

SUBJECT: NAVY IMPLEMENTATION ANALYSIS OF MJIA

Implementation of O-6 Judge Advocate Disposition Authority

The analysis that follows estimates manpower requirements should the Military Justice Improvement Act (the Act) become law. The estimates represent initial start-up requirements, but no attempt has been made to identify or quantify sustainment costs. Similarly, changes in case load caused by increased reporting or other factors will impact the estimated requirements. In addition, the Act would place a demand signal on senior Navy JAGC Military Justice Litigation Career Track (MJCLT) officers. To meet this demand in the immediate future, MJCLT officers would have to be reallocated, creating experience gaps in their current commands, or pulled from the Reserves at an additional cost. In addition, there are logistical support costs (e.g., office space, computers, supplies) required to support all of the personnel required to support the Act's implementation.

A) Current Authorization / Inventory of Navy Judge Advocates, by pay grade

| RANK | Officer Programmed Authorization | Current Active Duty Inventory | Current Reserve Inventory | Officers w/trial experience (AD/Reserve)* | Officers w/significant trial experience |
|------------|----------------------------------|-------------------------------|---------------------------|---|---|
| VADM (O-9) | 1 | 1 | | 0/0 | 0 |
| RADM (O-8) | 1 | 1 | | 0/0 | 0 |
| RDML (O-7) | 0 | 0 | 1 | 0 | 0 |
| CAPT (O-6) | 85 | 81 | 116 | 12/34 | 12** |
| CDR (O-5) | 139 | 136 | 162 | 15/51 | 5 (including 2 O-6 selects) |
| LCDR (O-4) | 206 | 190 | 154 | 30/24 | 0 |
| LT (O-3) | 324 | 377 | | 8/0 | 0 |
| LTJG (O-2) | 36 | 43 | | 0/0 | 0 |
| TOTAL | 792 | 829 | | 65/109 | 17 |

* Reflects MJCLT qualified officers, not all judge advocates with trial experience.

** There are currently 10 O-6 Military Justice Career Litigation Track (MJCLT) qualified Experts, and 2 O-6 Specialists who have significant trial experience.

Reserve O-6 MJ Pillar inventory: 34 (criminal justice practitioners)

B) Total MJIA Cases Disposed of at Courts-Martial in CY 2012: 186 (93 GCM, 93 SPCM)

C) Additional Cases Requiring Consideration by an O-6 JAG under MJIA for Disposition Determination: 1,696 (based on NCIS reports of investigations falling within MJIA purview in CY 2012)

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D) O-6 Judge Advocate Requirement under MJIA: Navy will require a minimum of 9 full-time O-6 judge advocate disposition authorities (DA). One DA will be assigned to each existing Navy Region.

1. *Workload calculation formula:* Total cases requiring O-6 JAG DA consideration under MJIA, divided by 44 weeks (44 weeks provides 30 days of leave, 10 federal holidays and 30 days of training and administrative time), divided by 9 O-6 JAG DAs = number of cases per/week each O-6 JAG DA must handle on average.
2. *Workload Calculation:* $(1696 + 186)/44 = 43$ cases to be processed each week/9 Regional O-6 JAG DAs = approximately 5 cases per week on average, which is a reasonable workload given the extensive documentation which must be reviewed for complex cases.

E) Regional Model

1. One O-6 DA assigned to each of the Navy's nine regions for a total of 9 O-6 JAG DAs. Each DA office requires an O-6 judge advocate with significant trial experience, an O-4/O-5 deputy with court-martial experience, and two to four O-3 judge advocates assisting with investigation review, command liaison and case analysis, and paralegal/Legalman support.
 - O-3 judge advocates could be assigned based on: (a) MJCLT designation as Specialist I or Specialist II; (b) post-career status board status with a minimum of two years trial experience or demonstrated proficiency in the courtroom; or (c) a combination of MJCLT designated officers and others with trial experience.

F) Data Assumptions:

1. Significant court-martial experience requirement is met by MJLCT Expert designation or Specialist designation with significant trial experience.
2. Reserve O-6 officers with significant court time (AUSAs, DAs, PDs, etc.) would qualify as having "significant court-martial experience."
3. Reserve O-6 officers could be recalled/utilized until active component can fill billet requirements.
4. Investigation reviews of cases involving qualified offenses, that in the past would have been disposed of at lower levels, will need to occur at O-6 DA level.
5. Additional O-6 DA support staff, including administrative staff, will be required to facilitate workflow.
6. On average, an O-6 DA working alone can review, research, and prepare prosecutorial merit memoranda on two cases per week, allowing adequate time for training and other requirements that reduce annual work load.
7. If the O-6 DA is supported by legal and administrative support staff to prepare the cases for review, processing 5 cases per week may be achievable.
8. Cannot dual track RLSO COs due to work load (additional investigation review would be further slowed by CO's full time job).

