



**UNITED STATES MARINE CORPS**  
CHIEF DEFENSE COUNSEL OF THE MARINE CORPS  
MARINE CORPS DEFENSE SERVICES ORGANIZATION  
755 SOUTH COURTHOUSE ROAD, BUILDING 2, SUITE 1000  
ARLINGTON, VA 22204-2482

7 Feb 23

POLICY MEMORANDUM 1.8A

From: Chief Defense Counsel  
To: Distribution List

Subj: DEFENSE LITIGATION RESOURCE FUNDS

Ref: (a) LSAM, Vol 3  
(b) CDC Policy Memo 3.1D, Detailing and IMC Authority  
(c) SecDef Memo re IRC Recommendation 1.7e of 6 Oct 21  
(d) FY22 NDAA § 549D  
(e) Recommendation 1.7e, IRC on Sex Assault Final Report  
(f) JAD Memo re USMC Implementation of IRC Rec. of 7 Dec 21  
(g) JAGMAN § 0145  
(h) Rule for Courts-Martial 703  
(i) SJA to CMC ltr 5800 SJA of 13 Sep 2022

Encl: (1) DLRF Request Form  
(2) Sample DLRF Request Memorandum

1. Purpose. To set clear, consistent policies and procedures for the request, approval, and use of Defense Litigation Resource Funds (DLRF) in support of defense investigation and litigation of courts-martial.

2. Applicability. This policy applies to all defense personnel approved as individual military counsel or detailed in military justice cases to represent an accused in accordance with references (a) and (b), and personnel similarly approved or detailed by other services to represent accused. Except as noted below, DLRF funds are available in courts-martial cases convened by Marine Corps commands.

3. Background.

a. In accordance with references (c) and (d), the Staff Judge Advocate to the Commandant (SJA to CMC) prepared a plan for the Marine Corps' implementation of reference (e). This plan, outlined in reference (f), sets forth the Marine Corps' plan to establish an independent budget for the DSO in support of litigation at courts-martial. While various regulations, to include references (g) and (h), must be modified to facilitate

the full use of these funds, the SJA to CMC has directed the implementation of reference (f) to the extent permitted by current fiscal and military statutes and orders. Reference (i) sets forth the SJA to CMC's current policy for the expenditure of DLRF.

b. DLRF confers a recently created avenue for defense counsel to seek expert assistance and other litigation resources for the benefit of our clients. In order to ensure its continued accessibility, we must use these public funds sensibly and in a manner consistent with public trust. Counsel should request expert assistance and case-related resources consistent with the needs and interests of your clients. In adjudicating such requests, it remains incumbent on the Chief Defense Counsel of the Marine Corps (CDC) to adhere to the policies set forth in the references and below in approving or denying such requests, and to account for dollars so spent. This Policy creates fair, clear, and transparent guidelines for approval.

4. Scope. Currently, references (g) and (h) vest the convening authority with the financial responsibility to produce approved defense witnesses for trial, including expert witnesses. Recognizing equal access to evidence, regulations and case law afford defense counsel the opportunity to request resources from the convening authority in preparation for trial including expert consultation and travel. Nothing in this policy is intended to supersede or modify reference (g) or (h), or any other existing requirement associated with the convening authority's responsibility to fund courts-martial. Rather, DLRF affords defense counsel an additional mechanism to obtain funding for certain litigation resources without approval from the convening authority and under the protection of privileged communication.

a. During the course of courts-martial case preparation and execution, defense counsel should continue to rely upon all available resources when they identify the need for expert, investigative, or other case-related funds.

b. The existence of DLRF resources does not create a substantive right for any accused or relief of the convening authority to approve and authorize courts-martial related expenses; counsel should pursue funding that best meets the needs of the client.

c. Requests outside the scope of reference (i) (and its successors) may be submitted to the SJA to CMC on a case-by-case

basis at the discretion of the CDC.

d. Courts-martial travel for defense team members (including AAs), and related costs are primarily the responsibility of the convening authority in accordance with references (a), (g), and (h).

