



# CHIEF OF THE NATIONAL GUARD BUREAU INSTRUCTION

NGB-GC  
DISTRIBUTION: A

CNGBI 0408.01  
21 December 2022

## PERSONNEL ACTIONS INVOLVING CIVILIAN ATTORNEYS

References: See Enclosure B.

1. Purpose. This instruction establishes policy and assigns responsibilities for personnel actions involving Title 5 civilian employee attorneys and applicants for civilian attorney positions in the National Guard Bureau (NGB), its field operating locations, and the National Guard (NG) in accordance with the references.
2. Applicability. This instruction applies to all Title 5 civilian attorneys assigned to NGB, its field operating locations, and the NG.
3. Cancellation. None.
4. Policy. It is NGB policy that the recruitment, selection, appointment, compensation, transfer, promotion, and retention of civilian attorneys throughout NGB and the NG must be made based on merit and in conformity with applicable law and regulations, including this instruction. Title 5 civilian attorneys are detailed to duty outside the Department of Defense (DoD) in accordance with reference b and this instruction. The NGB General Counsel will approve the detail of all Title 5 NGB or NG civilian attorneys to positions outside the legal career field.
  - a. Recruitment. Evaluation of applicants for civilian attorney positions must be made based on the skills, background, knowledge, and relevant experience of the applicants with the sole object being to obtain the highest caliber, most qualified candidates. Civilian attorney positions classified below the Senior Executive Service, Defense Intelligence Senior Executive Service, or equivalent level are excepted from the competitive service. Civilian attorneys must not be penalized in decisions related to their performance evaluations, performance awards, or performance system payouts for issuing legal advice that is timely, well-reasoned, and correctly states the applicable law and regulations. Civilian attorneys practicing law as NGB, and NG employees must be active members of the bar of the highest court of a State, Territory, or the District of Columbia.

**UNCLASSIFIED**

b. Prior to Appointment as Title 5 NGB Civilian Attorney. An applicant for a Title 5 NGB and NG civilian attorney position who is not serving in a current DoD civilian attorney position at the time of selection must provide a certificate from a State agency demonstrating that they have active membership in the bar of the highest court of a State, Territory, or the District of Columbia and are permitted to engage in the active practice of law. Online information provided by the licensing jurisdiction is sufficient if the online information clearly establishes the applicant is permitted to engage in the active practice of law. Information that the applicant is in good standing is not sufficient by itself.

c. Standards of Conduct. Covered attorneys (Title 5 civilian attorneys employed by the NGB or the NG civilian attorney [or equivalent]) must adhere to the highest standards of professional conduct, including compliance with the rules of professional conduct of the licensing authority of the jurisdictions in which they are members of the bar and with such supplemental requirements as may be established by the NGB General Counsel. A candidate for a covered attorney position has an affirmative obligation to notify the hiring authority, prior to any hiring decision, of any pending or completed disciplinary investigation or action against them in any jurisdiction in which they are or were licensed to practice.

d. Office of the NGB General Counsel (NGB-GC) Professional Conduct Board. The NGB-GC Professional Conduct Board consists of three permanent members; the NGB Deputy General Counsel for Administrative Law/Ethics, who will serve as Chair of the Board; the NGB Deputy General Counsel for Litigation and Employment Law; and the State Judge Advocate of a State NG as designated by the NGB General Counsel, or their designee. In the event a permanent member cannot consider an allegation of impropriety for any reason, an alternate member will be designated by the NGB General Counsel or their designee. If the Board is considering an allegation of impropriety involving a civilian attorney under the supervision of one of the permanent members, the NGB General Counsel, or their designee, will designate an alternate member to serve in their place.

e. Selection. For selections to General Schedule (GS) or equivalent level positions made from all sources, when more than one applicant for a particular Title 5 NGB and NG civilian attorney position meets the minimum requirements for appointment, the applicant who is best qualified based on relevant experience, education, and achievement in the legal field must be selected. For selectees entering the NGB or NG from outside the civil service, the duties to be performed are the critical factor in determining the grade or pay entrance level. The possession of a degree or high academic standing alone is not a sufficient basis for placement in a higher GS grade and step level, or the equivalent. Excepted service Title 5 NGB and NG civilian attorney positions are exempt from the appointment procedures in reference d. However, NGB and the NG are required to follow the principles of veterans' preference in hiring civilian attorneys as far as administratively possible.

f. Vacancy Announcements for Veterans. Vacancy announcements for Title 5 NGB and NG civilian attorney positions for selection from all sources or for which consideration of veterans' preference is otherwise required must include the notice in Figure 1.

