

National Guard Regulation 27-12

Legal Defense Services

**Judge Advocate
Cross
Jurisdictional
Practice of Law for
Legal Defense
Services**

**National Guard Bureau
Arlington, VA 22204
15 September 2014**

UNCLASSIFIED

SUMMARY OF CHANGE

NGR 27-12

Judge Advocate Cross Jurisdictional Practice of Law for Legal Defense
Services

15 September 2014

o This is a new publication.

Legal Defense Services

Judge Advocate Cross-Jurisdictional Practice of Law for Legal Defense Services

By Order of the Secretary of Army:

JUDD H. LYONS
Major General, USA
Acting Director, Army National Guard

Official:

CHARLES M. BALDWIN
Deputy Chief of Staff, Army National Guard

History. This is a new regulation.

Summary. This regulation governs the cross-jurisdictional practices, policies, and procedures for Army National Guard (ARNG) Judge Advocates (JA) providing legal services to members of the National Guard (NG) subject to adverse administrative action while performing duty under the authority of Title 32, United States Code (USC) (32 USC).

Applicability. This regulation applies to the ARNG of the 54 States, Territories, and the District of Columbia.

Proponent and exception authority. The proponent of this regulation is the Office of the National Guard Bureau Chief Counsel (NGB-JA). The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation.

Army management control process. This regulation is not subjected to the requirements of Army Regulation (AR) 11-2.

Supplementation. Local supplementation of this regulation is not authorized unless approved by the Chief, National Guard Bureau (CNGB).

Suggested improvements. Users of this regulation are invited to send comments and suggested improvements on Department of the Army (DA) Form 2028 (Recommended Changes to Publications and Blank Forms) directly to CNGB, ATTN: NGB-JA, 1636 Defense Pentagon, Washington, D.C. 20301-1636.

Distribution. Distribution is intended for all command levels.

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Glossary

Chapter 1 General

1-1. Purpose

This regulation governs the authority of ARNG Trial Defense Service (TDS) JAs, performing duty under the authority of 32 USC for the delivery of legal defense services to members of the National Guard (NG) subject to adverse administrative action, investigation, or inquiry, while performing duty under the authority of 32 USC. This policy facilitates the efficient and effective delivery of legal defense services to NG members in all States, Territories, and the District of Columbia. It clarifies authorities, and establishes responsibilities for cross-jurisdictional representation by ARNG JAs.

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and terms used in this regulation are defined in the glossary.

1-4. Responsibilities

a. In accordance with DODD 5105.77, the Chief, National Guard Bureau (CNGB), with approval of Secretary of the Army, is responsible for developing and promulgating directives, regulations, and publications on NG matters consistent with Department of Defense and Army policies.

b. The Director, ARNG, is responsible for approving Service specific policy.

c. The Adjutants General (TAG) are responsible for the administrative and logistical support of regional trial defense teams (RTDT), TDTs, assigned members, and the operational control of assigned RTDTs and TDTs for non-TDS missions during State or National emergencies.

d. The Chief, U.S. Army Trial Defense Service (Chief, USA TDS) is responsible for the detail, supervision, and control of defense counsel services within the Army.

e. The Chief, Army National Guard Trial Defense Service (Chief, ARNG TDS) is responsible for:

(1) Administering the ARNG TDS consistent with approved policies, directives, ARs, and other publications of the Army and ARNG.

(2) Technical supervision, management, direction, and legal defense training for all members of the ARNG TDS while in a Title 32 non-Federal status.

Chapter 2 Legal Defense Service Providers

2-1. Authorization to provide legal defense services

An ARNG TDS JA will be permitted to represent NG members in covered legal defense actions (see glossary), associated proceedings, and boards of all States, Territories, and the District of Columbia regardless of the JA's states of licensure.

2-2. Scope

a. The performance of covered legal defense actions by ARNG TDS JAs is a Federal function not subject to regulation by the States.

b. ARNG TDS JAs performing non-covered legal defense actions such as matters before a State court to include State courts-martial, will meet the licensure requirements of the respective State, Territory, or the District of Columbia, unless otherwise excused by a competent authority of those entities.

Chapter 3 Army National Guard Trial Defense Service

3-1. Chief, Army National Guard, Trial Defense Service

The Chief, ARNG TDS is an officer of the National Guard Bureau, designated by The Judge Advocate General, affiliated with, but operating independent of the Office of the National Guard Bureau Chief Counsel (NGB-JA).

