



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

AUG 02 2005

From: Under Secretary of the Navy
To: Lieutenant General Robert Magnus, USMC

Subj: PRECEPT CONVENING A SELECTION BOARD TO RECOMMEND A JUDGE
ADVOCATE OF THE MARINE CORPS TO BE DETAILED AS AN
ASSISTANT JUDGE ADVOCATE GENERAL OF THE NAVY

Encl: (1) Supplemental Guidance for Assistant Judge Advocate
General of the Navy Selection Board

1. Members. A selection board is appointed, consisting of yourself as president and the following additional members, to recommend a judge advocate in the permanent grade of colonel on the active-duty list of the Marine Corps to be detailed as an Assistant Judge Advocate General of the Navy:

Rear Admiral Bruce E. MacDonald, JAGC, USN
Major General Frances C. Wilson, USMC
Brigadier General Michael C. Wholley, JA, USMC, Retired
Brigadier General John R. Allen, USMC
Brigadier General Anthony L. Jackson, USMC

2. Recorders. Major Eric R. Kleis, U.S. Marine Corps, and Major Tamia N. Ashley, U.S. Marine Corps Reserve, will jointly act as recorders. A recorder will be present during all board deliberations.

3. Administrative Personnel. The following administrative support personnel are hereby appointed:

Colonel Lee W. Freund, USMC
Mr. William A. Hicks
Mr. Edward F. McDonnell
Major William J. McWaters, USMC
Mr. Robert J. Sunday
Mrs. Constance P. Ray
Captain Shunsee J. Wilson, USMCR
Captain Wendy A. Holmes, USMC
Mr. Michael D. Cheeseman
Mrs. Gracie Van Steenbergen
Mrs. Jane D. Ritchie
Mrs. Susan B. Reed
Chief Warrant Officer W3 Johnie W. Hamilton IV, USMC
Mrs. Janet L. Ector
Gunnery Sergeant Kelvin O. Guthrie, USMC
Staff Sergeant Eric S. Green, USMC

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Sergeant Timothy L. Brown, Jr., USMC
Sergeant Anthony S. Earnest, USMC
Corporal Blaine D. Raine, USMC
Private First Class Blanca L. Almeida, USMC
Private First Class Adam L. Hoggan, USMC
Private First Class Delphin Jonquet, USMC
Private First Class Luz E. Martinez, USMC
Private First Class Kristy L. Perry, USMC
Private First Class Alcedo R. Sanchez, USMC
Private First Class Staci R. Shultz, USMC
Private First Class Nicholas L. Weber, USMC

4. Date and Location. The board is ordered to convene at Headquarters, U.S. Marine Corps, Harry Lee Hall, Quantico, VA, on 23 August 2005, or as soon thereafter as practicable.

5. Guidance. The board will proceed in accordance with the following specific guidelines which are explained in detail in the enclosure.

a. Background. Section 5149(c) of title 10, U.S. Code, provides that an officer of the Marine Corps who is a judge advocate and a member of the bar of a Federal court or the highest court of a State or Territory and who has had at least 8 years of experience in legal duties as a commissioned officer may be detailed as an Assistant Judge Advocate General of the Navy. It also provides that while so serving, a judge advocate who holds a grade lower than brigadier general shall hold the grade of brigadier general, if he is appointed to that grade by the President, by and with the advice and consent of the Senate. An officer who is retired while serving as Assistant Judge Advocate General or who, after serving at least 12 months as Assistant Judge Advocate General, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of brigadier general.

b. Number of Selections Authorized. The board may select for detailing as an Assistant Judge Advocate General of the Navy, one eligible officer from either the above-, in-, or below-zone. The board is not required to select to the number provided.

c. Selection Standard. The board shall carefully consider without prejudice or partiality the record of every eligible officer. The officer selected will be that officer whom a majority of the members of the board consider best qualified for detailing. In addition to the standard of best qualified, the

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officer recommended for detailing must be fully qualified. This standard applies to all eligible officers, including those above- and below-zone.

d. Reserve Billets. The board shall consider duty as an inspector-instructor and commanding officer of a Reserve organization to be equivalent to command of like organizations of the Active Component.

e. Equal Opportunity. The board's evaluation of all officers, regardless of race, creed, color, gender, or national origin, must afford them fair and equitable consideration.

f. Marital Status. The marital status of an eligible officer or the employment, education, or volunteer service of a spouse will not be considered.