e. The expenditure of DLRF is not authorized in cases that originate from other services. The use of the DLRF is normally limited to cases supported by Marine Corps Legal Services Support Sections/Teams. When members of the Marine Corps Defense Services Organization are approved or detailed to represent clients facing courts-martial convened by an authority other than those serviced by the Marine Corps Legal Services Support Sections/Teams, the counsel may apply for utilization of DLRF. The sole approval authority for such expenditure is the CDC.

f. DLRF is available to detailed defense counsel and approved individual military counsel related to litigation of courts-martial only. DLRF is not available in support of adverse administrative hearings.

## 5. Procedures.

a. Requests. Defense counsel seeking to use DLRF shall submit the following documents to the CDC via their SDC and RDC: (a) a DLRF Request Form (see enclosure (1)); and (b) a supporting memorandum (see enclosure (2)). It is necessary to require both documents as the former provides documentation for audit purposes while the latter is for internal use by the CDC (or other designated approval authority) when evaluating these requests and may therefore contain sensitive or privileged attorney-client information. Copy of the charge sheet and/or the Trial Management Order may also be submitted in support of the request.

b. **DLRF Request Form.** Follow the format of enclosure (1). For travel, include documentation supporting DTS cost estimate. For experts, include as attachments a Curriculum Vitae for the requested expert, and any other documentation supporting the cost estimate such as fee schedules, cost estimates, and related emails or information not containing attorney-client information. For other expenses, provide supporting documentation. When seeking estimates, counsel must ensure to not incur a cost or fee, or to otherwise obligate the U.S. Government. Counsel are also encouraged to request a reduced fee, such as those fees normally provided to federal defender or public defender offices.

c. **DLRF Support Memorandum (Expert Consults)**. The primary purpose of this memoranda is to provide **specific, documentable reasons** why a particular expert is needed and how that expert's services will assist the client. Using the format set forth at enclosure (2), provide a 1-2 page memorandum that provides the following information:

- (1) the nature and status of the case, including the basic facts, the offense(s) alleged, and the nature/quantity of discovery;
- (2) your theory of the case, including your assessment of the likelihood of the case going to a contested trial or resulting in some form of plea;
- (3) how this type of expert assistance fits in with your theory of the case, or alternatively, your sentencing theory;
- (4) what you want the expert to do for your client (i.e. scope of work);
- (5) efforts you have made to identify other potential experts in the field and why this particular expert is the right one for your case;
- (6) A whether it is anticipated that the government will present an expert on this topic at trial or at sentencing; and
- (7) efforts you have made to "self-educate" in the field of expertise or an explanation as to why such efforts have proven or would prove futile.

d. **DLRF Support Memorandum (non-expert related expenses)**. When requesting DLRF for expenses other than expert consultation, the supporting memorandum should briefly address the following information:

- (1) the nature and status of the case, including the basic facts, the offense(s) alleged, and the nature/quantity of discovery;
- (2) the purpose of the travel or other expense requested and anticipated goals;
- (3) whether alternatives such as remote/electronic means were considered; and
- (4) any other relevant information pertaining to the request.

e. **SDC/RDC Endorsements**. Upon receipt, the counsel's SDC and RDC will each endorse the request and forward to the approval authority. Each endorsement will include why the request should be approved or denied, and any additional

information otherwise not captured, but helpful in making an approval determination.

f. Approval. The CDC is the approval authority for the expenditure of DLRF, delegable within the Office of the Chief Defense Counsel. No further delegation is authorized by reference (i).

g. Denial. Requests with inadequate support will be denied and returned to counsel. Counsel may revise the request and resubmit. Requests which are disapproved or which are approved only in part shall include a written explanation from the approval authority for the denial or partial approval.

h. Confidentiality. Requests and communications made pursuant to this policy are privileged Attorney Work Product. They will be routed and afforded the same level of protection from disclosure. Counsel, via their RDC, will provide immediate notification to the CDC prior to any disclosure outside of the DSO or other members of the defense team related to DLRF requests, including court orders. No person, including comptroller personnel, is authorized to release information regarding requests under this program without the specific authorization of the CDC.

