

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 6**

118. (Update to RSP RFI 75) Services: Selection criteria for attorneys:

a. What are the selection criteria (education, experience, and training) for assignment as a defense attorney detailed to an adult sexual assault case?

USA	TDS: No update to previous response to RSP RFI 75.
USAF	<p>The Air Force employs a robust selection criterial for military defense attorneys or Area Defense Counsel (ADC) to ensure the best qualified judge advocates are selected as ADCs. ADCs are selected through a worldwide, best qualified standard. A “best qualified” candidate is one who is able to handle the demands of a steady litigation docket and represent clients in a variety of administrative proceedings while managing an office with limited oversight and, often, geographically separated supervision. This standard requires the candidate to demonstrate strong organization and time management skills, reliability, civility, professionalism, and leadership while working autonomously. The nominating SJA considers the candidate’s complete duty history, to include Officer Performance Reports, awards and decorations, assignment history, and any instances or allegations of misconduct. In assessing whether the judge advocate should be nominated for an ADC position, the SJA also considers the candidate’s court-martial experience, including (1) the number of courts-martial tried; (2) a breakdown of litigated, partially litigated, and guilty plea trials; (3) the types of offenses tried; (4) the extent of participation in the trials (e.g., opening statement, <i>voir dire</i>, direct and cross examinations); and (5) other litigation experience, including discharge boards; civil litigation (e.g., employment hearings, depositions, and federal magistrate court appearances), and any litigation experience before becoming a judge advocate. Finally, the SJA considers the judge advocate’s leadership qualities and litigation training and evaluates the candidate’s officership, ability to work autonomously, organization and time-management skills, specialized training, and any other information the SJA believes relevant. All nominations for ADC positions are coordinated with the Trial Defense Division, Air Force Legal Operations Agency (AFLOA/JAJD) for input on the candidate’s qualifications for the ADC position. After collecting nominations from supervisory SJAs and input from the Trial Defense Division, the Professional Development Directorate, Office of The Judge Advocate General (AF/JAX) evaluates all candidates’ records and nominations to provide selection recommendations to TJAG. TJAG makes the final selection decisions based on the best qualified standard.</p> <p>Senior Defense Counsel (SDC) are selected from “graduated” ADCs. Many have also served as Senior Trial Counsel (currently 6 of 20 SDCs have served a previous tour as an STC) or appellate counsel. The Trial Defense Division works with the Professional Development Division to identify the best qualified individuals to serve in SDC positions with special emphasis on leadership and experience, as SDCs directly supervise ADCs. Vetted nominations are then submitted as recommendations to TJAG, who makes the final selection decisions.</p>
USN	No update to previous response, except that in the fifth sentence, beginning with the word “Additionally,” TCAP should be removed and replaced with the word DCAP.
USMC	Prior to detailing counsel to complex cases, the SDC consults with the RDC to ensure the right counsel is detailed to the right case. The term “complex case” is a term of art. Supervisory counsel consider the following non-exclusive list of factors when deciding what is and what is not a complex case: The forum; the number and severity of

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	<p>charges; the severity of any possible sentence; the number of potential witnesses; the possible requirements for expert assistance or testimony; and the relative experience base of counsel assigned to that SDC. See CDC PM 3.1, provided as enclosure (6).</p> <p>In addition to detailing decisions made by detailing authorities, CDC Policy Memo 2.1 requires new counsel to complete a training checklist prior to their detailing to a case. This training checklist includes assignments to read important case law, observation of administrative and judicial proceedings, and on the job training via “second seating” at a contested court-martial. See CDC PM 2.1, provided as enclosure (7).</p> <p>ENCLOSURES:</p> <ol style="list-style-type: none"> 1. CDC Policy Memo 3.1 – Detailing and Individual Military Counsel Determination Authority for Counsel Assigned to the Marine Corps Defense Services Organization, dated 6 October 2014 2. CDC Policy Memo 2.1 – New DSO Member Orientation Checklist
USCG	<p>By long standing memorandum of agreement between the Coast Guard and the Navy JAG Corps, the Navy is principally responsible for defending Coast Guard members accused of crimes under the UCMJ. The Coast Guard depends on the Navy JAG Corps to provide fully qualified defense counsel for Coast Guard cases. In return, seven Coast Guard judge advocates are detailed to work at various Navy Defense Service Offices on two year rotations, which provide another significant source of trial experience to Coast Guard judge advocates</p>

