

EXHIBIT 1

Air Force Judge Advocate Policy Memorandum
TJS-05 (Aug. 17, 2005)



TJAG POLICY MEMORANDUM: TJAGC Standards - 5

OPR:
AF/JAU

TJAGC Professional Responsibility Program

17 Aug 05

1. Summary. This policy memorandum provides guidance for the maintenance of professional responsibility and ethical standards within The Air Force Judge Advocate General's Corps (TJAGC). It implements and amplifies R.C.M.109 and establishes procedures for processing alleged or suspected violations of the *Air Force Rules of Professional Conduct* and *Air Force Standards for Civility* (TJAG Policy Memorandum TJS-2), *Air Force Standards for Criminal Justice* (TJAG Policy Memorandum TJS-3), *Standards of Professional Conduct for Air Force Reserve Judge Advocates*, and the *Rules of Professional Conduct for Air National Guard Judge Advocates* (TJAG Policy Memorandum ARC-1).

2. Applicability. This memorandum applies to all Air Force judge advocates, including active duty and Air Reserve Component members, civilian attorneys employed by the Corps, civilian counsel who represent the accused or are likely to represent the accused at courts-martial or other proceedings governed by the UCMJ or the MCM, and other attorneys under the functional supervision of The Judge Advocate General (TJAG). Nothing in this memorandum limits the authority of: (1) TJAG to issue or withdraw any certification of qualification to act as a military judge, any certification of competency to act as counsel before courts-martial, or any designation as a judge advocate; (2) TJAG to suspend any attorney from performing duties pending resolution of an allegation of unprofessional or unethical conduct; and (3) commanders or other supervisors to take appropriate disciplinary or administrative action when warranted.

3. Responsibilities, Training, Reporting, and Required Notifications.

a. TJAG. TJAG is responsible for making reasonable efforts to ensure that all attorneys in the Corps receive training and conform to the *Air Force Rules of Professional Conduct*, *Air Force Standards for Civility*, *Air Force Standards for Criminal Justice*, *Standards of Professional Conduct for Reserve Judge Advocates*, and *Rules of Professional Conduct for Air National Guard Judge Advocates* (collectively referred to as the Rules and Standards), as applicable. Supervisory attorneys have the same responsibility for all attorneys under their supervision.

b. Supervisory Attorneys. Supervisory attorneys will provide organizational training on these Rules and Standards annually. Supervisory attorneys will require subordinate attorneys to review the Rules and Standards each year and certify the review through an acknowledgment. The acknowledgment, dated and signed by the supervising attorney (SJA or equivalent) and subordinate attorney will take the following form (see attachment 3):

I have completed my annual review of the Air Force Rules of Professional Conduct and Air Force Standards for Civility (TJAG Policy Memorandum TJS-2), Air Force Standards for Criminal Justice (TJAG Policy Memorandum TJS-3), and, if required, the applicable Standards of Professional Conduct for Air Force Reserve Judge Advocates, or the Rules of Professional Conduct for Air National Guard Judge Advocates (TJAG Policy Memorandum ARC-1). I have also completed a review of the applicable state professional responsibility rules for the state or states where I am licensed to practice law.

Trial and appellate judges shall also certify that they have read Judicial Conduct and Discipline of Air Force Trial and Appellate Military Judges (TJAG Policy Memorandum TJS-4).

c. All Attorneys. All Corps attorneys are responsible for knowing and complying with the applicable Rules and Standards and the rules of their respective licensing authorities. Corps attorneys

are expected to meet ethics training and other professional responsibility requirements imposed by their licensing authorities in order to maintain good standing.

d. Reporting Suspected Violations. Suspected violations of the Rules and Standards will be reported in accordance with this memorandum, except for cases involving members of the Air National Guard (ANG). In those instances, the procedures in the *Rules of Professional Conduct for Air National Guard Judge Advocates* will be followed.

e. Required Notifications.

