to exercise independent judgment in control of the case. This duty is limited only by law, regulation, and the Army "Rules of Professional Conduct for Lawyers" (AR 27–26). Complaints involving the professional conduct or performance of USATDS counsel should be forwarded through the SDC and RDC to the Chief, USATDS, for action according to chapter 15 of this regulation and AR 27–1.

c. Business cards. Because business cards are necessary to perform their official duties and facilitate the performance of the USATDS mission, USATDS personnel, including trial defense counsel and defense paralegals, may print business cards at government expense in accordance with the provisions of AR 25–30. For commercially procured business cards, see AR 25–30.

Chapter 7
United States Army Trial Judiciary Military Judge Program

7–1. General

a. Military Judge Program. The Military Judge Program is a system in which military judges are designated and detailed as judges of GCM, SPCM, and proceedings conducted before referral pursuant to UCMJ, Article 30a. This chapter sets forth procedures for the Armywide operation of the Military Judge Program. This regulation implements UCMJ, Article 26.

b. Organization. The U.S. Army Trial Judiciary is an element of the USALSA, a field operating agency of OTJAG.

c. Military judge. The term "military judge" includes military magistrates specifically certified and authorized by TJAG to perform judicial duties pursuant to UCMJ, Articles 19 and 30a when performing those duties (see chapter 8 of this regulation and RCM 103(17)). A military judge will be detailed to all SPCMs and GCMs. The primary duty of a military judge is to preside over SPCMs and GCMs to which the judge is detailed. RA military judges (and mobilized USAR military judges) are assigned to the U.S. Army Trial Judiciary. Non-mobilized USAR military judges are assigned to the 150th LOD, USARLC. All military judges, RA, or USAR, are under the professional supervision of the U.S. Army Trial Judiciary.

d. Chief Trial Judge. The chief trial judge is a military trial judge who is designated by TJAG (see para 1–4*c*) as the chief of military trial judges.

e. Tenure for military judges. JAs are certified as military judges by TJAG and assigned to the Trial Judiciary for a minimum of three years. This three-year minimum tenure can be served at more than one duty location, if necessary to meet the needs of the Trial Judiciary. An exception to the three-year minimum tenure can be made if—

(1) The military judge voluntarily requests to be reassigned to other duties, and TJAG approves such assignment.

(2) The military judge retires or otherwise separates from military service.

(3) The military judge is reassigned to other duties by TJAG based on the needs of the Service in a time of war or national emergency.

(4) The officer's certification as a military judge is withdrawn by TJAG for good cause (see chap 15, Section III for suspension of military judges).

7–2. Qualifications of military judges

a. A military judge is a commissioned officer who is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military judge by TJAG.

b. Before performing duties as a military judge of a GCM, a commissioned officer must be—

(1) Certified to be qualified for duty as a military judge of a GCM by TJAG.

(2) Designated for detail as a military judge by TJAG or their designee.

(3) Assigned and directly responsible to TJAG or their designee.

c. All military judges assigned or attached to the U.S. Army Trial Judiciary and the 150th LOD are assigned and directly responsible to TJAG or their designee. Consistent with UCMJ, Article 26(c)(3) and RCM 502(c)(1), both the Chief Trial Judge, U.S. Army Trial Judiciary, and Commander, 150th LOD, are TJAG's designees for this purpose.

d. All military judges who meet the requirements for presiding over a GCM may also preside over a SPCM.

e. Appropriate records will be maintained by the Chief Trial Judge as follows:

(1) Current lists of military judges assigned or attached to the U.S. Army Trial Judiciary and to the 150th LOD.

(2) A list of supporting documents showing that the qualifications of each military judge have been met.

7–3. Judicial circuits

A judicial circuit is one or more GCM jurisdictions or the geographical area where the HQ of such jurisdictions are situated, as designated by TJAG or TJAG's designee, the Chief Trial Judge. Judicial circuits will be established but may be altered and dissolved by TJAG or TJAG's designee as required, at which time all convening authorities concerned will be notified. TJAG or TJAG's designee also will designate one or more duty stations within each judicial circuit at which military judges assigned to the U.S. Army Trial Judiciary will be located.

