



THE SECRETARY OF THE NAVY
WASHINGTON DC 20350-1000

NOV 12 2021

From: Secretary of the Navy
To: President, FY-22 Active-Duty Selection Board for Detail as Assistant Judge Advocate General (Chief Judge of the Department of the Navy) and Assistant Judge Advocate General of the Navy
Subj: ORDER CONVENING THE FY-22 SELECTION AND CONTINUATION BOARD TO RECOMMEND A NAVY JUDGE ADVOCATE ON THE ACTIVE-DUTY LIST IN THE REGULAR GRADE OF CAPTAIN FOR DETAIL AS ASSISTANT JUDGE ADVOCATE GENERAL (CHIEF JUDGE OF THE DEPARTMENT OF THE NAVY) AND ASSISTANT JUDGE ADVOCATE GENERAL OF THE NAVY
Ref: (a) FY-23 Active-Duty and Reserve Navy Flag Officer Promotion Selection Board Precept
(b) FY-22 Active-Duty Navy and Reserve Officer and Chief Warrant Officer Continuation Selection Board Precept
Encl: (1) Board Membership
(2) Board Recorders and Administrative Support

1. **Date and Location**

a. The selection board, consisting of you as president and the officers listed in enclosure (1), is ordered to convene at the Navy Personnel Command, Millington, TN, at 0800, November, 15, 2021, or as soon as practicable thereafter.

b. The board shall proceed in accordance with all guidance in this letter and, except when otherwise noted, the FY-23 Active-Duty and Reserve Navy Flag Officer Promotion Selection Board Precept, reference (a).

2. **Function.** The function of the board is to consider eligible Regular Active-Duty List officers of the Navy Judge Advocate General's Corps and to select one officer for detail as Assistant Judge Advocate General (Chief Judge of the Department of the Navy) ("AJAG (CJDON)") and Assistant Judge Advocate General of the Navy ("AJAG of the Navy") and one alternate selection.

a. In accordance with 10 U.S.C. § 8089, I will detail the officer selected by this board to the designated AJAG position

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as informed by recommendations from the Judge Advocate General of the Navy. The AJAG of the Navy is a statutory position, whereas the AJAG (CJDON) is a Departmental position established by SECNAVINST 1800.3A. The AJAG (CJDON) is eligible for detail as AJAG of the Navy pursuant to 10 U.S.C. § 8089. The AJAGs are flag/general officer equivalent positions in the Department of the Navy and, at my discretion, are eligible for retirement in the higher grade of rear admiral (lower half) or brigadier general following performance of qualifying service.

b. Selection for AJAG is commensurate with selection for promotion to the grade of rear admiral (lower half). The officer you select should be of commensurate quality and capable of performing the duties of a flag officer.

c. The officer you select shall serve for three years as AJAG (CJDON). Unless I deem it necessary for the officer to serve earlier, the officer selected will assume the title and duties of AJAG of the Navy for the last 12 months in the billet. Though authority to detail the AJAG of the Navy is contained in a specific statutory provision, the Department of the Navy, by policy, has chosen to follow the selection process provided in chapter 36 of title 10, U.S. Code, to the maximum extent practicable. Accordingly, the procedures to be employed by this board will closely follow those observed during regular statutory boards.

d. Eligible officers are only those judge advocates in the grade of captain on the Active-Duty List with a date of rank of November 1, 2018, or earlier, who submit a written letter to the board president requesting eligibility for consideration by the board, to arrive not later than 15 calendar days before the date the board convenes. An officer who was recommended by a previous selection board for appointment as AJAG of the Navy, or whose three-year tour as the AJAG (CJDON) would extend the officer's service beyond his or her 62nd birthday, is not eligible for this board, notwithstanding the timely submission of a written letter to the board president in accordance with this subparagraph.

e. From among the officers eligible for consideration, the board may select one judge advocate for detail as AJAG (CJDON) and AJAG of the Navy and one alternate selection. This number

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is the maximum that may be selected. The board need not select to the number provided.

