



## Determining Prosecutorial Jurisdiction

When concurrent military/civilian jurisdiction exists for a felony-level criminal offense committed by a Marine, it is essential that SJAs proactively engage with the civilian prosecutors representing that jurisdiction. In every such case, the SJA's engagement should demonstrate to civilian prosecutors that military authorities are ready, willing, and able to prosecute and ascertain what the civilian jurisdiction's inclination and capability is with respect to prosecution. Engagement should occur as early as possible. When negotiations result in civilian prosecutors taking a case for prosecution, SJAs should maintain an open, supportive relationship with the civilian prosecutors until the case is resolved. If at any time throughout the process civilians reconsider their decision to investigate or prosecute, they should know that military authorities retain an interest in the case and should have the SJA's contact information.

Engagement does not mean the Marine Corps is trying to prosecute every case in which concurrent military/civilian jurisdiction exists. In certain cases, a state may have a more compelling interest than the Marine Corps in prosecuting or greater experience and capability to prosecute, as might be true in a capital case. In other cases, however, particularly cases that concern Marine-on-Marine offenses, the Marine Corps will generally have a greater interest in acquiring jurisdiction over the case in order to ensure appropriate accountability for the subject/accused, proper support for the victim, and good order and discipline within the command. That said, even in cases where civilian authorities have a strong interest in prosecuting the case and are well equipped to do so, SJAs should engage early and remain involved until completion of the prosecution. Where memoranda of understanding (MOU) exist between commands and local prosecutor's offices, they should be consistent with these principles.

Proactive engagement by SJAs is the standard for all concurrent jurisdiction negotiations. Sustained engagement also happens to facilitate our meeting the requirement for Sexual Assault Initial Disposition Authorities (SA-IDAs) to report the final disposition of every sexual assault case using NAVMC 1752, Sexual Assault Disposition Report (SADR). In cases where civilian authorities prosecute a Marine who is administratively separated prior to completion of the civilian prosecution, the final disposition is the conclusion of the civilian prosecution, not the administrative separation of the Marine. As a result, the SA-IDA is required to report on the SADR both the administrative separation and the outcome of the civilian prosecution.

### SJA to CMC Guidance for Determining Prosecutorial Jurisdiction

1. We presumptively negotiate every jurisdictional issue with our civilian counterparts.
2. The going in proposition for the negotiations is that that we are ready, willing, and able to prosecute.
3. There is no need for protracted negotiations or requirement to document negotiations in most cases in which we end up prosecuting. Document appropriately the basis for the decision as to who will take jurisdiction.
4. We are willing to yield to reasonable arguments that a civilian jurisdiction has a more compelling interest in prosecuting a particular case – though rarely where a Marine-on-Marine offense is alleged-- or is better situated to prosecute a certain offense.
5. We never give up jurisdiction by default.