decentralized training.

D. Instruction Method. Counsel learn skills and retain their expertise longer if they practice working through problems which involve practical application of that skill. The primary emphasis in training will be on experiential and "hands-on" training designed to improve basic advocacy skills. An excellent instructional tool is The Advocacy Trainer, a publication compiled by the Criminal Law Department, TJAGLCS.

1. Preparation for instruction should begin with selection of a task, e.g., the cross-examination of a court-martial witness, and identification of the particular conditions under which the task must be performed, e.g., cross-examination of a chemist in a drug case. The counsel in charge of this particular phase of the training should demonstrate a proper cross-examination, after which each counsel will "solve the problem" by conducting a cross-examination. If desired, demonstration of the proper method of cross-examination may follow the counsel's efforts to complete the task; there is no required pattern. After completion of the task, each counsel will receive a critique from the RDC and/or the SDC and other counsel. Videotaping of counsel's efforts is encouraged for review after the critiques.

2. In staging problems and demonstrations, the RDC/SDC should consider the use of local experts, videotapes and non-legal personnel. Videotape demonstrations on various subjects are available through TJAGLCS and DCAP. Due to copyright restrictions, counsel will not copy videotapes without permission from Chief, DCAP

3. The most important goal of training is to involve participating counsel in the effort to solve a problem designed to improve a specific advocacy skill. Counsel will also participate in the critique that follows any other counsel's efforts; the critique is designed to provide constructive criticism and suggestions for improvement.

4. RDCs/SDCs should not attempt to cover too many aspects of the criminal trial process at a single training. Instead, the training should focus on several important aspects of one or two advocacy skills.

5. Although many subjects covered in a training will concern courts-martial practice, RDCs should also cover other aspects of defense work such as Article 15 counseling, adverse administrative actions, negotiations, and management problems. Each RDC will ensure that their TDCs and Defense Paralegals receive, at a minimum, three (3) hours of ethics instruction per year.

6. Not every subject will lend itself to use of the experiential method. Lectures or roundtable sessions are appropriate for updates on recent case law and administrative or

management problems, as well as presentations of technical data by local experts.

7. Determination of a training subject matter rests within the sound discretion of the RDC or SDC concerned, and should focus on advocacy skills or particular problems within the region or at the installation.

5-11. TJAGLCS AND CIVILIAN CLE COURSES. The RDCs, in coordination with DCAP will encourage maximum attendance by USATDS counsel at courses sponsored by TJAGLCS, other military organizations, and non-DOD civilian CLE groups.

A. General Guidance. Attendance at government expense will be approved only for courses and seminars that are criminal law related. An exception may be made for USAR personnel pursuing advanced schooling through the TJAGLCS nonresident instruction program who wish to attend a non-criminal law short course in order to gain credits. Counsel can also utilize permissive TDY IAW AR 600-8-10, to attend any course or seminar for which TDY at government expense will not be approved. Attendance at training or conferences sponsored by non-DOD organizations will be processed IAW policies established by the Department of Defense and/or Department of the Army.

B. Approval Requirement. USATDS counsel must coordinate with DCAP to obtain HQDA approval in order to receive government funding to attend civilian CLE courses. Requests will be forwarded through the Chief, DCAP. The request will include:

1. Requester's Name and Rank;
2. Requester's Address;
3. Requester's Telephone Number (Commercial & DSN);
4. Course Title and Dates;
5. Vendor's Address and Telephone Number;
6. Cost of Course (to include TDY costs (e.g. M&I costs, airfare, lodging, rental car expenses) and applicable registration and/or course material fees));
7. Location of Course;
8. Information on how the course instruction relates to the counsel's position in USATDS and the anticipated benefits to be derived from attendance; and
9. An endorsement of the RDC with a recommendation for approval or disapproval.

5-12. NON-USATDS MILITARY CLE. RDCs should encourage the use of non-USATDS military CLE resources within the region, especially OCONUS, and at installations with a small

USATDS field or branch office. RDCs and SDCs should help organize and support CLE presentations in cooperation with the local OSJA.

5-13. ON-THE-JOB TRAINING (OJT) FOR NEW COUNSEL.

A. Policy. OJT will include active leadership from both RDCs and SDCs and frequent observation of counsel by their supervisors while counsel are performing defense functions.

B. RDC and SDC Responsibilities. RDCs will maintain liaison with SDCs, military judges, and SJAs concerning the performance of all counsel. RDCs will not only advise defense counsel on performance of everyday defense functions, but also guide SDCs in the proper application of leadership and managerial responsibilities. RDCs and SDCs will establish procedures and policies designed to ensure that counsel are thoroughly prepared before being assigned to perform defense functions alone. As a rule, assignment of a new counsel initially as assistant TDC will help assure proper training in trial procedure and tactical handling of substantive criminal law issues. RDCs and SDCs must review records of trial to detect counsel strengths and weaknesses, and provide constructive criticism based on trial performance.

5-14. INDIVIDUAL RESPONSIBILITY. The ultimate responsibility for maintaining and improving professional skills rests upon the individual counsel. Although the training program creates opportunities for upgrading these standards, each counsel should remain alert for CLE courses that might prove beneficial, particularly local courses presented by state bar associations, and self-improvement efforts that can be shared with other counsel. Counsel should also suggest improvements to internal USATDS programs, especially when changes will help improve training on basic trial advocacy skills. Suggestions will be made through the RDC to the Chief, DCAP.

5-15. DCAP DOCUMENT LIBRARY. Every TDC and SDC will submit at least one (1) product to DCAP during each rating period for posting to the DCAP Document Library. It can be a motion, training materials, contact information for an expert (including CV, fee schedule, and extract from a transcript demonstrating how the expert was utilized at trial), or other written product. DCAP will review each submission and ensure it is suitable for posting to the Document Library. The submission of a product, whether or not it is ultimately posted by DCAP to the Document Library, satisfies the requirement. All submissions should be sent to usarmy.pentagon.hqda-otjag.mbx.usalsa-dcap@mail.mil. Supervisors are encouraged to conduct initial quality control by reviewing each product prior to its submission to DCAP.

5-16. DEFENSE PARALEGAL TRAINING. RDCs/SDCs will ensure that their assigned Defense Paralegals are included in decentralized training whenever feasible. All Defense Paralegals will receive three (3) hours of ethics instruction per year.