6. Continuation Board. Upon completion of the selection board, the board shall reconvene as a continuation board if the officer selected for detailing will be subject to involuntary retirement for total years of active service before completing three years as Assistant Judge Advocate General of the Navy. The officer will be continued on active duty for a period of three years from the date on which the officer is detailed, or 35 years of active commissioned service, or until the age of 62, whichever is earlier. A majority of the members of the board must consider the officer fully qualified for continuation and find the officer's continuation to be in the best interest of the Marine Corps. If a continuation board is convened, it will consist of you as president and the following additional members:

Major General Frances C. Wilson, USMC
Brigadier General Michael C. Wholley, JA, USMC, Retired
Brigadier General John R. Allen, USMC
Brigadier General Anthony L. Jackson, USMC

7. Additional Guidance. In addition to an explanation of the guidance in paragraph 5 above, the enclosure contains additional guidance for the board to consider in determining qualifications and selection potential. Administrative instructions and the oath for the members, recorders, and administrative support personnel are also included.

8. Confidentiality of Board Proceedings. Unless expressly authorized or required by the President, Secretary of Defense, Secretary of the Navy, or me, neither you nor any member of the board, recorder, or administrative staff may disclose the

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proceedings, deliberations, or recommendations of the selection
or continuation selection boards. All board members, recorders,
and administrative staff must comply fully with these
requirements, and I expect you to emphasize the need for strict
confidentiality.



Dionel M. Aviles

SUPPLEMENTAL GUIDANCE FOR
ASSISTANT JUDGE ADVOCATE GENERAL OF THE NAVY
SELECTION BOARD

1. The following oath or affirmation shall be administered to the recorders by the president of the board:

"Do you solemnly swear (or affirm) that you will keep a true record of the proceedings of this board and, further, that you will not disclose the proceedings or recommendations thereof pertaining to the selection or nonselection of individual officers except as authorized or required by the Secretary of the Navy or higher authority, so help you God?"

The following oath or affirmation shall then be administered by the recorder to each member of the board:

"Do you solemnly swear (or affirm) that you will perform your duties as a member of this board without prejudice or partiality, having in view both the special fitness of officers and the efficiency of the Naval Service and, further, that you will not disclose the proceedings or recommendations thereof pertaining to the selection or nonselection of individual officers except as authorized or required by the Secretary of the Navy or higher authority, so help you God?"

The following oath or affirmation shall then be administered to the administrative support personnel:

"Do you solemnly swear (or affirm) that you will not disclose the proceedings or recommendations thereof pertaining to the selection or nonselection of individual officers except as authorized or required by the Secretary of the Navy or higher authority, so help you God?"

2. The Commandant of the Marine Corps shall furnish the board with the names and records of all officers who are eligible for consideration. The names of the officers eligible for consideration shall be determined as of the date the board convenes. The board, however, shall not consider any officer who has an established separation date that is within 90 days after the date the board convenes. In addition, the board shall not consider the records of the officers previously detailed as an Assistant Judge Advocate General of the Navy.

3. Selection Board. The function of the board is to recommend a judge advocate of the Marine Corps on the active-duty list for

detailing as an Assistant Judge Advocate General of the Navy. The officer selected will be that officer whom a majority of the members of the board consider best qualified for detailing, giving due consideration to any guidance provided in this precept concerning the needs of the Marine Corps for officers with this particular skill. In addition to the foregoing standard of best qualified, the officer recommended for detailing by the board must be fully qualified; that is, the officer's qualifications and performance of duty must clearly demonstrate that the officer would be capable of performing the duties normally associated with the office of the Assistant Judge Advocate General of the Navy.

4. Continuation Selection Board. An eligible officer who is recommended for continuation must be fully qualified for continuation, and his or her continuation must be in the best interest of the Marine Corps. "Fully qualified" means that the individual's record clearly demonstrates performance in a satisfactory manner considering the grade and technical specialty held.

5. Career Patterns. The Marine Corps has not established an expected or preferred career pattern for officers of the Regular or Reserve Component. In your deliberations you should consider that assignments are made in the best interests of the Marine Corps. Officers rarely have direct influence over their assignments. As a result of assignment policies and practices, in the best interests of the Marine Corps some officers have developed skills and experience outside of their primary MOS and may have been ordered to serve multiple tours in that sub-specialty. When reviewing an officer's qualifications for detailing, you should also consider that the Marine Corps benefits when the officer corps possesses a broad spectrum of experiences. Assignments to the operating forces, recruiting duty, equal opportunity duty, joint and external billets, international exchange tours, the special education program or the advanced degree program, the training community, and the supporting establishment, all contribute to the depth and breadth of experiences that are critical to the Marine Corps. In addition, in some instances, utilization policies or practices, such as those based on statutory restrictions on the assignment of women, may have had an effect on career opportunities. All assignments are important to the Marine Corps, and successful performance of assigned duties is the key in measuring an officer's potential for detailing. In determining the qualification for detailing of any officer who has been affected by such utilization policies or practices, performance in duty assignments should be given the same weight as that given to duty equally well performed by officers who were not affected by such policies or practices.