**NOTICE OF VETERANS' PREFERENCE**

There is no formal rating system for applying veterans' preference to attorney appointments in the excepted service; however, the Department of Defense considers veterans' preference eligibility a positive factor for attorney hiring. Applicants eligible for veterans' preference must include that information in their cover letter or resume and attach supporting documentation (for example, DD Form 214, "Certificate of Release or Discharge from Active Duty") to their submissions.

Although the point-preference system is not used, applicants eligible to claim a 10-point preference must submit a Standard Form SF 15, "Application for 10-Point Veteran Preference," and supporting documentation required for the specific type of preference claimed. (SF 15, which lists the types of 10-point preference and the required supporting documents, is available from the Office of Personnel Management Website at <[www.opm.gov](http://www.opm.gov)>.)

**Figure 1.** Notice of Veterans' Preference

g. Duties Performed at the GS-9 or Equivalent Level. Assignments are developmental and involve legal or factual questions that require relatively easy research on clear-cut issues with adequate precedents. GS-9 or equivalent entry-level attorneys search case reports, legal documents, periodicals, and textbooks, and prepare drafts of letters, memorandums, and legal documents for use by higher-level attorneys. Attorneys who enter at the GS-9 or equivalent level work under close supervision and receive specific preliminary instructions, their authority is limited, and their completed written work is carefully reviewed. Assignments require the first professional law degree, (Bachelor of Laws [LL.B.] or Juris Doctorate [J.D.]) and active membership in the bar of the highest court of a State, Territory, or the District of Columbia. No additional work experience as a licensed attorney is required.

h. Duties Performed at the GS-11 or Equivalent Level. Assignments, while still developmental, involve complex and difficult legal questions requiring extensive research, analysis, and evaluation of information in controversial areas. Cases have an important impact on major public and private interests, such as cases concerning a major extension or revision in a grant program or a substantial question on civil rights. Cases are vigorously contested by capable legal talent, as in a contracts dispute case. In cases of this scope, GS-11 attorneys prepare drafts of pleadings and motions in connection with cases in litigation and conduct investigations to obtain facts, study legal precedents, and prepare recommendations while assisting attorneys in charge of court cases by cross-examining witnesses and by drafting findings of fact, conclusions of law, and orders based upon the record. Attorneys who enter at the GS-11 or equivalent level work under close supervision receive specific preliminary instructions, their commitment authority is limited, and their completed written work is carefully reviewed. Assignments require the first professional law degree (LL.B. or J.D.) and active

membership in the bar of the highest court of a State, Territory, or the District of Columbia. In addition, one of the following requirements in Figure 2 below must be satisfied.

- The second professional law degree (Master of Laws [LL.M.]) provided is required one full academic year of graduate study.
- One year of professional legal experience.
- Superior law student work or activities as demonstrated by one of the following:
  - Academic standing in the upper third of the attorney's law school graduating class.
  - Work or achievement of significance on one of the attorney's law school's official law reviews or journals.
  - Special high-level honors for academic excellence in law school (for example, membership in the Order of the Coif, winning of a moot court competition, or membership on the moot court team that represents the attorney's law school in competition with other law schools).
  - Full-time or continuous participation in a legal-aid program as opposed to one-time, intermittent, or casual participation.
  - Significant summer law office clerk experience.
  - Other evidence of clearly superior accomplishment or achievement.

**Figure 2.** Additional Requirements for GS-11 or Equivalent Level

i. Duties Performed at the GS-12 or Equivalent Level. Assignments involve extremely complex and difficult legal questions requiring extensive research, analysis, and evaluation of information in controversial scientific, financial, corporate, medical engineering, or other highly technical areas. Cases have an important impact on major private or public interests, such as cases concerning a major extension or revision in a grant program or a substantial question on civil rights. Interest in these cases is usually nationwide.

(1) GS-12 or equivalent entry-level attorneys are entrusted with the initial preparation of proposed solutions to projects. They conduct investigations to obtain facts, study legal precedents, make recommendations, and prepare necessary documents. They receive preliminary instructions, their commitment authority is limited, and their completed written work is carefully reviewed. Assignments require the first professional law degree (LL.B. or J.D.), active membership in the bar of the highest court of a State, Territory, or the District of Columbia, and one of the following:

(a) Two years of professional legal experience at or equivalent to the GS-11 level.

(b) The second professional law degree (LL.M.) plus one year of professional legal experience at or equivalent to the GS-11 level.