3. **Best and Fully Qualified Selection Standard**

a. **Fully Qualified.** The officer recommended for selection must be fully qualified; that is, the officer recommended must be capable of performing the duties as AJAG (CJDON) and duties of the more senior position of the AJAG of the Navy. An officer who does not meet that standard shall not be recommended for selection.

(1) Officers fully qualified for selection demonstrate an appropriate level of leadership, professional skills, integrity, management acumen, grounding in business practices, and resourcefulness in difficult and challenging assignments. Their personal and professional attributes include adaptability, intelligent risk-taking, critical thinking, innovation, adherence to Navy and DoD ethical standards, physical fitness, and loyalty to the Navy core values.

(2) The Navy is composed of men and women representing dozens of different ethnic groups and hundreds of cultural heritages. Fully qualified officers must have shown the ability to successfully lead and mentor a diverse workforce, while executing the Navy's strategic diversity initiatives and effectively retaining the right quality and quantity of performance-proven personnel.

(3) Fully qualified officers must be of the highest integrity and character, with the demonstrated ability to provide legal advice that is accurate, independent, objective, and reflective of the Navy core values.

b. **Best Qualified.** Among the fully qualified officers, you must recommend for selection the best qualified officer. The following core considerations should guide your recommendation. Members assigned to brief individual records are expected to use these considerations to guide the review and structure of their briefs. Each board member is expected to apply this guidance when deliberating and voting. Considerations are:

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(1) Proven and Sustained Performance

(a) You are required to pick the best officer. Proven and sustained superior performance in significant leadership positions (e.g., command, OJAG Division Director, SJA on senior-flag officer/general officer staff, etc.), and in difficult and challenging in-service, joint, and overseas contingency operations (OCO) assignments is the definitive measure of fitness for selection. This is the number one factor that should guide your recommendations.

(b) When applying this factor, you must consider that the future Navy and joint force leadership will be comprised of a mix of officers who have excelled in both traditional career paths and alternate career paths. You must consider the critical competency/skill sets developed by officers who have excelled in alternate career paths.

(c) Our dynamic Navy requires equal consideration to those who have served in non-traditional, combat-related, nation-building roles. Successful performance and leadership in combat conditions demonstrate exceptional selection potential and should be given special consideration. However, the board is reminded that limited opportunities exist for senior judge advocates to serve in combat conditions. This community-specific limitation may have foreclosed combat leadership opportunities for many judge advocates. Therefore, officers who have not served in such conditions should not be viewed negatively, provided the officers have progressed in billet complexity, professional development, and leadership responsibility.

(d) You should also consider for selection those men and women possessing the education, experience, and language skills that help improve the Navy's gender and cultural awareness and those who demonstrate mentoring skills that enhance the professional development of the Navy's future male and female leaders and the wide and varied diversity of the Navy.

(e) A critical goal of the Navy is to encourage -- to demand -- innovation and efficiency to ensure that we retain

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an adaptive, flexible, and effective naval force able to anticipate events and win across the spectrum of conflict. In your consideration, recognize that the continued preeminence of the Navy in the future is inextricably linked to its ability to successfully change and to manage for efficiency. Our future depends on male and female leaders who have demonstrated their awareness of this fact. Within the charter of best and fully qualified, seek to select these officers. Likewise, we must not restrict or limit the opportunity of any officer to think creatively, develop new ideas, take prudent risks, and maximize capabilities through sound management practices. Bear in mind that, in the context of a changing Navy, officers demonstrating innovative thinking, efficient management skills, prudent risk taking, and effective business practices, may reflect a variety of backgrounds.

