

CHAPTER ONE

**REGULATIONS IMPLEMENTING AND
SUPPLEMENTING THE
MANUAL FOR COURTS-MARTIAL**

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0101 Scope

a. The Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM) authorize "the Secretary concerned" or "the Judge Advocate General concerned" to prescribe regulations implementing or supplementing certain provisions of the UCMJ or the MCM. This chapter provides those regulations and additional regulations relating to military justice.

b. Part A contains regulations and procedures governing nonpunitive corrective measures. Part B contains regulations and procedures relating to nonjudicial punishment. Part C pertains to trial by court-martial and is divided into three subparts concerning the pretrial, trial, and post-trial stages of the courts-martial process. Part D contains miscellaneous provisions, including a table of cross-references between Chapter One and corresponding provisions of the MCM.

Part A - Nonpunitive Measures**0102 Nonpunitive Administrative Measures, Generally**

a. Definition of commander. The terms commander and commanding officer, as used in this part, refer to the same position. The term commander is defined in the MCM, Part V, paragraph 2, and in the U.S. Navy Regulations, Chapter 7. A commander includes the following officers: an officer empowered to convene general or special courts-martial; a commander of a joint command; an officer designated pursuant to U.S. Navy Regulation 0722; an officer designated as a commander of a separate and detached command pursuant to U.S. Navy Regulation 0723; and a commissioned or warrant officer exercising command. Marine Corps commanding officers are titled as commandant, commander, commanding general, commanding officer, director, and inspector-instructor. The approval of the Commandant of the Marine Corps is required to designate other Marine Corps commanders.

b. Types of administrative measures. To further the efficiency of their units, commanders should use appropriate administrative corrective measures. Administrative actions include counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or the administrative withholding of

privileges. Administrative measures may be administered orally or in writing. Commanders will not use these measures as punishment. The withholding of privileges and extra military instruction should normally occur only after counseling and normal training failed to accomplish the necessary objective, or when counseling and normal training would be insufficient to adequately remediate the deficiency. See R.C.M. 306(c)(2).

0103 Extra Military Instruction

a. Definition. Extra military instruction (EMI) is a bona fide training technique that attempts to improve an individual's performance by focusing additional effort on some deficiency in the individual's performance of duty. EMI must be logically related to the deficiency in performance for which it was assigned. EMI is neither hard labor without confinement nor extra duty, which may only be imposed by courts-martial or nonjudicial punishment, respectively.

b. Limitations. The following limitations apply to EMI:

(1) EMI normally will not be conducted for more than two hours per day.

(2) EMI conducted outside of normal working hours will be conducted consecutively with the Service member's workday, unless the commander determines that military exigencies require a deviation. Commanders of Reserve Component personnel will not assign EMI outside normal periods of inactive-duty training.

(3) When the deficiency is corrected, the EMI must cease.

(4) EMI will not be assigned on a Service member's Sabbath.

(5) EMI will not be used for the purpose of depriving the Service member of normal liberty to which he or she is otherwise entitled. A Service member who is otherwise entitled to normal liberty may commence normal liberty upon completion of EMI.

(6) The authority to assign EMI during normal working hours is an inherent part of the authority that officers, noncommissioned officers, and petty officers have over

subordinates. If warranted, any superior may withdraw the authority to assign EMI to be performed during normal working hours.

(7) Only a commander or officer in charge (as defined in subsection 0106(b)) may authorize EMI to occur outside of normal working hours. A commander may not delegate this authority unless authorized to do so by the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate.

0104 Administrative Withholding of Privileges

a. Privilege. A privilege is a benefit, advantage, or favor provided for the convenience or enjoyment of an individual. Examples of privileges that may be temporarily withheld through administrative actions are: special liberty; exchange of duty; special command programs; access to installation or ship libraries, installation or ship movies, or enlisted or officers' clubs; installation parking; installation driving privileges; and attendance at installation or ship special services events. It may also encompass the withholding of special pay, as well as commissary and exchange privileges, provided such withholding complies with applicable rules and regulations and is otherwise in accordance with law. In all instances, unless properly delegated, final authority to withhold a privilege, however temporary, rests at the level of authority empowered to grant that privilege.

b. Deprivation of liberty. Except as specifically authorized by the UCMJ and implemented through nonjudicial punishment or courts-martial proceedings, deprivation of normal liberty as a punishment is illegal. Nevertheless, commanders may lawfully restrict normal liberty for nonpunitive purposes such as pretrial restraint, liberty-risk programs for the protection of foreign relations, or when Service members are required to perform duties outside of normal working hours to accomplish essential tasks or work necessary to maintain operational readiness.

0105 Nonpunitive Censure and Nonpunitive Letter of Caution

a. General. "Censure" is a statement of adverse opinion or criticism of an individual's conduct or performance of duty expressed by a superior in the Service member's chain of command. Censure may be punitive or nonpunitive (see section

0114 regarding punitive censure). Censure does not include adverse comments in reports of fitness or performance evaluations, letters of instruction, or administrative remarks entries documenting factual matters such as counseling. Proper use of an adverse matter that is not censure is governed by DON regulations and applicable service directives, such as the Naval Military Personnel Manual and the Marine Corps Individual Records Administration Manual.

b. Nonpunitive censure. Nonpunitive censure is provided for in R.C.M. 306(c)(2). Any superior in the Service member's chain of command may issue a nonpunitive censure, which may be delivered orally or in writing. A sample nonpunitive letter is located at Appendix A-1-a.

(1) A nonpunitive letter is not punishment. Rather, the letter conveys necessary information to remedy a deficiency in conduct or in the performance of duty. The contents of a nonpunitive letter may include, but are not limited to, the following: identification of conduct or performance of duty deficiencies, direction for improvement, language of admonishment, identification of sources of assistance, outline of corrective action, and the consequences of failing to correct the deficiencies.

(2) A nonpunitive letter will be kept a personal matter between the Service member and the superior issuing the nonpunitive letter. Only the recipient may cause the letter to be entered into the recipient's official service record or official documents and correspondence, with the exception of those instances described in subsection 0105(b)(3) below. Similarly, service-record entries, fitness reports, performance evaluations, and any other official records or documents cannot refer to the nonpunitive letter, though they may refer to the facts or circumstances that relate to the nonpunitive letter.

(3) The facts underlying a nonpunitive letter may be used to support a detachment for cause proceeding, for relief of command, or to support a negative endorsement. If the Service member submits a rebuttal to those facts alleging inadequate counseling or a failure to warn of deficiencies, a copy of the nonpunitive letter may be included in the correspondence forwarding the Service member's rebuttal. Under such circumstances, a nonpunitive letter may properly be included in the official service record of the Service member upon filing of

the complete correspondence under the provisions of applicable service regulations.

(4) The DON has an obligation to ensure senior officials properly discharge the duties and responsibilities of government service. Public disclosure of significant departures by senior officials from expected standards of performance and conduct and the DON holding them accountable for such behavior instills public confidence in the institution and is consistent with principles of open governance. Proven wrongdoing of a serious and intentional nature by a senior official is of sufficient public interest to outweigh the privacy interest of the official. Less serious misconduct by lower-level agency employees generally is not considered of sufficient public interest to outweigh the privacy interest of the employee.

(a) In general, the DON finds the public interest warrants disclosure of accountability action taken in cases of misconduct involving flag and general officers and senior executive service personnel in order to retain the public's confidence and trust in the integrity of the Department, the Navy, and the Marine Corps. Similarly, resolution of misconduct involving commanding officers, executive officers, officers in charge, senior enlisted advisors, and other personnel of lower rank or grade may also warrant release of information depending on their official position and the nature of the misconduct.

(b) The determination to identify an individual with specific wrongdoing meriting the more extensive release of information to the public must be made on a case-by-case basis by a flag or general officer in the chain of command upon balancing the public interest against the privacy interest of the individual.

(c) Accordingly, in appropriate cases the fact of the issuance of the nonpunitive letter may be disclosed to the public. The actual letter may not be disclosed without the consent of the individual receiving the nonpunitive letter. The facts and circumstances underlying the letter may be disclosed. Similarly, the fact that counseling occurred may also be disclosed. Commanders considering public disclosure related to senior official misconduct should consult the staff judge advocate and the public affairs officer in their chain of command.

Part B - Nonjudicial Punishment

0106 Authority to Impose

a. Commander. As used in this section, the terms commander and commanding officer mean:

(1) A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area, which under pertinent official directives is recognized as a "command";

(2) An officer empowered to convene general courts-martial or special courts-martial;

(3) A commander of a joint command;

(4) An officer designated pursuant to U.S. Navy Regulation 0722; or

(5) An officer designated as a commander of a separate or detached command pursuant to U.S. Navy Regulation 0723.

(6) In the Navy, other titles, such as "Director," may designate Navy commanders. But a title alone does not indicate nonjudicial punishment authority. Rather, the title must be associated with a recognized command or activity listed on the Standard Naval Distribution List (SNDL) or other official directive.

(7) In the Marine Corps, commanding officers are titled as Commandant, Commander, Commanding General, Commanding Officer, and Inspector-Instructor. Only the Commandant of the Marine Corps can designate other Marine Corps commanders. A Marine Corps command is a company or higher unit recognized in an official table of organization. A commander whose command does not meet these criteria, and who does not otherwise meet the definition of commander under subsection (a), may request nonjudicial punishment authority from the Deputy Commandant of the Marine Corps (Manpower and Reserve Affairs).

b. Officer in charge. Any commissioned officer who is an officer in charge may impose nonjudicial punishment upon enlisted persons assigned to the unit, but authorized punishment is limited to admonition or reprimand and one or more of the

punishments listed in paragraph 5(b)(2)(A)(i) through (vi) of Part V, MCM. For purposes of this section, an officer in charge is defined as a commissioned officer who is designated as officer in charge of a unit by:

- (1) Departmental orders;
- (2) Tables of organization;
- (3) Manpower authorizations;
- (4) Orders of a flag or general officer in command (including one in command of a joint command to which members of the naval service are attached); or
- (5) Orders of the senior officer present as defined under U.S. Navy Regulation 0901.

c. Designated assistant. After receiving written approval from the Chief of Naval Personnel or the Commandant of the Marine Corps, a flag or general officer in command may delegate all or a portion of his or her nonjudicial punishment authority to an officer on his or her staff who is eligible to succeed to command in case of the absence of such officer in command. The designee will hold the same nonjudicial punishment authority as the flag or general officer who delegated the authority.

d. Joint commander. A joint commander may impose nonjudicial punishment on members of the naval service who are assigned or attached to the command. Alternatively, the commander may designate in writing one or more naval units, and further designate for each unit a commissioned officer of the naval service as commanding officer for the administration of nonjudicial punishment authority. When the joint commander delegates nonjudicial punishment authority, he or she should notify the Chief of Naval Personnel or the Commandant of the Marine Corps (JCA), as appropriate, and the Office of the Judge Advocate General (OJAG) (Code 20).

e. Withholding of nonjudicial punishment authority. Though no commander may direct that a subordinate impose nonjudicial punishment in a particular case, a superior commander may limit or withhold the exercise by subordinate commanders of any disciplinary authority they might otherwise have under MCM, Part V. Such limitations could be for certain types of offenses or

certain categories of persons, in specific cases, or limits on imposition of certain types of punishment.

f. Terminology. "Nonjudicial punishment proceedings" refer to the procedure authorized by Article 15, UCMJ. "Nonjudicial punishment" is a term that describes the punishment imposed at the conclusion of an Article 15, UCMJ, proceeding.

0107 Jurisdiction

a. Individual.

(1) General. In order to initiate nonjudicial punishment proceedings, the accused must be a member of the command or of the unit of the officer imposing the punishment. A member is "of the command," or "of the unit," if assigned or attached thereto. A member may be "of the command," or "of the unit," of more than one command or unit at the same time and, consequently, be subject to the nonjudicial punishment authority of both commanders.

(a) Members assigned or attached to commands or units for the purpose of performing temporary duty (TDY) are subject to the nonjudicial punishment authority of the commanders of both the parent and TDY commands.

(b) Members assigned or attached to a detachment under the operational control of another command or unit by virtue of operational orders, or other authorized means, are subject to the nonjudicial punishment authority of the commanders of both the parent and supported units.

(c) Superior operational or administrative commanders may exercise nonjudicial punishment authority upon any subordinate member in their chain of command. For purposes of this section, all members of units responsible to the superior commander are considered "of the command."

(d) Any general or special courts-martial convening authority who has charges against the accused properly before him or her for disposition at a court-martial may impose nonjudicial punishment upon the accused, regardless of whether that accused is "of the command" of the convening authority.

(e) Reserve commanding officers or inspector-

instructors may exercise command authority over members of that officer's command or upon members that are assigned or attached to the command by written orders or as directed in the Marine Corps Reserve and Administration Management Manual. An inspector-instructor or site commander may supersede a supported unit's commanding officer and exercise command authority and administrative control over members of the supported reserve command in the absence of the reserve commanding officer or other reserve officers that could act for the commanding officer when the reserve officers are not in a duty status or are otherwise unavailable to execute command functions pursuant to succession of command guidance issued by the appropriate commander.

(2) Party before a fact-finding body. A party before a fact-finding body convened under this Manual (see Chapter Two) remains thereafter "of the command" of the unit or organization to which he or she is assigned or attached when designated a party, even though for other purposes he or she may have been assigned or attached to another command. This status automatically terminates when all action on appeal is complete.

(3) Action when accused is no longer with command. Except as provided in subsections 0107(a)(1) and 0107(a)(2), above, if the nonjudicial punishment authority no longer has jurisdiction over a member, the allegation should be forwarded to a competent authority in the chain of command over the individual concerned.

b. Over Reserve Component personnel on active duty or inactive-duty training. A member of a Reserve Component on active duty or inactive-duty training is subject to the UCMJ. Such members are not, by virtue of termination of a period of active duty or inactive-duty training, relieved from amenability to jurisdiction of the UCMJ for offenses committed during periods of active duty or inactive-duty training, and they may be ordered to active duty for disciplinary proceedings. See section 0123 regarding procedures for ordering members to active duty for disciplinary proceedings and for the subsequent release from active duty.

0108 Limitations on Initiation of Article 15, UCMJ, Proceedings

a. Right to refuse nonjudicial punishment. A member of the armed forces who is not attached to or embarked in a vessel has

the right to refuse nonjudicial punishment and request trial by court-martial. A member of the armed forces who is attached to or embarked in a vessel does not have the right to refuse nonjudicial punishment. For purposes of this section, the term "attached to or embarked in a vessel" means that the person is assigned or attached via written or oral orders, either permanent or temporary, to a vessel; is aboard for passage; or is assigned or attached to an embarked staff, unit, detachment, squadron, team, air group, or other regular organized body. The determination of whether a person is attached to or embarked in a vessel is based upon the totality of the circumstances. The orders may apply individually, or they may apply to the unit of which the person is a member. No one may be ordered to a vessel solely for the purpose of limiting the ability to refuse nonjudicial punishment.

b. Units attached to ships. The commander or officer in charge of a unit attached to a ship for duty will, unless authorized under subsection 0108(b)(1), below, refrain from exercising his or her nonjudicial punishment authority while the unit is embarked. All disciplinary matters will be referred to the commanding officer of the ship for initial disposition.

(1) This policy is a necessary corollary to the ship commanding officer's overall responsibility for the safety, well-being, and efficiency of the ship. Nevertheless, the commanding officer of a ship may determine whether, and under what circumstances, he or she will authorize a commander or officer in charge of a unit attached to, or embarked in, that ship to exercise his or her nonjudicial punishment authority.

(2) This policy will not apply to Military Sealift Command vessels operating under a master, nor does it apply where an organized unit is embarked for transportation only. When an organized unit is embarked for transportation only, the officer in command of that organized unit will ordinarily retain the authority possessed over such unit before embarkation, including disciplinary authority. Nothing in the foregoing will be construed as impairing the paramount authority of the commanding officer of the ship, including disciplinary authority, over all personnel of the armed forces embarked. In the case of units embarked for transportation only, however, the commanding officer of the ship should only take disciplinary action under the UCMJ over the members of such embarked units in unusual cases concerning incidents occurring aboard the ship.

c. Use of self-reporting of arrest, conviction, or criminal charges by civilian authorities. U.S. Navy Regulation 1137 requires Service members to report certain offenses. The Chief of Naval Operations and the Commandant of the Marine Corps may promulgate orders requiring self-reporting of instances of a Service member's own arrest, charging, or conviction to his or her command. If a self-report is mandated under these orders (e.g., OPNAVINST 3120.32 (Series), which is applicable to Navy Service members) the person making the report is only required to report the date of arrest, charging, or conviction; the arresting or charging authority or jurisdiction; and the offense for which he or she was arrested, charged, or convicted. Under no circumstances is the member required to disclose the underlying facts related to the arrest, charging, or conviction. A commander's use of the information acquired through a mandated self-report is strictly limited as follows:

(1) No person subject to the UCMJ may question the person making the self-report without first advising that person of his or her rights under Article 31 of the UCMJ;

(2) Neither a nonjudicial punishment authority nor a courts-martial convening authority may impose disciplinary action, or begin courts-martial proceedings, unless that action is based solely on evidence derived independently of the required self-report. Commanders should consult the staff judge advocate in the chain of command before investigating and contemplating disciplinary action.

(3) Independent evidence may not be derived from information received from the Service member through a required self-report. If the only reason the command knows about the arrest, charging, or conviction is the self-report, then the command does not have independent evidence unless the Service member makes an incriminating statement after receiving notification of and waiving his or her Article 31 rights. Examples of independent evidence include:

(a) News reports or social media;

(b) Third-party reporting;

(c) Unsolicited information conveyed by the arresting or charging authority; or

(d) Bona fide command programs to screen for criminal information involving Service members (e.g., weekly screen of arrest records for names of command members).

(3) Subject to the restrictions above, a commander may still investigate the matter and use any acquired evidence for administrative purposes. Examples include: actions on security clearances, screening requirements, qualifications, processing for administrative separation, detachment for cause, de-frocking, revocation of installation driving privileges, and referral for drug or alcohol screening or treatment.

d. Cases previously tried in civilian courts. See section 0124 for rules governing nonjudicial punishment in cases previously adjudicated in domestic or foreign criminal courts.

e. Waiver of statute of limitations. In the event that the statute of limitations for nonjudicial punishment has expired (see MCM Part V, paragraph 1(f)(4)), an accused may choose to waive this protection and accept nonjudicial punishment. Such waiver must be in writing and must be attached to the record of nonjudicial punishment.

0109 Advice to Accused before Initiation of Article 15, UCMJ, Proceedings

a. Advice before nonjudicial punishment. Before the imposition of nonjudicial punishment, the nonjudicial punishment authority will ensure that the accused is fully advised of all applicable legal rights and that other required action is taken before the proceeding. (See section 0110 if nonjudicial punishment is to be based on the report of a fact-finding body).

(1) There is no right for an accused to consult with a lawyer before nonjudicial punishment; however, commanding officers are encouraged to permit an accused to so consult subject to the immediate availability of counsel, the delay involved, and operational commitments or military exigencies. Failure to provide the opportunity for an accused to consult with counsel before nonjudicial punishment does not preclude the imposition of nonjudicial punishment; it merely precludes the admissibility of the record of nonjudicial punishment in aggravation at a later court-martial, unless the accused was attached to or embarked in a vessel at the time of the imposition

of nonjudicial punishment. The status of the accused (see subsection 0109(b)) and the potential use of the record (see subsections 0109(c) and 0109(d)) should be considered in determining whether to utilize Appendix A-1-b, Appendix A-1-c, or Appendix A-1-d.

(2) Before nonjudicial punishment is awarded, a Service member having obligated service arising from receiving advanced education assistance must be advised that, if he or she is subsequently separated for misconduct, the government may require that the member reimburse the United States for the cost of advanced education assistance not repaid by active-duty service, as specified in the written agreement entered into with the government before accepting advanced education assistance. (See section 0176 and Appendix A-1-e).

b. Accused attached to or embarked in a vessel. When an accused is attached to or embarked in a vessel, the record of nonjudicial punishment can be used in aggravation in the event of a later court-martial conviction for other offenses. (See Appendix A-1-b).

c. Accused not attached to or embarked in a vessel; record cannot be used in aggravation. When the accused is not afforded the opportunity to consult a lawyer before imposition of nonjudicial punishment, the record of nonjudicial punishment may not be used in aggravation at a later court-martial for other offenses. The only exception to this rule is where a lawyer serves as personal representative at the Article 15, UCMJ, proceeding. (See Appendix A-1-c).

d. Accused not attached to or embarked in a vessel; record may be used in aggravation at a later court-martial. When the accused is afforded the opportunity to consult a lawyer before imposition of nonjudicial punishment, the record of nonjudicial punishment may be used in aggravation at a later court-martial for other offenses. (See Appendix A-1-d).

(1) If the accused elects to consult a lawyer, such lawyer may be a military lawyer, or a civilian lawyer obtained by the accused at his or her personal expense. A military lawyer who provides such advice should be "independent." A military lawyer who, in the course of his or her duties, acts as the principal legal advisor to the officer who would exercise nonjudicial punishment authority, is not "independent."

(2) If the accused does not elect to obtain this advice of rights from a lawyer, the accused should so indicate in the appropriate space and complete the remainder of the form. If the accused states that he or she desires to obtain advice of rights from a lawyer before deciding whether to refuse nonjudicial punishment and request trial by court-martial in lieu of nonjudicial punishment, Appendix A-1-d will so indicate, but the remainder of the form will not be completed until the accused has been given a reasonable opportunity to obtain this advice of rights. Such advice to an accused from a military lawyer should be limited to an explanation of the legal ramifications involved in the right to refuse nonjudicial punishment. These legal ramifications are limited to areas such as: the accused's substantive and procedural rights at a court-martial as opposed to nonjudicial punishment; the respective punishment limitations; the potential uses of courts-martial convictions and nonjudicial punishment records at any subsequent trial by court-martial, or other judicial or administrative proceeding; and that acceptance of nonjudicial punishment may not preclude conviction for the same offense in other civilian jurisdictions. Providing these technical explanations regarding basic principles of military law, while confidential, do not, per se, establish an attorney-client relationship, nor do they constitute an assignment of such a military lawyer as the individual's defense counsel or personal representative for purposes of nonjudicial punishment. Military lawyers making such explanations will guard against the establishment of an attorney-client relationship unless detailed by proper authority to serve as defense counsel or personal representative of the accused.

(3) Telephone or video teleconferencing communication between an accused and a military or civilian lawyer is sufficient to satisfy this advice requirement. Appendix A-1-d may be utilized.

(4) If, through no fault of the accused, he or she does not receive the requisite advice of rights, and he or she does not waive that right, use Appendix A-1-c in lieu of Appendix A-1-d.

e. Service record entries.

(1) In the event nonjudicial punishment is imposed, and Appendix A-1-d is used, or the accused is represented by a lawyer

at the proceeding, commanders must make appropriate service-record entries, signed by appropriate personnel, on page 13 (Navy) or page 11 (Marine Corps), or in such other manner as service directives may require. For example, if the accused executed Appendix A-1-d, the service-record entry should state, after appropriate verification, the following:

(Grade and name of accused) signed JAGMAN Appendix A-1-d, before (his)(her) nonjudicial punishment proceeding, which was held on (date of nonjudicial punishment proceeding).

The accused [talked to a lawyer before deciding whether to refuse nonjudicial punishment and requested trial by court-martial in lieu of nonjudicial punishment] [elected to give up (his)(her) right to talk with a lawyer before deciding whether to refuse nonjudicial punishment and requested trial by court-martial in lieu of nonjudicial punishment]. The accused was advised that acceptance of nonjudicial punishment does not preclude further administrative action against (him)(her). This may include being processed for an administrative discharge that could result in an other than honorable discharge. In completing the remainder of the form, the accused did not refuse nonjudicial punishment and requested trial by court-martial in lieu of nonjudicial punishment.

(2) If the accused is represented by a military or civilian lawyer as a personal representative at nonjudicial punishment proceedings, the following example of a service-record entry may be made, after appropriate verification:

(Grade and name of accused) received nonjudicial punishment on (date). The accused was represented by (name), a lawyer.

0110 Procedures for Initiation of Article 15, UCMJ, Proceedings

a. Article 15, UCMJ, guide. Service members are afforded the right to a personal appearance before the nonjudicial punishment authority except when appearance is prevented by the unavailability of the nonjudicial punishment authority or by extraordinary circumstances. See paragraph 4(c)(1), Part V, MCM. Appendix A-1-f is a guide for a personal appearance at

nonjudicial punishment proceedings. In accordance with Article 15(a), UCMJ, paragraph 4(d) of Part V, MCM, and section 0108 regarding refusal of nonjudicial punishment, there is an exception to this rule for cases decided on the basis of the record of proceeding of another fact-finding body. This exception is subject to the provisions of subsection 0110(e), below.

b. Standard of proof. The standard of proof by which facts must be established at nonjudicial punishment proceedings is a preponderance of the evidence, rather than the beyond a reasonable doubt standard, as it is at courts-martial. A nonjudicial punishment proceeding is not a criminal trial; it is a disciplinary proceeding. Its purpose is to determine whether an offense was committed by the member and, if appropriate, to provide punishment. Such punishment is designed for minor misconduct in a nonjudicial forum, without a record of a federal conviction.

c. Observers at nonjudicial punishment proceedings. The presence of representative members of the command as observers during personal proceedings under paragraph 4 of Part V, MCM, and Article 15, UCMJ, is authorized and encouraged to demonstrate integrity and fairness of the imposition of nonjudicial punishment. Nothing precludes the alleged offender from requesting to confer privately with the nonjudicial punishment authority in order to relate matters that, in the opinion of the alleged offender, are of a personal or embarrassing nature.

d. Alternatives to personal appearance. Ordinarily, before nonjudicial punishment may be imposed, the Service member is entitled to a personal appearance before the nonjudicial punishment authority. When personal appearance is prevented by the unavailability of the nonjudicial punishment authority, or by extraordinary circumstances, the proceedings may be conducted telephonically, by video teleconference, or through a similar remote means that provide for two-way voice communication. These alternatives are in addition to those already provided for in paragraph 4(c) of Part V, MCM. The Service member will be notified in writing before the imposition of nonjudicial punishment of the circumstances that warranted an alternative to personal appearance.

e. Nonjudicial punishment based on report of a fact-finding body.

(1) If nonjudicial punishment is contemplated on the basis of the record of a court of inquiry or other fact-finding body, a preliminary examination will be made of such record to determine whether the individual concerned was accorded the rights of a party before such fact-finding body and, if so, whether such rights were accorded with respect to the act or omission for which nonjudicial punishment is contemplated. If he or she does not exercise his or her right to refuse nonjudicial punishment, or if the individual does not have that right, the individual may submit in writing any matter in defense, extenuation, or mitigation to the nonjudicial punishment authority. If the individual was accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated, punishment may be imposed without further proceedings. If the individual was not accorded the rights of a party with respect to the offense for which punishment is contemplated, the procedure prescribed in paragraph 4 of Part V, MCM, must be conducted. In appropriate cases, the record of the fact-finding body may be returned for additional proceedings during which the individual will be accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated.

(2) In these cases, a punitive letter may be issued, or its issuance recommended to higher authority, on the basis of an investigation or court of inquiry without further proceedings. The officer issuing the punitive letter will prepare a report concerning the action taken. The report must include a summary of the evidence considered including, as applicable: testimony of witnesses, statements, and affidavits submitted.

f. Advice after imposition of nonjudicial punishment. The officer who imposes punishment under Article 15, UCMJ, will again ensure that the offender is fully informed of his or her right to appeal. Appendix A-1-g is an Accused's Acknowledgment of Appeal Rights, which should be signed and witnessed if punishment is imposed.

0111 Limitations on and Nature of Punishments

a. Restriction imposed upon officers and warrant officers. Restriction, with or without suspension from duty, imposed upon commissioned and warrant officers under paragraph 5(b)(1)(A) of Part V, MCM, may not exceed 15 consecutive days when imposed by a

commander below the grade of O-4 (major or lieutenant commander).

b. Correctional custody. This punishment will not be imposed on persons in paygrade E-4 and above unless an unsuspended reduction below paygrade E-4 is also imposed. (See SECNAVINST 1640.9 (series) for instructions concerning the administration of correctional custody).

c. Confinement. This punishment will only be imposed on persons attached to or embarked in a vessel pursuant to subsection 0108(a), and in paygrade E-3 or below. This punishment is authorized when the punishment also includes an unsuspended reduction to paygrade E-3 or below. Pursuant to the Military Justice Act of 2016, the imposition of bread and water or diminished rations is no longer authorized. Calculating the release date by number of hours in confinement is not authorized. (See DoD 1325-7M).

d. Extra duties. Subject to the limitations set forth in paragraph 5(c)(6) of Part V, MCM, this punishment will be considered satisfied when the enlisted person has performed extra duties during available time in addition to performing his or her military duties. Normally, the immediate commander of the accused will designate the amount and character of the extra duties to be performed. The daily performance of the extra duties, before or after routine duties are completed, constitutes the punishment whether the particular daily assignment requires one, two, or more hours; but normally extra duties should not extend to more than two hours per day. Except in cases of members of the Naval or Marine Corps Reserve performing inactive training or annual training for a period of less than seven days, if reasonable accommodation can be made, extra duty will not be performed on the member's Sabbath, though the member's Sabbath counts in the computation of the period for which such punishment is imposed. Guard duty will not be assigned as punishment.

e. Reduction in grade. Under no circumstances may the punishment of reduction in grade be imposed except to the next inferior paygrade. Navy personnel in the paygrade of E-7 or above and Marine Corps personnel in the paygrade of E-6 or above may not be reduced in paygrade by nonjudicial punishment. A nonjudicial punishment authority serving in the grade of W-1 through CWO-5 may not reduce enlisted personnel under any circumstances. A commander may exercise this authority on any member of the naval service under his or her command. Therefore,

so long as a Navy commander holds authority to promote a Navy enlisted member of the same grade held by a Marine, then the commander may award that Marine a reduction in grade; the same is true for a Marine commander awarding a reduction in grade to a Navy member.

f. Arrest in quarters. An officer or warrant officer undergoing this punishment will not be permitted to perform duties involving the exercise of authority over any subordinate.

g. No punishment. If no punishment is awarded at an Article 15, UCMJ proceeding, the effect is the same as if the charges were dismissed at the proceeding. No section 0119 record of nonjudicial punishment will be made in the member's service record. The fact that the member went to an Article 15, UCMJ, proceeding may not be referenced in the member's record. There is no restriction on reference to or use of the facts or evidence underlying the offenses alleged at the Article 15, UCMJ, proceeding for other authorized purposes. If no punishment is awarded, or the charges were dismissed, a subsequent nonjudicial punishment proceeding may be held for the same allegations or offenses.

h. Suspended punishment. If a punishment is suspended, the nonjudicial punishment authority must indicate the period of suspension. Punishment may not be suspended, however, for a period of longer than six months from the date of the suspension, and the expiration of the current enlistment or term of service of the Service member involved automatically terminates the period of suspension.

i. Punishment involving forfeiture of pay. Pay subject to forfeiture refers only to basic pay, plus sea duty or hardship duty pay. If nonjudicial punishment also includes reduction in grade, forfeiture will be based on the grade to which the accused is reduced.

0112 Limitations on Nonjudicial Punishments to Be Imposed on Reserve Component Personnel Not on Active Duty

a. Punishment involving restraint on liberty.

(1) If imposed on Reserve Component personnel on inactive-duty training, restriction will not extend beyond the normal inactive-duty training period but may be carried over to

subsequent periods of inactive-duty training or active duty. A Reserve Component member on inactive duty may not be ordered to active duty for the sole purpose of serving such punishment, unless the order to active duty received Secretarial approval. (See section 0123).

(2) If imposed on Reserve Component personnel who have been ordered to active duty for disciplinary proceedings, the period of active duty may not be extended for the purpose of serving such punishment, unless the order to active duty received Secretarial approval. (See section 0123).

(3) Correctional custody, extra duties, and arrest in quarters may not be imposed on Reserve Component personnel on inactive-duty training.

b. Punishment involving forfeiture of pay. For inactive-duty training Reserve Component personnel ordered to active duty for punishment and released before collection of all forfeitures, see DoD 7000.14-R, Volume 7A, Chapter 58, section 580704.

0113 Effective Date and Execution of Nonjudicial Punishments

a. Forfeiture of pay and reduction in grade. These punishments, if unsuspended, take effect when imposed at the nonjudicial punishment proceedings. If suspended, and the suspension is later vacated, these punishments take effect on the date the suspension is vacated. Subsequent to the imposition of a punishment of forfeiture of pay and before the execution of this punishment, if an accused absents himself or herself without authority, that period of absence will interrupt the service of this punishment and will be excluded in computing the service of this punishment. If a forfeiture of pay is imposed, however, while a prior punishment of forfeiture of pay is still in effect, the prior punishment must be completed before the latter begins. Reduction in rate may be executed in the accused's absence.

b. Punishments involving restraint and extra duties.

(1) General. The punishments of arrest in quarters, correctional custody, confinement, extra duties, and restriction, if unsuspended, take effect when imposed and are executed when served. See paragraph 7 of Part V, MCM, if an appeal is filed.

(2) Interruption by absence or later punishment.

Subsequent to the imposition and before the execution of nonjudicial punishment, if an accused absents himself or herself without authority, the period of absence will interrupt the service of the unexecuted portion of these punishments. The execution of any previously imposed nonjudicial punishment involving restraint will normally be interrupted by a subsequent nonjudicial punishment involving restraint. Upon execution of the later-imposed nonjudicial punishment involving restraint, the unexecuted portion of the earlier punishment will be executed. The officer imposing the later punishment may, however, order that the earlier punishment be completed before execution of the later punishment. A sentence imposed by a court-martial will also interrupt the service of any nonjudicial punishment involving restraint. When the judicially imposed punishment has been served, any unexecuted nonjudicial punishment will be completed.