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9. A system will be put in place for dealing with those conflict cases arising from same chain of command. To the extent this means “trading” cases with other O-6 DAs, out of pocket costs would be minimal; however, it would take longer to process such cases, which could result in delayed justice for victims and could have speedy trial implications.

G) Implementation Requirements:

1. **Changes Required**

- a. Increase inventory of O-6 MJLCT judge advocates.
- b. Immediate Diversion of O-6 MJLCT judge advocates from current billets (appellate and trial judges, RLSO COs, DSO COs and OJAG) creating significant gaps at critical mission points in the system. More junior officers at the O-4/O-5 grade (MJLCT Specialists), currently filling other valid requirements, would have to be diverted to these critical mission positions resulting in a reduction in capability. Increase O-4/O-5 inventory to provide direct support to the O-6 DA.
- c. Increase O-3 inventory to support investigation review.

2. **Resources**

Regional DAs

- a. 9 x O-6 (newly created positions under MJIA).
- b. 9 x O-4/O-5 (to provide direct support to the O-6 DA).
- c. 18 x O-3 (to provide investigative review, case analysis and command and investigator liaison functions for the new O-6 DA).
- d. 18 x paralegal or Legalman support personnel
- e. Office spaces with associated personnel.
- f. Communications, including, but not limited to NMCI drops, telephone, fax.
- g. Office equipment including computers, copiers, scanners, etc.

TOTAL PERSONNEL: 54

Elimination of Existing General Court-Martial Convening Authorities (GCMCAs)

A) Current Inventory of GCMCAs:

Difficult to determine. It includes all Flag officers in command of units or activities of the Navy, plus all Fleet Air Command commanders, all Navy Region commanders, and the commanders of 21 other commands that were granted that authority by the Secretary of the Navy. Each of these Flag officers has significant command/mission accomplishment responsibilities in addition to convening general courts-martial and exercising GCMCA administrative responsibility for personnel matters such as convening administrative separation boards, reviewing nonjudicial punishment appeals, and directing administrative investigations.

However, most GCM trials are convened by nine regional commanders with a small number of other GCMCAs convening cases, e.g. .COMNAVAILRANT, Superintendent USNA and Walter Reed Medical Center.

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B) Current Caseload of GCMCAs and Number of Cases Involving Offenses Falling Under MJIA

All Commander Naval Installation Command (CNIC) Region Commanders are the primary GCMCAs who convene courts for both subordinate CNIC commands, as well as operational commands within their regions. In addition, the following Flag Officers actively convene GCMs. Some specifically indicated that they have not convened cases within the past two years (USFFC, COMSUBLANT, USNAVCENT), but desire to maintain authorities should a case arise where more appropriate for them to convene.

1. Superintendent, U.S. Naval Academy, O-9
2. COMNAVSPECWARCOM, O-8
3. COMNAVAIRLANT, O-8
4. COMPATRECONGRU, O-7
5. COMPATRECONGRUPAC, O-7
6. U.S. Fleet Forces Command, O-10
7. COMSUBLANT, O-9
8. USNAVCENT, O-9
9. Commander, Navy Recruiting Command, O-8
10. Commanding Officer, U.S. Naval Air Station, Sigonella, Italy, O-6
11. Commander, U.S. Fleet Activities, Spain, O-6
12. Naval Air Station Lemoore, O-6
13. Commander, Walter Reed National Military Medical Center, O-8

Specific information regarding the number of cases convened by each GCMCA is not available. However, most GCMs are convened by nine regional commanders. The Navy prosecuted 137 GCMs in FY12 so approximately 15 GCMs convened per GCMCA.

C) Creation of New GCMCAs

1. Establish nine (9) new regional GCMCAs based on the Navy's region construct and support those individuals with local administrative support, including a judge advocate to provide advice on member selection, legal issues that arise during the case, court-martial review and appointment of the military judge.

D) Implementation Requirements

1. ***Changes Required***

Appoint nine new GCMCAs and provide support staff and facilities for operations as these new positions will operate independently of other commanders who currently have other missions.
2. ***Resources***
 - a. 9 x O-8/O-7/O-6s
 - b. 9 x chief of staff

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- c. 9 x judge advocates
- d. 9 legalmen
- e. 9 x support staff
- f. Office spaces with associated personnel.
- g. Communications, including, but not limited to NMCI drops, telephone, fax.
- h. Office equipment including computers, copiers, scanners, etc.

SUMMARY

54 personnel required to support the O-6 Disposition Authority requirement: 9 O-6s; 9 O-5/O-4s; 18 O-3s; and 18 civilian or enlisted staff.

45 personnel required to support the new Convening Authority offices: 9 O-8/O-7s/O-6s; 9 O-6s/O-5s; 9 O-4/O-3s; 9 legalmen; and 9 civilian or enlisted staff.

Total new personnel to implement MJIA: 99