

## **TDS Services Provided**

### **Obtaining Advice and the Nature of the Advice Available**

Generally speaking, advice that can be provided is limited by regulation, standard operating procedure and state laws on the practice of law, as well as limitations on resources. Services that can be provided in the order of priority are generally listed below. Each state will have different resources to be able to provide services. Ordinarily, the common and most typical areas of advice for ARNGTDS, subject to direction of the TDS supervisory chain and the State Judge Advocates direction for state include, but are not limited to: Article 15 (or state counterpart) consultation, Courts-Martial consultation and representation, advice when you have been read your 'Miranda' rights pursuant to Article 31 (or state counterpart), Rights warnings in conjunction with a commanders inquiry or AR 15-6 investigation, separation board advice and representation, or assistance with the preparation of rebuttals to Letters of Reprimand (also referred to as Memorandums of Reprimand).

ARNGTDS does not represent Soldiers in Civilian Court. If you are charged with a civilian offense you should see a private attorney in your jurisdiction as soon as possible. At an arraignment (first appearance) on a civilian charge the court will ordinarily if you are facing jail allow you to apply for court appointed counsel. You may have your private attorney coordinate with a ARNGTDS TDC to understand the implications of the charges pending on your military service. Please note that when you are represented by another attorney that a TDC cannot talk to you without getting the approval from that attorney so if you wish to consult with TDS and you already have a private attorney you must provide the TDC a letter from the attorney approving the contact. Also, it is possible that the Command may impose other actions on you such as a letter of reprimand or seek separation and you may obtain legal advice if not outright representation based on the circumstances from NGTDS for the military matters.

ARNGTDS does not represent Air National Guard members without a referral from the supporting Air Judge Advocate and the OSJA.

If you are needing 'legal assistance,' that being matters pertaining to such things as estates and domestic relations, please contact the State OSJA for a referral. ARNGTDS, depending on the particular state's resources and agreements with OSJA, may take direct requests for legal services in such matters as responding to a letter of reprimand, but ordinarily nothing else. ARNGTDS does not provide Ethics Counseling unless related to subject matter for which services are being provided. Actual Ethics Advice should come from an Ethics Counselor in the JAG Office (and is not confidential in nature).

Specifically,

Priority 1 matters for TDS are:

- (1) General court-martial (GCM) representation;
- (2) Special court-martial (SPCM) representation;
- (3) Article 32, UCMJ, representation; and

(4) Counseling of pretrial confinees.

Priority 2 matters for TDS are:

- (1) Officer elimination actions (AR 635–100);
- (2) Officer resignations in lieu of administrative elimination proceedings and resignations for the good of the service (AR 635–120);
- (3) Enlisted separation actions (AR 135-178; and AR 635–200, chapters 5 (convenience of the Government), 7 (defective/fraudulent enlistment/ reenlistment), 8 (pregnancy if notification procedure is used, 9 (alcohol/drug abuse / rehabilitative failure), 10 (discharge in lieu of courts-martial), 11 (entry level performance/conduct), 13 (unsatisfactory performance), 14 (misconduct), 15 (homosexuality), and 18 (failure to meet body fat standard). (4) Reductions in grade (AR 600–200).
- (4) Brief consultation for Summarized Article 15 is allowed but not required.
- (5) With approval of the Article 15 commander, an SDC may approve a TDC to appear as a spokesperson for a Soldier in an Article 15 proceeding. (This will allow the Trial Counsel (prosecutor) to appear on behalf of the NG).
- (6) With approval of the convening authority, an RDC may approve a TDC to appear at a Summary Courts-Martial to represent a Soldier (ordinarily resulting then in the Government being represented.) (This will allow the Trial Counsel (prosecutor) to appear on behalf of the NG).