6. Equal Opportunity

a. The Department of the Navy is dedicated to equality of treatment and opportunity for all personnel without regard to race, creed, color, gender, or national origin. The Marine Corps strives to maintain a professional working environment in which a Marine's race, creed, color, gender, or national origin will not impact his or her professional opportunities. Accordingly, within this board's charter to select an officer who is "best and fully qualified," you must ensure that officers are not disadvantaged because of their race, creed, color, gender, or national origin.

b. Your evaluation of all officers must afford them fair and equitable consideration. You should be particularly vigilant in your evaluation to take care that no officer's opportunity for detailing is disadvantaged by service utilization policies or practices. You should evaluate each officer's potential to assume the responsibilities of an Assistant Judge Advocate General of the Navy. The overriding evaluation factor is the performance of assigned duties and I remind you that all assigned duties are important.

c. This guidance should not be interpreted as requiring or permitting preferential treatment of any officer or group of officers on the grounds of race, creed, color, gender, or national origin.

7. When discussing your own personal knowledge concerning the professional qualifications of eligible officers, the board is reminded that if personal remarks, based on a member's personal knowledge, could be considered "adverse," the member cannot discuss his or her personal knowledge or evaluation unless such matter is contained in the officer's official record or other material placed before the board in compliance with the law and Service regulation. In addition, should an officer's record reveal the removal of a fitness report via the Performance Evaluation Review Board, Board for Correction of Naval Records, etc., the member may not discuss his or her personal knowledge regarding the circumstances which resulted in the removal of the report from the officer's record. However, documented incidents of misconduct and substandard performance which are included in an officer's official record must be briefed to all board members. Members must carefully consider each such incident in connection with their deliberations.

8. Faced with many well-qualified officers, there may be a tendency to simplify your task by summarily putting aside the folders of officers whose past records are less than perfect.

However, to do this is to fall short of your obligation. A judgment of the whole person and the whole record is required to determine whose future potential will serve the Marine Corps best. You may conclude that particular adverse information undermines an officer's ability to serve successfully in a position of increased authority and responsibility, despite an otherwise outstanding record. On the other hand, you may find that an officer's overall outstanding performance demonstrates such potential for future service that it outweighs any deficiency noted in the record. Some officers will have learned from their mistakes in ways that make them stronger; others will have strengths that outweigh relative weaknesses in their records. Make the best, not simply the most obviously defensible, choices. By doing this you will not only fulfill your obligation, you will also better serve the Marine Corps.

9. A critical goal of the Marine Corps is to encourage -- to demand -- innovation and efficiency to ensure that we retain an adaptive, flexible, and effective naval force able to anticipate events and win across the spectrum of conflict. Our institution must not restrict or limit the opportunity of any Marine to think creatively, develop new ideas, and maximize capabilities through sound management practices. In your consideration, recognize that the continued preeminence of the Marine Corps in the future is inextricably linked to its ability to change and to manage for efficiency. Our future depends on leaders who have demonstrated their awareness of this fact. Within the charter of best and fully qualified, seek to select this officer. Bear in mind that, in the context of a changing Marine Corps, the officers with the greatest capacity for innovation and management efficiency may reflect a variety of backgrounds.

10. The official military personnel records provided to the board may include medical documents relevant to an officer's physical qualifications. If the board desires clarification of any such document, then the board president should reduce the board's questions to writing and forward them to me. I will provide such clarification as may be appropriate.

11. The board president shall perform such administrative duties in connection with the board proceedings as I may prescribe. The board president has no authority to constrain the board from recommending for detailing the fully qualified officer whom the majority finds best qualified to meet the needs of the Marine Corps as specified by me. The board president shall ensure that paragraph 12 of this enclosure is read to each board member, recorder, and administrative support person on the convening date of the board or on the date of assignment to the board, whichever is later.

