



Headquarters, U.S.
Marine Corps

MCO P5800.16A
PCN 10209190800

**MARINE CORPS MANUAL
FOR LEGAL ADMINISTRATION
(SHORT TITLE: LEGADMINMAN)**

DISTRIBUTION STATEMENT A: Approved for public release; distribution is unlimited



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

C O R R E C T E D C O P Y

MCO P5800.16A

JA-2

31 Aug 99

MARINE CORPS ORDER P5800.16A W/CH 1-6

From: Commandant of the Marine Corps
To: Distribution List

Subj: MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE:
LEGADMINMAN)

Encl: (1) LOCATOR SHEET

Reports Required: List, page v

1. Purpose. To update policies and procedures concerning legal and legal administrative matters.
2. Cancellation. MCO 5800.11A, MCO P5800.16, and MCO 5830.5.
3. Summary of Revision. In addition to administrative corrections and updates which will not be listed separately, this revision contains the following, substantial changes:
 - a. Chapters have been renamed to more accurately reflect content, and renumbered to establish groupings of related material.
 - b. Chapter 1 combines elements of former chapters 1 and 3, and adds substantial new material. It should be completely reviewed.
 - c. Chapters 2, 8, 21, and 22 are new and should be completely reviewed.
 - d. Chapter 3 clarifies the dating of certain UPB items and removes discussion of a separate reduction order. In lieu of a reduction order, copies of the UPB will be delivered to the Marine and forwarded to CMC (MMSB) in any case involving an unsuspended reduction. This change will be mirrored in the next revision to MCO P1400.32B.
 - e. Chapter 4 adds or revises: procedures for waiving boards of inquiry; a sample board of inquiry findings worksheet; minimum qualifications for BOI recorders and legal advisors; notification language concerning receipt of advance education assistance; and the requirement for a verbatim record of officer NJP proceedings.
 - f. Chapter 5 revises procedures for return to military control, escaped prisoners, administration of Marine detained by civil authorities (domestic or foreign), and completion of DD Form 553.

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MCO P5800.16A
31 Aug 99

g. Chapter 12 adds material concerning Marine Corps birthday balls and gifts to MWR activities.

h. Chapter 17 revises the list of required publications.

i. Chapter 20 contains material from former chapter 1.

4. Recommendations. Recommendations concerning this Manual are invited and should be submitted to CMC (JA-2).

5. Reserve Applicability. This Manual is applicable to the Marine Corps Reserve.

6. Certification. Reviewed and approved this date.



T. G. HESS
Staff Judge Advocate to the
Commandant of the Marine Corps

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R 210800Z MAR 01 ZYW
FM CMC WASHINGTON DC//JA//
TO MARADMIN

BT

UNCLAS //N05800//

MARADMIN 135/01

MSGID/GENADMIN/CMC WASHINGTON DC/JA//

SUBJ/MCO P5800.16A CH 1. MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION
/(LEGADMINMAN)//

REF/A/SECNAVINST 1920.6B/-//

NARR/REF A REVISED POLICIES, STANDARDS, AND PROCEDURES FOR THE
ADMINISTRATIVE SEPARATION OF NAVY AND MARINE CORPS OFFICERS FROM THE
NAVAL SERVICE.

POC/CAPT FAHRINGER/JAM HQMC/TEL: DSN 224-4250/TEL: COMM

703-614-4250/TEL: FAX 703-695-8350/DSN: 225-8350//

RMKS/1. TO DIRECT CHANGES TO THE BASIC ORDER THAT EFFECT CMC'S
DELEGATION OF SHOW CAUSE AUTHORITY (I.E., THE AUTHORITY TO INITIATE
AN OFFICER ADMINISTRATIVE HEARING) TO LIEUTENANT GENERALS IN COMMAND.

2. ACTION: MAKE THE FOLLOWING PEN/REPLACEMENT CHANGES AS INDICATED.

- A. PAGE 4-7, PARAGRAPH 4004.1 (FORWARDING REPORTS OF NJP TO SHOW
CAUSE AUTHORITY). DELETE THE FIRST THREE SENTENCES AND
REPLACE WITH: "THE FIRST OEGCMA IN THE OFFICER'S CHAIN OF
COMMAND SHALL FORWARD A WRITTEN REPORT OF THE OFFICER'S NJP
DIRECTLY TO THE SHOW CAUSE AUTHORITY WITHIN THE CHAIN OF
COMMAND OR TO THE SHOW CAUSE AUTHORITY GEOGRAPHICALLY LOCATED
NEAREST TO THE COMMAND, WHICHEVER IS APPROPRIATE. THE OEGCMJ
WILL PROVIDE ANY INTERMEDIATE COMMANDERS AND CMC (JAM) WITH A
COPY OF THE REPORT OF NJP. IN APPROPRIATE CASES, THE SJA FOR
THE SHOW CAUSE AUTHORITY MAY CONTACT INTERMEDIATE COMMANDERS
(ATTN: SJA'S) FOR THE COMMANDER'S RECOMMENDATION. IF A SHOW
CAUSE AUTHORITY IMPOSES NJP UPON AN OFFICER, THE SHOW CAUSE
AUTHORITY SHALL RETAIN THE CASE FOR A SHOW CAUSE DECISION AND
FORWARD A COPY OF THE REPORT OF NJP TO CMC (JAM)."
- B. PAGE 4-10, PARAGRAPH 4006 (ADMINISTRATIVE SEPARATION
PROCESSING). DELETE ENTIRE PARAGRAPH AND REPLACE WITH: "ALL
LIEUTENANT GENERALS IN COMMAND ARE DESIGNATED AS SHOW CAUSE
AUTHORITIES. ANY REPORTS SUBMITTED IN ACCORDANCE WITH
PARAGRAPH 4004 WILL BE SUBMITTED TO EITHER THE SHOW CAUSE
AUTHORITY WITHIN THE CHAIN OF COMMAND OR THE SHOW CAUSE
AUTHORITY GEOGRAPHICALLY LOCATED NEAREST TO THE COMMAND FOR A
DECISION WHETHER THE OFFICER SHOULD BE REQUIRED TO SHOW CAUSE
FOR RETENTION. ANY SUBSEQUENT SEPARATION FOR CAUSE ACTION
WILL BE TAKEN PURSUANT TO SECNAVINST 1920.6B. IF A SHOW
CAUSE AUTHORITY DETERMINES THAT AN OFFICER'S CASE DOES NOT

WARRANT SEPARATION FOR CAUSE PROCESSING, THE SHOW CAUSE AUTHORITY SHALL FORWARD THE CASE TO CMC (JAM) WITH AN APPROPRIATE RECOMMENDATION. ONLY DC M&RA MAY TERMINATE SEPARATION FOR CAUSE PROCEEDINGS.

- C. PAGE 4-14, PARAGRAPH 4010.2, DELETE THE FIRST SENTENCE AND REPLACE WITH: "REPORTS OF OFFICER NJP/MISCONDUCT SHALL BE FORWARDED TO THE SHOW CAUSE AUTHORITY AS FOLLOWS:"
 - D. PAGES 4-14 AND 4-15, PARAGRAPH 4010.3A, DELETE ENTIRE PARAGRAPH AND REPLACE WITH THE FOLLOWING: "THE SHOW CAUSE AUTHORITY WILL CONVENE OR DIRECT THE OEGCMJ OF A RESPONDENT TO CONVENE A BOI IN APPROPRIATE CASES. NOTIFICATIONS TO CONVENE BOIS ARE PREPARED FOLLOWING THE SHOW CAUSE AUTHORITY'S DECISION TO DIRECT A BOI. THE SJA FOR THE SHOW CAUSE AUTHORITY OR CMC (JAM) FOR DC M&RA WILL FORWARD THE ORIGINAL NOTIFICATION AND ORDER TO CONVENE THE BOI AND AN ADVANCE FACSIMILE COPY OF THESE DOCUMENTS TO THE OEGCMJ OF THE RESPONDENT. THE RESPONDENT SHALL BE FORMALLY SERVED WITH A COPY OF THESE NOTIFICATION DOCUMENTS, AND SERVICE OF THE COPY OF THESE DOCUMENTS CONSTITUTES THE RESPONDENT'S OFFICIAL NOTIFICATION OF PROCEEDINGS."
 - E. PAGES 4-15 AND 4-16, PARAGRAPH 4010.4, DELETE ENTIRE PARAGRAPH AND REPLACE WITH THE FOLLOWING: "THE OEGCMJ WILL FORWARD A REPORT OF A BOI WITH APPROPRIATE RECOMMENDATIONS TO THE SHOW CAUSE AUTHORITY WHO DIRECTED IT. THE SHOW CAUSE AUTHORITY SHALL THEN FORWARD THE REPORT OF THE BOI TO CMC (JAM) WITH APPROPRIATE RECOMMENDATIONS."
 - F. ANY REFERENCE TO SECNAVINST "1920.6A" SHOULD BE CHANGED TO "1920.6B".
- 3. SUMMARY OF CHANGES. THIS CHANGE CLARIFIES AND DIRECTS DELEGATION OF SHOW CAUSE AUTHORITY TO LIEUTENANT GENERALS IN COMMAND.
 - 4. FILING INSTRUCTIONS. FILE THIS CHANGE IMMEDIATELY FOLLOWING THE SIGNATURE PAGE OF THE BASIC ORDER.
 - 5. THIS CHANGE IS APPLICABLE TO ALL MARINE CORPS ACTIVITIES.
 - 6. POC/QUESTIONS/CONCERNS: CAPT FAHRINGER, OFFICER MISCONDUCT ATTORNEY, TEL: COMM 703-614-4250/TEL: DSN 225-4250/TEL: COMM FAX: 703-695-8350/DSN 225-4250//

BT

MARADMIN 542/02

««-----»»

Date signed: 10/09/2002 MARADMIN Number: 542/02 R 091300Z OCT 02

FM CMC WASHINGTON DC(n)

TO ML MARADMIN(n)

MARADMIN

BT

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MARADMIN 542/02

MSGID/GENADMIN/CMC WASHINGTON DC/JA//

SUBJ/MCO P5800.16A CH 2. MARINE CORPS MANUAL FOR LEGAL

/ADMINISTRATION (LEGADMINMAN)//

REF/A/DOC/CMC/YMD:MIFD/YMD:20000620//

REF/B/DOC/CMC/JA/YMD:20000725//

REF/C/MSG/CMC WASHDC MI/311550ZMAY02//

REF/D/DOC/CMC WASHDC JA/31AUG1999//

NARR/REF A IS A CMC POSITION PAPER REGARDING REVISION TO NAVMC FORM

10132 UNIT PUNISHMENT BOOK AND CHANGES TO LEGAL ADMINISTRATIVE

PROCEDURES IN SUPPORT OF NON-JUDICIAL PUNISHMENT AND COURTS-MARTIAL.

REF B IS THE SJA TO CMC COMMENT ON REF A. REF C IS MARADMIN 301/02

THAT ANNOUNCES CH 1 TO THE MARINE CORPS INDIVIDUAL RECORDS

ADMINISTRATION MANUAL (IRAM). REF D IS THE LEGADMINMAN.//

POC/CWO5 D. R. DAHNERT/LEGAL ADMINISTRATIVE OFFICER/JA-2 HQMC

/TEL: DSN 224-8661/TEL: COMM 703-614-8661//

RMARKS/1. TO DIRECT CHANGES TO CHAPTER 3 OF THE BASIC ORDER THAT

GIVES DETAILED INSTRUCTIONS IN PREPARATION OF THE UNIT PUNISHMENT

BOOK (UPB).

2. ACTION: MAKE THE FOLLOWING PEN/REPLACEMENT CHANGES AS INDICATED.

A. PARA 3006.5. "DETAILED PREPARATION INSTRUCTIONS"

A. ITEM 1. DO NOT USE CHARGE/SPECIFICATION AS IN COURTS-MARTIAL. IF THERE ARE MULTIPLE INFRACTIONS OF AN ARTICLE OF THE UCMJ, REPEAT THE ARTICLE AS INDICATED BELOW. ENTER THE ARTICLE(S) OF THE UCMJ VIOLATED AND A SUMMARY OF EACH OFFENSE, TO INCLUDE DATE, TIME, AND PLACE OF THE ALLEGED OFFENSE. EXAMPLES:

ART. 90. STRUCK CAPT SMITH WITH FISTS AT HQCO, HQBN, 3D MARDIV, AT 0930, 10 NOV 98.

ART. 90. AT CO A, 1ST BN, 7TH MAR (DEPLOYED) ON 11 MAR 98, WILLFULLY DISOBEYED CAPT GREEN'S ORDER TO GET A HAIRCUT.

ART. 86. UA FR HQCO, HQBN, 3D MARDIV DUR THE PRD 0800, 11 NOV 98 THROUGH 2359, 15 NOV 98.

ART. 86. AT HQCO, HQBN, 3D MARDIV, FAILED TO GO AT THE TIME PRESCRIBED TO MORNING FORMATION AT 0800 ON 11 NOV 98.

B. ITEM 2. AFTER ADVISING THE MARINE IN ACCORDANCE WITH ARTICLE 31, UCMJ AND SECTION 0104, JAGMAN, REQUIRE THE MARINE TO INDICATE INTENTIONS BY STRIKING OUT INAPPLICABLE PORTIONS, UNLESS THE MARINE IS ATTACHED TO OR EMBARKED ABOARD A NAVAL VESSEL. IN SUCH CASES, STRIKE OUT WITH A SINGLE BLACK OR BLUE-BLACK INK LINE ALL SENTENCES AFTER THE FIRST SENTENCE. SEE SECTION 0109, JAGMAN. THEREAFTER, REQUIRE THE MARINE TO DATE AND SIGN THE ITEM. WHEN A MARINE REFUSES TO INDICATE AN INTENTION AND/OR REFUSES TO SIGN, PROCESS CHARGES AS A REFUSAL TO ACCEPT NJP AND FORWARD THE UPB TO THE OFFICER EXERCISING COURT-MARTIAL JURISDICTION FOR DISPOSITION. NOTE IN ITEM 2, "SEE ITEM 16." NOTE IN ITEM 16, "MARINE REFUSES TO INDICATE INTENTIONS OR TO SIGN ITEM 2.

CASE FORWARDED RECOMMENDING (SPECIAL COURT-MARTIAL), (SUMMARY COURT-MARTIAL), ETC."

C. ITEM 3. UPON ENSURING THAT THE INDIVIDUAL HAS BEEN INFORMED OF THE RIGHTS ENUMERATED IN ITEM 2, THE IMMEDIATE COMMANDING OFFICER WILL DATE AND SIGN ITEM 3. THIS ACTION MUST BE ACCOMPLISHED PRIOR TO

IMPOSITION

OF NJP AND THIS ITEM MUST, THEREFORE, BE DATED ON OR BEFORE THE DATE NJP IS IMPOSED.

D. ITEM 4. AFTER ADVISING THE ACCUSED OF THEIR OPPORTUNITY TO CONSULT

WITH COUNSEL PRIOR TO ELECTING TO ACCEPT NJP, THE VIOLATION OF THE
ARTICLE(S) OF THE UCMJ, AND WHETHER THEY ACCEPT NJP, THE ACCUSED WILL
DATE

AND SIGN ITEM 4.

E. ITEM 5. RECORD CURRENT/PREVIOUS UA'S IN EXCESS OF 24 HOURS AND
CURRENT/PREVIOUS DESERTIONS.

F. ITEM 6. ENTER PUNISHMENT IMPOSED AND DATE OF IMPOSITION. THE ENTRY
"NO PUNISHMENT" IS INVALID. UNLESS A PUNISHMENT LISTED IN ARTICLE 15,
UCMJ, IS LEVIED AT THE PROCEEDINGS, NJP HAS NOT BEEN
IMPOSED AND NO RECORD WILL BE MAINTAINED IN THE UPB BINDER. SAMPLE FORMS
OF AUTHORIZED PUNISHMENTS FOLLOW. CERTAIN PHRASES IN THESE EXAMPLES ARE
UNDERScoreD MERELY TO HIGHLIGHT AREAS WHERE DEVIATION FROM THE PRESCRIBED
WORDING, FREQUENTLY HAS RESULTED IN AMBIGUITY. OTHER GUIDANCE IS PRO-

VIDED

IN PARENTHESES. UPB FORM ENTRIES NEED NOT CONTAIN UNDERLINES OR
REFERENCES.

RESTR TO THE LIMITS OF HQSVCCO, 1ST BN, 3D MAR FOR 14 DAS, W/O SUSP FR DU.

2 JUN 98. (SEE PAR. 5C(2) OF PART V, MCM, 1998.)

FORF OF \$100 PAY PER MONTH FOR 2 MONTHS. TOTAL FORF \$200. 2 JUN 98.

(ALWAYS STATE FORFEITURES IN WHOLE DOLLAR AMOUNTS.)

CORR CUST FOR 7 DAS W/SUSP FR DU. 2 JUN 98.

CORR CUST FOR 6 DAS W/O SUSP FR DU. 2 JUN 98.

RESTR TO THE LIMITS OF PLACE OF MESS, BIL, DU AND WORSHIP AND MOST DIR
ROUTE TO AND FR W/O SUSP FR DU FOR 14 DAS AND EXTRA DU FOR 14 DAS, TO
RUN CONCURRENTLY. 2 JUN 98.

TO BE RED TO LCPL, E-3, AND TO BE ORALLY REPRIMANDED. 2 JUN 98.

G. ITEM 7. ENTER THE DATE AND THE SPECIFIC TERMS OF THE SUSPENSION. IF
NO PORTIONS OF THE PUNISHMENT ARE SUSPENDED, ENTER THE WORD "NONE." WHEN
SUSPENDING ALL OR PORTIONS OF THE PUNISHMENT, THE SPECIFIC PUNISHMENT,

THE

LENGTH OF THE SUSPENSION, AND THE TERMS FOR AUTOMATIC REMISSION WILL BE
REFLECTED. EXAMPLE:

2 JUN 98. RED TO LCPL, E-3, SUSP FOR 3 MOS, AT WHICH TIME, UNLESS SOONER
VACATED, THE RED WILL BE REMITTED W/O FURTHER ACTION.

H. ITEM 8. ENTER NAME, GRADE, AND TITLE OF THE OFFICER WHO TOOK THE
ACTION LISTED IN ITEM 6.

I. ITEM 9. WHEN THE OFFICER IMPOSING PUNISHMENT DETERMINES THAT THE
OFFENSES ARE PROPERLY PUNISHABLE UNDER ARTICLE 15, UCMJ, THE OFFICER
SO DETERMINING WILL SIGN THIS ITEM.

J. ITEM 10. ENTER THE DATE OF NOTIFICATION TO THE MARINE. THIS WILL
NORMALLY BE THE SAME DATE AS ITEM 6 EXCEPT WHERE A FORMAL INVESTIGATION
IS USED AS A BASIS FOR THE NJP OR NOTIFICATION IS DONE BY MAIL.

K. ITEM 11. WHEN NJP HAS BEEN IMPOSED, NOTIFY THE MARINE OF THE RIGHT
TO APPEAL. (SEE PARAGRAPH 7 OF PART V, MCM, 1998, AND SECTION
0110E, JAGMAN.) THE OFFICER IMPOSING NJP SHALL DATE AND SIGN THE ITEM.
THIS WILL NORMALLY BE THE SAME DATE AS ITEM 6 AND WILL, IN NO CASE,
BE PRIOR TO THE DATE IN ITEM 6.

L. ITEM 12. THE MARINE UPON WHOM NJP IS IMPOSED SHALL DATE AND SIGN THIS
ITEM INDICATING AN UNDERSTANDING OF THE RIGHT TO APPEAL THE NJP IMPOSED.
WHEN A MARINE REFUSES TO INDICATE AN UNDERSTANDING OF THE RIGHT TO APPEAL
AND/OR REFUSES TO SIGN ITEM 12, NOTE IN ITEM 12, "SEE ITEM 16" AND PLACE
THE FOLLOWING ENTRY IN ITEM 16: "MARINE REFUSES TO INDICATE INTENTIONS
OR SIGN ITEM 12."

M. ITEM 13. ENTER DATE OF THE APPEAL OF THE NJP. IF NOT APPEALED,
ENTER THE WORDS "NOT APPEALED."

N. ITEM 14. IF AN APPEAL IS MADE, ENTER THE FINAL ACTION AND
DATE THEREOF. EXAMPLES:

APPEAL DENIED - 25 JUN 98.

APPEAL GRANTED, PUNISHMENT SET ASIDE - 25 JUN 98.

RED SET ASIDE, NO FURTHER RELIEF GRANTED - 25 JUN 98.

THIS ITEM WILL BE SIGNED BY THE OFFICER ACTING ON THE APPEAL, OR IT

MAY BE SIGNED "BY DIRECTION" OF THE OFFICER ACTING ON THE APPEAL.
O. ITEM 15. ENTER THE DATE THE MARINE WAS NOTIFIED OF THE DECISION ON THE APPEAL. IF THE MARINE HAS BEEN TRANSFERRED OR DISCHARGED, ENTER THE DATE OF THE ENDORSEMENT FORWARDING THE DECISION TO THE MARINE'S NEW COMMAND OR TO THE MARINE'S PERMANENT MAILING ADDRESS.
P. ITEM 16. (1) ENTRIES ARE REQUIRED IN THIS ITEM UNDER THE FOLLOWING CONDITIONS:

(A) IF THE MARINE REFUSES TO SIGN EITHER ITEM 2 OR ITEM 12, ENTER THE FOLLOWING REMARK: "MARINE REFUSES TO INDICATE INTENTIONS OR TO SIGN ITEM 2 AND/OR ITEM 12" AS APPLICABLE.

(B) WHEN THE OFFENSES ARE FORWARDED TO HIGHER AUTHORITY FOR DISPOSITION, A GENERAL OR SPECIFIC RECOMMENDATION AS TO DISPOSITION MAY BE ENTERED. EXAMPLES:

GENERAL RECOMMENDATION - "FWD TO BNCO RECOM NJP."

SPECIFIC RECOMMENDATION - "FWD TO BNCO RECOM RED."

