

1979 WL 42713 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
May 31, 1979

***1 RE: Personal Liability of a JAG Office for Malpractice**

Brigadier General T. Eston Marchant
The Adjutant General
National Guard Armory
1225 Bluff Road
Columbia, South Carolina 29201

Dear General Marchant:

This is to acknowledge receipt of and thank you for your letter of May 3, 1979, concerning the above-referenced matter. I have reviewed [Section 25-1-2170 of the South Carolina Code](#) of Laws, 1976, which appears to grant absolute immunity from civil action to all officers and enlisted men of the South Carolina National Guard for acts done while 'in the discharge of his military duty when such act is in the line of duty.' While there has been no judicial interpretation of this section of the Code, it is certainly my opinion that a JAG officer acting as a defense counsel before a court-martial or providing other legal assistance would fall within the provisions of this section. However, the immunity is limited by the requirement that the act must be done 'in the discharge of its military duty' and 'in the line of duty.' There are numerous decisions under the Federal Tort Claims Act as to whether a soldier's acts were 'in the line of duty.' Of course, this determination must be made on a case by case basis.

If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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