(3) Deferment of execution. Commanders and officers in charge may, when adequate facilities are not available or when the exigencies of the service require, defer execution of restriction, correctional custody, or confinement for a reasonable period of time, not to exceed 15 days. Also, commanders and officers in charge may, if the accused is found to be medically unfit for the service of the punishments of correctional custody or confinement defer, for a period not to exceed 15 days, the execution of the punishment until the accused is determined to be medically fit to serve the punishment. If at the end of the deferment period the accused remains medically unfit to serve the punishment of correctional custody or confinement, the commander or officer in charge who imposed the punishment may mitigate the punishment to one no more severe than the original punishment announced. Upon request of the accused, a commander may defer any punishment. Once the period of requested deferment is completed, the individual will complete the awarded punishment in its entirety.

(4) Stay of punishment. In rare instances (e.g., medical emergency) and only upon request of the accused, a commander may grant a stay of nonjudicial punishment. A stay of punishment occurs when the accused has begun serving the punishment awarded and the commander exercises his or her discretion to interrupt the punishment for a period that will normally not exceed 15 days. This is done with the intent that the remainder of the punishment will be served at a later date. If the commander stays the punishment, such a stay should be noted in the

accused's service record with the accused acknowledging the remainder of the unexecuted punishment will be completed upon the end of the stay. For the purpose of computing the amount of punishment already served, any portion of the 24-hour day served before the stay is issued or after the accused returns from the stay will count as one full day.

c. Punitive letters. These punishments take effect when imposed. A punitive letter is imposed when announced to the accused. The imposition of a punitive letter may not be suspended.

0114 Punitive Censure

a. General. "Censure" is a statement of adverse opinion or criticism of an individual's conduct or performance of duty expressed by a superior in the member's chain of command. Censure may be punitive or nonpunitive. See section 0105 regarding nonpunitive censure. The issuance of punitive censure resulting from nonjudicial punishment may be disclosed to the command in accordance with section 0115. Commands considering public disclosure should consult their staff judge advocate and the public affairs officer in their chain of command. See subsection 0105(b)(4) for full discussion of senior official and public disclosure.

(1) Admonition. Admonition is a form of censure intended to express adverse reflection upon or criticism of a person's conduct. Admonition imposed as nonjudicial punishment is considered punitive. Punitive admonition imposed on enlisted persons may be either written or oral. For officers, punitive admonition must be in writing.

(2) Reprimand. Reprimand is a more severe form of censure than admonition. A reprimand issued as nonjudicial punishment or awarded at courts-martial is punitive. Punitive reprimand imposed on enlisted persons as nonjudicial punishment may be either written or oral. For officers, any punitive reprimand must be in writing. See R.C.M. 1003 for reprimands awarded at courts-martial.

(3) Issuing authority. When an officer has committed an offense that warrants a punitive letter of admonition or reprimand, the officer who imposed nonjudicial punishment may issue the letter or refer the matter through the chain of

command, normally to the superior general courts-martial convening authority (GCMCA) over the prospective addressee.

b. Official records of admonition or reprimand. Unless withdrawn or set aside by higher authority upon appeal, punitive letters become part of the official service record of the member to whom they are addressed. The issuance of a punitive letter and the facts of the underlying offenses may be mentioned in the member's fitness report or enlisted evaluation and used to support a detachment for cause proceeding, relief of command, or any other administrative action on the part of the service concerned.

c. Internal departmental responsibility. Correspondence, records, and files in the DON that relate to punitive censure are personnel matters under the primary cognizance of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

d. Content of letter of admonition or reprimand.

(1) General. A punitive letter issued pursuant to Article 15, UCMJ, may be imposed only for acts or omissions constituting minor offenses under the UCMJ, see paragraph 1(e) of Part V, MCM. The letter must set forth the facts constituting the offense but need not refer to any specific punitive UCMJ article, nor satisfy the drafting requirements of courts-martial specifications. The letter should contain sufficient specific facts, without reference to other documents, to apprise a reader of all relevant facts and circumstances of the offense. General conclusions, such as "gross negligence," "unofficer-like conduct," or "dereliction of duty," are valueless unless accompanied by specific facts upon which they are based. A sample punitive letter is set forth for guidance in Appendix A-1-h.

(2) References. Punitive letters should refer to all prior proceedings and correspondence upon which they are based, applicable laws and regulations (including the MCM) and this section. Particular reference should be made to the proceeding afforded the offender. Where applicable, the letter will include a statement that the recipient was advised of the right to refuse nonjudicial punishment and request trial by court-martial in lieu of nonjudicial punishment and that such trial was not requested. See Article 15(a), UCMJ.

(3) Classification. Specific details requiring security classification must be omitted from punitive letters. A letter issued as nonjudicial punishment will be designated "For Official Use Only."

(4) Notification of right to appeal and right to submit statement. Punitive letters, except letters issued in execution of a court-martial sentence as described in section 0153, will contain the following:

You may appeal this action to the next superior authority, via [insert the official designation of the commanding officer issuing the letter or, if the officer is the immediate commanding officer of the offender, the official designations of the immediate commanding officer of the offender and the officer issuing the letter] under the provisions of Article 15(e) of the Uniform Code of Military Justice, paragraph 7 of Part V, Manual for Courts-Martial, and section 0114 of the Manual of the Judge Advocate General.

If you do not desire to appeal, you are directed to so inform the issuing authority in writing within five working days after the receipt of this letter.

If you desire to appeal this action, you are advised that an appeal must be made within a reasonable time and that, in the absence of unusual circumstances, an appeal made more than five working days after the receipt of this letter may be considered as not having been made within a reasonable time. If, in your opinion, unusual circumstances make it impracticable or extremely difficult for you to prepare and submit your appeal within the five working days, you will immediately advise the officer issuing this letter of such circumstances and request an appropriate extension of time to submit your appeal. Failure to receive a reply to such request will not, however, constitute a grant of such extension of time to submit your appeal.

In all communications concerning an appeal of this action, you are directed to state the date of your receipt of this letter.

Unless withdrawn or set aside by higher authority, a copy of this letter will be placed in your official record at [Navy Personnel Command] [Headquarters, U.S. Marine Corps]. You may forward within 15 days after receipt of final denial of your appeal or after the date of your notification of your decision not to appeal, whichever may be applicable, a statement concerning this letter for inclusion in your record. If you do not desire to submit a statement, you will so state in writing within five days. You are advised that any statement submitted must be couched in temperate language and will be confined to pertinent facts. Opinions will not be expressed or the motives of others impugned. Your statement may not contain countercharges. Your reporting senior may note this letter in your next [fitness report] [performance evaluation] submitted after this letter becomes final, either by decision of higher authority upon appeal or by your decision not to appeal. (Omit last sentence in cases involving Marine Corps enlisted personnel in paygrades E-4 or below).

e. Appeals. The following rules apply to appeals of punitive letters, in addition to those rules contained in paragraph 7 of Part V, MCM, and sections 0116 and 0117:

(1) A copy of the report of nonjudicial punishment must be provided to the individual upon his or her request except where the interests of national security may be adversely affected. A copy will be made available to the individual for use in preparation of a defense or appeal. See section 0116 for similar rules concerning a copy of the record of an investigation or court of inquiry.

(2) In forwarding an appeal of a punitive letter, see section 0116, the officer who issued the letter will attach to the appeal a copy of the punitive letter and the record of investigation or court of inquiry or report of proceeding on which the letter is based. The appeal will be forwarded via the chain of command to the superior authority to whom the appeal is made, who may direct additional inquiry or investigation into matters raised by the appeal if deemed necessary in the interests of justice.

(3) Appeals from a punitive letter imposed as nonjudicial punishment will be forwarded as specified in section 0117.

(4) The standard of review for a punitive letter of censure will be that the language in the letter is "accurate and relevant to the offenses committed and the punishment imposed." The contents of the appeal must be couched in terms that are temperate and factual.

(5) Upon determination of the appeal, the superior authority acting on the appeal will advise the appellant of the action taken via the immediate commander, with copies of the action to officers in the chain of command through whom the appeal was forwarded. The superior authority will also return all papers to the commander who issued the letter.

f. Forwarding letter. Upon denial of any appeal, the lapse of a reasonable time after issuance, see section 0116, or upon receipt of the addressee's statement that an appeal is not desired, a copy of the punitive letter and other documents required by Navy Personnel Command or the Commandant of the Marine Corps, together with the addressee's statement, a written declaration that he or she does not desire to make a statement, or a written declaration that a reasonable time after issuance has elapsed will be forwarded to the Commander, Navy Personnel Command (PERS-834 for officers and PERS-832 for enlisted) or the Commandant of the Marine Corps (JPL for officers and MMRB-20 for enlisted), as appropriate. If the punitive letter is not sustained on appeal, a copy of the letter will not be filed in the official record of the member concerned. The command issuing a punitive letter has the responsibility of assembling and forwarding at one time all the foregoing documents and of providing a copy of the forwarding letter for each via addressee.

g. Removal and set aside. Material properly placed in an officer's or enlisted member's official record may not normally be removed or destroyed.

(1) If a factual error or other reasons indicate that a punitive letter issued under Article 15, UCMJ, and filed in the addressee's official record, results in a clear injustice, the officer referred to in paragraph 6 of Part V, MCM, and section 0118, may set aside or remove or direct the set aside or removal of the punitive letter. Removal or set aside occurs by issuing a second letter to the officer or enlisted member concerned

announcing the cancellation of the punitive letter and setting forth in detail the reason for cancellation.

(2) If a punitive letter is removed or set aside by a superior authority before a copy of the original of such letter is forwarded to the Commander, Navy Personnel Command or the Commandant of the Marine Corps, the punitive letter will not be forwarded and copies of the punitive letter will be removed from all files relating to the member and destroyed.

(3) If the removal or set aside occurs after a copy of the punitive letter has been forwarded, a copy of the letter of cancellation will be forwarded to the Commander, Navy Personnel Command or the Commandant of the Marine Corps, as appropriate, as well as to any other addressees to whom copies of the punitive letter were forwarded. Upon receipt of the copy of the letter of removal or set aside, addressees will ensure that copies of the punitive letter will not be filed in or, if already filed, will be removed from, the member's official record and destroyed. The order or letter of removal or set aside or a copy thereof will not be filed in the member's official records.

(4) If a punitive letter is filed inadvertently or by mistake of fact, such document may be removed only by Commander, Navy Personnel Command or the Commandant of the Marine Corps, as appropriate. In other cases, only the Secretary of the Navy acting through the Board for Correction of Naval Records may order removal of punitive letters and other documents in official records.

0114a Secretarial Letter of Censure

a. General. The Secretary of the Navy may administratively censure members, including retirees and reservists, in writing without resorting to Article 15, UCMJ. The Secretary's authority to issue censures is inherent in his or her office. The Secretary may, within his or her discretion, when he or she believes it is for the good of the service, send communications to subordinate officers that may be in the nature of a reprimand. This right is necessarily vested in him or her as chief officer of that department. Such censure is neither a nonpunitive measure nor a punitive sanction of the type that can be imposed as nonjudicial punishment or as the judgment of a court-martial. The Secretary's authority is in its own class. Such censures cannot be delegated. Unless otherwise directed, a copy of the

letter will be filed in the official record of the member censured.

b. Rebuttal. The member to whom a Secretarial letter of censure is addressed has no right of appeal. If a copy of the letter is filed in the official record of the member, the individual may submit a rebuttal. Any such rebuttal must be temperate in language and confined to pertinent facts. Opinions will not be expressed or the motives of others impugned. Rebuttals will not contain countercharges. The issuance of a Secretarial letter of censure and the underlying facts may be mentioned in a fitness report or an enlisted evaluation and used to support a detachment for cause proceeding, relief of command, negative endorsement, or any other administrative action on the part of the service concerned.

0115 Announcement of Nonjudicial Punishment

a. Publication. Publication of nonjudicial punishment is rooted in the reasonable belief that it serves to deter other members of the organization from committing similar offenses and that it has salutary effects upon the morale of the organization. Accordingly, the nonjudicial punishment authority may establish a policy whereby the disposition of Article 15, UCMJ proceedings are announced to military personnel within his or her unit. Announcement may be made by any or all of the methods discussed below.

b. Plan of the day publication. The name, rank/rate, offense(s), and disposition of the offenses may be published in the plan of the day no earlier than five working days and no later than 30 calendar days after the imposition of nonjudicial punishment or, if the punishment is appealed and not ultimately set aside in its entirety, within 30 calendar days after the reviewing authority's action on the appeal. This information may be published in the plan of the day if it is only disseminated to military personnel. If the plan of the day is disseminated to other than military personnel, nonjudicial punishment information may be published without the accused's name.

c. Bulletin boards. The name, rank/rate, offense(s), and disposition of the individual case may be posted no earlier than five working days and no later than 30 calendar days after the imposition of nonjudicial punishment or, if the punishment is

appealed and not ultimately set aside in its entirety, within 30 calendar days after the reviewing authority's action on the appeal. This information may be posted on command bulletin boards for military personnel only. If command bulletin boards are accessible to other than military personnel, nonjudicial punishment results may only be published without the name of the accused.

d. Daily formation or morning quarters. The name, rank/rate, offense(s), and disposition of nonjudicial punishment cases may be announced at daily formations or morning quarters no earlier than five working days and no later than 30 calendar days after the imposition of nonjudicial punishment or, if the nonjudicial punishment is appealed, within 30 calendar days after the appeal is denied.

e. Public censures. Commanders will not issue public censures. Oral censures during Article 15, UCMJ, proceedings do not violate this provision.

f. Release to the public. Information on nonjudicial punishment will not normally be disclosed to the public under the Freedom of Information Act. This is because the public interest in the routine administrative disposition of employee misconduct rarely outweighs the individual's privacy interest in the matter. See SECNAVINST 5720.42 (series). In order to protect the personal privacy of individuals receiving nonjudicial punishment, commands receiving requests for individual nonjudicial punishment records should forward the request to their cognizant initial denial authority (IDA) with the recommendation that the existence of the records be neither confirmed nor denied, except when the requester is the individual upon whom nonjudicial punishment was imposed. In that situation, the request is processed under the Privacy Act.

(1) Disclosure should only be considered when the events leading to the nonjudicial punishment are particularly newsworthy or the case involves a senior official. See subsection 0105(b)(4) for discussion of senior officials. In general, the DON finds the public interest warrants disclosure of the results of flag and general officer nonjudicial punishments in order to retain the public's confidence and trust in the integrity of the Department, the Navy and the Marine Corps.

(2) Resolution of misconduct involving commanding officers,

executive officers, officers in charge, senior enlisted advisors and other personnel of lower rank or grade may also warrant release of information depending on their official position and the nature of the misconduct. In such cases, the fact of the award of the nonjudicial punishment, including a recitation of the charges, findings, and resulting punishment, may be disclosed to the public.

(3) If the award includes a punitive letter, the actual letter may not be disclosed without the consent of the individual receiving the nonjudicial punishment; however, the facts and circumstances underlying the letter may be disclosed.

(4) The decision to release nonjudicial punishment information to the public must be made on a case-by-case basis by a flag or general officer in the chain of command upon balancing the public interest against the privacy interest of the individual. When contemplating a release of information, commanders should consult with the staff judge advocate and the public affairs officer in their chain of command. Publication of the results of nonjudicial punishment under this section are not considered to be a public censure.

g. Release of results to victims. Upon request from a victim in a case in which nonjudicial punishment has been imposed and the nonjudicial punishment has not been set aside in its entirety upon appeal, commands will promptly release the results of nonjudicial punishment to that victim. The information to be released will consist of the name and rank/rate of the accused, the offense(s) considered, and disposition of the offense(s) (including any punishment imposed). As used in subsection 0115(g), "victim" means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ. Nothing in subsection 0115(g) grants anyone a legal right of action, additional rights under the Freedom of Information Act, or a right to receive information in a particular format.

0116 Command Action on Nonjudicial Punishment Appeals

a. Time limit.

(1) In accordance with paragraph 7(d) of Part V, MCM, an appeal of nonjudicial punishment must be submitted within five working days, excluding weekends and holidays, of the imposition

of nonjudicial punishment, or the right to appeal will be waived in the absence of good cause shown. In computing this appeal period, allowance will be made for the time required to mail communications pertaining to the imposition and appeal of nonjudicial punishment. The appeal period commences to run from the date of the imposition of the punishment, even though all or any part of the punishment imposed is suspended. When a punitive letter is imposed, an appeal of nonjudicial punishment must be submitted within five working days after the accused receives the letter.

(2) If it appears that good cause may exist that would make it impracticable or extremely difficult for the accused to prepare and submit the appeal within the five-day period, the accused should immediately advise the officer who imposed the punishment why good cause exists and request an appropriate extension of time within which to submit the appeal. Upon receipt of such a request, the officer who imposed the nonjudicial punishment will determine whether good cause was shown and will advise the offender that an extension of time is or is not granted. Absent a request for extension, the officer acting on the appeal will determine whether good cause for delay exists in an appeal submitted more than five days after the imposition of the nonjudicial punishment.

b. Procedures.

(1) When the officer who imposed the punishment is not the accused's immediate commander, the latter may forward the appeal directly to the officer who imposed the punishment for forwarding under section 0117. Similarly, the action of the superior authority on appeal may be forwarded by the officer who imposed the punishment directly to the offender's commander for delivery. Copies of the correspondence should be provided for intermediate authorities in the chain of command.

(2) In any case where nonjudicial punishment is imposed on the basis of information contained in the record of a court of inquiry or fact-finding body, a copy of the record, including the findings, opinions, and recommendations, together with copies of endorsements thereon, will, except where the interests of national security may be adversely affected, be made available to the accused for examination in connection with the preparation of an appeal. In case of doubt as to whether a national security interest would be adversely affected, the matter will be referred

to OJAG (Code 30) for advice.

c. Contents of forwarding endorsement. The contents of the forwarding endorsement of the officer who imposed the punishment should normally include:

(1) Comment on any assertions of fact contained in the letter of appeal that the officer who imposed the punishment considers to be inaccurate or erroneous.

(2) Recitation of any facts concerning the offenses that are not otherwise included in the appeal papers. If such factual information was brought out at the nonjudicial punishment proceeding, the endorsement should so state and include any relevant comment made by appellant at the proceeding. Any other adverse factual information set forth in the endorsement, unless it recites matters already set forth in official service record entries, will be referred to the appellant for comment, and the appellant will be given an opportunity to submit a statement in regard thereto or state that he or she does not wish to make any statement.

(3) As an enclosure, a copy of the completed Report and Disposition of Offense(s) (NAVPERS 1626/7) or Unit Punishment Book (NAVMC 10132).

(4) As enclosures, copies of all documents and signed statements that were considered as evidence at the nonjudicial punishment proceeding or, if the nonjudicial punishment was imposed on the basis of the record of a court of inquiry or other fact-finding body, a copy of that record, including the findings of fact, opinions and recommendations, together with copies of any endorsements thereon.

(5) As an enclosure, a copy of the appellant's record of performance as set forth on service record page 9 (Navy) or Record of Service and NAVMC 118(3) (Marine Corps).

0117 Authority to Act on Nonjudicial Punishment Appeals

a. When the officer who imposed punishment is in a Navy chain of command. Any appeal of nonjudicial punishment in accordance with paragraph 7 of Part V, MCM will, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of

command to the officer who imposed the punishment, be forwarded to the Region Commander or to a subordinate commander authorized to convene general courts-martial and designated by the Region Commander for this purpose. When the cognizant Region Commander or a designated subordinate commander is not superior in rank or command to the officer who imposed the punishment or when the punishment is imposed by a commander who is a Region Commander or a designated subordinate commander, the appeal will be forwarded to the officer authorized to convene general courts-martial and next superior in the chain of command to the officer who imposed the punishment. For deployable units, the Region Commander or designated subordinate commander for the above purpose is the Region Commander or designated subordinate commander most accessible to the unit at the time of the forwarding of the appeal.

b. When the officer who imposed punishment is in a Marine Corps chain of command. Any appeal of nonjudicial punishment in accordance with paragraph 7 of Part V, MCM will, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the officer who imposed the punishment, be forwarded to the officer who is next superior in the operational chain of command to the officer who imposed the punishment. When such review is impracticable due to operational commitments, as determined by the officer who imposed punishment, appeal of nonjudicial punishment will be made to the Marine GCMCA geographically nearest and senior to the officer who imposed the punishment. That officer may delegate appellate authority to any commander in his or her organization who is senior in grade and in level of command to the officer who imposed punishment. In no case, however, will an officer not authorized to convene general courts-martial act on an appeal which, absent the impracticable circumstances, would have been acted on by an officer authorized to convene general courts-martial. The appellant need not be, at the time of his or her appeal, a member of an organization within the chain of command of the officer acting on the appeal. In those cases in which the Commandant of the Marine Corps is the next superior in the chain of command and in which the officer who imposed punishment is not a general officer in command, the appeal will, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest the officer who imposed the punishment.

c. When punishment is imposed within a joint force.

(1) In the case of Navy personnel, an appeal of nonjudicial punishment imposed by a joint force commander will be made to the nearest Navy Region Commander or to a subordinate GCMCA designated by the Region Commander for this purpose, unless the applicable Combatant Commander specifically directs otherwise. When the Region Commander or designated subordinate commander is not superior in rank to the officer who imposed the punishment, however, the appeal will be made to the Naval officer exercising GCMCA geographically nearest and superior in rank to the officer who imposed the punishment, unless the Chief of Naval Operations specifically directs otherwise. If directed, or in the event that a Navy officer cannot be found who is superior in rank to the officer who imposed the punishment, the appeal will be made to the Chief of Naval Operations.

(2) In the case of Marine Corps personnel, an appeal of nonjudicial punishment imposed by a joint force commander will, in the absence of specific direction to the contrary by the Combatant Commander, will be made to the Marine Corps general officer in command geographically nearest and superior in rank to the officer who imposed the punishment. If directed, or in the event that a Marine officer cannot be found who is superior in rank to the officer who imposed the punishment, the appeal will be made to the Commandant.

(3) In those cases in which both the officer who imposed the nonjudicial punishment and that officer's immediate superior in command are from the naval service, and that immediate superior commander is authorized to convene general courts-martial, the appeal authority will be that immediate superior in command.

(4) An appeal of nonjudicial punishment imposed by an officer of the Marine Corps or Navy designated as a commander pursuant to subsection 0106(d) will be made to the commander of the joint command who made the designation if such commander specifically so directs. In the absence of such direction, an appeal of nonjudicial punishment imposed by an officer of the Marine Corps will be made to the Marine Corps general officer in command geographically nearest and superior in rank to the officer who imposed the punishment unless otherwise directed by the Commandant of the Marine Corps. Absent direction to the contrary from the joint force commander, an appeal of nonjudicial

punishment imposed by an officer of the Navy will be made to the nearest Navy Region Commander or to a subordinate GCMCA designated by the Region Commander for this purpose. When such Region Commander or designated subordinate commander is not superior in rank to the officer who imposed the punishment, the appeal will be to the Naval GCMCA geographically nearest and superior in rank to the officer who imposed the punishment.

(5) When a Marine or Navy commander imposes nonjudicial punishment on a member who is not part of the Naval service, the next superior authority for purpose of appeals will be the authority prescribed by the member's parent service. (See AR 27-10 for Army personnel; AFI 51-201 for Air Force personnel; and MJM COMDTINST M5810.1D for Coast Guard personnel.) Other provisions of this regulation notwithstanding, an appeal by such member will be processed according to procedures contained in the governing regulation of the member's parent service.

d. Delegation of authority to act on appeals. Appellate authority may be delegated in accordance with the provisions of section 0106. An officer who has delegated his or her nonjudicial punishment powers to a principal assistant under section 0106 may not act on an appeal of punishment imposed by such principal assistant. In such cases, and in other cases where it may be inappropriate for the officer designated by subsection (a) or (b) to act on the appeal, such fact should be noted in forwarding the appeal to the appropriate authority who may act on the appeal.

e. Proceedings after appeal. A superior authority, when acting on an appeal, may set aside a nonjudicial punishment due to procedural error that materially prejudiced a substantial right of the member on whom punishment was imposed, not amounting to a finding of insufficient evidence. The superior authority acting on the appeal may authorize additional proceedings under Article 15, UCMJ, to be conducted by the officer who imposed the original nonjudicial punishment, or his or her successor in command, with regard to those offenses for which the appellant received nonjudicial punishment in the original proceeding. Any punishment imposed during such additional proceedings may be no more severe than that awarded during the original proceedings, unless other offenses that occurred subsequent to the date of the original nonjudicial punishment proceeding are included in the offenses for which punishment is imposed. An individual, whether or not attached to or embarked in a vessel, has no right to

refuse nonjudicial punishment for those offenses for which the additional proceeding was authorized, unless the appeal was granted on a claim pertaining to the validity of the accused's prior waiver of the right to refuse nonjudicial punishment. But an individual who is not attached to or embarked in a vessel retains the right to refuse nonjudicial punishment for any added offense that occurred subsequent to the date the nonjudicial punishment was set aside.

0118 Suspension, Mitigation, Remission, Setting Aside, and Vacation of Suspension

a. Definition of "successor in command". For purposes of Article 15, UCMJ, and this Chapter, the term "successor in command" refers to an officer succeeding to command by being detailed or succeeding thereto as described in U.S. Navy Regulations (1990). The term is not limited to the officer next succeeding.

b. Authority to suspend, mitigate, remit, set aside. The nonjudicial punishment authority who imposes nonjudicial punishment, the commander who imposes nonjudicial punishment (unless no longer on active duty), the commander who acts on an appeal of nonjudicial punishment, or his or her successor in command may, under Article 15(d), UCMJ, and paragraph 6 of Part V, MCM, exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment, provided that the punishment so affected and, in the case of mitigation, the punishment to which such punishment is mitigated, is one within the authority of such new commander to impose.

c. Interruption of probationary period. The running of the period of suspension of the punishment is interrupted by the unauthorized absence of the probationer or by commencement of proceedings to vacate suspension of the punishment.

d. Vacation of suspension. A commander or officer in charge may only vacate a suspension of punishment if a violation of the conditions of suspension occurs during the period of suspension. Before vacating a suspension, a commander or officer in charge ordinarily will notify the Service member and give him or her the opportunity to respond. Though a proceeding is not required to vacate a suspension, if the punishment is of the kind set forth in Article 15(e)(1)-(7), MCM, the Service member should, unless

impracticable, be given an opportunity to appear before the officer authorized to vacate suspension of the punishment to present any matters in defense, extenuation, or mitigation of the violations on which the vacation action is to be based. The order vacating a suspension must be issued within 10 working days of the commencement of the vacation proceedings. The decision to vacate suspension of nonjudicial punishment is not appealable under paragraph 7 of Part V, MCM, but is a proper subject of an Article 138, UCMJ, complaint. See Chapter Three of this Manual. If the reason for vacation involves additional misconduct, Article 31, UCMJ rights must be read to the accused before the commander asks if the accused wishes to make a statement on his or her own behalf.

0119 Records of Nonjudicial Punishment

a. Records. The records of nonjudicial punishment will be maintained and disposed of in accordance with the implementing regulations issued by Navy Personnel Command (PERS-4834) and the Commandant of the Marine Corps. The forms used for the Unit Punishment Book are NAVPERS 1626/7, S/N 0106-LF-016-2636 and NAVMC 10132, S/N 0000-00-002-1305. See section 0173 for procurement information for these forms.

b. Report of officer misconduct.

(1) Report of misconduct before nonjudicial punishment - Navy officers. Pursuant to Section 1611-010 the Naval Military Personnel Manual, Navy officer misconduct must be reported to Commander, Navy Personnel Command (PERS-834). Navy officer misconduct will be reported if:

(a) The incident in question may be of public interest; or

(b) The misconduct will require action by Navy Personnel Command concerning the officer's status.

(2) Report of misconduct after nonjudicial punishment - Navy officers. Once the results of the nonjudicial punishment are final (i.e., the appeal process is completed or waived), a final report will be sent to Commander, Navy Personnel Command (PERS-834). See SECNAVINST 1920.6 (series) and the Naval Military Personnel Manual. If the officer imposing the nonjudicial punishment is not a general or flag officer, the

letter report will be submitted via the first general or flag officer in the administrative chain of command. Fleet or Type commanders may require the letter report be forwarded through command channels. These required reports are separate and distinct from any reported nonjudicial punishment that may be contained in investigations or other correspondence. See section 1611-010 of the Naval Military Personnel Manual for the letter report requirements.

(3) Report of misconduct - Marine Corps officers. Marine officer misconduct must be reported to the Commandant of the Marine Corps (JPL), pursuant to MCO 5800.16 v.15 (Legal Support and Administration Manual). See Figures 15-5 and 15-9 of the Legal Support and Administration Manual for appropriate sample letters.

c. Report of enlisted misconduct.

(1) Report of misconduct before nonjudicial punishment - Navy enlisted in paygrades E-6 through E-9. Pursuant to MILPERSMAN 1616-040 of the Naval Military Personnel Manual, report E-6 through E-9 misconduct before nonjudicial punishment if:

(a) The incident in question may be of widespread public interest; or,

(b) The misconduct will require action by Navy Personnel Command concerning the Service member's status.

(2) Report of misconduct after nonjudicial punishment - Navy enlisted in paygrades E-6 through E-9. Once the results of the nonjudicial punishment are final (i.e., the appeal process is completed or waived), a final report will be sent to Commander, Navy Personnel Command (PERS-832) for all E-6 through E-9 cases, regardless of whether a pre-nonjudicial punishment report was previously submitted. See the Military Personnel Manual section 1616-040 for the letter report requirements.

Part C - Courts-Martial

Subpart C1 - Pretrial Matters

0120 Designation of Additional Convening Authorities

a. General courts-martial. In addition to those officers authorized to convene general courts-martial by Article 22(a)(5) through (7) and (22)(a)(9), UCMJ, the Secretary of the Navy, acting under Article 22(a)(8), UCMJ, has authorized the following officers, when in an active duty or inactive-duty training status, to convene general courts-martial:

(1) All flag or general officers, or their immediate temporary successors, in command of units or activities of the Navy or Marine Corps. Designation as a separate and detached command, in accordance with U.S. Navy Regulation 0723, does not, by itself, convey authority to convene general courts-martial. Flag or general officers in command of units or activities that have been designated as separate and detached commands may request such authority in accordance with section 0121. A list of general courts-martial authorities designated by the Secretary is maintained by OJAG (Code 20) or HQMC (JA), as appropriate.

(2) The Secretary of the Navy has designated and empowered the Commanding Officer, Navy-Marine Corps Appellate Leave Activity, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, KS, to exercise limited general courts-martial jurisdiction necessary to order the execution of a sentence to a punitive discharge, take action on the findings or sentence in accordance with the instructions transmitted by the JAG, and effect clemency action decided by the Naval Clemency and Parole Board. See section 0162a concerning the clemency powers of the Commanding Officer, Navy-Marine Corps Appellate Leave Activity, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, KS.

(3) Any officer whose nomination for promotion to flag or general officer rank has been confirmed by the Senate and who is serving in a flag or general officer billet in command of a naval service unit or activity, or the immediate temporary successor in command of such an officer.

b. Special courts-martial. Those officers empowered to convene general courts-martial may convene special courts-

martial. In addition to those officers authorized to convene special courts-martial by Article 23(a)(5) and (6), UCMJ, the Secretary of the Navy, acting under Article 23(a)(7), UCMJ, has empowered the following officers, when in an active duty or inactive-duty training status, to convene special courts-martial:

(1) Commanding officers of all battalions and squadrons, including both Regular and Reserve Marine Corps commands.

(2) Any commander whose subordinates in the operational or administrative chain of command have authority to convene special courts-martial.

(3) All commanders and commanding officers of units and activities of the Navy, including pre-commissioning units commanded by lieutenant commanders (O-4) or above, but not including inactive-duty training Naval Reserve units. Designation as a separate and detached command, in accordance with U.S. Navy Regulation 0723, does not, by itself, convey authority to convene special courts-martial. Commanders or commanding officers of units or activities that have been designated as separate and detached commands may request such authority in accordance with section 0121.

(4) All directors, Marine Corps Districts.

(5) All administrative officers, U.S. Naval Shipyards.

(6) All inspector-instructors and site commanding officers, Marine Corps Reserve organizations.

(7) Commanding officers and officers in charge of organic combat service support organizations providing combat service support to Marine Expeditionary Brigades, Marine Expeditionary Units, or comparable Marine Air-Ground Task Forces.

(8) Commanding officers of Marine Expeditionary Units, and those Special Purpose Marine Air-Ground Task Force commanding officers in the grade of O-5 and above.

c. Summary courts-martial. Those officers who are empowered to convene general and special courts-martial may convene summary courts-martial. In addition, the Secretary of the Navy, acting under Article 24(a)(4), UCMJ, has empowered all commanders, commanding officers, and officers in charge (if authorized) of

inactive-duty training Naval and Marine Corps Reserve units and activities of the Navy and Marine Corps, who are in a duty status, to convene summary courts-martial. A summary courts-martial convening authority is authorized to direct a preliminary hearing under Article 32, UCMJ. The authority to direct a preliminary hearing for certain sex-related offenses is withheld to an officer in the grade of O-6 or above with special courts-martial convening authority. See subsection 0128(d).