(C) ENTER ANY SUBSEQUENT VACATION OF ANY SUSPENDED PUNISHMENT INCLUDED IN ITEM 7 AND THE DATE OF VACATION. EXAMPLES:

FORF OF \$250 PER MO FOR 1 MO IMPOSED AND SUSP ON
10 DEC 98 VACATED - 26 DEC 98.

RED TO PFC, E-2, IMPOSED ON 10 DEC 98 AND SUSP ON
15 DEC 98 VACATED - 26 DEC 98.

(D) A MARINE WHO HAS APPEALED MAY BE REQUIRED TO UNDERGO ANY PUNISHMENT IMPOSED WHILE THE APPEAL IS PENDING, EXCEPT THAT IF ACTION IS NOT TAKEN ON THE APPEAL WITHIN 5 DAYS AFTER THE APPEAL WAS SUBMITTED, AND IF THE MARINE SO REQUESTS, ANY UNEXECUTED PUNISHMENT INVOLVING RESTRAINT OR EXTRA DUTY SHALL BE STAYED UNTIL ACTION ON THE APPEAL IS TAKEN. (SEE PARAGRAPH 7 OF PART V, MCM, 1998.) AN ENTRY REFLECTING THE STAY OF PUNISHMENT WILL BE MADE. EXAMPLE:

7 DEC 98: APPEAL SUBMITTED. PUNISHMENT OF (HERE INSERT PUNISHMENT)
STAYED.

(E) WHEN AN EXECUTED OR UNEXECUTED PUNISHMENT IS SET ASIDE. THIS ENTRY WILL

BE PLACED ON THE OLD UPB AND THE NEW UPB. IF THE OLD UPB IS NOT HELD AT THE COMMAND, THEN ENTER ON THE NEW UPB ONLY.

EXAMPLE:

7 DEC 98: RED TO CPL, E-4, IS SET ASIDE. ALL RIGHTS, PRIVILEGES AND PROPERTY AFFECTED WILL BE RESTORED.

(2) IN ADDITION TO THE AFOREMENTIONED REQUIRED ENTRIES, THIS ITEM MAY BE USED TO RECORD OTHER APPROPRIATE REMARKS OR INFORMATION.

Q. ITEM 17. UPON COMPLETION OF THE REQUIRED ADMINISTRATIVE ACTION, THE OFFICER RESPONSIBLE FOR THE ACTION WILL INITIAL THIS ITEM. THIS ITEM MUST BE INITIALED BY THE COMMANDING OFFICER, OFFICER IN CHARGE, OR BY AN OFFICER DESIGNATED TO SIGN "BY DIRECTION" OF THE COMMANDER. ENSURE COMPLETION OF ALL SRB AND UNIT DIARY ENTRIES.

R. ITEM 18. ENTER THE COMPLETE IDENTIFICATION OF THE MARINE'S UNIT; E.G., COMPANY/BATTERY/SQUADRON/GROUP/BATTALION.

S. ITEM 19. ENTER LAST NAME, FIRST NAME, AND MIDDLE INITIAL OF THE MARINE.

T. ITEM 20. ENTER GRADE AND PAY GRADE; E.G., LCPL, E-3.

U. ITEM 21. ENTER SOCIAL SECURITY NUMBER; E.G., 123 45 6789.

ADD THE FOLLOWING PARAGRAPH:

PARA 3006.11. "DISPOSITION INSTRUCTIONS."

1. DISPOSITION IS AS FOLLOWS:

A. FILE THE ORIGINAL IN THE SRB

B. COPY TO OFFICIAL MILITARY PERSONNEL FILE (OMPF)

C. COPY TO UNIT FILES

D. COPY TO MEMBER

3. SUMMARY OF CHANGES. THIS CHANGE CLARIFIES DETAILED INSTRUCTIONS IN PREPARATION OF THE UPB.

4. FILING INSTRUCTIONS. FILE THIS CHANGE IMMEDIATELY FOLLOWING CH 1 OF THE BASIC ORDER.

5. THIS CHANGE IS APPLICABLE TO ALL MARINE CORPS ACTIVITIES.//



18 Mar 03

MARINE CORPS ORDER P5800.16A Ch 3

From: Commandant of the Marine Corps

To: Distribution List

Subj: MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE:
LEGADMINMAN)

Encl: (1) New page inserts to MCO P5800.16A

1. Purpose. To transmit new page inserts to the basic Manual.

2. Action. Remove all pages of Chapters 14 and 15 and replace with corresponding pages in the enclosure.

3. Summary of Change.

a. Chapter 14. The change modifies detailed policy guidance on permissible legal assistance services. Unnecessary provisions have been deleted. The requirement for periodic reporting has been clarified and a sample quarterly report has been added. A Guide to Naturalization Applications Based upon Qualifying Military Service has been added.

b. Chapter 15. The change modifies the support standards required for Marines with family members. It adds a Support Calculation Worksheet to aid the Commander in determining the appropriate amount to order a Marine to pay as well as a sample Order of Support. Language has been added to allow the Commander to modify the amount of a previous order and to clarify when a Commander may waive the requirement to provide support.

4. Filing Instructions. File this Change transmittal immediately following the last page of MARADIN 135/01, Change 1 and MARADMIN 542/02, Change 2, which both immediately follow the signature page of the basic Manual.

5. Certification. Reviewed and approved this date.



K. M. SANDKUHLER

Staff Judge Advocate to the
Commandant of the Marine Corps

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DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
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MCO P5800.16A Ch 4
JA-2
9 Jun 05

MARINE CORPS ORDER P5800.16A Ch 4

From: Commandant of the Marine Corps
To: Distribution List

Subj: MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE:
LEGADMINMAN)

1. Purpose. To transmit change 4 to the basic Manual.
2. Action. Review MARADMIN 258/05 which directs significant changes to the basic Manual.
3. Filing Instructions. File this Change transmittal immediately following MARADIN 126/03, Change 3, immediately preceding the signature page of the basic Manual.
4. Certification. Reviewed and approved this date.

A handwritten signature in black ink, appearing to read "K. M. Sandkuhler", is positioned above the typed name.

K. M. SANDKUHLER
Staff Judge Advocate to the
Commandant of the Marine Corps

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MARADMIN 258/05

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Date signed: 06/09/2005MARADMIN Number: 258/05
Subject: MCO P5800 16A CH4 MARINE CORPS MANUAL FOR LEGAL
ADMINISTRATION

R 091536Z JUN 05
FM CMC WASHINGTON DC(UC)
TO AL MARADMIN(UC)
UNCLASSIFIED//
MARADMIN 258/05
MSGID/GENADMIN/CMC WASHINGTON DC JA//
SUBJ/MCO P5800.16A CH4. MARINE CORPS MANUAL FOR LEGAL
ADMINISTRATION//
POC/D. R. DAHNERT/CW05/JA/-/TEL:DSN 224-8661
/EMAIL:DAHNERTDA@HQMC.USMC.MIL//
GENTEXT/REMARKS/1. CHANGE 4 TO MCO P5800.16A, WHICH DIRECTS CHANGES
TO CHAPTERS 1, 5, 6, 8, 9, 11, 12, 13, 14, 16, 19, 20, AND ADDS A
NEW CHAPTER 23, BECOMES EFFECTIVE ON THE DATE OF THIS MARADMIN. THE
LEGADMINMAN, WHICH DOES NOT YET INCORPORATE THIS CHANGE, THE
HIGHLIGHTED TRACKED CHANGES DEPICTING CHANGE 4, AND THE SUMMARY OF
REVISIONS, ARE AVAILABLE AT THE JA WEB SITE AT HTTP:
SJA.HQMC.USMC.MIL.
2. CHANGE 4 TO THE LEGADMINMAN LOCATED ON THE OFFICIAL MARINE CORPS
WEB SITE IS CURRENTLY BEING INCORPORATED AT ARDE, HQMC.
3. FILING INSTRUCTIONS. FILE THIS MARADMIN IMMEDIATELY FOLLOWING CH
3 OF THE BASIC ORDER.
4. THIS CHANGE IS APPLICABLE TO ALL MARINE CORPS ACTIVITIES.//



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
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WASHINGTON, DC 20380-1775

MCO P5800.16A Ch 5
JA-2
28 Nov 05

MARINE CORPS ORDER P5800.16A Ch 5

From: Commandant of the Marine Corps
To: Distribution List

Subj: MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE:
LEGADMINMAN)

Encl: (1) Chapter 8 of LEGADMINMAN with Change 5 incorporated
(2) Summary of Changes

1. Purpose. To transmit change 5 to the basic Manual.
2. Action
 - a. Replace chapter 8 with enclosure (1).
 - b. Review enclosure 2, which directs changes to chapter 8 of the basic Manual.
3. Certification. Reviewed and approved this date.

K. M. SANDKUHLER

Staff Judge Advocate to the
Commandant of the Marine Corps

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DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
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WASHINGTON, DC 20350-3000

MCO P5800.16A Ch 6
JA
26 SEP 11

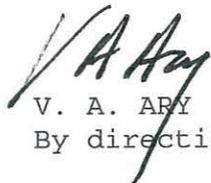
MARINE CORPS ORDER P5800.16A Ch 6

From: Commandant of the Marine Corps
To: Distribution List

Subj: MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (SHORT TITLE:
LEGADMINMAN)

Encl: (1) New page inserts to MCO P5800.16A

1. Situation. To transmit new page inserts to the Order.
2. Mission. This change updates Marine Corps policy for the delivery of defense services, renames the Marine Corps Defense Bar as the Marine Corps Defense Services Organization (DSO), clarifies the duties, responsibilities and authorities of supervisory defense counsel, ensures compliance with the recent appellate court decision concerning the assignment of defense counsel, and better insulates the DSO and the defense function. This update is the result of an extensive evaluation by the Staff Judge Advocate to the Commandant of the Marine Corps and Chief Defense Counsel of the Marine Corps.
3. Execution
 - a. Remove page iii and replace with the corresponding page iii in enclosure (1).
 - b. Remove pages 2-1 through 2-13 and replace with pages 2-1 through 2-13 in enclosure (1).
4. Summary of Changes. This change identifies the DSO, provides the DSO with greater supervisory control over DSO personnel, and changes the authority for detailing defense counsel to cases and acting on requests for individual military counsel assigned to the DSO.
5. Filing Instructions. File this change transmittal in front of the original Order.


V. A. ARTY
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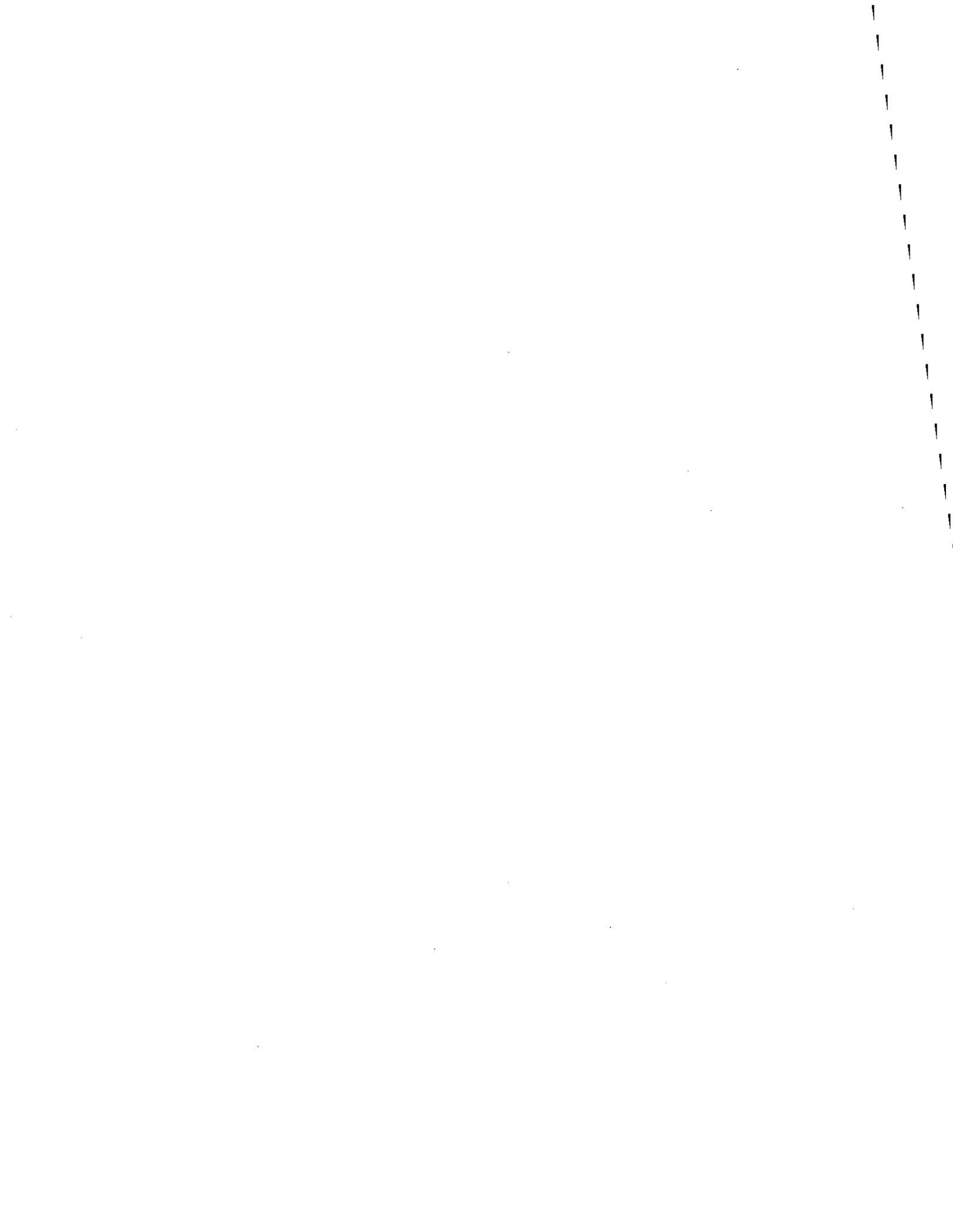
ENCLOSURE (1)

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RECORD OF CHANGES

Log completed change action as indicated.

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REPORTS REQUIRED

	<u>REPORT TITLE</u>	<u>REPORT SYMBOL</u>	<u>PARAGRAPH</u>
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II.	Officer Misconduct Case Update	MC-1621-05	4002.5
III.	Officer Punishment	EXEMPT	4004.1
IV.	Trial of Officers	EXEMPT	4005.1
V.	Notice of Absentee Wanted by the Armed Forces (DD Form 553)	MC-5800-02	5002.2d(6) 5010.2d
VI.	Unauthorized Absence of Officers	MC-1621-03	5003
VII.	Report of Return of Absentee and of Stragglers Orders Issued/Guards Requested	MC-5800-04	5009.3b 5009.4i
VIII.	Victim and Witness Assistance	DD-5800-09 (External RCS DD-P&R(A)1952))	6007.1
IX.	Public Financial Disclosure	DN-5370-01	11003.1
X.	Confidential Financial Disclosure	DN-5370-02	11003.2
XI.	Foreign Gift of More Than Minimal Value	EXEMPT	12002.8c
XII.	Gifts of Travel	EXEMPT	12002.9c
XIII.	Regional Legal Assistance Council Summary	MC-5800-01	14010.6b

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INTRODUCTION

0001. PURPOSE. This Manual is published to promulgate policies, procedures, guidance, and instructions for the administration of discipline, law, and legal matters in the Marine Corps and the Marine Corps Reserve.

0002. SCOPE

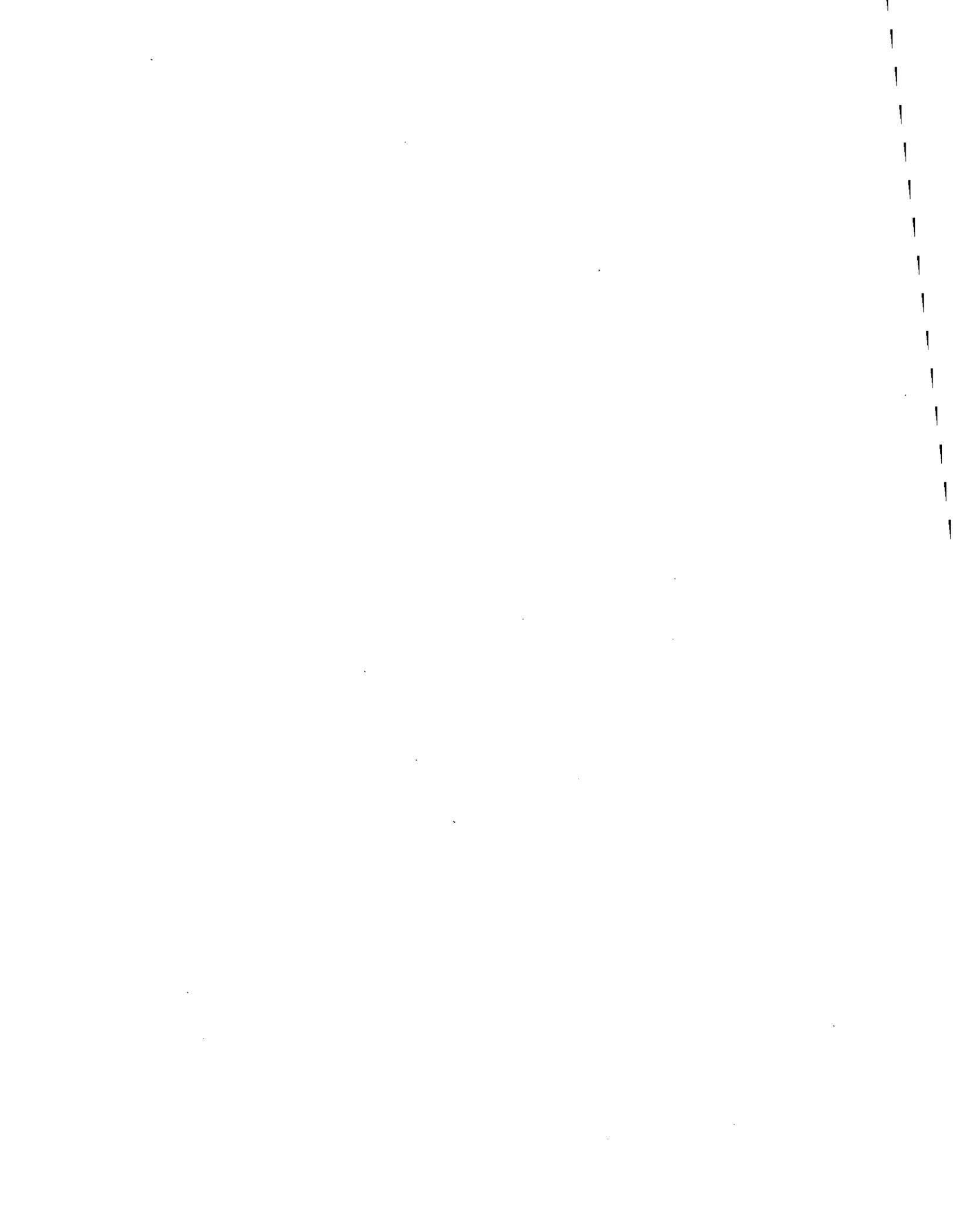
1. The provisions of this Manual set forth procedures and responsibilities for the maintenance of discipline and the administration of laws and regulations relating thereto.
2. This Manual supplements the UCMJ, the Manual for Courts-Martial, 1995 (MCM, 1995), the Manual of the Judge Advocate General of the Navy (JAGMAN), and other pertinent directives of higher authority. Provisions of the foregoing are restated herein only to the extent considered necessary for clarity, emphasis, elaboration, or convenience of reference.
3. In the event any portion of this Manual is now or hereafter in conflict with any regulation of higher authority, the provision of the regulation issued by higher authority shall be controlling. Users of this Manual are requested to bring such conflicts to the attention of CMC (JA-2).

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CHAPTER 1

MILITARY JUSTICE

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CHAPTER 1

MILITARY JUSTICE

1000. SCOPE. This chapter describes major source materials for military justice; sets forth goals for trial and defense counsel conducting a trial by court-martial; provides guidance to prevent unlawful command influence; offers guidance for high-profile military justice cases; sets forth procedures and administrative instructions relating to retention of Marines on active duty pending trial by court-martial or accused of committing an offense over which a foreign country has jurisdiction; consular protection of foreign nationals subject to the UCMJ; clemency review; extension of enlistment to serve probation; instruction on the UCMJ; and signing military justice documents; and suggests the use of depositions for civilian witnesses whose evidence is needed before referral of court-martial charges.

1001. MAJOR SOURCE MATERIALS. Major source materials for military justice are the Constitution, the UCMJ, the Manual for Courts-Martial, the Manual of the Judge Advocate General, Military Justice Regulations issued by the Judge Advocate General (currently in the form of letter-type JAG instructions), and this Manual. Major secondary sources include the Military Judges' Benchbook (currently Department of the Army Pamphlet 27-9), the commercially published Military Rules of Evidence Manual, and the Rules of Court and trial guides promulgated by the Navy-Marine Corps Trial Judiciary.

1002. GOALS OF A TRIAL BY COURT-MARTIAL

1. Operating within an adversarial system of justice, the goal of a trial is the search for the truth. To provide the best opportunity to find the truth and deliver justice, a trial should have an efficient presentation of evidence and arguments to the trier of fact in a setting that promotes a sense of the importance of the outcome.

2. Counsel for both sides are expected to strive to conduct an exemplary trial. In an exemplary trial, trial time is regarded by all as precious. The members are rarely sent out for extensive arguments of counsel on points of law. Counsel are able to frame their opening statements by properly balancing fact and emotion. Direct examination educates the members step-by-step about the essential facts and circumstances of the case. Exhibits are handled expeditiously. Visual evidence is planned and prepared in advance. Objections are ruled upon promptly without excessive arguments and are limited in number. Succeeding witnesses are presented without the need for recesses and their testimony is not dragged out to fill time. A schedule of witnesses is set and respected as much as possible.

3. Cross-examination by counsel, who have fully investigated the issues, is focused, succinct, and avoids the quality of a rambling debate with the witness. Everyone has a sense that counsel know exactly where they are going. Redirect examination maintains its proper scope and further examination is rare and limited. Counsel do not vie to have the last word.