i. Conflict Cases. RDCs shall ensure counsel can submit requests under this policy in a conflict free manner. In conflict cases, counsel will ordinarily route their requests via their assigned conflict-free supervisory counsel. RDCs should not be detailed cases that are in conflict with subordinate counsel as directed by references (a) and (b). However, if they do, the CDC may designate, in writing, conflict free DLRF approval authorities or retain the authority at the CDC level. If the CDC is conflicted, the CDC shall delegate approval authority to the Deputy CDC, Reserve CDC, or other official, as necessary.

6. Audit. Approval authorities who act on DLRF requests pursuant to this instruction shall maintain all requests for a period of two years following the date of submission. Such requests will be subject to audit during regularly scheduled Article 6 inspections, or as otherwise directed by the CDC. Additionally, the CDC, with the assistance of the designated comptroller, will review DLRF expenditures quarterly for compliance with this instruction.

7. Publication of this document cancels Policy Memorandum 1.8

Subj: DEFENSE LITIGATION RESOURCE FUNDS

and remains in effect until superseded in writing.

A handwritten signature in black ink, appearing to read "V. C. Danyluk", with a long, sweeping flourish extending to the right.

V. C. DANYLUK

# Attorney Work Product

DEFENSE SERVICES ORGANIZATION  
DEFENSE LITIGATION RESOURCE FUNDS (DLRF)  
REQUEST FORM

## Basic Request Information

Name of requestor / LSST:

Date of request:

Case name:

Conflict case(s), if any:

Type of Request: Initial request  Supplemental request

Requested resource: Travel  Expert  Both  Other

Has there been a request to the CA, Court, LSSS/T, or any other entity:

Yes  No  (if yes, explain)

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## Proposed Expert Information

Type:

Expert/Company:

Address:

Phone:

Email:

CV Attached: Yes  No

**This document is Attorney Work Product. If you have received this inadvertently, do not read and notify the sender immediately.**

# Attorney Work Product

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## Cost Information

### *TRAVEL*

Departure date:  
Return date:  
Locations:  
Flight/CTO fee:  
Taxi/POV milage:  
Rental car/fuel:  
Lodging/taxes:  
M&IE:  
Parking/tolls:  
Other:

Travel cost estimate total:

### *EXPERT CONSULTATION AND CASE FEES*

Rate schedule attached:   
Number of hours requested:  
Rate per hour:  
Consultation estimate total:

Documentation supporting consultation costs attached:  
Yes  No

(This does not have to be a formal document and could simply be a screenshot of the item from a website)

### *COST ESTIMATE TOTAL*

*(travel costs + constulation costs):*

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UNITED STATES MARINE CORPS  
OFFICE OF THE CHIEF DEFENSE COUNSEL OF THE MARINE CORPS  
MARINE CORPS DEFENSE SERVICES ORGANIZATION  
755 SOUTH COURTHOUSE ROAD, BUILDING 2, SUITE 1000  
ARLINGTON, VA 22204-2482

IN REPLY REFER TO  
5811  
DSO/abc  
30 Jan 23

MEMORANDUM

From: [Insert requestor(s)]  
To: Chief Defense Counsel of the Marine Corps  
Via: (1) Senior Defense Counsel  
Via: (2) Regional Defense Counsel

Subj: DEFENSE LITIGATION RESOURCE FUND REQUEST FOR [INSERT TYPE OF EXPERT OR EXPENSE REQUESTED] IN THE CASE OF *UNITED STATES V. LANCE CORPORAL ANTHONY SOPRANO*

Ref: (a) Chief Defense Counsel Policy Memo 1.8A

Encl: (1) Charge Sheet  
(2) Trial Management Order (if applicable)  
(3) DNA Report

1. **Nature of Request.** In accordance with reference (a), I am requesting to employ Dr. Jennifer Melfi for 15 hours of initial expert consultation at the rate of \$200/hour (total NTE \$3000) in the field of Serology and Forensic DNA Analysis.

