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(2) Promptly inform the DA General Counsel of any OSC investigation and consult with the DA General Counsel on any legal or policy issue arising from an OSC investigation.

(3) Serve as the HQDA point of contact in providing assistance to OSC.

(4) Act as DA attorney-of-record in administrative matters initiated by OSC before the MSPB which arise from an OSC investigation. As DA attorney-of-record, the Chief, DAJA-LE, will file necessary pleadings and make necessary appearances before the MSPB to represent DA interests.

(5) Monitor ongoing OSC investigations within DA.

(6) Ensure that appropriate DA personnel are fully apprised of their rights, duties and the nature and basis for an OSC investigation.

(7) Review and prepare recommendations to the General Counsel concerning any OSC recommended corrective action referred to DA. Such review and recommendations will address whether disciplinary action should be taken against DA civilian employees or military members, and whether the information warrants referral to appropriate authorities for corrective and disciplinary action.

(8) Seek OSC approval of DA proposed disciplinary action against an employee for an alleged prohibited personnel practice or other misconduct which is the subject of or related to any OSC investigation.

(9) Review and prepare recommendations for DA General Counsel concerning requests for counsel, to include identifying available DA attorneys to act as individual representatives. Upon approval of DA General Counsel, appoint DA civilian and military attorneys, to include attorneys from the U.S. Army Materiel Command and the Corps of Engineers, to represent individual military members or employees.

(11) Provide guidance and assistance to activity Labor Counselors in fulfilling their duties as Liaison Officers.

(c) Activity Labor Counselor. The activity Labor Counselor will do the following:

(1) Act as Liaison Officer for OSC investigations arising within the command, activity or installation serviced by the Labor Counselor’s client Employment Office.

(2) Promptly inform the MACOM labor counselor and the Chief, DAJA-LE, of any OSC inquiry or investigation.

(3) Act as the legal representative of the command, activity, or installation.

(4) Assist the OSC investigator with administrative matters related to the investigation, such as requests for witnesses and documents.

(5) Process all OSC requests for documents.

(6) Make appropriate arrangements for OSC requests to interview civilian employees and military members.

(7) Ensure that personnel involved are advised of the nature and basis for an OSC investigation, the authority of the OSC, and their rights and duties.

(8) Consult with the Chief, DAJA-LE, on policy and legal issues arising from the OSC investigation.

(9) Keep the Chief, DAJA-LE, informed of the status of the OSC investigation.

(10) Act as agency representative before the MSPB in actions initiated by employees (individual right of action appeals).

§516.72 Procedures.

(a) Witnesses and counsel for consultation. (1) DA military and civilian managers, supervisors, and employees who are requested by OSC for an interview will be made available in accordance with arrangements the Labor Counselor will establish. Requests for the testimony of IGs will be coordinated with the Inspector General Legal Office, SAIG-ZXL, DSN 227-9734 or Commercial (703) 697-9734.

(2) The Labor Counselor will ensure that witnesses are aware of their obligation to answer OSC questions, their potential to be considered “suspects” in OSC investigations, and their right to the assistance of counsel during
interviews with OSC representatives. If the requested witness is not an “ac-
cused” or “suspected” individual and the witness asks for assistance of coun-
sel, a DA attorney will be made available for the limited purpose of con-
sultation regarding the witness’ rights and obligations. An attorney-client re-
lationship will not be established. (See appendix F to this part).

(3) The Labor Counselor will arrange for individual counsel for consultation from local assets. If local assets are not sufficient, assistance may be requested from other DOD activities in the area or from HQDA, DAJA-LE. DA attor-
neys tasked to consult with one or more witnesses individually will not be
tasked to represent the DA activity concerned.

(4) The Labor Counselor, as the legal representative of the activity, is pre-
cluded from assisting or representing individual witnesses during OSC inter-
views.

(b) “Accused” or “suspected” DA per-
sonnel and counsel for representation. (1) If the OSC identifies a DA civilian em-
ployee or a military member as an “accused” or “suspected” individual, or if the Labor Counselor concludes that an individual is a “suspect,” the Labor Counselor will inform the indi-
vidual. The Labor Counselor also will advise the individual of the avail-
ability of counsel for representation upon approval by DA General Counsel.
(See Glossary, Counsel for Representa-
tion).

(2) If the “suspected” individual de-
scies legal representation by DA, the individual must request counsel by submitting a written request through DAJA-LE to DA General Counsel. (See figure I-1, appendix G, to this part).

(3) During the investigation but prior to DA General Counsel approval of the request for counsel, an “accused” or “suspected” individual will be provided the assistance of counsel for consulta-
tion in the same manner as any other OSC requested witness. “Accused” or “suspected” individuals who do not re-
quest counsel for representation will be provided counsel for consultation in the same manner as any other OSC re-
quested witness.