CHAPTER 6. U.S. ARMY RESERVE PERSONNEL

6-1. PURPOSE. This chapter describes the procedure for providing defense counsel services to U.S. Army Reserve (USAR) personnel. It further describes generally the training relationship between USATDS and the Reserve Component (RC) Trial Defense Service Legal Operations Detachments (TDS LODs). In addition to the guidance provided below, RDCs and SDCs should conform to the general guidance that USATDS will provide the most appropriate representation on a case-by-case basis. Where the commander with decision making authority (e.g., separation authority) is in the RC, defense services should be provided by RC defense counsel. Where the decision making authority is the commander of an Active Component (AC) unit or where the substantive regulation underlying the proposed adverse action is an AC regulation, defense services should be provided by active duty USATDS personnel. When the case involves both AC/RC features, both reserve and active duty defense counsel should collaborate on the case. The lead in any case will be coordinated between the TDS LOD commander and the AC RDC.

6-2. UCMJ JURISDICTION OVER U.S. ARMY RESERVE PERSONNEL.

A. Authority. Article 2(a)(3), UCMJ, as amended, provides for the exercise of military justice jurisdiction over USAR personnel. The Manual for Courts-Martial, United States, 2012 edition, and AR 27-10 establish procedures for implementing Article 2(a)(3), UCMJ.

B. Reserve UCMJ Status. USAR personnel are subject to the UCMJ whenever they are in a Title 10, United States Code duty status, which includes Active Duty (AD), Active Duty for Training (ADT), Annual Training (AT), Active Guard and Reserve Duty (AGR) or Inactive Duty for Training (IDT) as defined in applicable regulations.

C. Eligibility. Absent special arrangements with the applicable State National Guard, only personnel in a Title 10 duty status are eligible for USATDS/TDS LOD legal services.

6-3. U.S. ARMY RESERVE TRIAL DEFENSE SERVICE LEGAL OPERATIONS DETACHMENTS (LODs).

A. Composition. TDS LODs are MTOE units consisting of USAR judge advocates and supporting personnel, under the command of a senior Reserve judge advocate, and dedicated exclusively to the provision of defense counsel services. There are three established TDS LODs: the 16th LOD, the 154th LOD, and the 22d LOD (see Appendix B). The 16th LOD also provides legal services to USAR Soldiers in Germany.

B. USATDS Supervision. The Chief, USATDS, exercises technical supervision of the performance of defense counsel services and oversight of the TDS LOD's training and readiness. This includes technical supervision and oversight in part by promulgating administrative and training guidance on matters not relating to unit command and control or internal unit administration. That technical oversight includes acting on complaints that TDS LOD judge advocates have violated the Army Rules of Professional Conduct for Lawyers UP AR 27-26.

C. TDS LOD Operations. TDS LOD personnel will follow the TDS LOD technical

chain, to OTC, USATDS as necessary, for technical guidance or advice. TDS LOD commanders will maintain command and control of their LODs and conduct their own internal operations, e.g., issue their own orders, arrange any independent training and arrange for LOD funding, enter into Intraservice Support Agreements at locations at which the LODs maintain offices. TDS LOD commanders will ensure that administrative, training and assignment policies of their LOD are consistent with technical oversight of the Chief, USATDS.

6-4. TDS LOD SERVICES.

A. TDS LOD Services. TDS LOD judge advocates represent Soldiers in connection with courts-martial, non-judicial punishment, administrative separation proceedings UP AR 135-178 (enlisted) or AR 635-200 (active duty enlisted) and AR 135-175 (officer), and other administrative actions in which representation is authorized by law or regulation.

1. Under some circumstances, on a case by case determination, TDS LOD defense counsel may provide defense services to AC Soldiers and AC USATDS defense counsel may provide defense services for members of the USAR. In most cases, however, TDS LODs will not support Army National Guard (ARNG) personnel serving in a Title 32 (State) status.

2. Special consideration will be given to having counsel and representation available both by a TDS LOD and AC USATDS judge advocate where adverse action meriting defense services is being considered against an AGR Soldier.

B. USATDS - TDS LOD coordination. USATDS RDCs and TDS LODs will develop training relationships (see paragraph 6-5 below) and defense coordination relationships. USATDS RDCs will ensure that TDS LOD personnel are contacted for defense services when adverse action for which defense services are authorized is contemplated against USAR personnel. The TDS LOD will detail counsel and immediately notify the USATDS RDC and, under some circumstances, both an AC and RC defense counsel may represent an individual in the USAR facing adverse action.

6-5. TRAINING OF TDS LOD PERSONNEL.

A. Training Standard. Training will focus on developing proficiency in performing the mission-essential legal services and Soldier skills set forth in the mission essential task list (METL) at Appendix J. Appropriate emphasis will be placed on teaching rules of professional conduct governing USAR defense counsel.

B. Training Relationship. RDCs are responsible for establishing and maintaining a training relationship with the TDS LOD operating within the geographical area of the USATDS Region. RDCs will:

1. Invite TDS LOD personnel to their biannual training workshops.
2. Coordinate the scheduling of AT with TDS LOD at one or more of the USATDS field offices.

CHAPTER 7. ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE

7-1. PURPOSE. This Chapter describes generally the relationship between USATDS and the Army National Guard Trial Defense Service (ARNG TDS).

7-2. ORGANIZATION & SCOPE OF ARNG TDS.

A. The Chief, ARNG TDS, is a JA, designated by TJAG, who, as directed by the Chief, USATDS, exercises supervision, control, and direction of defense counsel and Defense Paralegals in the Army National Guard (ARNG). The Chief, ARNG TDS shall publish an ARNG TDS SOP that provides guidance and direction for the performance of duties in Title 32 status.

B. The National Guard Bureau (NGB), and the States, Territories and the District of Columbia provide manpower, budgetary, and administrative support to the ARNG TDS. Whether assigned to NGB, or the States, Territories and the District of Columbia with duty at a particular installation or armory, or assigned to another organization, ARNG TDS counsel are supervised, managed, and rated solely by their respective ARNG TDS supervisory chain.

C. ARNG members, while in State status under Title 32, United States Code, are subject to Army and National Guard regulations and respective state codes of military justice (SCMJ). ARNG personnel in State status are eligible for ARNG TDS defense legal services as authorized by law or regulation.

