

State to give "sympathetic consideration" to such request) and if such authorities refuse to waive jurisdiction, the commanding officer shall request the Department of State to press such request through diplomatic channels and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives;

(d) A representative of the United States to be appointed by the Chief of Diplomatic Mission with the advice of the senior U.S. military representative in the receiving State will attend the trial of any such person by the authorities of a receiving State under the agreement, and any failure to comply with the provisions of paragraph 9 of Article VII of the Agreement shall be reported to the commanding officer of the Armed Forces of the United States in such State who shall then request the Department of State to take appropriate action to protect the rights of the accused, and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives.

#### § 151.7 Fair trial guarantees.

The following is a listing of "fair trial" safeguards or guarantees that are considered to be applicable to U.S. State court criminal proceedings, by virtue of the 14th Amendment as interpreted by the Supreme Court of the United States. The list is intended as a guide for the preparation of country law studies prescribed by § 151.4 and for the determinations made by the designated commanding officer under § 151.4(e) through § 151.4(g). Designated commanding officers should also consider other factors that could result in a violation of due process of law in State court proceedings in the United States.

(a) Criminal statute alleged to be violated must set forth specific and definite standards of guilt.

(b) Accused shall not be prosecuted under an *ex post facto* law.

(c) Accused shall not be punished by bills of attainder.

(d) Accused must be informed of the nature and cause of the accusation and have a reasonable time to prepare a defense.

(e) Accused is entitled to have the assistance of defense counsel.

(f) Accused is entitled to be present at the trial.

(g) Accused is entitled to be confronted with hostile witnesses.

(h) Accused is entitled to have compulsory process for obtaining favorable witnesses.

(i) Use of evidence against the accused obtained through unreasonable search or seizure or other illegal means is prohibited.

(j) Burden of proof is on the Government in all criminal trials.

(k) Accused is entitled to be tried by an impartial court.

(l) Accused may not be compelled to be a witness against him or herself; and shall be protected from the use of a confession obtained by torture, threats, violence, or the exertion of any improper influence.

(m) Accused shall not be subjected to cruel and unusual punishment.

(n) Accused is entitled to be tried without unreasonable (prejudicial) delay.

(o) Accused is entitled to a competent interpreter when the accused does not understand the language in which the trial is conducted and does not have counsel proficient in the language both of the court and of the accused.

(p) Accused is entitled to a public trial.

(q) Accused may not be subjected to consecutive trials for the same offense that are so vexatious as to indicate fundamental unfairness.

### PART 152—REVIEW OF THE MANUAL FOR COURTS-MARTIAL

Sec.

152.1 Purpose.

152.2 Applicability and scope.

152.3 Policy.

152.4 Procedures.

152.5 Responsibilities.

152.6 Information requirements.

AUTHORITY: E.O. 12473; 10 U.S.C. 836; 10 U.S.C. 867(g).

SOURCE: 50 FR 6167, Feb. 14, 1985, unless otherwise noted.

## § 152.1

## 32 CFR Ch. I (7-1-02 Edition)

### § 152.1 Purpose.

This part implements the requirement established by the President that Manual for Courts-Martial, United States 1984, Executive Order 12473 reference be reviewed annually.

### § 152.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, and, by the agreement with the Secretary of Transportation, to the Coast Guard.

(b) This part is intended only to improve the internal management of the Federal Government; it is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

### § 152.3 Policy.

It is DoD policy to review annually the Manual for Courts-Martial, to ensure that the Manual fulfills its fundamental purpose as a comprehensive body of law governing military justice procedures and as a guide for lawyers and nonlawyers in the operation and application of such law.

### § 152.4 Procedures.

(a) *Annual review.* (1) A draft of the annual review of the Manual for Courts-Martial required by the President under Executive Order 12473 shall be prepared by the Joint Service Committee on Military Justice. The Joint Service Committee consists of one representative of each of the following: the Judge Advocate General of the Army; the Judge Advocate General of the Navy; the Judge Advocate General of the Air Force; the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps; and the Chief Counsel, U.S. Coast Guard. In addition, the Court of Military Appeals shall be invited to provide a staff member to serve in a nonvoting capacity with the committee.

(2) The Joint Service Committee on Military Justice shall review the Manual (including the Discussion and Appendices) in light of judicial and legislative developments in civilian practice to:

(i) Ensure that the Manual, the Discussion, and the Appendices apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in the U.S. District Courts to the extent practicable and to the extent that such principles and rules are not contrary to or inconsistent with the UCMJ. See Article 36, UCMJ (10 U.S.C. 836 and 10 U.S.C. 867(g)). This includes the requirement that the Manual must be workable across the spectrum of circumstances in which courts-martial are conducted, including combat conditions.

