

VOLUME 12

“COMMAND RESPONSIBILITIES IN THE PROVISION OF LEGAL SERVICES”

SUMMARY OF VOLUME 12 CHANGES

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VOLUME 12: COMMAND RESPONSIBILITIES IN THE PROVISION OF LEGAL SERVICES

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REFERENCES

- (a) SECNAVINST 5430.7R CH-1
- (b) SECNAVINST 5430.27D
- (c) SECNAVINST 5430.25E
- (d) 10 U.S.C. §§ 806, 1044, 1044e, 1059, 1072, 1565b, 1588, and 5046
- (e) MCO 5430.2
- (f) JAGINST 5803.1E
- (g) Manual for Courts-Martial, (2016 ed.)
- (h) U.S. Navy Regulations, (1990)
- (i) MCO 5800.14
- (j) MCO 1001.62B
- (k) MCO 1200.18
- (l) JAGINST 5803.2B
- (m) SECNAVINST 1920.6C
- (n) Uniform Code of Military Justice, (2016)
- (o) MCO 1610.7
- (p) MCO 1300.8
- (q) MCO 1000.6
- (r) JAGINST 5800.7F
- (s) SECNAVINST 5211.5E
- (t) 5 U.S.C. §§ 101, 552a, and 3111
- (u) JAGINST 5801.2
- (v) 37 U.S.C. §§ 601-604
- (w) 38 U.S.C. §§ 4301-4334
- (x) DoD Instruction 1205.12
- (y) 31 U.S.C. § 1342
- (z) DoD Instruction 1100.21
- (aa) 8 U.S.C. § 1400
- (bb) Executive Order 13269, (July 3, 2002)
- (cc) DoD Directive 2311.01E
- (dd) MCO 3300.4A
- (ee) DoD Directive 2310.01E
- (ff) DoD Directive 5146.13
- (gg) Executive Order 12333, (December 4, 1981)
- (hh) DoD Directive 5240.01
- (ii) DoD 5240.1-R
- (jj) DoD Instruction 3025.21
- (kk) DoD Instruction 5525.03
- (ll) SECNAVINST 5710.25B
- (mm) 1 U.S.C. § 112b
- (nn) 22 CFR Part 181
- (oo) DoD Directive 5530.3
- (pp) DoD 5500.07-R
- (qq) 18 U.S.C. § 202
- (rr) 5 C.F.R. § 2634

“REFERENCES”

As changes are made within this MCO Volume, the References list will also update.
Annotation of each update/change/addition to the References list is required.

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VOLUME 12

“COMMAND RESPONSIBILITIES IN THE PROVISION OF LEGAL SERVICES”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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COMMAND RESPONSIBILITIES IN THE PROVISION OF LEGAL SERVICES

0101 PURPOSE

This Volume provides information and instruction on the commander's role in the provision of legal services.

0102 GENERAL

The commander's role in the provision of military justice is essential. Specific legal and administrative tasks must be performed at the command level in order to maintain good order and discipline within the respective unit. All forms referred to in this Volume may be found at the Judge Advocate Division public website.

0103 ROLES DEFINED

010301. Commanding Officers

For purposes of this Volume, "commander" is defined as one who is properly appointed to command an organization, or who, under applicable provisions of law, regulations, or orders, succeeds to such command due to transfer, incapacity, death, or absence of the previous commander. For the purposes of this Volume, "absence" means any condition that prevents effective command and control of the unit by the commander. "Commander" includes a commissioned warrant officer exercising command. Marine Corps commanding officers are titled as Commandant, Commanding General, Commanding Officer, Director, and Inspector-Instructor. Other titles used to designate Marine Corps commanders shall be made only with the specific approval of the Commandant of the Marine Corps. See Chapter I of JAGINST 5800.7 (JAGMAN) for amplifying guidance.

010302. Legal Officer

A. For purposes of this Volume, "legal officer" is defined as an officer or civilian employee of appropriate grade, experience, and maturity who is properly appointed in writing by the commanding officer under his or her command.

B. Commanders shall appoint a legal officer in writing, indicating the officer's name, title, duty address, and telephone number.

0104 COURT-MARTIAL SUPPORT

010401. The legal officer is responsible for ensuring that every aspect of the commanding officer's legal mission is prepared, routed, and tracked through final disposition. Additionally, a primary role of the legal officer is to liaise with the cognizant Legal Services Support Section or Team (LSSS/T) in order to provide timely submission of all court-martial milestone requirements. These requirements include but are not limited to:

A. All pre- and post-court-martial related tasks, including: tracking all members of the command in pretrial confinement and reporting those confinees to the supporting LSSS/T, preparation of the Request for Legal Services form with all supporting documentation; preparation and maintenance

of all command convening orders; utilizing NAVMC 118(13) to record the convening authority's action; and managing/updating the court-martial command case file.

