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CDC
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CDC POLICY MEMO 4-13

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

Subj: MARINE CORPS DEFENSE SERVICES ORGANIZATION WORKSPACES, CORRESPONDENCE, REPORTING REQUIREMENTS, AND CASE FILE RETENTION POLICIES

Ref: (a) MCBul 5400 of 31 Aug 12
(b) MCBul 5800 of 11 Mar 13
(c) MCO P5800.16F (LEGADMINMAN)
(d) DoN CIO Message, DoN SSN Reduction Plan Phase Three of 17 Feb 12
(e) CDC Policy Memo 5-12 (Advising and Responding to At-Risk Clients)
(f) JAGINST 5800.7F (JAGMAN)

1. Purpose. To update certain business rules for the Marine Corps Defense Services Organization (DSO) related to DSO reporting requirements, work spaces, correspondence, case file retention and standardized forms in light of the Commandant-directed legal reorganization that was approved in reference (a) and implemented by reference (b) in order to ensure the continued operation of the DSO as a functionally independent organization.

2. Discussion.

a. Change 6 to reference (c) established the DSO as a functionally independent organization and in many ways revolutionized the delivery of defense counsel services across the Marine Corps. For the first time, the Chief Defense Counsel of the Marine Corps (CDC) was identified as the Officer-in-Charge of the DSO and entrusted with operational control of all members of the DSO and specifically tasked with establishing standard operating procedures for the delivery of defense counsel services throughout the Marine Corps. Shortly thereafter, in recognition of the enhanced authority and

functional independence of the DSO, the CDC approved a new mission statement and creed for the DSO.

(1) DSO Mission Statement. The Marine Corps Defense Service Organization provides zealous, ethical and effective defense counsel services to Marines and Sailors who are facing administrative, non-judicial and judicial actions in order to protect and promote due process, statutory and constitutional rights, thereby ensuring the military justice system is both fair and just.

(2) DSO Creed. We are Marines – Judge Advocates and Legal Services Specialists – who are dedicated to defending our fellow Marines and Sailors, by providing them legal counsel in any matter required by statute, regulation, or otherwise authorized. We are zealous advocates for our clients, serving independently of the local chain of command and under the supervision of the Marine Corps Defense Services Organization. We zealously represent each and every client within the guidelines of the law, consistent with our professional ethics, and in accordance with our rules of practice. We selflessly perform our duties with the utmost integrity, motivation and pride, without fear of reprisal, or expectation of professional or personal gain. In the same spirit as “Taking Care of Our Own,” we are: “Marines Defending Marines.”

b. References (a) and (b) fundamentally changed the model for the delivery of legal services support in the Marine Corps and created regional Legal Services Support Sections (LSSS). While operational control of defense services remains with the DSO, administrative control of defense services was moved under Officers-in-Charge of the LSSS and their subordinate Legal Services Support Teams (LSST).

c. The policies below, which update certain standard operating procedures and establish some new requirements related to running RDC and DSO branch offices, ensure the lines between administrative and operational control over members of the DSO remain clear in light of the Commandant-directed legal reorganization. These policies supersede and cancel CDC Policy Memos 5-11 and 6-11.

3. Policy.

a. DSO Workspaces. DSO workspaces will be maintained in a professional manner. DSO personnel will ensure that only authorized personnel have access to DSO spaces and that

privileged material and personally identifiable information (PII) are safeguarded at all times. The DSO office space should be clearly identified as being a branch office of the DSO and be separate and distinct from the rest of LSSS or LSST. To that end, there will be appropriate signage entering DSO workspaces. The DSO mission statement and creed and commander-style photographs of the senior defense counsel (SDC), regional defense counsel (RDC), and the Chief Defense Counsel of the Marine Corps (CDC) are to be prominently displayed in the DSO hallway or on the wall of the client waiting room. Additionally, each client waiting room will have a copy of General Mattis' letter to the DSO, contact information for local mental health providers, and the D-Stress Poster on the wall.