(1) AF/JAU. Corps attorneys must notify TJAG's Professional Responsibility Administrator (TPRA), AF/JAU, prior to contacting the state or federal licensing authorities of another Corps attorney regarding an alleged ethical violation by any attorney subject to this policy. This notification will assist the TPRA in carrying out TJAG's supervisory responsibilities and will ensure TJAG is aware of all professional responsibility and ethical matters involving attorneys within the Corps.

(2) HQ USAF/JAX. In accordance with AFI 51-103, *Designation and Certification of Judge Advocates*, all Corps attorneys will notify HQ USAF/JAX upon learning of the commencement of any action by their state or federal licensing authorities that may affect their license to practice law. AF/JAX will advise the TPRA of all actions by licensing authorities.

4. TJAG's Professional Responsibility Administrator.

a. Overall Responsibilities. The TPRA will carry out the overall administration and management of TJAG's Professional Responsibility Program. The TPRA will report directly to TJAG on all professional responsibility matters.

b. Guidance and Reports. The TPRA will provide general guidance on professional responsibility matters to all Air Force attorneys and will refer matters to The Judge Advocate General's Advisory Committee on Professional Responsibility and Standards (Advisory Committee) as appropriate. The TPRA will provide the Advisory Committee, appropriate major command (MAJCOM) staff judge advocates (SJAs), and TJAG with a monthly summary of pending cases.

5. Advisory Committee on Professional Responsibility and Standards.

a. Membership. The Advisory Committee will consist of the following permanent members: (1) Director, USAF Judiciary; (2) Director, Civil Law and Litigation; (3) Director, General Law Division; and (4) Reserve Advisor to TJAG, who will serve only on matters affecting Reserve or ANG judge advocates. The TPRA will serve as a non-voting recorder to the Advisory Committee. TJAG may appoint ad hoc members to the Advisory Committee when necessary to provide expertise in a particular area or to replace a member who is unable to serve on a particular case. The senior active duty member on the Advisory Committee will be the Chairman.

b. Overall Responsibilities. The Advisory Committee will take actions required in accordance with this policy and will make recommendations on all matters referred to it. The Advisory Committee will advise TJAG on matters related to the maintenance of professional responsibility and ethical standards.

c. Advisory Opinions. The Advisory Committee may issue advisory opinions on professional responsibility matters consistent with the procedures set forth in paragraph 14.

6. Handling Allegations of Judicial Misconduct.

All allegations involving Air Force judges will be reported and handled under the procedures in TJAG Policy Memorandum TJS-4, *Uniform Code of Judicial Conduct for Military Trial and Appellate Judges and Regulations and Procedures Relating to Judicial Discipline*.

7. Handling Alleged Misconduct by Attorneys Who are Not Judges – General Information.

a. Means of Reporting. To the extent possible, attorneys will report suspected or alleged violations of the Rules and Standards by another attorney subject to this policy to:

- (1) the subject's supervisory MAJCOM SJA;
- (2) the Commander, Air Force Legal Services Agency (AFLSA/CC), in the case of personnel assigned to AFLSA; or
- (3) to TJAG, in the case of attorneys not assigned to a MAJCOM or AFLSA.

See Attachment 1 for a listing of the SJAs given authority by this policy. Elsewhere in this memorandum, the term "MAJCOM SJA" includes AFLSA/CC.

b. When a MAJCOM SJA is the Subject of an Allegation. If an allegation is reported to someone other than the MAJCOM SJA, the allegation will be sent to the appropriate MAJCOM SJA. However, if the subject of the allegation of professional misconduct is the MAJCOM SJA, a senior attorney assigned to the Office of The Judge Advocate General, or an attorney not assigned to a MAJCOM listed in Attachment 1, the complainant should send pertinent information to TJAG, who will take action on the allegation(s) in accordance with the procedures established in this memorandum.

c. Notification of the TPRA. Upon receiving information of a possible violation of the Rules and Standards, the MAJCOM SJA or TJAG will immediately notify the TPRA that a potential allegation exists. The TPRA will monitor the processing of the matter.

d. Senior Attorney Cases. When the subject of an allegation of professional misconduct is a general officer, colonel, or holds the civilian grade of GS-15 or above, the following procedures shall apply (see Attachment 2).