12. Although the provisions of DoD Instruction (DoDInst) 1320.14 of 24 September 1996 do not directly apply to this board, I direct the following instructions concerning communications and information apply to these board proceedings:

a. Each of you (president, members, recorders, and administrative support personnel) is responsible to maintain the integrity and independence of this selection board, and to foster the careful consideration, without prejudice or partiality, of all eligible officers. DoDInst 1320.14 provides specific rules governing the conduct of officer selection boards and the actions of selection board personnel.

b. You must pay particularly close attention to the rules governing communications with and among other board members, the information authorized to be furnished to you, and the procedures you should follow if you believe that the integrity of this selection board has been improperly affected.

c. You may not receive, initiate, or participate in communications or discussions involving information that DoDInst 1320.14 precludes from consideration by a selection board. You are to base your recommendations on the material in each officer's military record, any information I have provided to the board in accordance with DoDInst 1320.14, and any information about his or her own record communicated to you by individual eligible officers under regulations I have issued. In your deliberations, you may discuss your own personal knowledge and evaluation of the professional qualifications of eligible officers to the extent that such matters are not precluded in law, DoDInst 1320.14, or Service regulation from consideration by a selection board or inclusion in an officer's military personnel record. You may not discuss or disclose the opinion of any person not a member of the board concerning an officer being considered unless that opinion is contained in material provided to the board under the provisions of DoDInst 1320.14.

d. The Secretary of the Navy is the only person who may appear in person to address you on other than administrative matters. All communications with this board, other than those that are clearly administrative, must be in writing, given to each of you, and made part of the board's record. I have designated in writing those persons authorized to provide routine administrative information to you.

e. Before the report of the selection board is signed, the recommendations may be disclosed only to members of the board, recorders, and those administrative support personnel I have designated in writing. After you sign the board report, only the recommendations of the board may be disclosed. Except as

authorized by DoDInst 1320.14 and sections 616(e), 618(f), 14104, or 14108(d) of title 10, U.S. Code, the proceedings of the board may not be disclosed to any person not a board member or board recorder.

f. If at any time you believe that you cannot in good conscience perform your duties as a member of the board without prejudice or partiality, you have a duty to request relief by me from this duty. I will honor any such request. If you believe that the integrity of the board's proceedings has been affected by improper influence of military or civilian authority, misconduct by the board president or a member, or any other reason, or believe someone is exerting or attempting to exert inappropriate influence over the board or its proceedings, you have a duty to request from me, the Secretary of the Navy, or the Secretary of Defense relief from your obligation not to disclose board proceedings and, upon receiving it, to report the basis for your belief.

g. Upon the completion of the board's deliberations, you will, at a minimum, certify in your report to me that:

(1) To the best of your knowledge, the board complied with DoDInst 1320.14;

(2) That you were not subject to or aware of any censure, reprimand, or admonishment about the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board;

(3) That you were not subject to or aware of any attempt to coerce or influence improperly any action in the formulation of the board's recommendations;

(4) That you were not party to or aware of any attempt at unauthorized communications;

(5) That, to the best of your knowledge, the board carefully considered the record of each officer whose name was furnished to the board;

(6) That the officer recommended for detailing is, in the opinion of the majority of the members of the board, fully qualified and best qualified to meet the needs of the Marine Corps among those officers whose names were furnished to the board;

-or-

That the officer recommended for continuation is, in the opinion of the majority of the members of the board, fully qualified for continuation and the officer's continuation is in the best interests of the Marine Corps;

(7) That you are aware that the name of the selectee will be released to the public after the board report is approved, and you know that you may not disclose recommended selectee until the name is released to the public; and

(8) That you understand that, except as authorized by DoDInst 1320.14 and sections 616(e), 618(f), 14104, or 14108(d) of title 10, U.S. Code, you may never disclose the proceedings and deliberations of the board to any person who is not a board member or board recorder.

13. Prior to adjournment, the board must review the extent to which the expectations of this selection board guidance have been met.

14. The record of the selection and continuation selection board's proceedings shall be prepared by the recorders and administrative support staff. The record of the selection board shall contain at a minimum:

- a. Convening notice;
- b. All instructions, information, and guidance that were provided to the board under DoDInst 1320.14;
- c. The written report of the board;
- d. A list of all officers eligible for consideration; and
- e. This precept.

15. The board president, the board members, and board recorders shall sign the written report of the selection board. The report shall contain: the name of the officer recommended for detailing and the certification described in paragraph 12g. Upon completion of its proceedings, the selection board shall forward its report to me for approval via the Commandant of the Marine Corps for his recommendations and the Judge Advocate General of the Navy for legal review.

16. The board president, the board members, and board recorders shall sign the written report of the continuation board. The report shall contain: the name of the officer recommended for continuation and the certification described in paragraph 12g. The continuation board shall forward its report to me for

approval via the Commandant of the Marine Corps for his recommendations and the Judge Advocate General of the Navy for legal review.