3-2. Regional Trial Defense Team

A RTDT provides technical supervision, performance oversight, legal defense training, and management of assigned TDTs. TAGs exercise operational control over respective RTDTs and TDTs, and members, for non-TDS missions during State or National emergencies. RTDTs:

- a.* Consist of a regional defense counsel, a senior defense counsel, and a paralegal noncommissioned officer.
- b.* May have an additional paralegal specialist.
- c.* Are assigned to their respective States and perform their Trial Defense Service missions under the technical supervision of the Chief, USA TDS through the Chief, ARNG TDS when not mobilized.
- d.* Come under operational control of the USA TDS upon mobilization in a Title 10 status.
- e.* Provide training and general supervision, and assist trial defense counsel in counseling clients and preparing actions for State courts-martial, administrative boards, investigations, nonjudicial punishment, or other adverse administrative actions.

3-3. Trial Defense Team

A TDT provides TDS for State courts-martial, administrative boards, investigations, nonjudicial punishment, or other adverse administrative actions. TAGs exercise operational control over respective TDTs, and members for non-TDS missions during State or National emergencies. TDTs:

- a.* Consist of a senior defense counsel, three trial defense counsel, and one paralegal noncommissioned officer.
- b.* May consist of a senior and field team configuration containing one additional paralegal specialist.
- c.* Are assigned to their respective States and perform their TDS mission under the technical supervision of the Chief, USA TDS through the Chief, ARNG TDS when not mobilized.
- d.* Come under operational control of the USA TDS upon mobilization in a Title 10 status.

3-4. Trial Defense Counsel

A trial defense counsel is a JA, certified under UCMJ, Art. 27 (b), in the ARNG, whose primary duties are to represent Soldiers in courts-martial, administrative boards, and other proceedings and act as consulting counsel as required by law or regulation. A Trial defense counsel performs other defense-related duties as prescribed by the Chief, ARNG TDS.

Appendix A
References

Section I
Required Publications

DODD 5105.77

National Guard Bureau (Cited in para 1-4a)

UCMJ

Uniform Code of Military Justice (Cited in para 3-4)

32 USC

National Guard (Cited in para 1-1)

Section II

Related Publications

A related publication is merely a source of additional information.
The user does not have to read it to understand this publication.

AR 27-1

Judge Advocate Legal Services

AR 27-3

The Army Legal Assistance Program

AR 27-10

Military Justice

AR 27-26

Rules of Professional Conduct for Lawyers

FM 1-04

Legal Support to the Operational Army

Title 10 United States Code, section 113

Secretary of Defense

Section III

Prescribed Forms

This section contains no entries.

Section IV

Referenced Forms

This section contains no entries.

Glossary

**Section I
Abbreviations**

AR
Army Regulation

ARNG
Army National Guard

ARNG TDS
Army National Guard Trial Defense Service

CNGB
Chief, National Guard Bureau

Chief, ARNG TDS
Chief, Army National Guard Trial Defense Service

Chief, USA TDS
The Chief, U.S. Army Trial Defense Service

DODD
Department of Defense Directive

JA
Judge Advocate

NG
National Guard

NGB-JA
Office of the National Guard Bureau Chief Counsel

RTDT
Regional Trial Defense Team

TAG
The Adjutant General

TDS
Trial Defense Service

TDT
Trial Defense Team

USA TDS
U.S. Army Trial Defense Service

USC
United States Code

Section II

Terms

Army National Guard Trial Defense Service Judge Advocate

Commissioned officers of The Judge Advocate General's Corps, certified under Article 27(b), UCMJ, members of the ARNG, assigned to the Trial Defense Service or performing legal defense services under the supervision of the ARNG TDS. Primary duties include representation of Soldiers in courts-martial, administrative boards, and other proceedings, and to serve as consulting counsel as required by law or regulation. Trial defense counsel perform other defense related duties as prescribed by the Chief, ARNG TDS.

Covered Legal Defense Action

Adverse administrative actions, investigations, or inquiries initiated pursuant to Army Regulations, Air Force Instructions, or National Guard Regulations, promulgated under authority of the respective Secretaries or the CNGB, and initiated against any member of the NG while performing duty under the authority of 32 USC.

Cross-jurisdictional Representation

The practice of military legal defense by an ARNG TDS JA in a covered legal defense action initiated by the NG of a State, Territory, or the District of Columbia, of which the ARNG TDS JA is not a member or otherwise recognized to practice law.

License

A right given by a competent state authority to practice law within the jurisdiction of the State.

Practice of Law

"Practice of law," "practice law," and "law practice" are terms that specifically include, but are not limited to, the providing of any advice, opinion, document, or instrument that construes or interprets law or legal authority, or is legal in nature (such as a contract, will, lease, power of attorney, and so forth, or any advice or opinion that purports to render a legal evaluation of such), or that is construed, or intended to be construed, by either the drafter or recipient, as a legal opinion, document, or instrument (See AR 27-1).

State or States

The 54 States, Territories and the District of Columbia.

The Adjutant General

The Adjutant General of a State, Territory, or the Commanding General of the District of Columbia NG.

Section III

Special Abbreviations and Terms

This section contains no entries.