



ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE

653^d TRIAL DEFENSE TEAM, WEST REGION
UTAH NATIONAL GUARD
12953 Minuteman Way, P.O. Box 1776
Draper, Utah 84020-1776



REPLY TO
ATTENTION OF

NGJA-UT-TDS

6 March 2011

MEMORANDUM FOR Utah Army National Guard Soldiers

SUBJECT: Establishment of the ARNG Trial Defense Service and Requesting Defense Services in Utah

1. **Summary.** The Army National Guard (ARNG) has established a separate Trial Defense Service (TDS) for the ARNG. Requests for Defense Counsel IAW this memorandum are made using the RFC form via email to NGUT.JAG.653UT.TDS@ng.army.mil. The preferred method of contact is the online FRC form available on the 653d TDT website at www.ut.ngb.army.mil/jagtds/default.htm.

2. **Expanded Explanation.**

a. The Army National Guard (ARNG) has established a separate Trial Defense Service (TDS) for the ARNG. With the development of TDS, defense services in Utah will be obtained in a different manner than in the past.

b. The TDS is modeled after the Active Component in routing rating authority and technical supervision up and out of the state to remove potential unlawful command influence on the military justice system. In short, a defense counsel is not rated by someone in the Utah National Guard chain of command, and reports only through the TDS channels for their activities. Formerly, Utah assigned defense counsel from outside the command of the Soldier to avoid command influence.

c. TDS is an M-Day organization without any full-time manning.

d. As a result of the changes, defense service requests as discussed in paragraph 3 will be routed through to TDS by email to NGUT.JAG.653UT.TDS@ng.army.mil, preferably using the Request for Counsel (RFC) form. The TDS offices are located at JFHQ in Draper.

e. With the limited availability of defense counsel, you need to submit a RFC as soon as possible in order to ensure that you are able to meet all applicable deadlines.

3. **Trial Defense Services.** Actions for which a soldier is entitled to defense counsel (bolded actions are most common) include:

SUBJECT: Establishment of the ARNG Trial Defense Service and Requesting Defense Services in Utah

a. Priority I Duties.

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

b. Priority II Duties.

- (1) **Counseling regarding rights warnings;**
- (2) Counseling suspects on criminal matters when the exercise of military jurisdiction is possible (even though jurisdiction has not been exercised);
- (3) Counseling with regard to Summary Courts-Martial (SCM);
- (4) **Formal Non-Judicial Punishment counseling;**
- (5) Representation and counseling of officers recommended for elimination under the provisions of (UP) AR 600-8-24, Officer Transfers and Discharges;
- (6) 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 (AR 635-100); and Officer resignations in lieu of administrative elimination proceedings and resignations for the good of the service (AR 635-120);
- (7) **Enlisted Separation Boards.** Representation and counseling of enlisted soldiers recommended for separation IAW (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);
- (8) Grade reduction boards where proposed reduction is based on misconduct; and
- (9) IAW paragraph 3-6g(2), 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 UtCMJ; or

SUBJECT: Establishment of the ARNG Trial Defense Service and Requesting Defense Services in Utah

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

The primary example of this is a **rebuttal to a Letter of Reprimand**.

4. **Legal Assistance and OSJA representation.** All other matters, typically otherwise considered legal assistance, are routed through the Office of the State Judge Advocate (OSJA) for any assignment. Where UT TDS cannot provide services due to staffing or conflict, OSJA will appoint a Special Defense Counsel from a Brigade other than the Brigade (or JFHQ) that the Soldier is assigned to.

5. **Legal Assistance, Priority III matters.** General Legal Assistance IAW AR 27-3, which generally includes TDS Priority III duties, includes services which may be and often are limited by the availability of Judge Advocates IAW AR 27-3. Priority III duties are the primary responsibility of the State Judge Advocate and subordinate organizations, and are:

- a. Line of duty investigations (AR 600–8–1).
- b. Financial Liability Investigation of Property Loss (FLIPL) (AR 735–5).
- c. Officer evaluation reports (OERs) (AR 623–105).
- d. Noncommissioned officer evaluation reports (NCOERs) (AR 623–205).
- e. Relief for cause reviews (AR 623–105).
- f. Letters or Memoranda of reprimand (AR 600–37).
- g. Article 138, UCMJ/OCMJ complaints (AR 27–10)
- h. Inspector General Investigations (AR 20–1).
- i. **Other investigations (AR 15–6). Ordinarily AR 15-6 investigations are initiated for UtCMJ allegations and will be referred to TDS.**
- j. Hardship discharges (AR 635–200).
- k. AR 614–200 (enlisted personnel).
- l. 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).
- m. Correction of military records (AR 15–185).
- n. Legal assistance will be provided on invoking whatever protections may be afforded under the SCRA (Servicemembers Civil Relief Act) on matters relating to the prosecution or defense of civil lawsuits based on alleged tortious 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.
- o. 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

SUBJECT: Establishment of the ARNG Trial Defense Service and Requesting Defense Services in Utah

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.

p. 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).

6. Limitations.

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

b. 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.

c. 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.

7. **Website.** The 653d website is in its infancy and is being developed. As resources are gathered the information will be added to the website. Even so, the information currently available on defense and legal assistance matters and resource links is relatively extensive.

8. We look forward to assisting you with your military legal defense and authorized legal services needs as we stand up this new organization. If you have any questions please contact us at NGUT.JAG.653UT.TDS@ng.army.mil.

9. POC is the undersigned.



DANIEL K. DYGERT
MAJ, JA
Senior Defense Counsel