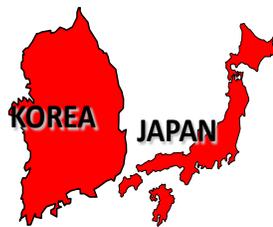
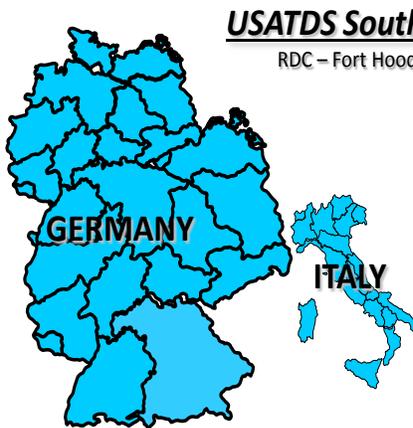
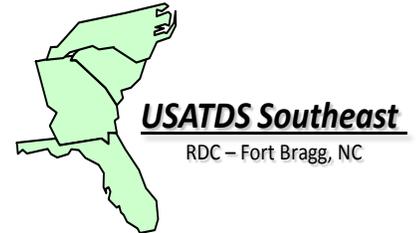
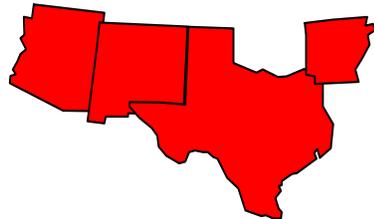
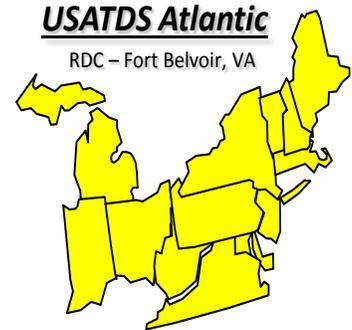
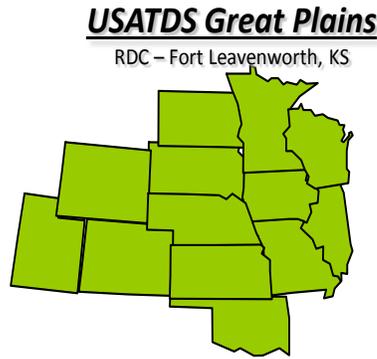
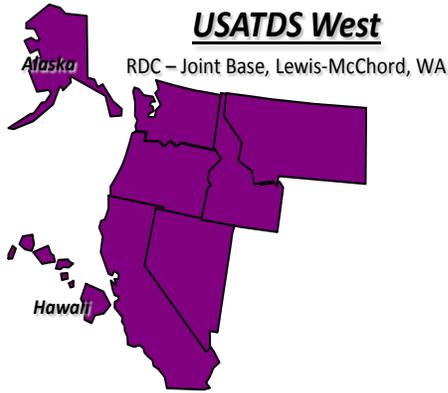
D. ARNG members are subject to the UCMJ only when in Federal status as Army National Guard of the United States (ARNGUS) under Title 10, United States Code and when otherwise called into Federal status. ARNG personnel in Federal service are eligible for USATDS/TDS LOD defense legal services as authorized by law or regulation.

E. Initial authority for allegations of misconduct by ARNG TDS counsel runs through USATDS to the Commander and Commandant, The Judge Advocate General's Legal Center and School (CG, TJAGLCS). The CG, TJAGLCS exercises authority to impose administrative disciplinary measures up to and including a reprimand. Respective adjutants general and commanders exercise SCMJ authority, administrative disciplinary authorities, and other command functions for ARNG TDS members.

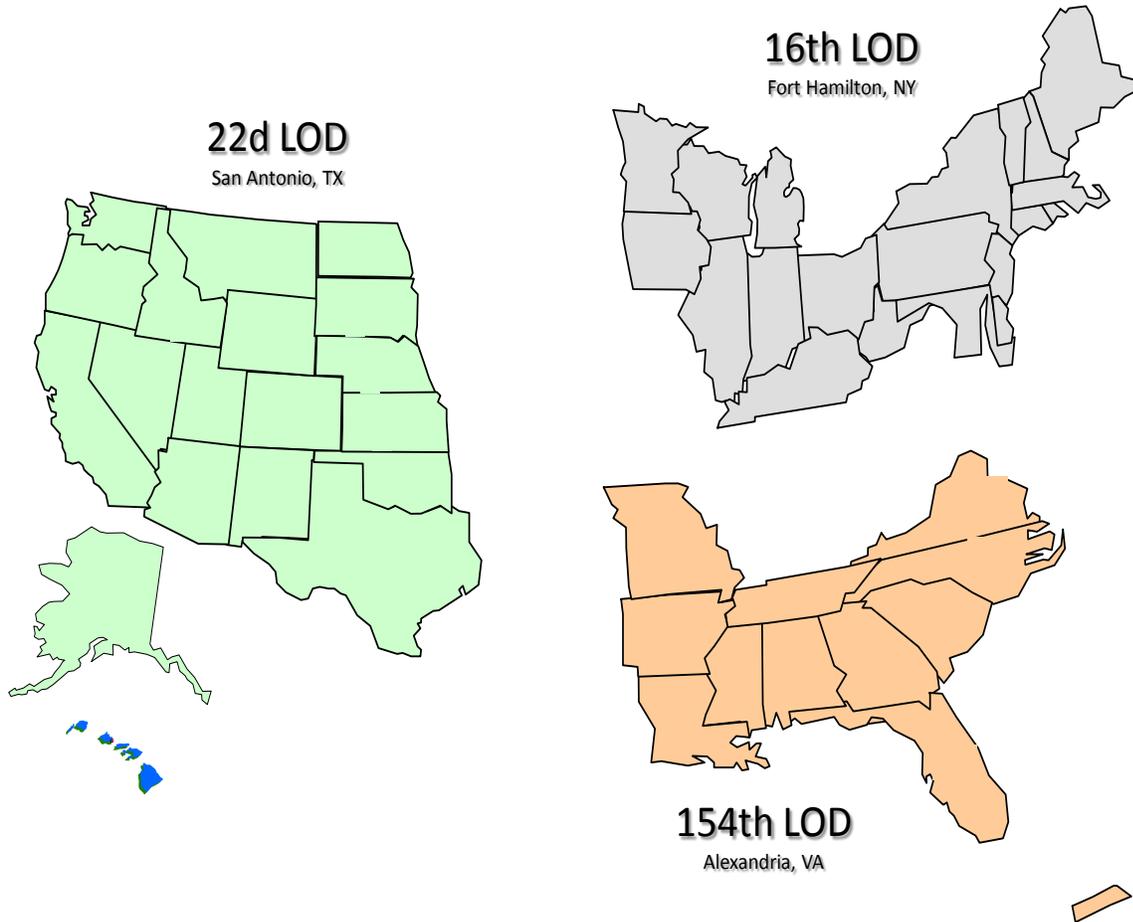
F. The Chief, ARNG TDS establishes procedures for detailing ARNGTDS counsel in Title 32 status.