0121 Requests for Authority to Convene Courts-Martial

a. General courts-martial. If authority to convene general courts-martial is desired for a commander or commanding officer who is not empowered by statute or regulation to convene such courts-martial, a letter will be forwarded to OJAG (Code 20) or HQMC (JA), as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to Article 22(a)(8), UCMJ. If general courts-martial convening authority is no longer desired or appropriate (e.g., reorganization of commands), a letter should be forwarded to OJAG (Code 20) or HQMC (JA), as appropriate, with the request that authorization be rescinded by the Secretary of the Navy.

b. Special and summary courts-martial. If authority to convene special or summary courts-martial is desired for commanding officers or officers in charge other than those listed in section 0120, and such officers are not empowered by statute or regulation to convene such courts, a letter will be forwarded to OJAG (Code 20) or HQMC (JA), as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to Article 23(a)(7), UCMJ, or Article 24(a)(4), UCMJ, as appropriate.

c. Separate and detached units. The officer designating an organization as separate or detached, pursuant to U.S. Navy Regulation 0723, may request via OJAG (Code 20) or HQMC (JA), as appropriate, that the JAG obtain from the Secretary of the Navy the authority for that organization's commanding officer or officer in charge to convene courts-martial. The request will state that the organization has been designated as separate or detached and will reference Article 22(a)(8), UCMJ, or Article 23(a)(7), UCMJ, as appropriate. See section 0106 for the effect of designation on authority to impose nonjudicial punishment.

d. Commanding officer of staff enlisted personnel. If

authority to convene special or summary courts-martial is desired for an officer designated as the commanding officer of staff enlisted personnel, under the provisions of U.S. Navy Regulation 0722, the designating commander will request via OJAG (Code 20) or HQMC (JA), as appropriate, that the JAG obtain authorization from the Secretary of the Navy pursuant to Article 23(a)(7), UCMJ, or Article 24(a)(4), UCMJ, as appropriate.

e. Requests for courts-martial convening authority. Such requests will contain the following information, as applicable:

(1) The number of cases referred from that command for the type of courts-martial for which the convening authority is being sought on a yearly basis for the past five years.

(2) If reorganization or downgrading of a command billet is the reason for such a request, state that fact and describe how the change affects the current and prospective convening authority.

(3) Who would handle military justice matters if the requested convening authority is not approved.

(4) The number of commands and tenant commands the prospective convening authority is responsible for, both operationally and administratively.

(5) The number of personnel, officer and enlisted, the prospective convening authority is responsible for, both operationally and administratively.

(6) The geographical reasons that necessitate the appointment of such authority.

(7) Whether the request is for permanent designation as a convening authority or only for a temporary or interim designation based upon a deployment, contingency, or similar rationale.

(8) If the request is for temporary designation as a convening authority, the request will contain an acknowledgement that the requestor will send written notification to OJAG (Code 20) or HQMC (JA), as appropriate, upon the expiration of the designation.

f. Record maintenance. Copies of all Secretarial letters of authorization are maintained by OJAG (Code 20) or HQMC (JA), as appropriate.

0122 General Restrictions on Exercise of Courts-Martial Jurisdiction

a. General, special, and summary courts-martial.

(1) Withholding disposition authority. The exercise of authority to convene summary, special, and general courts-martial may be restricted by a competent superior commander.

(2) Capital offenses. A special courts-martial convening authority may not refer a capital offense to trial by special or summary courts-martial or dispose of it at nonjudicial punishment without providing notice to the officer exercising general courts-martial convening authority over the command in order to give him or her an opportunity to withhold jurisdiction in accordance with R.C.M. 306. Pursuant to R.C.M. 201(f)(1)(C), a general court-martial composed of a military judge alone does not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been referred to trial as noncapital.

(3) Exclusive jurisdiction for certain sexual offenses. Pursuant to R.C.M. 201(f)(1)(D), only a general court-martial has jurisdiction to try offenses under Article 120(a), 120(b), 120b(a), and 120b(b), and attempts thereof under Article 80. Such offenses cannot be referred to a special court-martial. This applies only to offenses committed on or after 24 June 2014.

b. Units attached to ships. The commanding officer or officer in charge of a unit attached to a ship of the Navy for duty therein will, while the unit is embarked therein, refrain from exercising any power he or she might possess to convene and order trial by special or summary courts-martial, referring all such matters to the commanding officer of the ship for disposition. The foregoing policy does not apply to Military Sealift Command vessels operating under a master, nor is it applicable when an organized unit is embarked for transportation only. When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit will retain the authority possessed over such unit before embarkation, including disciplinary authority. Under ordinary

circumstances, the internal control and discipline of a unit embarked for transportation only will be left to the commanding officer of that unit. Nothing in the foregoing will be construed as impairing the paramount authority of the commanding officer of the ship, including disciplinary authority, over all personnel of the naval service embarked. In the case of units embarked for transportation only, however, the commanding officer of the ship should take disciplinary action under the UCMJ over members of such embarked units only in unusual cases concerning incidents occurring aboard the ship.

0123 Exercise of Courts-Martial Jurisdiction Over Retired, Reserve, Fleet Reserve, Fleet Marine Corps Reserve, and Discharged Personnel

a. Policy. In all cases in which jurisdiction is dependent upon the provisions of Article 2(a)(4), (5), or (6) and Article 3(a), (b), or (c), UCMJ, the following policies apply:

(1) Authority to refer charges against a retired member of the regular component of the Navy or Marine Corps not on active duty but entitled to receive pay, a retired member of the Navy Reserve or Marine Corps Reserve not on active duty who is receiving hospitalization from an armed force, or a member of the Fleet Reserve or Fleet Marine Corps Reserve not on active duty is withheld. No such cases will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy. This rule applies to offenses allegedly committed by such persons regardless of whether they were on active duty either at the time of the alleged offense or at the time they were accused or suspected of the offense. Members described in subsection 0123(a) may not be recalled to active duty solely for trial by court-martial. Such members are amenable to court-martial jurisdiction at all times and, if referred to court-martial, can be directed to appear without being recalled.

(2) No case in which jurisdiction is based on Article 3(a), (b) or (c), UCMJ, will be referred for trial by court-martial without prior authorization of the Secretary of the Navy.

(3) If authorization is withheld under subsection 0123(a)(1), the JAG, via OJAG (Code 20), will indicate alternative action or actions, if any, to the convening authority.

b. Request for authorization. Requests will be addressed to the Secretary of the Navy, via OJAG (Code 20) or HQMC (JA), as appropriate. Requests for authorization in cases involving this section should contain the following information:

(1) Draft charge(s) and specification(s) (do not prefer charges until authorization has been received from the Secretary of the Navy; care should be exercised to avoid triggering the speedy trial provisions of R.C.M. 707);

(2) A summary of the evidence in the case;

(3) The facts showing amenability of the accused or suspected person to trial by court-martial;

(4) Whether civilian jurisdiction exists, and if so, whether the civilian jurisdiction has declined to prosecute the case at the time of the request; and in applicable cases, the victim's preference as to jurisdiction (see subsection 0128(a));

(5) The military status of the accused or suspected person at present and at the time of the alleged offense; and

(6) The reasons that make trial by court-martial advisable.

c. Apprehension and restraint. Specific authorization of the Secretary of the Navy is required before apprehension, arrest, or pretrial confinement of any person who is amenable to trial by court-martial solely by reason of the provisions of Article 2(a)(4), (5), or (6) or Article 3(a), (b), or (c), UCMJ. No specific authorization is required for post-trial confinement after the Secretary of the Navy approves the request to exercise jurisdiction.

d. Jurisdiction over Reserve Component personnel under Article 3(d), UCMJ. A member of a Reserve Component subject to the UCMJ is not, by virtue of termination of a period of active duty or inactive-duty training, relieved from amenability to jurisdiction of the UCMJ for an offense against the UCMJ committed during such period of active duty or inactive-duty training.

e. Order to active duty in the case of Reserve Component personnel not on active duty.

(1) When jurisdiction is based upon Article 3(d), UCMJ, members of a Reserve Component not on active duty may be ordered to active duty involuntarily only by an officer described in subsection 0123(e)(2), below, for the purpose of a preliminary hearing under Article 32, UCMJ, trial by court-martial, or imposition of nonjudicial punishment for offenses committed while subject to the UCMJ. Subsection 0123(e) pertains without regard to any change between active and reserve service or within different categories of reserve service subsequent to commission of the offense.

(2) Requests for an order to active duty under subsection 0123(e) may be submitted only by officers empowered to convene courts-martial. Funding for these orders should be tasked to the appropriation used on the original set of orders during which the event necessitating recall occurred (see section 0145). Decisions regarding funding for recall of a Service member do not confer any procedural or substantive rights upon the member.

(3) Requests for an order to active duty under subsection 0123(e) will contain the following information:

(a) Draft charge(s) and specification(s) (do not prefer charges until authorization has been received from the Secretary of the Navy; care should be exercised to avoid triggering the speedy trial provisions of R.C.M. 707);

(b) A summary of evidence in the case;

(c) Facts showing amenability to trial by court-martial or imposition of nonjudicial punishment;

(d) Whether civilian jurisdiction exists, whether the civilian jurisdiction has declined to prosecute the case at that time, and, in applicable cases, the victim's preference as to jurisdiction (see subsection 0128(a));

(e) The military status, unit to which assigned and its location, and home address of the accused at the time of submission and at the time of commission of the alleged offenses;

(f) Where the accused should be ordered to active duty and why the order to active duty and trial by court-martial is advisable;

(g) The appropriation used on the original set of orders during which the event necessitating recall occurred; and

(h) For Navy personnel, confirmation that Commander, Navy Reserve Forces Command has been informed of the intention to bring a Navy reservist on active duty for disciplinary purposes.

(4) The request should be addressed to a general courts-martial convening authority (GCMCA) in the chain of command of the accused at the time of its submission, as designated in section 0120, and who is superior in grade to the submitting officer. But if confinement authority is requested, address the request to the Secretary of the Navy. See sections 0127 and 0134.

(5) Unless the order to active duty was approved by the Secretary of the Navy, the accused may not be sentenced to confinement or be required to serve a punishment of any restraint on liberty during a period other than a period of inactive duty training or active duty.

f. Release from active duty of Reserve Component personnel described in subsection 0123(e).

(1) Reserve Component personnel ordered to active duty without Secretarial approval must be released from active duty no later than the close of business one full work day after completion of disciplinary proceedings, i.e., announcement of the sentence by a court-martial or imposition of punishment under Article 15, UCMJ.

(2) Reserve Component personnel ordered to active duty with Secretarial approval may be retained on active duty to serve a punishment of confinement or other restraint on liberty, the execution of which is not precluded by the terms of a plea agreement. Unless retention on active duty is authorized by other authority, such persons must be released from active duty no later than the close of business one full work day after completion of disciplinary proceedings or service of the sentence to confinement or other restraint on liberty. See section 0134 and R.C.M. 202(c).

g. Tolling statute of limitations. The foregoing rules will not impede the preferral and processing of sworn charges under

Article 30, UCMJ, when such preferral and processing are necessary to prevent barring of trial by the statute of limitations. See Article 43, UCMJ.

0124 Exercise of Courts-Martial Jurisdiction in Cases Tried in Domestic or Foreign Criminal Courts

a. Policy. When a person in the naval service has been tried in a state or foreign court, whether convicted or acquitted, or when a member's case has been "diverted" out of the regular criminal process for a probationary period, or has been adjudicated by juvenile court authorities, military charges will not be referred to a court-martial or be the subject of nonjudicial punishment proceedings for the same act or acts, except in those unusual cases where trial by court-martial or the imposition of nonjudicial punishment is considered essential in the interests of justice, discipline, and proper administration within the naval service. Such unusual cases will not be referred to trial by court-martial or be the subject of nonjudicial punishment proceedings without specific permission as provided below. This policy is based on comity between the Federal Government and state or foreign governments and is not intended to confer additional rights upon the accused.

b. Criteria. Referral for trial or the imposition of nonjudicial punishment within the terms of this policy will be limited to cases that meet one or more of the following criteria:

(1) Cases in which punishment by civil authorities consists solely of probation, and local practice, or the actual terms of probation, do not provide for rigid supervision of probationers, or the military duties of the probationer make supervision impractical.

(2) Cases in which civilian proceedings concluded without conviction for any reason other than acquittal after trial on the merits.

(3) Other cases in which the interests of justice and discipline are considered to require further action under the UCMJ (e.g., where conduct leading to trial before a state or foreign court has reflected adversely upon the naval service or when a particular and unique military interest was not or could not be adequately vindicated in the civilian tribunal).

c. Procedure.

(1) General, special, summary courts-martial, and nonjudicial punishment proceedings. Permission of the GCMCA is not required for courts-martial proceedings if the civilian adjudication or diversion occurs after the military charges have been referred to a court-martial. No case described in subsection 0124(b), however, will be referred for trial by court-martial or be the subject of nonjudicial punishment proceedings without the prior permission of the first GCMCA over the member. Grants of such permission will be reported by the GCMCA concerned by means of a letter addressed to OJAG (Code 20) for Navy cases or HQMC (JA) for Marine cases. The GCMCA will describe the offense alleged, the action taken by civil authorities, and the circumstances bringing the case within one or more of the exceptions to the general policy described in subsection 0124(b).

(2) Reporting requirements. The provisions of this section do not affect the reporting requirements or other actions required under other regulations in cases of convictions of service personnel by domestic or foreign courts and adjudications by juvenile court authorities.

d. Limitations. Personnel who have been tried by courts that derive their authority from the United States Government, such as U.S. District Courts, will not be tried by court-martial or be subjected to nonjudicial punishment for the same act or acts.

0125 Exercise of Courts-Martial Jurisdiction Over Major Federal Offenses

a. Background. The federal civil authorities have concurrent jurisdiction with military authorities over offenses committed by military personnel that violate both federal criminal law and the UCMJ. The Attorney General and the Secretary of Defense have agreed on guidelines for determining which authorities will have jurisdiction to investigate and prosecute major crimes in particular cases (see DoDI 5525.07). The administration of this program on behalf of the naval service has been assigned to NCIS. Guidelines are set forth in SECNAVINST 5430.107 (series).

b. Limitation on courts-martial jurisdiction. In order to ensure that actions under the UCMJ do not preclude appropriate

action by civilian federal authorities in cases likely to be prosecuted in U.S. District Courts, convening authorities will ensure that appropriate consultation under the Memorandum of Understanding between the DoD and the Department of Justice has taken place before issuance of a grant of immunity, approval of a plea agreement, or trial by court-martial (see DoDI 5525.07). Accordingly, commanding officers receiving information indicating that naval personnel have committed a major federal offense, including any major criminal offense as defined in SECNAVINST 5430.107 (series) committed on a naval installation, will refrain from taking action with a view to trial by court-martial, but will refer the matter to the senior resident agent of the cognizant NCIS office for a determination in accordance with SECNAVINST 5430.107 (series). In the event that the investigation of any such case is referred to a federal civilian investigative agency, the cognizant U.S. Attorney, subject to the exceptions set forth below, normally will conduct any resulting prosecution.

c. Exceptions.

(1) Where it appears that naval personnel have committed several offenses, including both major federal offenses and serious, but purely military offenses, naval authorities are authorized to investigate all of the suspected military offenses, and such of the civil offenses as may be practicable, and to retain the accused for prosecution. Any such action will be reported immediately to OJAG (Code 20) or HQMC (JA), as appropriate, and to the cognizant GCMCA.

(2) When, following referral of a case to a civilian federal investigative agency for investigation, the cognizant U.S. Attorney declines prosecution, the investigation normally will be resumed by NCIS and the command may then commence court-martial proceedings as soon as the circumstances warrant.

(3) If, while investigation by a federal civilian investigative agency is pending, existing conditions require immediate prosecution by naval authorities, the GCMCA will contact the cognizant U.S. Attorney to seek approval for trial by court-martial. If agreement cannot be reached at the local level, the matter will be referred to OJAG (Code 20) or HQMC (JA), as appropriate, for disposition.

d. Related matters. See Chapter Six concerning the interview of naval personnel by federal investigative agencies and the delivery of personnel to federal authorities. See sections 0126, 0138, and 0139 regarding grants of immunity in cases involving civilian witnesses or national security.

0126 Determination of Status of Case as National Security Case, Investigation of Suspected National Security Cases, and Exercise of Jurisdiction in Such Cases

a. National security case defined. "National security" is defined in M.R.E. 505(b)(2) and further defined at R.C.M. 305(h)(2)(B). A case will be defined and designated as a national security case if, in the opinion of one of the National Security Case Disposition Authorities listed in subsection 0126(f) below, it is a case that, to any serious degree, involves the compromise of a military or defense advantage over any foreign nation or terrorist group; involves an allegation of willful compromise of classified information; affects our military or defense capability to successfully resist hostile or destructive action, overt or covert; or involves an act of terrorism. Such cases include an attempt or conspiracy to commit such offenses, as well as conduct aiding and abetting in the commission of such offenses or unlawfully assisting thereafter. Offenses chargeable in national security cases may include, but are not limited to, UCMJ Articles 81, 92 (for violations of SECNAVINST 5510.36 and U.S. Navy Regulations), 103, 103a, 103b, 107, 131, and 134; and provisions of the U.S. Code, such as 18 U.S.C. §§ 641, 792-93, 798, 1001, 1030, 2151-56, 2331-39B, 2381-85, 2388-90; 42 U.S.C. §§ 2272-77; and 50 U.S.C. §§ 783, 3121.

b. Case not designated as a national security case. Though a case may involve matters or materials relating to the security of the United States, it does not need to be designated a national security case if, in the opinion of the cognizant National Security Case Disposition Authority, the case does not to a serious degree: involve compromise of a military or defense advantage over a foreign nation or terrorist group; involve the willful compromise of classified information; substantially affect our military or defense capability to resist hostile or destructive action successfully, covertly or overtly; or constitute an act of terrorism.

c. Referral to the Naval Criminal Investigative Service. Within the DON, NCIS is responsible for the investigation of

actual, suspected, or alleged national security incidents including, but not limited to, those offenses enumerated in subsection 0126(a) above. Commanders and commanding officers will immediately refer any such incident to NCIS for investigation. SECNAVINST 5430.107 (series) and SECNAVINST 5510.36 (series) also pertain. Upon the initiation of any NCIS national security investigation, NCIS will notify the appropriate Department of Justice investigative agency in compliance with DoDD 5525.7 and 50 U.S.C. § 3381(e).

d. Preliminary inquiry. Concurrent with NCIS notification and consistent with the NCIS investigative prerogative, the commander or commanding officer will initiate a preliminary inquiry in accordance with SECNAVINST 5510.36 (series) and direct the inquiry and required reports be completed within 72 hours. These required 72-hour reports will not be delayed awaiting a complete assessment of the potential compromise and will be viewed as a continuing duty to report as details of possible lost or compromised information are received by the commander or commanding officer. In addition, the commander or commanding officer will notify Deputy Under Secretary of the Navy for Policy (DUSN(P)) in all cases involving sensitive compartmented information or intelligence information.

e. Notice to the JAG, SJA to the CMC, and National Security Case Disposition Authority. If any NCIS investigation or preliminary inquiry described in subsection 0126(c) or 0126(d) indicates that the case may meet the criteria of subsection 0126(a), or that a suspect may have committed any of the offenses enumerated in subsection 0126(a), whether or not such violation might also be chargeable under the UCMJ, the commander or commanding officer and NCIS will, within the 72 hours, notify OJAG (Code 30) and, in Marine cases, will also notify HQMC (JA). Within the same 72 hours, the commanding officer will also notify the appropriate National Security Case Disposition Authority listed in subsection 0126(f). In the event more than one National Security Case Disposition Authority may have cognizance, coordinate with the next National Security Case Disposition Authority in the administrative chain of command.

f. Limitations on convening courts-martial. Commands authorized under R.C.M. 306(a) and 401(a) to initially dispose of cases involving national security, as defined in subsection 0126(a), above, are directed to forward such cases to the appropriate National Security Case Disposition Authority in the

administrative chain of command listed below for disposition unless directed otherwise by competent authority. This provision is not intended to withdraw or limit the actual jurisdictional authority of commands identified under R.C.M. 306(a) and 401(a). This provision is promulgated for the exclusive benefit of the government and does not confer any benefit upon an accused. It will not be construed to support a jurisdictional challenge to a court-martial convened by an officer not listed below, or to afford an accused in such a court-martial any other relief. All officers otherwise empowered to dispose of offenses who receive reports or charges of offenses involving national security will, after taking action prescribed in subsections 0126(c)-(e), forward the completed investigation of such reports or charges for disposition directly and without delay to an appropriate National Security Case Disposition Authority listed below. Second-echelon commanders who report to the Chief of Naval Operations in the administrative chain of command who are not themselves National Security Case Disposition Authorities will forward such reports to Commander, U.S. Fleet Forces Command. Marine Corps commanders who report to the Commandant of the Marine Corps in the administrative chain of command who are not themselves National Security Case Disposition Authorities will forward such reports to the Commanding General, Marine Corps Combat Development Command. Those National Security Case Disposition Authorities listed below may dispose of such reports or charges by any means authorized under R.C.M. 306(c) or 401(c) to include returning the case for disposition to any convening authority as they may designate. The following officers are designated National Security Case Disposition Authorities:

- (1) Chief of Naval Operations;
- (2) Commandant of the Marine Corps;
- (3) Vice Chief of Naval Operations;
- (4) Assistant Commandant of the Marine Corps;
- (5) Commanders, U.S. Fleet Forces Command, U.S. Pacific Fleet, U.S. Naval Forces Europe, U.S. Naval Forces Central Command;
- (6) Commanders, U.S. Marine Corps Forces Command, U.S. Marine Corps Forces Pacific, U.S. Marine Corps Forces Central Command, U.S. Marine Corps Forces Reserve;

- (7) Commanders, U.S. Sixth and Seventh Fleets;
- (8) Commanders, Naval Air Force, Submarine, and Surface Forces;
- (9) Commander, Naval Education and Training Command;
- (10) Commander, Naval Special Warfare Command;
- (11) Commanding General, Marine Corps Combat Development Command;
- (12) Commanding Generals, Marine Expeditionary Forces; and
- (13) Commander, Marine Corps Installations Command.

See section 0137 regarding plea agreements in national security cases. See section 0162a regarding remission and suspension of sentences in national security cases.

g. Courts-martial involving classified information. See SECNAVINST 5510.36 (series), M.R.E. 505 and R.C.M. 806 for procedures relating to trial of cases involving classified information.

h. Reporting requirements by responsible command. Regardless of national security status and in addition to the 72-hour reporting requirement described above or other reporting requirements, in all cases where a possible violation of criminal law involves classified information, whether or not designated a national security case, the responsible command, convening authority, or staff judge advocate will notify OJAG (Code 30) and HQMC (JA):

(1) When criminal prosecution is contemplated. However, OJAG (Code 30) or HQMC (JA) notification does not take precedence over, or substitute for, NCIS notification required by subsection 0126;

(2) Whenever a major development occurs in the case or investigation (e.g., designation as a national security case, apprehension, involvement of other federal agencies, etc.); or

(3) At least once every 30 days, whether or not there has been a major development, unless the case is being reported by the National Security Case Disposition Authority. Include DUSN(P) in the notification for all cases involving sensitive compartmented information or intelligence information.

i. Reporting requirements by National Security Case Disposition Authority. Once informed of a potential national security case, the National Security Case Disposition Authority will report to CNO WASHINGTON DC/N09/DNS/N09N/DUSN(P)/N09D and NAVY JAG WASHINGTON DC/30 on the status of the case every 15 days via SITREP until it is determined that the case is not a national security case or until it is resolved by court conviction, acquittal, or other final disposition. In Marine Corps cases, a copy should also be provided to HQMC (JA). Include DUSN(P) in the report for all cases involving sensitive compartmented information or intelligence information. Each report will include: the suspect's name and command; date(s) of offense(s) and discovery of the offense(s); date NCIS began investigation; clear description of the nature and sensitivity of the information involved; suspected offense(s); date disposition authority took cognizance; date of preferral and referral of charges, if any; date pretrial confinement or other restraint imposed, if any; a summary of the plan of action and milestones to disposition; disposition authority points of contact; and the official responsible for the next step, as of the time of the report.

j. Plea agreements. A National Security Case Disposition Authority who convenes a national security case is authorized to enter into a plea agreement.

0127 Pretrial Restraint of Accused

a. Custody and restraint of accused before or during trial. See R.C.M. 304, 305, 804(c)(2)(discussion) and 804(e)(3).

b. Counsel. Before the initial review of the confinement, counsel will be provided, if requested, to an accused in pretrial confinement. The accused has no right, however, to an individual military counsel.

c. Preliminary probable cause review. Within 48 hours of the imposition of pretrial confinement under military control, a neutral and detached official must review the adequacy of the

probable cause to believe that the confinee has committed an offense and of the necessity for pretrial confinement.

(1) This review does not require a hearing.

(2) This determination need not be in writing; however, it is highly recommended that a written record be maintained.

(3) The reviewing official must be a neutral and detached officer. The official may be the confinee's commanding officer, but this is not required. Additionally, nothing in this section prohibits the commander who initially orders an accused into pretrial confinement from conducting the 48-hour probable cause review.

(4) The requirement for probable cause review is met, and therefore a separate determination of probable cause is not required, in the following circumstances:

(a) The commanding officer, complying with R.C.M. 305(d), personally orders the accused into confinement;

(b) The 72-hour letter report, as required by R.C.M. 305(h)(2), is signed by the commanding officer within 48 hours of the imposition of confinement; or

(c) The seven-day review of pretrial confinement, as required by R.C.M. 305(i) and conducted by a neutral and detached initial reviewing officer, occurs within 48 hours of the imposition of confinement.

d. Initial review officer. All general courts-martial convening authorities have authority to designate one or more officers of the grade of O-4 or higher to act as the initial review officer for purposes of R.C.M. 305(i)(2). For hearings conducted on installations with a military confinement facility, the GCMCA exercising jurisdiction over the confinement facility will assign the initial review officers to specific cases. For hearings conducted on installations without a military confinement facility, the GCMCA of the confinee's parent command or Regional Commander (if applicable) will assign the initial review officer. The initial review officer must follow the procedures outlined in R.C.M. 305(i)(2)(A), to include permitting the victim to be reasonably heard. The initial review officer will forward a copy of the documents considered and memorandum

prepared under R.C.M. 305(i)(2)(D) in each case to the confinee's brig file and appropriate convening authority of the Service member confined. The officers designated as initial review officers should be neutral and detached, be selected for their maturity and experience, and have command experience if practicable. Nothing in this rule prohibits the use of an initial review officer designated by one GCMCA from reviewing the confinement of a Service member of another command or service.

e. Reserve Component personnel. Except as provided in section 0134, Reserve Component personnel on inactive-duty training will not be placed in pretrial confinement, unless ordered to active duty with the approval of the Secretary. See section 0123.

0128 Forwarding of Charges

a. Consideration of a victim's preference in prosecution venue for sex-related offenses.

(1) For alleged sex-related offenses committed in the United States, the victim of the sex-related offense will be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

(2) The cognizant commander will consider the victim's preference for jurisdiction, if available, before making an initial disposition decision. The victim's views are not binding on that commander.

(3) The cognizant commander should continue to consider the views of the victim as to jurisdiction until final disposition of the case.

(4) If the victim of an alleged sex-related offense expresses a preference for prosecution of the offense in a civilian court, the cognizant commander will ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution.

(5) The cognizant commander will ensure the victim is notified should the commander learn of any decision by the civilian authority to prosecute or not prosecute the offense in civilian court.

(6) For purposes of subsection 0128(a) above:

(a) A "sex-related offense" means any allegation of a violation of UCMJ Articles 120, 120a (for stalking offenses committed prior to 1 January 2019), 120b, 120c, 125 (for forcible sodomy offenses committed prior to 1 January 2019), 130 (for stalking offenses committed on or after 1 January 2019), or any attempt thereof under Article 80, UCMJ.

(b) "Victim" is defined as an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an alleged sex-related offense.

(c) "Cognizant Commander" means the Sexual Assault Initial Disposition Authority (SA-IDA), GCMCA, or any other appropriate commander taking action on the case.

b. Consideration of victim's views regarding disposition.

(1) A SA-IDA, in considering preferral of charges for sex-related offenses identified in subsection 0128(b)(2), will ensure alleged victims are notified of the opportunity to express their views on disposition of alleged offenses for consideration by the convening authority. The SA-IDA will consider the statements of victims, the effect of the offense on the victims, and any views expressed by the victims regarding disposition of the case. The SA-IDA, and any other convening authority, will document that the alleged victim's statements and views concerning disposition of any sex-related offense were in fact considered in the referral decision.

(2) For the purposes of subsections 0128(b) through (g), sex-related offenses are rape or sexual assault in violation of UCMJ Article 120(a) or (b); forcible sodomy in violation of Article 125 (for forcible sodomy offenses committed prior to 1 January 2019); or attempts to commit any of these offenses in violation of Article 80, UCMJ.

(3) For the purposes of subsections (b) through (g) of section 0128, unless otherwise noted, the term "victim" means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ.

c. Victim input on nature of offense. All alleged victims of a sex-related offense identified in subsection 0128(b)(2) and Article 120b(a) and 120b(b), UCMJ, will be given the opportunity to state, either at the time of making an unrestricted report of the allegation or during the criminal investigation of the allegation, whether or not the victim believes that the offense alleged is a sex-related offense.

d. Sexual Assault Initial Disposition Authority. The authority to make the initial disposition of the sex-related offenses identified in subsection 0128(b)(2) is withheld to an officer in the grade of O-6 or above with special courts-martial convening authority. See MCO 5800.16 for Marine Corps definition of sex-related offenses.

e. Decisions not to refer charges for sex-related offenses.

(1) Staff judge advocate recommends referral. In any case in which a staff judge advocate, pursuant to Article 34, recommends that any specification(s) of sex-related offenses identified in subsection 0128(b)(2) above be referred for trial by court-martial and the convening authority does not refer to court-martial all of those specification(s) recommended by the staff judge advocate for referral, the convening authority will forward those specifications not referred along with a copy of the case file, as detailed in subsection 0128(e)(5) below, to the Secretary of the Navy for review. A specification recommended for referral by a staff judge advocate, but not referred by the convening authority, need not be forwarded if the specification was charged only as an alternative theory of proof to a specification that was referred to court-martial.

(2) Staff judge advocate does not recommend referral. In any case in which a staff judge advocate, pursuant to Article 34, recommends that specification(s) of a sex-related offense identified in subsection 0128(b)(2) above not be referred for trial by court-martial and the convening authority does not refer to court-martial the specification(s), the convening authority will forward the specification(s) not referred along with a copy of the case file, as detailed in subsection 0128(e)(5), below, to the next superior commander authorized to exercise general courts-martial convening authority for review. A specification not recommended for referral by a staff judge advocate, and not referred by the convening authority, need not be forwarded if the specification was charged only as an

alternative theory of proof to a specification that was referred to court-martial.

(3) Requesting review by the Secretary of the Navy. In any case involving a sex-related offense identified in subsection 0128(b)(2) above which has been reviewed by the next superior commander and a sex-related offense is not referred to a court-martial, the detailed trial counsel may request the Chief Prosecutor, as defined by service regulation, seek Secretary of the Navy review of the case file. The Chief Prosecutor will seek Secretary of the Navy review of the case file if he or she determines that the case has prosecutorial merit.

(4) Case file for review. When forwarding a case file for review under subsection 0128(e), the file will contain copies of the following:

(a) All charges and specifications related to the case, whether or not subject to review under this section;

(b) Reports of investigations related to the specifications submitted for review, including those prepared by NCIS or another investigative agency and, if applicable, the report prepared pursuant to Article 32, UCMJ;

(c) Certification that the alleged victim was given the opportunity to state whether or not the victim believes that the offense alleged is a sex-related offense;

(d) Certification that the alleged victim was notified of the opportunity to express his or her views regarding disposition of the alleged offense for consideration by the convening authority;

(e) All statements made by the alleged victim to NCIS or another investigative agency, the chain of command, and the convening authority regarding the victim's views on and preference for disposition of the alleged offense;

(f) The advice of the staff judge advocate provided pursuant to Article 34;

(g) A written statement explaining the reasons for the convening authority's decision not to refer the specification(s) subject to this review; and

(h) A written statement asserting that the alleged victim was informed of the convening authority's decision to forward the specification(s) subject to this review.

(5) Action on specifications under review. Before forwarding specification(s) for review by higher authority pursuant to this provision, the convening authority will dismiss without prejudice those specification(s) being forwarded unless there is a substantial likelihood that the statute of limitations for those specification(s) will run before the higher authority has an opportunity for review.

(a) In no case will any higher authority direct a subordinate commander to take any specific action to dispose of specification(s) subject to review. See R.C.M. 104.

(b) The higher authority may take any action discussed in R.C.M. 306.

(6) Notification to victim. Upon completion of any review by higher authority under this provision, the victim of the alleged sex-related offense will be notified by higher authority of the results of the review conducted.

(7) As used in subsection 0128(e), "victim" means a person who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification being considered and is named in one of the specifications.

f. Forwarding of charges by an officer in a Navy chain of command.

(1) General courts-martial cases. When a commanding officer, in taking action on charges, deems trial by general court-martial to be appropriate but is not empowered to convene a general courts-martial or finds the convening of such court-martial impracticable, the charges and necessary allied papers will, in the absence of specific direction to the contrary by a GCMCA superior in the chain of command, be forwarded to the Region Commander or to the subordinate commander authorized to

convene general courts-martial and designated by the Region Commander for this purpose. For deployable units, the Region Commander or designated subordinate commander for this purpose is the Region Commander or designated subordinate commander most accessible to the deployable unit at the time of forwarding of the charges. See section 0129 for additional provisions in cases in which the forwarding officer is an accuser.