4. Closing arguments stick to the evidence and do not invite objections. Counsel are well prepared with requests for rulings or members' instructions far in advance of the time for closing arguments. Objections to the military judge's instructions are made efficiently.

1003. COMMAND INFLUENCE

1. Courts-martial are instruments of leadership and command that have been balanced to ensure fairness to accused servicemembers. The UCMJ preserved a substantial amount of command control over military justice proceedings, but the UCMJ requires independent discretion and judgment on the part of court-martial participants. This is how the UCMJ seeks to ensure fairness while preserving the Code as an instrument of command. Unlawful command influence occurs when senior personnel, wittingly or unwittingly, act to influence court-martial members, witnesses, defense counsel, or the military judge in a court-martial case. Unlawful command influence not only jeopardizes the validity of the judicial process, it undermines the morale of military members, their respect for the chain of command, and public confidence in the military.

2. While some types of influence are unlawful and prohibited by the UCMJ, other types of influence are lawful, proper, and a necessary part of command and leadership. The prohibition against unlawful command influence does not mean that a commander may abdicate responsibility for correcting disciplinary problems or administering justice. Rather, the commander must be vigilant to ensure that command action does not encroach upon the independence of the other participants in the military justice system.

3. Lawful Command, Control and Influence. A commander may:

a. Personally dispose of a case at the level authorized for that commander.

b. Send a case to a lower level commander for that subordinate's independent action.

c. Send a case to a higher commander with a recommendation for disposition.

d. Withdraw subordinate court-martial convening authority in whole or for particular classes or categories of cases.

e. Order charges pending at a lower level transmitted up for further consideration, including, if appropriate, referral.

f. Mentor and train subordinates in military justice, but must do so recognizing that there exists the potential for misinterpreting the commander's intentions.

4. Unlawful Command Influence. A commander may not:

a. Order a subordinate to dispose of a case in a certain way. The law gives independent discretion to each commander at every level possessing authority to convene courts-martial.

b. Select or remove court-martial members in order to obtain a particular result in a particular trial. Selection of members must be based on the criteria contained in UCMJ, Article 25. Those criteria include age and experience, education and training, length of service, and judicial temperament.

c. Pressure the military judge or court members to arrive at a particular decision or harass defense counsel.

d. Intimidate or discourage witnesses from testifying or retaliate against a witness for testifying.

e. Criticize military judges, court members, witnesses, or defense counsel in a manner that may influence them or other military judges, court members, witnesses, or defense counsel in future cases.

f. Consider or evaluate, in a fitness report, the court-martial performance of any court member or give a less favorable rating or evaluation to a defense counsel because of the zeal with which the defense counsel represented an accused servicemember.

5. Though not, strictly speaking, unlawful "command influence," commanders should not have an inflexible policy on the disposition of a court-martial case or the punishment to be imposed. A convening authority must consider each case individually on its own merits. When a convening authority considers the post-trial submissions of the accused and acts on the sentence of a court-martial, s/he may not have an inflexible attitude toward clemency.

6. A commander who is an "accuser" may not thereafter act as a convening authority. A commander who is an accuser is disqualified to act as a convening authority and must forward the charges to a superior convening authority. A commander is considered to be an accuser when s/he:

- a. Formally signs and swears to the charges on a charges sheet,
- b. Directs that charges be signed and sworn to by another, or
- c. Has an interest, other than an official interest, in the prosecution of the accused.

1004. PUBLIC AFFAIRS AND HIGH-PROFILE MILITARY JUSTICE CASES

1. Military justice matters have sometimes become the subject of intense national, regional, and local media interest. Commanders, staff judge advocates, legal team leaders, military justice officers, and public affairs officers must be prepared to manage a court-martial or other military justice matters so that they do not become public affairs crises.

2. The following principles for managing high profile military justice matters are provided as guidance:

- a. If a matter under investigation is of such significance and potential public interest that it is virtually certain to be covered by the media, consider making the matter public before the matter "leaks" to the media.

- b. Assume that the media is more nimble than the command is; has sources of information the command does not have; and needs immediate education on the military justice system. Education of the media should begin immediately in the form of briefings and fact sheets available from HQMC (JAM).

- c. All potential high-visibility cases will be reported to CMC(JAM) - via email or telephonically - as soon as the information becomes available. CMC(JAM) will in turn brief the SJA to CMC so that CMC can be properly notified. It is of critical importance that CMC be kept informed of military justice issues with potential public interest. High Visibility is defined as any case likely to generate media interest, or other circumstances exist that warrant the incident being brought to the attention of CMC.

- d. All high-visibility cases involving officer misconduct will be reported immediately to the local SJA. The local SJA will then be responsible for entering the case in the EODN system.

- e. Get control of the facts. Initially, families, the media, or law enforcement agencies may have control of the facts, leading to a series of surprises. Use every lawful power at the command's disposal to get control of the facts. Once the parties have to come to the command for information, a high profile case can be successfully managed.

f. Establish a lawyer-public affairs team to manage the high profile case. The team must have ready access to the commander. If necessary, establish an operations center.

g. Consider obtaining a protective order from the convening authority or military judge relating to pretrial publicity.

h. Engage the media. While all information released to the media must be put through the "filters" of unlawful command influence, the Privacy Act, and rules pertaining to the release of pretrial information, often much relevant information can be released to the media. Once it is clear that the media will cover a case to its conclusion, it is generally a mistake not to engage the media or respond immediately to misinformation.

(1) If large numbers of media are in attendance, establish a media center. Assign a neutral third-party judge advocate to advise the media on military justice matters.

(2) Conduct press briefings before the proceedings in the morning and after the proceedings in the afternoon and evening.

(3) Coordinate with defense counsel and allow defense counsel to participate in the press briefings.

i. Maintain the integrity of the command, the military justice system, and the Marine Corps.

j. Keep HQMC informed and allow the Commandant and his staff to participate in the public affairs aspects of cases that affect the Marine Corps as a whole.

1005. EFFECT OF EXPIRATION OF ACTIVE SERVICE OF MARINES PENDING OR UNDERGOING SENTENCE OF COURT-MARTIAL OR ACCUSED OF COMMITTING AN OFFENSE OVER WHICH A FOREIGN COUNTRY HAS JURISDICTION

1. When, upon expiration of active service, a Marine has not been tried, or has been tried but the entire sentence has not been executed, the period of active service must be extended to complete trial, sentence and punishment, if any. The appropriate duty status code must be reported. In order to effect the extension, administrative action must be taken in accordance with MCO P1080.40, MCTFSPRIM. The authority to cite in such cases is R.C.M. 202, MCM.

2. A Marine may not be involuntarily retained in the service beyond normal EAS for the purpose of being a witness at a trial by court-martial.

3. Marines awaiting disposition of criminal proceedings by a foreign jurisdiction are accorded statutory and regulatory protections and

benefits attendant to their status as members of the armed forces. The policy of the Marine Corps is to ensure both that the member is accorded the fullest possible protection and that the Marine Corps meets its international obligations. In implementation of this policy, the following procedures will be applied in all cases where foreign criminal jurisdiction is being, or may be, exercised over a member of the naval service (by action such as apprehension, arrest, investigation, or a filing of charges that may result in trial), and where the foreign criminal proceedings are not likely to be completed prior to the date of the member's release from service because of EAS.

a. At least one month before EAS, Marines will be offered the opportunity to extend their enlistment voluntarily for the duration of legal proceedings and any subsequent punishment. Individuals will be informed of the protections and benefits they will receive as members of the Marine Corps during foreign criminal proceedings. For example: counsel may be provided at Marine Corps expense; court costs (but not fines) paid; an interpreter made available; and, in most countries, the Marine will remain in United States, vice foreign, custody at least during the trial proceedings. Marines will also be informed that they will remain subject to the UCMJ and may be subject to processing for administrative discharge. In some situations, advice of Article 27b, UCMJ, counsel will be provided when exposure to military criminal charges is possible. Additionally, the Marine will be advised that an election not to extend the enlistment voluntarily shall result in the following:

(1) Foreign authorities will be advised of the impending EAS and the inability of the Marine Corps to guarantee the Marine's presence after discharge;

(2) Foreign authorities will be offered custody of the Marine immediately prior to EAS; and

(3) Assuming foreign authorities accept custody, the Marine will be discharged from the naval service as soon thereafter as practicable, thereby terminating any special considerations that the Marine would be entitled to as a member of the armed forces.

b. If the Marine elects to extend the enlistment voluntarily, such request will be honored, and an appropriate page 11 entry will be made in the Marine's service record book and acknowledged by the Marine's signature. (See MCO P1040.31_, Enlisted Career Planning and Retention Manual.)

c. Should the Marine elect not to extend voluntarily, foreign authorities will be notified of the inability of the Marine Corps to guarantee the presence of the member after discharge due to the Marine's impending EAS. The foreign authorities will then be afforded the opportunity to take custody of the Marine at a mutually agreed

time immediately prior to EAS. If the foreign authorities desire custody, the Marine will be transferred to the foreign authorities at the agreed time. After such transfer of custody, the Marine's commanding officer will, at EAS, discharge the Marine and so notify the Judge Advocate General of the Navy, the CMC (MMSR), and the U.S. Embassy or Consul.

d. Should the foreign authorities, upon being notified of the Marine's impending EAS and the inability of the Marine Corps to maintain custody after discharge, state that the Marine need not be present within the jurisdiction and is not required nor desired to be available for any further criminal proceedings, the Marine should be returned to CONUS for separation. In such cases, foreign authorities have in effect released the Marine Corps from any obligation to keep the Marine within the foreign jurisdiction or to make the Marine available for foreign criminal proceedings. This communication from appropriate foreign authorities should be in writing, if possible; if not, a memorandum for the record should be made to memorialize the agreement. In any event, all action taken must be in accordance with the terms of any applicable Status of Forces Agreement or other similar applicable agreement or treaty.

e. The foregoing policy does not apply to a Marine who is in the custody of/confined by foreign authorities prior to the approach of EAS. In that situation, the provisions of SECNAVINST 5820.4_ continue to apply and, except under extraordinary circumstances approved by the Secretary of the Navy, the Marine will not be discharged while in custody or confinement of the foreign authorities.

1006. CONSULAR PROTECTION OF FOREIGN NATIONALS SUBJECT TO THE UCMJ

1. When a Marine who is not a citizen of the United States, and who claims foreign citizenship, is apprehended by military authorities under circumstances likely to result in confinement, or is ordered into military confinement, or is referred to trial by court-martial, the officer exercising general court-martial jurisdiction (OEGCMJ) is required to notify the nearest consular office of the foreign country concerned. This requirement is subject, in certain cases, to the objection of the Marine, depending on the applicable treaty, if any. Amplifying information is contained in SECNAVINST 5820.6.

2. In the event of the aforementioned, a copy of the notification must be incorporated into the record of trial. The commander on whose rolls the Marine is carried is responsible for informing the OEGCMJ over a Marine who is a foreign national whenever circumstances arise indicating that consular notification may be required.

1007. CLEMENCY REVIEW

1. Individuals whose court-martial sentence includes confinement for 12 months or more, or an unsuspended punitive discharge, are eligible for clemency review by the Naval Clemency and Parole Board (NC&PB) in accordance with SECNAVINST 5815.3_.
2. The commander on whose rolls the person is carried or, in the case of a Marine serving sentence in a Marine Corps brig, the commanding officer thereof, shall:
 - a. Provide a person eligible for clemency review the opportunity and free choice to request or waive clemency review before each annual review by NC&PB. Individuals should be encouraged to consult with assigned defense counsel prior to making their initial review decision.
 - b. Ensure that members waiving clemency review understand clearly the consequences of their choice, as outlined on the waiver form, and that, unless subsequent review is scheduled or directed, their cases will not again be subject to review by the Naval Clemency and Parole Board.
3. The vehicle for clemency review is the court-martial progress report, which will include:
 - a. The basic report;
 - b. The request for clemency; and
 - c. Endorsements of officials in the chain of review.
4. Only the following forms will be used in connection with clemency review:
 - a. To prepare the court-martial progress report - DD Forms 1476, 1477, 1478, and 1479 for the basic report, and NAVSO 5815/2 for the Marine's clemency request.
 - b. To waive clemency review - NAVSO 5815/4.
5. The commander on whose rolls the Marine is carried or, in the case of an individual serving sentence in a Marine Corps brig, commanding officer thereof, shall submit the original and two copies of the court-martial progress report to the President, NC&PB on all members who do not waive clemency review. A copy of the report will be furnished to the OEGCMJ (Attn: SJA). The time of submission shall be in accordance with the schedule established in SECNAVINST 5815.3_. Progress reports are to be completed as follows:
 - a. All required DD forms comprising the basic report, plus the Marine's clemency request, shall be completed in their entirety.

b. Psychiatric evaluations shall be in narrative form and normally typewritten. A military psychiatrist, a clinical psychologist, or a medical officer must make the evaluation.

c. Detailed information required to be included in psychiatric evaluations is contained in SECNAVINST 5815.3_.

1008. AGREEMENT TO EXTEND ENLISTMENT FOR THE PURPOSE OF SERVING A PERIOD OF SUSPENSION

1. Even though a Marine does not have sufficient time remaining on an enlistment to serve the period of suspension specified by the Secretary of the Navy or NC&PB, the Marine may be restored to duty, provided the Marine consents in writing to an extension of enlistment for the required suspension period.

2. The agreement to be executed shall be as follows:

"With full knowledge that the unexecuted portion of my sentence may be suspended for the purpose of allowing me to serve on active duty during the period of suspension, I hereby agree to be retained on active duty for the period of suspension, such period not to exceed 1 year. I further understand that the suspension may be vacated in accordance with R.C.M. 1109, MCM, 1998, in which event the unexecuted portion of my sentence shall be executed."

If the Marine has lost time that must be made good, add the following:

"I further understand that, pursuant to 10 U.S.C. § 972 and implementing directives, I shall also be required to make up _____ days time lost from my enlistment unless I am sooner discharged."

3. The following shall be accomplished relative to this agreement:

a. The information contained in the agreement shall be carefully explained to the Marine.

b. The Marine will sign the original and duplicate original.

c. The original agreement shall be retained in the SRB. The duplicate original will be forwarded to the Secretary of the Navy (Naval Clemency and Parole Board) via the CMC (JAM), with the Request for Restoration/Clemency, NAVSO 5815/2. The Marine should be advised that execution of an agreement to remain on active duty for the suspension period is not a form of clemency action, and that only the Naval Clemency and Parole Board may restore the Marine to duty.

1009. CIVILIAN WITNESSES. Gathering evidence from civilian witnesses is sometimes impossible because military criminal investigative organizations, preliminary inquiry officers, UCMJ, Article 32 investigation officers, and trial counsel cannot compel the attendance

of civilian witnesses until court-martial charges are referred to trial. When evidence from a civilian witness is needed before referral of charges, an oral or written deposition under UCMJ, Article 49 and Rule for Court-Martial 702 should be considered. A deposition may be taken after charges have been preferred. A subpoena is available to compel the attendance of a civilian witness at a deposition.

1010. INSTRUCTION ON THE UCMJ

1. The UCMJ, Article 137, requires that Articles 2, 3, 7 through 15, 25, 27, 31, 38, 55, 77 through 134, and 137 through 139 of the UCMJ be explained to enlisted Marines at the time of (or within six days after):

- a. The Marine's initial entrance on active duty; or
- b. The Marine's initial entrance into a duty status with a Reserve component; and
- c. After the Marine has completed 6 months of active duty or, in the case of a Marine of a Reserve component, after the Marine has completed recruit training; and
- d. At the time the Marine reenlists.

2. Instructions for recording the foregoing explanation in the service records of Marines are contained in MCO P1070.12_ (TRAM).

1011. SIGNING OF DOCUMENTS AND CORRESPONDENCE RELATED TO MILITARY JUSTICE MATTERS. The authority to convene courts-martial may not be delegated. Only the commander or the successor to command, as defined by Article 1026, U.S. Navy Regulations, 1990, and Marine Corps Manual, paragraph 1007, may sign court-martial convening orders, the referral block for charge sheets, and certain other court-martial documents. Documents will not be signed "acting" or "by direction."

1012. SEXUAL ASSAULT INCIDENTS AND REPORTING REQUIREMENTS. See also Chapter 6.

1. Commanders shall report all actual, suspected, or alleged incidents of sexual assault to the Provost Marshal. The Provost Marshal will ensure necessary notifications are provided to the Naval Criminal Investigation Service. For the purposes of this reporting requirement, the term sexual assault is defined by MCO 1752.5_, Sexual Assault Prevention and Response, and includes rape, forcible sodomy, assault with the intent to commit rape or sodomy, indecent assault, and any attempt to commit such offenses.

2. Sexual assault incidents are reportable incidents. The commander of the alleged offender will submit an OPREP-3SIR in accordance with 1-12

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MCO 5740.2_. In those cases where the alleged offender is unknown, the reporting commander will be that of the alleged victim. Staff Judge Advocates shall ensure that the SJA to CMC is an addressee on such reports.

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CHAPTER 2

THE MARINE CORPS DEFENSE SERVICES ORGANIZATION

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CHAPTER 2

THE MARINE CORPS DEFENSE SERVICES ORGANIZATION

2000. Purpose. The purpose of this chapter is to describe the organization, roles, and responsibilities of the Marine Corps Defense Services Organization (DSO), as provided for in law, regulations, and rules of professional conduct.

2001. General

1. The Sixth Amendment to the United States Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." For Service members pending court-martial, the right to counsel is provided by Congress through Article 27, Uniform Code of Military Justice (UCMJ) and implemented by the President through Rule for Courts-Martial (R.C.M.) 506, Manual for Courts-Martial (MCM). The Secretary of the Navy, through JAGINST 5800.7E, The Manual of the Judge Advocate General (JAGMAN), provides Departmental policy and regulations regarding the right to counsel and the formation of the attorney-client relationship. This chapter, which supplements the JAGMAN, provides Service policy regarding the delivery of defense counsel services within the Marine Corps. Further policy guidance and administrative procedures applicable to judge advocates serving as Marine defense counsel will be published separately by the Chief Defense Counsel of the Marine Corps (CDC).

2. Marine Corps defense counsel services are performed by commissioned officers who are licensed attorneys, certified as judge advocates under Article 27(b), UCMJ, and assigned to defense counsel billets in Marine Commands. Marine defense counsel serve at locations throughout the Marine Corps and are administratively assigned to local commands and installations, but while serving as a Marine defense counsel, are under the supervision of the CDC and the responsible Regional Defense Counsel (RDC).

3. A Marine defense counsel must exhibit unfettered loyalty and professional independence in representing the client, and is ultimately responsible for acting in the client's best interest. A Marine defense counsel's primary duty is to provide zealous, ethical, and effective representation to Marines and other Service members; this duty is limited only by law, regulation, and the Rules of Professional Conduct (JAGINST 5803.1C).

4. Attorney-Client Relationships

a. A Marine defense counsel will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by his or her detailing authority.

b. Once established, the attorney-client relationship may only be severed under the provisions of R.C.M. 505 and 506 and the Rules of Professional Conduct.

c. A Marine defense counsel shall continue to represent an accused post-trial until the accused is assigned an appellate defense counsel, if applicable, or until completion of any and all post-trial matters; however, for purposes of paragraph 2004 of this chapter, a Marine defense counsel's tour with the DSO is

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considered complete when R.C.M. 1105/1106 matters, if applicable, have been submitted for every case.

5. Guiding Principles

a. The Marine Corps DSO must be independent of unlawful pressure or influence.

b. Funding for training, resources, and facilities shall be consistently provided across the Marine Corps legal community, and there shall be equitable distribution, commensurate with mission requirements, between the defense function and the prosecution function with respect to access to resources, facilities, seats at continuing legal education courses, training funds, and support staff.

c. Requests for specific case related funding submitted to the convening authority shall be considered and processed consistent with Article 46, UCMJ, the MCM, and the JAGMAN.

d. Marine defense counsel shall be provided sufficient time and access to clients to achieve a full and confidential exchange of legal, procedural, and factual information. To ensure confidential communications, private meeting spaces must be available at offices, military confinement facilities, courtrooms, and all other places where clients and counsel must confer in confidence.

e. To ensure that a Marine defense counsel's workload is not so large as to interfere with his or her ethical obligations to any individual client, supervisory attorneys shall consider factors such as an individual counsel's experience and caseload, case complexity, anticipated end of tour date, and traditional officer duties when assigning counsel to a particular case.

f. A Marine defense counsel's ability, training, and experience should match the complexity of the case. Supervisory attorneys will only assign counsel who are properly qualified to handle a particular case.

2002. Personnel

1. Marine Corps Defense Services Organization (DSO). The Marine Corps DSO encompasses all defense counsel and defense enlisted support personnel assigned to Marine Corps Commands. The DSO operates under the supervision of the CDC. For purposes of this chapter, "supervision" includes professional responsibility oversight, defense-oriented training, assignment of defense counsel to particular cases, and execution of the day-to-day operations of the DSO.

2. Chief Defense Counsel of the Marine Corps (CDC). The CDC is the head of the DSO and responsible for supervision of all Marine defense personnel and the delivery of defense counsel services throughout the Marine Corps.

a. The CDC shall be an experienced judge advocate serving in or selected to the grade of colonel. The CDC is assigned in accordance with Article 6, UCMJ. The SJA to CMC should, when possible, consult with the current CDC and take into consideration the following when selecting a successor CDC:

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(1) Designation with the Necessary Military Occupational Speciality (NMOS) of 4409 (military justice);

(2) Prior experience as a Defense Counsel (DC), Senior Defense Counsel (SDC), and/or Regional Defense Counsel (RDC); and,

(3) Significant litigation experience as either a trial or defense counsel or as a military judge.

b. Upon assignment, the SJA to CMC will provide the CDC with an appointment in writing on behalf of the Commandant of the Marine Corps (CMC). The CDC's reporting senior and reviewing officer is the SJA to CMC.

c. The CDC is administratively assigned to Headquarters and Service Battalion (HQSVB BN), Headquarters Marine Corps (HQMC) and receives administrative support from HQMC.

d. The CDC is supported by a legal services specialist staff non-commissioned officer of appropriate experience and temperament selected in coordination with the Legal Services Chief of the Marine Corps.

e. The CDC serves as the supervisory attorney for the RDCs, SDCs, and DCs.

f. Specific CDC duties include, but are not limited to:

(1) Establishing standard operating procedures for the delivery of defense counsel services throughout the Marine Corps;

(2) Assessing the practice, procedure, and techniques of defense counsel and enlisted support personnel in the performance of defense functions;

(3) Assessing the adequacy of facilities and assets provided to defense counsel;

(4) Monitoring the experience levels of judge advocates assigned as defense counsel relative to judge advocates assigned as trial counsel;

(5) Reporting to the SJA to CMC annually regarding the delivery of defense counsel services within the Marine Corps;

(6) Detailing Marine defense counsel and auxiliary defense counsel to cases consistent with paragraph 2006 of this order and section 0130 of the JAGMAN; and

(7) Making availability determinations for Marine defense counsel to serve as Individual Military Counsel (IMC) consistent with paragraph 2008 of this order and section 0131 of the JAGMAN.

