



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
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JAGINST 5500.1
Code 13
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JUDGE ADVOCATE GENERAL INSTRUCTION 5500.1

From: Judge Advocate General

Subj: NAVY JUDGE ADVOCATE GENERAL'S CORPS ETHICS COUNSELOR
PROGRAM

Ref: (a) SECNAVINST 5430.7S
(b) DoD 5500.7-R of 30 Aug 93
(c) DON GC Memo of 29 Nov 22
(d) SECNAV Delegation of 27 Aug 21
(e) SECNAVINST 5430.27E
(f) DON GC Memo of 30 Nov 22
(g) JAGINST 5803.1E
(h) OPNAVINST 5400.45
(i) SECNAV M-5210.1
(j) OPNAVINST 5215.17A

Encl: (1) Ethics Counselor (EC) Positions
(2) Duties, Responsibilities, and Authority

1. **Purpose.** Pursuant to references (a) through (g), this instruction establishes certification, training, and oversight requirements for judge advocates and civilian attorneys serving in an EC position as designated in enclosure (1).

2. **Cancellation.** Deputy JAG (DJAG) Memo 5370 Ser 13/2SC12785.08 of 13 Jun 08; DJAG Memo 5370 Ser 13/2SF0296.14 of 2 May 14; and DJAG Memo 5370 Ser 13/2SF0686.15 of 14 Jul 15.

3. **Applicability.** This instruction applies to all active and reserve component judge advocates and civilian attorneys serving in an EC position identified in enclosure (1).

4. **Policy.** Per references (a) and (b), the General Counsel (GC) of the Department of the Navy (DON) is the Designated Agency Ethics Official (DAEO) for the DON and administers the DON's ethics program. Per references (d) and (e), the Judge Advocate General of the Navy (JAG) serves as Alternate DAEO and supports the GC in oversight and management of the DON's ethics program. Per reference (c), the Deputy JAG is a Deputy DAEO responsible to the GC for the oversight and administration of all ethics program requirements within the Navy JAG Corps. Enclosure (1) appoints the judge advocates and civilian attorneys assigned to the positions listed as ECs.

5. Definitions

a. EC. An EC is a judge advocate or civilian attorney serving in a position designated in enclosure (1).

b. Supervisory EC. An EC at an echelon I or II command or an EC who has oversight of another designated EC within the administrative chain of command as outlined in reference (h). Additional guidance is contained in paragraph 6.b. below.

c. Subordinate EC. An EC at an echelon III command or lower who reports to a supervisory EC.¹

6. Responsibilities

a. EC

(1) Per references (b) and (c), an EC is authorized to advise on the standards of conduct set forth in 5 C.F.R. § 2635 and supplemental DoD and DON regulations. EC duties and responsibilities include those set forth in section 1-411 of reference (b) and delegated authorities as outlined in reference (c).

(2) Certain EC Authorities Withheld. Enclosure (2) identifies Deputy DAEO authorities withheld, authorities delegated to the Deputy Assistant Judge Advocate General (Administrative Law), and certain authorities withheld to ECs in the grade of lieutenant commander/GS-13 or above. Subordinate ECs will refer ethics matters identified in enclosure (2) to their supervisory EC. Supervisory ECs may withhold additional duties and authorities, in writing, from a subordinate EC's ethics advice portfolio as needed for effective EC program management and professional development per paragraph 6.b. below.

(3) All ECs must identify their supervisory and/or subordinate EC(s) to establish, ensure, and maintain a clear understanding of the oversight of the ethics program within respective chains of command and applicable reporting requirements.

(4) ECs are encouraged to collaborate with other ECs across the organization to ensure the sufficiency and consistency of ethics advice provided to the Fleet and shore establishment.

(5) Training and EC Certification Documentation. ECs are responsible for maintaining documentation of their initial, refresher, and annual EC training certifications. Additionally, supervisory ECs are responsible for ensuring training requirements of subordinate ECs are completed and will periodically check training documentation for all ECs under their supervision. In addition, all ECs are responsible for memorializing their initial and annual trainings on the OJAG Code 13 SharePoint site located at <https://portal.secnav.navy.mil/orgs/JAG/13II/SitePages/Training.aspx>.