(2) Education/Personal and Professional Development

(a) The Navy's ability to support future operational requirements depends on a well-educated and trained officer workforce. The Navy needs officers who have helped create a culture of continuous learning demonstrated by their professional development through education and training. You shall favorably consider professional military education (PME), relevant graduate education, and experience in specialized areas. Best and fully qualified officers seek opportunities to improve performance by increasing their knowledge throughout their careers. The PME Continuum integrates four components of education: Advanced Education, Navy-Specific Professional Military Education (NPME), Joint Professional Military Education (JPME), and Leadership Development.

(b) Applying advanced education in subspecialty tours and achieving specialized skills as reflected in Additional Qualification Designator (AQD) codes are significant career milestones.

(c) Post-Graduate Education. The Judge Advocate General's Corps endeavors to provide all judge advocates with the opportunity to obtain post-graduate education. Of those officers afforded an opportunity to obtain post-graduate education, some will attend civilian educational institutions,

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while others will attend military institutions such as the Army's Judge Advocate General's Legal Center and School. Accordingly, post-graduate legal education obtained at a military institution shall be given weight equal to post-graduate legal education obtained at a civilian institution.

(3) **Demonstration of Core Attributes.** The challenges facing our Navy are growing in scope, scale, and pace. To meet these challenges, the Navy needs male and female leaders who have demonstrated estimable character and are prepared for decentralized operations. You should give careful consideration to officers who demonstrate the four core attributes that guide our decisions and actions: integrity, accountability, initiative, and toughness. Integrity may be demonstrated, as an individual or as a team member, when an officer displays conduct that is upright and honorable, and who works to strengthen the resolve of their peers, superiors, and subordinates. Accountability may be demonstrated by achieving and maintaining high standards, honestly assessing progress, and adjusting as required. Officers demonstrate initiative by taking ownership, acting to the limit of their authorities, and looking at new ideas with an open mind. Toughness can mean marshalling all sources of strength and resilience, including rigorous training, encouraging the fighting spirit of our people, and providing steadfast support of our families. Officers who demonstrate these core attributes ensure the U.S. Navy remains the world's finest Navy and deserve your careful consideration when selecting officers who are best and fully qualified.

4. **Equal Opportunity Guidance**

a. Diversity is the strength of Our Nation. The Navy benefits when we capitalize on the diverse experience, perspective, innovative spirit, background, and ideas in our ranks. Diversity is not founded on statistics, percentages, or quotas. Diversity is about achieving peak performance. Our Navy should draw upon the entire possible set of talents and backgrounds to maximize our warfighting capability, innovate to address new threats and challenges, and take advantage of emergent opportunities.

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b. The Department of the Navy is dedicated to equality of treatment and opportunity for all personnel without regard to race, religion, color, sex (including pregnancy), gender, gender identity, sexual orientation, or national origin. Discrimination on any of these bases is contrary to the Department's core values of honor, courage, and commitment. The Navy strives to maintain a professional working environment in which an individual's race, religion, color, sex (including pregnancy), gender, gender identity, sexual orientation, or national origin will not limit his or her professional opportunities. Accordingly, within this board's charter to determine the officers who are "best and fully qualified," you must ensure that officers of every race, religion, color, sex (including pregnancy), gender, gender identity, sexual orientation, and national origin are given fair and equitable consideration.

c. Your evaluation of all officers must be fair and equitable. You should be particularly vigilant in your evaluation of records to take care that no officer's promotion opportunity is disadvantaged by service utilization policies or practices. You should evaluate each officer's potential to assume the responsibilities of the next higher grade, including his or her ability to successfully lead a diverse organization, the overriding factor being performance of assigned duties.

d. Impermissible Considerations. Promotion boards are prohibited from considering the following:

(1) The marital status, civilian employment, religion, or volunteer service of an officer;

(2) Any information regarding an officer's spouse, including, but not limited to, civilian or military employment, education, race, religion, color, sex (including pregnancy), gender, gender identity, sexual orientation, national origin, and volunteer service;

(3) An officer's previous decision to opt out of a promotion selection board; and

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(4) An officer's previous participation in the Career Intermission Program.

