

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 and SPCM. This chapter governs the Army-wide operation of the Military Judge Program and sets forth procedures to be followed in administering it. This regulation implements UCMJ, Art. 26, which provides for an independent judiciary within the U.S. Army.

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

c. Military judge of a court-martial. A military judge will be detailed to all GCMs. A military judge will be detailed to each SPCM, unless a military judge cannot be obtained because of physical conditions or military exigencies. If a military judge is not detailed to a SPCM, the convening authority and Chief Circuit Judge will make a detailed written

statement of explanation to be appended to the record. Mere inconvenience will not be a reason for failure to detail a military judge. The primary duty of a military judge is to preside over GCMs and SPCMs to which the judge is detailed. Active duty military judges (or mobilized USAR military judges) are assigned to the U.S. Army Trial Judiciary. Non-mobilized USAR military judges are assigned to the 150th Legal Operational Detachment (LOD), U.S. Army Reserve Legal Command. All military judges, active duty or USAR, are under the professional supervision of the U.S. Army Trial Judiciary.

d. Chief trial judge. A military trial judge who is designated by TJAG (see para 1-4b, above) as the chief of military trial judges.

e. Tenure for military trial judges. Judge advocates are certified as military judges by TJAG and assigned to the Trial Judiciary for a minimum of 3 years, except under any of the following circumstances:

(1) The military judge is assigned to the Republic of Korea or such other area where officers are normally assigned for a short tour of 1 or 2 years; in such cases the military judge will be appointed for a 1- or 2-year term;

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

(3) The military judge retires or otherwise separates from military service;

(4) 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;

(5) The officer's certification as a military judge is withdrawn by TJAG for good cause. See section III, chapter 15, Suspension of Military Judges.

7-2. Qualifications of military judges

a. A military judge is a JA who has been certified by TJAG as qualified to preside over a GCM and/or SPCM. Before performing duties as a military judge of a GCM, a JA officer must be—

(1) Certified by TJAG as qualified for duty as a military judge.

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

(3) Assigned to the U.S. Army Trial Judiciary, or assigned and directly responsible to TJAG's designee under UCMJ, Art. 26(c). All military judges who meet the requirements for presiding over a GCM may also preside over a SPCM.

b. 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 headquarters 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. The Judge Advocate General 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.

(1) The primary functions of military judges are to—

(a) Designate the uniform and the date and time of trial, giving due consideration to military missions.

(b) Designate the place of trial subject to any directions contained in the convening order.

(c) Preside over each court-martial to which they have been detailed, to include performance of all judicial duties imposed or authorized by the UCMJ or theMCM.

(2) The military judge's judicial duties in a case with members include, but are not limited to—

(a) Calling the court into session without the presence of members to hold the arraignment.

(b) Receiving pleas and resolving matters that the court members are not required to consider (under UCMJ, Art. 39(a)).

(c) Entering findings of guilty based upon providently entered pleas of guilty immediately without a vote, when the accused pled guilty.

(d) Ruling on requests for continuances.

(e) Conducting post-trial sessions under RCM 1102.

(3) The purpose of a UCMJ, Art. 39(a), session is to dispose of all matters not requiring the attendance of the members of the court. To achieve the maximum use of such a session, the military judge must ensure that counsel have due notice of the session and sufficient time to prepare for the disposition of matters that must or should be considered.

(4) Military judges assigned to the U.S. Army Trial Judiciary, including all USAR judges under the professional supervision of the U.S. Army Trial Judiciary may—

- (a) Perform magisterial duties according to chapters 8 and 16 of this regulation.
- (b) Issue authorizations on probable cause under chapter 8 of this regulation.
- (c) Issue orders based on a probably cause standard, pursuant to 10 USC 1565a, requiring DOD repositories to make available specific DNA samples in accordance with the military judge's order.
- (d) After DOD approval of a request for authorization, receive applications for nonconsensual wire and oral communication intercept authorization orders and determine whether to issue such orders, according to AR 190-53.
- (e) 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.
- (f) Conduct training sessions for trial and defense counsel.
- (g) Serve as fact finders in debarment and suspension proceedings involving Government contracts.
- (h) Conduct investigations, hearings, or similar proceedings when detailed, appointed, or made available for appointment, by the Chief Trial Judge.

b. Summary courts-martial. A military judge may be detailed to a SCM if made available by the Chief Trial Judge or Chief Trial Judge's designee.

c. Courts-martial composed of a military judge only.