7–4. Functions and duties of military judges

a. General. Military judges may perform all judicial duties imposed or authorized by the UCMJ, MCM, and applicable regulations.

b. Mandatory duties. A military judge will be detailed to all GCM, SPCM, and proceedings conducted pursuant to UCMJ, Article 30a.

c. Additional duties. Military judges may—

(1) Perform magisterial duties according to chapters 8 and 16 of this regulation.

(2) Issue authorizations on probable cause pursuant to chapter 8 of this regulation.

(3) Issue orders based on a probable cause standard, pursuant to 10 USC 1565a, requiring DoD repositories to make available specific DNA samples in accordance with the military judge's order.

(4) Receive applications for nonconsensual wire and oral communication intercept authorization orders and determine whether to issue such orders, according to AR 190–53.

(5) Conduct hearings pursuant to AR 190–47 to determine whether an inmate at the USDB suffers from a mental disease or defect that requires inpatient psychiatric care or treatment beyond that available at the USDB.

(6) Conduct training sessions for trial counsel, special trial counsel, and defense counsel.

(7) Serve as fact finders in debarment and suspension proceedings involving government contracts.

(8) Conduct investigations, hearings, or similar proceedings when detailed, appointed, or made available for appointment by the Chief Trial Judge.

(9) Be detailed to a SCM if made available by the Chief Trial Judge.

d. Administrative responsibilities. Each military judge is responsible for—

(1) Maintaining an orderly trial calendar that will make efficient use of available time and provide, to the maximum extent possible, for scheduling of trials as requested by convening authorities.

(2) Submitting required reports as directed by the Chief Trial Judge.

(3) Cooperating closely with SJAs and military judges in the circuit. The military judge must exercise every legitimate and appropriate effort to assist convening authorities in the expeditious handling of court-martial cases while taking care to avoid any act that may be a usurpation of the powers, duties, or prerogatives of a convening authority or the convening authority's staff.

(4) Seeking necessary assistance through the judicial administrative channels specified in paragraph 7–6*c* in conflict cases, in other situations when another military judge may be required, or whenever they determine that additional military judge support is required for disposing of courts-martial referred to trial in their jurisdiction. In such cases, the military judge with primary responsibility for a GCM jurisdiction will obtain additional judicial support by conferring with the Chief Circuit Judge as provided in paragraph 7–6*c*.

e. Other courts-martial. Military judges will be detailed to all SPCM and GCM convened for the trial of persons protected by the Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949.

7–5. Responsibilities of the Chief Circuit Judge

The Chief Circuit Judge is the senior military judge in a judicial circuit or other judge designated by the Chief Trial Judge. The Chief Circuit Judge's responsibilities include:

a. General administration of the Military Judge Program within the judicial circuit.

b. Making recommendations to the Chief Trial Judge relating to the operation of the program within the circuit.

c. In coordination with the Chief Trial Judge, determining which military judge within the circuit will be primarily responsible for each GCM jurisdiction within the circuit.

d. In coordination with the Chief Trial Judge, determining the rater, intermediate rater, and senior rater as required for OERs concerning military judges and, where appropriate, for magistrates within the circuit.

e. Designating supervising military judges for military magistrates (see chap 8).

f. Ensuring adequate training for USAR military judges.

g. If authorized by the Chief Trial Judge, issuing circuit rules of court in accordance with paragraph 7–8. Such rules of court will not conflict with rules of court established by the chief trial judge.

7–6. Detailing of military judges

a. Authority to detail military judges. The Chief Trial Judge is authorized to detail military judges for all purposes for which military judges may be detailed (see RCMs 309(a) and 503(b)). This authority may be delegated to individual military judges.

b. Capital courts-martial. Military judges for capital courts-martial will be detailed by the Chief Trial Judge. In case of a conflict, the most senior Chief Circuit Judge will act as detailing authority.

c. Detail of military judges within general court-martial jurisdictions.

(1) The military judge who is designated as primarily responsible for a GCM jurisdiction (see para 7–5*c*) will—

(a) Normally detail themselves to preside over the courts-martial convened in that jurisdiction.