e. The Navy has assigned some officers outside of traditional career development patterns, e.g., institutional instructors, diversity officers, recruiting, and equal opportunity billets. These assignments, though greatly beneficial to the Navy, may have foreclosed to the officers so assigned opportunities available to other officers. In addition, other utilization policies or practices, such as those based on statutory restrictions on the assignment of women, may have had an effect on career opportunities. Such assignment practices should not prejudice the selection of these men and women for promotion; to do so may deny the Navy the diversity of talent, background, and experience we should seek and which is necessary for sustained success in our changing world. Successful performance of duties assigned is the key in measuring an officer's potential for promotion; duty performed well by men and women affected by such utilization policies or practices should be given weight equal to duty performed well by an officer not affected by such policies or practices.

f. This guidance shall not be interpreted as requiring or permitting preferential treatment of any officer or group of officers on the grounds of race, religion, color, sex (including pregnancy), gender, gender identity, sexual orientation, or national origin.

5. **Competency and Skill Guidelines.** The AJAG (CJDON) and the AJAG of the Navy perform a wide variety of legal duties and have independent responsibilities in the Office of the Judge Advocate General (OJAG). More importantly, the AJAG of the Navy acts as the Judge Advocate General of the Navy in the absence of the Judge Advocate General and the Deputy Judge Advocate General. Consequently, the officer selected must be fully capable of performing the duties of a flag officer. I have developed the following criteria, set out below in order of significance, to which you are to adhere in making your selection. You must ensure that the future AJAG (CJDON) and AJAG of the Navy has, to the greatest extent practicable, the following broad base of qualities and experience:

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a. **Military Justice Expertise.** The selected officer will have flag officer-level responsibility to oversee the most complex and challenging military justice law and policy matters facing the Navy and Marine Corps. Accordingly, the board shall give favorable consideration to those officers who have demonstrated superior performance while holding billets requiring an in-depth knowledge of military justice. Such billets include, but are not limited to, trial counsel, defense counsel, OJAG (Criminal Law Division), Naval Justice School instructor in criminal law or trial advocacy, SJA positions with a heavy military justice component, appellate counsel or judicial clerk, military judge, and appellate judge.

b. **Military Justice Supervision in the Navy.** The selected officer will serve in the capstone position and as the sponsor of the Navy JAG Corps' Military Justice Litigation Career Track, and must facilitate through the provision of judicial and continuing education the development and retention of senior officers with in-depth military justice experience. Accordingly, the board shall give favorable consideration to those officers who have proven performance in leadership positions related to military justice. Such billets include, but are not limited to, Senior Defense Counsel or Senior Trial Counsel, Commanding Officer or Executive Officer, OJAG Division Director, Chief Circuit Judge (trial level), and Senior Judge or Chief Judge (trial or appellate level).

c. **Command and Leadership**

(1) The selected officer will oversee approximately 60 Navy and Marine Corps judges, active and reserve, who preside over and review more than 2,000 criminal cases annually. The selected officer also will oversee all inquiries into judicial misconduct. Accordingly, the board shall give favorable consideration to those officers who have excelled while serving as trial or appellate judges, and who have demonstrated the ability to make difficult decisions as independent jurists while remaining fully consistent with the ethical rules governing judicial conduct.

(2) Demonstrated performance in command or as an OJAG Division Director, or other commensurate position is also a

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vitally important test of an officer's leadership and judgment. Accordingly, success in command or other significant leadership position shall also be given favorable consideration.

d. **Legal Advisor to Senior Leaders.** The selected officer, while serving as AJAG of the Navy, may be called upon to act for the Judge Advocate General of the Navy in advising the Department of the Navy's senior leaders on a broad range of legal issues. Accordingly, the board shall give favorable consideration to officers with a demonstrated ability to coordinate with colleagues throughout the Department of Defense and to work closely with senior military and civilian leaders in the Department of the Navy.

e. **Direct Support of Overseas Contingency Operations (OCO)/Irregular Warfare.** The board may give favorable consideration to those officers who, while serving in the grade of O-6, have displayed superior performance in a leadership role while serving in direct support of OCO or in Irregular Warfare assignments, in particular those assignments that are extraordinarily arduous or which involve significantly heightened personal risk. These individuals are developing valuable combat and nation-building skills under stressful conditions. Such assignments may not be typical of the officer's traditional community career path and the officer may be rated by a reporting senior unfamiliar with the officer's specialty and the Navy fitness report system.