(2) An attorney without experience may be employed at the GS-12 or equivalent level if the individual has advanced educational attainments substantially beyond those required for work at the GS-11 or equivalent level and if their education clearly indicates ability to perform the type of work to be assigned, including courses directly pertinent to the work of the agency. The essential point in such cases is to ensure that the individual's education has enabled them to step into complex legal work characteristic of the GS-12 or equivalent level and to operate with the degree of independence and responsibility typical of that level.

j. Duties Performed at the GS-13 or Equivalent Level. Assignments require the first professional law degree (LL.B. or J.D.), active membership in the bar of the highest court of a State, Territory, or the District of Columbia, and more than two years of professional legal experience that is equal to the duties and responsibilities of the position.

k. Duties Performed at the GS-14, GS-15, or Equivalent Levels. Assignments require the first professional law degree (LL.B. or J.D.), active membership in the bar of the highest court of a State, Territory, or the District of Columbia, and more than three years of professional legal experience that is equal to the duties and responsibilities of the position. Attorneys performing duties in GS-15 or equivalent level positions are expected to perform with substantial independence even when working on the most complex or difficult matters.

l. Duties Performed at the Senior or Equivalent Level. Assignments require the first professional law degree (LL.B. or J.D.), active membership in the bar of the highest court of a State, Territory, or the District of Columbia, and substantial professional legal experience. To qualify for this level, individuals must have sufficient expertise and experience to be recognized as experts in their fields, in accordance with reference e.

m. Exceptions to Qualification Standards. The qualifying authority may make exceptions to the GS grade or equivalent level standards in this instruction for applicants possessing special experience or qualifications of a legal or non-legal nature that will be of material value in performing the duties of the position to which the civilian attorney is appointed. Such experience may have been gained either before or after admission to the bar. The qualifying authority may not make exceptions to the basic qualification requirements of graduation from law school, admission to the bar, and, for initial assignment to a Title 5 NGB and NG civilian attorney position, active membership in the bar of the highest court of a State, Territory, or the District of Columbia.

n. Promotion to GS-15 or Equivalent Level and Below. For Merit-Based Promotions under other than Full and Open Competition, submit all proposed promotions of a Title 5 NGB and NG civilian attorney to the applicable qualifying authority for approval or disapproval. Include an evaluation by the professional supervisor of the attorney of the quality of the attorney's work and, if desired, an expression of opinion as to the attorney's prospective ability to perform the duties of the proposed new position. The criteria the qualifying authorities must use in considering promotions must include the ability of the subject civilian attorney to perform the duties of the proposed new position,

the quality of their performance of prior duties, and any other relevant experience. For promotion after Full and Open Competition, each proposed promotion of a Title 5 NGB and NG civilian attorney must be submitted to the qualifying authority for approval or disapproval. The criteria for the qualifying authorities for use in considering promotions must include the ability of the subject civilian attorney to perform the duties of the proposed new position, the quality of their performance of prior duties, and any other relevant experience.

5. Definitions. See Glossary.
6. Responsibilities. See Enclosure A.
7. Summary of Changes. This is the initial publication of CNGBI 0408.01.
8. Releasability. This instruction is approved for public release; distribution is unlimited. It is available through <<https://www.ngbpmc.ng.mil>>.
9. Effective Date. This instruction is effective upon publication and must be revised, reissued, cancelled, or certified as current every five years.



DANIEL R. HOKANSON  
General, USA  
Chief, National Guard Bureau

Enclosures:

- A -- Responsibilities
- B -- References
- GL -- Glossary

## ENCLOSURE A

### RESPONSIBILITIES

1. NGB General Counsel. The NGB General Counsel will:
  - a. Serve as the qualifying authority for personnel actions involving Title 5 civilian attorneys assigned to NGB, its field operating locations, and the NG.
  - b. Oversee, as appropriate, legal services performed by Title 5 civilian attorneys within the NGB, its field operating locations, and the NG, including establishing procedures to determine the adherence to appropriate professional responsibility standards.
  - c. Serve as the coordinating and approval official, in accordance with reference b, for detailing Title 5 civilian attorneys to duty outside the DoD or the NG.
2. The Adjutants General and the Commanding General of the District of Columbia National Guard. The Adjutants General and the Commanding General of the District of Columbia must inform the NGB General Counsel, through their State Judge Advocate, of allegations of illegal activity, professional or other misconduct, or other impropriety against Title 5 civilian attorneys in their respective State and Territory.
3. Title 5 NGB and NG Civilian Attorneys. Title 5 NGB civilian attorneys must maintain active status, which permits the practice of law, in at least one State or jurisdiction during the entire course of their employment.
4. Selecting Official. The Selecting Official will:
  - a. Treat veterans' preference eligibility as a positive factor in all stages of the hiring process, including the review process, when selecting from a job announcement or recruitment open to all sources or when veterans' preference is otherwise applicable as required by law.
  - b. Ascertain whether any of the applicants are preference eligible and, in borderline cases, continue to consider those applicants, and ascertain whether any of the candidates are preference eligible.
  - c. Select the preference-eligible veteran as opposed to an equally well qualified, non-preference-eligible candidate.
  - d. Select from the preference-eligible veterans, if all relevant considerations for the position are deemed equal and there are multiple preference-eligible veterans in the final group of candidates.