¹ A subordinate ethics counselor (EC) can also be a supervisory EC. For example, the Staff Judge Advocate (SJA) assigned to a Navy Region Command is subordinate to the Force Judge Advocate for Commander, Navy Installations Command, and also may be a supervisory EC for subordinate installation SJAs.

b. Supervisory ECs. Consistent with references (a) through (f), supervisory ECs shall provide mentorship and oversight of subordinate ECs, including reviewing subordinate EC's ethics advice, processes, and records, as appropriate. Echelon II supervisory ECs will specify in writing their supervisory relationship and oversight responsibilities with regards to their subordinate ECs. For example, the expected frequency of training, expectations for supervisory spot checks, to include compliance with records management, and the EC program assessment requirements set forth in paragraph 9 below.

(1) Guidance for coordinating ethics matters with the operational chain of command. Per paragraph 5.b, a supervisory EC exercises oversight of subordinate ECs in the administrative chain of command, and subordinate ECs report to the supervisory EC in the administrative chain of command. However, there may be ethics matters that require coordination and supervisory oversight by ECs in the operational chain of command. In such cases, the ethics matter must be briefed to the supervisory EC and the cognizant superior EC in the operational chain of command, who will decide which EC exercises supervisory oversight of the matter. As a general rule, the command who has the most equity in the ethics matter should assume the lead for supervisory oversight. The determination of which EC has the lead must be in writing and retained as outlined in paragraph 8.²

(2) Naval Legal Service Command (NLSC).

(a) Region Legal Service Office (RLSO) Commanding Officers (CO) serve as the supervisory EC for all ECs assigned to their RLSO. RLSO COs must coordinate with ECs at non-NLSC legal commands (e.g., Navy Regions SJAs, TYCOM SJAs) to ensure continuity of ethics advice provided across the area of responsibility.

(b) When appropriate, RLSO COs and ECs at non-NLSC commands may agree, in writing, for the EC at the non-NLSC command to serve as the supervisory EC for RLSO personnel. For example, a RLSO CO and a Region SJA may agree that the Region SJA will serve as the supervisory EC for the installation SJAs.

c. CO, Naval Justice School (NJS). Disseminate a list of live and online training courses that are available to meet the initial EC certification requirement.

d. Deputy Assistant Judge Advocate General (Administrative Law). Disseminate the live and online training courses that meet the training requirements for previously certified ECs and annual EC training.

² Hypothetical. A carrier strike group conducts a port visit to a partner nation. During planning for the port visit, the CVN Judge Advocate identifies potential gift issues under the Standards of Conduct because of the involvement of a foreign husbanding agent (a defense contractor) and informs the supervisory EC (the Force Judge Advocate for the Aviation Type Commander (TYCOM)) and the cognizant superior EC in the operational chain of command (the CSG SJA). The TYCOM FJA and CSG SJA must coordinate to determine which commander has the most equity in the ethics matter and make a written determination of who has lead for the record.

7. Training

a. Initial EC Training for First-Time ECs. Judge advocates or civilian attorneys assigned to an EC position identified in enclosure (1) must earn initial EC certification prior to or within three months of assuming EC duties. Initial EC certification is earned by completing a course specified by CO, NJS. Courses include the NJS EC Course or an EC course facilitated by The Army Judge Advocate General's Legal Center and School, the DoD Standards of Conduct Office, or DON Office of the GC that the CO, NJS has identified to provide a minimum of eight hours of ethics training.

b. EC Training for Previously Certified ECs. ECs who previously completed initial certification but have not served in an EC capacity for greater than three years prior to assuming their current EC position must earn certification within three months of assuming an EC position by completing eight hours total of live or online training. This training must cover eight of the following areas: gifts, post-government service employment and procurement integrity, conflicts of interest, relations with non-Federal entities, fundraising, outside activities, political activities, financial disclosure, use of government resources, fiscal law, and official travel.

c. Annual EC Training. ECs will complete refresher training by December 31 annually, unless the EC completed initial or prior EC certification training in that calendar year. Required refresher training consists of one hour each of live or online training in four of the areas identified in paragraph 7.b.