B. Ensuring that victims and witnesses within the command understand the rights afforded them under the law and the Victim-Witness Assistance Program (VWAP), MCO 5800.14 and are provided with a completed Initial Information for Victims and Witnesses of Crime (DD Form 2701) if one has not already been provided.

1. Coordinates with the supporting LSSS/T to ensure that all victims are notified of the pretrial confinement status of a reported offender, the date of the initial review officer hearing, the victim's right to be heard and confer with the representative of the command and counsel for the government, if any, present at the hearing, and the results of the hearing.

2. Maintain data on the number of victims and witnesses who receive the DD Form 2701.

3. Report monthly the number of DD Form 2701s issued to victims and witnesses to the installation Victim and Witness Liaison Officer pursuant to MCO 5800.14.

4. Ensure victims and witnesses rights are respected and that victims assigned to the command are receiving necessary support available to them as outlined in MCO 1752.5B (SAPR).

5. Ensure that victims of financial or property crimes are notified of their right to file a claim pursuant to Article 139, UCMJ.

C. Ensures s a court-martial progresses through the phases of trial that lines of communication between the trial counsel, staff judge advocate, and commander remain open. This is especially important at times where the commander is required to make trial decisions on pre- and post-trial negotiations, selection of members, trial funding, and post-trial actions, etc. The cost for the production of trial participants (witnesses, members, reporters, escorts, bailiff, interpreters, etc.), when required, shall be borne by the convening authority.

010402. In the event that a summary court-martial is convened outside the purview of a Trial Services Office, the legal officer must ensure that the proceedings are conducted in accordance with the Manual for Courts-Martial and JAGMAN. Additionally, the legal officer must ensure that all summary courts-martial are routed to their Regional Review Office at the Legal Services Support Section in order to have the appropriate judge advocate review completed. It is recommended that the commander forward the original record to the Review Officer and maintain a unit file copy. The Regional Review Office will then archive the original court-martial and the command may destroy the unit copy upon expiration of the file.

0105 PREPARATION OF THE NAVMC 118(13) AND NAVMC 118(13A)

010501. NAVMC 118(13) and NAVMC 118(13A) are forms that record the history of a court-martial. These forms can also serve as evidence of a previous conviction in the event charges are preferred at a subsequent court-martial.

010502. Prepare the Record of Conviction by Court-Martial (NAVMC 118(13)) for each summary, special, and general court-martial. Prepare and distribute the page 13 as follows:

- A. Use authorized abbreviations.
- B. If there is insufficient room in any block on the page 13 to enter required information, continue the information on an 8 1/2 x 11 inch white paper. Indicate in the block being continued, "Continuation Sheet." On the continuation sheet, indicate "Block____ Contd." and enter the appropriate information. Enter the Marine's identifying information on the bottom of the continuation sheet. Number the continuation sheet accordingly, i.e., 13-1a, 13-2a, etc. When a continuation sheet is used enter "Contd on Supp Pg" after the page number on the page 13.
- C. Until the convening authority takes action on the case, file the NAVMC 118(13) in the command files.
- D. In the event that action has been taken by the convening authority that results in setting aside the findings on all charges and specifications, remove and destroy the form.
- E. When all or part of the sentence is approved by the convening authority (with the exception of a punitive discharge), complete, and forward a copy of the signed form to the CMC (MMSB) for filing in the OMPF/Electronic Service Record (ESR). Retain the original in the command files.
- F. If the court-martial acquits the accused of all charges and specifications, then no page 13 is completed, and the OMPF/ESR will contain no indication that the accused's case was referred to a court-martial.
- G. When numbering pages, insert the number "1" in the footer at the bottom of the page alongside 13, for the first conviction by court-martial. Number subsequent pages prepared to record convictions by court-martial consecutively; i.e., place the number "2" in the block to indicate the second conviction, and so on.

010503. When subsequent action is taken on a summary court-martial or special court-martial sentence by the convening authority, wherein the sentence did not include an approved bad-conduct discharge, prepare a page 13A, as follows:

- A. Complete blocks 1 and 2 by inserting the accused's organization at the time of the original trial. Insert in block 2 the type of court-martial and the date of the trial.
- B. Block 7. If the convening authority has taken a subsequent action, immediately after the word "ACTION:" in block 6, insert the word "Supplemental," the date, and briefly state the subsequent action.

Example: "The sent as susp on (date of action suspending sentence) is vacated. Unexecuted portion of sent to cnft at hard labor for 2 mos, forf of \$100 per mo for 2 mos and reduction to E-1 ordered executed." "Unexecuted sentence remitted this date," "Cnft unexecuted as of date of this action susp for 6 months."

- C. Blocks 7, 8, 9, and 10. Complete as indicated on the form.

D. Numbering. Number the page the same as the original page 13 to which the case relates and immediately to the right of the block insert "a." Example: If the original page 13 conviction record numbered "13 1", number the subsequent page "13 1 a."

