



ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE
4133^d REGIONAL TRIAL DEFENSE TEAM, WEST REGION
OREGON NATIONAL GUARD
OFFICE OF THE REGIONAL DEFENSE COUNSEL
1776 Militia Way, P.O. Box 14350
Salem, Oregon 97309-5047



REPLY TO
ATTENTION OF

NGJA-OR-TDS

21 June 2010

MEMORANDUM FOR Soldiers

SUBJECT: General Military Justice Rights and Right to Counsel

1. Soldiers' Military Justice Rights. For military justice (MJ) matters, Soldiers should generally be aware of the following:

a. This fact sheet presents information about your right to an attorney. If you are suspected of committing a crime (for example, apprehended by the police or called into your commander's office) or anyone reads you your rights, this fact sheet applies to you and you should know about your rights to an attorney. This fact sheet, however, is intended to apply to military situations only and not situations with civilian law enforcement. You should review the 4133 RFC Soldier's Memo for more information on matters within the jurisdiction of TDS for Assistance.

2. **THE BASIC RULE: DON'T SPEAK TO ANYONE WITHOUT YOUR ATTORNEY PRESENT:** The Constitution, State Law, and the State and Military Rules of Evidence, guarantee suspects the right not to be questioned by police and military authorities without an attorney. This right helps to ensure, in essence, that you do not become the prosecutor's key witness at your own court-martial or Article 15 hearing. You are entitled to be assisted by a military defense counsel at no cost to you or you may retain civilian attorney at no expense to the government. Generally speaking, if you say you are not willing to speak with the Government representatives, then they can re-engage and speak with you after a reasonable period of time has lapsed, and if you ask for an attorney and do not obtain an attorney within 14 days the Government representatives are likely free to re-engage and speak with you again.

3. **WHAT TO DO IF YOU ARE QUESTIONED:** If you are read your rights and questioned, you should give your questioner (perhaps the police, your supervisor, someone in your chain of command) your name and unit and show them your ID card. You should then inform them that you do not wish to talk to them without an attorney. When you do this, all questioning must stop. If questioning does not stop, continue to remain silent. Do not lose your cool or otherwise be tricked into saying anything to anyone.

4. **WHAT TO EXPECT:** Once you ask for an attorney, most police and military officials will immediately stop asking you questions. Some may, however, encourage you to talk to them alone. They may tell you, for example, that only guilty people ask for a lawyer, which is simply not true.

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Remember, the person questioning you are trying to get information and believes you are guilty. Do not be fooled. Continue to ask for an attorney and do not answer questions. If you ask for an attorney and then later go back and initiate a conversation with the police or military personnel then you are likely waiving your earlier demand to talk to a lawyer.

5. **WHEN YOU EXERCISE YOUR RIGHTS:** When you tell your questioner that you do not want to talk to them without an attorney, all questioning must stop. Speak to an attorney as soon as possible. Usually an attorney at your local Trial Defense Service Office is reasonably available at no cost to you to discuss the matter under investigation with you in complete confidence. Because most TDC are also reservists, it will take some time for your request for counsel to get a response and your commander should allow you a reasonable time to coordinate advice, but you cannot sit idly by for someone to come to you. Once you consult with a TDC you can then decide whether it is in your best interest to make a statement. Your attorney will ensure you are interviewed fairly and will read any written statement you make to be sure it is accurate. If a military defense attorney cannot be reached, continue to remain silent. Ask the police to contact someone from your unit. If you are released to your unit, do not discuss your case with anyone - this includes police, social workers, psychiatrists, chaplains, anyone in your chain-of-command, your co-workers, friends, roommates, girl or boyfriends, and even your spouse.

6. **WHEN YOU ARE ENTITLED TO AN ATTORNEY:** You are entitled to a military defense attorney:

- a. When you are suspected of a crime. Your attorney will discuss your rights as a suspect, including your right to have your attorney present for questioning, lineups, and writing and voice samples.
- b. When anyone reads you your rights. Your attorney will discuss your rights as a suspect and the charges against you.
- c. When anyone reads you an Article 15. Your attorney will advise you regarding the charges against you, possible defenses, and your rights during Article 15 proceedings.
- d. When charges are preferred against you. Your attorney will represent you at all stages of the criminal proceedings, including the Article 32 hearing and at all court hearings.
- e. When you are being administratively separated (chaptered) out of the Army. Your attorney will consult with you regarding ways to challenge the chapter and will represent you at an Administrative Separation Board if you are entitled to one.

7. POC for this memorandum is the current Regional Defense Counsel. The 4133d can be emailed at NGOR.JAG.4133.TDS@ng.army.mil.

ORIGINAL SIGNED

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