(2) Special and summary courts-martial cases. When a commanding officer or officer in charge, in taking action on charges, deems trial by special or summary courts-martial to be appropriate but is not empowered to convene such courts-martial, the charges and necessary allied papers will be forwarded to the superior in the chain of command authorized to convene the type of courts-martial deemed appropriate. The first GCMCA in the chain of command may, however, on the basis of a local arrangement with the Region Commander or the designated subordinate commander, direct that such cases be forwarded to the Region Commander or the subordinate commander authorized to convene the type of courts-martial deemed appropriate and designated by the Region Commander for this purpose. For deployable units, the Region Commander or designated subordinate commander for this purpose is the Region Commander or designated subordinate commander most accessible to the deployable unit at the time of the forwarding of the charges. See section 0129 for additional provisions in cases in which the forwarding officer is an accuser. Subject to the terms of the local arrangement, forwarding to the Region Commander or designated subordinate commander may also be resorted to even though the immediate or superior commanding officer of the accused is authorized to convene the type of courts-martial deemed appropriate but finds such action impracticable.

g. Forwarding of charges by an officer in a Marine Corps chain of command. For sex-related offenses identified in subsection 0128(b)(2), officers in a Marine Corps chain of command will follow the procedures laid out in MCO 5800.16. In other cases, when a commanding officer or officer in charge, in taking action on charges, deems trial by general, special, or summary courts-martial to be appropriate but is not empowered to convene courts-martial of that type, the officer will, in the absence of specific direction to the contrary by a GCMCA superior in the chain of command to such officer, forward the charges and necessary allied papers through the chain of command to an officer exercising the type of courts-martial jurisdiction deemed

appropriate. See R.C.M. 401(c)(2); see also section 0129 for additional provisions in cases in which the forwarding officer is an accuser.

0129 Superior Competent Authority Defined

a. Accuser in a Navy chain of command. Whenever a commanding officer is an accuser, as defined in Article 1, UCMJ, the "superior competent authority" for purposes of Articles 22(b) and 23(b) is the Region Commander or the subordinate commander authorized to convene general or special courts-martial, as appropriate, and designated by the Region Commander for this purpose, in the absence of specific direction to the contrary by a GCMCA superior in the commanding officer's chain of command. For deployable units, the Region Commander or designated subordinate commander for this purpose is the Region Commander or designated subordinate commander most accessible to the deployable unit at the time of forwarding of the charges. When the cognizant Region Commander or designated subordinate commander is not superior in rank or command to the accuser, or when the accuser is a Region Commander or designated subordinate commander, or if it is otherwise impossible or impracticable to forward the charges as specified above, they will be forwarded to any superior officer exercising the appropriate courts-martial jurisdiction. See R.C.M. 401 and 601(c).

b. Accuser in a Marine Corps chain of command. Whenever a commanding officer comes within the purview of Articles 22(b) and 23(b), UCMJ, the "superior competent authority" as used in those Articles is defined as any superior officer in the chain of command authorized to convene a special or general courts-martial, as appropriate. If such an officer is not reasonably available, or if it is otherwise impossible or impracticable to so forward the charges, they will be forwarded to any superior officer exercising the appropriate courts-martial jurisdiction. See R.C.M. 401 and 601(c).

0130 Personnel of Courts-Martial and Victims' Counsel

a. Military judges.

(1) Detailing. Military judges may be detailed for trial of general and special courts-martial by the Chief Judge, Navy-Marine Corps Trial Judiciary; the circuit military judge; or the circuit military judge's designee.

(2) Qualifications and additional duties. The qualifications for military judges and additional duties to which military judges may be assigned are set forth in JAGINST 5813.4 (series).

(3) Oaths. A military judge, certified in accordance with Article 26(b), UCMJ, may take a one-time oath to perform his or her duties faithfully and impartially in all cases to which detailed. The oath may be taken at any time and may be administered by any officer authorized by Article 136, UCMJ, and section 0902 of this manual to administer oaths. Once such an oath is taken, the military judge need not be re-sworn at any court-martial to which subsequently detailed.

b. Counsel.

(1) Detailing.

(a) Judge advocates assigned to Navy commands may be detailed as trial counsel, defense counsel, or victims' counsel by the judge advocate's commanding officer, officer in charge, or other properly designated authority.

(b) Judge advocates assigned to Marine commands may be detailed as trial counsel, defense counsel, or victims' counsel pursuant to MCO 5800.16.

(c) See section 0131 for procedures relating to requests for individual military counsel.

(2) Oaths. Military counsel, certified in accordance with Article 27(b), UCMJ, may be given a one-time oath. Such oath will customarily be administered when military counsel is certified, though the oath may be given at any time by any officer authorized to administer oaths by Article 136, UCMJ, and section 0902 of this manual. An officer certified under Article 27(b) who has taken such an oath need not be re-sworn when detailed as counsel or serving as individual military counsel in any subsequent court-martial.

(3) Military counsel not sworn and certified in accordance with subsection 0130(b)(2) and all civilian counsel must be sworn in each case. Counsel who have taken one-time oaths administered by the Army, Air Force, or Coast Guard need

not again be sworn in courts-martial convened in the naval service. The oaths used for counsel not administered a one-time oath will be those prescribed in R.C.M. 807(b)(2)(discussion).

(4) The following oath should be used in administering a one-time oath to military counsel:

I, _____, do swear (or affirm) that I will faithfully perform the duties of counsel in any court-martial to which I am detailed as counsel, or in which I participate as individual military counsel. [So help me God.]

c. Members.

(1) Detailing. See R.C.M. 503(a).

(2) Oaths. Court members may be given one oath for all cases that are referred to the court-martial in accordance with the convening order which detailed them as members. In the event the convening order is amended, a new member may be sworn when he or she arrives. This oath will be administered by any officer authorized by Article 136, UCMJ, and section 0902 of this manual to administer oaths. When court members are not sworn at trial, the fact that they have previously been sworn will be recorded in the transcript or record of trial. The oaths used for court members will be those prescribed in R.C.M. 807(b)(2)(discussion).

d. Reporters, interpreters, escorts, bailiffs, clerks, and guards.

(1) Qualifications of court reporters. At minimum, court reporters must be proficient in using courtroom equipment (hardware and software) to make a primary and alternate audio record of each judicial proceeding and in preparing a transcript of the proceeding. Each judicial proceeding will have an assigned court reporter that is responsible for certifying the record.

(2) Appointment of reporters and interpreters.

(a) Reporters. In each case before a general or special courts-martial or before a military commission, a court reporter or reporters will be detailed by competent authority. Detailed reporters must be proficient in recording the

proceedings of and the testimony taken before the court or commission. A reporter may be detailed by the convening authority of a summary court-martial, by the officer who orders a preliminary hearing under Article 32, UCMJ, or by the officer who directs the taking of a deposition. The reporter will prepare a verbatim transcript to accompany the record of trial in all cases except for complete acquittals, in which case a summarized transcript will be prepared. The reporter will preserve the complete mechanical or voice record, or digital record of the proceedings as provided in section 0150. Additional clerical assistants may be detailed when necessary. See R.C.M. 501(c).

(b) Interpreters. In each case before a court-martial or military commission, in each preliminary hearing conducted under Article 32, UCMJ, and in each instance of the taking of a deposition, the convening authority or the officer directing such proceeding will appoint, when necessary, a properly qualified and sworn interpreter for the court, commission, investigation, or officer taking the deposition.

(c) Manner of appointment. Appointment of reporters and interpreters by the convening authority or authority directing the proceedings may be effected personally or, at his or her discretion, by any other designated person. Such appointment may be oral or in writing.

(3) Oaths.

(a) Reporters. Any court reporter, military or civilian, may be given a one-time oath. When the court reporter is not sworn during the trial, the fact that he or she has been previously sworn will be noted by the trial counsel and recorded in the transcript or record of trial. Reporters will be sworn as provided in R.C.M. 807(b)(2)(discussion).

(b) Interpreters. Interpreters will be sworn by the trial counsel as provided in R.C.M. 807(b)(2)(discussion).

(4) Disqualification. Reporters, interpreters, escorts, bailiffs, clerks, and guards will be disqualified as provided in R.C.M. 502(e)(2).

(5) Duties. The duties of reporters, interpreters, escorts, bailiffs, clerks, and guards will be as prescribed in R.C.M. 502(e)(3), the Uniform Rules of Practice for U.S. Navy-

Marine Corps Trial Judiciary, individual circuit rules, and by the military judge or trial counsel. A bailiff should be present at every court-martial unless his or her presence is excused by the military judge.

(6) Source and expenses of court reporters and interpreters. Whenever possible, reporters, interpreters, and clerical assistants will be detailed from either naval or civilian personnel serving under, or at the disposal of the convening authority or officer directing the proceeding, or placed at his or her disposal by another officer or by other federal agencies. When necessary, the convening authority or officer directing the proceeding may employ, or authorize the employment of, a reporter or interpreter, at the prevailing wage scale, for duty with a general or special courts-martial, a military commission, a preliminary hearing under Article 32, UCMJ, or at the taking of a deposition. No expense to the government will be incurred by the employment of a reporter, interpreter, or other person to assist in a court-martial, military commission, Article 32 preliminary hearing, or the taking of a deposition, except when authorized by the convening authority or officer directing the proceeding. When interpreters are not available locally, the convening authority or officer directing the proceeding may communicate with Navy Personnel Command or Commandant of the Marine Corps, as appropriate, requesting that such assistance be provided or authorized.

e. Article 32 Preliminary Hearing Officers in sexual assault cases. The preliminary hearing officer in an Article 32 preliminary hearing involving sex-related offenses will be a judge advocate, qualified and certified in accordance with Article 27(b), UCMJ, and sworn in accordance with Article 42(a), UCMJ. For the purposes of subsection 0130(e), "sex-related offenses" are violations of Articles 120, 120b, 120c, 125 (forcible sodomy for offenses committed prior to 1 January 2019), UCMJ, or attempts to commit any of these offenses in violation of Article 80, UCMJ.

f. Oaths of courts-martial personnel. Where no form of oath is specified in this section, the oaths set out in R.C.M. 807(b)(2)(discussion) will be used.

g. Rules of practice before courts-martial. All naval service court-martial participants, including counsel, court reporters, interpreters, clerks of court, and bailiffs, military

or civilian, will be governed in their courtroom conduct and in their relationships with each other by the Uniform Rules of Practice for U.S. Navy-Marine Corps Trial Judiciary.

0131 Standards for Determining Availability of Requested Individual Military Counsel

a. General. Article 38(b)(3)(B), UCMJ, provides that an accused has the right to be represented before a general or special courts-martial or at a preliminary hearing under Article 32, UCMJ, by military counsel of his or her own selection if that counsel is "reasonably available." Counsel serving in the Army, Air Force, or Coast Guard, are reasonably available to represent a Navy or Marine Corps accused if not otherwise unavailable within the meaning of R.C.M. 506 or under regulations of the Secretary concerned for the Department in which such counsel are members. Because an accused has the right to civilian counsel in addition to detailed counsel or individual military counsel, retention of, or representation by, civilian counsel does not extinguish the right to representation by individual military counsel. It is the policy of the Secretary of the Navy that the right to individual military counsel will be administered so as not to interfere with orderly and efficient trials by court-martial.

b. Definitions.

(1) Proceeding. As used in this section, "proceeding" means a trial-level proceeding by general or special courts-martial or a preliminary hearing under Article 32, UCMJ.

(2) Determining Authority.

(a) Judge advocates assigned to Navy commands. For counsel assigned to a Region Legal Service Office or Defense Service Office, the determining authority of the requested counsel is defined as the commanding officer of the cognizant office or in cases of conflict, the respective Chiefs of Staff as defined in the Naval Legal Service Command Manual; for counsel assigned to the Naval Civil Law Support Activity, the Commanding Officer, Naval Civil Law Support Activity; for counsel assigned to the Navy-Marine Corps Appellate Review Activity, the Officer in charge, Navy-Marine Corps Appellate Review Activity; for all other counsel assigned to OJAG, the Assistant Judge Advocate General for Military Justice (Code 02). For all other Navy

counsel, the determining authority is defined as the commanding officer or head of the organization, activity, or agency with which requested military counsel will be serving at the time of the proceeding. The detailing authority is not disqualified from acting as the determining authority under this rule solely because the detailing authority is also the convening authority.

(b) Judge advocates assigned to Marine commands. The determining authority for judge advocates assigned to Marine commands has been established by the SJA to the CMC in MCO 5800.16.

(3) Attorney-client relationship. For purposes of this section, an attorney-client relationship exists between the accused and requested counsel when counsel and the accused have had a privileged conversation relating to a charge pending before the proceeding, and counsel has engaged in active pretrial preparation and strategy with regard to that charge. A counsel will be deemed to have engaged in active pretrial preparation and strategy if that counsel has taken action on the case that materially limits the range of options available to the accused at the proceeding. But see JAGINST 5803.1 (series) prohibiting a counsel from establishing an attorney-client relationship until properly detailed, assigned, or otherwise authorized.

(a) Actions by counsel deemed to constitute active pretrial preparation and strategy that materially limit the range of options available to the accused include, but are not limited to: advising the accused to waive or assert a legal right, other than simply asserting the right to remain silent, where the accused has followed such advice by waiving or asserting that right; representing the accused at a preliminary hearing under Article 32, UCMJ, dealing with the same subject matter as any charge pending before the proceeding; submitting evidence for testing or analysis; advising the accused to submit to a polygraph examination conducted by a government agency where the accused has followed such advice by so submitting; offering a plea agreement on behalf of the accused; submitting a request for an administrative discharge in lieu of trial on behalf of the accused; or interviewing witnesses relative to any charge pending before the proceeding.

(b) Actions that, in and of themselves, will not be deemed to constitute active pretrial preparation and strategy include, but are not limited to: discussing the legal and

factual issues in the case with the accused; discussing the legal and factual issues in the case with another person under the protection of the attorney-client privilege, such as another defense counsel; performing legal research dealing with the subject matter of the case; representing the accused in the review of pretrial confinement under R.C.M. 305; representing the accused in appellate review proceedings under Article 70, UCMJ; or providing counseling to the accused concerning Article 15, UCMJ. These actions should be appraised under a totality of the circumstances test to determine if they constitute active pretrial preparation and strategy.

(4) Reasonably available. All counsel serving on active duty in the Navy or Marine Corps, certified in accordance with Article 27(b), UCMJ, and not excluded by subsections 0131(b)(4)(a) through (c) below, may be determined to be "reasonably available" by the determining authority. In making this decision, the determining authority will assess the effect on the counsel's unit should the requested counsel be made available. In so doing, the determining authority may consider, among others, the following factors: the anticipated duties and workload of requested counsel, including authorized leave; the estimated duration of requested counsel's absence from the command, including time for travel, preparation, and participation in the proceeding; any unique or special qualifications relevant to the proceeding possessed by requested counsel; the ability of other counsel to assume the duties of requested counsel; the nature and complexity of the charges or the legal issues involved in the proceeding; the experience level and any special or unique qualifications of the detailed defense counsel; and the information or comments of the accused and the convening authority. Counsel described below are not reasonably available:

(a) Counsel who are flag or general officers;

(b) Counsel who are performing duties as trial counsel; victims' counsel; trial or appellate military judge; appellate defense or government counsel; court commissioner; principal legal advisor to a command, organization or agency having general courts-martial convening authority, or the principal assistant to such legal advisor; instructor or student at a college, university, service school, or academy; or assigned as a commanding officer, executive officer, or officer in charge; and

(c) Counsel who are assigned to any of the following commands, activities, organizations, or agencies: Executive Office of the President; Office of the Secretary of Defense; Office of Military Commissions; Office of the Secretary of the Navy; the Office of the Chairman of Joint Chiefs of Staff and the Joint Staff; Office of the Chief of Naval Operations; Headquarters, U.S. Marine Corps (except those assigned to Office of the Chief Defense Counsel); National Security Agency; Defense Intelligence Agency; Office of the Navy Judge Advocate General; Navy-Marine Corps Appellate Review Activity; Naval Civil Law Support Activity; Office of Legislative Affairs; Office of DoD or DON Inspectors General; or any agency or department outside the DoD.

(5) Requests for Navy counsel who are assigned 500 miles or more from the situs of the proceedings, or who are permanently assigned OCONUS for proceedings in CONUS or permanently assigned in CONUS for proceedings OCONUS, will be approved by the Chief of Staff-Defense Service Office or the Chief Defense Counsel as required, taking into account the effects that approval of the request may have on the fair and efficient administration of justice.

(6) Requests for Marine Corps counsel will be approved in accordance with MCO 5800.16.

(7) Notwithstanding the limitations regarding officers in charge set forth above, the determining authority has discretion to make personnel serving as a commanding officer, executive officer, or officer in charge available as counsel under exceptional circumstances including, but not limited to, the complexity of a particular case or lack of experienced counsel otherwise available.

c. Submission and forwarding of requests.

(1) Submission. A request for individual military counsel will be made in writing by the accused, or by counsel for the accused on the accused's behalf, and will be submitted to the convening authority via the trial counsel. The burden is on the counsel for the accused to state in the request the specific location and duties of requested counsel, if known, and to state clearly whether the accused claims to have an attorney-client relationship with requested counsel regarding one or more charges

pending before the proceeding, and the factual basis underlying that assertion. The request will also state any special qualifications of requested counsel that are relevant to the case.

(2) Action by the convening authority.

(a) If requested counsel is not on active duty in the Military Services, the convening authority will promptly deny the request and inform the accused, in writing, citing this provision.

(b) If the requested counsel is on active duty in the Military Services, the request does not claim an attorney-client relationship regarding any charge pending before the proceeding, and the requested counsel is not reasonably available as defined in subsection 0131(b)(4) above, the convening authority will promptly deny the request and inform the accused, in writing, citing this provision.

(c) In all other cases, the convening authority will forward the request to the determining authority, providing the following in the forwarding endorsement: the nature of the charges; the convening authority's estimate of the duration of requested counsel's involvement in the proceeding, including time for travel, preparation and participation in the proceeding; and any other appropriate information or comments.

d. Action by the determining authority.

(1) Determining whether an attorney-client relationship exists. Applying the criteria enumerated in subsection 0131(b)(3), above, the determining authority will determine whether requested counsel has an attorney-client relationship with the accused regarding any charge pending before the proceeding.

(2) When there is an attorney-client relationship. If the determining authority finds that there is an attorney-client relationship regarding any charge pending before the proceeding, then the requested counsel should ordinarily be made available to act as individual military counsel without regard to whether he or she would otherwise be deemed reasonably available as defined in subsection 0131(b)(4) above, unless there is "good cause" to sever that relationship, and provided that requested counsel is

certified in accordance with Article 27(b), UCMJ. Good cause to sever an attorney-client relationship includes, but is not limited to, requested counsel's release from active duty or terminal leave. If requested counsel is not certified in accordance with Article 27(b), UCMJ, the determining authority will promptly deny the request and inform the accused, in writing, citing this provision. If there is good cause to sever an attorney-client relationship, the determining authority will apply the criteria and procedures in subsection 0131(d)(3) below.

(3) When there is no attorney-client relationship. If the determining authority finds that there is no attorney-client relationship regarding any charge pending before the proceeding, the following procedures apply:

(a) If the determining authority finds that requested counsel is not reasonably available as defined in subsection 0131(b)(4), above, the determining authority will promptly deny the request and inform the accused, in writing, citing this provision.

(b) If the determining authority finds that requested counsel is reasonably available, the requested counsel will be made available to represent the accused at the proceeding, and the determining authority will promptly inform the convening authority and the accused of this determination.

e. Administrative review. The decision whether requested counsel will be made available to act as individual military counsel is an administrative determination within the sole discretion of the determining authority. If the determining authority declines to make the requested counsel available, the accused may request a review of that determination to the next higher commander or level of supervision in accordance with R.C.M. 506(b)(2).

f. Approval of associate defense counsel. If individual military counsel has been made available to defend an accused at a proceeding, the detailed defense counsel normally will be excused from further participation in the case unless the authority who detailed the defense counsel, in his or her sole discretion, approves a request from the accused that detailed defense counsel act as associate defense counsel. The seriousness of the charges, the retention of civilian defense counsel, the complexity of legal or factual issues, the detailing

of additional trial counsel, trial defense counsel training, and the stage of the proceedings are among the factors that may be considered in the exercise of this discretion. This decision is not subject to administrative review.

0132 Article 32 Preliminary Hearings

a. The preliminary hearing officer. The preliminary hearing officer presiding over the Article 32 hearing will be a judge advocate, qualified and certified in accordance with Article 27(b), UCMJ, and sworn in accordance with Article 42(a), UCMJ. In exceptional circumstances and in the interest of justice, a line officer may be detailed as a preliminary hearing officer. However, only a judge advocate may be detailed as a preliminary hearing officer in cases involving sex-related offenses under Articles 120, 120b, 120c, 125 (forcible sodomy for offenses committed prior to 1 January 2019), UCMJ, or attempts thereof under Article 80, UCMJ. See MCO 5800.16 for additional Marine Corps preliminary hearing officer requirements.

b. Counsel for accused interview of victims of alleged sex-related offense prior to Article 32 hearing.

(1) In any case where offenses involve violation of Articles 120, 120a, 120b, 120c, or 125 (for forcible sodomy offenses committed prior to 1 January 2019), UCMJ, or attempts thereof under Article 80, UCMJ, counsel for the government, if intending to call a victim(s) of such an offense to testify during the Article 32 preliminary hearing will notify, in writing, the counsel for the accused with the name of such victim(s).

(2) Following receipt of notice under subsection 0132(b)(1) above, counsel for the accused will make any request to interview the named victim through victims' counsel or other counsel for the victim, if applicable.

(3) As used in subsection 0132(b), "victim" means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ.

c. Audiovisual technology. The preliminary hearing officer may order the use of audiovisual technology, such as video-

teleconferencing technology, among the parties and the preliminary hearing officer for purposes of Article 32, UCMJ, proceedings, consistent with similar provisions guiding Article 39(a), UCMJ, sessions and consistent with R.C.M. 804 and 805. Use of such audiovisual technology will satisfy the presence requirement of the accused only when the accused has a defense counsel physically present at his or her location. Such technology may include two or more remote sites as long as all parties can see and hear each other.

0132a Certain Proceedings Conducted Before Referral

a. Contents of application for warrants and orders. An application for a warrant or order for electronic communications under R.C.M. 703A, should contain, at a minimum, all of the following information:

- (1) Name of the accused, if known;
- (2) Identity of the service provider from whom the electronic information is sought;
- (3) Description of the electronic information sought;
- (4) Identity of the person to whom the information pertains;
- (5) The crime(s) to which the evidence relates (UCMJ article and title of offense);
- (6) Information that establishes a sufficient basis for granting the request:
 - (a) If seeking a warrant, the application must contain pertinent facts that establish probable cause that the information sought contains evidence of a crime. Information establishing probable cause must be in the form of a written affidavit or sworn oral testimony.
 - (b) If seeking an order, the application must contain specific and articulable facts that establish reasonable grounds to believe that the information sought is relevant and material to an ongoing criminal investigation.
- (7) Request for Non-Disclosure Order if applicable; and

(8) Draft warrant or order enclosed for the circuit military judge to sign, which should contain, at a minimum, the following information:

(a) Identity of the service provider who is being required to disclose the information;

(b) Description of the electronic information to be obtained;

(c) A deadline for executing the warrant, not to exceed 14 days from the date on which the warrant is granted; and

(d) Written requirement for an inventory of the electronic content obtained in the execution of the warrant, to be returned to the circuit military judge along with the original warrant.

b. Submission of application for warrants and orders. All applications for warrants or orders will be presented to the circuit military judge in the circuit where the warrant is sought. Only a trial counsel in the applicable circuit may present the application. The application must be sworn to and signed by the applicant or his or her designee. The circuit military judge will assign a military judge in the circuit to review the application. This review will be done outside of the presence of the trial counsel and will not be recorded. If, after reviewing the application, the military judge determines that the evidentiary basis is met, the military judge will grant the warrant or order, subject to any limitations that the military judge deems appropriate under the circumstances. If the military judge does not believe the evidentiary basis has been met, he or she will return the application to the trial counsel. The applicant may modify the application for further review. Ex parte communications will be kept to a minimum during the military judge's review, except at a recorded Article 30a hearing.

c. Procedures for Article 30a Hearings. If the applicant for a warrant wishes to offer sworn oral testimony to establish probable cause, the trial counsel must request in writing that the military judge conduct an ex parte, in camera, closed hearing under Article 30a, UCMJ. At this session, the trial

counsel may call any witnesses whose testimony is relevant to establishing probable cause, and the military judge may examine those witnesses. This hearing must be recorded and the record of the proceeding will be immediately provided to the convening authority or officer with authority to dispose of the charges or offenses in the case. If charges are referred, the record will be provided to the military judge detailed to the court-martial and the detailed defense counsel and made a part of the official record of trial.

d. Non-disclosure orders. The applicant may seek a non-disclosure order in conjunction with the warrant or order if there is reason to believe that notification to the subscriber or customer by the service provider would result in:

(1) Endangering the life or physical safety of any individual;

(2) Flight from prosecution;

(3) Intimidation of witnesses; or

(4) Otherwise seriously jeopardize the investigation or unduly delay a trial.

e. Requests for relief and orders of enforceability. If, after granting an order under R.C.M. 703A(2)-(4), the military judge receives a motion from the service provider to quash or modify the order, the military judge will order a session of court under Article 30a, UCMJ, at which the military judge will consider any arguments from the service provider and trial counsel. This hearing must be recorded and the record of the proceeding will be immediately provided to the convening authority or commander with authority to dispose of the charges or offenses in the case. If charges are referred, the recording will be provided to the military judge detailed to the court-martial and the detailed defense counsel and made part of the official record of trial. At the conclusion of the hearing, the military judge may quash, modify, or order compliance with the order, as appropriate.

0133 Additional Matters in Convening Orders

Each convening order will be assigned a court-martial convening order number. The order will be personally signed by the

convening authority and will show his or her name, grade, and title, including organization or unit. A copy of the convening order will be furnished to each person named in the order. A convening order is not valid if signed "by direction."

0134 Additional Matters in the Case of Certain Reserve Component Personnel

a. Holdover of Reserve Component personnel on active duty. Reserve Component personnel on active duty may be extended involuntarily beyond their normal release date from active duty as a result of apprehension, arrest, confinement, investigation, or preferral of charges that may result in trial by court-martial and execution of any sentence of a court-martial. See R.C.M. 202(c).

b. Holdover of Reserve Component personnel on inactive-duty training.

(1) Reserve Component personnel on inactive-duty training may be retained in that status by an officer empowered to convene courts-martial for not more than two full working days past the end of inactive-duty training if:

(a) There is probable cause to believe the accused committed an offense for which the maximum punishment authorized is confinement for more than ten years or death;

(b) Approval, either oral or written, for holdover is obtained before expiration of inactive-duty training from a GCMCA in the chain of command of the accused, as designated in section 0120, and superior in grade to the requesting officer; and

(c) Immediate action is taken to order the member to active duty for trial by court-martial.

(2) An accused held over under subsection 0134(b) may be placed in pretrial confinement as circumstances warrant (see R.C.M. 304-305). The order to active duty in such a case, however, must be approved by the Secretary, Under Secretary, or Assistant Secretary of the Navy, no later than two full working days past the end of inactive-duty training. The request for an order to active duty under subsection 0134(b) will state the reasons why pretrial confinement is deemed necessary. See subsection 0123(c).

(3) If necessary, the request to order an accused to active duty may be made directly by message or telephone.

c. Extension of reserve term of service.

(1) Reserve Component personnel that are nearing the end of their reserve term of service may have their term of service involuntarily extended if they are being actively investigated with a view toward court-martial pursuant to R.C.M. 202 and 204.

(2) All requests to involuntarily extend members of the Reserve Component beyond their reserve term of service must be approved by the GCMCA with administrative control over the individual.

d. Sentences to forfeiture or fine.

(1) Forfeiture. Pay subject to forfeiture refers to the basic pay of the person plus any sea or hardship duty pay. If punishment includes reduction in grade, forfeiture will be based on the grade to which the accused is reduced. See DoD 7000.14-R, Volume 7A, Chapter 48, for guidance on how forfeiture may be carried over to subsequent periods of inactive-duty training or active duty pursuant to R.C.M. 204.

(2) Fine. Fines in the case of Reserve Component personnel permanently assigned to an inactive-duty training unit will be based on the total amount subject to forfeiture at the time adjudged.

e. Sentences involving restraint on liberty.

(1) Personnel on inactive-duty training. If the sentence pertains to Reserve Component personnel on inactive-duty training, restraint on liberty will not extend beyond the normal inactive-duty training period but may be carried over to subsequent periods of inactive-duty training or active duty. A Reserve Component member on inactive duty may not be ordered to active duty for the sole purpose of serving such punishment unless the order to active duty receives Secretarial approval. See section 0123.

(2) Personnel on active duty. If the sentence pertains to Reserve Component personnel who have been ordered to active

duty for disciplinary proceedings, the period of active duty may not be extended for the purpose of serving such punishment, nor may a sentence to confinement be adjudged, unless the order to active duty received Secretarial approval. See section 0123.

Subpart C2 - Trial Matters

0135 Article 39(a), UCMJ, Sessions

a. General. Article 39(a), UCMJ, sessions will be called by order of the military judge. Either counsel, however, may make a request to the military judge that such a session be called. The military judge of a general or special court-martial may, at an Article 39(a) session, arraign the accused, hear arguments and rule on motions, and receive the pleas of the accused. If the accused pleads guilty, the military judge may at that time make the appropriate inquiry into the providence of the accused's plea. The military judge may also at that time accept the plea of the accused. Upon acceptance of a plea of guilty, the military judge is authorized to enter a finding of guilty immediately except when the plea is to a lesser included offense and the prosecution intends to proceed to trial on a greater offense.

b. Audiovisual technology. Consistent with R.C.M. 804 and 805, the military judge may order the use of audiovisual technology, such as video-teleconferencing technology, among the parties and the military judge for purposes of Article 39(a) sessions. Use of such audiovisual technology will satisfy the "presence" requirement of the accused only when the accused has a defense counsel physically present at his or her location. Such technology may include two or more remote sites as long as all parties can see and hear each other and the Article 39(a) session can be properly recorded.

0136 Delegation of Authority to Excuse Members

A general court-martial or special court-martial convening authority may delegate authority to excuse members before assembly to the staff judge advocate or to a principal assistant consistent with R.C.M. 505(c)(1)(B), MCM.

0137 Plea Agreements

a. Major Federal offenses. The authority of court-martial

convening authorities to refer cases to trial and to approve plea agreements extends only to trial by courts-martial. In order to ensure that such actions do not preclude appropriate action by Federal civilian authorities in cases likely to be prosecuted in the U.S. District Courts, court-martial convening authorities will ensure that appropriate consultation under the Memorandum of Understanding between the Departments of Defense and Justice has taken place before trial by court-martial or approval of a plea agreement in cases where such consultation is required, see DoD Instruction 5525.07.

b. Consultation. Convening authorities should consult with the staff judge advocate or trial counsel before acting on an offer to enter into a plea agreement. Some of the factors to be considered when entering into a plea agreement are listed in the Non-Binding Disposition Guidance, Appendix 2.1, MCM. Pursuant to R.C.M. 705(e)(3)(B), convening authorities must provide a victim an opportunity to provide input on a proposed plea agreement. If the victim chooses to provide input, then the convening authority must consider the input.

c. Limitations. For limitations that apply to court-martial convening authorities' power to agree to terms in a plea agreement, see Article 60a, UCMJ, and R.C.M. 1107.

0138 Authority to Grant Immunity from Prosecution

a. General. A GCMCA, or his or her designee, has the authority to grant immunity to a witness. See R.C.M. 704(c)(3) for limitations on the GCMCA's ability to delegate this authority. This authority may be exercised in any case, whether or not formal charges have been preferred, and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

b. Procedure. The written recommendation that a certain witness be granted immunity in consideration for testimony deemed essential to the Government or to the defense will be forwarded to any officer competent to convene a general court-martial for the witness for whom immunity is requested. Such recommendation will be forwarded by the trial counsel or defense counsel in cases referred for trial, the preliminary hearing officer conducting an investigation upon preferred charges, the counsel or recorder of any other fact-finding body, or the investigator

before the preferral of charges. The recommendation will state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The GCMCA, or his or her designee, will act upon such request after referring it to his or her staff judge advocate for consideration and advice. If approved, a copy of the written grant of immunity must be served upon the accused or his or her defense counsel within a reasonable time before the witness testifies. Additionally, if any witness is expected to testify in response to a promise of leniency, the terms of the promise of leniency must be reduced to writing and served upon the accused or his or her defense counsel in the same manner as a grant of immunity.

c. Civilian witnesses. Pursuant to 18 U.S.C. §§6002, 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary in the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege against self-incrimination, then the approval of the Attorney General of the United States, or his or her designee, must be obtained before the execution or issuance of an order to testify to such civilian witness. The cognizant GCMCA, or his or her designee, may obtain the approval of the Attorney General by forwarding a request using the Department of Justice form in the Department of Justice Criminal Resource Manual at 721 (available online at: <https://www.justice.gov/usam/file/872951/download>), via OJAG (Code 20) for Navy cases, via HQMC (JA) in Marine cases; and OJAG (Code 30) in all national security cases. Requesters should allow at least eight weeks for action on such requests, and must send copies of the charge sheet, relevant portions of the investigation, and the draft grant of immunity and order to testify with all requests.

d. Cases involving national security. In all cases involving national security or foreign relations of the United States, only the cognizant GCMCA will forward, using the Department of Justice form prescribed in subsection 0138(c) above, any proposed grant of immunity to OJAG (Code 20) or HQMC (JA), as appropriate (via OJAG (Code 30)) for the purpose of consultation with the Department of Justice. Such cases include, but are not limited to, those enumerated in section 0126. See section 0125 regarding investigations, limitations on dispositional authority, and relations between the Departments of Defense and Justice. See section 0162 regarding remission and

suspension of sentences in national security cases.

e. Review. Under some circumstances, the officer granting immunity to a witness may be disqualified from taking action on the record of the trial at which the immune witness testified. A successor in command who did not participate in granting the immunity would not be disqualified under those circumstances.

f. Form of grant. See Appendix A-1-m (testimonial) and Appendix A-1-n (transactional).