(ii) Ensure that the Manual, the Discussion, and the Appendices reflect current military practice and judicial precedent.

(3) The Joint Service Committee shall send its draft review to the General Counsel not later than April 15, 1985, and February 1 of each year thereafter. A copy of the report shall be sent to the committee, established by Article 67(g), UCMJ (10 U.S.C. 836 and 10 U.S.C. 867(g)) which may submit comments on the draft review to the General Counsel.

(4) The draft review shall set forth any specific recommendations for changes in the Manual, the Discussion, or the Appendices. If no changes are recommended, the draft review shall so state. If changes are recommended by the Joint Service Committee, the public notice procedures of paragraph (c) of this section, are applicable. If the Joint Service Committee determines that an aspect of civilian practice should be adopted, but recommends that the Manual should not be changed because the proposal would be contrary to or inconsistent with 10 U.S.C. 836 and 867(g) the draft review should contain a legislative proposal. Minority reports, if any, shall be included.

(5) Proposed changes to the Manual for Courts-Martial and proposed legislative changes that are recommended in the draft review are subject to the coordination requirements of DoD Directive 5500.1.

(b) *Other changes to the Manual for Courts-Martial.* (1) Normally, changes to the Manual for Courts-Martial will be proposed as part of the annual review set forth in paragraph (a) of this

section. However, when earlier implementation is required, proposed changes may be sent to the General Counsel for coordination under DoDD 5000.19.

(2) Proposed changes to the Manual for Courts-Martial under this section are subject to the public notice procedures of paragraph (c) of this section.

(c) *Public Notice.* (1) Notice that the Department of Defense intends to recommend changes to the Manual for Courts-Martial shall be published in the FEDERAL REGISTER before submission of such changes to the President, unless the Secretary of Defense proposes that the President issue the change without such notice on the basis that notice and public procedure thereon is unnecessary or contrary to the sound administration of military justice.

(2) The Joint Service Committee on Military Justice shall coordinate with the Office of General Counsel as to the timing and content of such notice.

(3) The notice shall include a brief description of the matters contained in the proposed change, the time and place where a copy of the proposed change may be examined, and the procedure for obtaining a copy of the proposed change.

(4) A period of not less than 75 days after publication of notice shall be allowed for public comment, but a shorter period may be prescribed when it is determined that a 75-day period is unnecessary or contrary to the sound administration of military justice.

(5) Comments shall be submitted to the Joint Service Committee on Military Justice.

#### § 152.5 Responsibilities.

(a) The General Counsel is responsible for the administration of this part including approval of the annual review of the Manual for Courts-Martial, coordination of any proposed changes to the Manual for Courts-Martial under DoD Directive 5500.1, approval of any proposed changes to the Discussion and Appendices accompanying the Manual for Courts-Martial, and transmittal to the Congress of rules approved by the President. See Article 36, UCMJ (10 U.S.C. 836 and 10 U.S.C. 867 (g)).

(b) The Judge Advocates General of the Military Departments; the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps; and the Chief Counsel, U.S. Coast Guard are responsible for appointment of representatives to the Joint Service Committee on Military Justice.

#### § 152.6 Information requirements.

The reporting requirement prescribed in § 152.4(a) is exempt from formal approval and licensing in accordance with subsection VII.C. of enclosure 3 to DoD Directive 5000.19.

### PART 153—LEGAL ASSISTANCE MATTERS

Sec.

153.1 Purpose.

153.2 Applicability.

153.3 Definitions.

153.4 Policy.

153.5 Responsibilities.

APPENDIX A TO PART 153—MILITARY TESTAMENTARY PREAMBLE

APPENDIX B TO PART 153—MILITARY TESTAMENTARY INSTRUMENT SELF-PROVING AFFIDAVIT

APPENDIX C TO PART 153—MILITARY POWER OF ATTORNEY PREAMBLE

APPENDIX D TO PART 153—MILITARY ADVANCE MEDICAL DIRECTIVE PREAMBLE

AUTHORITY: 10 U.S.C. 301.

SOURCE: 66 FR 45169, Aug. 28, 2001

#### § 153.1 Purpose.

This part implements 10 U.S.C. 301 for persons eligible for military legal assistance by establishing a uniform approach for the execution of military testamentary instruments.

#### § 153.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as “the DoD Components”). The term “Military Services,” as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps, and the