7-3. REQUESTS FOR IMC OF THE ARNG TDS. Requests for IMC by AC or USAR Soldiers of ARNG TDS counsel will be transmitted through Chief, USATDS, to the Chief, Army National Guard Trial Defense Service, NGB-JA (TDS), 111 South George Mason Drive, Arlington, VA 22204.

APPENDIX A – USATDS REGIONS & AREAS OF RESPONSIBILITY – Each Region will be responsible for the delivery of defense legal services to Soldiers stationed in that Region.



APPENDIX B – USAR TDS LEGAL OPERATIONS DETACHMENTS & AREAS OF RESPONSIBILITY



APPENDIX C - CHIEF'S CRITICAL INFORMATION REQUIREMENTS (CCIR) –
RDCs will send prompt email notification containing the 5Ws to the Chief and XO, USATDS.
Submission of good news (personal or professional successes) is also always welcome.

- ✓ **Death, serious injury, illness or hospitalization of USATDS personnel or family member.**
- ✓ **Allegations of personal misconduct against USATDS personnel.**
- ✓ **Suicide gesture/attempt by USATDS personnel or family member.**
- ✓ **Allegation of counsel misconduct – by or against USATDS counsel (mismanagement; IAC; ethical violations, etc.).**
- ✓ **Loss of sensitive item, including computer, by USATDS personnel.**
- ✓ **Loss of Personally Identifiable Information (PII) by USATDS personnel.**
- ✓ **Any other matter that might embarrass USATDS or result in negative media attention.**
- ✓ **Death/suicide of a client.**
- ✓ **Client escape from custody/confinement.**
- ✓ **Capital Referral.**
- ✓ **Filing of petitions for extraordinary relief.**

APPENDIX D - TEMPORARY DUTY (MISSION) TRAVEL. All travel will comply with the Joint Federal Travel Regulations (JFTR) and with TDS Policy Memorandum 2013-01: USATDS Defense Travel System (DTS) Policy, dated 24 January 2013, unless amended or rescinded.

A. Secretary of Defense memorandum, “Track Four Initiative Decisions,” dated March 14, 2011, mandates that “all DOD Travel requests must include justification that alternate means such as, Secure Video Teleconference (SVTC) or other web-based communication, are not sufficiently able to accomplish travel objectives.”

B. All travel must be planned through the DTS. In addition, OTC, USATDS will review and approve all travel requests through DTS.

C. Responsibilities:

1. The Program Analyst, USATDS:

(a) Reviews all TDY requests processed through DTS.

(b) Monitors all TDY expenses.

(c) Advises the Legal Administrator, XO, and the Chief, USATDS, concerning all fiscal matters related to TDY travel, including requests for exceptions to policy.

2. RDCs:

(a) Authorize all TDY travel originating within their respective geographic areas of responsibility.

(b) Establish specific policies and procedures for evaluating TDY travel requests within their respective geographic areas of responsibility.

(c) Upon submission of a TDY travel request by an SDC, evaluate the request and determine whether it is mission essential.

(d) Monitor expenditures and report to the Program Analyst or Legal Administrator concerning all fiscal matters relating to TDY which originate within their regions.

(e) Coordinate all TDY travel requests involving travel between CONUS and OCONUS areas with the Operations Officer, Legal Administrator, or the Program Analyst, USATDS.

(f) Ensure all travelers submit their vouchers within DTS NLT 3 business days after return from travel.

3. SDCs:

- (a) If delegated by the RDC, authorize travel of less than 12 hours by TDC assigned to their field office.
- (b) Coordinate all TDY travel requests with the RDC and submit the requests for RDC approval.
- (c) If traveling, request permission for TDY travel from RDC before submitting TDY travel authorization in DTS. If approved, include a comment in DTS that “RDC has approved this TDY.”
- (d) Ensure all travelers submit their vouchers within DTS NLT 3 business days after return from travel.

4. TDCs:

- (a) Ensure proper enrollment in DTS and maintenance of the administrative information in the DTS profile;
- (b) Ensure maintenance and timely payment of individual government travel card;
- (c) When government quarters are not used, obtain and submit a statement of non-availability with the DTS voucher;
- (d) Submit travel vouchers within DTS NLT 3 business days after return from travel.
- (e) Request permission for TDY travel from RDC through SDC before submitting TDY travel authorization in DTS. If approved, include a comment in DTS that “RDC has approved this TDY.”

D. RDCs and SDCs submitting DTS documents for travel around their respective region for the purpose of conducting supervisory inspections will put the following in DTS -

1. On Trip Purpose – put "Other Travel."
2. On Trip description –
 - (a) If visit is connected to a case, such as assisting a TDC in a case, observing in court-representation of clients and mentoring the TDC in the process, put - “In support of US v. (name of case)”
 - (b) If visit is not connected to a case, put - “Supervisory oversight as (Regional Defense Counsel or Senior Defense Counsel) in order to ensure competent and

effective legal defense services are being provided to Soldiers IAW Article 27 of the UCMJ, Chapter 6 of AR 27-10, paragraphs 3-6g(2) and 3-6g(5) of AR 27-3, and USATDS policies/procedures.”

E. Travelers must follow these additional specific policies:

1. Ensure travel is for an authorized purpose and keep TDY costs to the minimum.
2. Government transportation and quarters will be used when available unless the order issuing authority determines that such use adversely interferes with mission accomplishment.
3. Government vehicles (GOV) will be requested for any travel involving driving. If GOV is not available, the traveler will include a statement in the request for TDY travel in DTS that “GOV is unavailable.” Use of privately owned vehicle (POV) is generally permitted if the travel is less than 800 miles roundtrip.
4. Ensure the most cost effective modes of travel are used, especially for airfare. All travelers must schedule and book their travel well in advance. The earlier the travel is booked, the more savings can be generated for our organization, which in turn allows our organization to cover the costs of travel for everyone in USATDS during that fiscal year.
5. Rental vehicles can be authorized for travel if a GOV is not available and the rental cost is more cost effective than airfare. Rental vehicles will only be used in conjunction with air travel when they are considered mission essential. Use of public transportation is strongly encouraged.
6. Use the lodging program for travel to the National Capital Region.
7. Use the current fiscal year DTS LOA in DTS.
8. If travel is funded by another organization, unit, or convening authority IAW AR 27-10, paragraph 6-5*b* and *c* (e.g. separation boards), the traveler must request the LOA from that entity be added to their DTS profile and upload their written authorization for use of that LOA (email will suffice) to the Substantiating Documents of the authorization. Authorizations cannot be approved without an LOA.

