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Federal Court Petitioner

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FOR SJAS

SUBJ: APPEARANCE OF MILITARY COUNSEL

1. THE JULY-AUGUST DEFENSE APPELLATE DIVISION NEWSLETTER DISCUSSES THE APPEARANCE OF MILITARY DEFENSE COUNSEL IN CIVIL COURTS UPON BEHALF OF ACCUSED CHARGED UNDER THE UCMJ. THE ARTICLE ADVISES COUNSEL THAT UNDER AR 27-40 PERMISSION TO APPEAR SHOULD BE OBTAINED FROM SJA OR TJAG.

2. THE APPEARANCE OF APPOINTED OR INDIVIDUAL MILITARY DEFENSE COUNSEL IN CIVIL COURTS TO PROSECUTE ACTIONS UPON BEHALF OF THEIR MILITARY ACCUSED IS CURRENTLY UNDER STUDY BY THE JUDGE ADVOCATE GENERAL. AR 27-40 WAS NOT INTENDED TO COVER SUCH APPEARANCES. ALL REQUESTS BY MILITARY COUNSEL FOR PERMISSION TO APPEAR IN CIVIL COURTS UPON BEHALF OF A MILITARY ACCUSED WILL BE FORWARDED, WITH RECOMMENDATIONS, TO THE JUDGE ADVOCATE GENERAL, ATTN: CHIEF,

PAGE 2 RUEADWD7941 UNCLAS E F T O

LITIGATION DIVISION. NO MILITARY COUNSEL MAY APPEAR IN A CIVIL COURT UPON BEHALF OF A MILITARY ACCUSED WITHOUT THE PERMISSION OF THE JUDGE ADVOCATE GENERAL.

3. DEFENSE COUNSEL WHO SEEK PERMISSION TO APPEAR IN CIVIL COURTS

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MAY BE ADVISED THAT THE GENERAL RULE IS THAT FEDERAL COURTS WILL NOT ENTERTAIN COLLATERAL ATTACKS UPON COURTS-MARTIAL UNTIL ALL MILITARY REMEDIES HAVE BEEN EXHAUSTED. NOYD V. BOND, 395 U. S. 683 (1969); LEVY V. CORCORAN, 389 F. 2D 924 (D.C. CIR., 1967). THE MOST RECENT EXAMPLES OF THIS RULE ARE SET FORTH IN TORRES V. CONNOR, CIVIL NO. 13,940 (5TH CIR., DECIDED 10 AUGUST 1970), AND MACDONALD V. FLANAGAN, CIVIL NO. 915 (E.D. N.C., DECIDED 19 JULY 1970).

4. THIS MESSAGE WILL BE RE-TRANSMITTED TO ALL SUBORDINATE COMMANDS.

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