6. **Additional Considerations**

a. As the officer selected is expected to serve for three years, you should consider the following statutory provisions:

(1) In accordance with 10 U.S.C. § 634, Regular captains are required to retire upon reaching 30 years of active commissioned service.

(2) In accordance with 10 U.S.C. § 637, Regular captains may be selectively continued for up to five years past 30 years active commissioned service.

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b. Accordingly, the selection board is not precluded from recommending an officer whose three-year tour as AJAG (CJDON) would extend beyond the limits of the current policy regarding retirement upon attaining 30 years of active commissioned service.

7. Continuation Selection Board

a. Upon completion of the selection board, the board president shall review the records of the officer recommended for selection and the alternate officer recommended for selection. If the selected officer or alternate will have a mandatory retirement date between December 1, 2021 and September 1, 2025, the members shall convene as a continuation board in accordance with 10 U.S.C. §§ 611(b) and 637, and with reference (b).

b. The continuation board may select for continuation the officer who is deemed by a majority of the members of the board to be fully qualified for continuation and whose continuation is in the best interests of the Navy. The officer selected will be continued on active duty for a period not to exceed: three years of service as the AJAG (CJDON), including 12 months of service as the AJAG of the Navy, or 35 years of active commissioned service, whichever occurs earlier.

8. Board Report. The written report shall be signed by the board president, members, recorder, and assistant recorder(s) and shall contain the name of the officer recommended for selection as well as the alternate selection, and the certifications required in reference (a), enclosure (1), appendix (B), except in the following instances:

a. Page headings shall refer to the report as "Report of a selection board to recommend a Navy Judge Advocate on the Active-Duty List in the regular grade of captain for detail as Assistant Judge Advocate General, Chief Judge, Department of the Navy and Assistant Judge Advocate General of the Navy."

b. The certification in paragraph 1(c)(6) shall be replaced with the following:

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The officer recommended for selection and detail and the alternate selection are, in the opinion of the majority of the members of the board, fully qualified and best qualified for selection and detail to meet the needs of the Navy among those officers whose names were furnished to the board.

c. The certification in paragraph 1(c)(7) shall be replaced with the following:

The officer recommended for selection and detail and the alternate selection, after consideration by all members of the board of any adverse information about the officer that was provided to the board, are, in the opinion of the majority of the members of the board, fully qualified and the best qualified to meet the needs of the Navy among those officers whose names were provided to the board, consistent with the exemplary conduct requirements of section 8167 of Title 10, United States Code, which states:

"All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge;"

d. The certification contained in paragraph 1(c)(8) shall be replaced with the following:

You are aware that the names of the selectees will be released privately after the board report is approved, and you know that you may not disclose the recommended selectees until the names are released privately. Due to the nature

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of alternate selections, the names of the alternate selects may never be released, and you know that you may never disclose the names of alternate selects;

e. The certification in paragraph 1(j) is not required.

f. If the members convene as a continuation selection board and select an officer for continuation as described in paragraph 6 above, then the board report will include the following certification, as appropriate:

"In the opinion of a majority of the members of the board, the officer recommended for selection and detail is fully qualified for continuation and his/her continuation is in the best interests of the Navy."

g. The report shall be forwarded directly to me via the Chief of Naval Personnel, the Judge Advocate General, and the Chief of Naval Operations.



Carlos Del Toro