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CDC POLICY MEMO 5-14

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) MCO P5800.16__ (series)
(b) DoN CIO Message, DoN SSN Reduction Plan Phase Three
of 17 Feb 12
(c) 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 order to ensure the effective and efficient operation of the DSO as a functionally independent organization.

2. Discussion.

a. Reference (a) establishes the DSO as a functionally independent organization. In it, the Chief Defense Counsel of the Marine Corps (CDC) is identified as the Officer-in-Charge of the DSO (OIC, DSO). The CDC is appointed by the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC). The CDC is specifically tasked with establishing standard operating procedures and standards of practice for the delivery of defense counsel services throughout the Marine Corps.

b. In his role as OIC of the DSO, reference (a) entrusts the CDC with operational control of all members of the DSO. "Operational control" is defined as the authority to perform those functions of leadership over subordinate defense counsel involving their organization and employment, assigning tasks, designating goals and objectives, and giving authoritative direction necessary to accomplish the DSO mission. Operational control includes authoritative direction over all aspects of DSO

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operations and training necessary to accomplish the DSO mission, with the exception of case-specific decisions made by individual defense counsel concomitant to their representation of servicemembers. See, e.g. FM 101-5-1 MCRP 5-12A (Operational Terms and Graphics) at p. 1-114.

c. Reference (a) entrusts local commanders with administrative control over DSO personnel. This authority is typically effected by the Officer-in-Charge, Legal Services Support Section (LSSS) or Team (LSST). "Administrative control" is defined as authority over subordinates in respect to administration and support, including control of resources and equipment, personnel management, unit logistics, individual and unit training, readiness, mobilization, demobilization, discipline, and other matters not included in the operational missions of the subordinate or other organizations. 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. *Id.* at p. 1-2.

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 command-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

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document unless authorized under reference (b). To the extent possible rely on EDIP. 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 portal unless:

(1) Use of a particular form is not in the best interest of the client.

(2) 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. 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, regardless of the time of day or day of the week, 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. Any report of suspected misconduct or investigative action in the case of a member of the DSO, including but not limited to arrest, pretrial confinement,

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preferral of charges against, or notification of non-judicial
punishment.

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

5. The filing of any pleading alleging another
government attorney has acted unethically or has engaged in
prosecutorial misconduct. Where feasible attach an electronic
copy of the pleading to the e-mail notification.

6. Any suicide gesture by a DSO member.

7. Any interaction with a client, including
individuals who are present for limited purposes such as NJP
counselling, who in the estimation of the DSO member appears to
be at risk for suicide.

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

(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 (c).

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

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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.

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(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. Each week the CDC will conduct a teleconference or videoconference with the RDCs and their Chiefs. 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 earlier of:

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(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.

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(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. CDC PM 4-13 is hereby cancelled. This CDC Policy Memo is effective immediately.



STEPHEN C. NEWMAN

Distribution List:
SJA to CMC
Legal Chief of the Marine Corps
All Marine Corps SJAs
LSSS OICs
LSST OICs
All members of the DSO
NMCTJ Code 52, OJAG