



UNITED STATES MARINE CORPS
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In Reply Refer To:
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CDC
5 Nov 14

CDC POLICY MEMORANDUM 3.3

From: Chief Defense Counsel of the Marine Corps
To: Distribution List

Subj: RELEASE OF COUNSEL WITHOUT CONFLICT OF INTEREST

Ref: (a) R.C.M. 505(d) (2)
(b) JAGINST 5803.1D

Encl: (1) Supervisory Attorney Memorandum Regarding the Right to Counsel

1. Purpose. To establish a standard procedure within the Defense Services Organization (DSO) for seeking and memorializing a client's voluntary decision to release a defense counsel from further representation without the need to demonstrate good cause.

2. Discussion. An established attorney-client relationship may only be severed under a limited set of circumstances. First, it may be severed when counsel is excused by the detailing authority for good cause shown on the record. Second, it may be severed when counsel is excused by the military judge for good cause shown. Third, it may be severed when counsel is excused upon the appointment of individual military counsel. Fourth and finally, it may be severed when counsel is excused with the express consent of the accused (voluntary severance). This memorandum is only intended to address voluntary severance of the attorney-client relationship.

3. Policy. Prior to any voluntary severance, DSO attorneys must immediately discuss the issue with their supervisory attorney, which in most cases will be their Senior Defense Counsel (SDC). The SDC shall, in turn, immediately inform his or her Regional Defense Counsel (RDC) that voluntary severance has been proposed, and the planned course of action to ensure continuity of representation. No voluntary severance shall occur without the express permission of the DSO Attorney's immediate supervisory chain, typically the SDC and the RDC. In

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cases where an SDC seeks severance he or she must first obtain the permission of the RDC and Chief Defense Counsel of the Marine Corps. Where an RDC seeks voluntary severance, he or she must obtain the express permission of the Chief Defense Counsel of the Marine Corps. In those unusual circumstances where the Chief Defense Counsel of the Marine Corps seeks voluntary severance, he or she shall seek the advice of the Staff Judge Advocate to the Commandant of the Marine Corps before doing so. There are two basic scenarios contemplated by voluntary severance.

a. *Attorney-Initiated Voluntary Severance.* Voluntary severance may occur when a DSO attorney seeks to withdraw from a particular case. For example, a DSO attorney pending an end of active service date may determine that voluntary severance of a preexisting attorney-client relationship is desirable.

1. As noted above, DSO attorneys must first seek permission from their supervisory attorneys before proceeding.

2. Once granted approval, DSO attorneys will next discuss voluntary severance with the client concerned. When doing so DSO attorneys are specifically tasked with fully explaining the reason voluntary severance is sought as well as any potential impact voluntary severance may have on the client's case.

3. **Advice to a client regarding the merits of voluntary severance from a DSO attorney who seeks to terminate a preexisting attorney-client relationship is strictly forbidden.** Doing so may create a conflict between the desire to be released and the client's interests.

4. Instead, the DSO attorney who seeks release shall ask his or her supervisory attorney to advise the client, and the DSO attorney's supervisory attorney **SHALL** provide the client conflict-free advice regarding this important decision.

5. All attorneys involved in any stage of these proceedings shall memorialize the advice they rendered and to whom they rendered it using enclosure (1).

6. Should the client agree to voluntary severance, provide a completed copy of enclosure (1) to the detailing authority, military judge (if any), Staff Judge Advocate, and to all replacement counsel. Severed counsel shall retain a copy for their records.

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7. Should the client decline voluntary severance the DSO attorney concerned shall maintain a copy of enclosure (1) in the client's case file.

b. *Client-Initiated Voluntary Severance.* Second, voluntary severance may occur at the initiation of the client. For example, a client who loses confidence in his or her attorney may view severance of that preexisting attorney-client relationship as desirable. Not only does the DSO seek to provide zealous, professional representation, but we also have to ensure that our clients are satisfied with, and confident in, the quality of representation we provide. In that light, if a DSO attorney suspects a client desires the assignment of new counsel, he or she shall:

1. Without dissuading the client from the decision to voluntarily sever, immediately discuss the issue with the client.

2. If the DSO attorney still believes the client desires new counsel, he or she shall inform their supervisory counsel (typically the SDC).

3. Once notified the supervisory attorney shall, as soon as possible, provide prompt conflict-free advice to the client to ascertain whether the client seeks voluntary severance of a preexisting attorney-client relationship.

