

AIR NATIONAL GUARD

Use of Active Guard Reserve Judge Advocates in the Base X Group

You have asked for a legal review on the appropriateness of adding two additional Active Guard Reserve (AGR) judge advocates to the Base X Group, given the parameters of permissible AGR duties as set out in federal law. Based on the information provided, the proposed use of these two additional AGRs meets the statutory requirement that the primary duties of AGRs be to organize, administer, recruit, instruct, and train (OARIT) members of reserve components.

JAG positions on the AOG/AOC unit manning documents (UMDs) have increased from two to six billets (Guardsmen are part of the AOG while in Title 32 status and belong to the AOC when in Title 10 status). Two of the four additional JAGs are projected to be AGRs. The two current billets are both AGR positions, so this proposal will result in four of the six JAG billets in the AOG/AOC being AGR billets.

There are approximately 2000 Airmen in State Y Air National Guard (ANG), approximately 70 percent of whom are traditional Guardsmen. While the AGR to traditional Guardsman ratio within the AOG/AOC is AGR-heavy, the AOG JAGs provide OARIT support to traditional Guardsmen state-wide. The AOG Staff Judge Advocate is the SJA for the whole of State Y ANG.

The primary day-to-day duties of the current AGRs (the SJA and the deputy SJA) and the two additional AGR JAGS are and will be OARIT, provided to the 2000 State Y ANG Airmen across the state. The only occasions in which they will not be engaging in OARIT (once trained for their AOC duties) will be those when they have self-activated into Title 10 status for air sovereignty events or are training other active duty JAGs to serve in the AOC.¹ As explained to us, the daily OARIT duties of the AOG AGRs include:

Providing military justice and administrative discharge support to eight State Y ANG commanders across the state, including support for non-judicial punishment, courts-martial, and discharge boards;

Providing legal assistance, including wills and powers of attorney, to State Y ANG Airmen across the state;

¹ 32 U.S.C. § 328(b) and 32 U.S.C. § 502(f) allow for duties other than OARIT to be performed by AGRs, as long as they don't interfere with their primary OARIT duties. One permissible additional duty is the training of active duty military for operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense.

Supporting commanders with regards to civilian employment issues, commander-directed investigations, line of duty determinations, urinalysis testing, ethics advice, mental health referrals, Title 10/Title 32 issues, and MOUTs/MOAs; and

Assisting the State Y Army National Guard with processing of their soldiers for deployment and with their administrative discharge boards.

10 U.S.C. § 101(d)(6) defines the term “active Guard and Reserve duty,” as “active duty performed by a member of a reserved component of the Army, Navy, Air Force, or Marine Corps, or full-time National Guard duty performed by a member of the National Guard pursuant to an order to full-time National Guard duty, for a period of 180 consecutive days or more *for the purpose of organizing, administering, recruiting, instructing, or training (OARIT) the reserve components*” (emphasis added).

32 U.S.C. § 328 states that the Governor of a State, with the consent of the Secretary concerned, may order a member of the National Guard to perform AGR duty, as defined in the above-referenced statutory provision. It also states that in addition to OARIT, AGRs may perform the extra duties set out in 32 U.S.C. § 502(f), as long as they don’t interfere with the AGRs’ primary OARIT duties.

While the permissible roles of AGRs are very clearly set out in statutes, it is also clear that duties in addition to OARIT are permissible as long as those additional duties do not become the AGR’s primary duties. Based upon your assertions of the duties expected to be performed by the AOG AGR JAGs and our reading of the applicable statutes, their primary duties will be conducting OARIT, with few additional duties, and the proposal to add two additional JAG AGRs to AOG/AOC is legally sound.