0139 Post-Testimony Procedure When Authority to Grant Immunity Was Obtained from the Attorney General

a. After a civilian witness immunized in accordance with section 0138 has testified, the following information will be provided to the U.S. Department of Justice, Witness Immunity Unit, via OJAG (Code 20) in Navy cases or via HQMC (JA) in Marine cases:

(1) Name, citation, or other identifying information, of the proceeding in which the order was requested;

(2) Date of the examination of the witness;

(3) Name and residence address of the witness;

(4) Whether the witness invoked the privilege;

(5) Whether the immunity order was used;

(6) Whether the witness testified pursuant to the order;
and

(7) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded.

0140 Rules for Appeals Under Article 62, UCMJ, And for Filing Petitions for Extraordinary Relief

a. Government appeals under Article 62, UCMJ. Trial Counsel will coordinate with Navy or Marine Corps Trial Counsel Assistance Program (TCAP) and the Appellate Government Division

(Code 46) before filing any notice of appeal under R.C.M. 908(b)(3). Initial telephone contact for coordination should be made with TCAP and the Deputy Director, Appellate Government Division. The Director, Appellate Government Division (Code 46) is the designated representative of the Government under R.C.M. 908(b)(2), and will decide whether the notice of appeal will be filed with the military judge. Government appeal packages will be mailed to Director, Appellate Government Division (Code 46) within 15 calendar days of service of the notice of appeal on the military judge. The envelope must be prominently marked as follows: GOVERNMENT APPEAL-NOTIFY DIRECTOR, APPELLATE GOVERNMENT DIVISION IMMEDIATELY. DO NOT OPEN IN MAIL ROOM. See also Navy-Marine Corps Court of Criminal Appeals Rules of Practice and Procedure. The appeal package must contain the following:

(1) Notice of Appeal. See R.C.M. 908(b). The 72-hour period referenced in R.C.M. 908(b) does not begin until the military judge renders a ruling or order on the record in accordance with R.C.M. 801(f). The certificate of service of the notice of appeal must reflect the date and time of the military judge's ruling or order from which the appeal is taken, and the date and time of service upon the military judge.

(2) Letter of Justification. The appeal package must contain a letter from trial counsel to the Director, Appellate Government Division (Code 46). The letter will include a statement of the issues appealed, indicate why the appeal is being taken, and describe the anticipated relevant consequences should the military judge's ruling be permitted to stand. Other issues raised in the letter should include: effect on other pending cases, the unique import of the case to discipline, morale, or the integrity of military justice, and other relevant circumstances not apparent in the record of trial.

(3) Record of Trial. In conjunction with the Notice of Appeal, when required under R.C.M. 905(d) or when necessary to facilitate prompt resolution of the appeal, the military judge will state his or her essential findings of fact and conclusions of law in support of the decision being appealed. Except in extraordinary circumstances, an original certified record of trial, prepared in accordance with R.C.M. 1112(b) to the greatest extent possible, including the military judge's essential findings of fact and conclusions of law, will be submitted as part of the appeal package. Attached to the

certified record of trial will be a certified verbatim transcript of the relevant portions of the trial proceedings. A digital copy of the certified record of trial with all attachments will be provided on either CD or DVD or sent through secure electronic means to OJAG (Code 46). If any delay involving preparation of the record of trial or certification is anticipated, the trial counsel will promptly notify the Director, Appellate Government Division (Code 46), and forward the uncertified record of trial as soon as it is available, to be followed by the certified record of trial.

b. Government Petitions for Extraordinary Relief. The Director, Appellate Government Division (Code 46), will decide whether the Government will petition for extraordinary relief. Trial counsel will coordinate with the Director, TCAP (Navy or Marine Corps) and the Director, Appellate Government Division (Code 46) before any notice of intent to seek extraordinary relief is provided to a trial judge.

c. Defense Petitions for Extraordinary Relief.

(1) Trial defense counsel should consult with DCAP (Navy or Marine Corps) and coordinate with the Director, Appellate Defense Division (Code 45) before a petition for extraordinary relief on behalf of an accused is filed.

(2) Petitions for extraordinary relief, which are filed by trial defense counsel, must be forwarded to the appropriate court, with a copy forwarded to: Director, Appellate Government Division (Code 46).

(3) The Director, Appellate Defense Division (Code 45), as designated by the Judge Advocate General under Article 70, UCMJ, may appoint appellate defense counsel to represent the accused in connection with the petition for extraordinary relief.

d. Victim Petitions for Writs of Mandamus

(1) A victim may petition the Navy-Marine Corps Court of Criminal Appeals for a writ of mandamus to require the court-martial or preliminary hearing officer in an Article 32 hearing comply with Article 6b, UCMJ, and Military Rules of Evidence 412, 513, 514, and 615. A victim may also petition the Navy-Marine Corps Court of Criminal Appeals for a writ of mandamus to quash

an order to testify at a deposition. To the extent practicable, such petitions will have priority over all other proceedings before the court.

(2) Petitions for writs of mandamus, which are filed by or on behalf of a victim, will be forwarded directly to the appropriate court, with a copy forwarded to: Director, Appellate Government Division (Code 46) and Director, Appellate Defense Division (Code 45).

(3) As used in this subsection, "victim" means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ.

e. No rights given. Nothing in this section creates or is intended to create an independent right by an accused or victim to challenge a government appeal.

0141 Personal Data and Character of Prior Service of the Accused

If otherwise admissible, trial counsel are authorized to present, and summary court-martial officers are authorized to obtain and introduce into evidence, records of nonjudicial punishment, provided that those records reflect offenses committed during the current enlistment or period of service of the accused. Nothing in this section precludes admission of personnel records otherwise admissible referencing the underlying misconduct that formed the basis for the nonjudicial punishment (e.g., counseling records, fitness reports, and evaluations). See R.C.M. 1001(b)(2), MCM.

0141a Personally Identifiable Information in Records of Trial

a. General. Unless otherwise required by law, the Rules for Courts-Martial, or the Military Rules of Evidence, personally identifiable information (defined as Protected Personal Information by SECNAVINST 5211.5_(series), DON Privacy Program), should ordinarily be omitted from all dockets, filings, pleadings, court records, and exhibits that counsel intend to use at any court proceeding including the Article 32, UCMJ preliminary hearing, or that may otherwise be included in the record of trial. The responsible counsel must redact the following information from all documents, dockets, filings, pleadings, court records, and exhibits prior to submitting the

document to the court or preliminary hearing officer: social security numbers, taxpayer identification numbers, birthdates, the names of minors (use initials only), the names of victims (use initials only), and all financial account numbers (use last four digits of the account number). Counsel must be mindful that dockets, filings, and court records become public documents and inclusion of PII in these documents should be omitted so as not to infringe on the privacy interests of the individuals named in these documents.

b. Matters under seal. When any Federal law, the Rules for Courts-Martial, or the Military Rules of Evidence do not permit omission or redaction, the counsel submitting such filing or court record should request that such matters be placed under seal or the military judge issue a protective order.

0142 Release of Information Pertaining to the Administration of Military Justice and Accused Persons

a. General. Public information and access to military judicial proceedings promotes public awareness and confidence in the military justice system. The task of striking a fair balance among the protection of individuals accused of offenses, improper or unwarranted publicity concerning their cases, public understanding and transparency of the military justice system, and the state of discipline in the military, requires the exercise of sound judgment by both those responsible for administering military justice and those providing information to the public and the media. No statements or other information will be furnished to the news media or any other source for the purpose of prejudicing the outcome of an accused's trial, or which could reasonably be expected to have such an effect.

b. Applicability of regulations.

(1) Except as provided in subsection (2) below, these regulations apply to all persons who may obtain information as the result of duties performed in connection with the administration of military justice involving accused persons, the investigation of suspected offenses, the imposition of nonjudicial punishment, or the trial of persons by court-martial. These regulations are applicable from the time of apprehension, the preferral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the imposition of nonjudicial punishment, completion of

trial (court-martial sessions), or disposition of the case without trial. If nonjudicial punishment is imposed, section 0115 governs. These regulations also prescribe guidelines for the release or dissemination of information to public news agencies, to other public news media, or to other nongovernmental persons or agencies. Release of information to victims and witnesses of crime is controlled by the Victim and Witness Assistance Program, SECNAVINST 5800.11 (series).

(2) All attorneys practicing under the cognizance of the Judge Advocate General or otherwise subject to the professional supervision of the Judge Advocate General in accordance with R.C.M. 109, who represent an individual client other than the Government will consult the applicable provisions of JAGINST 5803.1 (series), Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General, when making any statements concerning an accused or the subject matter of their representation of the accused. See Rules 1.6 (Confidentiality of Information), 3.6 (Extra-Tribunal Statements), and 4.1 (Truthfulness in Statements to Others).

c. Release and dissemination of information. The release and dissemination of information pertaining to military justice matters, including accused persons, will be accomplished via the convening authority's public affairs officer. Requests for information received from representatives of news media will be referred to the public affairs officer for action. When an individual is suspected or accused of an offense, care should be taken to indicate that the individual is alleged to have committed an offense, as distinguished from stating or implying that the accused has committed the offense or offenses. Where public interest is evident, information in subsection (d) below and other appropriate information about the proceedings may be disseminated to the public.

d. Information to be disseminated without specific request. In order to facilitate public awareness, foster understanding, instill trust, and to afford access to information about the military justice system, the following may be disseminated to the public via appropriate methods, including public dockets, unless contrary to national security interests. Dissemination must be coordinated through the cognizant GCMCA and public affairs office.

(1) For cases pending an Article 32, UCMJ preliminary hearing, the grade and service of the accused may be released. However, the name of the accused will not be included in routine disseminations, see also subsection (d)(3) and (e)(2) below. For cases referred to court-martial, the name of the accused may be included in routine disseminations (e.g., dockets posted on websites).

(2) The scheduling (docketing) of Article 32, UCMJ preliminary hearings and courts-martial, including the time, date, and place of the proceedings.

(3) The names of witnesses and victims will not be included in routine disseminations.

(4) The general nature of the proceeding (e.g., Article 39(a) - arraignment; Article 39(a) - motions; trial).

(5) The general nature of the offense(s) (i.e., Article 86 - Absence without leave) of which individuals are accused, or suspected of, for scheduled hearings or proceedings.

e. Additional information subject to release. Upon inquiry, the following information concerning a person accused of an offense or offenses, in addition to the information in subsection (d) above, may generally be released through the cognizant public affairs officer, without elaboration:

(1) In the case of referred general or special courts-martial, the accused's name, grade, age, unit, duty station, and gender. The fact that an accused has been charged with an offense may be released, but a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until proven guilty must also be included.

(2) In the case of Article 32, UCMJ, preliminary hearing, the purpose of which is to develop a pre-decisional recommendation regarding disposition of charges, the accused's name will not be released except in those cases where the accused's identity has otherwise been made public.

(3) The identity of the apprehending and investigating agency, and the identity of the accused's counsel, if any.

(4) The fact, time, and place of the apprehension of the

accused and the nature of any pre-trial restraint imposed.

(5) In the absence of a protective or other order issued by the presiding military judge, information that has been admitted into evidence or has otherwise become a part of the public record of a court-martial in open session.

(6) The result of any stage in the judicial process.

(7) The denial by the accused of any offense or offenses of which he or she may be accused or suspected when release of such information is approved by the counsel of the accused.

f. Prohibited information. The following information concerning a person accused or suspected of an offense or offenses may not be released, except as provided in subsection (g). The prohibitions under this section are not meant to be restrictive of information that has otherwise become part of the public record or record of trial under subsection(e)(5).

(1) Subjective opinions, observations, or comments concerning the accused's character, demeanor, credibility, expected testimony, or guilt of the offense or offenses involved.

(2) The prior criminal record, including other apprehensions, charges, or trials, or reputation of the accused.

(3) The existence or contents of any confession, admission, statement, or alibi given by the accused, or the refusal or failure of the accused to make any statement.

(4) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or failure of the accused to submit to an examination or test.

(5) The identity or nature of physical evidence expected to be presented, or the identity, testimony, or credibility of possible witnesses, including victims. Particularly objectionable are statements or comments concerning information or evidence which is known, or which reasonably should be known, to be inadmissible before a court-martial.

(6) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer

to negotiate respecting a plea of guilty.

(7) References to confidential sources or investigative techniques or procedures.

(8) Statements or opinions regarding the credibility, reputation, motives, or character of DoD military or civilian officials.

(9) Any other matter when there is a reasonable likelihood that the dissemination of such matter will affect the deliberations of an investigative body or the findings or sentence of a court-martial, or otherwise prejudice the due administration of military justice either before, during, or after trial.

g. Scope. The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present - such release of information is authorized. In addition, release of information that the suspect is under investigation or the accused is pending charges may be provided, regardless of whether a request is made, to other federal, state, local, or foreign agencies, if those agencies are responsible for investigating or prosecuting the said violation or are responsible for enforcing or implementing the statute, rule, or regulation pursuant thereof. The information to be released must be compatible with the specific purpose for which the information was collected. Before releasing information to another agency, the Privacy Act and applicable DoD routine uses should be consulted. For questions regarding the proper release of information to other agencies, consult OJAG (Code 13).

h. Upon completion of trial. In order to facilitate public awareness, further understanding, instill trust, and to afford access to information about the military justice system, information pertaining to the results of military justice proceedings will be made public via appropriate methods, unless contrary to national security interests.

(1) For Navy cases, The Chief of Naval Information (CHINFO) will ensure that results of courts-martial are published in a publicly accessible location. Such results will include the

general nature of the charges and sentence and, upon conviction, the name of the accused. In the case of an acquittal, the rank of the accused will be released, but not his or her name.

(2) For Marine Corps cases, the report of results of trial will be published in accordance with MCO 5800.16 (series).

(3) The cognizant GCMCA through his or her public affairs officer may publish similar information relating to the results of courts-martial cases in local publications.

i. Consultation. Consultation with the staff judge advocate or cognizant RLSO concerning interpretation and application of these instructions is encouraged.

0143 Spectators at Proceedings

a. Courts-martial. See R.C.M. 806, MCM. Summary courts-martial will be treated the same as general and special courts-martial.

b. Article 32, UCMJ preliminary hearings. Consistent with R.C.M. 405(j)(3) and appellate case law, R.C.M. 806(b)(2) applies to Article 32, UCMJ preliminary hearing. Ordinarily, the proceedings of a preliminary hearing should be open to spectators. Only if R.C.M. 806(b)(2) is satisfied, should the convening authority or preliminary hearing officer direct that any part of the hearing be held in closed session and that persons be excluded. In cases dealing with classified information, the preliminary hearing officer will ensure that any part of a preliminary hearing (e.g., rights advisement and any unclassified testimony) that does not involve classified information will remain open to spectators.

0144 Security of Classified Matter in Judicial Proceedings

a. General. Every precaution will be taken by convening authorities, military judges, summary courts-martial, preliminary hearing officers, and trial counsel and trial support personnel, defense counsel and defense support personnel, and court reporters to protect the security of classified matter involved in judicial proceedings. If a trial of a case involves classified information, the convening authority, military judge, summary court-martial officer, preliminary hearing officer, defense counsel, and trial counsel, as appropriate, are charged

with the responsibility of ensuring compliance with applicable provisions of DON Information Security Program Regulation, SECNAVINST 5510.36 (series), DON Personnel Security Program Regulation, SECNAVINST 5510.30 (series), R.C.M. 401(d) and 407(b), MCM, and MIL. R. EVID. 505, MCM.

b. Security clearance of personnel. If classified material or testimony will be introduced or discussed during any portion of a judicial proceeding, appropriate security clearances in accordance with SECNAVINST 5510.30 (series) must be coordinated and granted to any personnel who may be required to participate in those proceedings to include, but not limited to: members of the prosecution and defense, court reporters, interpreters, and all other persons whose presence will be required when classified material or testimony is introduced before the court. If the accused is represented by civilian defense counsel, such counsel must likewise be cleared before classified matter may be disclosed to him or her. The necessity for clearing the accused and the practicability of obtaining such clearance rests in the sound discretion of the convening authority and may be one of the considerations in the determination to try a particular case. If it appears during the course of a proceeding that classified matter will be disclosed, and if the provisions of this subsection have not been complied with, the military judge, preliminary hearing officer, or summary court-martial officer will adjourn the proceeding and refer the matter to the convening authority.

c. Procedures concerning spectators. See R.C.M. 806 and M.R.E. 505, MCM, which prescribe procedures necessary to prevent the dissemination of classified information to other than authorized persons.

0145 Financial Responsibility for Costs Incurred in Support of Courts-Martial

a. Pay, travel, per diem, fees, and mileage.

(1) The costs of travel (other than local travel) and per diem of military personnel and civilian employees of the DON, but excluding those of personnel attached to the Navy-Marine Corps Trial Judiciary when acting as military judges of courts-martial, will be charged to the operation and maintenance allotment which supports temporary additional duty travel for the convening authority of the court-martial. Such costs incurred by personnel

attached to the Navy-Marine Corps Trial Judiciary when acting as military judges of courts-martial will be charged to the operation and maintenance allotment of the JAG. When a Reserve Military Judge is detailed, pay, allowances, and travel costs are paid from Reserve Component funding sources (AT, ADT, IDT, or IDTT).

(2) The costs of fees and mileage of civilians other than employees of the DON will be charged to the operating budget which supports the temporary additional duty travel funds of the appropriate Navy or Marine Corps convening authority. See the Department of the Navy Financial Management Policy Manual, Section III.

(3) The cost of local travel, as defined by the Joint Travel Regulations, by detailed military counsel will be absorbed by the operation and maintenance allotment of the activity that provides the counsel.

(4) If reserve judge advocates are supporting courts-martial at their assigned training center or at other units local to their residence, any required travel will be paid by the reservist. All pay and allowances are paid by the reserve command and are not incurred by the convening authority.

(5) If reserve judge advocates are supporting courts-martial at a location other than their assigned training center, the convening authority is responsible for all travel and per diem costs. If the requirements of the court-martial exceed the reservist's allotted drills, the unit must fund the reservist's pay, allowances, and travel.

b. Involuntary recall and extension on active duty of members in the Reserve Component. Funding for these orders should be tasked to the appropriation used on the original set of orders during which the event necessitating recall occurred. Decisions regarding funding for recall of a service member do not confer any procedural or substantive rights upon the member. The available funding sources include:

(1) Military Personnel Navy (MPN) - Active Duty for Special Work (ADSW) orders primarily supporting regular Navy commands/projects.

(2) Reserve Personnel Navy (RPN) - Inactive Duty Training

(IDT), Annual Training (AT), Active Duty for Training (ADT), and ADSW orders primarily supporting Navy Reserve commands/projects.

c. Services and supplies.

(1) The following costs of services and supplies provided by an activity in support of courts-martial will be charged to the operation and maintenance allotment of the convening authority:

(a) In-house costs that are direct, out-of-pocket, identifiable, and that total \$100.00 or more in a calendar month; and

(b) Costs that arise under contracts that were entered into in support of courts-martial.

(2) All other costs of services and supplies will be absorbed by the operation and maintenance allotment of the activity that provides the services or supplies.

0146 Fees of Civilian Witnesses

a. Method of payment. The fees and mileage of civilian witnesses, to include expert consultants prior to being identified as a witness, will be paid by the disbursing officer of the command of a convening authority or appointing authority, or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken, when such disbursing officer is presented a properly completed public voucher for such fees and mileage signed by the witness and certified by one of the following:

(1) Trial counsel or assistant trial counsel of the court-martial;

(2) Summary court-martial;

(3) Counsel for the court in a court of inquiry;

(4) Recorder or junior member of a board to redress injuries to property; or

(5) Military or civil officer before whom a deposition is taken.

b. Public voucher. The public voucher must be accompanied by a subpoena or invitational orders, see Joint Travel Regulations, Vol. 2, Ch. 6, and by a certified copy of the order appointing the court-martial, court of inquiry, or preliminary hearing. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned will be paid by the disbursing office at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as prescribed above, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him or her and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the United States, its territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or preliminary hearing, and by an order from the convening authority or appointing authority, subscribed by him or her and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

c. Obtaining money for advance tender or payment. Upon written request by one of the officers listed in subsection (a), the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in subsection (a), or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witness for mileage and fees for one day of attendance. The person so receiving the money for the purpose named will furnish the disbursing officer concerned with a proper receipt.

d. Reimbursement. If an officer charged with serving a subpoena pays from his or her personal funds the necessary fees and mileage to a witness, taking a receipt therefore, he or she is entitled to reimbursement upon submitting to the disbursing officer such receipt, together with a certificate of the appropriate person named in subsection (a) to the effect that the payment was necessary.

e. Certificate of person before whom deposition is taken. The certificate of the person named in subsection (a) before whom the witness gave his or her deposition will be evidence of the

fact and period of attendance of the witness and the place from which summoned.

f. Payment of accrued fees. The witness may be paid accrued fees at his or her request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his or her discharge from attendance, the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return travel will be made upon the basis of the actual fees and mileage allowed for travel to the court or place designated for taking a deposition.

g. Computation. Travel expenses will be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

h. Non-transferability of accounts. Accounts of civilian witnesses may not be transferred or assigned.

i. Signatures. Two persons must witness signatures of witnesses signed by mark.

j. Rates for civilian witnesses prescribed by law.

(1) Civilian witnesses not in Government employ. A civilian not in Government employ, who is compelled or required to testify as a witness before a Naval tribunal at a specified place, or to appear at a place where his or her deposition is to be taken for use before a court or fact-finding body, will receive fees, subsistence, and mileage as provided in 28 U.S.C. § 1821. Witness and subsistence fees are not prorated; instead, any fractional part of a calendar day expended in attendance or qualifying for subsistence entitles the witness to payment for a full day. Further, nothing in this subsection will be construed as authorizing the payment of attendance fees, mileage allowances, or subsistence fees to witnesses for:

(a) Attendance or travel that is not performed either as a direct result of being compelled to testify pursuant to a subpoena or as a direct result of invitational orders; or

(b) Travel that is performed before being duly

summoned as a witness; or

(c) Travel returning to their places of residence if the travel from their places of residence does not qualify for payment under this subsection.

(2) Civilian witnesses in Government employ. When summoned as a witness, a civilian in the employ of the Government will be paid as authorized by Joint Travel Regulations.

k. Supplemental construction of section. Nothing in this section will be construed as permitting or requiring the payment of fees to those witnesses not requested, or whose testimony is determined not to meet the standards of relevancy and materiality in accordance with R.C.M. 703, MCM.

l. Expert witnesses.

(1) The convening authority will authorize the employment of an expert consultant or witness and will fix the limit of compensation to be paid such expert based on the normal compensation paid by U.S. Attorneys for attendance of a witness of such standing in U.S. courts in the area involved. Information concerning such normal compensation may be obtained from the nearest GCMCA having a judge advocate assigned in other than an additional duty, temporary duty, or temporary additional duty capacity. Overseas convening authorities will fix the limit of compensation to be paid the expert witness based on the normal compensation paid by U.S. Attorneys for attendance of a witness of such standing based on the area where the witness is from when the witness is from the United States. See subsection (m) for fees payable to foreign nationals.

(2) The provisions of subsection (j) are applicable to expert witnesses. However, the expert witness fee prescribed by the convening authority will be paid in lieu of ordinary attendance fees on those days the witness is required to attend the court.

(3) An expert witness employed in strict accordance with R.C.M. 703(d), MCM, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his or her employment. See 11 Comp. Gen. 504. In the absence of such authorization, no fees other than ordinary witness fees may be paid for the employment of an individual as an expert witness.

After an expert witness has testified pursuant to such employment, the certificate of one of the officers listed in subsection a, when presented to the disbursing officer, will also enclose a certified copy of the authorization of the convening authority.

m. Payment of witness fees to foreign nationals. GCMCAs in areas other than a State or Territory of the U.S. will establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.

0147 Warrants of Attachment

When any party desires the issuance of a warrant of attachment, trial counsel or the cognizant staff judge advocate will notify OJAG (Code 20) or HQMC (JA), as appropriate, at the time of issuance. When practicable, a warrant of attachment should be executed by a civilian law enforcement officer of the United States. This notice requirement does not confer any procedural, evidentiary, or substantive rights for any party to the proceeding. See R.C.M. 703(g)(3)(H), MCM.

0148 Post-Trial Representation of a Convicted Accused

a. Submission of matters under R.C.M. 1106. The trial defense counsel should consult with the accused on matters to be submitted under R.C.M. 1106. However, the trial defense counsel may submit such matters on behalf of the accused without the signature of the accused.

b. Appellate rights.

(1) A convicted accused is entitled to post-trial representation by a defense counsel qualified in accordance with Article 27(b), UCMJ, until completion of appellate review in his or her case. Article 70(c), UCMJ, prescribes the detailing of counsel to represent the accused before the Navy-Marine Corps Court of Criminal Appeals (NMCCA), the U.S. Court of Appeals for the Armed Forces (CAAF), or the U.S. Supreme Court. Appellate defense counsel will represent the accused before NMCCA, CAAF, or the U.S. Supreme Court under Articles 62, 66, 67, 67a, or 73, UCMJ, or for petitions for extraordinary relief when requested by the accused, if the United States is represented by counsel, or if the JAG certifies a case originally under his or her

cognizance pursuant to Article 69, UCMJ, or if the government appeals the sentence under Article 56(d), UCMJ. An accused may be represented by civilian counsel of his or her choice at no expense to the Government. Upon request of an appellant, and in the discretion of the Director, Appellate Defense Division (Code 45), appellate defense counsel may be appointed to assist appellants before the Naval Clemency and Parole Board.

(2) Article 38, UCMJ, prescribes counsel rights for the representation of accused before general or special courts-martial or preliminary hearings under Article 32, UCMJ. While Article 38, UCMJ, provides that an accused may be represented by military counsel of his or her own selection if that counsel is reasonably available, no such provision for the selection of individual appellate counsel appears in Article 38 or 70, UCMJ. Accordingly, the Appellate Defense Division (Code 45), Navy-Marine Corps Appellate Review Activity of the Office of the Judge Advocate General will provide all appellate representation of accused in proceedings before NMCCA, CAAF, or the U.S. Supreme Court, with the exception of civilian counsel provided by the accused.

(3) Fulfillment of duties under R.C.M. 502(d)(5) requires that trial defense counsel will, immediately after a trial which results in a conviction, advise the accused in detail concerning his or her appellate rights. Included in this explanation will be advice with regard to the accused's right to post-trial representation, to request clemency, and to request deferment of any sentence to confinement pursuant to Article 57, UCMJ. Trial defense counsel will inform the accused of the responsibilities and powers of the convening authority, and as applicable, the possibility of review pursuant to Articles 64, 65, or through 69, UCMJ, including the possibility of review by NMCCA, CAAF, or U.S. Supreme Court.

(4) In order to comply with R.C.M. 502(d)(5), the following procedures apply in cases in which death, a punitive discharge, or confinement for more than six months is adjudged:

(a) The accused in a court-martial in which a punitive discharge or confinement for more than six months is adjudged will, after being advised of his or her appellate rights, acknowledge advisement of his or her appellate rights and provide necessary information for forwarding to his or her appellate defense counsel. The Standardized Post-Trial and

Appellate Rights form is available at http://www.jag.navy.mil/trial_judiciary.htm. This requirement is separate and distinct from applicable forms executed at the end of trial by court-martial in compliance with R.C.M. 1010.

(b) The original, signed appellate rights statement will be attached to the original court-martial record of trial.

(c) A duplicate original appellate rights statement will be provided to the accused and duplicate originals or certified copies will be attached to each copy of the record of trial. The accused will also be advised of his or her authority to designate, by power of attorney, an attorney-in-fact as his or her agent to petition CAAF and the U. S. Supreme Court for review on his or her behalf. Trial defense counsel should advise the accused of the advantages of granting a power of attorney with this authority and encourage the accused to execute one. If the accused executes such a power of attorney, the original will be attached to the original appellate rights statement in the original record of trial and copies attached to the appellate rights statement in each copy of the record of trial. The power of attorney will be revoked if the accused waives appellate review.

(5) In order to comply with R.C.M. 502(d)(5), the following procedures apply in cases in which the adjudged sentence does not include a punitive discharge and the confinement adjudged is six months or less:

(a) The accused, after being advised of his or her right to request an appellate review under Articles 65 and 69, must acknowledge advisement of his or her appellate rights. The Standardized Post-Trial and Appellate Rights form is available at http://www.jag.navy.mil/trial_judiciary.htm. This requirement is separate and distinct from applicable forms executed at the end of trial by court-martial in compliance with R.C.M. 1010.

(b) The original, signed appellate rights statement will be attached to the original record of trial.

(c) A duplicate original appellate rights statement will be provided to the accused and duplicate originals or certified copies will be attached to each copy of the record of trial.

c. Relief of Trial Defense Counsel. If trial defense counsel is unable to continue representation and an appellate defense counsel has not yet been detailed, a substitute trial defense counsel must be appointed. Trial defense counsel will continue to perform duties on behalf of the accused until an appropriate detailing authority has detailed either substitute trial defense counsel or appellate defense counsel, at which time trial defense counsel will be deemed to be relieved. The original correspondence and orders relating to the relief of trial defense counsel and the appointment of successor trial defense counsel or appellate counsel will be placed in the original record of trial. Copies of all correspondence and orders relating to the relief of counsel and the appointment of successor counsel will be placed in each record of trial and provided to the defense counsel concerned and the accused. There is no requirement for defense counsel or his or her successor in a court-martial not involving a punitive discharge or confinement for six months or less to request relief from defense counsel duties after review has been completed pursuant to Article 65, UCMJ.

Subpart C3 - Post-Trial Matters

0149 Statement of Trial Results

a. General. After a general or special courts-martial adjourns, the military judge shall sign the Statement of Trial Results. This form is included in the JAG/CNLSCINST 5814.1 (series) and is available at <http://www.jag.navy.mil/library/instructions.htm>. In accordance with R.C.M. 1101(a), the Statement of Trial Results shall include the following information:

- (1) Name, rate/rank, and DoD ID number of the accused.
- (2) For each charge and specification referred to trial:
 - (a) A summary of each charge and specification;
 - (b) The plea(s) of the accused; and
 - (c) The finding or other disposition of each charge and specification.
- (3) Sentence and the date the sentence was announced. If the accused was convicted of more than one specification and

any part of the sentence was determined by a military judge, the Statement of Trial Results shall also specify:

(a) The confinement and fine for each specification, if any;

(b) Whether any term of confinement is to run concurrently or consecutively, or concurrently with any other term(s) of confinement; and

(c) The total amount of any fine(s) and the total amount of any confinement, after accounting for any credit and any terms of confinement that are to run consecutively or concurrently, if applicable.

(4) Any confinement credit for pretrial confinement or for other reasons.

(5) The type of court-martial and the command by which it was convened.

(6) Details of the plea agreement.

(7) Any suspension recommendations including:

(a) The portion(s) of the sentence to which the recommendation applies;

(b) The minimum duration of the suspension; and

(c) The facts supporting the suspension recommendation.

(8) All crime reporting notifications, including:

(a) Sex offender;

(b) DNA collection;

(c) Domestic violence; and

(d) Crime reporting for firearm possession under 18 U.S.C. § 922.

(9) Any other information directed by the military

judge.

(10) Signature of the military judge.

b. Distribution. The trial counsel will promptly provide a copy of the Statement of Trial Results to the accused's immediate commander and the convening authority or the convening authority's designee. If the sentence includes confinement, forward a copy to the commanding officer or officer in charge of the brig or confinement facility where the accused will be confined. A copy of the Statement of Trial Results will be provided to the accused or the accused's defense counsel and any crime victim or victims' counsel, if applicable, without regard to the outcome of the court-martial. If the sentence includes forfeitures or reduction in grade, the Statement of Trial Results must be forwarded to the appropriate Personnel Support Detachment (see <https://www.public.navy.mil/bupers-npc/psd/conuslocations/Pages/default.aspx>) or Unit Diary Clerk, as appropriate, and include, if applicable, information regarding approved requests for deferments of adjudged or automatic forfeitures and adjudged reductions in grade.

0150 Record of Courts-Martial Proceedings

a. Access for submission of matters. To facilitate preparation of matters, the defense counsel or accused and the victim or victims' counsel may request a copy of the court-martial recording and copies of, or access to, the exhibits. When preparing these records for release, the government should be cognizant that delays in providing the requested information may serve as grounds for the defense to request a delay in the submission of matters.

b. Audio recording. Pursuant to R.C.M. 1112(a), all courts-martial proceedings shall be audio recorded in order to create a substantially verbatim recording of the courts-martial proceedings. Upon request, a copy of the audio recording shall be provided to the accused or defense counsel, and the crime victim or crime victims' counsel as soon as practicable. This audio recording must not include any closed sessions, sealed or classified court-martial material or recordings unless authorized by a military judge. To obtain access to any sealed or classified proceedings, a formal request must be submitted to the military judge demonstrating good cause.

c. Access to exhibits. In accordance with R.C.M. 1106 and 1106A and upon request, the government must provide access to all appellate exhibits, prosecution exhibits, and defense exhibits to the accused or defense counsel, and the crime victim or crime victims' counsel. These documents must not include any sealed or classified sessions, or any sealed or classified materials, unless authorized by the military judge. Copies of these documents may be provided in circumstances where it is not feasible for the accused or defense counsel, and the crime victim or crime victims' counsel to access the documents at the appropriate Region Legal Service Office (RLSO), Legal Service Support Section (LSSS), or Law Center (LC). Personally Identifiable Information must be redacted from all copies and photographs.

