



REPLY TO
ATTENTION OF

ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE

4133^d REGIONAL TRIAL DEFENSE TEAM, WEST REGION

OREGON ARMY NATIONAL GUARD

OFFICE OF THE REGIONAL DEFENSE COUNSEL

1776 Militia Way, P.O. Box 14350

Salem, Oregon 97309-5047



NGJA-OR-TDS

15 May 2011

MEMORANDUM FOR Oregon Army National Guard Soldiers

SUBJECT: Requesting Defense Services in Oregon

1. **Summary.** The Army National Guard (ARNG) has established a separate Trial Defense Service (TDS) for the ARNG. Requests for Defense Counsel (RFC) IAW this memorandum are made using the RFC form via email to NGOR.JAG.4133.TDS@ng.army.mil. The preferred method of contact is via email using the RFC form after reviewing this memorandum and determining that the area of concern is an area that TDS provides legal services for. Please prepare the form and if you are emailing it to us, please save it as RFC, LAST NAME, FIRST, RANK, type of matter (ie separation board). Other contact information is available on the 4133 website at <http://www.oregon.gov/OMD/JAG>.

2. Expanded Explanation.

a. The Army National Guard (ARNG) has established a separate Trial Defense Service (TDS) for the ARNG. Oregon has been selected as the Western Region Headquarters and will be providing Technical Supervision for Trial Defense Counsel (TDC) in the ARNG in 10 States and Guam¹. With the development of the TDS, defense services in Oregon will be obtained in a different manner than in the past.

b. The TDS is different as it is modeled after the Active Component in routing rating authority and technical supervision up and out of the particular state to remove potential unlawful command influence on the military justice system. In short, a TDC is not rated by someone in Oregon, and reports only through the TDS channels for their activities. In our case, myself as the Oregon Regional Defense Counsel (RDC) will Senior Rate or Rate all TDC within the Western Region Structure. Formerly, Oregon assigned defense counsel from other than the Brigade or JFHQ assignment of the Soldier to avoid command influence.

c. As a result of the changes, defense service requests as discussed below will be routed to TDS by email to NGOR.JAG.4133.TDS@ng.army.mil, preferably using the Request for Counsel (RFC) form. All TDS services are provided by Traditional MDay Judge Advocates. There is no full time manning. There are very few TDS positions and so RFC are channeled to available defense counsel or OSJA for assignment as necessary. Make RFC's timely in order to get a timely response.

¹ Guam, Hawaii, California, Arizona, Utah, Nevada, Oregon, Washington, Idaho, Montana, & Alaska.

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d. If you submit a RFC for out of Oregon defense services, the RFC will be routed to those in your state who assign defense counsel. Please allow significant additional time for assignment of Trial Defense Counsel (TDC).

3. **Trial Defense Services.** Defense Services for which a RFC should be directed to the OR TDS (bolded actions are most common) are:

a. Priority I Duties.

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

b. Priority II Duties.

- (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);** and
- (5) **Formal Article 15, OCMJ, counseling;**
- (6) Representation and counseling of officers recommended for elimination under the provisions of 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, including Officer elimination actions; and Officer resignations in lieu of administrative elimination proceedings and resignations for the good of the service;
- (8) **Enlisted Separation Boards.** Representation and counseling of enlisted soldiers recommended for separation IAW AR 135-178. (See separate Enlisted Separation Board Memorandum).
- (9) Representation and counseling of inmates at sentence vacation hearings as result of Courts-Martial;

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(10) Representation and counseling of inmates at disciplinary and adjustment boards pursuant to AR 190-47;

(11) Grade reduction boards where proposed reduction is based on misconduct.

(12) Additionally, IAW AR 27-3, Legal Assistance, TDS counsel 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 OCMJ; or

(b) Related to impending, pending, or recently completed OCMJ proceedings.

(c) The primary example of this are **rebuttals to Letters of Reprimand**.

3. Legal Assistance, OSJA representation, and conflict assignments. All other matters, typically otherwise considered legal assistance, are routed through the Office of the State Judge Advocate (OSJA) for any assignment. OSJA's office number is 503.584.3571. If for such matters, OSJA cannot provide the requested services due to conflict or other reasons, and the matters are authorized TDS activities, then OR TDS may be requested to provide those services through OSJA. Where OR TDS cannot provide services due to staffing or conflict, and OSJA will appoint a Special Defense Counsel from a Brigade other than the Brigade (or JFHQ) that the Soldier is assigned to.

4. Limitations.

a. ARNGTDS counsel may provide defense and legal assistance for activated ORARNG Soldiers where the issue is directly related to Title 32 issues, not arising from Title 10 status.

b. TDC shall not represent Soldiers in civilian criminal matters, but may counsel Soldiers pertaining to possible military criminal jurisdiction. See AR 27-3 for legal assistance ability to provide advice.

5. If you have any questions please contact us at NGOR.JAG.4133.TDS@ng.army.mil.

6. POC is the current Regional Defense Counsel.

ORIGINAL SIGNED

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