APPELLATE AND POST-TRIAL RIGHTS AND POST TRIAL ADMINISTRATIVE PROCESSING
Use in cases referred on or after 1 January 2019

You are advised that your defense counsel is legally and ethically required to fully explain to you the following post-trial and appellate rights, and, you can request the military judge explain all or any portion of your appellate rights in open court prior to adjournment of your court-martial.

Access to the Court-Martial Record

Immediately after the adjournment of the court-martial, you have the right to request a copy of the recording of all open sessions of the court-martial, and, a copy of, or access to, the evidence admitted at the court-martial. You may request the recording and the exhibits be provided to you or your counsel. Neither you nor your counsel will be provided access to sealed or classified court-martial material or recordings unless authorized by the military judge for good cause. You can use the material provided to submit matters to the convening authority for his or her consideration before that officer takes action in your case.

Submission of Matters to the Convening Authority

You have a right to submit written matters to the convening authority before that officer takes action on your case. Normally these matters will be compiled and submitted for you by your defense counsel. These matters must be submitted within 10 calendar days after the announcement of the sentence. The convening authority may extend this period, for good cause, for not more than an additional 20 calendar days. Failure to submit matters within the time prescribed waives the right to submit matters later. If a crime victim submits matters for the convening authority's consideration, you will be given an additional 5 calendar days from receipt of those matters to submit a rebuttal to those matters. You are not permitted to include matters that relate to the character of a crime victim unless such matters were admitted as evidence at trial.

Possible Action by the Convening Authority

(A) For Cases Involving Only Offenses Committed ON OR AFTER 1 January 2019

The convening authority only has the legal authority to grant clemency or take action on the findings or sentence in certain cases. In the cases that the convening authority does have such authority, the convening authority has the following options: 1) take no action, 2) take action on the findings, if allowed by law, and/or 3) take action on the sentence, if allowed by law.

The convening authority may not act on findings or a sentence or grant clemency (except as it pertains to forfeitures, reduction in rate, and/or fines) if any of the following apply:

1) the authorized maximum confinement for an offense of which you have been convicted exceeds two years regardless of the jurisdictional maximum of the court,
2) the adjudged sentence includes a Dismissal, Bad Conduct Discharge, or Dishonorable Discharge,
3) the adjudged confinement is more than six months, or
4) the offense of which you have been convicted is a violation of the sexual offenses listed in Articles 120(a)-(b) or 120b.

In all other cases, the convening authority will take action on the findings and sentence and may grant clemency within the limits of Article 60a, Uniform Code of Military Justice (UCMJ), and Rule for Courts-Martial (R.C.M.) 1109/1110. If the convening authority is authorized by law to disapprove, commute, or suspend the sentence in whole or set aside a finding of guilty, order a rehearing on a finding of guilty; or approve a lesser included offense of a finding of guilty; that decision is within the sole discretion of the convening authority. The convening authority may suspend a sentence in certain cases when recommended by a military judge or by the trial counsel. The convening authority is not required to review the case for legal errors or factual sufficiency, but may order a rehearing only in the circumstances provided for in Article 60b, UCMJ. **In the post-trial process, the convening authority and the Military Judge may never increase the severity of the sentence and are not empowered to reverse a finding of not guilty.**

(B) For Cases Involving Any Offenses Committed BEFORE 1 January 2019

The convening authority may take action on the sentence adjudged and/or may, may take action on findings of guilty within the limits of Article 60, UCMJ that was in effect at the time of the earliest offense for which the accused was convicted. The action to be taken on the findings and sentence may be limited by Article 60, UCMJ depending on the date of the offense, the type of offense, the maximum punishment of the offense, a recommendation of the trial counsel, the existence of a plea agreement, and the punishment awarded. If the convening authority is authorized by law to disapprove, commute, or suspend the sentence in whole or set aside a finding of guilty; order a rehearing on a finding of guilty; or approve a lesser included offense of a finding of guilty, that decision is within the sole discretion of the convening authority. The convening authority is not required to review the case for legal errors or factual sufficiency. **The convening authority may never increase the severity of the sentence and is not empowered to reverse a finding of not guilty.**

Entry of Judgment

The Entry of Judgment reflects the result of your court-martial as well as the results of the convening authority's action. The Entry of Judgment terminates the trial proceedings and initiates the appellate process. The Entry of Judgment will include the final sentence, which will account for any modifications made by the convening authority during the post-trial review process or any post-trial ruling, order, or other determination by the military judge. The Entry of Judgment will also include the total amount of sentence credit, if any, to be applied to a sentence of confinement. The military judge will complete the Entry of Judgment and attach it to the record of trial. A copy of the Entry of Judgment will be provided to you or your defense counsel, according to your election below.