(1) When making final selections (for example, at the point the candidates under serious consideration for an offer have been identified), a Selecting Official must determine whether any of the candidates are preference eligible. If all relevant considerations for the position are deemed equal, the Selecting Official must select the preference-eligible veteran as opposed to an equally well qualified, non-preference-eligible candidate. If all relevant considerations for the position are deemed equal and there are multiple preference-eligible veterans in the final group of candidates, the Selecting Official must select from the preference-eligible veterans in Figure 3.

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| <ul style="list-style-type: none"><li>• Disabled veterans qualifying for a 10-point preference.</li><li>• Other 10-point preference eligible, including Purple Heart recipients.</li><li>• Veterans qualifying for 5-point preference.</li></ul> |
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**Figure 3.** Preference-Eligible Veterans

(2) If a qualified preference-eligible applicant requests information regarding their non-selection, the Responding Official will advise the applicant that it is DoD and NGB policy to hire the most qualified applicant taking into consideration all factors, including, if applicable, veterans' preference eligibility, and that a selection was made on that basis.

5. Responding Official. The Responding Official will:

a. Advise the applicant that it is DoD and NGB policy to hire the most qualified applicant taking into consideration all factors, including veterans' preference eligibility, and that a selection was made on that basis, if a qualified preference-eligible applicant requests information regarding their non-selection. Responses do not follow templates applicable to competitive service positions or disclose personal information about the civilian attorney hired for the position because selections for civilian attorney positions are excepted, not competitive, hires.

b. Advise the preference-eligible veteran of this instruction and must, upon request, furnish the applicant with the reasons for non-selection.

6. Covered Attorneys. Covered attorneys will:

a. Report to the NGB General Counsel, through their respective supervisory chains, the existence of any disciplinary investigation or action in which they are the subject, by any jurisdiction, within seven business days of being informed that the investigation or action has been initiated.

b. Report the outcome and other significant developments in such disciplinary investigations or actions within seven business days of being informed of such outcomes or developments.



ENCLOSURE B

REFERENCES

- a. Department of Defense (DoD) Instruction 1442.02, 30 September 2010, "Personnel Actions Involving Civilian Attorneys"
- b. DoD Instruction 1000.17, 30 October 2013, "Detail of DoD Personnel to Duty Outside the Department of Defense," Incorporating Change 2, 26 April 2022
- c. DoD Instruction 1400.25, 01 December 2008, Subchapter 1920, "DoD Civilian Personnel Management System: Classification and Qualifications"
- d. Title 5, Code of Federal Regulations, Part 302, "Employment in the Excepted Service"
- e. United States Code, 2006 Edition, Supplement 5, Section 5376, "Pay for Certain Senior-Level Positions"
- f. Office of the Secretary of Defense, Office of General Counsel, Memorandum, 18 December 2020, "Delegation of Qualifying Authority for Civilian Attorneys Appointed Pursuant to Title 5, United States Code, in the National Guard Bureau (NGB) and in National Guard Units and Organizations"

## GLOSSARY

### PART I. ACRONYMS

DoD	Department of Defense
GS	General Schedule
J.D.	Juris Doctorate
LL.B.	Bachelor of Laws
LL.M.	Master of Laws
NG	National Guard
NGB	National Guard Bureau

### PART II. DEFINITIONS

Active Practice of Law -- The practice of law by an attorney who is an active member in good standing of a State Bar; for example, an attorney who is eligible for the immediate practice of law before the highest court of a State, Territory, or the District of Columbia, in which they are licensed. This does not include inactive membership even if the membership is deemed "in good standing." An individual who is a member of more than one State Bar need only be active in one State Bar provided they are in good standing with that State Bar.

Covered Attorneys -- All Title 5 civilian attorneys employed by the National Guard Bureau or the National Guard in civilian attorney (or equivalent) positions. Does not include judge advocates and Title 32 Dual Status Technician attorneys.