(b) Notify the Chief Circuit Judge when they require a replacement judge to be detailed to preside over a particular court-martial for any reason or determines that additional military judge support is required for disposing of courts-martial referred to trial in their jurisdiction.

(2) When a military judge requests the detailing of a replacement judge or requests additional military judge support, the Chief Circuit Judge will, if practicable, detail a replacement from the military judges within the circuit or will request a replacement judge or additional military judge support from the Chief Trial Judge.

d. Processing requests for replacement judges. Requests and responses to requests for replacement judges or additional military judge support will be expeditiously processed through judicial administrative channels.

e. Docketing. At installations with two or more military judges, one will be designated as the primary docketing judge to oversee docketing and calendar management within that installation. At all other installations, the GCM military judge designated as primarily responsible for a GCM jurisdiction pursuant to paragraph 7–5*c* will oversee docketing and calendar management within that jurisdiction.

f. Cross-service detailing.

(1) Nothing in this regulation precludes the detailing of a military judge from another armed service who has been made available for detail to either a SPCM or GCM, provided that such military judge has been certified by TJAG of the military judge's armed service. The approval of the Chief Trial Judge will be obtained before the judge is detailed.

(2) Army military judges may preside at courts-martial for another armed force, CCMD, or a joint command pursuant to RCM 503(b)(3). The approval of the Chief Trial Judge will be obtained before the judge is detailed.

7–7. Administrative and logistical support

a. Duty station. Military judges are assigned to U.S. Army Trial Judiciary with duty at a specified location. Judges will not be further attached or assigned to any other unit without the written permission of the CG, USALSA. The installation trial judiciary office is a tenant unit on the installation and thus entitled to administrative and logistical support to meet mission requirements, to the greatest extent feasible and authorized. This support includes, but is not limited to—

(1) Permanent or temporary quarters for each military judge and the judge's Family members to the same degree as are provided regularly assigned officers of like grade and similar responsibility. Military judges will not share quarters.

(2) Assistance and maintenance of military personnel records, finance records, officer qualification records, and all other personnel requirements.

(3) Private office space appropriate for the grade and position.

(4) Office furniture to include, but not limited to, an appropriate desk, chairs, carpeting, equipment, and supplies.

(5) Access to legal research publications and facilities and commercial automated legal research capability wherever possible.

(6) Private long-distance telephone line, facsimile machine, digital scanner, wireless email service, and email accessibility.

(7) A Soldier or civilian employee who will provide stenographic, clerical, and administrative assistance as required for the expeditious performance of duties to the military judge(s) assigned for duty at that installation.

(8) Modern computer hardware (to include a high-quality desktop or laptop computer and laser printer), software, networking, and telecommunications equipment (to include a high-quality smartphone, and a computer wireless internet aircard) that meets standards established for JAGCNet, and connection with a local area network that will permit access to email and the internet.

(9) Army transportation resources, including aircraft, as far as is necessary.

b. Sites of trials. At locations where military judges preside over court-martial proceedings, the command will provide administrative and logistical support, to include—

(1) A suitable and functional courtroom facility.

(2) Private office space and appropriate furnishings, to include automation and networking capability, adjacent to the courtroom for the exclusive use of the military judge while court is in session or when the judge is engaged in other judicial business.

(3) Class A telephone service in the military judge's office.

(4) Convenient access to legal research publications, online legal research (JAGCNet), and facilities.

(5) Stenographic, clerical, and administrative assistance as required for the performance of judicial duties.

(6) Army transportation.

(7) On-post billeting facilities appropriate for the judge's grade and position, if available and desired. Except under deployment conditions, military judges should not ordinarily be billeted in facilities also used to billet witnesses, court members, or other trial participants.

c. Courtrooms. The courtroom is the most visible symbol of military justice on an installation. A distinctive facility that provides for the proper atmosphere and decorum is essential to emphasize the Army's commitment to a fair and impartial application of military law. It is thus vital that the courtroom convey a sense of dignity and respect for the people who interact with it. Therefore, courtrooms will be designed, constructed, funded, and maintained by the installation in accordance with applicable Army courtroom facilities guidelines. Exceptions to these guidelines will be requested through the Chief, OTJAG–CLD, and can only be granted by the Army Facilities Standardization Committee. Priority of use of these facilities will be for courts-martial, and other uses will not interfere with court-martial proceedings.

d. Courtroom security.