8. EC Records Management

a. Echelon II supervisory ECs will maintain a document delineating the supervisory EC-subordinate EC relationships of all EC positions under their supervision. All supervisory ECs will maintain records of training and spot-checks conducted of subordinate EC programs. These records will be retained in accordance with reference (i).

b. All ECs will ensure digital copies of written ethics advice documents (e.g., emails, memoranda, notes to file) are maintained for six years in accordance with reference (i). Verbal EC advice must be subsequently documented as soon as practicable and retained as above. As a best practice, ECs should retain templates and example ethics documents to ensure continuity of knowledge and consistency of ethics advice within a chain of command.

c. All ECs will ensure digital copies of ethics advice is maintained on an unclassified shared drive, web portal, or other media (e.g., other than Outlook .pst files), that can be made readily accessible to facilitate periodic assessments and/or data calls. Financial disclosure records are maintained in the Integrity system and Financial Disclosure Management system as the appropriate retention location. Opinions issued in accordance with Section 847 of the National Defense Authorization Act for Fiscal Year 2008 must be retained in After Government Employment Advice Repository (AGEAR) as the appropriate retention location.³

³ The requirement to retain opinions in the After Government Employment Advice Repository only applies to certain former "covered DoD officials" who participate in an acquisition contract worth over \$10 million within two year of leaving the Department of Defense (DOD), when the employee will be working for a DoD contractor.

9. Program Assessment

a. EC Program Assessment. By 15 February annually, all ECs that support a command that does not have a designated EC will complete a written EC program assessment (ECPA) of that command's ethics program for the prior calendar year, to include items specified in the Annual Ethics Audit Review Checklist contained in Vice Chief of Naval Operations (VCNO) Annual Standards of Conduct Guidance. If an EC supports multiple commands that do not have their own assigned EC (e.g., ECs in RLSO Command Services Departments or Carrier Strike Group SJAs supporting multiple commands), the cognizant supervisory EC (e.g., RLSO CO for RLSO ECs) will annually designate which supported command(s) will receive annual ECPAs, or if the EC will conduct an ECPA that addresses the EC's support to multiple commands. ECs will provide copies of ECPAs to their supported commander or principal. ECs will forward copies of ECPAs to their supervisory EC, if requested. ECs shall maintain ECPAs for a period of ten years to be available for review as part of the Navy JAG Corps' Comprehensive Assessment Program.

b. Chief Counsel to the JAG for Assessments and Organizational Performance (CCAO) and/or NLSC Inspector General (IG) Assessment. Periodically, the CCAO and/or NLSC IG Article 6 will assess the efficacy of an EC's ethics program. This assessment will include the sufficiency of supervisory EC and subordinate EC collaboration and consistency of advice provided to the subordinate units in the chain of command.

c. Completion of initial, refresher, and annual EC certification documentation may be assessed by the CCAO and/or NLSC IG in connection with JAG Corps Continuous Performance Assessment and UCMJ Article 6 inspections, as well as during other ethics assessments, such as those directed by the VCNO in the annual VCNO Standards of Conduct guidance.

10. Temporary Absence of an EC. If an EC is absent temporarily from their duties, an individual who has been assigned to cover their duties may act as the EC provided the requirements of paragraph 7 above are met.

11. Exceptions and Waivers. The Deputy Assistant Judge Advocate General (Administrative Law) may approve exceptions or waivers of the training requirements in paragraph 7 for good cause.

12. Records Management. Per reference (i), records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned per the records disposition schedules located on the Department of the Navy Directorate for Administration, Logistics, and Operations, Directives and Records Management Division portal page at <https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/Records-and-Information-Management/Approved%20Record%20Schedules/Forms/AllItems.aspx>.

13. Review and Effective Date. Per reference (j), OJAG (Administrative Law Division) will review this instruction on the fifth anniversary of its effective date to ensure its applicability, currency, and consistency with Federal, DoD, SECNAV, and Navy policy and statutory authority using OPNAV Form 5215/40 Review of Instruction. This instruction will be in effect for 10 years, unless revised or cancelled in the interim, and will be reissued by the 10-year anniversary

date if it is still required. Otherwise, if the instruction is no longer required, it will be processed for cancellation as soon as the need for cancellation is known.

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Releasability and distribution:

This instruction is cleared for public release and is available electronically only via Office of the Judge Advocate General Issuances website, <https://www.jag.navy.mil/library/instruction.htm>.