(1) A military judge who is detailed to a court-martial must be satisfied that an accused's request for trial by a court-martial consisting only of a military judge has been made knowingly and voluntarily. After a full inquiry into the accused's understanding of the request, the military judge should grant the request, absent unusual circumstances. If the trial counsel desires to contest the appropriateness of a trial by military judge alone, the military judge should hear arguments from trial and defense counsel before deciding the issue (RCM 903).

(2) In addition to duties and functions performed when sitting with members (except those relating to instructions), the military judge, when sitting as a court consisting of only a military judge, will—

- (a) Rule on all questions of fact arising during the proceedings.
- (b) Determine whether the accused is guilty or not guilty in the form of general findings (and will make special findings when required (under UCMJ, Art. 51(d)).
- (c) If the accused is convicted, adjudge an appropriate sentence.

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 7-6c in conflict cases, in other situations when another military judge may be required, or whenever he or she determines that additional military judge support is required for disposing of courts-martial cases referred to trial in his or her 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 7-6c, below.

e. Other courts martial. Military judges will be detailed to all GCMs and SPCMs convened for the trial of person's 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 and is responsible for—

- a.* General administration of the Military Judge Program within the judicial circuit.
- b.* 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 officer evaluation reports (OERs) concerning military judges and, where appropriate, for magistrates within the circuit.
- e.* Designating supervising military judges for part-time military magistrates (see chap 8).
- f.* Ensuring that USAR military judges receive adequate assistance in performing training.

7-6. Detailing of military judges

a. Authority to detail military judges. The Chief Trial Judge is authorized to detail military judges for courts-martial (see RCM 503(b)). This authority may be delegated to individual military judges.

b. Capital Courts-martial. Absent conflicts, trial judges for capital courts-martial shall be detailed by the Chief Trial Judge. In conflict cases, the next most senior trial judge shall 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 7-5c, above) will—

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

(b) Notify the Chief Circuit Judge when he or she requires 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 cases referred to trial in his or her 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 7-5c, above, will oversee docketing and calendar management within that jurisdiction.

f. Cross-servicing.

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

(2) Army military judges may preside at courts-martial of other Services, under RCM 503(b)(3). For administrative control, the concurrence of the Chief Trial Judge should 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 Commander, USALSA. The installation trial judiciary office is a tenant unit on the installation and thus entitled to all support required by AR 5-9. 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, officer qualification records, and all other personnel requirements.

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

(4) Office furniture to include 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 e-mail service, and e-mail 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 computer, 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 the Judge Advocate General's Corps Network (JAGCNet), Legal Automation Army-Wide System, and connection with a local area network that will permit access to e-mail and the World Wide Web.

(9) Army transportation facilities, including aircraft, as far as is practicable.

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. 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, Criminal Law Division, OTJAG, and can only be granted by the Army Facilities Standards Committee. Priority of use of these facilities will be for courts-martial, and other uses will not interfere with courts-martial proceedings.

d. Courtroom security.

(1) When circumstances warrant, the local SJA will coordinate with the provost marshal for the detailing of an armed MP to provide security at a court-martial. The MP will take general direction from the military judge and trial counsel and will not act as bailiff or escort or be an expected witness in the case.

(2) Staff Judge Advocates, in coordination with the GCM military judge primarily responsible for that GCM jurisdiction, and installation provost marshals will periodically inspect court-martial facilities to assess security vulnerabilities and make such improvements as deemed necessary to provide a safe and secure facility.

e. Leaves and passes.

(1) Request for leaves and passes by military judges assigned to the U.S. Army Trial Judiciary will be forwarded within judicial administrative channels as follows:

(a) By military judges within a circuit to the Chief Circuit Judge, or the Chief Circuit Judge's designee.

(b) By Chief Circuit Judges to U.S. Army Trial Judiciary, JALS-TJ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060-5546.

(2) In emergency situations, clearance may be obtained by electronically transmitted message or telephone. It will be assumed, unless affirmatively noted, that a requested absence will not interfere with the timely administration of military justice.

7-8. Rules of court

The Judge Advocate General authorizes the Chief Trial Judge under RCM 108 to promulgate local or general rules of court. This authority may be delegated by the Chief Trial Judge to Chief Circuit Judges, and 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 individual military counsel will be processed in accordance with paragraph 5-7f(1). 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, U.S. Army Court of Criminal Appeals, but no further review is authorized.