0151 Matters Submitted by Accused and Crime Victims

a. Notification to crime victim of right to submit matters. In any case resulting in a guilty finding for an offense that involved a victim who has suffered direct physical, emotional or pecuniary harm, the trial counsel must provide each crime victim with a notification of post-trial rights using the Crime Victim Post-Trial Rights Form included in the JAG/CNLSCINST 5814.1 (series) and available at <http://www.jag.navy.mil/library/instructions.htm>. The trial counsel shall inform each crime victim of these rights after the announcement of the findings or sentence. After the sentence is announced, any crime victim of an offense may submit matters to the convening authority for consideration, consistent with R.C.M. 1106A. All matters submitted by a crime victim must be provided to the convening authority for consideration and provided to the accused to allow for an opportunity to respond. A crime victim must submit matters within 10 calendar days after the sentence is announced. The convening authority may extend the time period to submit matters up to an additional 20 calendar days if the crime victim shows good cause for the extension. Extension requests must be submitted in writing to the convening authority.

b. Accused's right to submit matters. Before the adjournment of a court-martial, the defense counsel must advise the accused of his or her rights throughout the post-trial process using the Appellate Post-Trial Rights and Advisement Form. This form is available at http://www.jag.navy.mil/trial_judiciary.htm. This form shall be appended to the record of trial as an appellate exhibit. After the sentence is

announced, the accused may submit matters to the convening authority for consideration, consistent with R.C.M. 1106. The accused must submit matters within 10 calendar days after the sentence is announced. The convening authority may extend the time period to submit matters up to an additional 20 calendar days if the accused shows good cause for the extension. Extension requests must be submitted in writing to the convening authority. If a crime victim elects to submit matters to the convening authority for consideration, the accused may submit a rebuttal to those matters within five calendar days.

0152 Convening Authority Action

a. General. If a case was referred to trial on or after 1 January 2019, the post-trial procedures contained in section 0152 and Articles 60a and 60b, UCMJ, as well as R.C.M. 1109 and 1110, MCM 2019 must be used. In a case that was referred to trial before 1 January 2019, section 0152 is not applicable, and the post-trial procedures (to include the requirement for SJA recommendations) contained in R.C.M. 1107, MCM 2016 must be used.

(1) When action may be taken. The convening authority, or other person authorized to act under subsection 0152(c), may take action only after the applicable time periods under R.C.M. 1106 and 1106A, MCM 2019, have expired; however, action may be taken sooner if the accused and, if applicable, the crime victim, have waived the right to present matters under R.C.M. 1106 and 1106A, MCM 2019. In any case that results in a full acquittal (or findings of not guilty by the military judge), the convening authority will take no action with regard to those findings.

(2) Documentation. In all cases, the RLSO or LSSS will ensure that actions taken at every step in the post-trial process are properly documented, including justification for any delay that occurs. Consult JAGINST 5814.1 (series) and R.C.M. 808.

(3) Convening authority clemency power. When deciding whether to grant relief under these rules, the convening authority has two options: take action on the findings and sentence or take no action on the findings and sentence. A decision to take action is tantamount to granting relief, whereas a decision to take no action is tantamount to granting no relief. Granting post-sentencing relief (i.e., "taking action") is a

matter of command prerogative entirely within the discretion of the convening authority, as limited by the applicable version of Article 60, UCMJ. The convening authority's power to grant clemency is based on the date of the earliest offense of which the accused was convicted.

(a) In a case in which the accused was found guilty of an offense that occurred before 24 June 2014, apply the clemency authority described in Article 60 and R.C.M. 1107, MCM 2012.

(b) In a case in which the earliest offense of which the accused was found guilty was before 1 January 2019, but on or after 24 June 2014, apply the clemency authority described in Article 60 and R.C.M. 1107, MCM 2016.

(c) In a case in which all offenses of which the accused was found guilty occurred on or after 1 January 2019 use Articles 60a and 60b, UCMJ, and R.C.M. 1109 and 1110, MCM 2019.

(d) In all cases, regardless of the date of the offenses, the convening authority may suspend a sentence in accordance with a military judge's recommendation as annotated on the Statement of Trial Results. See Article 60a(c), UCMJ.

(4) Staff judge advocate or legal officer review. An SJA or legal officer recommendation is not required before the convening authority's action for any case referred on or after 1 January 2019, regardless of when the offense to which an accused was convicted was committed. But, before determining what action, if any, should be taken in a particular court-martial, the convening authority shall consult with the SJA or legal officer to confirm compliance with Articles 60a and 60b, UCMJ, and R.C.M. 1109 and 1110.

(5) Companion cases tried separately. In courts-martial cases where the separate trial of a companion case is ordered, the convening authority will so indicate in his or her action on the record in each case.

(6) Documenting convening authority's action. Regardless of which version of clemency authority applies, and even if the convening authority decides to take no action, the SJA will ensure that the convening authority complies with the requirements of R.C.M. 1109(g). The decision by the convening

authority to take no action, or the action taken by the convening authority, will be memorialized in the Convening Authority's Action Form included in JAG/CNLSC 5814.1 (series) and available at <http://www.jag.navy.mil/library/instructions.htm>. The action (or no action) by the convening authority will be promptly forwarded to the military judge and incorporated as an attachment to the record of trial. A decision by the convening authority to take action or no action on a case may be signed by the convening authority's delegate with the convening authority's verbal approval provided that any verbal approval is subsequently memorialized in writing.

(7) Timing of convening authority's action. The convening authority must generally act before the entry of judgment. However, the convening authority may grant relief upon recommendation of trial counsel for substantial assistance by the accused after the entry of judgment. See R.C.M. 1109(e)(3)(B) and (e)(7); see also R.C.M. 1110(c)(2). If trial counsel's recommendation is made more than one year after the entry of judgment, the GCMCA over the command to which the accused is assigned may reduce the sentence only if the criteria in R.C.M. 1109(e)(5)(B) are met.

(8) Forwarding of convening authority's action and related matters. The convening authority shall also provide a copy of the action to the accused and any crime victims, or their respective counsel. If the action is served on counsel, counsel will, by expeditious means, provide the accused or crime victim, as applicable, with a copy. If the judgment is entered within 10 duty days of the convening authority's action, service of the entry of judgment upon the accused, any crime victims, or their respective counsel will satisfy this requirement.

b. Suspension of sentences. When authorized under Article 60, UCMJ, convening authorities are encouraged to suspend, for a probationary period, all or any part of a sentence, when suspension would promote discipline and when the accused's prospects for rehabilitation would more likely be enhanced by probation than by the execution of all or any part of the sentence adjudged.

(1) Suspension recommendation by military judge. In cases referred to trial on or after 1 January 2019, after receiving a suspension recommendation from the military judge, the convening authority may suspend any part of a sentence in accordance with

R.C.M. 1109(f) regardless of when the offense was committed. The authority to suspend a sentence under R.C.M. 1109(f) is in addition to any other suspension power the convening authority may have. See R.C.M. 1109(c)(5) and 1110(c).

(2) Suspension recommendation by trial counsel. Upon the recommendation of the trial counsel, the convening authority may disapprove, commute, or suspend the adjudged sentence in whole or in part, even with respect to an offense for which a mandatory minimum sentence applies. However, a sentence of death may not be suspended.

c. When impracticable for convening authority to act. A convening authority may forward a case for post-trial processing as long as the following procedures are followed:

(1) For Navy commands, if it is impracticable for the convening authority to act, he or she will forward the record of trial to a superior GCMCA, to the Region Commander, or a subordinate commander authorized to convene general courts-martial and designated by the Region Commander for this purpose. For deployable units, the appropriate Region Commander or designated subordinate commander is the one most convenient at the time of forwarding of the record. The letter or message requesting the record of trial to be forwarded will contain a justification as to why the normal convening authority could not take action in the case.

(2) Unless directed differently by a superior GCMCA, Marine Corps convening authorities who find it impracticable to take action will forward the record of trial to another GCMCA. For summary and special courts-martial, this will normally be the GCMCA who is superior in the chain of command unless, in the discretion of the officer who would normally take action as convening authority, it will also be impracticable for that officer to take the convening authority's action. The letter or message requesting the record of trial to be forwarded will contain a justification as to why the normal convening authority could not take action in the case.

d. Electronic signatures. Electronic signatures may be used in the convening authority's action, charge sheet, and other court-martial documents, if using a DoD Common Access Card and following all other technical requirements per SECNAVINST 5239.21, DON Electronic Signature Policy.

0153 Actions on Specific Types of Sentence

a. Summary courts-martial. The convening authority may take any action permitted under Article 60b(a)(1), UCMJ.

b. Sentences including reprimand.

(1) General. Reprimands issued in execution of courts-martial sentences must be in writing. Except as otherwise prescribed in section 0153, subsection 0114(d) applies to punitive letters issued in execution of a court-martial sentence. Punitive letters issued in execution of court-martial sentences need not be designated "For Official Use Only."

(2) By whom issued. The convening authority will include in the action any reprimand that the convening authority has ordered executed.

(3) Contents. The punitive letter will include the time and place of trial, type of courts-martial, and a statement of the specific charges and specifications of which the accused was convicted. It will also contain the following:

A copy of this letter will be placed in your official record at [Navy Personnel Command] [Headquarters, U.S. Marine Corps]. You may forward within 15 days after receipt of this action a statement concerning this letter for inclusion in your record. If you elect not to submit a statement, you will so state officially in writing within the time prescribed. In connection with your statement, any statement submitted will be couched in temperate language and will be confined to pertinent facts. Opinions will not be expressed nor the motives of others impugned. Your statement will not contain countercharges.

(4) Procedure for issuance. The original letter will be delivered to the accused and a copy appended to the convening authority's action, or the promulgating order of the officer subsequently directing execution of the sentence. The action, or order, should refer to the letter as follows:

Pursuant to the sentence of the court as approved, a punitive letter is this date being served upon the accused

and a copy is incorporated as part of this action.

(5) Insertion into service record. Upon receipt of the accused's written statement or a written declaration that he or she does not desire to make a statement, an additional copy of the punitive letter, with the statement or declaration, will be forwarded to Commander, Navy Personnel Command (PERS-834 for officers and PERS-832 for enlisted) or HQMC (JA) for officers and MMSB-20 for enlisted, as appropriate.

(6) Appeals. Review, including appellate review of punitive letters issued as part of an approved court-martial sentence, will be accomplished as provided for by the UCMJ, the MCM, and this Manual. No separate appeal from these letters will be considered.

c. Sentences extending to dismissal. Under the authority of Article 57(a)(4), UCMJ, the Under Secretary of the Navy and the Assistant Secretaries of the Navy have been designated by the Secretary as empowered to approve that part of a sentence providing for dismissal of an officer or a midshipman, and may commute, remit, or suspend the sentence, or any part of the sentence, as they see fit.

d. Sentences including adjudged or automatic forfeitures. The ability of a convening authority to defer or waive forfeitures of pay and allowances depends on whether the forfeitures are adjudged or automatic.

(1) Adjudged forfeitures are those forfeitures imposed by the military judge or the members as part of a court-martial sentence (see Article 57(a), UCMJ, and R.C.M. 1103). Adjudged forfeitures of pay or allowances take effect 14 calendar days after the sentence is announced, or, in a summary court-martial, the date the sentence is approved by the convening authority.

(2) Automatic forfeitures are forfeitures that take effect by operation of law pursuant to Article 58b, UCMJ. Automatic forfeitures take effect if an accused is sentenced to confinement for more than six months, death, or confinement for six months or less and a punitive discharge. The automatic forfeitures take place during the period of confinement adjudged.

(3) Upon written application of the accused, the convening authority may defer adjudged and automatic forfeitures

until the entry of judgment or, in the case of a summary court-martial, until a convening authority acts on the sentence. The convening authority may rescind a deferment at any time.

(4) The convening authority may waive automatic forfeitures for no more than six months for the benefit of the accused's dependents. Waived forfeitures are paid directly to the accused's dependents. The convening authority may not waive adjudged forfeitures. However, the convening authority may take action under Articles 60, 60a or 60b, UCMJ, to defer, suspend, mitigate, or disapprove all or part of adjudged forfeitures, and then waive any automatic forfeitures.

(5) The convening authority's action will indicate if adjudged forfeitures are deferred, or if automatic forfeitures in accordance Article 58b, UCMJ, were deferred and waived. If waiver of forfeitures is approved and included in the action, the waiver must state the person to whom the forfeitures are to be paid.

e. Automatic reduction in pay grade. The President has not affirmatively authorized automatic reductions in pay grade under Article 58a, UCMJ, for offenses committed on or after 1 January 2019. Until such time as authorized, an enlisted member will not be automatically reduced in pay grade pursuant to Article 58a, UCMJ, for offenses committed on or after 1 January 2019.

0154 Entry of Judgment

a. General. The entry of judgment reflects the results of the court-martial after all post-trial actions, rulings or orders. The entry of judgment terminates trial proceedings and initiates appellate proceedings. The military judge is responsible for the entry of judgment and attaching it into the record of trial for all general and special courts-martial. The standard entry of judgment form must be used in all special and general courts-martial. This form is included in JAG/CNLSCINST 5814.1 (series) and is available at <http://www.jag.navy.mil/library/instructions.htm>.

b. Contents of entry of judgment. The entry of judgment must include all items listed in R.C.M. 1111(b). Additionally, any modification made by reason of any post-trial action by the convening authority, or any post-trial rule, order, or other determination by the military judge must be included.

c. Timing. In a general or special courts-martial with a finding of guilty, the military judge will enter the judgment of the court-martial either: (1) 10 days after receiving the convening authority's action; or (2) after the resolution of any post-trial motions filed under R.C.M. 1104. When a court-martial results in a full acquittal or when a court-martial terminates before findings, the judgment shall be entered as soon as practicable. When a court-martial results in a finding of not guilty of all charges and specifications only by reason of lack of mental responsibility, the judgment shall be entered as soon as practicable after a hearing is conducted under R.C.M. 1105.

d. Service of entry of judgment. The accused, designated defense counsel, convening authority, and upon request, the crime victim or victims' counsel shall receive a copy of the entry of judgment as soon as practicable. If an accused is in confinement, service is satisfied when a copy is provided to the designated defense counsel.

e. Distribution of entry of judgment. The entry of judgment must be distributed as follows:

(1) Original to be attached to original record of trial. If the original record of trial has been forwarded, the original entry of judgment, along with the appropriate copies as described below, will be sent to the command or activity to which the original record of trial was forwarded.

(2) Duplicate original to be placed in the service record of the accused (unless the court-martial proceedings resulted in acquittal of all charges, disapproval of all findings of guilty, or disapproval of the sentence by the convening authority). In cases involving Navy personnel, if applicable, forward to the Personnel Support Detachment (<https://www.public.navy.mil/bupers-npc/psd/conuslocations/Pages/default.aspx>) maintaining the accused's service record. In cases involving Marine Corps personnel, if applicable, forward to the Installation Personnel Administration Center.

(3) Duplicate originals must also be provided to the following:

(a) The commanding officer of the accused;

(b) The commanding officer of the brig or confinement

facility, if the accused was sentenced to confinement;

(c) Commander, Navy Personnel Command (PERS-834 in the case of officers, or PERS-832 in the case of enlisted) or HQMC, Manpower and Reserve Affairs (M&RA), as appropriate;

(d) The GCMCA or SPCMCA over the accused at the time of trial, and to the current GCMCA over the accused, if different. The GCMCA will be identified by the command name;

(e) The Directorate of Debt and Claims Management (DFAS);

(f) The accused;

(g) The commanding officer of the RLSO, LSSS, or LC at which the accused was tried;

(h) The military judge, trial counsel, and defense counsel of the court-martial before which the case was tried; and

(i) The commanding officer of the Defense Service Office or the Regional Defense Counsel that represented the accused, as appropriate.

0155 Certification of Record of Trial - General and Special Courts-Martial

a. Record of trial. The official record of trial is a substantially verbatim recording of the court-martial proceedings. This recording may be accomplished via videotape, audiotape, or by other forms of technology that capture the audio of the proceedings completely and accurately.

b. Preparation of the certified record of trial. All records of trial will be prepared as prescribed in R.C.M. 1112(b). If the court-martial resulted in a guilty finding, the court reporter shall ensure all documents provided in R.C.M. 1112(f) are included in the certified record of trial prior to forwarding to OJAG (Code 40) or the cognizant SJA for appellate review. The certification of a record of trial must be completed as soon as practicable after the adjournment of a court-martial. Consult JAG/CNLSCINST 5814.1 (series) for the post-trial process requirements. The SJA for the convening authority will provide reasons in writing for any delay in certification and append

them to the certified record of trial. See section 0158 below.

c. Preparation of transcript. All special and general courts-martial that result in a guilty finding, regardless of the sentence adjudged, will receive a verbatim written transcript prepared in accordance with R.C.M. 1114 and JAGINST 5813.1 (series). If the proceedings resulted in an acquittal of all charges and specifications or in termination of the proceedings before or after findings, a summary of the trial proceedings up to the disposition of the case will be prepared in accordance with JAGINST 5813.1 (series).

d. Certification of record of trial. After the record of trial has been prepared in accordance with R.C.M. 1112(b), it shall be reviewed by the court reporter. The court reporter will then certify the record of trial was prepared in accordance with R.C.M. 1112(b). If the court reporter is not available to certify the record of trial, the military judge will certify the record of trial.

e. Requirements for cases requiring appellate review. If a court-martial requires appellate review, the court reporter will prepare the record of trial in accordance with R.C.M. 1112(f). When the court reporter compiles a complete and accurate record of trial, it will be provided to the military judge for verification. Upon receiving verification from the military judge, the court reporter will then certify the record of trial was prepared in accordance with R.C.M. 1112(f). This certification must be completed within 120 days after the completion of trial. Any delays beyond 120 days must be documented and appended to the record of trial.

f. Retention of trial notes or recordings. The RLSO or LSSS in every general and special courts-martial will ensure that any notes (stenographic or otherwise) or any recordings (mechanical or voice) from which the record of trial was prepared are secured for retention until such time as review of the case is final.

g. Security classification. Records of trial containing classified matter will be properly classified in accordance with the provisions of R.C.M. 1112(e)(3)(A) and SECNAVINST 5510.36 (series). Copies of such records for delivery to the accused will be prepared and handled in accordance with R.C.M. 1112(e)(3)(A). Attention is directed to the fact that, while SECNAVINST 5510.36 (series) requires that a classified matter

bear the overall classification of its highest component, that degree of classification is not then imparted to other components. Rather it authorizes and requires that a component be marked with the classification it warrants, if any. Misunderstanding of these provisions may result in erroneously marking as classified each page of a voluminous record, rendering review for downgrading unnecessarily difficult and excision for delivery to the accused or counsel impossible.

h. Records of trial involving images or material of child pornography. In courts-martial that involve the introduction into evidence of child pornography, as defined by Article 134, UCMJ, (Paragraph 95) or of what appears to be child pornography (hereinafter referred to as child pornography), the trial counsel will ensure that the record of trial is prepared in a manner consistent with subsection 0155(h).

(1) Images of child pornography, in whatever format, used by military authorities during the investigation and prosecution of criminal activity will be under the care, custody, and control of government authorities at all times. Neither trial nor defense counsel will retain images or material of child pornography obtained during the course of their representation. The trial counsel will ensure that all images of, or material containing, child pornography provided to either the trial or defense team are returned to the cognizant NCIS or other law enforcement office within five days of the final adjournment of the court-martial or dismissal of the charges related to the child pornography. Under no circumstances will images of child pornography be duplicated, reproduced, distributed or transferred by any person, except pursuant to 18 U.S.C. § 3509(m).

(2) Images of child pornography, in whatever format, offered during a court-martial will be marked appropriately and handled during the trial in a manner that ensures only those participants of the trial who are required and authorized to view such images have access. The images should be placed on a compact disc (CD) or digital versatile disc (DVD) and should be password protected. The password should remain in the files of the senior trial counsel and the NCIS Resident Agent and a copy provided by the senior trial counsel to the Clerk of the Court for the Navy-Marine Corps Court of Criminal Appeals (NMCCA). The senior trial counsel will provide all passwords to his or her relief as a turnover item upon transfer from the billet.

Trial counsel will request the military judge issue a protective order for the CD or DVD, and for any exhibits containing images of child pornography that cannot be placed on the CD or DVD. A password-protected CD or DVD may be left in the record of trial during the certification and appellate process.

(3) Nothing in subsection 0155(h) creates or is intended to create an independent right or authority to compel production or introduction of such evidence; gives rise to a cause of action by an accused against the government; or, establishes grounds to challenge or object to the offer or admission of such images in a court-martial or other forum.

i. Records containing classified information. After first coordinating with the Navy-Marine Corps Appellate Review Activity, the original of any record of trial that contains classified information will be packaged and transmitted in accordance with the DON Information Security Program, SECNAVINST 5510.36 (series) to OJAG (Code 30), for filing and availability for inspection under section 0166. OJAG (Code 30) will notify OJAG (Code 40) when any classified records of trial have been received.

0156 Certification of Record of Trial - Summary Courts-Martial

A written record of trial of a summary court-martial shall be completed in accordance with the requirements of R.C.M. 1305, and the use of DD Form 2329 (Record of Trial by Summary Courts-Martial), see Appendix 9, MCM, and shall include: (1) the pleas, findings, and sentence, and if the accused was represented by counsel at the summary court-martial, a notation to that effect; (2) the fact that the accused was advised of the matters set forth in R.C.M. 1304(b)(1); and (3) if the summary court-martial is the convening authority, a notation to that effect.

0156a Summary Courts-Martial - Service of Record and Action

a. Service of record of trial. In accordance with R.C.M. 1305(d) the certified record of trial shall be served on the accused as soon as it is certified. The original record of trial shall be forwarded to the convening authority after the accused has been served with a copy. After completion of the convening authority's action, the record of trial shall be disposed of under SECNAV Manual 5210.1 (series) and prescribed service regulations governing records management.

b. Service of convening authority's action. The results of any review or action on a summary court-martial under section 0153, after the initial action of the convening authority, will be forwarded to the convening authority and to the accused's commanding officer for notation in the service record or service record book of the accused. If a victim requests a copy of the convening authority's action, a copy shall be provided to the victim or the victims' counsel.

0157 Provision of Record of Trial to Victims and the Accused

a. General. The certified record of trial will be provided to the accused and, if applicable, a qualifying victim pursuant to Article 54, UCMJ, and R.C.M. 1112(e).

b. Accused copy. Except as provided in R.C.M. 1112(e)(3) and subsections 0141a, 0144 and 0155(h), the accused will receive a copy of the record of trial immediately upon certification.

c. Victim copy. Qualifying victims, as defined in R.C.M. 1112(e)(1), will receive a copy of the record of trial immediately upon certification except as provided in R.C.M. 1112(e)(3), subparagraph 0141a, 0144, and 0155(h), and 5 U.S.C. § 552a, the Privacy Act of 1974. In preparing the record of trial for the victim, the following material must be redacted if not previously removed or sealed:

- (1) Social security numbers;
- (2) All taxpayer ID numbers;
- (3) All birthdates;
- (4) The names of (other) minor witness(es) and victim(s);
- (5) Financial account numbers;
- (6) Closed M.R.E. 412, 513, or 514 hearings pertaining to other victims;
- (7) Home addresses;
- (8) Personal e-mail addresses and telephone numbers; and

(9) Any unsealed medical records of other victims.

0158 Transmittal and Review of Records of Trial

a. JAG supervision. Records of all trials by court-martial in the naval service are under the supervision of the JAG. The convening authority will maintain a certified record of trial until appellate review is complete.

b. Transmittal of cases resulting in sentence of confinement for more than six months or a punitive discharge. In all cases in which the sentence extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for more than six months, where the accused has not waived appellate review under Article 61, UCMJ, or R.C.M. 1115, the certified record of trial will immediately be forwarded to OJAG (Code 40) for review under Article 66, UCMJ. The original, certified record of trial will be sent directly to Navy-Marine Corps Appellate Review Activity (Code 40), 1254 Charles Morris Street SE, Ste B01, Washington Navy Yard, DC, 20374-5124 via USPS Priority Mail Express, USPS Registered Mail, Federal Express, UPS Express, or DHL Express only. Due to the requirement for speedy post-trial processing as set forth in United States v. Moreno, 63 M.J. 129 (CAAF 2006), and to prevent the compromise or loss of the original certified record of trial and the Personally Identifiable Information contained therein, neither regular nor certified USPS mail service will be used to forward records of trial to OJAG or to any other addressee in the court-martial record certification or review process. Use of the required delivery services, listed above, will provide tracking capability, reliable handling, and maximum security. Consult JAGINST 5814.1 (series) and appropriate Marine Corps guidance for supplemental post-trial processing timelines. The convening authority will provide reasons in writing for any delay in forwarding the record and append them to the record of trial. A digital copy of the certified record of trial will also be provided to Navy-Marine Corps Appellate Review Activity (OJAG, Code 40) via the OJAG (Code 40) SharePoint site, if practical. If the certified record of trial cannot be uploaded to the OJAG (Code 40) SharePoint site, a digital copy of the certified record of trial will be placed on a CD or DVD and mailed directly to OJAG (Code 40).

c. Compliance with crime reporting requirements. Before forwarding the record of trial to OJAG (Code 40), the

appropriate documents necessary for crime reporting must be complete and uploaded to the respective case management systems. Records of trial will be deemed complete and accepted for appellate review only when, in addition to the hard copy record, the responsible RLSO or LSSS has ensured a copy of the Statement of Trial Results, convening authority's action, all charge sheets, entry of judgment, and, as applicable, any rulings pursuant to R.C.M. 1104 are uploaded into appropriate case management systems (e.g., CMS, CMTIS). Consult JAG/CNLSCINST 5814.1 (series) and appropriate Marine Corps guidance for specific documentation requirements.

d. Transmittal of cases resulting in no punitive discharge or dismissal and six months or less of confinement. If an accused receives a sentence of six months or less confinement and no punitive discharge, the certified record of trial will be reviewed under Article 65(d), UCMJ and R.C.M. 1116. The certified record of trial will be forwarded to the SJA of the GCMCA designated in subsection 0158(d)(2), below.

(1) Manner of review. The SJA may review the record pursuant to R.C.M. 1116, or may cause another judge advocate to perform such review. Upon completion of the review, if the SJA believes corrective action may be required, the record of trial along with the request for corrective action will be forwarded to the JAG, or his or her designee, via OJAG (Code 20), for action in accordance with Article 65(e), UCMJ.

(2) Identification of judge advocate to whom record is forwarded for review. In all cases, the action of the convening authority in forwarding the record for judge advocate review will identify the judge advocate to whom the record is forwarded by stating his or her official title, such as "The record of trial is forwarded to the Staff Judge Advocate, Commander, Navy Region Mid-Atlantic, for review under Article 65, UCMJ."

e. Transmittal of cases resulting in a full acquittal.

(1) General courts-martial. Records of all trials by general court-martial will, immediately after certification of the record of trial, be filed at OJAG (Code 40).

(2) Special courts-martial. Records of trial by special court-martial that involve an officer accused or that have been returned for further action, will, after certification of the

record of trial, be filed in OJAG (Code 40). All other special courts-martial records will be filed in the manner provided below for summary courts-martial.

f. Transmittal of summary courts-martial.

(1) Shore activities where records of trial have been reviewed under Articles 64 and 65, UCMJ, will retain original records of proceedings for a period of two years after final action. At the termination of such retention period, commands must contact the OJAG (Code 40) records custodian to coordinate the transfer of the original records of trial to the National Personnel Records Center, Military Personnel Records, General Services Administration.

(2) Fleet activities, including Fleet Air Wings and Fleet Marine Forces, where records of trial have been reviewed under Articles 64 and 65, UCMJ, will retain original records of trials for a period of three years after final action. At the termination of such retention period, commands must contact the OJAG (Code 40) records custodian to coordinate the transfer of the original records of trial to the National Personnel Records Center, Military Personnel Records, General Services Administration.

g. Transmittal of cases where accused waived or withdrew from automatic appeal or appeal of right. Upon completion of the entry of judgment in any case in which the accused has waived the appellate review process or withdrew from appellate review under R.C.M. 1115, the certified record of trial will immediately be sent directly to Navy-Marine Corps Appellate Review Activity (Code 40), 1254 Charles Morris Street SE, Ste B01, Washington Navy Yard, DC, 20374-5124 via USPS Registered Mail, Federal Express, USPS Priority Mail Express, UPS Express, or DHL Express only. Consult JAG/CNLSCINST 5814.1 (series) and appropriate Marine Corps guidance. The convening authority will provide reasons in writing for any delay in forwarding the record and append them to the record of trial.

h. Review of cases.

(1) Cases eligible for review at the Court of Criminal Appeals in which the accused has waived or withdrawn appellate review or failed to file an appeal. If the accused waives or withdraws the right to appellate review or does not file a

timely appeal, the commanding officer of the Reserve Preliminary Hearing Officer Unit or his or her immediate supervisor will designate a judge advocate to review the record in accordance with R.C.M. 1201(e) and prepare a written decision to be appended to the record that includes:

(a) A conclusion as to whether the court had jurisdiction over the accused and the offense;

(b) A conclusion as to whether the charge and specification stated an offense; and

(c) A conclusion as to whether the sentence was within the limits prescribed as a matter of law.

(2) Cases not eligible for appellate review at a Court of Criminal Appeals. If the case is not eligible for direct review under Article 66(b), UCMJ, the convening authority's SJA shall review the record in accordance with R.C.M. 1201(d) and prepare a written decision to be appended to the record that includes:

(a) A conclusion as to whether the court had jurisdiction over the accused and the offense;

(b) A conclusion as to whether the charge and specification stated an offense;

(c) A conclusion as to whether the sentence was within the limits prescribed as a matter of law; and

(d) When applicable, a response to each allegation of error made in writing by the accused.

(3) Cases reviewed by a Court of Criminal Appeals. NMCCA shall review cases forwarded to it by the JAG under Article 65(b)(1), and in cases eligible for review where the accused has made a timely appeal from the judgment of a court-martial, in accordance with Articles 66(b)(1) and 66(h), UCMJ, and R.C.M. 1203.

(4) Review of summary courts-martial. The convening authority acting upon the record of a summary court-martial shall follow the provisions of R.C.M. 1306(b) and append a written action to the record in accordance with R.C.M. 1306(d).

In each summary courts-martial in which there is a finding of guilty, a judge advocate assigned to the GCMCA superior in the chain of command to the convening authority, to the Region Commander, or to a subordinate commander authorized to convene general courts-martial and designated by the Region Commander for this purpose, shall review the record and append a written review of the case in accordance with R.C.M. 1307.

0159 Appeal of Sentence by the Government

a. Submission of request to appeal. If the government seeks to appeal the announced sentence under R.C.M. 1007, the trial counsel must obtain approval from the JAG, or his or her designee, in accordance with R.C.M. 1117. In order to request the approval of the JAG, the trial counsel shall submit the request to JAG, or his or her designee, via OJAG (Code 46).

b. Contents of request. This request shall include the following:

- (1) A statement of reasons to support an appeal;
- (2) Statement of the law at issue and the facts in the record that demonstrate a violation of the law;
- (3) Identification of facts that demonstrate by clear and convincing evidence that the sentence was plainly unreasonable; and
- (4) Input, if provided, from the military judge, the accused, parties, and the crime victim.

c. Timing. A government appeal of a sentence must be filed with the Court of Criminal Appeals within 60 days after the entry of judgment.

0160 JAG Orders Implementing Appellate Court Rulings

a. Background. Upon issuance of any appellate judicial ruling (including Article 62 rulings, extraordinary writs, writs-appals, mandates, opinions, orders, decisions, or any other ruling by NMCCA or U.S. Court of Appeals for the Armed Forces (CAAF), or the Supreme Court of the United States (SCOTUS) and only after applicable waiting periods have expired), the record, along with the appellate ruling, must be returned by the JAG to

the convening authority for appropriate action. OJAG (Code 40) performs this service on behalf of the JAG. No action may be taken on an appellate ruling until the ruling is returned by OJAG (Code 40) via order to the appropriate convening authority via the cognizant RLSO, LSSS, or LC for action.

b. Returned cases. When an appellate ruling issued by NMCCA, CAAF, or SCOTUS returns a record of trial to the JAG for further action, that record of trial will be retained by OJAG (Code 40). OJAG (Code 40) will forward the following consistent with the waiting periods discussed below: (a) a certified copy of the record of trial to the appropriate convening authority via the cognizant RLSO, LSSS, or LC; and (b) the JAG order directing the required action on the appellate ruling. No party will take any action on an appellate ruling until directed by the JAG under section 0160. The following rules apply.

(1) Returned NMCCA cases. In cases where NMCCA issues an appellate ruling, OJAG (Code 40) will retain control of the record of trial until the time for filing a petition for reconsideration at NMCCA (30 days from service of NMCCA's ruling), a petition to CAAF (for writ-appeals, 20 days from the service of NMCCA's ruling, order, opinion, or decision on reconsideration; and, in all other cases, 60 days from the service of NMCCA's ruling, order, opinion, or decision on reconsideration in all other cases), and a certification to CAAF (60 days from NMCCA's ruling, order, opinion, or decision on reconsideration), expires and no petition for further review has been filed, except as provided below. Should court rules change the length of waiting periods, the new periods control.