b. What are the selection criteria (education, experience, and training) for assignment as a prosecuting attorney detailed to an adult sexual assault case?

USA	<p>TCAP: In addition to response previously provided for RSP RFI 75, please see attachment RFI 111b.</p> <p>ENCLOSURE:</p> <p>SVP TCAP INFO Paper</p>
USAF	<p>To serve as a prosecuting attorney, or assistant trial counsel, on an adult sexual assault case, a judge advocate must meet the minimum qualifications to serve as a judge advocate outlined in RFI 111(b). Additionally, to serve as trial counsel, or lead counsel, on a general court-martial, a judge advocate must be certified by TJAG under the criteria outlined in RFI 111(b). Typically, charges in an adult sexual assault case will be reviewed by an STC or SVU-STC, and, depending on the complexity of the case and the experience level of trial counsel assigned from the installation legal office, an STC or SVU-STC will be detailed to prosecute the case.</p> <p>Since 1972, the Air Force has selected its best and most experienced litigators to serve as STCs and try the most difficult cases, including the vast majority of sexual assault prosecutions. While there is no rank requirement to serve as an STC, judge advocates are not eligible for an STC assignment as a first assignment. As a result, STCs are either captains or majors.</p>

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	<p>A subset of STCs with substantial training and experience in investigating and prosecuting particularly difficult cases (e.g., sexual assault, crimes against children, and homicide) are designated SVU-STCs. These SVU-STCs have primary responsibility for early interaction with local trial counsel for offenses involving a “special victim,” including consultation with investigators and trial counsel prior to the first trial counsel interview of a victim and prior to preferral of charges.</p> <p>The Chief, Government Trial and Appellate Division (AFLOA/JAJG) selects SVU-STCs and certifies that each SVU-STC possesses the requisite litigation skills, professionalism, and leadership to provide the highest quality of legal representation for the government. SVU-STCs must be capable of supervising, mentoring, and training junior counsel while providing candid, independent legal advice and expert prosecutorial support to legal offices that perform military justice functions.</p> <p>AFLOA/JAJG decides which STCs will be designated as SVU-STCs, taking into account the following criteria:</p> <ol style="list-style-type: none"> 1. Completion of one year as an STC or SDC; 2. Attendance at two or more advanced litigation skills-focused courses, such as the following: <ol style="list-style-type: none"> (a) Advanced Trial Advocacy Course (AF); (b) Prosecuting Complex Crimes Course (Navy); (c) National District Attorneys Associations Sexual Assault & Related Crimes; (d) Special Victims Unit Prosecutors Course (Army); (e) Prosecuting Alcohol-Based Sex Crimes (Navy). 3. Completion of specialized training in prosecuting or defending sexual assaults; <p>Demonstrated ability to prosecute a variety of sexual assault and complex cases. Note: There is no minimum number or type of cases required to meet this criterion. Skills include courtroom demeanor; mastery of the rules and law; ability to handle expert witnesses; and ability to work with victims and witnesses.</p>
USN	No update.
USMC	No change from RSP RFI 75.
USCG	The Coast Guard does not have any specific selection criteria. However, in general, the most senior and experienced attorneys in the grades O-3 (lieutenant) through O-4 (lieutenant commander) are selected to prosecute sexual assault cases. In especially complex cases, the Coast Guard’s Chief Prosecutor, a GS-15 civilian employee who is a retired Coast Guard O-6 (captain) with extensive experience as a prosecutor and trial judge can be detailed to the case.