F. Local Travel In and Around the Permanent Duty Station (PDS). RDCs may authorize reimbursement for transportation expenses incurred by TDC who must travel in and around the PDS to provide defense services. RDCs may delegate this authority to SDCs. The criteria for reimbursement is contained in the JFTR, Chapter 3, Section U3505. IAW that provision, mileage reimbursement for travel that begins or ends at the TDC's residence is only authorized if the travel exceeds the TDC's ordinary commuting distance, regardless of the transportation mode ordinarily used to commute to the PDS. Consequently, when completing such travel reimbursement requests, TDCs will ensure ordinary commuting distance mileage is subtracted

from the total mileage when the travel begins or ends at the TDC's residence. TDCs will ensure their funding request for TDY is IAW the provisions of paragraph 6-5, AR 27-10, and that all claims for reimbursement within DTS designate the appropriate funding source.

G. Requests to attend CLE courses must be coordinated and approved by the Chief, DCAP or Chief, USATDS before initiating the travel authorization in DTS.

H. Country Clearance for OCONUS Travel. Clearance through the Aircraft and Personnel Automated Clearance System (APACS) is mandatory for processing DOD sponsored foreign travel in all Combatant Commands effective 01 May 2008. APACS is the web-based tool used to create, submit, coordinate and approve personnel travel clearances (Special Area, Theater and Country) for DOD sponsored travel. In order to meet this requirement when travel OCONUS is necessary to accomplish the defense mission, the detailed TDC will contact the Operations Officer at OTC, USATDS IMMEDIATELY upon notice of the required travel OCONUS. The Operations Officer will determine whether country clearance is required and submit the request for the traveler(s).

1. Traveler's Responsibility. The traveling TDC will provide the following information to the Operations Officer at OTC, USATDS:

(a) Name(s) of traveler(s) to include rank, organization, title, security clearance, date of last completed Anti-Terrorism Level 1 on-line training;

(b) Country(ies) to be visited, to include specific location (Camp Arifjan, Kabul, etc.);

(c) Dates of travel, to include arrival and departure times for each location to be visited (DTS authorization and flight itinerary is helpful);

(d) Purpose of mission (i.e., interviews/depositions of witnesses – include name and unit of witnesses);

(e) POC at location to be visited (usually SDC), to include name, rank, unit, phone, fax and email;

(f) Contact information for traveler (work phone, cell phone, email);

(g) Theater clearance must be requested at least 30 days prior to travel. If TDC is unable to meet this 30-day lead-time requirement, a thorough explanation must be provided);

2. Additional Information Requirements. Theater Specific Information and Country Specific Information may also require additional information, to include (but not limited to): training documentation such as Anti-Terrorism/Force Protection training (DOD), Personnel Recovery, SERE 100 (EUCOM, PACOM), ISOPREP (SOUTHCOM, EUCOM, PACOM), Antiterrorism, Plan/Buddy-Rule (PACOM), Force Protection responsibility (EUCOM), Human

Trafficking and/or Human Rights training (SOUTHCOM), Passport information for each traveler, Flight information (Name of airline, flight number), social security number, mode of transportation between locations in the country of planned travel.

3. OTC, USATDS Responsibility. The Operations Officer will request clearance through APACS, will monitor the progress of the request, and will maintain contact with the traveler(s) on the status of the request.

I. Authorized Airports for Temporary Duty Travel. Appendix E lists the default required airports for all USATDS travel (mission and training) which requires travel by airplane. All AC USATDS personnel, including mobilized Reserve Component or any other USATDS supporting personnel, must use these airports unless DTS lists a contractual flight that is cheaper and the traveler obtains approval from the XO, USATDS.

APPENDIX E – AUTHORIZED AIRPORTS FOR TDY TRAVEL

Installation	Airport
<u>Mississippi Valley</u>	
Fort Rucker, AL	Dothan, AL
Fort Campbell, KY	Nashville, TN
Fort Polk, LA	Alexandria, LA
Fort Knox, KY	Louisville, KY
Fort Benning, GA	Atlanta, GA
<u>Southeast</u>	
Fort Gordon, GA	Augusta, GA
Fort Bragg, NC	Raleigh, NC
Fort Stewart, GA	Savannah, GA
Fort Jackson, SC	Columbia, SC
HAAF, GA	Savannah, GA
<u>Great Plains</u>	
Fort Leavenworth, KS	Kansas City, MO
Fort Carson, CO	Denver or Colorado Springs, CO (conduct cost comparison)
Fort Riley, KS	Manhattan, KS
Fort Sill, OK	Oklahoma City, OK
Fort Leonard Wood, MO	St. Louis, MO
<u>Southwest</u>	
Fort Huachuca, AZ	Tucson, AZ
Fort Bliss, TX	El Paso, TX
Fort Sam Houston, TX	San Antonio, TX
Fort Hood, TX	Austin or Killeen, TX (conduct cost comparison)
<u>West</u>	
Fort Lewis, WA	Seattle, WA
Fort Richardson, AK	Anchorage, AK
Fort Wainwright, AK	Fairbanks, AK
Schofield Barracks, HI	Honolulu, HI
Fort Irwin, CA	Las Vegas, NV
<u>Pacific Rim</u>	
Korea	Seoul, Korea
Okinawa, Japan	Okinawa Naha Airport, Japan
<u>Atlantic</u>	
Fort Belvoir & Fort Myer, VA	Reagan National Airport / Dulles International Airport, VA
Fort Meade, MD	BWI, MD
Aberdeen Proving Ground, MD	BWI or Philadelphia (conduct cost comparison)
Fort Drum, NY	Syracuse, NY
Fort Eustis, VA	Norfolk or Newport News, VA (conduct cost comparison)
Fort Lee, VA	Richmond, VA
West Point, NY	JFK or La Guardia, NY (conduct cost comparison)
<u>Europe</u>	
	Frankfurt or Munich, GE (conduct cost comparison)
<u>CENTCOM</u>	
	Kuwait

APPENDIX F – USATDS IN-PROCESSING FORM. This form can be found in Word format in the USATDS website under “New to TDS?”