3. Regional Defense Counsel (RDC). A RDC is directly responsible to the CDC for the delivery of defense counsel services within a region.

a. A RDC is a Marine judge advocate serving in or selected to the grade of lieutenant colonel, with considerable expertise in military justice matters.

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b. Each RDC office is assigned a separate Monitored Command Code (MCC), and is a tenant activity at the installation where located.

c. A legal services specialist non-commissioned officer with prior military justice or defense experience is assigned to each RDC office.

d. RDCs serve as the supervisory attorney for the SDCs and DCs within their regions. There are three defense regions in the Marine Corps:

(1) The Eastern Region encompasses all Marine defense counsel assigned to commands and installations in the Eastern Recruiting Region;

(2) The Western Region encompasses all Marine defense counsel assigned to commands and installations in the Western Recruiting Region, excluding any location outside the continental United States; and

(3) The Pacific Region encompasses all Marine defense counsel assigned to commands and installations outside the continental United States except those within a designated combat zone.

e. When trial services are deployed in support of expeditionary or contingency operations abroad in a designated combat zone (defined as being a location subject to imminent danger/hostile fire pay) the CDC shall designate one of the three RDCs as the supervisory attorney for defense counsel serving within the area of operations.

f. Specific RDC duties include, but are not limited to:

(1) Coordinating with local commands to ensure that defense counsel and support personnel receive appropriate training;

(2) Conducting, at a minimum, semi-annual site visits to all defense sections within their designated region;

(3) Monitoring defense counsel performance through personal observation, reading records of trial and briefs, and meeting and corresponding with senior judge advocates, military judges, and commanders;

(4) Assessing and reporting to the CDC on the adequacy of support, assets, and facilities provided to defense offices within the region;

(5) Detailing defense counsel assigned to their respective region, provided that authority has been properly delegated by the CDC consistent with paragraph 2006 of this chapter; and,

(6) Making IMC availability determinations for defense counsel assigned to their respective region, provided that authority has been delegated by the CDC consistent with paragraph 2008 of this chapter.

g. A RDC's primary duty is the training, mentoring, and supervision of subordinate defense counsel in the RDC's region. If a RDC maintains a case load, it should not interfere with the RDC's responsibilities for training, mentoring, and supervising personnel within the region.

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4. Senior Defense Counsel (SDC). A SDC is directly responsible to the RDC and CDC for the delivery of defense counsel services in support of the Marines and Sailors serviced by the Law Center or Legal Services Support Section to which that SDC belongs.

a. A SDC is a Marine judge advocate, preferably serving in or selected to the grade of major, who serves as head of the defense section at that location.

b. SDCs are administratively attached to local commands, but are responsible and accountable to their RDC and the CDC.

c. Specific SDC duties include, but are not limited to:

(1) Ensuring that defense counsel and support personnel receive appropriate training;

(2) Monitoring defense counsel performance through personal observation, reading records of trial and briefs, and meeting and corresponding with senior judge advocates, military judges, and commanders;

(3) Assessing and reporting to the RDC on the adequacy of support, assets, and facilities provided defense counsel at their location;

(4) Detailing defense counsel assigned to that SDC's specific location, provided that authority has been properly delegated by the RDC or CDC consistent with paragraph 2006 of this chapter; and

(5) Reporting periodically on the condition of trial defense services at his or her location to the RDC and/or CDC.

d. An SDC will maintain a caseload that does not interfere with the SDC's responsibilities for training, mentoring, and supervising personnel within the section.

5. Defense Counsel. A defense counsel's primary duties are to represent Marines and Sailors in courts-martial, administrative boards, and other proceedings, to provide counsel as required by law or regulation, and to perform other duties as prescribed by the SDC, RDC, or CDC. Defense Counsel are administratively assigned to local commands, but once assigned to a defense billet, they are under the supervision of and responsible and accountable to his or her SDC, RDC, and the CDC.

6. Auxiliary Defense Counsel

a. If needed to meet requirements, a local Staff Judge Advocate, Officer-in-Charge, or Law Center Director (SJA, OIC, Director) may identify a judge advocate who will be available to be detailed by the CDC or his or her designee, to be a defense counsel for a particular case. Staff judge advocates, deputy staff judge advocates, trial counsel, or review officers may not serve as auxiliary defense counsel.

b. As outlined in paragraph 2010.3 of MCO P1610.7F (PES), auxiliary defense counsel concurrently performing non-defense duties may receive simultaneous fitness reports from a member of the DSO to evaluate the auxiliary defense

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counsel's performance as a defense counsel and from his or her supervisor outside of the DSO to evaluate the performance of non-defense counsel duties.

7. Student Judge Advocate. Student judge advocates (MOS 4401) may be assigned by local commands to support the local defense section in a manner similar to that provided to support the military justice section. While assigned to the defense section, student judge advocates are under the supervision of and responsible and accountable to the DSO, but they may not be detailed to represent clients.

8. Enlisted Support Personnel. Subject to force structure limitations and mission requirements, legal services specialists shall be assigned by local commands to support the defense section in a manner proportional to the support requirements provided to the military justice section. While assigned to the defense section, legal services specialists are under the supervision of and responsible and accountable to the DSO.

9. Defense Branch, Reserve Legal Services Support Section (RLSSS). Reserve judge advocates assigned by the RLSSS to the Defense Branch are under the supervision of and responsible to the DSO when fulfilling Defense Branch duties.

2003. Tour Length

1. After consultation with the responsible RDC, the cognizant SJA, OIC, or Director responsible for assigning judge advocates to defense counsel billets will establish an anticipated end date for the judge advocate's tour as a DC/SDC, which normally will be at least 18 months after assignment to a defense counsel billet. When assigning a judge advocate to a defense counsel billet, the responsible SJA, OIC or Director will memorialize the anticipated end of tour date in writing and provide a copy of the assignment letter to the responsible RDC.

2. The responsible RDC will ensure, as far as practicable, that the agreed upon tour length coincides with the termination of that defense counsel's duties and responsibilities.

3. If circumstances arise that require curtailing a defense counsel's tour before the previously established agreed upon end of tour date, the cognizant SJA, OIC, or Director and the responsible RDC shall establish a new end of tour date.

4. If the parties cannot mutually agree upon a new end of tour date, the cognizant SJA, OIC, or Director shall report, in writing, the circumstances requiring the tour curtailment to the SJA to CMC via the CDC.

5. A defense counsel tour is not considered to be complete until R.C.M. 1105/1106 matters have been submitted for every case to which the defense counsel remains detailed.

2004. Reassignment

1. The reassignment of a Marine defense counsel requires careful planning and coordination between the responsible RDC and the local SJA, OIC, or Director.

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2. Once a Marine defense counsel is slated for reassignment by the SJA, OIC, or Director, the responsible RDC must ensure that the defense counsel is not detailed cases anticipated to extend beyond the targeted reassignment date without the consent of the SJA, OIC, or Director.
3. If the RDC and SJA, OIC, or Director cannot reach an agreement on the detailing decision involving a case that will likely extend beyond the defense counsel's anticipated rotation date, the matter will be forwarded to the CDC for resolution. If the CDC cannot resolve the matter, the matter will be forwarded to the SJA to CMC for final decision.
4. If a Marine defense counsel is pending reassignment, including discharge or retirement, prior to the completion of defense counsel duties, including post-trial representation, the responsible RDC must ensure the defense counsel has:
 - a. Notified all remaining clients and any co-counsel in writing of the pending reassignment;
 - b. Informed all remaining clients of their options with regard to the pending reassignment;
 - c. Arranged for the client, when the reassignment creates a conflict of interest with a particular case, to consult with a conflict-free counsel about the matter and ensure the client's understanding of this advice is memorialized in writing, counter-signed by the client, and, in court-martial cases, provided to the military judge; and,
 - d. Notified the military judge detailed to any ongoing courts-martial of the defense counsel's pending reassignment.
5. Absent a knowing and affirmative waiver by the client of the apparent conflict of interest, and approval by a military judge, judge advocates may not serve concurrently, including periods of transition between billets, as a judge advocate assigned to the DSO or an auxiliary defense counsel and as:
 - a. A trial counsel on any case;
 - b. The deputy staff judge advocate or staff judge advocate to the convening authority of any case in which the defense counsel is still performing defense counsel duties, including post-trial representation;
 - c. The Deputy Director, Director, assistant OIC, or OIC of the office the defense counsel is assigned to; or,
 - d. Other billets which would create a conflict of interest with concurrent service as a defense counsel.

2005. Collateral Duties

- a. Marine defense personnel shall perform routine non-defense duties, such as unit PT, training, and standing duty so long as those collateral duties do not have a military justice connection or conflict with their statutory and ethical obligations to their clients. For example, a defense attorney cannot serve as a duty officer if he or she is responsible for checking Marines on or off restriction or is required to make command visits to the local confinement

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facility. A Marine defense counsel may, with the consent of the responsible RDC, augment the local legal assistance office.

b. Recognizing the smaller caseload in a combat or expeditionary environment, Marine defense personnel may also perform non-defense duties in an expeditionary or combat environment such as working group member in operational planning teams in civil affairs, information operations and detainee operations, or providing legal assistance so long as these duties do not have a military justice connection or conflict with their statutory and ethical obligation to their clients. Prior to assigning a Marine defense counsel to these duties, the Marine Air Ground Task Force (MAGTF) SJA should consult with the responsible RDC.

2006. Detailing

1. For detailing purposes, the CDC is the OIC under JAGMAN section 0130(b) of the DSO and is the the detailing authority for Marine defense counsel. Detailing authority includes the authority to remove a counsel from a case for good cause. The CDC may further delegate detailing authority for Marine defense counsel to subordinates within the DSO, subject to the restrictions set forth below. Further delegation of detailing authority will be published via CDC Policy Memorandum.
2. Prior to detailing a defense counsel to a particular case, the detailing authority will consider such factors as: the geographic locations of the accused and counsel, the anticipated rotation date of the defense counsel, the counsel's caseload and experience, any applicable conflict-of-interest analysis, the case complexity, collateral duties assigned to the defense counsel, and the officer's training and education requirements.
3. When detailing a defense counsel to a particular case, the detailing authority shall ensure that: 1) standard detailing criteria are used; 2) the needs of the local commands are taken into consideration; 3) every accused receives zealous representation by a fully qualified counsel; and 4) every accused is detailed counsel in a timely manner.
4. The responsible detailing authority shall detail a defense counsel in writing to a particular case as soon as practicable and in no case later than:
 - a. Ten days of being notified via e-mail, fax, or other written means by corrections personnel, command representatives, the military justice section, or some other government official that an accused has been placed in pretrial confinement or arrest under R.C.M. 305;
 - b. Five days of being served notice of preferred charges;
 - c. Five days of being served an administrative separation/board of inquiry package; or,
 - d. As otherwise required by law or regulation.
5. The detailing authority will provide a copy of the detailing memorandum to the accused's summary court-martial convening authority, the responsible staff judge advocate, and the cognizant prosecution section.

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6. With the consent of the SJA to CMC, the CDC may detail him or herself to a case. RDCs may not detail themselves to cases. If delegated the authority, RDCs may only detail counsel assigned to their regions to cases arising within their region. If delegated the authority, SDCs may only detail counsel, including themselves, who are assigned to that SDC's specific geographic location. Additionally, SDCs may only detail counsel to cases whose commands are supported by the applicable servicing Law Center or legal services support section (LSSS). However, SDCs may not detail themselves to cases that involve clients with a conflict of interest with clients of a defense counsel that the SDC supervises (i.e. alleged co-conspirator or drug ring cases).

7. Marine defense counsel are normally only detailed to represent an accused assigned to an organization that is supported by that Marine defense counsel's Law Center or LSSS. However, for situations such as organizations without local defense counsel, conflict-of-interest cases, gaps in defense counsel coverage, or unique requirements of a case, non-local defense counsel may be detailed on a case-by-case basis.

a. The CDC, or the RDC, if delegated detailing authority, are the only individuals authorized to detail non-local defense counsel.

b. Prior to detailing, the authorized detailing authority shall:

(1) Get approval from the convening authority's SJA for travel and other expenses associated with detailing a non-local defense counsel to the case; and,

(2) Consult with the non-local defense counsel's SDC and the SJA, OIC, or Director, and consider the impact that detailing the non-local defense counsel will have on the needs of that organization.

c. If the convening authority will not agree to fund travel and other expenses associated with detailing the non-local counsel or the non-local counsel's SJA, OIC, or Director object, the issue will be forwarded to the CDC for resolution. If the CDC cannot resolve the issue, it will be forwarded to the SJA to CMC for final decision.

8. An accused is not entitled to be represented by more than one military counsel, and normally only one Marine defense counsel will be detailed to particular case. Prior to detailing a second Marine defense counsel to any case, the detailing authority shall consult with the local SDC and the SJA, OIC, or Director, and consider the impact detailing a second Marine defense counsel will have on the needs of that organization.

2007. Representation at Initial Review Officer Hearings. Unless the accused has previously been detailed a defense counsel, the responsible detailing authority shall ensure a Marine defense counsel is assigned to represent Marines and Sailors assigned to commands supported by their locations, at initial review officer hearings conducted under R.C.M. 305. Such representation is limited to these hearings, and does not create an entitlement that the accused later be detailed the counsel who represented him or her at this hearing.

2008. Requests for Individual Military Counsel (IMC)

1. Article 38, UCMJ, provides that an accused has the right to be represented by a military counsel of his own selection, if that counsel is reasonably

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available. Section 0131 of the JAGMAN sets forth standards for determining the availability of a requested IMC.

2. Determining Authority for IMC requests

a. As the OIC of the DSO, the CDC is the determining authority under JAGMAN section 0131b(2) for all IMC requests for Marine defense counsel assigned to the DSO, except for IMC requests for the CDC. The CDC may further delegate this authority to subordinates within the DSO, subject to the restrictions set forth below.

b. The SJA to CMC is the determining authority on IMC requests for the CDC.

c. The CDC is the determining authority on IMC requests for RDCs. For IMC availability purposes, a RDC's organization is limited to the region the RDC is assigned.

d. If delegated the authority, RDCs are determining authorities on IMC requests for SDCs and defense counsel assigned to their regions.

e. The determining authority for IMC requests for auxiliary defense counsel is that judge advocate's SJA, OIC, or Director.

3. Before taking action on an IMC request for an SDC or defense counsel, the determining authority shall consult with both the convening authority's SJA and the requested IMC's SJA, OIC, or Director, and consider the impact the approval will have on the operational needs of the requested IMC's organization, as well as the requested IMC's anticipated rotation date, caseload, and experience, the case complexity, collateral duties assigned to the requested counsel, and the officer's training and education requirements.

4. If the requested defense counsel is made available as an IMC, the detailed defense counsel shall normally be excused from further participation in the case, unless the detailing authority approves a request from the accused that the detailed defense counsel act as associate counsel. Prior to approving such a request, the detailing authority shall consult with the detailed counsel's SDC and SJA, OIC, or Director, and consider the impact approving the request for associate counsel will have on the operational needs of that organization.

5. Administrative Review and Appeal of IMC Request Denials

a. The SJA to CMC's denial of an IMC request may not be appealed, but is subject to judicial review.

b. For all IMC requests denied by the CDC, the SJA to CMC is the immediate superior in command for administrative review and appeal.

c. For all IMC requests denied by the RDC, the CDC is the immediate superior in command for administrative review and appeal.

d. For all IMC requests denied by an SJA, OIC, or Director, that officer's commander is the immediate superior in command for administrative review and appeal.

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2009. Professional Responsibility Complaints. The SJA to CMC is the Rules Counsel for all Marine judge advocates, including Marine defense counsel. Informal professional responsibility complaints regarding Marine defense counsel will be resolved within the DSO. Formal professional responsibility complaints regarding Marine defense counsel will be forwarded via the responsible RDC and CDC to CMC (JAR) for resolution.

2010. Administrative and Logistical Support

1. The CDC and RDCs are administratively assigned to the following host commands:

CDC	HQSVC BN HQMC	MCC TEM
RDC-East	HQSPT BN MCB Camp Lejeune	MCC TEH
RDC-West	HQSPT BN MCB Camp Pendleton	MCC TEJ
RDC-Pacific	HQSVC BN MCB Camp Butler	MCC TEG

2. Cognizant commands will provide personnel, administrative, and logistical support, commensurate with mission requirements, to defense sections equitably with that provided to military justice sections.

2011. Budgeting and Funding Guidance

1. Funding to support the defense function should be provided equitably with command funding provided to the support the prosecution function. All case-related expenses shall be provided by the convening authority, as required by JAGMAN section 0145.

2. Funding for administrative and logistical support and training expenses for SDCs, DCs, and their support personnel will be provided by local commands.

3. Funding for administrative and logistical support and training expenses for the CDC, RDCs, and their support personnel will be provided by the commands to which they are administratively attached.

2012. Applicability. This chapter is applicable to Marine judge advocates assigned duty as Marine defense counsel and legal services specialists assigned as defense enlisted support personnel. This chapter does not apply to judge advocates or legal services specialists attached to commands external to the Marine Corps.

Fitness Report Chain for
Marine Defense Counsel
and Enlisted Legal Services Specialists

MARINE OFFICERS (4401; 4402)

Marine Reported On (MRO)	Reporting Senior (RS)	Reviewing Officer (RO)
Chief Defense Counsel (CDC)	SJA to CMC	SJA to CMC
Regional Defense Counsel (RDC)	CDC	SJA to CMC
Senior Defense Counsel (SDC)	RDC	CDC
Defense Counsel (DC)	SDC	RDC

Note 1: If the RS listed above is the same grade as the MRO, the officer listed as the RO will become the RS and the RDC or CDC will become the RO.

Note 2: Simultaneous reports may be written to evaluate an auxiliary defense counsel and individual military counsel (who are not Marine defense counsel) for performance of defense duties using the same reporting chain laid out above.

LEGAL SERVICES SPECIALISTS (4421); E-5 through E-9

Marine Reported On (MRO)	Reporting Senior (RS)	Reviewing Officer (RO)
CDC Legal Chief	CDC	Deputy SJA to CMC
Regional Defense Chief	RDC	CDC
Section Defense Chief	SDC	RDC

Figure 2-1.--Fitness Report Chart

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CHAPTER 3

ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND
PREPARATION OF THE UNIT PUNISHMENT BOOK

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CHAPTER 3

ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND
PREPARATION OF THE UNIT PUNISHMENT BOOK

3000. AUTHORITY TO IMPOSE NONJUDICIAL PUNISHMENT

1. Commanding Officers. All commanding officers may impose punishment under Article 15, UCMJ upon military personnel of their command. For purposes of this paragraph, "commanding officer" 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. "Commanding officer" includes a commissioned warrant officer exercising command. Marine Corps commanding officers are titled as Commandant, Commander, 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. With the exception of delegations of authority to impose NJP from a general officer in command to a principal assistant, which require the express prior approval of the Commandant of the Marine Corps (see section 0106c, JAGMAN), the authority to impose NJP cannot be delegated unless by specific authorization of the Secretary of the Navy. "Acting" commanders do not have authority to impose NJP solely by virtue of their acting status.

2. Officers in Charge. Officers in charge of units designated by departmental orders, tables of organization, manpower authorizations, orders of a flag or general officer in command (including one in command of a multiservice command to which members of the naval service are attached, or orders of the senior officer present, are empowered to impose nonjudicial punishment upon enlisted personnel assigned to their unit. An officer in charge, regardless of grade, in addition to imposing an admonition or reprimand, is limited to those punishments authorized by the UCMJ for company grade officers.

3001. JURISDICTION OVER ACCUSED

1. At the time nonjudicial punishment is imposed, the accused must be a member of the command of the commanding officer, or of the unit of the officer in charge, who imposes the punishment. A person is "of the command" or "of the unit" if assigned or attached thereto, and a person may be "of the command" or "of the unit" of more than one command or unit at the same time, such as persons assigned or attached to commands or units for the purpose of performing temporary duties.

2. For the imposition of nonjudicial punishment, a person who has been designated a party before a fact-finding body convened under JAGMAN, Chapter II, remains thereafter "of the command" of the unit or organization to which assigned or attached at the time of such designation. This is for the limited purpose, however, of imposing a letter of admonition or reprimand, and imposition of NJP is valid even though, for other purposes, that person may have been assigned or attached to another command before such letter was delivered. This status terminates automatically when all action contemplated by Article 15, UCMJ, including action on an appeal, has been completed. (See section 0107a(2), JAGMAN.)

3. Except as provided in paragraph 3001.2, if, at the time nonjudicial punishment is to be imposed, the accused is no longer assigned or attached to the same unit or command, the alleged offense should be referred for appropriate action to a competent authority in the chain of command over the individual accused. In the case of an officer, the referral normally should be to the officer who exercises general court-martial jurisdiction.

4. Jurisdiction over Reservists

a. Members of the Reserve component on active duty or inactive duty training are 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 such periods of active duty or inactive duty training and may be ordered to active duty for the sole purpose of disciplinary proceedings. (See sections 0107b, 0123d, 0123e, and 0123f, JAGMAN.)

b. As a matter of policy, any physical restraint pending nonjudicial punishment or imposed as NJP shall not extend beyond the normal time of termination of a drill or training period.

