

**BY ORDER OF THE
DIRECTOR OF THE AIR NATIONAL
GUARD**

**AIR NATIONAL GUARD INSTRUCTION
51-001**

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Law



**AIR NATIONAL GUARD MULTI-STATE
PRACTICE OF LAW**

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This instruction governs the multi-state legal practice for judge advocates serving in the Air National Guard (ANG). It provides guidance and policies for judge advocates serving in the ANG who provide legal services as a Defense Counsel, Legal Assistance attorney, Special Victim's Counsel, Recorder or Legal Advisor to an Administrative Discharge Board or Legal Advisor for administrative investigations, while performing duty under the authority of Title 10 or Title 32 of the United States Code. This publication applies to the Air National Guard military. Refer recommended changes and questions about this publication to the office of primary responsibility (OPR) using the DAF Form 847, *Recommendation for Change of Publication*; route DAF Forms 847 from the field through the appropriate chain of command. The authorities to waive wing/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2 T-3") number following the compliance statement.

1. Overview. To clarify authority, responsibilities and jurisdiction for judge advocates serving in the ANG to provide legal services in any US state, commonwealth or territory, or the District of Columbia.

2. Jurisdiction.

2.1. Judge advocates serving in the ANG are required to be admitted, in active (or equivalent) status and in good standing, to practice before the highest court of a US state, commonwealth or territory, or the District of Columbia in accordance with Department of the Air Force Instruction 51-101, *The Air Force Judge Advocate General's (AFJAG) Corps Operations*,

Accessions, and Professional Development, paragraph 6.2.2.2.. (T-0). Judge advocates who perform duty in a Title 10 status or a Title 32 status may be assigned to perform military duties at any location within the jurisdiction of the ANG.

2.2. Judge advocates serving in the ANG may be assigned to provide the following legal services while performing in a duty status under Title 10 or Title 32, including while teleworking, in any US state, commonwealth or territory, or the District of Columbia, regardless of the judge advocates' state of licensure:

2.2.1. Legal assistance attorney or as a Special Victim's Counsel in accordance with Title 10 United States Code Section 1044, *Legal Assistance*, Air Force Instruction 51-304, *Legal Assistance, Notary, Preventative Law, and Tax Programs*, and Air National Guard Instruction 51-504, *Air National Guard Legal Assistance Program*.

2.2.2. Chief, ANG Defense Service, Regional Defense Counsel, and Area Defense Counsel in accordance with the governing instructions for the ANG Defense Services program,

2.2.3. Recorder or legal advisor in accordance with Department of the Air Force Instruction 36-3211, *Military Separations*,

2.2.4. Legal advisor for administrative investigations in accordance with Department of the Air Force Manual 1-101 *Command Directed Investigations*; Department of the Air Force 36-2710, *Equal Opportunity Program*; Department of the Air Force Instruction 90-301, *Inspector General Complaints Resolution*, or other formal or informal administrative investigation process, and,

2.2.5. Other judge advocate duties related to the performance of legal services that do not involve issues of state law. (T-0)

2.3. The performance of legal services listed in [paragraph 2.2](#) by judge advocates serving in the ANG is a federal function. See Air Force Instruction 51-110, *Professional Responsibility Program*, Attachment 2, Rule 5.5. Judge advocates serving in the ANG shall generally be protected from liability in accordance with Title 10 United States Code Section 1054, Defense of certain suits arising out of legal malpractice, and Title 28 United States Code Sections 1346 (b), 2671 et seq, Federal Tort Claims Act (FTCA), because they are acting within their scope of employment as federal employees when performing duties in a Title 10 or Title 32 status and in accordance with Air Force policy as defined by Air Force Policy Directive 51-1, *The Air Force Judge Advocate General's Corps*, paragraphs 2.2 and 2.3.. ANG judge advocates will contact the National Guard Bureau, General Counsel (NGB-GC), who will then coordinate with the USAF and Department of Justice (DOJ) consistent with USAF policy on all requests for substitution and representation relating to the performance of Title 32 legal services.

2.4. This ANGI does not apply to judge advocates while they are working in a State Active Duty (SAD) status pursuant to state law. In a SAD status, it will be the responsibility of the state attorney general or other appropriate state legal office to defend the service member and/or substitute consistent with applicable state law and regulations.

2.5. All state National Guard Joint Force Headquarter State Staff Judge Advocates (SSJAs) should periodically examine their state laws and regulations to ensure ANG JAGs can

adequately and safely perform their Title 32 and SAD military duties. Any concerns should be promptly raised to state military leadership for resolution.

2.6. ANG judge advocates should consult AFI 51-110, Attachment 2, Air Force Rules of Professional Conduct, as well as AFI 51-110, Attachment 5, Supplemental Rules of Professional Conduct for Air National Guard Judge Advocates, and their state licensing authority's professional responsibility rules as needed.

DUKE A. PIRAK
Major General, USAF
Acting Director, Air National Guard

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

10 U.S.C. § 1044, *Legal Assistance*

10 U.S.C. § 1054, *Defense of certain suits arising out of legal malpractice*

10 U.S.C. § 12301, *Reserve components generally*

28 U.S.C. §§ 1346 (b), 2671 *et seq.*, Federal Tort Claims Act

AFPD 51-1, *The Air Force Judge Advocate General's Corps*, 14 Nov 2018

DAFI 36-2710 *Equal Opportunity Program*, 18 Jun 2020

DAFI 36-3211, *Military Separations*, 24 Jun 2022

DAFI 51-101, *The Air Force Judge Advocate General's (AFJAG) Corps Operations, Accessions, and Professional Development*, 20 Jun 2023

AFI 51-110, *Professional Responsibility Program*, 11 Dec 2018

AFI 51-304, *Legal Assistance, Notary, Preventative Law, and Tax Programs*, 22 Aug 2018

DAFI 90-301, *Inspector General Complaints Resolution*, 4 Jan 2024

DAFMAN 1-101 *Command Directed Investigations*, 9 Apr 2021

ANGI 51-504, *Air National Guard Legal Assistance Program*, 20 Nov 2014