(4) If the DA General Counsel ap-
proves the request for counsel, the
Chief, DAJA-LE, will appoint a DA at-
torney to represent the individual. This appointment may be made tele-
phonically but will be confirmed in writing. The Chief, DAJA-LE, will
make appropriate coordination with MACOM SJAs and command counsel to
confirm availability of the attorney.

(5) An attorney appointed by DA may represent a civilian employee in any
proceeding initiated by OSC before the MSPB. However, counsel provided by
DA may not represent the employee in any proceeding initiated by DA, in any
appeal from a final decision by the MSPB, or in any collateral proceeding
before any forum other than the MSPB.

(6) OSC may not bring a disciplinary
action before the MSPB against a mili-
tary member. Accordingly, DA counsel
will not be required to represent the
military member in any MSPB discipli-
nary proceeding. However, counsel may
represent the member during the OSC
investigation with the understanding
that the evidence obtained by OSC may
be referred to the member’s command
for possible disciplinary action under
the UCMJ or appropriate regulations.
If DA initiates action against the mili-
tary member for misconduct disclosed
in the OSC investigation, the member
will obtain counsel as provided under
the UCMJ or relevant regulations.

(c) Records. (1) OSC requests for
records must be in writing. The Labor
Counselor will assist OSC representa-
tives in identifying the custodian of
specific records sought during the in-
quiry.

(2) Generally, requested records
should be furnished to OSC representa-
tives if such records would be released
under AR 25–55 or AR 340–21 to other
government agencies in the normal
course of official business. Records
constituting attorney work product
should not be released without ap-
proval of the Chief, DAJA-LE. IG
records will not be released without
the approval of the Inspector General.
(AR 20–1). The Labor Counselor should
seek guidance from the Chief, DAJA-
LE, if there is any doubt concerning
the release of records.

(3) If, after completion of the OSC in-
vestigation, the OSC files a complaint
against DA or a DA employee, release
of records and other information will be accomplished pursuant to MSPB rules of discovery (5 CFR part 1201, subpart B).

(d) **Funding.** The command, activity, or installation within which the allegations of misconduct arose will provide funding for travel, per diem and other necessary expenses related to the OSC investigation. These expenses may include appropriate funding for witnesses, counsel for consultation and DA General Counsel approved counsel for representation.

§ 516.73 **Assistance from HQDA.**

Labor Counselors may seek guidance on questions arising from implementation of this chapter by calling the Chief, DAJA-LE, DSN 225-9476/9481 or Commercial (703) 695-9476/9481.

**Subpart J—Soldiers Summoned To Serve on State and Local Juries**

§ 516.74 **General.**

(a) This subpart implements 10 U.S.C. § 982 and DOD Directive 5525.8. It establishes Army policy concerning soldiers on active duty who are summoned to serve on state and local juries.

(b) This subpart does not apply to Army National Guard soldiers in an annual training or full-time AGR (Active Guard Reserve) status under Title 32, U.S. Code. Soldiers in a Title 32 status must refer to their respective state law for relief from state or local jury duty.

§ 516.75 **Policy.**

(a) Active duty soldiers should fulfill their civic responsibility by serving on state and local juries, so long as it does not interfere with military duties.

(b) The following active duty soldiers are exempt from complying with summons to serve on state and local juries:

   (1) General officers.
   (2) Commanders.
   (3) Active duty soldiers stationed outside the United States, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.
   (4) Active duty soldiers in a training status.
   (5) Active duty soldiers assigned to forces engaged in operations.

(c) Other active duty soldiers may be exempted from serving on local juries if compliance with such summons would have either of the following effects:

   (1) It would unreasonably interfere with performance of the soldier’s military duties; or,
   (2) It would adversely affect the readiness of a summoned soldier’s unit, command, or activity.

§ 516.76 **Exemption determination authority.**

(a) The commander exercising special court-martial convening authority (SPCMCA) over a unit has the authority to determine whether a soldier of that unit, who has been served with a summons, is exempt from serving on a state or local jury unless that authority has been limited or withheld in accordance with paragraph (b) or (c) of this section. This authority may not be delegated to a subordinate commander who does not exercise SPCMCA.

(b) A commander superior to the SPCMCA, who also exercises SPCMCA or general court-martial convening authority (GCMCA) over a unit, may limit or withhold the exemption determination authority of subordinate commanders.

(c) A GCMCA, who orders a unit or soldier assigned to one command to be attached or detailed to another command for disciplinary purposes (for example, “for administration” or “for administration of military justice”), may reserve exemption determination authority to the commander exercising SPCMCA in the chain of command to which the unit or soldier is assigned rather than the chain of command to which the unit or soldier is attached or detailed.

§ 516.77 **Procedures for exemption.**

(a) Active duty soldiers served with a summons to serve on a state or local jury will promptly advise their commander and provide copies of pertinent documents.

(b) Unit commanders will evaluate the summons considering both the individual soldier’s duties and the unit mission. Coordination with the servicing judge advocate or legal adviser and with the appropriate state or local