



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
9275 GUNSTON ROAD
FORT BELVOIR, VA 22060

REPLY TO
ATTENTION OF:

JALS-TD

3 May 2017

MEMORANDUM FOR U.S. Army Trial Defense Service Personnel

SUBJECT: TDS Policy Memorandum 2017-01: Detailing of Defense Counsel and Formation of Attorney-Client Relationships With Alleged Victims of Sexual Assault¹

1. PURPOSE. This memorandum establishes policies and procedures for members of the Trial Defense Service (TDS) to follow when an alleged victim of a sex assault (SA) or a representing Special Victim Counsel (SVC) requests defense counsel support. The policy establishes a coordinated method of detailing defense counsel services for alleged victims in a manner that prevents inadvertent disclosures of client confidences, avoids potential conflicts of interest and ensures availability of supervisory counsel support for Soldiers accused of SA. TDS at all levels will coordinate this policy with all potential stakeholders.

2. DISCUSSION.

a. In many SA cases, the alleged victim has criminal exposure for collateral misconduct, for example underage drinking, adultery, or a violation of a barracks policy. By policy, an SVC will not represent an alleged victim regarding potential criminal liability. An alleged SA victim may need defense counsel services, but having the alleged victim and the accused in the same case represented at the same TDS field office may cause potential ethical issues for counsel, specifically protecting client confidences and avoiding conflicts of interest. This policy establishes a representation scheme to prevent such issues.

b. This policy also ensures Regional Defense Counsel (RDC) and Defense Counsel Assistance Program (DCAP) personnel will be kept conflict-free enabling them to provide guidance and advice to a subordinate counsel representing a client accused of SA.

3. POLICY.

a. All supervisory attorneys in TDS have a duty to create conditions for the ethical practice of law. It is TDS policy that the accused and the alleged victim in the same sexual assault case will not be represented by defense counsel assigned to the same TDS field or branch office.

b. Detailing authorities will keep confidential the fact an alleged victim requested or has TDS representation. To avoid potential conflicts of interest, detailing authorities will not detail defense counsel to represent a Soldier accused of SA and the alleged victim in the same case.

c. This policy eliminates the need for RDCs to detail defense counsel for alleged victims seeking TDS representation. RDCs are therefore not the designated point of contact for alleged victims seeking representation, rather the paired installation SDC should be used. Similarly,

¹ This supersedes TDS Policy Memorandum 2014-01, dated 1 April 2014.

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members of DCAP will not directly advise SVCs representing alleged victims of SA. Instead, questions regarding defense counsel representation by alleged SA victims or representing SVCs will be referred to OTC, TDS.

d. When the SDC detailing authority located at the installation where the accused is assigned details a defense counsel to represent the accused from that installation, TDS policy requires that a different detailing authority at a different installation will detail a defense counsel from a different installation to represent the alleged victim. To facilitate this requirement, TDS provides to SVCs an alternate detailing authority other than their local servicing TDS field office. The alternate detailing authority is designated in Enclosure 1 of this memorandum which lists all installations with Army TDS Field or Branch TDS offices and pairs each installation with another installation TDS field office.

e. Each SDC will proactively coordinate with the SVC(s) on their local installation and ensure the SVC(s) receive and understand this policy and the requirement to seek TDS representation directly from the TDS field office at the installation that is paired to the installation where the accused is assigned.

f. All requests to deviate from this policy and the representational scheme in Enclosure 1 will be directed to the Office of the Chief, TDS.

4. Both the accused Soldier and alleged victim of SA who seek TDS representation are TDS clients and will receive zealous representation while creating conditions that minimize the possibility of a violation of our Rules of Professional Conduct. A defense counsel representing an alleged victim of SA may receive guidance and assistance from his or her SDC. SDCs may request an RDC from another region be appointed to provide additional assistance if necessary.