b. DSO Correspondence. DSO letterhead will be used on all defense-related correspondence (except for court pleadings) with the DSO member's role and the identity of the client clearly articulated in the document itself. Social Security numbers (SSN) or any portion of a SSN shall not be included in any document unless authorized under reference (d). Defense-related e-mails from a member of the DSO will identify the sender as a member of the DSO, the sender's role, identify of the client and, when appropriate, will identify the contents as work product or privileged communications. E-mails containing PII must be digitally signed and encrypted and should include "privacy sensitive" notices in the subject line and body.

c. Standard Forms. DSO personnel shall use the standard forms available on the DSO SharePoint unless the use of a particular form is not in the best interest of the client or when a standard form does not meet the requirement of a particular circumstance.

d. DSO Reporting Requirements.

(1) CDC's Critical Information Requirements. CDC's CIRs are significant events that the CDC must be made aware of as soon as possible, normally regardless of the time of day. Timely and accurate reporting of CDC CIRs prior to or immediately following an event significantly enhances the ability of the CDC to make timely decisions and initiate appropriate actions. Timely reporting of CDC CIRs can, in some situations, enable the CDC to prevent or shape events. A CDC CIR will be initially reported via e-mail and the case affected will be annotated as a CDC CIR case in the DSO's Case Information System (CIS) and weekly report.

(a) Immediate Reportable Items. All members of the DSO will immediately report simultaneously to the CDC, the applicable Regional Defense Counsel, and the applicable Senior Defense Counsel, the CDC CIRs listed below.

1. Death or serious injury to any DSO member or any DSO client.

2. Death or serious injury to any DSO member's immediate family (parent, spouse, or child).

3. The arrest, pretrial confinement, preferral of charges against, or notification of non-judicial punishment of any DSO member.

4. Any suicide gesture by a DSO member.

5. Any interaction with a client at risk for suicide that required a limited disclosure pursuant to reference (e) of a DSO client.

6. Any possible or suspected loss, compromise, or spillage of classified material or information by any DSO member.

7. Any investigative actions against a DSO member.

8. Any allegation that a member of DSO has acted unethically.

9. The filing of any pleading alleging another government attorney has acted unethically or has engaged in prosecutorial misconduct. An electronic copy of the pleading should be attached to the e-mail.

(b) Items Reportable through the RDC. All members of the DSO will immediately report to their Regional Defense Counsel via their Senior Defense Counsel, the CDC CIRs listed below, and Regional Defense Counsels will ensure prompt forwarding to the CDC.

1. Any media interest in an investigation or case concerning a DSO client.

2. Any potential claim from a member of the DSO that a government attorney is acting unethically or has engaged in prosecutorial misconduct (this is prior to an articulation of the claim in a motion, correspondence, pleading, on the record statement, or email which is mandated CIR direct to CDC in paragraph 3c(1)(a)9 above).

3. Any case alleging a violation of Article 118 (or an attempted 118), UCMJ or that has been defined as a national security case under paragraph 0126 of reference (f).

4. Any court hearing where a general officer or staff judge advocate will be called as a witness.

5. Any case alleging misconduct by an officer above the grade of O-3 and Chief Warrant Officers above CWO-3, or an enlisted Marine above E-7.

6. Any case alleging unlawful command influence, prior to an articulation of the claim in a motion, correspondence, pleading, on the record statement, or email to the government.

(2) Regular Reports. The following reports will be filed by the deadline prescribed.

(a) Weekly Litigation Snapshot. RDCs or their designee will send the CDC and the Officer-in-Charge, Defense Counsel Assistance Program an e-mail by close of business each Thursday listing the pending litigation for the following week and the results for litigation from the current week.

(b) RDC Weekly Report. RDCs or their designee will upload the RDC Weekly Report to Reports Folder on SharePoint by close of business each Monday. The weekly report will identify significant new cases, provide updates in CDC CIR and other significant cases, identify significant motions litigated, list all cases completed, identify significant litigation for the following week and provide an up-to-date status of the RDC’s cases.