Priority 3 matters for TDS (availability of services are subject to discretion of the State Judge Advocate and Supervising RDC/SDC) are:

- (1) Line of duty investigations (AR 600–8–1).
- (2) Financial Liability Investigation of Property Loss (FLIPL) (AR 735–5).
- (3) Officer evaluation reports (OERs) (AR 623–105).
- (4) Noncommissioned officer evaluation reports (NCOERs) (AR 623–205).
- (5) Relief for cause reviews (AR 623–105).
- (6) Memoranda of reprimand (AR 600–37).
- (7) Article 138, UCMJ/OCMJ complaints (AR 27–10).
- (8) Inspector General Investigations (AR 20–1).
- (9) Other investigations (AR 15–6). Ordinarily AR 15-6 investigations are initiated for UCMJ allegations and will be referred to TDS.
- (10) Hardship discharges (AR 635–200).
- (11) AR 614–200 (enlisted personnel).
- (12) Officer unqualified resignations by reason of pregnancy and resignations in lieu of discharge because of failure to meet statutory or regulatory requirements (AR 635–120).
- (13) Correction of military records (AR 15–185).
- (14) Legal assistance will be provided on invoking whatever protections may be afforded under the SCRA on matters relating to the prosecution or defense of civil lawsuits based on alleged tortuous conduct. Subject to the availability of expertise and resources, other legal assistance may be provided, but such assistance will be limited to counseling and assistance on retaining a civilian lawyer.

(15) Taxes. Legal assistance will be provided on real and personal property tax issues and on the preparation of Federal and State income tax returns. Legal assistance may be provided on estate, inheritance and gift tax matters, filing of income tax returns, based on the availability of expertise and resources. Tax assistance on private business activities is outside the scope of the legal assistance program with the exception for family child care (FCC) providers.

(16) Civilian Criminal Matters. Legal assistance may be provided on civilian criminal matters based on the availability of expertise and resources. ARNGTDS TDC may only advise regarding civilian criminal matters if collateral to military matters otherwise within the scope of representation as discussed herein, including but not limited to officer transfers and discharges, or enlisted separations. Clients seeking assistance on civilian criminal matters may be provided general advice on civilian criminal matters, such as explaining the nature of the criminal charge, possible punishments, criminal procedure, and expungements. Attorneys providing assistance may contact civilian court or prosecuting officials to obtain information, coordinate with private defense counsel, and to informally request delays in proceedings, dismissal or reduction of charges, and other such matters, so long as an 'official appearance' is not made. Formal requests must be signed by the servicemember only. Clients may be provided assistance on retaining a civilian lawyer but should be advised to seek a court appointed attorney, and shall be told that the TDC does not represent them in regards to their civilian criminal defense matter. See also, AR 27-3 for scope of legal assistance advice in civilian criminal matters.

(17) Various legal assistance matters are optional IAW AR 27-3, and inherently then a lower level Priority III duty: Bars to Re-enlistment (AR 601-280); Waivers to allow reenlistment (AR 601-280); Security clearance revocations (AR 380-67); Suspension of favorable personnel actions (aka FLAGS) (AR 600-8-2); Expungement of military records (AR 600-37); Physical evaluation boards (AR 635-40); Flying evaluation boards (AR 600-105); Quality accreditation for doctors (AR 40-68); Medical evaluation boards (AR 40-3); Qualitative Management Program (AR 601-280); Military driving privileges (AR 190-5); and Recruiter misconduct (AR 601-1).

Limitations on services provided, include but are not limited to:

(1) ARNGTDS counsel will not provide defense and legal assistance for Active Duty personnel, other than activated National Guard Army Title 10 (T10) servicemembers, without RDC approval. Such advice must be related to a Title 32 state status (T32) incident.

(2) Priority III services may be provided upon agreement for activated Title 32 National Guard state status (T32) servicemembers, for matters arising during T32 state status, during their T10 status up to the point when the servicemember would be released from T10 duty under orders. If and when the servicemember opts to continue T10 status with another unit, at which time ARNGTDS representation shall cease and the servicemember be referred to USATDS or legal assistance.

(3) ARNGTDS counsel may assist former clients who have not transitioned to a different State NG or Title 10 status in applications to the Army Discharge Review Board (ADRB) and

the Army Board for Military Records (ABCMR), but may not 'enter' an appearance for them by signing documents or letters for them unless they continue in a State T32 NG status.

(4) Except as allowed under Priority III duties, 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.