5. Effect of Expiration of Active Service (EAS) of Marines Pending or Undergoing Nonjudicial Punishment. A Marine may not be involuntarily retained in the service beyond normal EAS for the purpose of imposing NJP or to serve punishment previously imposed at NJP, or to be a witness at NJP.

3002. ADVICE TO ACCUSED BEFORE IMPOSITION OF NJP. An accused Marine may have NJP imposed without first being accorded the opportunity to consult with a judge advocate, but the results of any such NJP are not admissible as a matter in aggravation at any subsequent court-martial proceeding. As a matter of policy, however, an opportunity to consult with a judge advocate should be accorded to those who request such, if at all practicable (telephone may be used). This will ensure the Marine has been afforded all legal rights prior to the imposition of

NJP as provided by section 0109, JAGMAN. (See also Appendices A-1-b, A-1-c, and A-1-d, JAGMAN.)

3003. QUANTUM OF PUNISHMENTS-COMBINATION. Paragraph 5d of Part V, MCM, 1998, contains instructions concerning combination of nonjudicial punishments.

3004. FORFEITURES IMPOSED AS NONJUDICIAL PUNISHMENT

1. Forfeitures imposed as nonjudicial punishment must be expressed in whole dollar amounts only--not in dollars and cents (e.g., \$100.25), not in "days pay" (e.g. 10 days pay), and not in fractions (e.g., 1/2 of a month's pay). See paragraph 5 of Part V, MCM, 1998.
2. The maximum permissible forfeiture is determined by rounding down to whole dollar amounts.
3. The maximum permissible forfeiture which can be imposed by a company grade officer or officer in charge at NJP is determined by dividing a month's base pay by 30, multiplying the result by seven, and rounding down to a whole dollar amount.
4. If a reduction is also imposed, whether or not such reduction is suspended, the maximum permissible forfeitures must be computed on the pay of the grade to which reduced. See paragraph 5 of Part V, MCM, 1998.

3005. SUSPENSION, REMISSION, MITIGATION, SETTING ASIDE

1. Article 15(d), UCMJ and paragraph 6 of Part V, MCM, 1998, provide that an officer who imposes nonjudicial punishment may suspend, remit or mitigate any part or amount of the unexecuted portion of that punishment; may set aside in whole or in part that punishment, whether executed or unexecuted; and may restore all rights, privileges and property affected by that punishment.
2. In addition to the officer who imposed the punishment, the following officers may also take remedial action: a successor in command to the imposing officer; the commander of any command to which the Marine is subsequently transferred; and, any other officer authorized to act on the punishment imposed.
3. There are certain restrictions on remedial action concerning punishment:
 - a. The power to set aside punishments and to restore some or all rights, privileges and property affected by the executed portions of a punishment should ordinarily be exercised only when the authority

considering the case believes that, under all circumstances of the case, the punishment has resulted in a clear injustice.

b. The power to set aside an executed punishment, or to mitigate an executed or unexecuted reduction in grade to a forfeiture of pay, should be exercised within 4 months after the date of execution. See paragraph 6(b) of Part V, MCM, 1998.

c. Suspension of an executed punishment of reduction or forfeiture of pay may be accomplished only within 4 months of the date the punishment is executed.

3006. UNIT PUNISHMENT BOOK (UPB)

1. A Unit Punishment Book (UPB) form (NAVMC 10132) will be used to record the imposition of NJP for enlisted personnel. When reporting nonjudicial punishment of officers, comply with chapter 4 of this Manual.

2. When an officer exercising Article 15, UCMJ authority receives information that an offense punishable under the UCMJ has been committed by an enlisted person under that officer's jurisdiction, and that officer further determines that the offense should either be disposed of at nonjudicial punishment or be referred to higher authority, a UPB form will be prepared.

3. The UPB form will be prepared in duplicate and may be typewritten or handwritten (legibly) in black or blue-black ink. The completed duplicate UPB form will be filed, after completion of all items, in the originating unit's files (Standard Subject Identification Code 5812). The duplicate UPB form does not require original signatures or initials. Authorized abbreviations are encouraged. (See MCO P1070.12J, IRAM.) When there is insufficient space for an item, the reverse side of the UPB form or a sheet of bond paper may be used. Additional sheets will be securely stapled to the UPB form.

4. The use of correction tape and/or fluid is not authorized. Changes and corrections will be made by drawing a thin-inked line (using black or blue-black ink) through the character(s)/numeral(s)/word(s) to be changed or corrected. The new information will be entered directly above or below the original information, or explained in item 18, as applicable.

> CH 2 5. Detailed Preparation Instructions

a. Item 1. Do not use charge/specification as in courts-martial. If there are multiple infractions of an article of the UCMJ, repeat the article as indicated below. Enter the article(s) of the UCMJ violated and a summary of each offense, to include date, time, and place of the alleged offense. Examples:

Art. 90. Struck Capt Smith with fists at HqCo, HqBn 3d MarDiv at 0930, 10 Nov 98.

Art. 90. At Co A, 1st Bn, 7th Mar (deployed) on 11 Mar 98, willfully disobeyed Capt Green's order to get a haircut.

Art. 86. UA fr HqCo, HqBn, 3d MarDiv dur the prd 0800, 11 Nov 98 through 2359, 15 Nov 98.

Art. 86. At HqCo, HqBn, 3d MarDiv, failed to go at the time prescribed to morning formation at 0800 on 11 Nov 98.

b. Item 2. After advising the Marine in accordance with Article 31, UCMJ and section 0104, JAGMAN, require the Marine to indicate intentions by striking out inapplicable portions, unless the Marine is attached to or embarked aboard a Naval vessel. In such cases, strike out with a single black or blue-black ink line all sentences after the first sentence. See section 0109, JAGMAN. Thereafter, require the Marine to date and sign the item. When a Marine refuses to indicate an intention and/or refuses to sign, process charges as a refusal to accept NJP and forward the UPB to the officer exercising court-martial jurisdiction for disposition. Note in item 2, "See item 16." Note in item 16, "Marine refuses to indicate intentions or to sign item 2. Case forwarded recommending (special court-martial), (summary court-martial), etc."

c. Item 3. Upon ensuring that the individual has been informed of the rights enumerated in Item 2, the immediate commanding officer will date and sign item 3. This action must be accomplished prior to imposition of NJP and this item must, therefore, be dated on or before the date NJP is imposed.

d. Item 4. After advising the accused of their opportunity to consult with counsel prior to electing to accept NJP, the violation of the article(s) of the UCMJ, and whether they accept NJP, the accused will date and sign item 4.

e. Item 5. Record current/previous UA's in excess of 24 hours and current/previous desertions.

f. Item 6. Enter punishment imposed and date of imposition. The entry "no punishment" is invalid. Unless a punishment listed in Article 15, UCMJ, is levied at the proceedings, NJP has not been imposed and no record will be maintained in the UPB binder. Sample forms of authorized punishments follow. Certain phrases in these examples are underscored merely to highlight areas where deviation from the prescribed wording, frequently has resulted in ambiguity. Other guidance is provided in parentheses. UPB form entries need not contain underlines or references.

Restr to the limits of HQSVCCo, 1st Bn, 3d Mar For 14 das, w/o susp fr du. 2 Jun 98. (See par 5c(2) of part V, MCM, 1998.)

Forf of \$100 pay per month for 2 months. Total for \$200.
2 Jun 98 (Always state forfeitures in whole dollar amounts.)

Corr cust for 7 das w/susp fr du. 2 Jun 98.

Corr cust for 6 das w/o susp fr du. 2 Jun 98.

Restr to the limits of place of mess, bil, du and worship and most dir route to and fr w/o susp fr du for 14 das and extra du for 14 das, to run concurrently. 2 Jun 98.

To be red to LCpl, E-3, and to be orally reprimanded.
2 Jun 98.

g. Item 7. Enter the date and the specific terms of the suspension. If no portions of the punishment are suspended, enter the word "NONE." When suspending all or portions of the punishment, the specific punishment, the length of the suspension, and the terms for automatic remission will be reflected. Example.

2 Jun 98. Red to LCpl, E-3, susp for 3 mos, at which time, unless sooner vacated, the red will be remitted w/o further action.

h. Item 8. Enter name, grade, and title of the officer who took the action listed in item 6.

i. Item 9. When the officer imposing punishment determines that the offenses are properly punishable under Article 15, UCMJ, the officer so determining will sign this item.

j. Item 10. Enter the date of notification to the Marine. This will normally be the same date as item 6 except where a formal investigation is used as a basis for the NJP or notification is done by mail.

k. Item 11. When NJP has been imposed, notify the Marine of the right to appeal. (See paragraph 7 of part V, MCM, 1998, and section 0110E, JAGMAN.) The officer imposing NJP shall date and sign the item. This will normally be the same date as item 6 and will, in no case, be prior to the date in item 6

l. Item 12. The Marine upon whom NJP is imposed shall date and sign this item indicating an understanding of the right to appeal the NJP imposed. When a Marine refuses to indicate an understanding of the right to appeal and/or refuses to sign item 12, note in item 12, "See item 16" and place the following entry in item 16: "Marine refuses to indicate intentions or sign item 12."

m. Item 13. Enter date of the appeal of the NJP. If not appealed, enter the words "Not Appealed."

n. Item 14. If an appeal is made, enter the final action and date thereof. Examples:

Appeal denied - 25 Jun 98.

Appeal granted, punishment set aside - 25 Jun 98.

Red set aside, no further relief granted - 25 Jun 98.

This item will be signed by the officer action on the appeal, or it may be signed "By direction" of the officer acting on the appeal.

o. Item 15. Enter the date the Marine was notified of the decision on the appeal. If the Marine has been transferred or discharged, enter the date of the endorsement forwarding the decision to the Marine's new command or to the Marine's permanent mailing address.

p. Item 16

(1) Entries are required in this item under the following conditions:

(a) If the Marine refuses to sign either item 2 or item 12, enter the following remark: "Marine refuses to indicate intentions or to sign item 2 and/or item 12" as applicable.

(b) When the offenses are forwarded to higher authority for disposition, a general or specific recommendation as to disposition may be entered. Examples:

General recommendation - "Fwd to BnCO recom NJP."

Specific recommendation - "Fwd to BnCO recom red."

(c) Enter any subsequent vacation of any suspended punishment included in item 7 and the date of vacation. Examples:

Forf or \$250 per mo for 1 mo imposed and susp on 10 Dec 98 vacated - 26 Dec 98.

Red to PFC, E-2, imposed on 10 Dec 98 and susp on 15 Dec 98 vacated - 26 Dec 98.

(d) A Marine who has appealed may be required to undergo any punishment imposed while the appeal is pending, except that if action is not taken on the appeal within 5 days after the appeal was

submitted, and if the Marine so requests, any unexecuted punishment involving restraint or extra duty shall be stayed until action on the appeal is taken. (See paragraph 7 of part V, MCM, 1998.) An entry reflecting the stay of punishment will be made. Example:

7 Dec 98: Appeal submitted. Punishment of (here insert punishment) stayed.

(e) When an executed or unexecuted punishment is set aside. This entry will be placed on the old UPB and the new UPB. If the old UPB is not held at the command, then enter on the new UPB only. Example:

7 Dec 98: Red to Cpl, E-4, is set aside. All rights, privileges and property affected will be restored.

(2) In addition to the aforementioned required entries, this item may be used to record other appropriate remarks or information.

q. Item 17. Upon completion of the required administrative action, the officer responsible for the action will initial this item. This item must be initialed by the commanding officer, officer in charge, or by an officer designated to sign "By direction" of the commander. Ensure completion of all SRB and unit diary entries.

r. Item 18. Enter the complete identification of the Marine's unit; e.g., company/battery/squadron/group/battalion.

s. Item 19. Enter last name, first name, and middle initial of the Marine.

t. Item 20. Enter grade and pay grade; e.g., LCpl, E-3.

u. Item 21. Enter social security number; e.g., 123 45 6789.

6. The officer imposing NJP will prepare, or cause to be prepared, a summary transcript of the proceedings. This may be accomplished by using the form prescribed in Appendix A-1-e, JAGMAN, or a locally prepared form. If local forms are used, sufficient information will be recorded to provide a clear and accurate picture of what transpired at the proceedings. This summary will be appended to the UPB form.

7. When an appeal from NJP is forwarded to higher authority for decision, comply with JAGMAN sections 0116 and 0117 and, additionally, forward the SRB (if available), the original UPB form, the summarization of proceedings, and all allied papers. After action on the appeal, the original of the appeal and all allied papers will be returned to the officer originating the UPB. Allied papers may include, but are not limited to, statements, investigation reports, documents, records, or photographs. A copy of the appeal will be provided to the Marine concerned. Item 17 will be completed and the original appeal with all enclosures and endorsements will be attached to the UPB form. Any allied papers will be filed in the command correspondence files in accordance with current directives. Factual disputes should be addressed by endorsers and resolved by the appeal authority.

8. NJP proceedings are considered complete and final when the appeal period has expired, or at the time the Marine is notified of the decision on an appeal. Once final, an appeal which has been granted may not be reconsidered and denied.

9. For each case involving an unsuspended reduction, copies of the UPB will be forwarded to CMC (MMSB) and delivered to the Marine once proceedings are complete and final.

10. A Unit Punishment Book binder shall be maintained for each organization where the commanding officer or officer in charge imposes NJP under Article 15, UCMJ. Those organizations using consolidated administration (e.g., a battalion) may maintain a single unit punishment book binder. Each Article 15, UCMJ, jurisdiction should be maintained separately by means of dividers (e.g., battalion, Co A, Co B).

a. The UPB binder will consist of UPB forms including attached pages, appeals, and summary transcripts of the impartial hearings, filed alphabetically in a loose leaf binder.

b. A new Unit Punishment Book binder shall be opened at the beginning of each calendar year.

c. When no punishment is imposed, or all offenses are referred to trial by court-martial or resolved by administrative corrective action other than NJP, the UPB form will not be maintained in the UPB binder.

d. Duplicate UPB forms will be prepared and maintained per paragraph 3006.3. However, copies of UPB forms forwarded to a higher level in the chain of command for disposition will not be maintained in the UPB binder.

e. The old UPB binder will be retained in the organization for 2 full calendar years as required by disposal instructions. (See SECNAVINST 5212.5D.)

> Ch 2 11. Disposition Instructions.

1. Disposition is as follows:

- a. File the original in the SRB
- b. Copy to official military personnel file (OMPF)
- c. Copy to unit files
- d. Copy to member

3007. VACATION OF SUSPENSION. A suspended NJP may be vacated by any commander authorized to impose upon the accused punishment of the kind and amount to be vacated. Vacation of suspension may only be based on an offense under the UCMJ committed during the period of suspension. Before a suspension may be vacated, the accused ordinarily shall be notified and given an opportunity to respond. Although a hearing is not required to vacate a suspension, if the punishment suspended is of the kind set forth in Article 15(e)(1)-(6), UCMJ, the accused should, unless impracticable, be given an opportunity to appear before the commander contemplating the vacation to present any matters in defense, extenuation or mitigation of the offense on which the vacation action is based. Vacation of suspension of NJP is not itself NJP, and additional action to impose NJP for the offense(s) upon which

the vacation action is based is authorized. If only suspended punishment is vacated, an accused has no right of appeal. If additional punishment is imposed, the right to appeal applies. Commanders will prepare, or cause to be prepared, a summary transcript of vacation proceedings involving punishment of the kind set forth above. The summary transcript will include the following information:

- a. A statement that the accused was informed of the vacation hearing and (was/was not) permitted to appear before the commander;
- b. A description of the suspected offense warranting the vacation of suspended punishment; and
- c. A statement that punishment for the additional offense (is/is not) contemplated.

3008. JUDGE ADVOCATE REVIEW. Before acting on an appeal of certain NJP punishments, the appeal authority must refer the case to a judge advocate for consideration and advice. See Article 15(e), UCMJ. This referral should involve full documentary review.

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CHAPTER 4

OFFICER MISCONDUCT

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CHAPTER 4

OFFICER MISCONDUCT

4000. CHARGE TO OUR LEADERS

1. Marine Corps officers are a breed apart, entrusted with the leadership of the finest fighting organization in the world. When officers violate the special trust and confidence we have placed in them, the Marines of our Corps have the right to expect that corrective action will be initiated immediately, pursued vigorously, and resolved swiftly. When this does not happen, there is a justifiable perception that inequity exists, i.e., that there is inconsistency between the treatment of officer and enlisted misconduct.

2. Although SECNAVINST 1920.6A establishes time processing goals for officer administrative separation cases, there is no speedy trial rule like there is for courts-martial. Commanders, staff judge advocates, and legal service providers must, therefore, generate an internal sense of urgency in officer misconduct cases. There is no substitute for command attention in officer cases.

3. With the assistance of their staff judge advocates and officers in charge of legal service support sections/teams, all officers exercising general court-martial jurisdiction (OEGCMJ) will:

a. Establish a case tracking system for all reported officer misconduct and personally review its contents at least monthly;

b. Establish internal time processing goals for processing officer misconduct cases;

c. Regularly meet with the staff judge advocate to discuss all pending officer misconduct cases;

d. Meet personally with the Resident Agent in Charge, Naval Criminal Investigative Service, and with the local Officer in Charge, Criminal Investigation Division at least annually to discuss areas of mutual interest in officer case processing;

e. Ensure that expedited mail or courier service is used to transmit officer misconduct cases during all phases of processing and to each level of command. For commands geographically co-located, couriers (not guard mail) will be used. For commands geographically separated, Express Mail or comparable overnight mail service will be used.

4001. DISPOSITION OF CASES

1. The Commandant of the Marine Corps expects all matters involving officer discipline to be handled promptly. By the same token, it must be absolutely clear that commanders are expected to dispose of cases consistently, equitably, and in the interest of good order and discipline, considering those factors listed in the discussion at R.C.M. 306(b), Manual for Courts-Martial (MCM, 1998). Within the boundaries established by the Manual for Courts-Martial, SECNAVINST 1920.6A and related regulations, commanders retain unfettered authority to determine the most appropriate forum for resolution of a particular case. What is desired is not a "rush to judgment," but rather all deliberate speed in handling officer discipline cases.

2. Officer cases should not be postponed because of operations, exercises, or training commitments. We are a naval expeditionary force capable of administering discipline at any time around the world.

3. Drunk Driving or "DUI" Offenses. Certain types of cases arising from misconduct in the civilian community have historically taken inordinate amounts of time to resolve. In particular, drunk driving or "DUI" cases often turn into "trials by continuance." In such cases, commanders should consider the option of immediate nonjudicial punishment proceedings. This technique can speed the ultimate resolution of a drunk driving offense for Marine Corps purposes, as well as having a salutary effect on the disposition of the civilian court case by removing the very reason for postponement. NJP may be imposed at any time before a civilian trial, but only after receiving the permission of the OEGCMJ after a civilian trial. See JAGMAN, section 0124. Commanders who desire to embark on a program of immediate NJP proceedings for all off-base, officer drunk driving cases should make liaison with local law enforcement authorities.

4002. REPORT OF OFFICER MISCONDUCT

1. General. Upon receipt of information which indicates an officer may have committed an act proscribed by a military or civilian criminal statute, a report thereof will be made to CMC (JAM) in the following instances:

- a. The officer is in the grade of colonel or above;
- b. The officer is a commander with special court-martial convening authority;
- c. The incident or allegation may generate media interest; or
- d. The incident or allegation is the subject of NCIS, CID, or a command investigation or a preliminary inquiry under R.C.M. 303, MCM, 1998; or

e. The allegation(s) is supported by credible evidence and:

(1) The suspected criminal behavior is of such apparent seriousness that nonjudicial punishment, court-martial, civilian prosecution, or a recommendation to CMC (JAM) for administrative discharge proceedings may result; or

(2) Other circumstances exist that warrant the incident being brought to the attention of CMC.

f. Report all drunk driving or "DUI/DWI" cases that are supported by credible evidence.

g. Do not report DoD, DON or HQMC Inspector General investigations until they are completed and one of the previous reporting criteria is met.

h. When doubt exists as to whether a report is required, contact the CMC (JAM) for guidance.

2. The report will be made to CMC (JAM), Report Symbol MC-1621-04; by electronic mail, facsimile (DSN 225-8350; commercial 703-695-8350), or telephone (DSN 224-4250/1740; commercial 703-614-4250/1740). If made telephonically, it must be followed up with either electronic mail or facsimile within 1 working day. The report will be made by:

a. The staff judge advocate, senior judge advocate assigned, or other designated representative of an OEGCMJ; or

b. The commanding officer or officer-in-charge where no judge advocate is assigned to the organization or when the officer is not under the command of a Marine OEGCMJ.

3. The report shall include the following information:

a. Name

b. Grade/Date of grade

c. Social Security Number/Military Occupational Specialty

d. Component

e. Unit (including major command)

f. Marital status

g. Whether or not selected for promotion

h. Synopsis of the allegation(s)

4. The reported information will remain in the Commandant's Officer Discipline Notebook and will only be provided to those with a need to know.

a. Such reports will not be included in the officer's official military personnel file (OMPF).

b. Upon receipt of the required notification, the Commandant has directed that the Director, Personnel Management Division hold in abeyance all personnel actions (such as promotion, retirement, separation, or transfer) relating to reported officers. These personnel "stop" orders carry with them no punitive aspect, but rather are implemented to maintain the status quo until the matters are resolved by the cognizant commanders and/or civilian authorities.

c. In unusual circumstances, commanders may request, in writing and with appropriate justification, execution of personnel actions prior to resolution of the allegation(s). Such requests shall be forwarded via the chain of command to CMC (JAM) for action.

d. Delays of promotion will be handled in accordance with applicable directives, and are not automatic. Commanders should note that immediate determinations concerning pending promotion and the desirability of delay are imperative, in order to avoid promotion while pending possible criminal charges. The promotion of an officer may not be delayed unless the officer has been given written notice of the grounds for the delay (except when it is impractical to give such written notice) before the effective date of the promotion. An officer whose promotion has been delayed shall be given the opportunity to comment in response to the action. (See SECINST 1120.11A, SECNAVINST 1412.6K, SECNAVINST 1412.9A, and SECNAVINST 1420.1A)

5. Monthly Report. A monthly status report on officer misconduct cases will be provided by each OEGCMJ or CO/OIC of a Marine unit and shall include a chronology of all significant events that have occurred in the case in the period since the last report. Where no significant actions have occurred, an explanation is required. The report shall be provided to CMC (JAM), Report Symbol MC-1621-05, at or before 1200 on the 20th of each month by either electronic mail or facsimile. An example of a monthly report is included as figure 4-1. An information copy of this report should concurrently be provided to the cognizant COMMARFOR. A negative report is not required from commands that have no active cases.