(1) Initial Investigation. The MAJCOM SJA, or TJAG when appropriate, will immediately gather existing information related to the allegation and make comments and recommendations. Then this file will be forwarded through the TPRA to the Advisory Committee for its comment on whether any allegation appears credible and whether the conduct described violates an Air Force rule or standard.

(2) Closing the Case or Investigating Further. If the Advisory Committee determines, upon initial review, that further action on the allegation is not warranted, the file will be sent to TJAG with a recommendation that the case be closed. If TJAG agrees to close the case, the TPRA will notify the MAJCOM SJA. If TJAG believes further inquiry is warranted, the file will be returned to the MAJCOM SJA, and an inquiry will be conducted in accordance with the procedures described in paragraph 9. If the subject is a MAJCOM SJA, TJAG will appoint an inquiry officer from another MAJCOM who will conduct an inquiry in accordance with paragraph 9.

(3) Appointing an Inquiry Officer. If the Advisory Committee determines that an allegation appears credible and warrants further inquiry, the file will be returned to TJAG or the MAJCOM SJA for appointment of an inquiry officer to conduct an inquiry into the allegation. The procedures for inquiries described in paragraph 9 will be followed.

(4) Advisory Committee Recommendation. Whenever the Advisory Committee determines it has sufficient information upon which to conclude that the Rules and Standards have been violated, it may recommend appropriate action to TJAG. In making this recommendation, the Advisory Committee will prepare a report consistent with that described in paragraph 10b below. The recommendations of the Advisory Committee are not binding on

TJAG. TJAG may close the case with no action, take action on the violation, or return the case to the MAJCOM SJA for an inquiry as set out in paragraph 9.

e. Processing Other Cases. In cases where the subject of an allegation is an officer of the grade of lieutenant colonel or below, or a civilian in the grade of GS-14 or below, the following procedures shall apply (see Attachment 2).

(1) MAJCOM Review – No Further Action Warranted. If upon initial review of the reported evidence, the MAJCOM SJA determines further action is not warranted on the allegation, the file will be sent to the TPRA with a recommendation regarding the appropriate disposition of the matter. The TPRA will review the file and either send the file to TJAG with a recommendation that the case be closed or refer the matter to the Advisory Committee for its review. Upon receipt, TJAG may close the case, return the matter to the MAJCOM SJA for an inquiry into the allegation, or may take action based on the evidence of record. If the TPRA refers the matter to the Advisory Committee, the Advisory Committee may recommend that the case be closed, that an inquiry be conducted, or that appropriate action be taken based on the evidence of record (see paragraph 10b for the type of report required when action is recommended). If the Advisory Committee determines further inquiry into the matter is necessary, the TPRA will return the file to the MAJCOM SJA for an inquiry. Inquiries will be conducted in accordance with the procedures described in paragraph 9.

(2) MAJCOM Review – Further Inquiry Warranted. If, upon initial review, the MAJCOM SJA determines further inquiry into the allegation is warranted (or if the Advisory Committee or TJAG has determined an inquiry is necessary), the MAJCOM SJA will appoint an inquiry officer. Inquiries will be conducted in accordance with the procedures described in paragraph 9.

f. Deferring an Inquiry. Whatever the subject's grade, when the suspected or alleged professional misconduct also involves allegations of criminal misconduct, TJAG may defer an inquiry or action on the allegation of professional misconduct until the criminal case is completed. Inquiries or actions may also be deferred when otherwise warranted (e.g., to prevent interference with an ongoing trial, post-trial actions, or the appellate process).

g. Delegation of Authority to Conduct Inquiries. Consistent with TJAG's responsibilities to maintain ethical standards within the Corps, TJAG is authorized to conduct inquiries into allegations of professional misconduct by Corps attorneys or other attorneys subject to TJAG's functional supervisory authority pursuant to Rule for Courts-Martial (R.C.M.) 109. In matters not arising under R.C.M. 109, the authority to conduct inquiries concerning Corps attorneys is delegated to the MAJCOM SJAs listed in Attachment 1.

h. Action to Suspend Civilian Counsel. The procedures and actions set forth above for suspending military counsel or Corps civilian counsel will also apply, insofar as practicable, against civilian counsel who represent the accused or are likely to represent the accused at courts-martial or other proceedings governed by the UCMJ or the MCM.