RANK/NAME:		
TDS OFFICE:	REPORT DATE TO TDS:	
TDS OFFICE ADDRESS:	DUTY PHONE:	
	SUPERVISOR'S NAME:	
DUTY TITLE:	SUPERVISOR'S PHONE:	
COMPONENT (RA/USAR/ARNG):	DOR:	BASD:
BAR MEMBERSHIP (COUNSEL ONLY):	CPNCO/SPNCO NAME & PHONE (PARALEGAL ONLY):	
THRU DATE OF LAST OER/NCOER/AER:		
MILITARY EDUCATION:		
CIVILIAN EDUCATION:		
HOME ADDRESS (AT DUTY STATION):	HOME PHONE:	
	CELL PHONE:	
EMAIL ADDRESS:		
NOK NAME: SERVICEMEMBER SPOUSE? YES/NO	NOK ADDRESS & PHONE:	
SECURITY CLEARANCE TYPE: INVESTIGATION DATE:	ARE YOU REGISTERED IN DTS? YES / NO IF YES, HAVE YOU BEEN RELEASED FROM YOUR PREVIOUS UNIT'S HIERARCHY IN DTS? YES / NO	
DO YOU HAVE A GOVERNMENT CREDIT CARD? YES / NO	HAVE YOU UPDATED YOUR PROFILE IN DTS/TATS/JAGCNET? YES / NO	
CARD NUMBER & EXPIRATION DATE:	<u>SEND A COPY OF ORB/ERB, PCS ORDERS, AND LAST OER/NCOER WITH THIS FORM</u>	
CRIMINAL/MILITARY JUSTICE EXPERIENCE:		
(COUNSEL ONLY) # MONTHS AS A TC/DC (OR CIVILIAN EQUIVALENT): _____ / # CASES TRIED AS A TC/DC (OR CIVILIAN EQUIVALENT): _____ CONTESTED ; _____ GUILTY PLEAS.		
(PARALEGAL ONLY) # OF MONTHS EXPERIENCE IN CRIM LAW: _____ TDS EXPERIENCE: _____		
OTHER RELEVANT EXPERIENCE: _____		

APPENDIX G – USATDS OUT-PROCESSING FORM. This form can be found in Word format in the USATDS website under “Leaving TDS?”

RANK/NAME:		TDS OFFICE/REGION:	
COMPONENT (RA/USAR/ARNG):		DUTY PHONE:	
SUPERVISOR’S NAME:			
RESIGNATION/RETIREMENT/ETS DATE (IF APPLICABLE):		EXPECTED DEPARTURE DATE:	
GAINING UNIT W/ADDRESS:			
YOUR FOWARDING ADDRESS:		YOUR PHONE:	
		YOUR E-MAIL:	
HAVE YOU SIGNED YOUR EVALUATION (OER/NCOER)? YES / NO IF YES, DATE YOU SIGNED: _____			
HAVE YOU RECEIVED YOUR AWARD? YES / NO IF YES, DATE RECEIVED: _____			
HAVE YOU SETTLED ALL TRAVEL DOCUMENTS IN DTS? YES / NO HAVE YOU PAID ANY OUTSTANDING BALANCE ON YOUR GOVERNMENT CREDIT CARD? YES / NO			
DO YOU HAVE ANY PENDING COURT-MARTIAL CASES? YES / NO IF YES, HAS YOUR CLIENT SUBMITTED AN IMC REQUEST FOR YOU IAW AR 27-10, para 5-7? YES / NO			
REMINDER			
ENSURE YOU UPDATE YOUR JAGCNET, TATS, DTS, GOVCC AND MJO PROFILES UPON SIGNING IN TO YOUR GAINING UNIT.			
MOST MEMORABLE EXPERIENCE WHILE ASSIGNED TO TDS:			
SUGGESTIONS FOR IMPROVEMENT:			

APPENDIX H – MONTHLY MANAGEMENT REPORT

1. The RDC is "safety net" for the reliability of the report. The report is prepared, then reviewed by the SDC and certified as "final," and then reviewed and approved by the RDC. Only after the RDC has "approved" the report will the information be considered final and the reporting requirement completed. Requests for access will be submitted to the Legal Administrator, OTC, USATDS.

2. REPORT PERIOD. SDCs will have the web-based management report prepared at the conclusion of each calendar month, reporting data for that month. After review to assure accuracy and completeness, the SDC will enter "final" on the report and notify the RDC telephonically or by email that the report is available for review and approval. The RDC will review reports on the web site and, after confirming accuracy and completeness will certify the report as "approved." The approval process must be completed NLT ten duty days following the last day of the month reported.

3. PREPARING THE MANAGEMENT REPORT. SDCs will use the following guidance in preparing the management report:

a. Field Office: Self-explanatory.

b. Region: Self-explanatory.

c. Counsel Strength: Record the number of certified, active duty USATDS counsel assigned at least half the month (10 or more duty days) to the field office.

(1) Counsel attending ILE, other educational courses, deployed, or on extended field exercises away from the home installation for more than 10 duty days per month are not counted. Counsel on leave are counted in total counsel strength.

(2) Reserve officers and summer interns temporarily performing duty in a field office will not be counted in counsel strength. Their tours of duty should be noted and reported in the quarterly activity report (paragraph 4-5, below). Ensure, however, that any actions completed by these additional personnel are included in the office totals of the management report.

d. Month and Year: This is the period reported, not the date prepared.

e. Description of Column Entries.

(1) COMPLETED JUDICIAL ACTIONS is the number of judicial actions that have been completed in the respective reporting region through an acquittal, conviction, or other disposition (see subparagraph (5) below for definition of "other disposition"). The number of COMPLETED GCMs and SPCMs for the month, which are the numbers of trials completed (NOT when post-trial is completed), will be recorded in the appropriate box. Do not record "OTHER DISPOSITION" cases in the "TOTAL NUMBER OF COURTS-MARTIAL" boxes.

Do not count courts-martial that continue past the end of the month without a finding of guilty or announcement of a sentence. The number of JUDGE ALONE and PANEL cases will be recorded in the appropriately marked box.

(2) A GUILTY PLEA occurs when the client pleads guilty to all of the charges and specifications (with or without a pretrial agreement). This also includes a case in which the government agrees to not contest any of the charges or specifications the client contests (by either not presenting evidence or withdrawing such charges or specifications).

(3) A MIXED PLEA occurs when the client pleads guilty to at least one of the specifications but contests another specification and the government presents evidence on those specifications the client contested.

(4) A CONTESTED CASE occurs when the client pleads not guilty to all specifications and charges.

(5) OTHER DISPOSITION occurs when the case is "disposed of" after referral of charges by means other than trial by court-martial (e.g., discharge under the provision of Chapter 10, AR 635-200, charges withdrawn or dismissed by the convening authority). If a case is withdrawn and referred to a lower (or higher) level court-martial, that particular case will be counted as an OTHER DISPOSITION and the new referral counted as a new action.

(6) NUMBER OF ARTICLE 15 ACTIONS is the number of nonjudicial punishment consultations conducted during the month. Clients who view a videotape and/or attend a briefing by counselor support personnel, but do not stay for a private session with a defense counsel, are counted. Each consultation, including a telephone conversation or video-conference (VTC) meeting, is counted as an action. For example, if there are multiple consultation sessions with a client (e.g., if one client makes five visits for the same Article 15 in one or more months), each is counted as an action.

