



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

MAR 11 2022

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Policies Governing Offices of Special Trial Counsel

In accordance with title 10, U.S. Code, section 1044f, as enacted by section 532 of the National Defense Authorization Act for Fiscal Year (FY) 2022, effective immediately, I establish the following policies for the Military Departments' Offices of Special Trial Counsel and their personnel. These policies will be incorporated in issuances promulgated by the Secretary of each Military Department to be issued within 180 days of the date of this memorandum.

I. Mission

The mission of the Offices of Special Trial Counsel is to provide expert, specialized, independent, and ethical representation of the United States, under the direct civilian control of the Secretary of the applicable Military Department, in the investigation and trial-level litigation of covered offenses as prescribed by article 1(17) of the Uniform Code of Military Justice, 10 U.S.C. § 801(17), and other offenses over which the offices exercise authority.

II. Offices' Establishment

A. Not later than December 27, 2023, the Secretaries of the Military Departments will ensure that an Office of Special Trial Counsel with respect to each Military Service within their respective Military Department is at full operational capability, recognizing that those offices cannot exercise the authorities newly enacted by the National Defense Authorization Act for FY 2022 with respect to offenses that occur before December 28, 2023. In preparation for full operational capability, the Secretaries of the Military Departments will take the following actions, completion of which will be reported to the General Counsel of the Department of Defense:

1. Not later than July 15, 2022, establish the Offices of Special Trial Counsel. For purposes of initial operational capability, the Department of the Air Force may establish a single Office of Special Trial Counsel for both the Air Force and the Space Force.
2. Not later than September 30, 2022, identify recommended nominees for Lead Special Trial Counsel.
3. Not later than October 15, 2022, identify Special Trial Counsel.
4. Not later than December 31, 2022, develop and issue initial training and education policies for the Offices of Special Trial Counsel.



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5. Not later than January 1, 2023, or such later date on which each Lead Special Trial Counsel is confirmed and appointed as a general or flag officer, assign, and where applicable ensure the permanent change of station of, Lead Special Trial Counsel to that permanent general/flag officer position.
 6. Not later than August 31, 2023, assign or detail, and where applicable ensure the permanent change of station of, judge advocates to fill the Special Trial Counsel positions. Until December 27, 2023, either (a) the Lead Special Trial Counsel, or (b) if the Lead Special Trial Counsel has not yet been appointed, the Secretary of the Military Department concerned may make Special Trial Counsel available to perform duties outside of the Office of Special Trial Counsel, provided that the primary duty of the Special Trial Counsel is within the Office of Special Trial Counsel. This authority of the Lead Special Trial Counsel or the Secretary of the Military Department concerned may not be delegated. Beginning on December 27, 2023, the provisions of para. IV.B.4 will apply.
 7. Not later than July 1, 2023, establish standard operating procedures for the Offices of Special Trial Counsel, including the reciprocal agreements required by para. III.B.2.
- B. Pursuant to section 958(b)(1) of the National Defense Authorization Act for FY 2020, Public Law No. 116-92 (2019), the Secretary of the Air Force may designate a single Space Force judge advocate to be the Lead Special Trial Counsel for both the Air Force and the Space Force.

III. Offices' Functions

- A. All Lead Special Trial Counsel, Special Trial Counsel, and other support personnel deemed appropriate by the Secretary of the Military Department concerned will be assigned to an Office of Special Trial Counsel, which will supervise and oversee the United States' legal representation in the investigation and trial-level litigation of covered offenses as defined by article 1(17) of the Uniform Code of Military Justice, 10 U.S.C. § 801(17), and other offenses over which the office exercises authority.
- B. Independence
1. The Offices of Special Trial Counsel will operate independently of the military chains of command of both the victims of alleged covered offenses and those accused of covered offenses as defined by article 1(17) of the Uniform Code of Military Justice, 10 U.S.C. § 801(17), and any other offenses over which the offices exercise authority.
 2. The Military Departments will enter into reciprocal agreements to provide for the legal representation of the United States in the investigation and trial-level litigation by another Military Service's Office of Special Trial Counsel of any

offense over which an Office of Special Trial Counsel is precluded from exercising authority because either the alleged offender or victim is a member of the relevant Office of Special Trial Counsel (see para. III.B.1).

3. Special Trial Counsel will conduct their assigned activities free from unlawful or otherwise unauthorized influence or coercion.