(1) The installation SJA is responsible for ensuring adequate security measures for the courtroom and courtroom facilities. In meeting this responsibility the SJA must coordinate with the military judge, law enforcement personnel, and others, as appropriate.

(2) Adequate security measures include, but are not limited to, the following:

(a) Inspections. Periodic inspection, no less than annually, of courtrooms and courtroom facilities to assess and implement appropriate security measures for the protection of court-martial procedures, spectators, and property.

(b) Law Enforcement Personnel. The detailing of two of more law enforcement personnel (for example, MP, or DA Civilian police), to provide security during court-martial proceedings. Detailed law enforcement personnel will take general direction from the military judge and trial counsel or special trial counsel. Detailed law enforcement personnel will not act as bailiffs or escorts. Detailed law enforcement personnel will not be anticipated witnesses for the proceeding. The military judge may determine that detailed law enforcement personnel are unnecessary for court-martial proceedings on a case-by-case basis.

(c) Signage. All courtrooms will display DA-issued signage at the entry to the courtroom identifying prohibited items and security procedures.

(d) Screening. Detailed law enforcement personnel must screen all persons and bags entering the courtroom facility using a wand or walk-through metal detection technology. Thorough inspection requirements apply to all personnel regardless of rank or position. Physical searches of personnel must be conducted in the event the metal detector technology becomes inoperable.

(e) Media. Only the court reporter is authorized to make an audio recording of court-martial proceedings. With the exception of the security surveillance camera requirements in paragraph 7–7*d*(2)(*f*), any other use of photography, video, social media, or any other method of creating an audio or visual

recording of court-martial proceedings is prohibited without prior approval of the military judge in accordance with AR 360–1.

(f) Physical Security and Emergency Equipment. All courtrooms and courtroom facilities should possess the following physical security and emergency equipment: operable security surveillance cameras with recording capabilities, duress alarms/panic buttons, metal detector technology (for example, wands, or walk-through metal detectors), locking mechanisms that permit rapid evacuation (for example, cypher locks or key-code/smart card locks), first aid kits, and an automated external defibrillator. Detailed law enforcement personnel and those personnel with offices located in the courtroom facility will be trained in the use and operation of any security surveillance cameras, duress alarms/panic buttons, and metal detector technology. Any duress alarms/panic buttons will be routinely tested to ensure a timely and appropriate response from law enforcement personnel if triggered.

(3) The SJA responsible for any courtroom or courtroom facility that does not comply with the security measures in paragraph 7–7*d*(2) may request a waiver from the Chief, OTJAG–CLD. Requests for waivers must detail the specific reasons the SJA is unable to comply with the security measures and an estimated timeline for compliance.

(4) As a best practice, the installation SJA should create, and update as necessary, a courtroom facility security Standard Operating Procedure (SOP). The SOP should apply to all proceedings held in the courtroom facility and should be published to all routine court-martial participants (for example, the military judge, court reporters, and counsel). All non-routine participants, such as bailiffs, detailed law enforcement personnel, and witnesses, should be informed of the procedures relevant to their participation. The installation SJA should detail an individual in a rank no lower than E–7 or GS–11 as the courtroom facility security manager to oversee implementation and execution of the SOP. The courtroom facility manager should be able to identify security needs, address courtroom facility deficiencies, and resolve other courtroom facility requirements (for example, routine maintenance and work orders).

7–8. Rules of court

TJAG authorizes the Chief Trial Judge, pursuant to RCM 108, to promulgate local or general rules of court. This authority may be delegated by the Chief Trial Judge to Chief Circuit Judges. A copy of any local rules of court will be forwarded to the Chief Trial Judge.

7–9. Requests for military judges as individual military counsel

Requests for military judges to serve as IMC will be processed in accordance with paragraph 5–9*f*(2)(*d*). The Chief Trial Judge will make an administrative determination whether the requested judge is reasonably available. This determination is a matter within the sole discretion of the Chief Trial Judge. An adverse determination may be reviewed upon the request of the accused to the Chief Judge, USACCA, but no further review is authorized.