(7) ADMINISTRATIVE CONSULTATION ACTIONS are consultations not involving representation by a USATDS counsel, (e.g., where the Soldier either is not entitled to a board, waives the board, or representation at a board does not occur; officer resignation in lieu of administrative elimination). If there are multiple consultation sessions, each session, including a telephone conversation or VTC meeting, is counted as an action.

(8) ADMINISTRATIVE BOARDS are the number of formal administrative boards, in which a USATDS counsel provided representation, completed during the month. All types of boards are recorded in this category (e.g., elimination, reduction, show cause, flight evaluation, physical evaluation).

(9) NUMBER OF SUMMARY COURT-MARTIAL CONSULTATIONS is the number of summary court-martial consultations conducted during the month. Just as with Article 15 actions, clients who view a videotape and/or attend a briefing by defense counsel or support personnel, but do not stay for a private session with a defense counsel, are counted. Each consultation, including a telephone conversation or VTC meeting, is counted as an action.

(10) NUMBER OF MILITARY JUSTICE CONSULTATION ACTIONS is the number of consultations with a suspect. This includes advice concerning Article 31/Miranda/Tempia and a discussion of the facts of a criminal matter when the exercise of military justice appears possible. This also includes counseling in line-up or show-up situations before charges are preferred. Each consultation, including a telephone conversation or VTC meeting is counted as an action.

(11) PRIORITY II and III DUTY ACTIONS is the number of Priority II and Priority III actions, as defined in paragraph I-5B and C of this SOP.

f. Computation of Travel Hours – total hours in any given day spent traveling in support of USATDS mission, to include travel and work at TDY location (billable hours).

APPENDIX I – SAMPLE MUTUAL SUPPORT AGREEMENT

MUTUAL SUPPORT AGREEMENT (MSA)

BETWEEN

THE U.S. ARMY TRIAL DEFENSE SERVICE (TDS), (INSTALLATION) FIELD OFFICE

AND

THE OFFICE OF THE STAFF JUDGE ADVOCATE (OSJA), (INSTALLATION), (STATE)

1. Purpose: To identify the mutual responsibilities between the (insert name of installation) Trial Defense Service (TDS) Field Office and the (insert name of installation, unit, division or corps) Office of the Staff Judge Advocate (OSJA) for the purpose of providing legal counsel/representation to Soldiers within the (insert name of installation) community. This MSA is also intended to enhance the working relationship and foster an atmosphere of cooperation by defining the administrative and logistical support requirements and duties of each office.

2. References:

- a. AR 27-1, Judge Advocate Legal Services;
- b. AR 27-3, The Army Legal Assistance Program;
- c. AR 27-10, Military Justice; and
- d. AR 27-26, Rules of Professional Conduct for Lawyers.

3. General: AR 27-10, paragraph 6-8a directs staff judge advocates and senior defense counsel to develop administrative policies and procedures to meet local requirements and support the basic mission of the command being served.

4. Organization: The Chief, U.S. Army Trial Defense Service (USATDS), through the geographic Regional Defense Counsel (RDC) and the installation Senior Defense Counsel (SDC), exercises independent supervision, control and direction over all trial defense counsel and paralegals. AR 27-10, paragraph 6-3 states that all TDS counsel are supervised, managed and rated solely by their USATDS supervisory chain.

5. Trial Defense Service Responsibilities:

a. In accordance with AR 27-10, paragraph 6-8b, TDS personnel will comply with (insert name of installation) installation command, personnel, and administrative policies, such as duty hours, physical fitness, appearance, weapons qualifications, and uniform and equipment

standards. The RDC may authorize exceptions to this policy. Normally, such exceptions will be granted only when the particular requirement conflicts with the basic mission of USATDS.

b. The Field Office will maintain service hours from (hours) to (hours) on (designated days) . The office will answer its phones from 0900-1700 each working day. Normally, Article 15 clients will be screened and seen from (hours) to (hours) on (designated day(s)) . Clients facing elimination or administrative separation will be screened and seen from (hours) to (hours) on (designated day(s)) .

c. The SDC will provide advance notice to the SJA when there will be a deviation from normal service hours due to other requirements (e.g., courts-martial; TDY, etc.).

d. The SDC will designate an Acting SDC in his/her absence and inform the Chief of Military Justice, OSJA, of the dates when the Acting SDC will be acting as such.

e. The SDC will notify the OSJA and military judges of events which require counsel to be absent from their respective Field Office (i.e., conferences, training sessions) sufficiently in advance so as to enable these other parties to plan accordingly.

f. The SDC will ensure that defense services are available and accessible during non-duty periods. The SDC will provide the OSJA with an on call duty roster for representation requirements outside of normal duty hours. The personal telephone numbers of TDS personnel will not be provided to third parties.

g. Priority I duties will be performed by TDS counsel. Priority I duties include counseling of pretrial confinees, and representation at all of the following: General Courts-Martial; Special Courts-Martial; and proceedings pursuant to Article 32 of the UCMJ. Priority I duties take precedence over all other assigned duties.

h. Priority II duties are primarily the responsibility of TDS, but are executed by TDS as Priority I mission allows. Priority II duties include:

(1) Counseling IAW Article 31(Miranda/Tempia) requirements;

(2) Representation and/or counseling in line-up situations;

(3) Counseling suspects on criminal matters when the exercise of military jurisdiction is possible (even though jurisdiction has not been exercised);

(4) Counseling with regard to Summary Courts-Martial (SCM);

(5) Formal Article 15, UCMJ, counseling;

(6) Representation and counseling of officers recommended for elimination under the provisions of (UP) AR 600-8-24, Officer Transfers and Discharges;

(7) Counseling of officers desiring to submit a resignation in lieu of administrative elimination or Resignation for the Good of the Service in Lieu of General Court-Martial UP AR 600-8-24, (since resignations for the good of the service require preferred charges, they begin as Priority I Duties);

(8) Representation and counseling of enlisted Soldiers recommended for separation UP Chapters 5 (involuntary separations), 7, 9, 10, 11, 13, 14, and 18, AR 635-200, Active Duty Enlisted Administrative Separations (since Chapter 10 discharges require preferred charges they begin as Priority I Duties);

(9) Representation and counseling of inmates at sentence vacation hearings pursuant to Article 72, UCMJ;

(10) Representation and counseling of inmates at disciplinary and adjustment boards pursuant to AR 190-47, The Army Corrections System;

(11) Grade reduction boards;

(12) Additionally, IAW paragraph 3-6g(2), AR 27-3, The Army Legal Assistance Program, USATDS counsel should ordinarily assist Soldiers on military administrative actions not listed in paragraphs (1) through (8) above when such actions are either initiated on the basis of alleged violations of the UCMJ, or are related to impending, pending, or recently completed UCMJ proceedings (e.g., reprimand).