2. **Brief synopsis of charges and theory.** The Government alleges that, on 10 August 2022, LCpl Soprano sexually assaulted Ms. Valentnia La Paz (hereinafter "CW") by penetrating her vulva with his penis by using force. The allegation stems from. . . [brief factual description]. I anticipate the Government's theory is [e.g. LCpl Soprano took advantage of the CW when she was too drunk to consent]. LCpl Soprano made a statement to NCIS wherein he denies having intercourse with the CW, but admits to consensually kissing the CW on the lips, and consensually touching her vagina under her clothes. On 1 January 2023, LCpl Soprano was arraigned on the sole charge and specification. No other court appearances have been made. At the time of this request, the Defense has not engaged in settlement negotiations, and the case appears to be tracking toward a contested trial.

3. **Brief discussion of how this type of expert fits with theory.** Our theory of Defense is that LCpl Soprano and the CW engaged in consensual sexual contact, not amounting to sexual intercourse. The Government provided a DNA report generated by USACIL, enclosure (3), in discovery. The Report indicates that LCpl Soprano's DNA was present on the exterior of the CW's vagina and on the underwear she was wearing on the night in question. I would like to have Dr. Melfi review the Government's DNA report, explain the viability of our theory as compared to the Government's theory, and educate the Defense team on transference and contamination. Moreover, I would like Dr. Melfi to determine the likelihood that the DNA

Commented [KCBM1]: Include additional enclosures if necessary.

Commented [KCBM2]: Include the name of the expert, # of consultation hours requested, experts' hourly rate, total cost, and field of expertise.

Commented [KCBM3]: Include the offenses alleged, brief facts of the case relevant to the request, a synopsis of the Government's likely theory, the current stage of the case (i.e. post arraignment, whether a plea-a is in the works (if relevant)).

found on the CW was epithelial DNA as compared to the type of DNA found in ejaculate. If Dr. Melfi can determine that the DNA found is epithelial, and not sperm, it would greatly benefit our case. On the other hand, if Dr. Melfi determines the opposite, it will indicate that we should adjust our theory.

4. **Description of how the expert's services will assist the defense.** Specifically, Dr. Melfi will perform the following tasks for the defense: (a) review select discovery consisting of approximately 85 pages; and (b) conduct a verbal brief with counsel on the results of her analysis. Should the results be favorable, it is possible I will submit a supplemental request for an additional 8 hours of expert services for Dr. Melfi to prepare a written report and/or additional testing of the DNA sample.

5. **Efforts made to identify other potential experts and why this particular expert is the right one.** The Defense team has worked with Dr. Melfi in the past and knows that she is knowledgeable in her field, experienced working with military members, and produces high-quality reports. She is local, and best suited to conduct the DNA analysis in this case. She has also agreed to reduce her normal fee of \$300/hour to the federal defender rate of \$200/hour. Additionally, we chose not to request an expert from the Convening Authority because we do not (at this stage) want them to know our theory of the case.

6. **A discussion as to whether it is anticipated the government will present an expert on this topic at trial or sentencing.** I anticipate the government will call an expert on this topic.

7. **A discussion on efforts you have made to "self-educate" in the field or an explanation as to why such efforts have or would prove futile.** Only a trained expert in this field possesses the knowledge and ability to interpret the required information.

8. For the preceding reasons, I request the expenditure of \$3000 in support of the defense of LCpl Soprano.

N. MEINK  
Defense Counsel

**Commented [KCBM4]:** Include information about your theory/defense efforts and how the expert will work to fit into that theory. Expert consultants are not limited to anticipated trial testimony; use in a motion is viable, but the reason you need the expert should be explained here.

**Commented [KCBM5]:** Explain exactly what the expert consultant will do for you. Keep in mind, what you put in this document is confidential, so please be to the point.

**Commented [KCBM6]:** Include information about why this particular expert was identified for this particular issue.