7–10. Contempt

A military judge may, pursuant to UCMJ, Article 48, and RCM 809, punish acts of contempt committed in any proceeding by any person or entity, including those not subject to the UCMJ, by a fine of up to $1,000.00, confinement of up to 30 days, or any combination thereof. The authority to pursue and impose such contempt of court action may be limited by status of forces or other international agreement.

a. Fine. Sentences for contempt involving a fine will be treated in the same manner as an approved sentence to a fine adjudged by court-martial.

b. Confinement. Individuals serving sentences to confinement for contempt are distinct from the categories of prisoners defined in AR 190–47. The timing and location of execution of a sentence to confinement for contempt is determined by the military judge and is not governed by AR 190–47. Individuals sentenced to confinement for contempt will normally be held in the same facility used by the local GCMCA for pretrial confinement. For sentences to contempt of 12 hours or less, the military judge may designate a local detention cell as the location for confinement. Upon application by the person sentenced to confinement for contempt, the military judge may designate an alternate location or means of confinement, such as house arrest or other form of restraint.

c. Contracted confinement facilities. At installations that utilize contracted space in civilian confinement facilities for the detention of pretrial confinees, the GCMCA will ensure that the contract terms provide for confinement of individuals sentenced to confinement for contempt.

d. Reporting. The supporting SJA will report within 48 hours the holding in contempt of any person by a military judge to Chief, OTJAG–CLD and the Clerk of Court, USACCA.

e. Appeal.

(1) *Notice of appeal.* Any person found in contempt by a military judge may appeal the punishment by filing a notice of appeal with the Clerk of Court, USACCA, within 20 days of being found in contempt. The notice of appeal must comply with the ACCA Rules of Practice and Procedure (ACCA Rules), available at https://www.jagcnet.army.mil/acca.

(2) *Action by the government upon notice of appeal.* Within 20 days of receiving or filing a notice of appeal, the trial counsel or special trial counsel will forward a record of the contempt proceedings to USACCA, for further distribution in accordance with ACCA Rules.

(3) *Briefing.* A contempt-appellant must file any brief in support of their appeal within 30 days of being served with a copy of the record specified in paragraph 7–10*e*(2). Opposing counsel may respond within 20 days of receiving the contempt-appellant's brief. If the United States elects not to respond or is the contempt-appellant, USACCA may direct that counsel be detailed to defend the finding of contempt and punishment.

(4) *Resolution of appeal.* Other procedures for resolution of an appeal from a contempt finding will be specified in rules prescribed by USACCA.

Chapter 8
Military Magistrates

Section I

General

8–1. Military magistrates generally

a. In general. This chapter implements specific procedures for the certification and designation of military magistrates pursuant to UCMJ, Article 26a.

b. Magistrate defined. A military magistrate is a RA JA who is certified by TJAG to be qualified for duty as a magistrate and is designated to perform such duty in accordance with this chapter. Military magistrate as used in this chapter does not have the meaning given in RCM 103.

c. Limitations. The authority of military magistrates is limited to those specifically authorized in paragraph 8–4.

d. Federal magistrate system distinguished. There is no relationship between a military magistrate under this chapter and DA's implementation of the Federal Magistrate System to dispose judicially of uniform violation notices and minor offenses committed on military installations (see AR 190–45).

8–2. Responsibilities

a. TJAG will certify all military magistrates and will specify which magistrate powers each military magistrate may exercise.

b. SJAs will—

(1) Nominate JAs for duty as military magistrates pursuant to paragraph 8–3*b*.

(2) Notify the designated military magistrate's supervising judge if the military magistrate can no longer perform military magistrate duties.

c. The Chief Trial Judge will promulgate standard operating procedures and other guidance for military magistrates.

d. Chief circuit judges will—

(1) Designate military magistrates pursuant to paragraph 8–3*b*.

(2) Establish and supervise training requirements for military magistrates.

(3) Review complaints made against any military magistrate involving allegations related to magistrate duties.

(4) Revoke designation when the designated military magistrate is reassigned to law enforcement or prosecution duties or is otherwise unable to continue performing magistrate duties.

(5) Detail a military judge to supervise each designated military magistrate in the performance of magistrate duties.