4. Rather than dissuading a client who has lost confidence in his or her DSO attorney, supervisory attorneys shall instead listen to the client's complaints and/or concerns, determine if they may be addressed as a matter of performance, and discuss remedial corrective measures.

5. Should the client persist in seeking voluntary severance, and where there is available, conflict-free replacement counsel, supervisory attorneys are specifically directed to err on the side of honoring a client's desire by severing the relationship and detailing new counsel.

6. Should the client persist in seeking voluntary severance even where there is no available, conflict-free replacement counsel, immediately contact the Regional Defense Counsel for further guidance.

7. Whether or not local replacement counsel is available, supervisory attorneys are encouraged to re-advise the

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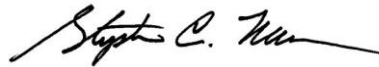
client about his or her right to request individual military counsel.

8. If the supervisory counsel harbors doubts about the client's sincerity (e.g. if it seems to be a ruse to create delay), immediately contact the Regional Defense Counsel before proceeding.

9. If the client persists in requesting voluntary severance, and such request is approved, use enclosure (1) to document the process. Provided completed copies of enclosure (1) to the detailing authority, the military judge (if any), the Staff Judge Advocate, and all replacement counsel. Severed counsel shall retain a copy for their records.

10. At any time in this process should the client decline voluntary severance the DSO attorney concerned shall maintain a copy of enclosure (1) in the client's case file.

4. Conclusion. CDC Policy Memo 2-11 is hereby cancelled. This CDC Policy Memo is effective immediately.



STEPHEN C. NEWMAN

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[BRANCH LETTERHEAD]

IN REPLY REFER TO
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MEMORANDUM

From: **Supervisory Attorney**
To: **Accused**

Subj: **ADVICE CONCERNING RIGHT TO COUNSEL**

1. Purpose of Advice. Your trial defense counsel, **Captain X**, has advised me that **he** has sought your consent) (you have requested) to sever the attorney-client relationship (in order to allow **Capt X** to)(because you feel) (*state with specificity why the defense counsel is seeking to sever the attorney-client relationship*). Because **Capt X** has a personal interest in this issue, as **his** supervisory attorney, I am providing you with conflict-free advice concerning your right to counsel in this situation.

2. Scope of Advice. This advice is intended to help you make an informed decision about your right to counsel. This communication is protected by the same attorney-client privilege (with the same exceptions) as your communications with **Capt X**. This advice is provided solely for the purpose of assisting you in making an informed decision about your right to counsel. I do not represent you in your court-martial case

3. Right to Continued Representation by **Capt X**. Absent a good cause to sever the attorney-client relationship, you have the absolute right to continued representation by **Capt X** and **Capt X** will continue to represent you unless you expressly (consent to **his** request to)(request to) sever the attorney-client relationship. If you agree to release **Capt X** as your defense counsel, a new military defense counsel will be assigned to represent you. Like **Capt X**, that defense counsel will be a licensed attorney and will represent you at no expense to you.

4. The Decision is Yours to Make. You should make your decision completely free of any pressure. The decision to release **Capt X** under these circumstances is yours, and yours alone. No person or circumstance can force, threaten, coerce, or pressure you to release **Capt X**.

5. Election of Counsel Rights. Once we have discussed your rights to counsel, I will request that you memorialize your decision regarding (**Capt X**'s)(your) request to sever the attorney-client relationship in the subparagraphs below.

a. After having discussed (**Capt X**'s request to be released)(my request to release **Capt X**) as my counsel with **Supervisory Attorney**, I expressly and voluntarily consent to releasing **Capt X** as my counsel. I understand that a new military defense counsel will be detailed to represent me instead of **Capt X**. I further understand that a copy of this consent form will be provided to the detailing authority and the military judge to memorialize my voluntary consent to release **Capt X** as my counsel.

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b. After having discussed (Capt X's request to be released)(my request to release Capt X) as my counsel with (Supervisory Attorney), I expressly DO NOT agree to severing the attorney-client relationship between Capt X and I. I do not agree to release Capt X as my counsel.

Accused

Date

6. Regardless of your election of rights, I will provide Capt X a copy of this letter and should you elect to release Capt X, a copy of this letter will be provided to your new defense counsel, the detailing authority, and the military judge.

I. M. INCHARGE