5. Defense counsel will use DCAP Form 7h (Enclosure 2) to explain the scope of representation to alleged victims of sexual offenses. Defense counsel are authorized to form and maintain attorney-client relationships with alleged victims of sexual offenses consistent with DCAP Form 7h.

6. Questions or recommended changes to this policy will be addressed to OTC, TDS.

2 Encls:
as



COREY L. BRADLEY
COL, JA
Chief, Trial Defense Service

**Representational Scheme for Alleged Victims of Sexual Assault Requesting
TDS Representation (2 May 2017)**

If the accused's TDS counsel
is assigned to:

Contact the Senior Defense Counsel at:

Alabama

Fort Rucker, AL

Fort Polk, LA (337.716.6917)

Alaska

JB Elmendorf-Richardson, AK

JB Lewis-McChord, WA (253.477.1851)

Fort Wainwright, AK

JB Lewis-McChord, WA (253.477.1851)

Arizona

Fort Huachuca, AZ

Fort Bliss, TX (915.568.1679)

California

Fort Irwin, CA

JB Lewis-McChord, WA (253.477.1851)

Colorado

Fort Carson, CO

Fort Sill, OK (580.442.1494)

Georgia

Fort Stewart, GA

Fort Benning, GA (706.545.1520)

Fort Gordon, GA

Fort Stewart, GA (912.210.7035)

Fort Benning, GA

Fort Gordon, GA (706.791.5388)

Hawaii

Schofield Barracks, HI

Yongsan, ROK (DSN 315.738.4419)

Kansas

Fort Leavenworth, KS

Fort Riley, KS ((785.239.2456)

Fort Riley, KS

Fort Leavenworth, KS (913.684.1861)

**Representational Scheme for Alleged Victims of Sexual Assault Requesting
TDS Representation (2 May 2017)**

If the accused's TDS counsel
is assigned to:

Contact the Senior Defense Counsel at:

Kentucky

Fort Campbell, KY

Fort Knox, KY (502.624.1847)

Fort Knox, KY

Fort Campbell, KY (270.798.0750)

Louisiana

Fort Polk, LA

Fort Rucker, AL (334.225.2228)

Maryland

Fort Meade, MD

Fort Drum, NY (315.772.6631)

Missouri

Fort Leonard Wood, MO

Fort Leavenworth, KS (913.684.1861)

New York

Fort Drum, NY

JB Myer-Henderson Hall (703.696.3038)

USMA, NY

JB Myer-Henderson Hall (703.696.3038)

New Jersey

Fort Dix, NJ

Fort Drum, NY (315.772.6631)

North Carolina

Fort Bragg, NC

Fort Jackson, SC (803.751.6813)

Oklahoma

Fort Sill, OK

Fort Cason, CO (719.526.0051)

**Representational Scheme for Alleged Victims of Sexual Assault Requesting
TDS Representation (2 May 2017)**

If the accused's TDS counsel
is assigned to:

Contact the Senior Defense Counsel at:

South Carolina

Fort Jackson, SC

Fort Bragg, NC (910.907.1949)

Texas

Fort Hood, TX

Fort Sam Houston, TX (210.295.9744)

Fort Sam Houston, TX

Fort Hood, TX (254.287.0476)

Fort Bliss, TX

Fort Huachuca, AZ (520.533.0621)

Virginia

Fort Belvoir, VA

Fort Lee, VA (804.765.2145)

JB Myer-Henderson Hall, VA

Fort Lee, VA (804.765.2145)

Fort Lee, VA

JB Myer-Henderson Hall (703.696.3038)

Fort Eustis, VA

JB Myer-Henderson Hall (703.696.3038)

Washington

JB Lewis-McChord, WA

JB Elmendorf-Richardson, AK (907.384.0396)

Germany

Kaiserslautern

Grafenwoehr (DSN 314.475.8494)

Baumholder

Grafenwoehr (DSN 314.475.8494)

Wiesbaden

Grafenwoehr (DSN 314.475.8494)

Grafenwoehr

Kaiserslautern (DSN 314.483.8608)