010504. Prepare the supplementary record of conviction by court-martial (NAVMC 118(13A)) in all cases involving conviction by general court-martial and in those cases involving conviction by special court-martial where an approved bad conduct discharge (whether or not suspended) is included as part of the sentence. Prepare and distribute the page 13A per the following:

A. General

1. Use authorized abbreviations.
2. If there is insufficient room in any block on the page 13A to enter required information, continue the information on the reverse of the page. Indicate in the block being continued, "Contd on Reverse." On the reverse of the page, indicate "Block ____ Contd:" and enter the appropriate information. If all room on the front and reverse of the page is filled and more information needs to be recorded, use 8 1/2 x 11 inch white bond paper. Enter the Marine's identifying information on the bottom of the continuation sheet. Number the continuation sheet accordingly, i.e., 13-1a, 13-2a, etc. When a continuation sheet is used enter "Contd on Supp Pg" after the page number on the page 13A.
3. Initially, file both copies in the command files.
4. Prepare portions of the page as soon as practicable after receipt of the information. For example, complete as much of the page as possible upon receipt of a Navy-Marine Corps Court of Criminal Appeals decision.
5. When review of higher authority results in setting aside the findings on all charges and specifications, remove and destroy the original and duplicate of NAVMC 118(13A) together with the original of the record of conviction by court-martial.
6. Upon completion of all items, forward a signed digital copy to CMC (MMRP) for filing in the OMPF.

B. Specific Blocks. Items not covered are considered self-explanatory.

1. Block 3. Briefly summarize action taken by the Navy-Marine Corps Court of Criminal Appeals. Record in space provided the date of the action. In those cases not reviewed, insert the word "None."
2. Block 4. Insert the date the accused received for the Navy-Marine Corps Court of Criminal Appeals decision.
3. Block 5. Briefly summarize action taken by the SecNav or Judge Advocate General. Insert in space provided the date such action was taken. If no action is taken by the SecNav or the Judge Advocate General, insert the word "None."

4. Block 6. Enter the date the certificate of attempted service is executed in cases where the accused was absent from the place of duty and delivery of the Navy-Marine Corps Court of Criminal Appeals decision and action of the Judge Advocate General is impossible.

5. Block 8. Enter the final date the accused may petition the Court of Appeals for the Armed Forces for grant of review.

6. Blocks 11 and 16. Enter the title and organization of the officer authorized to sign. Signatures shall be those of the commander or an officer duly designated by the commander, in which case the entry will be signed by direction.

7. Block 13. Briefly summarize the action taken by the Court of Appeals for the Armed Forces. Insert in space provided the date of the court's decision.

8. Numbering of Pages. The number inserted in the block opposite the number 13A will be the same number given the page 13 to which the supplementary record refers.

010505. If, after approval by proper authority, a change in the sentence is made by the same or other proper authority and the page 13 or 13A previously executed does not reflect the true status of the case, prepare an additional page 13 or 13A, as appropriate. This additional page will contain in the appropriate blocks or spaces the following information: the type of court, date of trial, date of new action, authority taking new action, e.g., convening authority, Judge Advocate General (Court of Criminal Appeals), Court of Appeals for the Armed Forces or Secretary of the Navy Council of Review Boards, summary of new action, and authenticating signature with title and organization of the convicted Marine's commanding officer or an officer duly designated by the commander. In the latter event, the entry will be signed by direction. Enter complete identifying information of the convicted Marine to include name, EDIPI, and grade at the time of the entry, and designate this as an additional page by recording the word "Additional" at the bottom of the page under the figure 13 or 13A. If a page 13 or 13A has not been previously accomplished concerning the conviction or actions concerned, all actions should be briefly summarized in the initial preparation of the appropriate page.

010506. Restoration/Clemency or Waiver of Restoration

Upon receipt of the letter from the Secretary of the Navy concerning action taken on "Request for Restoration/Clemency or Waiver of Restoration", place a copy of this letter on top of the applicable NAVMC 118(13).

0106 MILITARY PROTECTIVE ORDER

010601. Upon report of a crime, the commander is responsible to provide protection for victims and witnesses and assure their continued safety. The Military Protective Order (MPO) is a tool the commander may use to provide this protection. If a Military Criminal Investigative Organization (MCIO) is investigating the reported offense, the agent involved should be consulted before issuing an MPO to avoid interfering with the investigation.

010602. Distribution of the completed MPO shall be limited to the Service member, the Service member's local personnel file, the installation provost marshal's office, the protected person, trial counsel, and civilian law enforcement, as appropriate. No further distribution is authorized.

010603. In the event any individual involved in the MPO does not reside on a military installation at any time during the duration of the MPO, commanders shall notify the appropriate civilian authorities of the issuance of the MPO, the individuals involved of any subsequent changes to the MPO, and its termination. For a command in a remote location not co-located at a major installation containing PMO, such as a reserve unit, the commander will electronically transfer the MPO to the closest MP unit for input into NCIC.