6. Officers of Other Services. A report shall be made per this paragraph on all non-Marine officers assigned or attached to Marine Corps commands. In the case of officers of the Navy, specified reporting as required by the Chief of Naval Personnel must also be complied with. Information on these requirements is available from CMC (JAM).

4003. NONJUDICIAL PUNISHMENT (NJP)

1. The Unit Punishment Book (UPB) will not be used when NJP is contemplated in officer cases. In lieu thereof, the officer should be advised of those matters contained in figure 4-2 or 4-3, as appropriate

2. The procedure for imposing NJP upon an officer is contained in section 0110, JAGMAN and paragraph 4, Part V, MCM, 1998.

a. When NJP is contemplated on the basis of a formal fact-finding body under JAGINST 5830.1, and the officer was accorded the rights of a party with respect to the act or omission charged, the officer should be advised of those matters set forth in figure 4-2. NJP may then be imposed without further proceeding.

b. When NJP is contemplated on the basis of information not the subject of a formal fact-finding body and the officer concerned was not accorded the rights of a party with respect to the act or omission charged, the officer must be advised of those matters set forth in figure 4-3. An Article 15, UCMJ, hearing must then be held in accordance with the procedures set forth in section 0110, JAGMAN and paragraph 4, Part V, MCM, 1998.

3. If NJP is imposed, the officer must be advised of appeal rights as set forth in figure 4-4.

4004. FORMAL REPORT OF OFFICER NONJUDICIAL PUNISHMENT (NJP) OR DISPOSITION OF ALLEGATIONS OF MISCONDUCT

> CH 1 1. The first OEGCMA in the officer's chain of command shall forward a written report of the officer's NJP directly to the show cause authority within the chain of command or to the Show Cause Authority geographically located nearest to the command, whichever is appropriate. The OEGCMJ will provide any intermediate commanders and CMC (JAM) with a copy of the report of NJP. In appropriate cases, the SJA for the Show Cause Authority may contact intermediate commanders (ATTN: SJA's) for the commander's recommendation. If a Show Cause Authority imposes NJP upon an officer, the Show Cause Authority shall retain the case for a show cause decision and forward a copy of the report to CMC (JAM). A sample letter report of officer NJP is contained in figure 4-5. The purpose of the report of officer NJP is to provide a complete record of the hearing and misconduct for entry into the officer's OMPF and to provide the Show Cause Authority with sufficient information to make the decision whether to process the officer for administrative separation. A copy of the evidence considered, or photographic representations of evidence that is not readily included, should be provided with the report.

2. The report of officer NJP shall not be made to CMC (JAM) until:

a. The appropriate authority has acted finally upon an appeal of NJP, or a reasonable period of time has elapsed after the imposition of NJP without an appeal having been taken. In this regard, an appeal shall be submitted within 5 days of imposition of punishment, or the

right to appeal shall be waived in the absence of good cause shown. The fact that the officer signed a statement indicating no intent to appeal immediately after imposition of NJP does not prevent the officer from later submitting an appeal. See paragraph 7, Part V, MCM, 1998, and section 0110, JAGMAN; and/or

b. An appeal of a punitive letter of admonition or reprimand issued at NJP has been acted finally upon, or a reasonable period of time has elapsed after the officer concerned has received the letter of admonition or reprimand without an appeal having been taken. In this regard, an appeal shall be submitted within 5 days of receipt of the letter, or the right to appeal shall be waived in the absence of good cause shown. See section 0114, JAGMAN.

3. The report of NJP shall include the following:

a. A brief factual statement of the offense(s) and the NJP imposed

b. A concise, even-handed explanation of the circumstances surrounding the offense(s), including significant matters in aggravation and extenuation and mitigation.

c. Copies of all correspondence incident to the imposition of NJP and all matters relating to an appeal.

d. A verbatim copy of the record of the NJP hearing, or a copy of proceedings of the record of the court of inquiry or other formal fact-finding body upon which NJP was premised. (A citation for bulky records may be substituted provided the record is on file in the Office of the Judge Advocate General of the Navy.)

e. A copy of the investigation upon which NJP was based.

f. A recommendation as to the appropriateness of processing for administrative separation under SECNAVINST 1920.6A, and shall include the basis for such recommended course of action.

g. A copy of the report of NJP with the commander's recommendation for administrative processing should be provided to the officer. If there is a recommendation for a Board of Inquiry (BOI), the officer shall be allowed an opportunity to submit a resignation request with an appropriately characterized discharge or retirement, if eligible, at the current or next lower grade (see figure 4-8). Any retirement/resignation request made at this time shall be enclosed in the report of NJP.

4. In other cases of substantiated serious officer misconduct not involving NJP (including courts-martial where no dismissal was adjudged or approved, and non-traffic civilian convictions), a similar

report shall also be forwarded with recommendations concerning processing.

a. Serious officer misconduct is defined as any behavior for which administrative separation processing would be appropriate under SECNAVINST 1920.6A.

b. Substantiated misconduct includes a finding or opinion of misconduct in a written investigation, civilian conviction, or admission.

c. While minor traffic offenses need not be reported, all driving under the influence or driving while intoxicated convictions must be reported.

4005. COURT-MARTIAL OF OFFICERS

1. The Commandant of the Marine Corps (JAM) (Report Symbol EXEMPT), will be notified when charges are preferred against an officer. The initial report will be made in the manner set forth in paragraph 4002. In addition, the cognizant commander shall forward all favorable/unfavorable matter from the individual's OQR to CMC (JAM).

2. Upon completion of a court-martial and action by the convening authority pursuant to R.C.M. 1107, MCM, 1998, the cognizant commander will cause the following actions to be taken, as appropriate:

a. If the officer was acquitted, or the findings and sentence were disapproved or set aside, have local orders issued reassigning the officer, or request that CMC (MMOA) originate orders reassigning the officer.

b. If the officer was convicted, a copy of the court-martial order will be forwarded to CMC (JAM), in addition to routine distribution, and:

(1) When the sentence imposed requires approval of the President or Secretary of the Navy prior to execution and the officer is not within CONUS, the convening authority shall:

(a) Request CMC (MMOA) originate orders directing the officer's immediate return to CONUS to await final action; and

(b) Advise the CONUS command to which the officer is ordered by message of the charges; findings, sentence, and actions thereon; and any other information pertinent to ensure adequate restraint of the officer. Ensure that CMC (JAM) is an information addressee.

(2) When the sentence imposed requires approval of the President or Secretary of the Navy prior to execution, and the officer is within CONUS, the convening authority shall advise CMC (JAM) by letter or message of the findings, sentence, and action thereon; the command to which the officer will be assigned or attached; and the exact nature and extent of restraint, if any.

3. When an officer has been transferred to a command to await final disciplinary action in the manner prescribed in paragraph 4005.2, the cognizant commander will notify CMC (MMOA) by message as soon as the officer joins the command. The message should indicate the unit to which the officer is being assigned or attached, and should set forth the exact nature and extent of the restraint contemplated while the officer awaits final action on his/her sentence.

4. The Secretary of the Navy has proscribed discharging a dismissed officer outside CONUS, except under special circumstances and upon request to the Secretary of the Navy.

5. When a recommendation is made to the Secretary of the Navy, via CMC (JAM), to execute a sentence to dismissal by reason of violation of the conditions of suspension, cognizant commands should follow the same procedure prescribed in paragraphs 4005.2 and 4005.3, as appropriate.

> CH 1 4006. ADMINISTRATIVE SEPARATION PROCESSING. All lieutenant generals in command are designated as Show Cause Authorities. Any reports submitted in accordance with paragraph 4004 will be submitted to either the Show Cause Authority within the chain of command or the Show Cause Authority geographically located nearest to the command for a decision whether the officer should be required to show cause for retention. Any subsequent separation for cause action will be taken pursuant to SECNAVINST 1920.6B. If a Show Cause Authority determines that an officer's case does not warrant separation for cause processing, the Show Cause Authority shall forward the case to CMC (JAM) with an appropriate recommendation. Only DC M&RA may terminate separation for cause proceedings.

4007. Resignations AND BOARD OF INQUIRY WAIVERS SUBMITTED WHILE MISCONDUCT/SUBSTANDARD PERFORMANCE ISSUES ARE PENDING

1. An officer may tender a resignation at any time during, or in anticipation of, Show Cause processing. The following guidance applies to resignations offered under these circumstances. Resignations tendered "in lieu of trial by courts-martial" do not come within this section, and are handled under the provisions of Marine Corps Order P1900.16E (MARCORSEPMAN).

a. A request submitted under the conditions outlined herein must state whether the resignation is being offered under paragraph 5002 (a standard resignation) or 4104 (a resignation for cause/in lieu of further administrative processing) of MCO P1900.16E (MARCORSEPMAN). The request must reference the specific paragraph, as that designation

will determine what information is entered on the DD 214 and whether a Reserve commission is authorized (regardless of whether requested).

b. CMC (M&RA) is the denial authority for all resignations. The type of resignation and the characterization of service offered are important factors in this decision, and are therefore critical in each submission.

(1) If the resignation is tendered under paragraph 5002 of MCO P1900.16E (MARCORSEPMAN) [change of career intentions], normal resignation format and procedures should be followed, except that the resignation should be submitted in letter format to CMC (JAM) via the chain of command.

(2) If the resignation is under paragraph 4104 of MCO P1900.16E (MARCORSEPMAN) [a resignation for cause/in lieu of further administrative processing], the following guidance applies:

(a) The resignation must state that it is for cause and is being offered in lieu of further administrative separation processing under paragraph 4104 of MCO P1900.16E (MARCORSEPMAN).

(b) The resignation must state whether it is unqualified (least favorable characterization is honorable), qualified (least favorable characterization is general), or for the good of the service (least favorable characterization is other than honorable) under the definitions contained in enclosure (1) to SECNAVINST 1920.6A, and must use the language in paragraph 4104.3 of MCO P1900.16E (MARCORSEPMAN) to state what characterization of service will be accepted and that the consequences of that characterization are understood by the requesting officer.

(c) The resignation need not, and should not, request a specific separation date since it is effective upon approval by the Secretary of the Navy and subsequent issuance of the discharge message from CMC (MMSR).

c. The resignation should provide the basis (i.e., the nature and circumstances of the conduct that occasioned it) in the body of the request (e.g., NJP, civilian conviction, court-martial).

d. A regular officer resigning due to misconduct is not entitled to a Reserve commission, and that fact should be recognized and commented upon within the body of, and endorsements to, the resignation request.

e. A sample resignation in lieu of administrative processing is provided at figure 4-9.

2. An officer may waive a BOI at anytime during, or in anticipation of, Show Cause processing. A waiver of a BOI may not be conditional. The waiver shall include the following:

a. A statement that the officer is voluntarily waiving his or her right to a BOI.

b. A statement that the basis for the waiver of the BOI stems from the officer's misconduct and/or substandard performance of duty established by a relevant investigation or other documentation.

c. A statement that the officer admits committing the alleged misconduct or agrees that the performance of duty was substandard.

d. If the officer is eligible for retirement, a statement that the officer understands that s/he may be retired in the grade next inferior to that in which the officer is currently serving if the Secretary of the Navy determines that the inferior grade was the highest grade in which the officer served satisfactorily.

e. If the officer is not eligible for retirement, paragraph 4104.3c, MARCORSEPMAN, must be included stating that the officer understands s/he could receive an other than honorable characterization of service.

f. A statement that the officer understands that s/he may submit a sworn or unsworn statement or other materials on his/her behalf, and that the officer understands that statements submitted in connection with the request, including admissions of guilt, are not admissible in a court-martial except as provided by Military Rule of Evidence 410, but may be admissible at other proceedings.

g. A statement that the officer understands that s/he may be required to reimburse the U.S. for advance education assistance that included an active duty service requirement that has not been completed

h. A statement that the officer understands that once the request is submitted, it may be withdrawn only with the permission of the Secretary of the Navy.

i. A statement that the officer has consulted with a qualified defense counsel, including the counsel's name, grade, and branch of service.

3. A sample waiver of a BOI is at figure 4-10.

4008. ADMINISTRATIVE SEPARATION PROCESSING WITHOUT BOARD ACTION. In certain circumstances, a commander or the Show Cause Authority may recommend to the Secretary of the Navy that an officer be separated

without a BOI. The following procedures and guidelines apply to these cases:

1. In cases in which the recommendation for separation without board action originates with the Show Cause Authority, notification will be prepared by CMC (JAM). The original notification will be forwarded via the chain of command, and a facsimile copy will be provided directly to the OEGCMJ or designee for use in notifying the respondent. The respondent shall be formally served with the facsimile copy of the notification documents, and service of these documents constitutes the respondent's official notification.

a. The OEGCMJ should ensure that the respondent is served within 2 working days of receipt, and the originals provided to the respondent upon receipt.

b. The respondent's statement in reply to the recommendation (or a written waiver of the right to respond) should be submitted within 5 working days of the Respondent's receipt of notification. The OEGCMJ may grant an appropriate delay in response time upon written application with supporting reasons for such delay, and by written grant of a specific period of delay. The entire record of correspondence, including any requests for, and grant or denial of, delay shall be forwarded with the respondent's reply or waiver of the right to reply. The OEGCMJ (and relevant subordinate commanders) shall provide written endorsements for use by the Show Cause Authority in evaluating the case.

2. In cases in which the recommendation for separation without board action originates with the officer's commanding officer, the notification of the separation recommendation will be prepared by the commanding officer in accordance with SECNAVINST 1920.6A. A sample notification is included at figure 4-10.

a. The commanding officer shall serve the notification on the respondent.

b. The respondent shall be directed to submit a statement regarding the separation recommendation (or a waiver) using the same parameters outlined previously relating to cases originating with the Show Cause Authority.

c. In this variation on the process, the same package, including all recommendations, notification, documentation substantiating the conduct or performance, and any matters submitted by the respondent, shall be forwarded to the Show Cause Authority via the OEGCMJ. CMC (JAM) will contact the appropriate MEF and Force commanders (Attn: SJA) for the commander's recommendation.

4009. MINIMUM QUALIFICATIONS FOR BOARD OF INQUIRY RECORDER AND LEGAL ADVISOR

1. The recorder for a BOI shall be a judge advocate in the pay grade of 0-3 or above who has had at least 1 year of experience as a trial or defense counsel.
2. If the OEGCMJ appoints a legal advisor for a BOI, the legal advisor shall be a judge advocate in the pay grade of 0-4 or above who has previously been a BOI recorder or a BOI counsel for the respondent, or who is or has been a military judge or a staff judge advocate to an OEGCMJ.
3. If the minimum qualifications for the BOI recorder or legal advisor cannot be met, the SJA for the OEGCMJ may request a waiver of the minimum requirements from CMC (JAM).
4. This paragraph is intended to ensure that adequately qualified personnel are detailed as BOI recorders and legal advisors and is not intended to, and does not, create any rights, entitlements, or defenses arising out of the failure to comply with this paragraph.

4010. TIME LINES FOR PROCESSING OF OFFICER CASES

1. Every effort should be made to meet the deadlines and processing goals established herein.
 - > CH 1 2. Reports of Officer NJP/Misconduct shall be forwarded to the Show Cause Authority as follows:
 - a. Fourteen days from the imposition of NJP if no appeal is submitted; OR
 - b. Fourteen days from final action on the NJP appeal; or
 - c. Fourteen days from any other action requiring formal reporting (including court-martial and appropriate civilian convictions).
3. Boards of Inquiry
 - >CH 1 a. The Show Cause Authority will convene or direct the OEGCMJ of a respondent to convene a BOI in appropriate cases. Notifications to convene BOIS are prepared following the Show Cause Authority's decision to direct a BOI. The SJA for the Show Cause Authority or CMC (JAM) for DC M&RA will forward the original notification and order to convene the BOI and an advance facsimile copy of these documents to the OEGCMJ of the respondent. The respondent shall be formally served with a copy of these notification documents, and service of the copy of these documents constitutes the respondent's official notification of proceedings.

When the original is received it should then be provided the respondent, and an acknowledgment of receipt noted for the record.

b. The OEGCMJ should ensure that the respondent is served with the copy of the notification within 2 working days of its receipt by the command.

c. The OEGCMJ should ensure that each BOI is scheduled to commence between 30 and 45 days of the date the respondent is served with notice of the BOI. The OEGCMJ may grant a respondent an appropriate delay in the commencement of the BOI based upon a written application by the respondent showing good cause. Any request for, and grant or denial of, delay will be in writing and appended to the record forwarded to the Show Cause Authority.

d. The BOI transcript should be completed and served on respondent's counsel within 7 days of the conclusion of the hearing.

e. Respondent's counsel shall be provided 5 working days to review and return the transcript with a statement that the record has been reviewed, noting any errors.

f. The BOI report and transcript shall be provided to the members of the board for their review and any corrections immediately upon return from counsel, and the members of the board should complete their review and authenticate the report and transcript within 7 working days of receipt by the senior member.

g. The final board report should be served on respondent's counsel within 2 working days of authentication by the members.

h. Respondent's counsel shall be provided 5 working days after receipt of the report of the BOI to submit the respondent's rebuttal or waiver of rebuttal.

i. Following a period of 5 working days for administrative review, the entire package shall be provided to the OEGCMJ for endorsement.

j. All processing commands are encouraged to maintain a continuing dialogue on any case in the BOI processing chain, and to exchange information which would aid any superior headquarters in ensuring expedited review.

>CH 1 4. The OEGCMJ will forward a report of a BOI with appropriate recommendations to the Show Cause Authority to lieutenant generals in command.

5. The following chart is provided for ready reference:

<u>Action Takes Place on Day Number</u>	<u>Processing Goal for This Action in Days</u>	<u>Required Action</u>
1	0	Receipt of notification of BOI
2-3	2	Respondent served with notification of BOI
32-33	30	30-day preparation period expires
34-48	15	BOI scheduled and conducted
49-55	7	BOI transcript completed
56-60	5	Respondent's counsel reviews and returns transcript
61-67	7	Members sign BOI report and authenticate transcript
68-69	2	BOI report served on respondent's counsel
70-74	5	Respondent's counsel submits rebuttal comments
75-79	5	Report of BOI forwarded to OEGCMJ for endorsement
80-82	3	Endorsement by the OEGCMJ

LEGADMINMAN

(COMMAND TITLE)

(REPORT CONTROL SYMBOL MC-1621-04)

NEW CASE(S)

LAST NAME, First Name MI
Grade/date of grade
SSN/MOS
Component
Unit (include major command)
Marital Status
Whether or not selected for promotion
Allegation of misconduct: Explain allegation(s).
Chronology and status:

Date	Event	Day Count
------	-------	-----------

ONGOING CASES

DOE, John E.
WO/1 Feb 97
123 45 6789/1234
USMC
MWSG-37, 3d MAW
Single
Not selected for promotion
Allegation of misconduct: Engaged in adultery with enlisted Marine's wife during Feb 98.
Chronology and status:
8 Mar 98 - First notified. Preliminary inquiry initiated. (0)
21 Mar 98 - Preliminary inquiry completed. Command intends to offer CG's NJP. (14)
31 May 98 - CG's NJP IMPOSED. Punishment: letter of reprimand Report of NJP in preparation. (85)
30 Jun 98 - Report of misconduct forwarded to MARFORPAC for endorsement. CG 3d MAW recommended SNO not be required to show cause for retention in the Marine Corps. (115)
31 Jul 98 - Report of misconduct forwarded to HQMC (JAM) via (courier) (FedEx) (express mail) (). (146)

Figure 4-1.--Format for Monthly Officer Misconduct Report.

LEGADMINMAN

HEADING

SSIC
Code
Date

From: Commanding General/Officer
To: (Officer concerned)

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT (NJP)

Ref: (a) Paragraph 4d, Part V, MCM, 1998

Encl: (1) Copy of record of formal fact-finding body

1. You are hereby informed that I intend to impose NJP on you based upon the information contained in the enclosure.
2. Under the reference, an Article 15, UCMJ hearing need not be conducted in your case. The enclosure is the record of the formal fact-finding body in which you were accorded the rights of a party respecting the charge(s) against you.
3. You are advised that the offense(s) for which you will receive nonjudicial punishment is/are: (List offense(s) and respective UCMJ articles violated).
4. You are advised that under the reference, you have the following rights with regard to the proposed NJP:
 - a. Unless attached to or embarked in a vessel, the right to refuse NJP.
 - b. The right to submit, in writing, any matter in defense, extenuation, or mitigation, for consideration by me in determining whether you committed the offense in question and, if so, an appropriate punishment.
 - c. The right to appeal the NJP to the next superior authority, if you consider it unjust or disproportionate to the offense. Such an appeal must be made within a reasonable time following the imposition of NJP. In the absence of unusual circumstances, an appeal made more than 5 days following imposition of NJP may be considered as not having been made within a reasonable time. Such an appeal must be in writing and should include your reasons for regarding the NJP as unjust or disproportionate. You may be required to undergo NJP imposed while your appeal is pending, except that if action is not taken on the appeal 5 days after the appeal was submitted, and you so

Figure 4-2.--Notification of Intent to Impose NJP.

LEGADMINMAN

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT (NJP)

request, any unexecuted punishment involving restraint shall be stayed until action on the appeal is taken.

5. You are further advised that a report of this NJP will be made to CMC and that you may be subject to involuntary separation proceedings directed by CMC. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

6. You will indicate, by return endorsement hereon, your understanding of the foregoing and return it within 5 working days.

Signature

(Date)

FIRST ENDORSEMENT

From: (Officer concerned)
To: Commanding General/Officer
Ref: (b) SECNAVINST 1920.6B

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of nonjudicial punishment. I do not desire to demand trial by court-martial and am willing to accept punishment under Article 15, UCMJ. I understand that action under reference (b) is not precluded by my acceptance of NJP.