Representational Scheme for Alleged Victims of Sexual Assault Requesting TDS Representation (2 May 2017)

If the accused's TDS counsel
is assigned to:

Contact the Senior Defense Counsel at:

Katterbach/Ansbach

Kaiserslautern (DSN 314.483.8608)

Vilseck

Kaiserslautern (DSN 314.483.8608)

Italy

All Locations

Grafenwoehr (DSN 314.475.8494)

Korea

All Korea Locations

Schofield Barracks, HI (DSN 315.656.1190)

Japan

All Japan Locations

Schofield Barracks, HI (DSN 315.656.1190)

CENTCOM

All CENTCOM Locations

Italy (DSN 314.637.8185)

All Other Cases

If you don't know where the accused's defense counsel is assigned, would like a defense counsel located geographically closer to the alleged victim, or have any special circumstances, call the Office of the Chief, USATDS at 703.693.1019.

Scope of Representation (Collateral Misconduct)

1. I am (Rank) (Name). I am an attorney, and I have been detailed to represent you. I have been certified to represent Soldiers at special and general courts-martial. This form explains the scope of our attorney-client relationship and client confidentiality after the end of the relationship.

2. I understand that you have reported that you are the victim of an offense and another Soldier was the perpetrator. I understand that it may be possible that your conduct may expose you to criminal liability. I am happy to discuss your situation with you, but first you must understand the scope of my representation. The scope of my representation will depend on what action, if any, the command initiates against you.

3. No action: If the command has not initiated or expressed its intent to initiate an adverse action against you at the time the court-martial proceedings against the Soldier you have accused of misconduct ends, our attorney-client relationship will terminate. The court-martial proceedings against the Soldier end when charges are dismissed or disposed of without trial, the court-martial finds him not guilty, or the Soldier is sentenced. If the command has not initiated or expressed its intent to initiate an adverse action against you at the time the command decides not to pursue court-martial charges against the Soldier, our attorney-client relationship will end.

4. Nonjudicial Punishment: If your chain-of-command initiates nonjudicial proceedings against you, our attorney-client relationship will be terminated at the end of the nonjudicial punishment process or when I leave the Trial Defense Service (TDS), whichever happens first. If I leave TDS before the end of the nonjudicial punishment process, you will be assigned another attorney, if necessary. If the government takes UCMJ or adverse administrative action against you in the future for this or any other misconduct you may be accused of, I may, or may not, be the attorney assigned to represent you.

5. Adverse Administrative Action: If your chain-of-command initiates administrative separation proceedings against you, our attorney-client relationship will be terminated when the separation process is complete, to include any appeals, or when I leave the TDS, whichever happens first. If I leave TDS prior to the completion of the separation action process, another attorney will be assigned to represent you, if necessary.

6. Preferral of charges: If your chain-of-command initiates court-martial proceeding against you, I expect I will represent you during all phases of the court-martial process, including pre-trial proceedings, trial, and post-trial processing. Our attorney-client relationship will terminate when the convening authority takes initial action if your case will not be reviewed by our appellate courts, or when you are assigned appellate defense counsel if your case will be reviewed by our appellate courts. Additionally, certain things could happen before initial action that will terminate our attorney-client relationship before the convening authority takes initial action. Some of them are:

- a. Charges are disposed of before initial action;
- b. I am reassigned outside TDS, demobilize or otherwise leave active duty before the completion of the case;
- c. You release me from representing you;

Scope of Representation (Collateral Misconduct)

- d. A conflict of interest develops; or
- e. You make a request for individual military counsel and it is approved.

If you are completely acquitted of all charges and specifications, our attorney-client relationship will end when you receive your copy of the record of trial.

7. After our attorney-client relationship is terminated, I will continue to have a duty to keep confidential the information I have learned during my representation of you.

NAME
RANK, JA
Defense Counsel

I understand and agree with the scope of representation described in this form.

NAME
RANK, USA