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Certified Record of Trial (ROT)

The certified ROT will be comprised of the following: 1) an audio recording of all open sessions, 2) all evidence admitted, and 3) all appellate exhibits entered at trial. If any exhibit includes classified or sealed materials, it will not be provided to you. A copy of the certified ROT will be assembled and provided to either you or your defense counsel, according to your election below. If you believe you need to review an exhibit or portion of the court-martial proceedings that was classified or sealed, you or your counsel must submit a request to the military judge.

Appellate Review

If your sentence includes a punitive discharge (Dismissal, Dishonorable Discharge or Bad-Conduct Discharge) or confinement for two years or more, your case will be automatically reviewed by the Navy Marine-Corps Court of Criminal Appeals (NMCCA). If your sentence does not include a punitive discharge but 1) you received confinement for more than six months and less than two years, 2) the government previously filed an appeal with the NMCCA pursuant to Article 62, UCMJ, during your trial, or 3) the government appealed the sentence in your case, you can request the Court of Criminal Appeals review your case. In either case, you will be appointed a Navy or Marine Corps Appellate Defense Counsel to represent you throughout appellate review. You will also have the option of hiring a civilian attorney at your own expense to represent you throughout your appeal.

After your case is reviewed by the NMCCA, and upon your request or that of the Office of the Judge Advocate General (OJAG), your case may be reviewed by the Court of Appeals for the Armed Forces (CAAF). Review by CAAF is discretionary. This means they do not have to hear your appeal. Your petition for review at CAAF must be made within 60 days of the NMCCA's decision. If CAAF grants review of your case, it may act only with respect to the findings and sentence as entered into judgment and as affirmed or set aside as incorrect in law by the NMCCA.

If your sentence included confinement for six months or less but did not include a punitive discharge, your case is not immediately eligible for review by the NMCCA. Your case will be reviewed by a judge advocate in accordance with Article 65(d), UCMJ. This review will include conclusions as to whether the court had jurisdiction over you and the offense, whether the charge and specification stated an offense, whether the sentence was within the limits prescribed as a matter of law, and responses to each allegation of error submitted in writing by you or your counsel. If you are not satisfied with this review, you have the right to submit an application for further review under Article 69, UCMJ. You must submit an application for review under Article 69, UCMJ within one year of the completion of the Article 65, UCMJ review. Once the Article 69, UCMJ review is complete, you may apply for discretionary review at the NMCCA pursuant to Article 66(b)(1)(D), UCMJ within 60 days from the date you are notified of the result of the Article 69 review. Discretionary review means the NMCCA does not have to hear your appeal. To obtain discretionary review at NMCCA, you must convince the court that there is a substantial basis for concluding the action taken in the Article 69 review was error that prejudiced you.

At any time within three years after the date of the Entry of Judgment, you may petition for a new trial on the ground of newly discovered evidence or fraud on the court-martial pursuant to Article 73, UCMJ, and R.C.M. 1210. A petition for a new trial on the basis of newly discovered evidence may not be submitted if you pled guilty. A petition for a new trial on the ground of newly discovered evidence will only be granted if: (1) the evidence was discovered after the trial; (2) the evidence could not have been discovered by you or our defense counsel during your trial if you or your counsel exercised due diligence; and (3) the newly discovered evidence, if it had been considered by the trial court, in light of all other pertinent evidence, would probably produce a substantially more favorable result for you. A petition for a new trial on the basis of fraud on the court-martial must demonstrate how the fraud had a substantial contributing effect on a finding of guilty or the sentence adjudged.

Waiver of Appellate Review

You may waive appellate review, giving up the foregoing rights, or you may withdraw your case from appellate review at a later time. **This is a significant decision and you should fully understand your appellate rights and the implications of a waiver before you forego appellate review.** You have the right to the advice and assistance of counsel in exercising or deciding to waive your appellate rights. This may include the assistance of an appellate defense counsel in coordination with your trial defense counsel. If you submit a waiver or withdraw from the appellate review process, your case will be reviewed under Article 65(d)(3), UCMJ. This review will include conclusions as to whether the court-martial had jurisdiction over you and the offense, whether the charge and specification stated an offense, and whether the sentence was within the limits prescribed as a matter of law. If you are not satisfied with this review, you have the right to submit an application for further review under Article 69, UCMJ. You must submit an application for review under Article 69, UCMJ within one year of the completion of the Article 65, UCMJ, review.

