

tion for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large)                       |
|-----------------|--------------------|--|
| 804(a) .....    | 50:554(a).         | May 5, 1950, ch. 169, §1 (Art. 4), 64 Stat. 110. |
| 804(b) .....    | 50:554(b).         |  |
| 804(c) .....    | 50:554(c).         |  |
| 804(d) .....    | 50:554(d).         |  |

In subsection (a), the word "If" is substituted for the word "When". The word "commissioned" is inserted before the word "officer". The word "considered" is substituted for the word "held".

In subsections (a) and (b), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (c), the word "If" is substituted for the word "Where". The words "the authority of" are omitted as surplusage. The words "grade and with such rank" are substituted for the words "rank and precedence", since a person is appointed to a grade, not to a position of precedence, and the word "rank" is the accepted military word denoting the general idea of precedence. The words "the existence of a" are substituted for the word "position" for clarity. The word "receive" is omitted as surplusage.

In subsection (d), the word "If" is substituted for the word "When". The words "he has no" are substituted for the words "there shall not be a".

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2 of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

**§ 805. Art. 5. Territorial applicability of this chapter**

This chapter applies in all places.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large)                       |
|-----------------|--------------------|--|
| 805 .....       | 50:555.            | May 5, 1950, ch. 169, §1 (Art. 5), 64 Stat. 110. |

The word "applies" is substituted for the words "shall be applicable".

**§ 806. Art. 6. Judge advocates and legal officers**

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocates General, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, or senior members of their staffs, shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

(d)(1) A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of assistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39; Pub. L. 90-179, §1(3), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90-632, §2(2), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98-209, §2(b), Dec. 6, 1983, 97 Stat. 1393; Pub. L. 99-661, div. A, title VIII, §807(a), Nov. 14, 1986, 100

Stat. 3909; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112–239, div. A, title V, §531(d)(1), Jan. 2, 2013, 126 Stat. 1726; Pub. L. 114–328, div. E, title LI, §5103, Dec. 23, 2016, 130 Stat. 2895.)

AMENDMENT OF SUBSECTION (c)

*Pub. L. 114–328, div. E, title LI, §5103, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2895, 2967, provided that, effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, subsection (c) is amended to read as follows:*

(c)(1) *No person who, with respect to a case, serves in a capacity specified in paragraph (2) may later serve as a staff judge advocate or legal officer to any reviewing or convening authority upon the same case.*

(2) *The capacities referred to in paragraph (1) are, with respect to the case involved, any of the following:*

(A) *Preliminary hearing officer, court member, military judge, military magistrate, or appellate judge.*

(B) *Counsel who have acted in the same case or appeared in any proceeding before a military judge, military magistrate, preliminary hearing officer, or appellate court.*

*See 2016 Amendment note below.*

day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VIII, §807(b), Nov. 14, 1986, 100 Stat. 3909, provided that: “The amendment made by subsection (a) [amending this section]—

“(1) shall take effect on the date of the enactment of this Act [Nov. 14, 1986]; and

“(2) may not be construed to invalidate an action taken by a judge advocate, pursuant to an assignment or detail under section 973(b)(2)(B) of title 10, United States Code, before the date of the enactment of this Act.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|----------------------------|
| 806(a) .....    | 50:556(a).         | May 5, 1950, ch. 169, §1   |
| 806(b) .....    | 50:556(b).         | (Art. 6), 64 Stat. 110.    |
| 806(c) .....    | 50:556(c).         |                            |

In subsection (b), the word “entitled” is substituted for the word “authorized”.

In subsection (c), the words “may later” are substituted for the words “shall subsequently”.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case.”

2013—Subsec. (a). Pub. L. 112–239 substituted “The Judge Advocates General, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, or senior members of their staffs, shall” for “The Judge Advocate General or senior members of his staff shall”.

2002—Subsec. (d)(2). Pub. L. 107–296 substituted “of Homeland Security” for “of Transportation”.

1986—Subsec. (d). Pub. L. 99–661 added subsec. (d).

1983—Subsec. (a). Pub. L. 98–209 substituted “Air Force, and” for “and Air Force and law specialists of the”.

1968—Subsec. (c). Pub. L. 90–632 substituted “military judge” for “law officer”.

1967—Subsec. (a). Pub. L. 90–179 substituted reference to judge advocates of the Navy for reference to law specialists of the Navy and provided for the assignment of judge advocates of the Marine Corps.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on the date designated by the President, not later than the first

**§806a. Art. 6a. Investigation and disposition of matters pertaining to the fitness of military judges**

(a) The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military judge or military appellate judge to perform the duties of the judge’s position. To the extent practicable, the procedures shall be uniform for all armed forces.

(b) The President shall transmit a copy of the procedures prescribed pursuant to this section to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 101–189, div. A, title XIII, §1303, Nov. 29, 1989, 103 Stat. 1576; amended Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 114–328, div. E, title LI, §5104, Dec. 23, 2016, 130 Stat. 2895.)

AMENDMENT OF SUBSECTION (a)

*Pub. L. 114–328, div. E, title LI, §5104, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2895, 2967, provided that, effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, subsection (a)(1) is amended in the first sentence by striking “military judge” and all that follows through the end of the sentence and in-*