8. Procedures for Conducting an Inquiry.

a. Purpose of Inquiries. Inquiries are intended to develop the facts and circumstances surrounding allegations of violations of the Rules and Standards so that a competent authority can determine whether a violation occurred and take appropriate action.

b. Initial Stage. At the initial stage, the inquiry is not intended to constitute the type of "ethics investigation" that most licensing authorities normally require lawyers to report. However, it is the responsibility of the subject of the inquiry to know and comply with his or her licensing authority's reporting requirements.

c. Inquiry Officer Requirements. Inquiry officers will be senior in grade to the subject of the inquiry. Exceptions to this requirement must be approved by TJAG. If the allegation involves a defense counsel, the inquiry officer will be a defense counsel to the extent possible. Inquiry officers will not come from the same office as the subject of the inquiry.

d. Inquiry Officer Responsibilities.

(1) Gathering Information. The inquiry officer will determine the facts and circumstances surrounding allegations by examining all relevant witnesses and collecting all relevant documents. The inquiry officer will take sworn statements from witnesses who provide relevant information.

(2) Interviewing the Subject. The inquiry officer will notify the subject of the inquiry of the allegation(s) and the purpose of the inquiry, question the subject about the allegation(s), and provide him or her the opportunity to submit a sworn statement and other documentary evidence. The provisions of Article 31, Uniform Code of Military Justice (UCMJ), if the subject is a military member, or the Fifth Amendment, if the subject is civilian, apply when the inquiry officer has reason to suspect the subject has committed a criminal offense. When Article 31 or the Fifth Amendment applies, judge advocate subjects are entitled to the assistance of a military defense counsel. Civilian attorneys must retain defense counsel at their own expense.

(3) Preparing and Submitting a Report. The inquiry officer will prepare a report setting forth the facts of the case and conclusions as to whether or not any of the Rules and Standards have been violated. The inquiry officer will apply a "preponderance of the evidence" standard of proof in reaching conclusions from the evidence developed. The inquiry officer will attach to the report all statements and documents obtained during the inquiry. Normally the inquiry officer will not make recommendations as to disposition, but may do so at the request of the MAJCOM SJA or TJAG as appropriate. The inquiry officer will submit his or her report to the subject's MAJCOM SJA or to TJAG, as appropriate.

e. Disposition of Inquiry Officer Report. The MAJCOM SJA or TJAG will review the report and return it for further inquiry, or attach written comments and recommendations and forward it to the TPRA.

9. Disposition of Allegations.

a. MAJCOM and TPRA Recommendations. If, upon review of the report, the MAJCOM SJA determines the matter should be closed without further action, the file will be sent to the TPRA with recommendations. The TPRA will review the file and either send the file to TJAG with a recommendation that the case be closed or refer the matter to the Advisory Committee for review. The Advisory Committee has no investigative powers and will not communicate directly with the subject or witnesses. The Advisory Committee discusses the case and does one of the following: coordinates and returns the case to the TPRA for completion or returns the case to the TPRA for further action.

b. Advisory Committee Report. The Advisory Committee will prepare a report including specific findings and recommendations, and the rationale for the recommendations. The Report of Inquiry will be attached. It will clearly state whether the Advisory Committee found a violation of the Rules and Standards. The findings should be limited to the specific provisions allegedly violated. The Advisory Committee will employ a "preponderance of the evidence" standard of proof when reaching its conclusions. Minority reports are permitted. The Advisory Committee may make other observations about the case in a separate letter.

c. TJAG Review. If TJAG directed the inquiry, he or she may, after review, close the matter without further action or refer it to the Advisory Committee for review and recommendations.