(a) OJAG (Code 40) may not return records of trial before the expiration of these periods, unless informed in writing by both OJAG (Code 46), and appellate defense counsel of record of trial, that both parties do not intend to seek reconsideration, certification, petition, or further appellate review, and also desire the record of trial to be returned to the convening authority or the Navy and Marine Corps Appellate Leave Activity (NAMALA).

(b) If a petition for review or certificate is filed at CAAF, or appellate review is otherwise granted at NMCCA, CAAF, or SCOTUS, then OJAG (Code 40) will maintain the record or forward the record of trial to the appropriate court.

(c) If NMCCA has ordered further proceedings or post-trial processing, once complete, the convening authority will return the record of trial to OJAG (Code 40) via the cognizant RLSO, LSSS, or LC.

(2) Returned CAAF cases. In cases where CAAF issues a ruling, OJAG (Code 40) will retain control of the record of trial until the time for filing a petition for reconsideration expires (10 days from CAAF's ruling and, in the case of opinions, until CAAF issues an official mandate under CAAF Rule 43A, the time for filing a petition for writ of certiorari to SCOTUS (90 days from CAAF's opinion or order) expires, and no petition for further review has been filed, except as provided below.

(a) If reconsideration of a ruling is filed at CAAF, OJAG (Code 40) will wait until CAAF finally rules on the reconsideration (and in the case of opinions, until CAAF issues an official mandate) and until any other applicable periods have expired (e.g., the time for filing a petition for writ of certiorari to SCOTUS), which begin to run after the ruling on reconsideration is issued.

(b) Where CAAF instructs, OJAG (Code 40) will return the record of trial to NMCCA for further review or to the JAG. However, OJAG (Code 40) will not return records of trial to the convening authority before the expiration of these periods unless informed in writing by both OJAG (Code 46), and appellate defense counsel of record, that both parties do not currently intend to seek reconsideration, certification, petition, or further appellate review, and also desire the record to be returned to the convening authority.

(c) If CAAF has ordered further proceedings or post-trial processing, once complete, the convening authority will return the record to OJAG (Code 40) via the cognizant RLSO, LSSS, or LC.

(d) If petition for further review is filed and granted, or appellate review is otherwise granted at NMCCA, CAAF, or SCOTUS, then OJAG (Code 40) will maintain the record or forward the record of trial to the appropriate court.

c. When confinement is affected. In accordance with Article 57a, UCMJ, in any case which a court-martial sentences a

person to confinement and the sentence to confinement has been ordered executed, but in which review of the case under Article 67a(2), UCMJ, is pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending. Deferment requests pursuant to Article 57a will be addressed to the Secretary of the Navy via OJAG (Code 20).

0161 Service and Execution of Sentences

a. General. A sentence is executed and takes effect as follows:

(1) General and special courts-martial. A sentence is executed and takes effect when the judgment is entered into the record under R.C.M. 1111, unless otherwise specified.

(2) Summary courts-martial. A sentence is executed and takes effect when the convening authority acts on the sentence, unless otherwise specified.

b. Place and nature of confinement.

(1) Designation of places of confinement. Subject to section 0174, the convening authority or other person taking the initial action on a court-martial that sentenced an accused to confinement is a competent authority to designate the initial place of confinement of naval prisoners.

(2) Nature of confinement. See SECNAVINST 1640.9 (series).

c. Execution of punitive discharge and dismissal. A punitive discharge may not be not executed until the appellate review process is complete and the court-martial is finalized in accordance with R.C.M. 1209.

d. Punitive discharge - Naval Clemency and Parole Board action.

(1) In general. Notwithstanding the fact that a sentence may have been duly ordered executed, a punitive discharge may not in fact be executed until the provisions of SECNAVINST 5815.3 (series) have been fulfilled.

(2) Required documents. A complete copy of the certified

record of trial will be forwarded to the Naval Clemency and Parole Board in those cases in which the approved sentence includes an unsuspended punitive discharge, dismissal, or confinement for 12 months or more. See section 0158.

e. Execution of death penalty. The manner in which a sentence to death is to be carried out will be determined by the Secretary of the Navy.

f. Hard labor without confinement. R.C.M. 1003(b)(6) authorizes special and general courts-martial to sentence enlisted members to hard labor without confinement for up to three months. The immediate commander of an accused designates the amount and character of the hard labor to be performed, which should conform to the guidelines governing extra duties imposed as punishment under Article 15, UCMJ; see paragraph 5(c)(6) of Part V, MCM.

0162 Remission and Suspension

a. Authority to remit or suspend sentences in general courts-martial and special courts-martial in which the sentence includes a bad-conduct discharge. Pursuant to Article 74(a), UCMJ, and subject to the limitations in section 0162a, below, the Under Secretary of the Navy, the Assistant Secretaries of the Navy, the JAG, and, subject to the limitations in Article 60a, UCMJ, all general courts-martial convening authorities over the command to which the accused is attached are empowered to remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President. A sentence to death may not be suspended.

b. Authority to remit or suspend sentences. Notwithstanding the limitations in section 0162a below, if the accused's commander has authority to convene a court-martial of the kind that adjudged the sentence, that commander, subject to the limitations of Article 60a, UCMJ, may suspend or remit any part of the unexecuted part of any sentence that does not include a sentence of death, dishonorable discharge, bad-conduct discharge, dismissal, or confinement for more than six months. See R.C.M. 1107(b).

c. Probationary period. Suspensions will conform to the conditions, limitations, and termination requirements of R.C.M.

1107(c)-(e). See also R.C.M. 1108(b)(4), which governs interruptions of a period of suspension due to unauthorized absence of the probationer or the commencement of proceedings to vacate suspension. For instructions concerning voluntary extension of enlistment for the purpose of serving probation, see SECNAVINST 5815.3 (series).

d. Liaison with Naval Clemency and Parole Board. Officers taking clemency action pursuant to the authority of section 0162 on any sentence including a punitive discharge or confinement for 12 months or more will coordinate such action with the Naval Clemency and Parole Board under the provisions of SECNAVINST 5815.3 (series). This obligation to coordinate does not limit the authority any officer otherwise has to take clemency action.

0162a Limitations on Authority to Remit and Suspend Sentences

a. Cases involving national security. No official of the DON, other than the Secretary of the Navy, may remit or suspend, pursuant to Article 74(a), UCMJ, any part or amount of the approved sentence in any case designated as a national security case in accordance with section 0126.

b. Life without the possibility of parole. The Secretary of the Navy may suspend or remit the unexecuted part of a sentence of confinement for life without eligibility for parole only after the service of a period of confinement of not less than 20 years. See R.C.M. 1107.

c. Flag and general officers. Notwithstanding section 0162, the JAG may not remit or suspend, pursuant to Article 74(a), UCMJ, any part or amount of the sentence in any case involving a flag or general officer.

d. Officers and warrant officers. Notwithstanding section 0162, GCMCAs may not remit or suspend, pursuant to Article 74(a), UCMJ, any part or amount of the sentence in any case involving an officer or warrant officer.

e. Authority of the Commanding Officer, Navy-Marine Corps Appellate Leave Activity, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, KS. The Commanding Officer, Navy-Marine Corps Appellate Leave Activity, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, KS (or its successor

command), may:

(1) Effect actions directed by the Secretary following clemency review;

(2) Remit uncollected forfeitures of courts-martial prisoners returning to duty;

(3) Remit confinement, not in excess of five days, to facilitate administration, by adjusting dates of transfer upon completion of confinement. Early releases in excess of five days may be granted when specifically authorized by the Commander, Navy Personnel Command for Navy prisoners, or the Commandant of the Marine Corps for Marine Corps prisoners; and

(4) Exercise other authority specifically delegated in writing by the Secretary.

0163 Restoration of the Accused

In a case where an executed part of a court-martial sentence has been set aside or disapproved, the accused must be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed at a new hearing. For the period of time after the date on which an executed part of a court-martial sentence is set aside, an accused pending a rehearing or new trial must receive the pay and allowances at the restored grade until the completion of the new trial or rehearing.

0164 Vacation of Suspension of Sentence

a. Review of confinement of probationer pending vacation proceedings. The officers appointed under section 0127 to conduct a review of pre-trial confinement under R.C.M. 305 will also conduct reviews of confinement under R.C.M. 1108(c)(4). The same procedures set forth on section 0127 shall be used.

b. Notice of proceedings. In the case of courts-martial under review, immediate notice of the vacation of any punishment will be made to the command or activity conducting the review. In the case of courts-martial in which the approved sentence includes a punitive discharge, dismissal, death, or confinement of six months or more, and appellate review has not been waived, notice will be made to both the Navy-Marine Corps Appellate

Review Activity (OJAG, Code 40) and the NMCCA.

c. Filing of report of proceedings. The original record of any proceedings in connection with vacation of suspension under R.C.M. 1108, will be included in the certified record of trial (see R.C.M. 1112(f)). If the authority ordering the vacation is not in possession of the record of trial, that authority will transmit the record of the vacation proceedings to the command or activity to which the original record of trial was forwarded for inclusion in the record of trial. In the case of vacation of a suspended general court-martial sentence or of a suspended special court-martial sentence including a bad-conduct discharge, two copies of the record of any vacation proceedings will be forwarded with the original of such vacation proceedings.

d. Execution of vacated punishments. The execution of a vacated punishment is subject to the restrictions of section 0161 and R.C.M. 1102(b).

0165 Request for Waiver or Withdrawal of Appellate Review

a. General. In all cases an accused may waive the right to appellate review or withdraw from the appellate review process in accordance with the NMCCA rules, except one in which the judgment entered into the record includes a sentence of death. Waivers and requests to withdraw from appellate review, including the certified record of trial, will be forwarded to OJAG (Code 40). In cases where the accused withdraws from or waives appellate review, the certified record of trial will be forwarded to the commanding officer of the Reserve Preliminary Hearing Officer Unit or his or her immediate supervisor to conduct review under Article 65, UCMJ.

b. Waiver or withdrawal. A waiver may be signed at any time after entry of judgment and withdrawal from appellate review may be made at any time before such review is completed. However, an accused cannot effectively waive appellate review until after service of the entry of judgment. An accused who wishes to waive or withdraw from appellate review has the right to consult with counsel before such waiver or withdrawal. The waiver or withdrawal of appellate review must be in writing and forwarded for inclusion into the original record of trial as an enclosure. For sample forms, see Appendices 13 and 14, MCM.

0166 Article 69, UCMJ, Reviews

a. General. Upon application by the accused, the JAG, or his or her designee, may modify or set aside in whole or in part the findings and sentence of a court-martial that is not reviewed under Article 66, UCMJ. An Article 69, UCMJ, review occurs after a review under Article 64 or 65, UCMJ.

b. Time limits. An application by an accused for such a review must be filed in OJAG (Code 20) within one year after the date of the completion of the review under Article 64 or 65, UCMJ, unless the accused establishes good cause for failure to file within that time. However, the period in which to request a review under Article 69, UCMJ, cannot exceed three years. Any command in receipt of an application for Article 69, UCMJ, review will immediately forward an advance copy of the application to OJAG (Code 20) to ensure the timely submission of the application.

c. Scope of review.

(1) In a case previously reviewed under Article 64, UCMJ, (summary courts-martial) or cases previously reviewed under Article 65(d)(2), UCMJ, (cases not eligible for direct appeal), the JAG may set aside the findings or sentence, in whole or in part, on the grounds of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or appropriateness of the sentence.

(2) In a case previously reviewed under Article 65(d)(3), UCMJ, the review is limited to the determination of whether the waiver, withdrawal, or failure to file an appeal was invalid.

d. Submission procedures. Applications for relief will be submitted in writing to OJAG (Code 20). If the accused is on active duty, the application will be submitted via the applicant's commanding officer, the command that convened the court-martial, and the command that reviewed the case under Article 64 or 65, UCMJ, if applicable. If the original record of trial is held by the command that reviewed the case under Article 64 or 65, UCMJ, it will be forwarded as an enclosure to the command's endorsement. If the original record of trial has been filed in the National Personnel Records Center (see section 0158), the endorsement will include all necessary retrieval data (accession number, box number, and shelf location) obtained from

the receipt returned from the National Personnel Records Center to the sending activity. This endorsement will also include information and specific comments on the grounds for relief asserted in the application, and an opinion on the merits of the application. If the applicant is no longer on active duty, the application will be submitted directly to OJAG (Code 20).

e. Contents of application. All applications for relief will contain:

- (1) Full name of the applicant;
- (2) Applicant's DoD ID number and branch of service, if any;
- (3) Applicant's present grade, if on active duty or retired, or "civilian" or "deceased," as applicable;
- (4) Applicant's address at time the application is forwarded;
- (5) Date of trial;
- (6) Place of trial;
- (7) Command title of the organization at which the court-martial was convened (convening authority);
- (8) Command title of the officer exercising Article 64 review authority over the applicant at the time of trial, if applicable;
- (9) Command title of the officer that performed the Article 65(d), UCMJ, review, if applicable;
- (10) Type of court-martial that convicted the applicant, and sentence adjudged;
- (11) General grounds for the requested relief, which must be one or more of the following:
 - (a) Newly discovered evidence;
 - (b) Fraud on the court;

(c) Lack of jurisdiction over the accused or the offense;

(d) Error prejudicial to the substantial rights of the accused; or

(e) Appropriateness of the sentence.

(12) An elaboration of the specific prejudice resulting from any error cited. Legal authorities to support the applicant's contentions may be included, and the format used may take the form of a legal brief if the applicant so desires;

(13) Any other matter the applicant desires to submit;

(14) Relief requested;

(15) Facts and circumstances to establish "good cause" for a failure to file the application within the time limits prescribed in subsection 0166(b), if applicable; and

(16) If the application is signed by a person other than the applicant pursuant to subsection 0166(f) below, an explanation of the circumstances rendering the applicant incapable of making application.

f. Signatures on application. Unless incapable of making application, the applicant will personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian, or other person with a proper interest in the matter. In this regard, one is considered incapable of making application for purposes of subsection 0166(f) when unable to sign the application under oath due to physical or mental incapacity.

g. Notification of JAG review. Upon completion of the Article 69, UCMJ, review, the accused shall receive a copy of the decision made by the JAG, or his or her designee. An accused is notified when the decision is mailed to the address provided by the accused or the address listed for the accused in the official service record. Within this notification, an accused will be informed of his or her right to request the Court of Criminal Appeals review the case.

h. Court of Criminal Appeals review of Article 69 appeals. The NMCCA may review a case after Article 69 review is complete in two situations: (1) in a case sent to the NMCCA by order of the JAG; or (2) when an accused applies for NMCCA review subsequent to the decision made by the JAG, or his or her designee. If an accused seeks NMCCA review, the accused must submit an application within 60 days of receiving notification of the decision of the JAG, or his or her designee, or within 60 days of when the decision was mailed to the accused in accordance with subsection 0166(g) above. The accused's application for NMCCA review must demonstrate a substantial basis for concluding that the decision constituted prejudicial error.

0167 Petition for New Trial - Article 73, UCMJ

Petitions for a new trial under Article 73, UCMJ, will comply with the form and procedures set forth in R.C.M. 1210, and will be sent directly to OJAG (Code 40).

0168 Substitution of Discharge - Article 74(b), UCMJ

a. Statutory provision. Article 74(b), UCMJ, provides that the "Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial."

b. Submission procedures. Applications for substitution of discharge under Article 74(b), UCMJ, will be submitted to the Secretary through OJAG (Code 20). If received within five years after the execution of the punitive discharge or dismissal, or within five years after the disapproval of a prior request under Article 74(b), UCMJ, applications for substitution of discharge, except in unusual circumstances, will not normally be considered.

c. Contents of the application. All applications for substitution of discharge will contain:

- (1) Applicant's full name, DoD ID number, age, and date of birth;
- (2) Applicant's branch of service;
- (3) Date and place of trial, and type of court-martial

that resulted in the punitive discharge or dismissal;

(4) Command title of the courts-martial convening authority;

(5) Offense(s) of which the applicant was convicted and the sentence entered by the court;

(6) Date the punitive discharge or dismissal was executed;

(7) Applicant's current marital status and number and ages of dependents, if any;

(8) Applicant's civilian criminal record (arrest(s) with disposition and conviction(s)), if any, both prior and subsequent to the court-martial that resulted in the punitive discharge or dismissal. If an applicant has no civilian criminal record, he or she should affirmatively state that fact in the application;

(9) Any military administrative discharge proceedings (circumstances and disposition) initiated against the applicant;

(10) Applicant's full employment record since the punitive discharge or dismissal was executed;

(11) The specific type and character of administrative discharge requested under Article 74(b), UCMJ (a more favorable administrative discharge than that requested will not be approved);

(12) At least three, but no more than six, character affidavits (the character affidavits must be notarized, indicate the relationship of the affiant as well as specific reasons why the affiant believes the applicant to be of good character). The affidavits should discuss the applicant's character primarily as reflected in the civilian community since the applicant's punitive discharge or dismissal;

(13) Any matters, other than character affidavits, supporting the considerations described in 0168(c)(12) above; and

(14) A statement by the applicant, setting forth the

specific considerations the applicant believes constitute good cause sufficient to warrant the substitution of an administrative form of discharge for the punitive discharge or dismissal previously executed. Article 74(b), UCMJ, does not provide an extraordinary procedure for the review of a court-martial. Questions of guilt or innocence, or legal issues attendant to the court-martial that resulted in the punitive discharge or dismissal, are neither relevant nor appropriate for consideration under Article 74(b), UCMJ. As used in the statute, "good cause" was envisioned by Congress to encompass a Secretarial exercise of clemency and ultimate control of sentence uniformity. Accordingly, in determining what constitutes good cause under Article 74(b), UCMJ, the primary concern will be with the applicant's record in the civilian community subsequent to his or her punitive separation from the naval service.

d. Signature on application. Unless incapable, the applicant will personally sign the application, under oath, before a notary or other official authorized to administer oaths. If the applicant is incapable of executing the application, the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian, or other person recognized as a personal representative by the law of the applicant's domicile. One is considered incapable of executing an application, for purposes of subsection 0168(d) only, when the applicant is unable to sign the application under oath due to physical or mental incapacity. When an application is signed by a person other than the applicant, the circumstances rendering the applicant incapable of executing the application, with appropriate documentation, will be set forth in the application.

0169 Notification to Accused of Court of Criminal Appeals Decision

a. Service of NMCCA decision upon accused. Upon receipt of the decision of NMCCA, OJAG (Code 40) will provide the accused a copy of the decision by first-class certified mail. If the accused's address is not contained in the certified record of trial, the GCMCA over the accused will provide OJAG (Code 40) the accused's last known address. If the accused is in a military confinement facility, absent contrary directions from the accused, the decision will be forwarded to the commanding officer or officer in charge of the confinement facility for delivery to

the accused. The commanding officer or officer in charge of such facility will ensure personal service on the accused and that the certificate of personal service is completed and returned to OJAG (Code 40).

b. Contents. The contents of the above service must include a copy of the NMCCA decision containing the endorsement notifying the accused of his or her right to petition for review by CAAF.

c. Copies of decision. Copies of the NMCCA decision will be forwarded by OJAG (Code 40) to the appropriate RLSO, LSSS, or LC.

d. Change in address. Notice of any change in address of the accused due to transfer, appellate leave, or any reason will be immediately given to OJAG (Code 40).

e. Completion of appellate review. Notification of the completion of appellate review (i.e., expiration of the 60-day appeal period if no petition for review is filed, or final review by CAAF or SCOTUS) will be forwarded by OJAG (Code 40) to the cognizant GCMCA for compliance with sections 0161 and 0169, if applicable.

0170 Request for Immediate Execution of Discharge

a. General. Before completion of appellate review, an accused may request immediate execution of the unexecuted portion of his or her sentence, following completion of the confinement portion thereof, if any, in those cases in which the sentence as affirmed by NMCCA:

(1) Includes an unsuspended punitive discharge; and

(2) Either does not include confinement, or the confinement portion thereof has been or will be completed before 60 days from the date the accused is served with a copy of the NMCCA decision.

b. Conditions of approval. Such requests may be approved by the GCMCA subject to the following conditions:

(1) That the accused has received a copy of the decision of the NMCCA in his or her case;

(2) That the accused has had fully explained to him or

her the right to petition CAAF for grant of review;

(3) That the accused does not have a petition or case pending before CAAF;

(4) That the accused does not intend to petition CAAF but, he or she understands that the request for immediate release does not affect the right to petition CAAF;

(5) That the accused has consulted counsel of his or her own choice; and

(6) That Naval Clemency and Parole Board review, under the provisions of SECNAVINST 5815.3 (series), if applicable, has been completed.

c. Execution of unexecuted portion of sentence. Upon approval of such requests, the GCMCA will order the unexecuted portion of the sentence to be duly executed.

d. Form of request for immediate execution of discharge. The prescribed form is set forth in Appendix A-1-m. Three signed copies of the request will be transmitted to OJAG (Code 40).

0171 Inspection of Record of Trial Containing Classified Information

After the completion of the appellate review process, an appellant desiring to personally inspect the original record of trial that contains classified information must submit a request to OJAG (Code 40) via OJAG (Code 30). Such requests are subject to the requirements of SECNAVINST 5510.36 (series). If during the appellate review process, refer to subsection 0155(i) above for those procedures.

0172 Setoff of Indebtedness of a Person Against Pay

a. Courts-martial decisions. When the United States has suffered loss of money or property through the offenses of selling or otherwise disposing of, or willfully damaging or losing military property, willfully and wrongfully hazarding a vessel, larceny, wrongful appropriation, robbery, forgery, arson, or fraud for which persons, other than accountable officers (see DoD Financial Management Regulation, DoD 7000.14-R, Volume 5, Chapter 2, section 0203) have been convicted by court-martial,

the amount of such loss constitutes an indebtedness to the United States that will be set off against the final pay and allowances due such person at the time of dismissal, discharge, or release from active duty.

b. Administrative determinations. In addition, when the government suffers a loss of money and competent authority has administratively determined the loss occurred through the fraud, forgery, or other unlawful acts of such persons as described in subsection 0172(a), the amount of such loss will be set off as described in subsection 0172(a). "Competent authority," as used herein, will be the commanding officer of such persons and the administrative determination will be made through an investigation pursuant to this Manual and approved on review by a GCMCA.

c. Army and Air Force property. When the money or property involved belongs to the Army or the Air Force, and such service determines liability through the procedures provided by the authority of 37 U.S.C. § 1007 and demands setoff against the final pay and allowances of any naval service personnel, setoff will be effected in accordance with subsection 0172(a).

d. Voluntary restitution. Immediate recovery action may be instituted on the basis of a voluntary offer of the member to make restitution of all or part of any indebtedness to the government. The voluntary offer constitutes assumption of pecuniary responsibility for the loss and, as such, is sufficient to authorize checkage of current pay, if required, to collect the amount of the indebtedness. See also 10 U.S.C. § 6161 concerning the possibility of remission or cancellation of an enlisted member's indebtedness. Nothing herein precludes a setoff against final pay in other cases when such action is directed by competent authority.

Part D - Miscellaneous

0173 Apprehension by Civilian Agents of the Naval Criminal Investigative Service

Pursuant to the provisions of R.C.M. 302(b)(1), and under the authority of Article 7(b), UCMJ, any civilian agent of NCIS who is duly accredited by the Director, NCIS, and who is engaged in conducting an investigation, with or without prior approval or a request from a competent command, within the investigative

jurisdiction of NCIS as established in departmental directives, may apprehend, if necessary, persons subject to the UCMJ or to trial thereunder, upon reasonable belief that an offense has been committed and that the person apprehended committed it. A person so apprehended must be taken promptly before his or her commanding officer or other appropriate military authority. Such a civilian agent may apprehend a commissioned officer or a warrant officer only pursuant to specific orders of a commissioned officer, except where such an apprehension is necessary to prevent disgrace to the service, the commission of a serious offense, or the escape of one who has committed a serious offense. Such a civilian agent, even though not conducting an investigation relating to the person apprehended, may also apprehend a person subject to the UCMJ upon observation of the commission of a felony or a misdemeanor amounting to a breach of the peace occurring in the agent's presence. A person so apprehended must be delivered promptly to his or her commanding officer or other appropriate military authority.

0174 Authority to Prescribe Regulations Relating to the Designation and Changing of Places of Confinement

Commander, Navy Personnel Command and the Commandant of the Marine Corps are authorized to issue joint regulations, as required, relating to the designation and the changing of places of confinement of naval prisoners, the transfer of naval prisoners among military confinement facilities, and transfers from military facilities to civilian confinement facilities. See SECNAVINST 1640.9 (series), BUPERSINST 1640 (series), and MCO 1640.3.

0175 Forms Supplementing the Military Rules of Evidence

a. Interrogations. Appendix A-1-n contains a suggested format that investigative personnel can use when a criminal suspect desires to waive his or her rights concerning self-incrimination and to make a statement. See M.R.E. 301-305.

b. Search and seizure. Appendices A-1-o and A-1-p contain suggested formats for recording information pertaining to authorization for searches, with instructions, and the granting of consent to search. See M.R.E. 311-316.

0176 Recoupment of Advanced Education Assistance

a. Authority. 10 U.S.C. § 2005 authorizes the Secretary of the Navy to require a Service member to enter a written agreement to serve on active duty for a specified period of time as a condition of that Service member's receipt of advanced education financial assistance from the Government. Whether voluntarily or as a result of misconduct, if the Service member fails to complete the term of active-duty service specified in the agreement, the Secretary of the Navy can require the member to reimburse the United States. 10 U.S.C. § 2005 also requires that a recipient of advanced education assistance be advised of the recoupment possibility before the recipient submits a request for voluntary separation or makes a personal decision regarding administrative, nonjudicial, or judicial action resulting from alleged misconduct.

b. Advisement. Accordingly, a Service member having obligated service arising from advanced education assistance must be advised that he or she may be required to reimburse the United States for the cost of advanced education assistance not repaid by active service as specified in the written agreement entered into with the Government. This advice (see Appendix A-1-e) must be given to the member before he or she:

(1) Accepts nonjudicial punishment or a summary court-martial;

(2) Requests voluntary separation;

(3) Waives an administrative discharge board or board of inquiry; or

(4) Enters a guilty plea at a court-martial (whether in accordance with a plea agreement or otherwise).

c. Application. Recoupment applies to those individuals who have received, at Government expense, education or training above the secondary level. Applicable programs may include, but are not limited to, the U.S. service academies, Reserve Officer Training Corps, the Funded Law Education Program, the Armed Forces Health Professions Scholarship Program, other post-graduate programs, and enlisted educational programs such as the Enlisted Education Advancement Program.

d. No additional rights. This requirement is not intended

to confer rights on an individual but to preserve for the Government the possibility of recoupment. Failure to advise a member of the possibility of recoupment, as discussed in subsections 0176(a) and (b) above, before the member submits a request for retirement or makes a personal decision regarding administrative separation, nonjudicial punishment, or judicial actions will not create any cause for relief against an otherwise valid nonjudicial, judicial, or administrative proceeding process.

0177 Search of Attorneys and Attorney Spaces

a. General. There are occasions when effective law enforcement may require the issuance of a search authorization for attorneys or attorney spaces. Because of the potential effect of this type of search on attorney-client relationships and because of the possibility that, during such a search, the government may encounter material protected by a legitimate claim of privilege, it is important that close control be exercised over this type of search.

b. Definitions.

(1) For purposes of section 0177 only, "subject" includes:

(a) An attorney who is a suspect, subject, or target of a criminal investigation;

(b) An attorney who is related by blood or marriage to a suspect, subject, or target of a criminal investigation; or

(c) An attorney who is believed to be in possession of contraband or the fruits or instrumentalities of a crime.

(2) Attorney "spaces" may include the office, residence, personal items, or person of the attorney.

(3) Exigent circumstances is defined as an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence.

c. Considerations. In order to avoid impinging on attorney-client relationships, trial counsel and law enforcement

agencies are expected to take the least intrusive approach consistent with vigorous and effective law enforcement when evidence is sought from an attorney actively engaged in the practice of law. Consideration should be given to obtaining information from other sources or through the use of a subpoena, unless such efforts could compromise the criminal investigation or prosecution, or could result in the obstruction or destruction of evidence, or would otherwise be ineffective. An application for such a search authorization is appropriate when there is a strong need for the information or material and less intrusive means have been considered and rejected.

d. Procedures for obtaining search authorization. Should trial counsel believe there are no viable, less-intrusive alternatives available, including seeking a court order when a court has jurisdiction over the matter, then prior consultation is ordinarily required before requesting the issuance of a search authorization. Absent exigent circumstances, the following consultation procedures apply:

(1) Prior consultation with Trial Counsel Assistance Program (TCAP). Trial counsel or law enforcement agents must first consult with the cognizant Director, TCAP (either Navy or USMC, as applicable) prior to requesting approval for such searches. Trial counsel or law enforcement agents should consult with the cognizant Director, TCAP as early as possible regarding a possible search of an attorney or an attorney's spaces. To facilitate the consultation, the cognizant Director, TCAP should be provided the grounds for requesting the search, the relevant information about the proposed search, a draft copy of the proposed search authorization, affidavit in support thereof, and any special instructions to the searching agents regarding search procedures and procedures to be followed to ensure that trial counsel (or the trial counsel team) is not "tainted" by any privileged material inadvertently seized during the search.

(2) The following procedures should be discussed with the cognizant Director, TCAP during consultation concerning the prospective search. This is not an exhaustive list of considerations, and the matters considered will vary according to the facts of each case:

(a) The privilege team (see subsection 0177(f)(2), below) that will conduct the review;

(b) Whether copies of all seized materials will be provided to the subject attorney (or a legal representative) in order to minimize adverse effects on the attorney's legal practice and to ensure that the subject counsel is afforded an opportunity to participate in the process of disputing determinations of privilege. To the extent possible, providing copies of seized records is encouraged, where such disclosure will not impede or obstruct the investigation; and

(c) Whether appropriate arrangements have been made for storage and handling of electronic evidence and procedures developed for searching computer data (i.e., procedures that recognize the unique nature of computer seizure and are designed to avoid review of materials implicating the privilege of unrelated clients).

(3) After consultation, Director, TCAP must provide a recommendation on the requested search authorization to the Chief of Staff, Region Legal Services Office (COS RLSO) or the Deputy Director, HQMC (JA), as appropriate. COS RLSO or Deputy Director, HQMC (JA) will then make a written recommendation to the commander with authority to grant the search. Absent exigent circumstances, trial counsel or law enforcement agents may not request search authorization from a commander with authority to grant the request until after consultation with the COS RLSO or Deputy Director, HQMC (JA) and receiving his or her written recommendation. Before advising that commander, the cognizant judge advocate must consult with the law enforcement officials seeking the authorization and the COS RLSO or the Deputy Director, HQMC (JA), as appropriate.

(4) Should exigent circumstances prevent prior consultation, the appropriate Director, TCAP and COS RLSO or Deputy Director, HQMC (JA) should be notified of the search immediately, and provided a copy of any command authorized search authorization, search authorization affidavit, and any special instructions to the searching agents as soon as possible.

e. Documentation. The draft of the proposed search authorization should be drawn as specifically as possible, consistent with the requirements of the investigation, to minimize the need to search and review privileged material to which no exception applies. The affidavit in support of the

proposed search authorization may attach any written instructions or, at a minimum, should generally state the government's intention to employ procedures designed to avoid impinging on valid attorney-client privileges.

f. Search procedures. In conducting the search, the following procedures shall apply:

(1) Procedures should be designed to ensure that privileged materials are not improperly viewed, seized or retained during the course of the search. The procedures to be followed should be tailored to the facts of each case and applicable mission needs and command structure. In all cases, trial counsel and law enforcement agents must employ adequate precautions to ensure that any searched materials are promptly reviewed for privilege claims and that privileged documents are returned to the attorney from whom they were seized.

(2) While every effort should be made to avoid viewing privileged material, the search may require limited review of arguably privileged material to ascertain whether the material is covered by the search authorization. Therefore, to protect the attorney-client privilege and to ensure that the investigation is not compromised by exposure to privileged material relating to the investigation or to defense strategy, a "privilege team" should be designated. The privilege team will consist of agents or investigators and a judge advocate who are not involved in the underlying investigation. The judge advocate assigned to the privilege team should not be connected to the investigation, or to the prosecution or defense departments involved in the case.

(3) The judge advocate assigned to the privilege team will give instructions that set forth procedures designed to minimize the intrusion into privileged material, and should ensure that the privilege team does not disclose any information to the investigation and trial counsel team unless and until so instructed by the judge advocate assigned to the privilege team. The privilege team judge advocate should be available either on or off-site, to advise the agents during the course of the search, but should not participate in the search itself.

(4) Once granted, the execution of the search authorization should be planned to minimize disruption to the operation of the attorney's office and should occur at a time

when clients are unlikely to be present. If clients are present, the search will not be conducted until clients can depart the spaces unless exigent circumstances require the search to be conducted immediately.

(5) Reasonable efforts should be made to limit the scope of the search to the evidence sought. The search should end when the object of the search is located and seized to avoid a continuing, unnecessary search of privileged spaces. If feasible, consideration should be given to securing or "freezing" the place being searched to confirm the recovery of the object of the search.

(6) If it is anticipated that computers, to include cell phones, will be searched or seized, investigators should follow procedures similar to those set forth in the current edition of the Department of Justice, Computer Crime and Intellectual Property Section Criminal Division's Searching and Seizing Computers manual.

g. Disclaimer. These guidelines are set forth solely for the purpose of internal DON guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative or litigation prerogatives of the DON.

0178 Military Justice Forms Index

a. How to obtain forms. DD forms used in courts-martial are available from the DoD Forms Management Program site at <http://www.esd.whs.mil/DD/>.

b. Forms prescribed by MCM. Where forms are prescribed by the MCM, but are not immediately available, convening authorities may improvise as necessary, using the MCM, and its appendices as guides.