Right to Counsel

It is your defense counsel's responsibility to represent you until the Entry of Judgment of your court-martial conviction. Your defense counsel is responsible for examining the Statement of Trial Results, the findings, the sentence, and, when applicable, the CA's action for errors or legal insufficiency. It is your defense counsel's obligation to advise and assist you in preparing and submitting post-trial matters or motions, if applicable, to the military judge before the Entry of Judgment.

If you receive a sentence that includes a punitive discharge or confinement for more than six months, an appellate defense counsel will be appointed to represent you at no cost to you and, if you choose, you may hire a civilian counsel at no expense to the United States. This appellate defense counsel will be appointed when your certified record of trial is completed.

If your sentence includes confinement for six months or less but did not include a punitive discharge, your trial defense counsel will continue to represent you through the Article 65(d),

UCMJ, review process as well as the subsequent Article 69, UCMJ, review, if you elect this additional review. Once the Article 69, UCMJ review is complete, you can request the assistance of an appellate defense counsel to submit a petition to the NMCCA. For more information on appellate defense counsel, http://www.jag.navy.mil/organization/code_45.htm.

Post-Trial Processing and Notifications

As a result of being found guilty, you may be processed for administrative discharge from the United States Navy/Marine Corps. An administrative discharge could result in an other-than-honorable characterization of service, unless otherwise limited in a plea agreement (as permitted by Service policy), even if part or all of the sentence, including a punitive discharge, is suspended for any reason.

If the adjudged sentence includes either a punitive discharge and confinement, or confinement in excess of six months, Article 58b, UCMJ, requires the automatic imposition of forfeiture of all pay and allowances at a general court-martial or 2/3 pay per month at a special court-martial during any period of confinement served. This applies regardless of whether the sentence is suspended.

Forfeitures and reduction in rank, whether adjudged or automatic, take effect 14 days after the sentence is announced. If you have dependents, you must establish an allotment in order for your dependents to receive any deferred pay and allowances. If you are held in confinement beyond your End of Active Obligated Service (EAS/EAOS) date, you or your dependents will not receive any pay or allowances by operation of law.

If you commit misconduct after the date of trial, but before the Entry of Judgment, or violate any of the conditions of suspension stated in your plea agreement during this time period, the convening authority may vacate any periods of suspension recommended by the military judge or the trial counsel or any period of suspension established by your plea agreement in accordance with R.C.M. 1108. If that occurs, any previously suspended portion of your sentence could be imposed upon you.

If you commit any misconduct after the date of the Entry of Judgment, or violate any of the conditions of suspension stated in your plea agreement during the period in which any part of your sentence is suspended, the convening authority may vacate any periods of suspension recommended by the military judge or the trial counsel, or any period of suspension established by your plea agreement in accordance with R.C.M. 1108. If that occurs, any previously suspended portion of your sentence could be imposed upon you.

If your sentence includes an unsuspended punitive discharge, you may be placed on appellate leave in a no-pay status under the provisions of Article 76a, UCMJ, notwithstanding any provision regarding forfeitures or fines in any plea agreement. A service member placed in an appellate leave status will normally not receive any pay or allowances. Receipt of pay and/or allowances while in an appellate leave status will depend on the amount of accrued leave you have accumulated, request to use, and receive command approval to use, and on the sentence

awarded by this court-martial. You will remain a member of the Armed Forces while in an appellate leave status and subject to military jurisdiction.

Acknowledgment

By signing the document below, you acknowledge the following: (1) that prior to adjournment of your court-martial, you were provided with the above written advice; (2) that you have read and understand your post-trial and appellate rights; and (3) that you discussed your rights with your DC prior to signing this form.

_____	_____
Attorney's Name	Accused's Name
Rank	Rank
U.S. (Navy)(Marine Corps)	U.S. (Navy)(Marine Corps)
Detailed Defense Counsel	Accused

Indicate below where you want all post-trial documents and copies of the record of trial sent.

I specifically request that my copy of the recording of the court-martial proceedings pursuant to R.C.M. 1106 be delivered to:

_____ me._____ my counsel.

I specifically request that my copy of the victim(s) matters be delivered to:

_____ me._____ my counsel. _____ Not Applicable.

I specifically request that my copy of the Convening Authority's Action be delivered to:

_____ me._____ my counsel.

I specifically request that my copy of the Entry of Judgment be delivered to:

_____ me._____ my counsel.

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I specifically request that my copy of the certified record of trial be delivered to:

_____ me._____ my counsel.

Contact information for the accused after the completion of the court-martial:

Name: _____

Address: _____

_____

Phone: _____

Email: _____

_____	_____
Attorney's Name	Accused's Name
Rank	Rank
U.S. (Navy)(Marine Corps)	U.S. (Navy)(Marine Corps)
Detailed Defense Counsel	Accused