Ethics Counselor Positions

1. Assistant Judge Advocate General for Civil Law (AJAG 01)
2. Deputy Assistant Judge Advocate General (Administrative Law); Deputy Director, and Branch 132 (Ethics and Standards of Conduct) judge advocates¹
3. Commanding Officer, Naval Justice School
4. RLSO COs, XOs, Command Services Department Heads, Detachment Officers-in-Charge, and Branch Heads engaged in the provision of command services
5. Principal, Deputy, and Assistant SJAs supporting Flag Officer, SES or SES-equivalent Civilian-led staffs
6. Special Assistant for Legal and Legislative Matters for Office of the Secretary of the Navy
7. Special Counsel and Assistant Special Counsel to the Chief of Naval Operations
8. Assistant and Deputy Assistant for Legal and Legislative Matters for Office of the Vice Chief of Naval Operations
9. Legislative Counsels for Office of Legislative Affairs
10. Civilian Attorneys assigned as Ethics Advisors
11. Principal SJAs supporting Commanding Officers. This does not include officers in their initial tours as Judge Advocates.

¹ Serve as ECs for JAG, DJAG, and DJAG (RA&O).

Duties, Responsibilities, and Authority

1. **Designated Agency Ethics Official (DAEO)**. The General Counsel for the Department of the Navy serves as the Department of the Navy's DAEO.

2. **Alternate Designated Agency Ethics Officials (ADAEO)**. The Judge Advocate General of the Navy serves as the Department of the Navy's ADAEO.

3. **Deputy Designated Agency Ethics Official (DDAEO)**

a. Per reference (c), the Deputy Judge Advocate General (DJAG) serves as a DDAEO. The following authorities are retained by DJAG:

(1) Waiver of late fees for OGE 278 or 278-T reports per 5 C.F.R. § 2634.704. Granting OGE 278-T filing extensions after the filing deadline per 5 C.F.R. § 2634.201(g) and reference (c).

(2) Per 5 C.F.R. § 2635.805(c), authorizing, in coordination with the Department of Justice (DOJ), service as an expert witness which might otherwise violate 18 U.S.C. §§ 203 or 205.

b. Per reference (c), the Assistant General Counsel for Ethics (AGC(E)) serves as a DDAEO. The following authorities are retained by AGC(E):

(1) Primary point of contact for the Department of Defense Standards of Conduct Office, the OGE, and other government agencies on matters related to government ethics.

(2) Sole authority for approval of non-federal entities for the purposes of co-sponsorship of conferences, seminars, and similar events pursuant to section 3-306.b(3) of reference (b).

(3) Sole authority to review appeals from DON personnel who object to filing the OGE Form 450.

4. **Assistant Judge Advocate General (Civil Law)**. The authority to designate ECs in writing is delegated to the Assistant Judge Advocate General (Civil Law). This authority is not further delegable.

5. **Deputy Assistant Judge Advocate General (Administrative Law)**. The following authorities are delegated to the Deputy Assistant Judge Advocate General (Administrative Law):

a. Designating ECs in writing. This authority is not further delegable.

b. **Public Financial Disclosure**. These authorities may be further delegated in writing to personnel in the Administrative Law Division (Code 13).

(1) If requested prior to the filing deadline, grant reasonable extensions of time for filing required public financial disclosure reports, not to exceed a total of 90 days.

Enclosure (2)

(2) Certify financial disclosure reports filed by DON officers and employees.

6. Ethics counselors in the grade of lieutenant commander or GS-13, or above. The following authorities are retained by ECs in the grade of lieutenant commander/GS-13 or above.

a. Conflicts of Interest. Coordinate possible 18 U.S.C. § 208 waiver with the DAEO per 5 C.F.R. § 2635.402. Advise on impartiality and conflicts of interest per 5 C.F.R. § 2635.502 and JER 3-204. Advise on seeking and negotiating employment per 18 U.S.C. § 208, Section 1117 of the National Defense Authorization Act for Fiscal Year 2022 and 5 C.F.R. § 2635.604.

b. Post-Government Ethics Advice. Provide post-government ethics advice and advise on written disqualification per reference (b), section 9-400.

c. Public (OGE Form 278) Financial Disclosure Reports. Review financial disclosure reports per reference (b), section 7-206b, and grant 90-day extensions for filing OGE 278-Ts if requested prior to the filing deadline per 5 C.F.R. § 2634.201(g) and reference (c).

d. Acceptance of Gifts from Outside Sources. Act as an agency designee, where authorized in reference (b), for review of widely attended gatherings in accordance with 5 C.F.R. § 2635.204(g).

7. Ethics Counselor Responsibilities. Unless authority has been retained in paragraphs 3 through 5 above, ECs will exercise the authorities delegated to them in reference (c).