NONPUNITIVE LETTER OF CAUTION

Date

From: Commander, U.S. Pacific Fleet
To: [Rank], [Name of officer receiving NPLOC], [Corps (if applicable)], USN/[Designator]

Subj: NONPUNITIVE LETTER OF CAUTION

Ref: (a) Report of investigation into discrepancies in the ship's store returns for the first quarter of fiscal year 20__, on USS _____ (_____)
(b) R.C.M. 306, MCM
(c) JAGMAN 0105

1. Reference (a) is the record of an investigation by _____ to inquire into certain discrepancies in the ship's store returns for the first quarter of fiscal year 20__ in USS _____.

2. [Here insert a precise statement of the relevant events and circumstances for which the letter of caution is issued.] From the foregoing, it is apparent that you performed your duties in a careless manner. Such carelessness contributed to the improper operation of the ship's store aboard USS _____. Accordingly, you are hereby administratively cautioned pursuant to references (b) and (c).

3. This letter, being nonpunitive, is addressed to you as a corrective measure. It does not become a part of your official record. You are advised, however, that in the future you will be expected to exercise greater care in the performance of your duties in order to measure up to the high standard of performance of duty required of all officers in the Surface Force. Commander, U.S. Pacific Fleet, trusts that the instructional benefit you will receive from this experience will cause you to become a more proficient Naval officer.

[Signature]

**NONJUDICIAL PUNISHMENT
ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED ATTACHED TO OR EMBARKED IN A VESSEL
(See JAGMAN 0109)**

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of _____, assigned or attached to _____.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, [insert current edition], you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

(Note: Here describe the offenses, including the UCMJ Article(s) allegedly violated.)

2. The allegations against you are based on the following information:

(Note: Here provide a brief summary of that information.)

3. You may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you will be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31, UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to

permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects considered as evidence against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether to impose nonjudicial punishment and if so, how much;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those who may be witness(es) against you, if their statements will be relevant and the witness(es) are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or, if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceeding.

ELECTION OF RIGHTS

4. Knowing and understanding all of my rights as set forth in paragraphs 1 through 3 above, my desires are as follows:

a. Personal appearance. (Check one)

_____ I request a personal appearance before the commanding officer.

_____ I waive my right to a personal appearance. (Check one below)

_____ I do not desire to submit any written matters for consideration.

_____ Written matters are attached.

b. Elections at personal appearance. (Check one or more)

_____ I request that the following witnesses be present

**NONJUDICIAL PUNISHMENT
ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL
RECORD CANNOT BE USED IN AGGRAVATION IN EVENT OF LATER
COURT-MARTIAL UNLESS LAWYER SERVES AS PERSONAL REPRESENTATIVE
(See JAGMAN 0109)**

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of

_____, assigned or attached to _____.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, [insert current edition], you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

(Note: Here describe the offenses, including the UCMJ Article(s) allegedly violated.)

2. The allegations against you are based on the following information:

(Note: Here provide a brief summary of that information.)

3. You have the right to refuse nonjudicial punishment and request trial by court-martial in lieu of nonjudicial punishment. If you refuse nonjudicial punishment, charges could be referred for trial by summary, special, or general court-martial. If charges are referred to trial by summary court-martial, you may not be tried by summary court-martial over your objection. If charges are referred to a special or general court-martial you will have the right to be represented by counsel. Regardless of whether you accept or refuse nonjudicial punishment, you could be processed for administrative separation based on your misconduct. The maximum punishment that could be imposed if you accept nonjudicial punishment is:

4. If you decide to accept nonjudicial punishment, you may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have

the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you will be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31, UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects considered as evidence against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those who may offer testimony or evidence against you, if their statements will be relevant and the witness(es) are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceeding.

ELECTION OF RIGHTS

5. Knowing and understanding all of my rights as set forth in paragraphs 1 through 4 above, my desires are as follows

a. Right to refuse nonjudicial punishment. (Check one)

_____ I refuse nonjudicial punishment. I understand that, upon refusal of nonjudicial punishment, charges could be referred against me for trial by summary, special, or general court-martial, and that I also have the option of refusing trial by summary court-martial. I also understand that my refusal of nonjudicial punishment does not preclude administrative action against me.

_____ I accept nonjudicial punishment. I am advised that acceptance of nonjudicial punishment does not preclude further administrative action against me. This may include being processed for an administrative discharge which could result in an other than honorable discharge.

(Note: If the accused does not accept nonjudicial punishment, the matter should be submitted to the commanding officer for disposition.)

b. Personal appearance. (Check one)

_____ I request a personal appearance before the commanding officer.

_____ I waive my right to personal appearance. (Check one below)

_____ I do not desire to submit any written matters for consideration

_____ Written matters are attached.

c. Elections at personal appearance. (Check one or more)

_____ I request that the following witnesses be present at my nonjudicial punishment proceeding:

_____ I request that my nonjudicial punishment
proceeding be open to the public.

(Signature of Accused and Date) (Signature of Witness and Date)

(Name of Accused) (Name of witness)

**NONJUDICIAL PUNISHMENT
ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL
RECORD MAY BE USED IN AGGRAVATION IN EVENT OF LATER COURT-
MARTIAL
(See JAGMAN 0109)**

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of

_____, assigned or attached to
_____.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, [insert current edition], you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

(Note: Here describe the offenses, including the UCMJ Article(s) allegedly violated.)

2. The allegations against you are based on the following information:

(Note: Here provide a brief summary of that information.)

3. You have the right to refuse nonjudicial punishment and request trial by court-martial in lieu of nonjudicial punishment. If you refuse nonjudicial punishment, charges could be referred for trial by summary, special, or general court-martial. If charges are referred to trial by summary court-martial, you may not be tried by summary court-martial over your objection. If charges are referred to a special or general court-martial you will have the right to be represented by counsel. Regardless of whether you accept or refuse nonjudicial punishment, you could be processed for administrative separation based on your misconduct. The maximum punishment that could be imposed if you accept nonjudicial punishment is:

4. If you decide to accept nonjudicial punishment, you may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have

the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you will be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31, UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects considered as evidence against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those who may offer testimony or evidence against you, if their statements will be relevant and the witness(es) are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceeding.

5. In order to help you decide whether or not to refuse nonjudicial punishment or to exercise any of the rights explained above should you decide to accept nonjudicial punishment, you may obtain the advice of a lawyer before any decision. If you wish to talk to a lawyer, a military lawyer will be made available to you, either in person or by telephone, free of charge, or you may obtain advice from a civilian lawyer at your own expense.

ELECTION OF RIGHTS

6. Knowing and understanding all of my rights as set forth in paragraphs 1 through 5 above, my desires are as follows:

a. Lawyer. (Check one or more, as applicable)

_____ I wish to talk to a military lawyer before completing the remainder of this form.

_____ I wish to talk to a civilian lawyer before completing the remainder of this form.

_____ I hereby voluntarily, knowingly, and intelligently give up my right to talk to a lawyer.

(Signature of witness) _____ (Signature of Accused)

(Date) _____ (Date)

(Note: If the accused wishes to talk to a lawyer, the remainder of this form will not be completed until the accused has been given a reasonable opportunity to do so.)

_____ I talked to _____, a lawyer, on _____.

(Signature of witness) _____ (Signature of Accused)

(Date) _____ (Date)

b. Right to refuse nonjudicial punishment. (Check one)

_____ I refuse nonjudicial punishment. I understand that, upon refusal of nonjudicial punishment, charges could be referred against me for trial by summary, special, or general court-martial, and that I also have the option of refusing trial by summary court-martial. I also understand that my refusal of nonjudicial punishment does not preclude administrative action against me based on my misconduct. This may include being processed for an administrative discharge which could result in an other than honorable discharge.

_____ I accept nonjudicial punishment. I understand that acceptance of nonjudicial punishment does not preclude further administrative action against me. This may include being processed for an administrative discharge which could result in an other-than-honorable discharge.

(Note: If the accused does not accept nonjudicial punishment, the matter should be submitted to the commanding officer for disposition.)

c. Personal appearance. (Check one)

_____ I request a personal appearance before the commanding officer.

_____ I waive my right to personal appearance. (Check one below)

_____ I do not desire to submit any written matters for consideration.

_____ Written matters are attached.

d. Elections at personal appearance. (Check one or more)

_____ I request that the following witnesses be present at my nonjudicial punishment proceeding:

_____ I request that my nonjudicial punishment
proceeding be open to the public.

(Signature of Accused and Date) (Signature of Witness and Date)

(Name of Accused) (Name of witness)

ACKNOWLEDGEMENT OF ADVANCED EDUCATION ASSISTANCE REIMBURSEMENT

I understand that, in accordance with 10 U.S.C. § 2005, I may be required to reimburse the United States for the cost of advanced education assistance provided to me by the Government, if I voluntarily or as a result of misconduct fail to complete the required period of active duty service specified in the written agreement I entered into with the United States before accepting advanced education assistance.

Signature

Date

Witness

NONJUDICIAL PUNISHMENT PROCEEDING GUIDE

(Note: The formalities before and at the termination of the nonjudicial punishment proceeding normally are determined by custom and tradition in the Navy and Marine Corps.)

CO: You are suspected of committing the following violation(s) of the Uniform Code of Military Justice:

You do not have to make any statement regarding the offense(s) of which you are accused or suspected, and any statement made by you may be used as evidence against you.

(Note: If it is reasonably foreseeable that the accused's statements during the nonjudicial punishment proceedings may be considered for introduction in evidence in a later court-martial, an explanation of rights and a waiver, in the format of Appendix A-1-p of the JAGMAN, will be obtained from the accused, before or during the hearing, before proceeding further.)

CO: You are advised that a nonjudicial punishment proceeding is not a trial and that a determination of misconduct on your part is not a conviction by a court. Further, you are advised that the formal rules of evidence used in trials by court-martial do not apply at nonjudicial punishment.

CO: I have a statement signed by you acknowledging that you were fully advised of your legal rights pertaining at this hearing. (Note: This statement will be either JAGMAN Appendix A-1-b, A-1-c, or A-1-d.)

CO: Do you understand this statement and do you understand the rights explained therein?

ACC:

CO: Do you have any questions about them or do you wish to make any requests?

ACC:

CO: [To witness (if any are present)] What can you tell me about the accused's involvement in (these) (this) offense(s)?

WIT: _____.

CO: [To witness(es) who has/have previously provided written statement(s) when accused and commanding officer both have copies of the statement(s).] Do you adopt your statement(s) as your testimony here today?

WIT: _____.

CO: Do you have anything to add to or change in your statement?

WIT: _____.

CO: (To accused) Would you like me to ask any further questions of this witness?

ACC: _____.

CO: (After all witnesses are questioned) I have before me the following (documents) (statements) (other physical evidence) that will be considered by me. Have you been given the opportunity to examine them?

ACC: _____.

CO: (If the answer is "no," offer the accused the opportunity to examine the evidence.)

CO: Is there anything that you wish to offer? (If the answer is "yes," permit the accused the opportunity to call his or her witnesses, make a personal statement in defense, and present other evidence.)

ACC: _____.

CO: Are there any other witnesses you would like to call or any other evidence you would like to present?

ACC: _____.

CO: Is there anything that you wish to offer that would lessen the seriousness of (this) (these) offense(s) or mitigate them?

ACC: _____.

CO: (To witness) What can you tell me about (accused's name) performance of duty?

WIT: _____.

CO: (To accused) Is there anything else you would like to present?

ACC: _____.

(Note - CO may wish to briefly dismiss the accused to deliberate on whether the offenses have been proved by a preponderance of the evidence and an appropriate punishment)

CO: I find that you have committed the following offenses:

Accordingly, I impose the following punishment:

_____.

You are advised that you have the right to appeal this punishment to (identify the superior authority by name and organizational title). Your appeal must be made within a reasonable time, which is normally 5 days. Following this hearing, _____ will advise you more fully of this right to appeal. Do you understand?

ACC: _____.

CO: You are dismissed.

**NONJUDICIAL PUNISHMENT
ACCUSED'S ACKNOWLEDGEMENT OF APPEAL RIGHTS**

I, _____, assigned or attached to _____, have been informed of the following facts concerning my rights of appeal as a result of nonjudicial punishment held on _____:

a. I have the right to appeal to (specify to whom the appeal should be addressed).

b. My appeal must be submitted within a reasonable time. Five working days, excluding weekends and holidays, after the punishment is imposed is normally considered a reasonable time, in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances that I believe will make it extremely difficult or not practical to submit an appeal within five working days, I should immediately advise the officer imposing punishment of such circumstances and request an appropriate extension of time to file my appeal.

c. The appeal must be in writing.

d. There are only two grounds for appeal; that is:

(1) The punishment was unjust; or

(2) The punishment was disproportionate to the offense(s) for which it was imposed.

e. If the punishment imposed included reduction from the pay grade of E-4 or above, or was in excess of: arrest in quarters for seven days, correctional custody for seven days, forfeiture of seven days' pay, extra duties for 14 days, restriction for 14 days, then the appeal must be referred to a military lawyer for consideration and advice before action is taken on my appeal.

(Signature of Accused and Date) (Signature of Witness and Date)

PUNITIVE LETTER OF REPRIMAND

(Date)

From: Commander, U.S. Fleet Forces Command
To: [Rank], [Name of officer receiving PLOR], [Corps (if applicable)], USN/[Designator]
Via: (if applicable)

Subj: PUNITIVE LETTER OF REPRIMAND

Ref: (a) Report of investigation of collision between USS _____ (____), and USS _____, which occurred, on _____ April 20_____
(b) Article 15, UCMJ [or results of trial, as appropriate]
(c) Para. 5 of Part V, MCM, [or R.C.M. 1003, as appropriate]
(d) JAGMAN 0114 [or JAGMAN 0153, as appropriate]

1. Reference (a) is the record of an investigation convened by Commander, U.S. Fleet Forces Command, to inquire into the collision between USS _____ (____) and USS _____ on _____ April 20_____. The collision occurred in the Atlantic Ocean about 60 miles east of Norfolk, Virginia. You were a party to the investigation and were accorded your rights as such. [As applicable, except in the case of a member attached to or embarked in a vessel, add: You have been advised that you have the right to refuse imposition of nonjudicial punishment and you have elected to accept nonjudicial punishment.]

2. [Here insert a precise statement of all relevant events and circumstances of the offense or offenses in violation of an Article or Articles of the Uniform Code of Military Justice for which the letter of reprimand is issued.]

3. Your actions clearly show that you were derelict in the performance of your duties as Officer of the Deck, USS _____, on the morning of _____ April 20_____ in that you negligently failed to:

a. Maintain USS _____ on a safe course as required by the U.S. Navy Regulations.

b. Employ all means and devices available to you for detecting and avoiding danger from collision as required by USS _____ Standing Night Orders and the U.S. Navy Regulations.

c. Inform your commanding officer when you made a course

and speed change at about 6 minutes before the collision as required by the U.S. Navy Regulations.

4. Pursuant to references (b), (c), and (d) you are hereby reprimanded for your negligence in the performance of duty as set forth above.

[Here insert final paragraphs prescribed by subsection 0114(f)(3)(d).]

[Signature]

OFFICER NONJUDICIAL PUNISHMENT REPORT

(See JAGMAN 0119)

[LETTERHEAD]

SSIC
[Ser]
[Date]

From: Commanding General, 1st Marine Aircraft Wing
To: [Commandant of the Marine Corps (JPL)] [Commander, Navy
Personnel Command PERS-834)]
Via: Commanding General, III Marine Expeditionary Force
Subj: REPORT OF NONJUDICIAL PUNISHMENT ICO FIRST LIEUTENANT
JOHN J. JONES, USMC, [Designator]

Ref: (a) MCO 5800.16 v.15 (LSAM)/NAVPERS 15560D
(b) Article 15, UCMJ
(c) Part V, MCM
(d) JAGMAN, Chapter 1, Part B
(e) U.S. Navy Regulation 1122

Encl: (1) Record of Hearing under Article 15, UCMJ
(2) Punitive Letter of Reprimand
(3) 1stLt Jones's ltr 1621 of [date]
(4) 1stLt Jones's statement regarding adverse matter

1. This report is forwarded for inclusion in 1stLt Jones' official records pursuant to paragraph 010603 of reference (a).

2. On 4 December 2018, in accordance with references (b), (c), and (d), nonjudicial punishment was imposed on 1stLt Jones for conduct unbecoming an officer. As a result, [he or she] was awarded a punitive letter of reprimand and a forfeiture of \$400.00 pay per month for two months.

3. Details of the hearing and the circumstances of the offense(s) are set forth in enclosure (1). A copy of the punitive letter of reprimand is attached as enclosure (2).

4. As reflected in enclosure (3), 1stLt Jones did not appeal the punishment. Accordingly, the nonjudicial punishment is now final and will be reflected in the fitness report that includes the date it was imposed, 4 December 2018.

5. I recommend that 1stLt Jones be retained on active duty until the expiration of his or her obligated active service. (I recommend he or she (not) be required to show cause for retention in the naval service.)

FOR OFFICIAL USE ONLY

6. By copy hereof, 1stLt Jones is notified of his or her right, per reference (e), to submit his or her comments, within 15 days of receipt, concerning this report of nonjudicial punishment and the letter of reprimand which will be included as adverse material in his or her official records. His or her comments, if any, will be attached as enclosure (4).

[Signature]

Copy to:
Commanding Officer, MAG-32
Commanding Officer, MALS-32
1stLt Jones

SAMPLE FIRST ENDORSEMENT

FIRST ENDORSEMENT on CG, 1stMAW ltr [SSIC] Ser of [DATE]

From: Commanding Officer, Marine Wing Aircraft Squadron 1

To: First Lieutenant John J. Jones, USMC, 1369

Subj: PUNITIVE LETTER OF REPRIMAND

1. Delivered.

[Signature]
By direction

SUMMARY COURT-MARTIAL ACKNOWLEDGEMENT OF RIGHTS AND WAIVER

I, [ACCUSED], assigned to [COMMAND], understand the following facts and rights regarding summary courts-martial:

1. I have the right to consult with a lawyer before deciding whether to accept trial by summary court-martial. Should I desire to consult with counsel, I understand that a military lawyer may be made available to advise me free of charge, or in the alternative I may consult with a civilian lawyer at my own expense.

2. I realize that I may refuse trial by summary court-martial, in which event the commanding officer may refer the charge(s) to a special or general court-martial. My rights at a summary court-martial would include:

a. the right to confront and cross-examine all witnesses against me;

b. the right to plead not guilty and the right to remain silent, thus placing upon the government the burden of proving my guilt beyond a reasonable doubt;

c. the right to have the summary court-martial call, or subpoena, witnesses to testify in my behalf;

d. the right, if found guilty, to present matters which may mitigate the offense or demonstrate extenuating circumstances as to why I committed the offense; and

e. the right to be represented at trial by a civilian lawyer provided by me at my own expense, if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it.

3. I understand that the maximum punishment that may be imposed at a summary court-martial is:

On E-4 and below:

Confinement for 1 month, 45 days hard labor without confinement, or 60 days restriction;

Forfeiture of two-thirds pay for 1 month; and

Reduction to the lowest paygrade.

On E-5 and above:

60 days restriction;

Forfeiture of two-thirds pay for 1 month; and

Reduction to the next inferior paygrade.

4. Should I refuse trial by summary court-martial, the commanding officer may refer the charge(s) to trial by special or general court-martial. At a special or general court-martial, in addition to those rights set forth above with respect to a summary court-martial, I would also have the following rights:

a. The right to be represented at trial by a military lawyer, free of charge, including a military lawyer of my own selection if that lawyer is reasonably available. I would also have the right to be represented by a civilian lawyer at my own expense.

b. At a general court-martial, the right to be tried by a member panel composed of eight officers or, at my request, at least one-third of the members would be enlisted personnel. If tried by a court-martial with members, three-fourths of the members, voting by secret written ballot, would have to agree in any finding of guilty, and three-fourths of the members would also have to agree on any sentence to be imposed should I be found guilty.

c. At a special court-martial not referred to a military judge alone, the right to be tried by a member panel composed of four officers or, at my request, at least one-third of the members would be enlisted personnel. If tried by a court-martial with members, three-fourths of the members, voting by secret written ballot, would have to agree in any findings of guilty, and three-fourths of the members would also have to agree on any sentence to be imposed should I be found guilty.

d. At a special court-martial referred to a military judge alone, the military judge alone would determine my guilt or innocence and, if found guilty, the military judge alone would determine the sentence. However, the military judge may not award a bad-conduct discharge or confinement for more than six months if the charges are referred to a special court-martial consisting of a military judge alone.

e. In either a general or special court-martial (not referred to a military judge alone), the right to request trial by a military judge alone. If tried by a military judge alone, the military judge alone would determine my guilt or innocence and, if found guilty, the military judge alone would determine the sentence.

5. I understand that the maximum punishment for the offense(s) presently charged against me is the following:

Special Court-Martial: a bad-conduct discharge, confinement for 12 months, forfeiture of two-thirds pay per month for 12 months, a fine, and reduction to the lowest enlisted pay grade.

Special Court-Martial referred to a military judge alone: confinement for six months, forfeiture of two-thirds pay per month for six months, and reduction to the lowest enlisted pay grade.

General Court-Martial - *[insert maximum punishment here]*

Knowing and understanding my rights as set forth above, I (do) (do not) desire to consult with counsel before deciding whether to accept trial by summary court-martial.

Knowing and understanding my rights as set forth above (and having first consulted with counsel), I hereby (agree) (object) to trial by summary court-martial.

Signature of witness

Signature of accused and date

Print name

Print name

**SUMMARY COURT-MARTIAL
WAIVER OF THE APPEARANCE OF COUNSEL**

I have been advised by the summary court-martial officer that I cannot be tried by summary court-martial without my consent. I have also been advised that if I consent to trial by summary court-martial I may be represented by civilian counsel provided at my own expense (if such appearance will not unreasonably delay the proceedings, if military exigencies do not preclude it, and if counsel is qualified under Rule for Courts-Martial 502(d)(3)). If I do not desire to be represented by civilian counsel provided at my own expense, I may request that a military lawyer be appointed (the detailing authority may, as a matter of discretion, detail or otherwise make available a military attorney). It has also been explained to me that if I am represented by a lawyer (either civilian or military) at the summary court-martial, the results of the summary court-martial will be admissible as impeachment evidence under M.R.E. 609 at any subsequent court-martial. On the other hand, if I am not represented by a lawyer, the results of the court-martial will not be admissible as impeachment evidence under M.R.E. 609 at any subsequent court-martial. By my signature below, I hereby waive the appearance of a lawyer, military or civilian, to represent me at the summary court-martial.

Signature of Summary Court-
Martial

Signature of Accused

Type Name and Rank

Date

GRANT OF TESTIMONIAL IMMUNITY AND ORDER TO TESTIFY

IN THE MATTER OF

U N I T E D S T A T E S

v.

[ACCUSED]

[RANK/RATE/GRADE] [SERVICE]

GRANT OF TESTIMONIAL IMMUNITY
AND ORDER TO TESTIFY

To: [Witness to whom immunity is to be granted]

1. You are a material witness in the matter United States v. [Accused], [Service] involving charges of [insert UCMJ alleged violations].

2. As an officer empowered to convene general courts-martial and pursuant to 18 U.S.C. §§ 6002, 6004, I hereby make the following findings:

a. That you possess information relevant to the trial by court-martial in the matter described in paragraph (1), and that the presentation of your testimony at the trial is necessary to the public interest; and

b. That you will likely refuse to testify on the basis of your privilege against self-incrimination if subpoenaed to appear as a witness.

3. Pursuant to Rule for Courts-Martial 704 and JAGMAN § 0138, you are hereby granted immunity from the use of your testimony or other information given by you (including any evidence directly or indirectly derived from your testimony or from the other information you provide) against you in any criminal case, except a prosecution for perjury, giving a false statement, or wrongful failure to testify.

4. This grant of immunity from the use of your testimony is effective only upon the condition that you testify truthfully and under oath in the matter described in paragraph (1).

5. On the basis of facts above and pursuant to 18 U.S.C. § 6004, I hereby order you to appear and testify before the court-martial convened for the trial in the matter described in

paragraph (1).

[6. This order is issued with the approval of the Attorney General of the United States set forth in enclosure 1 annexed hereto.]

[CONVENING AUTHORITY]

GRANT OF TRANSACTIONAL IMMUNITY AND ORDER TO TESTIFY

IN THE MATTER OF

U N I T E D S T A T E S

v.

[ACCUSED]
[RATE/RATE/GRADE] [SERVICE]

GRANT OF TRANSACTIONAL IMMUNITY
AND ORDER TO TESTIFY

To: [Witness to whom immunity is to be granted]

1. You are a material witness in the matter United States v. [Accused], [Service] involving charges of [insert UCMJ alleged violations].

2. As an officer empowered to convene general courts-martial and pursuant to 18 U.S.C. §§ 6002, 6004, I hereby make the following findings:

a. That you possess information relevant to the trial by court-martial in the matter described in paragraph (1), and that the presentation of your testimony at the trial is necessary to the public interest; and

b. That you will likely refuse to testify on the basis of your privilege against self-incrimination if subpoenaed to appear as a witness.

3. In consideration of your testimony as a witness in the matter described in paragraph (1), you are hereby granted immunity from prosecution for any offense connected with the offense(s) described in paragraph (1) about which you testify truthfully under oath.

4. This grant of immunity from prosecution is effective only upon the condition that you actually testify as a witness. This grant of immunity from prosecution extends only to the offense(s) described in paragraph (1) in which you were implicated and about which you testify under oath, and does not extend to prosecution for perjury, giving a false statement, or wrongful failure to testify.

5. On the basis of the facts above and pursuant to 18 U.S.C. §

6004, I hereby order you to appear and testify before the court-martial convened for the trial in the matter described in paragraph (1).

[6. This order is issued with the approval of the Attorney General of the United States set forth in enclosure 1 annexed hereto.]

[CONVENING AUTHORITY]

REQUEST FOR IMMEDIATE EXECUTION OF DISCHARGE

(See JAGMAN 0170)

United States)	[SPCM] [GCM] NCM _____
)	REQUEST FOR IMMEDIATE EXECUTION
v.)	OF [BAD CONDUCT][DISHONORABLE]
)	DISCHARGE ADJUDGED ON _____
[Name, grade or)	BY [SPECIAL] [GENERAL] COURT-MARTIAL
rate and armed)	CONVENED BY _____
service])	
)	[AT] [ON BOARD] _____

To: [Officer exercising general court-martial jurisdiction]

1. I, the accused in the above-captioned case, hereby request the immediate execution of the above-described [dishonorable] [bad conduct] discharge and my release from the Naval service.

2. Naval Clemency and Parole Board review pursuant to SECNAV Instruction 5815.3 (series) [has been completed] [is not required].

3. I received a copy of the decision of the U.S. Navy-Marine Corps Court of Criminal Appeals in my case on _____.

4. I have had fully explained to me, and I understand my right, under Article 67(c), Uniform Code of Military Justice, to petition the U.S. Court of Appeals for the Armed Forces for grant of review within 60 days from the date I received my copy of the decision of the U.S. Navy-Marine Corps Court of Criminal Appeals.

5. I do not have an appeal pending before the U.S. Court of Appeals for the Armed Forces at this time, nor do I now intend to appeal; however, I understand that, if this request is granted, it will not affect my right to appeal if I later change my mind and decide to appeal.

6. I have discussed this matter with [Rank, if applicable] [Name of counsel] [Corps, if applicable], [Service, if applicable], counsel of my own choice.

[Signature of Accused]

CERTIFICATE

I, the undersigned officer of the grade, and branch of service below stated, certify I explained to the above named accused his or her rights, under Article 67(c), Uniform Code of Military Justice, to petition the U.S. Court of Appeals for the Armed Forces for grant of review; I read aloud to him or her the foregoing request; and he or she thereafter signed the same and acknowledged that he or she did so as his or her free and voluntary act.

[Signature]
Name, grade

SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT

(See JAGMAN 0175)

FULL NAME (ACCUSED/SUSPECT)	RATE/RANK	SERVICE
ACTIVITY/UNIT	DATE OF BIRTH	
NAME (INTERVIEWER)	RATE/RANK	SERVICE
ORGANIZATION	BILLET	
LOCATION OF INTERVIEW	TIME	DATE

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, the interviewer warned me that:

(1) I am suspected of having committed the following offense(s):

(2) I have the right to remain silent; -----

(3) Any statement I do make may be considered by the convening authority and used as evidence against me in trial by court-martial; -----

(4) I have the right to consult with lawyer counsel before any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to

act as my counsel without cost to me, or both; ----- ☐

(5) I have the right to have such retained civilian lawyer or appointed military lawyer present during this interview; and ----- ☐

(6) If I decide to answer questions now without a lawyer present, I will have the right to stop this interview at any time. ----- ☐

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that, --- ☐

(1) I expressly desire to waive my right to remain silent. ----- ☐

(2) I expressly desire to make a statement. ----- ☐

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me before any questioning. ----- ☐

(4) I expressly do not desire to have such a lawyer present with me during this interview. ----- ☐

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.----- ☐

(6) I understand that, even though I initially waive my rights to counsel and to remain silent, I may, during the interview, assert my right to counsel or to remain silent.----- ☐

NOTE: IF THE SUSPECT INDICATES HE OR SHE IS WILLING TO MAKE A STATEMENT, HE OR SHE SHOULD FIRST BE ASKED WHETHER HE OR SHE HAS MADE A STATEMENT IN RESPONSE TO QUESTIONS ABOUT THE SUSPECTED OFFENSE TO ANYONE HE OR SHE BELIEVED WAS ACTING IN A

LAW ENFORCEMENT CAPACITY BEFORE THE PRESENT INTERVIEW. IF THE SUSPECT INDICATES HE OR SHE HAS PREVIOUSLY MADE SUCH A STATEMENT, ADVISE THE SUSPECT AS FOLLOWS:

PREVIOUS STATEMENTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, the interviewer warned me that:

(1) My previous statement may not be admissible at courts-martial and may not be usable against me. (It may not be possible to determine whether a previous statement made by the suspect will be admissible at some future court-martial; this suggests it may be wise to treat it as inadmissible and provide the cleansing warning).

(2) Regardless of the fact that I have talked about this offense before, I still have the right to remain silent now.

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
SIGNATURE (INTERVIEWER)	TIME	DATE
SIGNATURE (WITNESS)	TIME	DATE

The statement which appears on this page (and the following _____ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED/SUSPECT)

[illegible]

RECORD OF AUTHORIZATION FOR SEARCH

(See JAGMAN 0175)

RECORD OF AUTHORIZATION FOR SEARCH

1. At _____ [time] on _____ [date], I was approached by _____ [name] in his or her capacity as _____ [duty] who having been first duly sworn, advised me that he or she suspected _____ [name] of _____ [offense] and requested permission to search his or her _____ [object or place] for _____

_____ [items].

2. The reasons given to me for suspecting the above named person were:

3. After carefully weighing the foregoing information, I was of the belief that the crime of _____ [had been] [was being] [was about to be] committed, that _____ was the likely perpetrator thereof, that a search of the object or area stated above would probably produce the items stated and that such items were [the fruits of crime] [the instrumentalities of a crime] [contraband] [evidence].

4. I have therefore authorized _____ to search the place named for the property specified, and if the property be found there, to seize it.

[Name/Grade/Title]

Date and Time

INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.
2. Other than his or her own prior knowledge of facts relevant thereto, all information considered by the individual empowered to authorize a search on the issue of probable cause must be provided under oath or affirmation. Accordingly, before receiving the information which purports to establish the requisite probable cause, the individual empowered to authorize the search will administer an oath to the person(s) providing the information. An example of an oath is as follows: "Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God?" This requirement does not apply when all information considered by the individual empowered to authorize the search, other than his or her prior personal knowledge, consists of affidavits or other statements previously duly sworn to before another official empowered to administer oaths.
3. The area or place to be searched must be specific, such as wall locker, wall locker and locker box, residence, or automobile.
4. A search may be authorized only for the seizure of certain classes of items: (1) fruits of a crime (the results of a crime such as stolen objects); (2) instrumentalities of a crime (e.g., search of an automobile for a crowbar used to force entrance into a building which was burglarized); (3) contraband items, the mere possession of which is against the law (e.g., marijuana, etc.); or (4) evidence of crime (e.g., bloodstained clothing of an assault suspect).
5. Before authorizing a search, probable cause must exist. This means reliable information that would lead a reasonably prudent and cautious person to a natural belief that:
 - a. An offense probably is about to be, or has been committed;

b. Specific fruits or instrumentalities of the crime, contraband, or evidence of the crime exist; and

c. Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

6. In arriving at the above determination it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances. However, unreliable hearsay cannot alone constitute probable cause, such as where the hearsay is several times removed from its source or the information is received from an anonymous telephone call. Hearsay information from an informant may be considered if the information is reasonably corroborated or has been verified in some substantial part by other facts, circumstances, or events. The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists. If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

CONSENT TO SEARCH
(See JAGMAN 0175)

CONSENT TO SEARCH

I, _____, have been advised that inquiry is being made in connection with _____. I have been advised of my right not to consent to a search of [my person] [the premises mentioned below]. I hereby authorize _____ and _____, who [has] [have] been identified to me as _____ [position(s)] to conduct a complete search of my [person] [residence] [automobile] [wall locker] [computer and electronic media, to include a forensic search of all electronic files thereon] [_____] located at _____.

I authorize the above listed personnel to take from the area searched any letters, papers, materials, or other property which they may desire. Any computer or electronic media files may be forensically reviewed at a time that is convenient for the government.

This written permission is being given by me to the above named personnel voluntarily and without threats or promises of any kind.

[Signature]

WITNESSES

Name Signature Date

Name Signature Date