IV. Personnel

A. Office Head

1. Each Office of Special Trial Counsel will be headed by a general or flag officer with significant military justice experience with the title, "Lead Special Trial Counsel."
2. To promote both the appearance and the actuality of independence to the maximum extent possible, each Lead Special Trial Counsel will serve for a specified fixed term of not less than three years, with an option for that term to be renewed for a subsequent fixed term or terms of any length. A Lead Special Trial Counsel may be relieved of duty prior to the end of his or her term only for cause, unless he or she leaves active duty or is promoted. The Secretaries of the Military Departments will promulgate issuances governing the grounds and procedures for relieving a Lead Special Trial Counsel for cause. Only the Secretary of the Military Department concerned or the Secretary's superior may relieve a Lead Special Trial Counsel for cause.
3. Each Lead Special Trial Counsel will report directly to the Secretary of the Military Department concerned with no intervening authority.
4. No Lead Special Trial Counsel may be assigned any additional duties with the following exception. If favorably endorsed by a Lead Special Trial Counsel, a request for that Lead Special Trial Counsel to serve on an officer promotion selection board may, at the discretion of the Secretary of the Military Department, be granted.
5. No Lead Special Trial Counsel may be supervised or rated by anyone other than the Secretary of the applicable Military Department.
6. In cases over which an Office of Special Trial Counsel exercises authority, the Lead Special Trial Counsel of the applicable Military Service will have exclusive authority to determine whether to file an appeal under Article 62 of the Uniform Code of Military Justice (10 U.S.C. § 862), in consultation with appellate government counsel in the office of the Judge Advocate General of the applicable Military Department. Appellate government counsel will litigate those appeals on behalf of the United States and are responsible for the substance and content of submissions to the appellate courts.

B. Special Trial Counsel

1. Special Trial Counsel will be assigned to the Office of Special Trial Counsel for a fixed term of not less than three years. Those assignments may, with the permission of the applicable Judge Advocate General or, in the case of Marine Corps judge advocates, the Commandant of the Marine Corps, be renewed for subsequent fixed terms of any length. Each Military Department's issuance governing its Office or Offices of Special Trial Counsel will provide that a Special Trial Counsel may be released before the end of the fixed term only if the Special Trial Counsel leaves active duty or at the direction or with the permission of the Lead Special Trial Counsel with notice to the applicable Judge Advocate General or, in the case of Marine Corps judge advocates, the Commandant of the Marine Corps.
2. Special Trial Counsel will be highly skilled, experienced, well-trained, and competent in handling the investigation and trial-level litigation of covered offenses.
3. Special Trial Counsel will be supervised and rated only by personnel assigned to the applicable Office of Special Trial Counsel.
4. The Military Services will instruct promotion boards to value litigation experience.
5. A request may be made to a Lead Special Trial Counsel to detail a Special Trial Counsel to a case that does not fall under the authority of an Office of Special Trial Counsel. The Lead Special Trial Counsel will have exclusive and unreviewable authority to grant or deny such a request. If a Special Trial Counsel is detailed to a case that does not fall under the authority of an Office of Special Trial Counsel, no one other than a member of an Office of Special Trial Counsel will prepare a performance evaluation for the Special Trial Counsel for the period during which the Special Trial Counsel performs those duties.

V. Command Input

The commander of any victim of an alleged covered offense and the commander of any accused in a case involving a covered offense will be given a reasonable opportunity to provide input to the Special Trial Counsel regarding case disposition, but that input is not binding on the Special Trial Counsel.

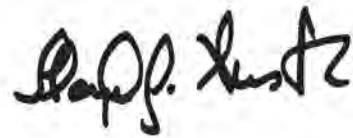
VI. Training

The Lead Special Trial Counsel will establish appropriate training programs for personnel assigned to their respective offices. Joint training among the Military Services' Offices of Special Trial Counsel is encouraged. Lead Special Trial Counsel are encouraged to

have personnel assigned to their respective offices participate in training with judge advocates outside of the Offices of Special Trial Counsel in addition to appropriate specialized training within the Office of Special Trial Counsel concerned. Lead Special Trial Counsel are encouraged to send their respective personnel to training programs outside the Department of Defense, including those offered by the Department of Justice.

VII. Exceptions to Policy

Exceptions to these policies may be granted only by the Secretary of Defense or the Deputy Secretary of Defense. That authority may not be delegated.

A handwritten signature in black ink, appearing to read "R. J. Lust". The signature is written in a cursive style with a large, stylized initial "R".