



UNITED STATES MARINE CORPS
CHIEF DEFENSE COUNSEL OF THE MARINE CORPS
MARINE CORPS DEFENSE COUNSEL ORGANIZATION
2 NAVY ANNEX
WASHINGTON, D.C. 20380

5800
CDC
12 April 11

CDC Policy Memo 02-11

From: Chief Defense Counsel of the Marine Corps
To: Distribution List

Subj: SEEKING RELEASE FROM A CLIENT (WITHOUT CAUSE)

Ref: (a) R.C.M. 505(d)(2)
(b) JAGINST 5803.1C

Encl: (1) Supervisory Attorney Memorandum Regarding the Right to Counsel

1. Purpose. To establish a standard procedure for seeking and memorializing a client's voluntary decision to release a defense counsel from further representation without the need to demonstrate good cause.
2. Discussion. Under the references, an established attorney-client relationship may only be severed under a limited set of circumstances: (1) when excused by the detailing authority for good cause shown on the record, (2) when excused with the express consent of the accused, (3) when excused by the military judge for good cause shown, and (4) when excused upon the appointment of individual military counsel. This memorandum deals solely with a defense counsel obtaining the consent from the client to sever the attorney-client relationship.
3. Policy. Before a defense counsel seeks a client's consent to sever the attorney-client relationship, the defense counsel will discuss the issue with the Senior Defense Counsel and the Regional Defense Counsel. Upon approval from the RDC, the defense counsel will discuss the issue with the client and fully explain the justification for seeking release and the impact on the case by releasing the defense counsel. The defense counsel WILL NOT advise the client whether the client should consent to releasing the defense counsel because the defense counsel may have a conflict between the desire to be released and the client's interests. That defense counsel's supervisory attorney SHALL provide the client conflict-free advice regarding this important decision and the supervisory attorney will memorialize this advice using enclosure (1). If the client consents to releasing the defense counsel, the consent form will be provided to the defense counsel, detailing authority, and military judge. If the client does not consent, the consent form will be provided only to the defense counsel.


J. G. BAKER

Distribution List:

SJA to CMC

Legal Chief of the Marine Corps

LSSS OICs and Law Center Directors

All members of the DCO

MEMORANDUM

From: Supervisory Attorney

To: Accused

Subj: ADVICE CONCERNING RIGHT TO COUNSEL

1. Purpose of Advice. Your trial defense counsel Capt X has advised me that he has sought your consent to sever the attorney-client relationship in order to allow Capt X to *state with specificity why the defense counsel is seeking to sever the attorney-client relationship.* Because Capt X has a personal interest in this issue, as his supervisory attorney I am providing you with conflict-free advice concerning your right to counsel in this situation.

2. Scope of Advice. This advice is intended to help you make an informed decision about your right to counsel. This communication is protected by the same attorney-client privilege (with the same exceptions) as your communications with Capt X. This advice is provided solely for the purpose of assisting you in making an informed decision about your right to counsel. I do not represent you in your court-martial case

3. Right to Continued Representation by Capt X. Absent a good cause to sever the attorney-client relationship, you have the absolute right to continued representation by Capt X and Capt X will continue to represent you unless you expressly consent to his request to sever the attorney-client relationship. If you agree to release Capt X as your defense counsel, a new military defense counsel will be assigned to represent you. Like Capt X, that defense counsel will be a licensed attorney and will represent you at no expense to you.

4. The Decision is Yours to Make. You should make your decision completely free of any pressure. The decision to release Capt X under these circumstances is yours, and yours alone. No person or circumstance can force, threaten, coerce, or pressure you to release Capt X.

5. Election of Counsel Rights. Once we have discussed your rights to counsel, I will request that you memorialize your decision regarding Capt X's request to sever the attorney-client relationship in the subparagraphs below.

a. ____ After having discussed Capt X's request to be released as my counsel with (Supevisory Attorney), I expressly and voluntarily consent to releasing Capt X as my counsel. I understand that a new military defense counsel will be detailed to represent me instead of Capt X. I further understand that a copy of this consent form will be provided to the detailing authority and the military judge to memorialize my voluntary consent to release Capt X as my counsel.

b. ____ After having discussed Capt X's request to be released as my counsel with (Supervisory Attorney), I expressly DO NOT agree to severing the attorney-client relationship between Capt X and I. I do not agree to release Capt X as my counsel.

Accused

Date

6. Regardless of your election of rights, I will provide Capt X a copy of this letter and should you elect to release Capt X, a copy of this letter will be provided to your new defense counsel, the detailing authority, and the military judge.

I. M. INCHARGE