When defense counsel or resources are insufficient to perform these duties, the supporting SJA must, upon written request by the RDC and within the SJA's capability, provide non-USATDS counsel to perform these duties under the supervision of the SDC IAW AR 27-10, paragraph 6-8d.

i. Priority III duties include all duties not listed as Priority II duties, such as a bar to reenlistment; relief for cause, referred OER/NCOER, or reprimand not based on misconduct. Priority III duties are primarily the responsibility of the supported OSJA.

6. OSJA Responsibilities:

a. AR 27-10, paragraph 6-4 requires the SJA to provide administrative and logistical support to USATDS personnel in the same manner as provided to OSJA Military Justice personnel.

b. Paralegal Support: When not otherwise provided on a sustainment brigade/command MTOE, the OSJA will provide experienced and trained paralegal support to TDS IAW AR 27-10, paragraph 6-4h. Defense Paralegals are under the operational control and supervision of the SDC. The SDC is responsible for ensuring these Soldiers comply with AR 27-26, Rules of Professional Conduct for Lawyers. The OSJA will strive to provide TDS paralegals for a minimum of 12 months. To the extent possible, both military and civilian paralegals will be rated by their supervisory chain in the TDS office. The TDS paralegal(s) will not be assigned non-TDS related duties. At all times, the

SJA/command will ensure that support duties do not have the potential to create an appearance of conflict with TDS duty performance.

c. Non-Defense Duties: TDS personnel will not be assigned additional duties by the OSJA that may conflict with client representation.

d. The Chief of Military Justice, OSJA, will ensure the SDC is notified of preferred charges at the earliest possible date so that the SDC can assign defense counsel to the client. As of 1 March 2013, SJA offices will forward a digital preferral packet via Military Justice Online (MJO). In cases with multiple co-accused clients, the OSJA will be especially mindful of the need for early coordination with the SDC, and will provide reasonable notice of any case in which the number of accused exceed the number of DCs assigned to the servicing Field Office.

e. TDS personnel are members of the JAGC regiment. The OSJA is encouraged to invite TDS personnel to attend/participate in regimental functions, including professional development training, promotion/award ceremonies, hails and farewells, and other social functions sponsored by the OSJA. The OSJA will endeavor to provide timely notice to TDS of these activities. In turn, TDS personnel will endeavor to actively participate in OSJA functions.

7. Funding Responsibilities: Funding responsibilities will be as defined in AR 27-10, paragraph 6-5.

8. Effective Date, Termination and Review: This agreement is effective upon execution by the SDC and SJA. The parties agree to review it when either signatory is reassigned to other duties. The MSA will survive the reassignment of either or both signatories. This MSA will terminate only when one or more signatories, or their successors, submits a written intention to withdraw from the agreement or the MSA is renewed, amended, or otherwise altered by the agreement of all signatories, or their successors.

DATE:

SJA NAME
COL, JA
Staff Judge Advocate

SDC NAME
MAJ, JA
Senior Defense Counsel

APPENDIX J - USAR MISSION ESSENTIAL TASK LIST FOR DEFENSE COUNSEL

1. Priority I Duties. Develop a comprehensive understanding of the UCMJ, MCM, AR 27-10, AR 27-26, and the U.S. Army Trial Defense Service Standard Operating Procedure (USATDS SOP).

a. Prior to interviewing the client, examine the charge sheet and allied papers and ensure there is no conflict of interest with regard to the client.

b. Interview the accused. Explain counsel's role, the accused's counsel rights, and the charges. Ascertain the accused's response to the charges, whether he or she is under restraint, and any other special circumstances.

c. Advise pretrial confinees pursuant to RCM 304 & 305 and AR 27-10. Represent the accused at proceedings conducted under RCM 305(1). Consider a motion for review of pretrial confinement by a military judge pursuant to RCM 305(j).

d. Assess possible legal or factual defenses, such as self-defense in an assault case, or sanity or competency issues.

e. Review pretrial publicity. Consult with appropriate authority before speaking to new media. (See USATDS SOP, paragraph 1-9).

f. Represent accused at hearings under Article 32(b), UCMJ. Explain all aspects of the investigation to the accused. Request the investigating officer (IO) to provide appropriate witnesses and documents. Request that all tapes of the investigation be preserved. Ensure that any objections to the IO's report be noted to the appointing authority within the time limits of RCM 405.

g. Represent the accused at trial. Interview all witnesses, and prepare cross examination of government witnesses and direct examination of defense witnesses. Obtain the accused's decision regarding pleas, forum, whether to testify, whether to stipulate to expected testimony, and whether to enter into a plea agreement.

h. Prepare, research and present any appropriate motions. See generally RCM 905-907. Represent accused during all phases of trial, including pleas, voir dire, evidence on the merits, arguments, presentation of extenuation and mitigation evidence (if a guilty finding ensues), and sentencing arguments.

i. Continue representation to final action by convening authority. Request deferment of confinement if appropriate. Advise accused regarding appellate rights. Prepare post-trial matters pursuant to RCM 1105 & 1106. Closely review SJA recommendations for errors or omissions. Obtain accused's consent regarding all submissions.

2. Adverse actions/non-judicial actions (priority II duties).

a. Provide suspect counseling to Soldiers under investigation who have requested counsel under Article 31, UCMJ.

b. Represent Soldiers in line-up situations.

c. Counsel officers and enlisted Soldiers facing adverse administrative eliminations. Represent Soldiers who are entitled to separation boards.

d. Counsel Soldiers facing summary courts-martial.

e. Represent Soldiers at grade reduction boards.

f. Counsel Soldiers facing Article 15, UCMJ, punishment.

g. Counsel and assist Soldiers responding to memoranda of reprimand when the reprimand in substance asserts wrongdoing under the UCMJ or when it appears further adverse action will follow the reprimand.

APPENDIX K – USATDS CERTIFICATE OF APPRECIATION

United States Army Trial Defense Service
Defending those who defend America!



Certificate of Appreciation

AWARDED TO

NAME

In recognition of your outstanding support to the United States Army Trial Defense Service during the period of DAY MONTH YEAR – DAY MONTH YEAR. (Enter achievement s.

NAME

COL, JA

Chief, U.S. Army Trial Defense Service