10. TJAG Action on Reports of Inquiry.

a. Advisory Committee's Findings or Recommendations Not Binding. Upon receipt of Advisory Committee reports related to violations of the Rules and Standards, including the Report of Inquiry, TJAG will determine what action, if any, is appropriate. TJAG is not bound by the Advisory Committee's findings or recommendations.

b. Finding of No Violation. If TJAG determines no violations occurred, the matter will be closed and the subject, complainant, and supervisory attorney will be notified of this finding by the TPRA.

c. Supervisory Action. If TJAG determines the subject violated any of the Rules and Standards, TJAG may direct the TPRA to forward the matter through channels to the subject's commander or supervisory attorney for appropriate action.

d. TJAG Action.

(1) General Procedures. If TJAG determines the subject violated any of the Rules and Standards and determines corrective action within TJAG's authority (other than counseling) may be warranted, TJAG may (1) advise the subject of the proposed action; (2) direct the TPRA to send a copy of the relevant portions of the report to the subject; and (3) give the subject ten calendar days to submit written matters showing why TJAG should not take such action. The subject of the proposed action has no right to a personal appearance with TJAG.

(2) Extensions. TJAG may grant extensions to the period allowed to respond for good cause. A subject's failure to provide written comments in the time provided, including any extensions, constitutes a waiver of the opportunity to comment.

(3) Cases Involving Suspensions. In cases involving suspension of an attorney from practicing before Air Force courts pursuant to R.C.M. 109, only TJAG may approve the suspension. In those cases, the procedures in subparagraph 11d above will be followed by TJAG. If withdrawal of designation and certification is being contemplated, the procedures in AFI 51-103 will be followed. The notice of reasons for withdrawal of designation or certification required by AFI 51-503 may be given simultaneously with the notice of other contemplated action (see subparagraph 11d above). TJAG may also combine all actions in a single communication.

e. Final Action Involving Violations. TJAG will notify the subject and the supervisory attorney of the final action reached in the case. Notification to the complainant will be made in accordance with the Privacy Act. TJAG's action is final and not subject to appeal.

f. Referral to Supervisory Chain. In addition to the actions described in subparagraphs 11c and 11d, TJAG may also direct the TPRA to forward appropriate evidence and reports through channels to the subject's commander or supervisory attorney for action.

g. Time Standards. As a general rule, all efforts should be made to expedite an inquiry while safeguarding the appropriate due process requirements. The goal should be to complete inquiries within 120 days from complaint to final closure.

11. Reporting Cases to Licensing Authorities. If TJAG determines that any of the Rules and Standards have been violated and the seriousness of the violation warrants, TJAG may direct the TPRA to report the matter to the appropriate licensing authorities of the subject attorney. The finding of a violation of the Rules and Standards may trigger a separate requirement that the subject report the action to his or her licensing authorities. It is the responsibility of the subject attorneys to know and comply with the reporting requirements of their licensing authorities.

12. Case Summaries. The TPRA may prepare summaries of cases handled by the Advisory Committee and publish them with TJAG's approval. Summaries will not contain any information from which the identities of people or offices involved may be discerned. The summaries will primarily be used as training tools by supervisors.

13. Advisory Opinions.

a. Written Requests Encouraged. The Advisory Committee may provide advisory opinions when requested. To the extent practicable, attorneys will request formal advisory opinions in writing. Requests will be sent to the TPRA. While it is not required, attorneys are encouraged to send requests for advisory opinions through supervisory attorney channels to the TPRA. Prior to forwarding requests, supervisory SJAs may include their observations and recommendations. TJAG will review all written advisory opinions before they are issued and will decide whether and how the formal opinions will be published.

b. Written Opinions Required. When a request for a written advisory opinion is not practicable, attorneys may request an advisory opinion by calling the TPRA. The Advisory Committee may, in very limited situations, issue an oral opinion, but only with the approval of TJAG. If an oral opinion is rendered, a written opinion restating the oral opinion will be prepared as soon as possible.

Approved 17 August 2005 by:

JACK L. RIVES, Major General, USAF
Deputy Judge Advocate General
Performing Duties of The Judge Advocate General
10 U.S.C. §8037

3 Attachments:

1. MAJCOM SJA and AFLSA/CC Authority Delegation
2. Processing Professional Responsibility Allegations
3. Rules and Standards Certification