(c) Regional Monthly Report. RDCs or their designee will upload the Regional Monthly Report to the Reports Folder on SharePoint by the close of business on the fifth day of the month. The monthly report will identify completed and upcoming training, issues related to working environment,

significant accomplishment and trends identified for the region. Additionally, the RDC will update the Monthly Litigation Statistics Report in the Monthly Report folder on SharePoint. The CDC's Legal Chief will ensure the Master Personnel Roster and Fiscal Year to Date Litigation Statistics Report is updated and placed into the Monthly Report folder by the seventh day of the month.

(d) CDC Yearly Report. The CDC will provide the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) a yearly report in the format provided by the SJA to CMC.

(3) Other Reports.

(a) Case Information System. Each counsel shall update each individual case file on the Case Information System (CIS) within two working days of a significant case event.

(b) DSO Training Tracker. RDC Chiefs will update the DSO Training Tracker in the Reports folder on SharePoint within five days of DSO member returning from a training event.

(c) DSO Master Personnel Roster. RDC Chiefs will update the DSO Master Personnel Roster within one business day of a Marine joining or departing the DSO.

(d) DSO At-Risk Client Roll-up. The CDC's Legal Chief will update the DSO At-Risk Client Roll-up within two business days of receipt of a CDC CIR or notice of the completion of suicide prevention related training event.

(4) DSO Leadership Meetings. At least twice monthly, the CDC will conduct a teleconference with the RDCs and their Chiefs and the RDCs will conduct a teleconference with their SDCs.

e. Case File Retention. Case files are the responsibility of the individual counsel, not the DSO. Case files are to be kept in a secure location and in a manner that safeguards the attorney-client privilege and the confidentiality of attorney work-product. Case files must include the detailing letter, notification of representation letter, the charge sheet or notification letter, the client interview checklist, a record that the client was provided the "coping with stress letter," potential witness list with contact information, all discovery requests and responses, and, when applicable, a termination of

representation letter. Counsel have an obligation to maintain their case files, even after leaving the DSO, at a minimum, for the time periods set forth below. These obligations supersede any state bar rule that would either authorize or permit destruction of a case file at an earlier point.

(1) In a non-capital court-martial cases (general, special, or summary), defense counsel will retain the case file until the defense counsel has turned over the entire case file to either the client or successor counsel or the latter of:

(a) completion of appellate review, including any subsequent proceedings ordered by any appellate court and completion of appellate review of any such subsequent proceedings;

(b) the completion of any administrative proceeding, including any authorized review, against the former client that the counsel knows will occur or reasonably believes will occur following the trial; or

(c) the death of the client.

(2) In a capital court-martial case, the defense counsel will retain the case file until:

(a) the client is executed;

(b) the client’s death sentence has been set aside in a final order (in the event that such a final order occurs before the completion of appellate review and any subsequent proceedings ordered by an appellate court, the defense counsel will retain the case file in accordance with paragraph (d)(1)(a), above); or

(c) the defense counsel has turned over the case file to either the client or successor counsel.

(3) In an Article 32 investigation case in which charges are not referred to court-martial, the defense counsel will retain the case file until the earlier of:

(a) one year after the statute of limitations for all offenses investigated has expired;

(b) one year after the client's final discharge from the Armed Services; or

(c) the death of the client.

(4) In a nonjudicial punishment case in which the defense counsel entered into an authorized attorney-client relationship and nonjudicial punishment is imposed and the client is not the subject of an administrative separation board or board of inquiry, the defense counsel will retain the case file until the earlier of one year after the case is closed or the death of the client.

(5) For administrative separation boards and boards of inquiry, the defense counsel will retain the case file until the earlier of two years after the board's completion or the death of the client.

(6) A defense counsel who destroys a case file following the expiration of the time periods set out above will do so in a manner that safeguards the attorney-client privilege and the confidentiality of attorney work-product.

4. Conclusion. This CDC Policy Memo is effective immediately. CDC Policy Memos 5-11 and 6-11 are cancelled.

J. G. BAKER

Distribution List:
SJA to CMC
Legal Chief of the Marine Corps
All Marine Corps SJAs
LSSS OICs
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