(Signature of accused)

(Date)

(Witness, typed or printed name)

Figure 4-2.--Notification of Intent to Impose NJP--Continued.

LEGADMINMAN

HEADING

SSIC
Code
Date

From: Commanding General/Officer
To: (Officer concerned)

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

Ref: (a) Paragraph 4, Part V, MCM, 1998
(b) SECNAVINST 1920.6B

1. You are hereby notified that it is my intention to conduct an Article 15, UCMJ, hearing in accordance with reference (a). Prior to that hearing, you are advised of the following:

a. That you are accused of: (include a statement describing the alleged offenses--including the article(s) of the UCMJ).

b. That you may, upon request, examine available statements and evidence upon which the allegations are based.

c. That you have the right not to make any statement concerning this/these offense(s).

d. That any statement you do make may be used against you during these proceedings or in trial by court-martial or in administrative separation proceedings under reference (b).

e. That you may consult with a lawyer, either a civilian lawyer retained by you at your own expense, or a judge advocate at no expense to you, if one is reasonably available.

f. That you will receive a hearing at which you will be accorded the following rights:

(1) To be present before the officer conducting the hearing or, if you waive such personal appearance, to submit written matters for consideration;

(2) To be advised of the offense(s) of which you are suspected;

(3) That you will not be compelled to make any statement regarding the offense(s) charged and that any statement you do make can be used against you;

Figure 4-3.--Notification of Article 15, UCMJ Hearing.

LEGADMINMAN

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

(4) To be present during the presentation of all information against you, including the testimony of witnesses present and the receipt of written statements. Copies of any statements will be furnished to you;

(5) To have made available to you for inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

(6) To present to the officer conducting the proceedings appropriate matters in mitigation, extenuation or defense of the alleged charge(s). Matters in mitigation do not constitute a defense but do reduce the degree of culpability. Such matter might include a fine military record, either previous or subsequent to the alleged offenses. Matters in extenuation are matters that render an offense less aggravated or reprehensible than it would otherwise be, but such matters also do not constitute a defense. A matter offered in defense is offered as a reason in law or in fact why you should not be found guilty of the charges alleged;

(7) To be accompanied at the hearing by a personal representative to speak on your behalf. The command has no obligation to provide such a personal representative. It is your own obligation to obtain and arrange for the presence of such a personal representative if you wish one. The personal representative need not be a lawyer; and

(8) To have the proceeding open to the public unless good cause for closing the proceeding can be shown or unless the punishment to be imposed will not exceed restriction for 14 days and an oral reprimand.

2. You are further advised that if NJP is imposed, you have the right to appeal to the next superior authority within 5 working days, if you consider the punishment unjust or disproportionate to the offense(s) for which it is imposed.

3. Unless attached to or embarked in a vessel, you have a right to refuse NJP.

4. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

Figure 4-3.--Notification of Article 15, UCMJ Hearing--Continued.

LEGADMINMAN

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

5. You will indicate, by return endorsement hereon, your understanding of the foregoing and return it within 5 working days.

Signature

(Date)

FIRST ENDORSEMENT

From: (Officer concerned)
To: Commanding General/Officer

Subj: NOTIFICATION OF ARTICLE 15, UCMJ HEARING

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of nonjudicial punishment; I do not desire to demand trial by court-martial and am willing to accept punishment under Article 15, UCMJ. Prior to making this decision, I have had the opportunity to consult with a lawyer.

(Signature of accused)

(Date)

(Witness, typed or printed name)

Figure 4-3.--Notification of Article 15, UCMJ Hearing--Continued.

LEGADMINMAN

SSIC
Code
Date

From: [Officer Concerned]
To: [NJP Authority]

Subj: ACKNOWLEDGMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS

Ref: (a) SECNAVINST 1920.6B
(b) MCO P1900.16E (MARCORSEPMAN)

1. I [Grade First Name MI Last Name SSN/MOS USMC(r)], assigned or attached to [unit], have been informed of the following facts concerning my right of appeal as a result of [NJP authority] nonjudicial punishment held on [date NJP imposed].

2. My appeal must be submitted within a reasonable time. Five days 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 which I believe will make it extremely difficult or not practical to submit an appeal within the 5 day period, I should immediately advise the officer imposing punishment of such circumstances, and request an appropriate extension of time in which to file my appeal.

a. The appeal must be in writing.

b. There are only two grounds for appeal; that is:

(1) The punishment was unjust;

(2) The punishment was disproportionate to the offense for which it was imposed.

3. I understand that, if I submit an appeal, it must be referred to a military lawyer for consideration and advice before action is taken on the appeal.

4. _____ I intend to appeal the imposition of NJP.

_____ I do not intend to appeal the imposition of NJP.

Figure 4-4.-Acknowledgment of NJP Appeal Rights.

LEGADMINMAN

Subj: ACKNOWLEDGMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS

[If a Board of Inquiry will be recommended, add the following language]:

5. I have been notified of my right to submit a request for [resignation][retirement] in lieu of administrative separation processing.

_____ I desire to submit a request for resignation/retirement in lieu of administrative separation processing in accordance with references (a) and (b).

_____ I do not desire to submit a request for resignation/retirement in lieu of administrative separation processing.

[signature] [date]

[witness signature] [date]

Figure 4-4.--Acknowledgment of NJP Appeal Rights--Continued.

LEGADMINMAN

HEADING

SSIC
Code
Date

From: [Officer Imposing NJP]
To: Commandant of the Marine Corps (JAM)

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (GRADE, FULL
NAME, SSN, MOS) (REPORT CONTROL SYMBOL EXEMPT)Ref: (a) MCO P5800.16A
(LEGADMINMAN)
(b) MCM, 1998
(c) JAGINST 5800.7C (JAGMAN)
(d) UCMJ
(e) SECNAVINST 1920.6B
(f) MCO P1900.16E (MARCORSEPMAN)

Encl: (1) Preliminary inquiry/formal fact-finding body report [Include, at a
minimum, items listed in paragraph 4004.3, LEGADMINMAN]
(2) Record of NJP hearing
(3) Acknowledgment of advance educational assistance
reimbursement requirement
(4) Resignation request

1. This report is submitted per paragraph 4003 of reference (a)
2. On [date], following the applicable provisions of references (b), (c), and (d), nonjudicial punishment was imposed by the undersigned on [grade name]. The charges and disposition thereof are as follows:

<u>Charge(s)</u>	<u>Plea</u>	<u>Finding</u>	<u>Appeal/Status</u>
Article ____	[G/NG]	[G/NG]	[Yes/Denied]

3. [Grade name] voluntarily accepted NJP and the following punishment was imposed: [set forth punishment imposed].
4. The circumstances giving rise to the imposition of nonjudicial punishment in this case are: [Provide concise, even-handed explanation of the offense(s), including significant matters in aggravation, extenuation and mitigation.]
5. A record of the NJP hearing conducted in accordance with paragraph 4, part V of reference (b) is contained in enclosure (2). The accused was present at the hearing, was accorded all rights including the right to consult with a lawyer. [Grade name] officer indicated acceptance of the imposition of nonjudicial punishment and did not desire to demand trial by court-martial. Nonjudicial punishment was

Figure 4-5.--Sample Letter Report of Officer NJP.

LEGADMINMAN

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (GRADE, FULL
NAME, SSN, MOS) (REPORT CONTROL SYMBOL EXEMPT)

imposed in accordance with section 0110 of reference (c), and Article 15 of reference (d). All requirements of paragraph 4, Part V of reference (b) have been satisfied.

6. [Grade name] has been accorded the opportunity to read the report of nonjudicial punishment in this case and [did/did not] desire to exercise the right to appeal the punishment. [Grade name] has made a statement, enclosure (), and [does/does not] desire to exercise the right to appeal the punishment.

7. I [do/do not] recommend that [grade name] be required to show cause for retention in the Marine Corps at a Board of Inquiry.

[Add the following, as appropriate]:

8. [Grade name] has been advised of the reimbursement requirement for advanced education assistance. [Grade name's] acknowledgment of this requirement is provided as enclosure (3). I do/do not recommend that the reimbursement requirement be waived in this case. [See paragraph 4007.]

9. [Grade, name] has submitted a request for resignation/retirement in lieu of administrative separation processing in accordance with references (e) and (f). I recommend approval/disapproval.]

[Signature]

Figure 4-5.--Sample Letter Report of Officer NJP--Continued.

LEGADMINMAN

ACKNOWLEDGMENT OF ADVANCE EDUCATION ASSISTANCE REIMBURSEMENT
REQUIREMENT

I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

Signature

Date

Figure 4-5.-Sample Letter Report of Officer NJP-Continued.

LEGADMINMAN

SSIC
Code
Date

FOR OFFICIAL USE ONLY

From: [Senior Board Member Identification]
To: Secretary of the Navy
Via: Commandant of the Marine Corps (JAM)

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME
MI LAST NAME SSN/MOS USMC(R)]

Ref: (a) CMC ltr 1920 JAMO of [date] [letter directing BOI]
(b) CG, MARFORXXX ltr 1920 SJA of [date] [convening order]
(c) SECNAVINST 1920.6B

Encl: (1) Transcript of the Board's proceedings with exhibits
(2) Findings and recommendations worksheet
(3) Respondent's comments on the report of the BOI

1. As directed by references (a) and (b), a Board of Inquiry convened at [command/location] and conducted a hearing in accordance with the requirements of reference (c).

2. Enclosure (1) is forwarded pursuant to reference (c). Enclosure (2) is the board's findings and recommendations. As indicated by enclosure (3), defense counsel received a copy of the transcript and submitted no deficiencies, but did submit rebuttal comments on behalf of the respondent.

3. REASONS FOR SHOWING CAUSE FOR RETENTION. The purpose of the Board of Inquiry was to recommend whether the respondent should be retained in the U. S. Marine Corps [Reserve]. The board considered these specific reasons for separation:

a. Misconduct, moral or professional dereliction: Commission of a military offense or civilian offense which, if prosecuted under the Uniform Code of Military Justice (UCMJ), could be punished by confinement of 6 months or more, and any other misconduct which, if prosecuted under the UCMJ, would require specific intent for conviction; and/or

b. Substandard performance: failure to demonstrate acceptable qualities of leadership required of an officer of his/her grade.

c. [Other bases for separation that SNO was advised of per reference (a).]

Figure 4-6.--Sample Board of Inquiry Report (Not Retirement Eligible).

LEGADMINMAN

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME
MI LAST NAME SSN/MOS USMC(R)]

4. ACTS ALLEGED. The respondent allegedly...

5. RESPONDENT'S POSITION WITH RESPECT TO THE ALLEGATIONS: The respondent asserts that...

PARAGRAPHS SIX AND SEVEN WILL DEPEND ON THE BOI'S FINDINGS AND RECOMMENDATIONS:

CASE CLOSED: ALLEGATIONS UNSUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence did not prove the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the case be closed. See enclosure (2).

CASE CLOSED: ALLEGATIONS SUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retained and that the case be closed. See enclosure (2).

DISCHARGE

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be discharged and that the characterization be (honorable)(general (under honorable conditions))(other than honorable). See enclosure (2).

8. SERVICE AND BACKGROUND. As required by reference (c), the following information is submitted concerning the respondent's service record and background:

- a. Date of birth:
- b. Marital Status:
- c. Civilian Education:
- d. Date of Appointment:

Figure 4-6.-Sample Board of Inquiry Report (Not Retirement Eligible)-Continued.

LEGADMINMAN

SSIC
Code
Date

FOR OFFICIAL USE ONLY

From: [Senior Board Member Identification]
To: Secretary of the Navy
Via: Commandant of the Marine Corps (JAM)

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME
MI LAST NAME SSN/MOS USMC(r)]

Ref: (a) CMC ltr 1920 JAMO of [date] [letter directing BOI]
(b) CG, MARFORXXX ltr 1920 SJA of [date] [convening order]
(c) SECNAVINST 1920.6B

Encl: (1) Transcript of the Board's proceedings with exhibits
(2) Findings and recommendations worksheet
(3) Respondent's comments on the report of the BOI

1. As directed by references (a) and (b), a Board of Inquiry convened at [command/location] and conducted a hearing in accordance with the requirements of reference (c).

2. Enclosure (1) is forwarded pursuant to reference (c). Enclosure (2) records the Board's findings and recommendations. As indicated by enclosure (3), defense counsel received a copy of the transcript and submitted no deficiencies, but did submit rebuttal comments on behalf of the respondent.

3. REASONS FOR SHOWING CAUSE FOR RETENTION. The purpose of the Board of Inquiry was to recommend whether the respondent should be retired from the U. S. Marine Corps [Reserve] and, if so, at what grade. The board considered these specific reasons for retirement:

a. Misconduct, moral or professional dereliction: Commission of a military offense or civilian offense which, if prosecuted under the Uniform Code of Military Justice (UCMJ), could be punished by confinement of 6 months or more, and any other misconduct which, if prosecuted under the UCMJ, would require specific intent for conviction; and/or

b. Substandard performance: Failure to demonstrate acceptable qualities of leadership required of an officer of his/her grade.

c. [Other bases for separation that the respondent was notified of per reference (a)].

Figure 4-7.-Sample Board of Inquiry Report (Retirement Eligible).

LEGADMINMAN

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME
MI LAST NAME SSN/MOS USMC(R)]

4. ACTS ALLEGED. The respondent allegedly...

5. RESPONDENT'S POSITION WITH RESPECT TO THE ALLEGATIONS: The respondent asserts that...

PARAGRAPHS SIX AND SEVEN WILL DEPEND ON THE BOI'S FINDINGS AND RECOMMENDATIONS:

CASE CLOSED: ALLEGATIONS UNSUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence did not prove the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the case be closed. See enclosure (2).

CASE CLOSED: ALLEGATIONS SUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent not be retired and that the case be closed. See enclosure (2).

RETIREMENT: CURRENT GRADE (NO OTH)

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations and that the respondent failed to show cause for retention. The Board found that the respondent's misconduct was insufficiently serious to warrant an other than honorable discharge if s/he were not retirement eligible and that service in the current grade is satisfactory. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retired in his/her current grade. See enclosure (2).

RETIREMENT: CURRENT GRADE (OTH BUT GOOD RECORD)

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations and that the respondent failed to show cause for retention; that the respondent's misconduct was sufficiently serious to warrant an other than honorable discharge if s/he were not retirement eligible; that the respondent served in the current grade at least 6 months; and that the respondent's record is otherwise so

Figure 4-7.--Sample Board of Inquiry Report (Retirement Eligible)--
Continued.

LEGADMINMAN

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST NAME
MI LAST NAME SSN/MOS USMC(R)]

eritorious as to demonstrate the respondent has served satisfactorily
in the current grade. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retired
in his/her current grade. See enclosure (2).

RETIREMENT: INFERIOR GRADE

6. FINDINGS: The Board found that a preponderance of the evidence
proved the allegations and that the respondent failed to show cause for
retention; that the respondent's misconduct was sufficiently serious to
warrant an other than honorable discharge if s/he were not retirement
eligible; that the respondent served in the current grade for at least 6
months; and that the respondent's record is not otherwise so meritorious
as to demonstrate the respondent has served satisfactorily in the
current grade. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retired
in the next inferior grade. See enclosure (2).

8. SERVICE AND BACKGROUND. As required by reference (c), the following
information is submitted concerning the respondent's service record and
background:

a. Date of birth:

b. Marital Status:

c. Civilian Education:

d. Date of Appointment:

e. Date of Rank:

f. MOS:

g. Service Schools: See NAVMC 118(8a) at Government Exhibit _.

h. Decorations/awards: See NAVMC 118(9) at Government Exhibit _.

i. Disciplinary History: None

9. PRESERVICE MISCONDUCT CONSIDERED. None.

10. MINORITY REPORT. None.

Figure 4-7.--Sample Board of Inquiry Report (Retirement Eligible)--
Continued.

LEGADMINMAN

SAMPLE BOARD OF INQUIRY FINDINGS WORKSHEET

(Note: Below is an example using the most common reasons for separation. Each reason listed by the BOI order must be listed on the findings worksheet)

FINDINGS OF THE BOARD OF INQUIRY

By a preponderance of the evidence, this Board of Inquiry finds that Major John Doe 123 45 6789/4402 USMC,

Has/Has not demonstrated Substandard Performance of Duty by:

_____ Failure to demonstrate acceptable qualities of leadership required of an officer of his grade.

_____ Failure to properly discharge the duties expected of an officer of his grade and experience.

Has/Has not engaged in personal or professional conduct that is unbecoming an officer as evidenced by:

_____ The commission of a military or civilian offense that, if prosecuted under the UCMJ, could be punished by confinement of 6 months or more, or if prosecuted under the UCMJ, would require specific intent for conviction. Specifically:

_____ A violation of Article xxx, UCMJ.
(list each article separately)

RECOMMENDATIONS OF THE BOARD OF INQUIRY (Separation BOI)

_____ By majority vote, the Board of Inquiry recommends that Major John Doe 123 45 6789/4402 USMC be separated from the naval service for the reason(s) listed above. The Board of Inquiry further recommends that Major Doe's service be characterized as:

_____ Honorable

_____ General (Under Honorable Conditions)

_____ Other Than Honorable

_____ By majority vote, the Board of Inquiry finds that none of the reasons listed above warrant Major Doe's separation from the naval service and the case is, therefore, closed.

(SEE ENCLOSURE (5) OF SECNAVINST 1920.6B FOR GUIDANCE ON CHARACTERIZATION OF SERVICE RECOMMENDATION)

Figure 4-8.-Sample Board of Inquiry Findings Worksheet.

LEGADMINMAN

RECOMMENDATIONS OF THE BOARD OF INQUIRY (Retirement BOI)

_____ By majority vote, the Board of Inquiry recommends that Major John Doe 123 45 6789/4402 USMC be retired for the reason(s) listed above, and that:

_____ Major Doe be retired in his current grade.

_____ Major Doe be retired in the next inferior grade.

_____ By majority vote, the Board of Inquiry finds that none of the reasons listed above warrant Major Doe's involuntary retirement.

(SEE ENCLOSURE (8) OF SECNAVINST 1920.6B FOR GUIDANCE ON RETIREMENT GRADE RECOMMENDATION)

Figure 4-8.--Sample Board of Inquiry Findings Worksheet--Continued.

LEGADMINMAN

SSIC
Code
Date

From: [Officer Concerned]
To: Secretary of the Navy
Via: () (Chain of Command)
() Commandant of the Marine Corps (JAM)

Subj: REQUEST FOR RESIGNATION FOR CAUSE

Ref: (a) MCO P1900.16E (MARCORSEPMAN), paragraph 4104
(b) SECNAVINST 1920.6B

1. Pursuant to references (a) and (b), I voluntarily tender my (unqualified resignation, qualified resignation, or resignation for the Good of the Service)¹ of my commission in the United States Marine Corps (Reserve) in lieu of (further) processing for administrative separation for cause.²
2. [Include "authorized characterization of service" statement required by paragraph 4104.3 of MARCORSEPMAN. This language must correspond with the type of resignation tendered above.³]
3. This resignation is based on (my nonjudicial punishment for _____, my civilian conviction for _____, my misconduct/substandard performance of duty by _____).
4. [Regular Officers] Pursuant to reference (b), I understand that a Reserve commission is normally not authorized for officers resigning for cause and I do not desire such a commission. (While I understand that pursuant to reference (b) a Reserve commission is normally not authorized for officers resigning for cause, if tendered, I would accept a commission in the United States Marine Corps Reserve.)

Figure 4-9.--Sample resignation in lieu of administrative processing.

4-37 _____

- 1 See enclosure (1) to SECNAVINST 1920.6B.
- 2 The officer should not request a specific separation date. The resignation will be effective upon SecNav approval of the request.
- 3 The officer may request a higher characterization of service than the lowest that is authorized by the officer's request. This is simply a request that the Secretary of the Navy consider a higher characterization, and the Secretary is free to characterize at the lowest level authorized by the type of resignation offered. For example: An officer requesting a qualified resignation (least favorable characterization allowed is general) may state: "Based on my entire record of service, I request separation with an honorable characterization of service. However, I have been informed and understand that if my resignation in lieu of processing for administrative separation for cause is accepted, I may subsequently receive a certificate of general discharge from the Marine Corps; that such..."

LEGADMINMAN

Subj: REQUEST FOR RESIGNATION FOR CAUSE

5. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

SIGNATURE

Figure 4-9.--Sample resignation in lieu of administrative processing--continued.

LEGADMINMAN

SSIC
Code
Date

From: Commanding Officer
To: Second Lieutenant John Doe xxx xx xxxx/9901 USMCR

Subj: NOTIFICATION OF RECOMMENDATION FOR ADMINISTRATIVE SEPARATION IN
THE CASE OF SECOND LIEUTENANT John Doe XXX XX XXXX/9901 USMCR

Ref: (a) CO, ltr of
(b) SECNAVINST 1920.6B
(c) (Documentation)

Encl: (1) Sample Resignation Format
(2) Acknowledgment of Respondent's Rights

1. In reference (a), I am recommending your separation from the Marine Corps with an honorable characterization of service pursuant to reference (b). The specific factual basis supporting this recommendation is the substandard performance of duty documented in reference (c).
2. The specific reason for your separation is substandard performance of duty as evidenced by your failure to demonstrate acceptable qualities of leadership required of an officer of your grade (or other appropriate basis).
3. You are afforded the following rights regarding this recommendation for your separation:
 - a. The right to submit a statement to the Secretary of the Navy in rebuttal to this recommendation or to decline to make a statement.
 - b. The right to tender a resignation in lieu of separation processing. The format for such a resignation is included at enclosure (1).
 - c. The right to confer with a judge advocate concerning this matter.
 - d. The right to consult with a civilian counsel at your own expense. This right shall in no way be allowed to delay the orderly processing of this recommendation.
 - e. The right to be provided copies of the papers to be forwarded to the Secretary of the Navy to support your proposed separation. Any classified documents will be summarized.

Figure 4-10.--Sample notification/acknowledgment without board rights.

LEGADMINMAN

Subj: NOTIFICATION OF RECOMMENDATION FOR ADMINISTRATIVE SEPARATION IN
THE CASE OF SECOND LIEUTENANT John Doe XXX XX XXXX/9901 USMCR

4. You also have the right to waive the rights contained in paragraph 3(a)-(e), and any failure to respond as indicated in paragraph 5, below, shall constitute a waiver of these rights.

5. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

6. You are directed to acknowledge receipt of this notification and to designate your election of rights in enclosure (2). All matters you desire to submit concerning this recommendation are due to me within 5 working days of your receipt of this notice. You may request an extension of this time upon a timely showing of good cause.

COMMANDING OFFICER

Figure 4-10.--Sample notification/acknowledgment without board
rights-continued.

LEGADMINMAN

SSIC
Code
Date

From: Second Lieutenant John Doe xxx xx xxxx/9901 USMCR
To: Commanding Officer,

Subj: ACKNOWLEDGMENT OF NOTIFICATION OF SEPARATION RECOMMENDATION

Ref: (a) CO, ltr 1920 CO of

1. I acknowledge receipt of the reference informing me of the recommendation for my administrative separation from the Marine Corps.
2. I understand the factual basis for my recommended separation and understand that I am being recommended for an honorable characterization of service.
3. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.
4. _____ I (do) (do not) desire to submit a statement to the Secretary of the Navy in rebuttal to this recommendation.
5. _____ I (do) (do not) desire to tender a resignation in lieu of separation processing.
6. _____ I (do) (do not) desire to confer with a judge advocate concerning this matter.

_____ I have conferred with _____ on _____.

7. _____ I (do) (do not) desire to consult with a civilian counsel at my own expense. I understand that the processing of my case shall in no way be unduly delayed to await the availability of such civilian counsel.

_____ I have conferred with _____ on _____.

Figure 4-10.--Sample notification/acknowledgment without board rights--continued.

LEGADMINMAN

Subj: ACKNOWLEDGMENT OF NOTIFICATION OF SEPARATION RECOMMENDATION

8. _____ I (do) (do not) desire to be provided copies of the papers to be forwarded to the Secretary of the Navy to support the proposed separation. Any classified documents will be summarized.

JOHN DOE

Date: _____

Figure 4-10.--Sample notification/acknowledgment without board rights--continued.

LEGADMINMAN

SSIC
Code
Date

From: [Officer Concerned]
To: Secretary of the Navy
Via: (1) (Chain of Command)
(2) Commandant of the Marine Corps (JAM)

Subj: VOLUNTARY WAIVER OF A BOARD OF INQUIRY

Ref: (a) SECNAVINST 1920.6B
(b) MCO P1900.16E (MARCORSEPMAN)

1. Pursuant to references (a) and (b), I voluntarily waive my right to a Board of Inquiry for processing for [administrative separation for cause] [involuntary retirement]. (Note: Conditional language will not be accepted.)

2. (Insert a statement that the basis for the waiver stems from the officer's misconduct and/or substandard performance of duty established by a relevant investigation or other documentation, and a statement that the officer admits committing the alleged misconduct or agrees that the performance of duty was substandard.)

3. [Not retirement eligible] I have been informed and understand that if I am separated from the Marine Corps that I may receive a characterization of service from the Marine Corps which will state upon its face that it is under other than honorable conditions; that I may be deprived of substantial rights, benefits, and bounties which Federal or State legislation confers or may hereafter confer upon persons with honorable service in, or separated from, the Armed Forces, that I may expect to encounter substantial prejudice in civilian life in situations where the nature of service rendered in, or the character of separation from, the armed forces may have a bearing.

OR

3. [Retirement eligible] I have been informed and understand that I may be retired in the grade next inferior to that in which I am currently serving if the Secretary of the Navy determines that the inferior grade was the highest grade in which I served satisfactorily.

4. I have consulted with [insert counsel's name, grade, and branch of service] a qualified defense counsel.

5. I understand that I may submit a sworn or unsworn statement or other material on my behalf for consideration by the Secretary of the Navy, and that any statements submitted in connection with this

Figure 4-11.--Sample voluntary waiver of a board of inquiry.

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Subj: VOLUNTARY WAIVER OF A BOARD OF INQUIRY

waiver, including admissions of guilt, are not admissible in a court-martial except as provided by Military Rule of Evidence 410, but may be admissible at other proceedings.

6. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advance education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

7. I understand that once this waiver is submitted, it may be withdrawn only with the approval of the Secretary of the Navy.

JOHN DOE

Date: _____

Figure 4-11.--Sample voluntary waiver of a board of inquiry--
continued.

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CHAPTER 5

ABSENTEES, DESERTERS, IHCA, AND IHFA

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CHAPTER 5

ABSENTEES, DESERTERS, IHCA, AND IHFA

5000. SCOPE

1. This chapter sets forth procedures and responsibilities for the processing of Marine Corps absentees and deserters, absentees from other branches of the armed forces who are being held by the Marine Corps pending return to their branch of the armed forces, and for Marines detained for civil charges.

2. If there is evidence at the time of absence which indicates that the individual is not an unauthorized absentee, or if such evidence subsequently develops, the unit commander will initiate an inquiry to determine if action is required under MCO P3040.4_, MARCORCASPROC MAN.

3. Caution shall be exercised to ensure that Marines who ultimately could be classified as "missing" are not initially reported as "unauthorized absentees" or "deserters." A Marine who, in a combat zone/while deployed to a contingency operation, is unaccounted for shall be listed initially as Duty Status, Whereabouts Unknown (DUSTWUN) rather than as UA or as a deserter status: MCO P3040.4_, MARCORCASPROC MAN, provides guidance for making missing status determinations.

4. In addition, the provisions of this chapter cover all Marine Corps personnel serving on, or ordered to report to, active duty in the armed forces of the United States and members of the Reserve components serving on active duty for training. See UCMJ, Article 2, and MCO P1001R.1_, MCRAMM.

5. The Deserter Information Point (DIP), Headquarters, U.S. Marine Corps, is required, under normal conditions, to enter every declared deserter in the Federal Bureau of Investigation's National Crime Information Center (NCIC) Wanted Persons File upon receipt of the DD Form 553 (Absentee Wanted by the Armed Forces). Expeditious reporting of unit diary entries and subsequent preparation and submission to the DIP of the DD Form 553 is required by all reporting units. Complete descriptive information must be provided on the DD Form 553 before entries can be made in the NCIC. The DIP is a 24-hour operation that can be contacted at (703) 614-3248/3376 or FAX (703) 614-3404/3499, DSN 224.

5001. DUTY STATUS, WHEREABOUTS UNKNOWN

1. If a Marine, [in a combat zone/while deployed to a contingency operation] -

a. Is absent from the parent command without authorized leave or orders;

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- b. Missed movement; or
- c. Is otherwise unaccounted for;

2. Then take the following actions -

- a. Make DUSTWUN unit diary entries per MCO P1080.40_, MCTFSPRIM.
- b. Make appropriate DUSTWUN entries in the SRB/OQR per MCO P1070.12_, IRAM.
- c. Immediately contact HQMC Casualty Section, DSN 278-9512 and complete a Personal Casualty Report (PCR) classifying the Marine as a DUSTWUN in regards to Casualty Status. The HQMC Casualty Section will assign a Casualty Assistance Calls Officer (CACO) to the Primary Next of Kin (PNOK) and Secondary Next of Kin (SNOK).
- d. Immediately initiate an investigation to determine the Marine's proper duty/casualty status.
- e. Once the investigation is complete, submit a supplementary PCR in accordance with MCO P3040.4_ classifying the Marine's status as Returned to Military Control, deceased, UA or deserter and make the appropriate unit diary and SRB/OQR entries.
- f. IAW paragraph 8104, MCO P3040.4_, if the investigation supports a declaration of missing; submit the investigative report, its opinions, and a recommendation that the Marine be declared missing to CMC (MRC) within 10 days of the disappearance.
- g. Coordinate with the HQMC Casualty Section to have the Marine's PNOK and SNOK notified of any change in status.

5002. UNAUTHORIZED ABSENCE STATUS

1. If a Marine -

- a. Is absent from the parent command without authorized leave or orders;
- b. Missed movement;
- c. Failed to comply with stragglers orders; or
- d. Failed to comply with permanent change of station orders;

2. Then take following actions -

- a. Make unit diary entries per MCO P1080.40_, MCTFSPRIM.
- b. Make appropriate entries in the SRB/OQR per MCO P1070.12_, IRAM.

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3. The parent command will inventory and store all Government property and personal effects as prescribed by MCO P4050.38_.

4. After 48 hours - CONUS commanders will notify the primary next of kin telephonically of the absentee's status and request assistance in returning the absentee to military control. All other commanders will do the same when their absentee's dependents are residing in the local area.

5. Prior to the 10th day of unauthorized absence, the parent command will prepare and mail a letter advising the primary next of kin of the Marine's status and requesting assistance in returning the Marine to the parent command. Figure 5-1 is the suggested format that may be adapted to local needs. A copy of the letter will be filed on the document side of the Marine's SRB/OQR until return of the Marine and completion of administrative/disciplinary action.

5003. DESERTION STATUS

1. If a Marine -

a. Is absent from the parent command without authority over 30 days; or

b. Is believed to have gone to or is remaining in a foreign country, and to have applied for or accepted any type of asylum or residency permit from such country, or any governmental agency thereof; or

c. Is an escaped prisoner (see paragraph 5011 for detailed instructions); or

d. Is a person reported as being in an unauthorized absence status who has had access to Top Secret information during the last 12 months; or

e. Is a person who's location is known, Commanders may publish a DD Form 553 to ensure the Marine is apprehended with dispatch.

2. Then take the following actions -

a. Inventory and store all Government property and personal effects as prescribed by MCO P4050.38_, if not previously accomplished.

b. Make required unit diary entries per MCO P1080.40_, MCTFSPRIM.

c. Make required OQR/SRB entries on applicable pages of the deserter's service record per MCO P1070.12_, IRAM.

d. Prepare and distribute the DD Form 553

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(1) If insufficient information is available to complete the DD Form 553, the commanding officer will send a priority message to CMC (MMSB-10) requesting needed information. Ensure that the height, weight, hair, and eye color entries are made. In no case will an incomplete or unsigned DD Form 553 be distributed by a Marine's commanding officer without specific approval from CMC (PSL).

(2) If the Marine is dropped to desertion prior to the 31st day of absence per paragraphs 5003.1b through 1f, the reason for that action will be included in the remarks section of the DD Form 553.

(3) If the Marine is considered an escape risk or dangerous to self or others, is pending charges or under investigation for violations of the UCMJ other than unauthorized absence or desertion, is a violator of previous stragglers orders, or is drug/alcohol addicted, appropriate cautionary statements will be placed in the remarks section of the DD Form 553 in CAPITAL LETTERS.

(4) Units with FPO or APO addresses will indicate in the remarks section of the DD Form 553 whether the Marine deserted in CONUS or in a specific foreign country.

(5) Block by block instructions for completing the DD Form 553 are contained in figure 5-10.

(6) Distribute the DD Form 553 as specified in Figure 5-10.

(7) Immediately upon completion of Signature date block entry (18f), the DD Form 553 must be submitted electronically/facsimile to PSL in order to comply with NCIC Operating Standards for "Warrants For Wanted Persons." Due to guidelines set forth in the FBI, NCIC 2000 Operating Manual 1.1., a DD Form 553 must be entered into the NCIC terminal immediately or within a 24 hour time period from the date of signature.

(8) On the 31st day of absence, conduct a thorough audit of the SRB. If the Marine deserted and had the SRB in his/her possession, the parent command will notify CMC (PSL) by message that the original SRB is not held, and request a microfiche copy from CMC (MMSB-10) for creating a temporary service record per MCO P1070.12, IRAM. Publication and submission of the DD 553 will not be delayed pending receipt of microfiche.

(9) Retain the OQR/SRB/HEALTH/DENTAL RECORDS until the date on which the period of absence exceeds the period during which a deserter would be returned to that command upon return to military control per Table 5-1, at that time forward to CMC (PSL), HQMC, 2 Navy Annex, Room 3312, Washington, DC 20380-1775.

5004. OFFICER ABSENTEES. The administrative processing for officer absentees is the same as for enlisted Marines, except that on the 7th day of absence a message report will be submitted to CMC (PSL and JAM) 5-6

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(Report Symbol MC-1621-03). The report will include the date and hour of absence and any known circumstances.

5005. MARINES WITH FAMILY MEMBERS

1. Upon declaring a Marine who has dependents a deserter, every effort should be made to retrieve dependent ID cards. If dependents refuse to surrender their ID cards, the command concerned will send a representative to call on the cardholders to obtain the cards. If a cardholder still refuses to return the card, local medical facilities and military activities should be notified. A terminate DD Form 1172 will be submitted to the nearest Defense Enrollment Eligibility Reporting System/Realtime Automated Personnel Identification System (DEERS/RAPIDS) site or to the DEERS Enrollment Processing Center per MCO P5512.11_. Ensure a copy of the DD Form 1172 is placed in the sponsor's SRB/OQR prior to forwarding the records. Only in alleged or actual instances of fraud should the case be referred to the Naval Criminal Investigative Service.

2. The dependents of certain Marines may be entitled to payment of BAH after the absence commences. Refer to DoD Financial Management Regulation, Volume 7A, and MCO P1751.3_ concerning entitlement eligibility and specific instructions.

3. Dependents occupying Government quarters will be directed to vacate those quarters per MCO P11000.22.

5006. DETERMINATION OF UNAUTHORIZED ABSENCE

1. All units, but particularly deployed units (afloat or in a foreign country), must exercise extreme care in determining that a Marine is actually an unauthorized absentee and does not fall within the category of "missing persons," as that term is defined by MCO P3040.4_, MARCORCASPROC MAN.

2. In cases in which a Marine is originally reported as an unauthorized absentee and subsequently determined to be missing, appropriate service record and unit diary entries will be made to reflect the change in status. If a DD Form 553 has been published, a DD Form 616 (Report of Return of Absentee Wanted by the Armed Forces) will be distributed with an apology letter indicating the Marine's current status. A copy of the DD Form 616 will be forwarded to CMC (PSL).

3. [In a combat zone/while deployed to a contingency operation] - see section 5001 (DUSTWUN).

5007. ABSENTEES/DESERTERS HOSPITALIZED

1. The nearest Marine Corps activity receiving information an absentee or deserter is hospitalized in a Veterans' Administration, military, or civilian institution will notify CMC (PSL, MRC, MMEA-86A)

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for disposition by the most expeditious means, followed by a naval message. The naval message will include, at a minimum, the Marine's name, SSN, nature of injury or illness, name and location of hospital, and point of contact at the hospital. Pending disposition instructions, the Marine will not be joined to the rolls of any unit or command.

5008. APPREHENSION OF ABSENTEES AND DESERTERS

1. Absentees may be apprehended by:

- a. Members of the armed forces authorized by R.C.M. 302, MCM; or
- b. Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth or Possession, or the District of Columbia; or
- c. U.S. authorities in foreign countries, but only when authorized by an international agreement with the country concerned or by an agreement with the appropriate local authorities when such an agreement is within the purview of an existing international agreement. In such cases:

(1) Careful consideration must be given to possible international implications and adverse foreign reaction.

(2) Where apprehension cannot be accomplished or where doubt exists as to apprehension authority, a priority message report of the facts will be forwarded to CMC(PSL and JAM) requesting guidance.

d. Any officer or noncommissioned officer is authorized to apprehend or to cause the apprehension of any Marine absentee.

2. In the event that the DD Form 553 is not held by local civil, or military law enforcement agencies, commanding officers, officers in charge, and noncommissioned officers in charge are authorized to prepare a DD Form 553 to cause the immediate apprehension of any absentee, regardless of the length of absence. Prior to issuing the DD Form 553, verification of the Marine's absence will be made with the parent command or with CMC (PSL). Once verified and properly prepared, fax the DD Form 553 to CMC (PSL) at (703) 614-3499. Distribution of the DD Form 553 will be limited to CMC (PSL), and parent command if applicable. All DD Form 553's will be retained in the Marine's SRB with a copy forwarded to OMPF. The unit diary entry dropping the Marine to desertion will not be made until the Marine meets the criteria for desertion, as per paragraph 5003.1.

5009. REWARDS AND CLAIMS

1. Rewards will be paid to local civil authorities in accordance with the provisions of the Financial Management Regulations (see DoD 7000.14-R, Vol. 10, Chapter 12, para. 120110).

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2. Reward claims and claims for reimbursement of expenses for confinement of Marine absentees will be processed as follows:

a. Prisoner escort teams, upon absentee pick up, will leave a Statement to Accomplish Payment of Reward or Expenses for Return of Absentee (NAVMC 11145) (figure 5-2) for completion by local authorities. The escort team will ensure their return address is stamped on the bottom of the claim form prior to distribution. Instruct local authorities to forward the claim form to that address.

b. Upon receipt of a completed claim form, the prisoner escort team will prepare NAVCOMPT Form 2277 (Voucher for Disbursement and/or Collection), (figure 5-3) and forward both forms to DFAS-KSS, CODE FE, 1500 East 95th street, Kansas City, MO 64197-0001 for further processing.

5010. RETURN TO MILITARY CONTROL (RMC)

1. Absentees and deserters are RMC at the time and date:

a. They surrender to, are delivered to, or are apprehended by or for military authorities; or

b. Civil authorities holding them for some reason other than at the request of the military inform the military of their availability for return to military control.

2. Absentees and deserters shall be received at any military installation that is manned by active duty personnel. Immediate action shall be taken to transfer individuals to the nearest installation of their branch of military service having facilities to process absentees and deserters.

3. Assignment of Marines Returning to Military Control

a. Absentees will remain on the rolls of their parent organization upon RMC. Deserters RMC will be assigned as delineated in Table 5-1. In cases involving special or unusual circumstances, CMC (PSL) is authorized to deviate from Table 5-1 and direct assignment to other commands.

b. Upon delivery of the Marine to the major command by cross-country chasers, subsequent assignment within the command is a local matter. A major command is defined as one, which has a general court-martial convening authority (GCMCA); a unit is defined as the specific battalion, squadron, etc.

c. Deserters RMC absent less than 180 days will be returned to the major command from which absent. Deserters absent greater than 180 days, with the exception of those pending administrative or disciplinary action at the command from which absent, will be

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reassigned to the non-operating force major command nearest the point of apprehension or surrender, compatible with their MOS (ground or aviation), and based upon their location (i.e. East/West of Mississippi) as depicted in Note 2 of Table 5-1.

d. Marines who are scheduled to be reassigned in accordance with Table 5-1 will be returned to the major command or unit from which absent - vice being reassigned if that major command or unit has any pending administrative or disciplinary action, other than the present unauthorized absence.

4. Return to Military Control While in a Foreign Country/Outside CONUS. Military attaches and mission chiefs are restricted from accepting the offer of deserters or absentees to return to military control unless the United States is directly responsible for the presence of the Marine in that country. The Marine will normally be advised and assisted to report at his/her own expense to a U.S. military installation within the U.S. or overseas. Unless the Marines are citizens of the country in which assistance is requested, they will be reported to the appropriate authorities of the country with a view toward deportation. When the Marine departs or is deported, arrangements will be made to have the Marine taken into custody upon arrival in a territory where U.S. military officers have the authority to apprehend.

5. Stragglers Orders

a. Stragglers orders will be issued to absentees directing their assignment as set forth in paragraph 5010.3. Figure 5-4 may be used as a guide to facilitate the processing of stragglers orders. Contact CMC (PSL) at commercial (703) 614-3248/3376 (DSN 224) prior to issuing stragglers orders. CMC (PSL) will make the final determination in questionable cases. Marines who meet any of the following criteria will not be issued stragglers orders:

(1) They are in violation of a previously issued set of stragglers orders;

(2) They are escaped prisoners;

(3) They indicate that they will not comply with stragglers orders;

(4) A law enforcement agent requests that they be returned under guard;

(5) The Marine Corps representative assuming physical custody determines that they will not comply with the stragglers orders;

(6) They have previously been apprehended by civil or military authorities for unauthorized absence;

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(7) They have serious military charges pending at their parent command; or

(8) They have been classified by competent authority as dangerous or escape risks.

b. In NO case will an absentee be issued a Government transportation request (GTR) in conjunction with stragglers orders if the Marine has sufficient funds to defray the cost of travel. If it is necessary to issue a GTR in conjunction with stragglers orders, note on the GTR "good for destination only, least costly service and mode of transportation is to be used." The GTR will be annotated to expire within 2 days after the date of issuance to the absentee. Stragglers orders travel for absentees is to be charged to appropriation 17X1105.2702/OC-11/BCN12691/AAAN067443/TT21/PAA000000/CC71130 (add last digit of current FY where "X" appears). Stragglers orders appropriations will be prepared in accordance with MCO P7300.8_, Marine Corps Financial Accounting Manual. Marines in transit on permanent change of station orders (PCSO) will be issued stragglers orders by endorsement to their original orders using appropriation data from the PCSO if the UA is less than 31 days.

c. Commands issuing stragglers orders will make travel reservations for the absentee and direct the absentee to report to the appropriate transportation terminal no later than 2 hour prior to departure time.

d. Distribution of stragglers orders:

(1) Forward an authenticated copy of the stragglers orders, signed by the Marine, to the joining command. This copy will be used by the joining command to publish a DD Form 616.

(2) Forward an authenticated copy of the stragglers orders, signed by the Marine, to CMC (PSL).

(3) If a GTR is issued, forward the original and two copies of DD Form 139 (Pay Adjustment Authorization) with a copy of the travel orders and transportation endorsement promptly to DFAS (CTAR), 1500 E. 95th St., Kansas City, MO 64197-0001. An acknowledged copy of the DD Form 139, GTR/meal ticket, travel orders and transportation endorsement will also be forwarded to CG (Code 470), Marine Corps Logistics Base, 814 Radford Blvd., Albany, GA 31704-5001.

(4) Give the signed original to the Marine.

(5) Place a signed duplicate original with the Marine's receiving endorsement in the issuing unit files. If the Marine fails to comply with the orders, this duplicate original may be required as proof at a subsequent disciplinary proceeding.

e. Absentees apprehended by civil authorities are generally

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transported under guard. However in certain cases absentees may qualify for stragglers orders. This determination will be made by CMC (PSL), who will then coordinate with the civil authorities and issue stragglers orders and/or an electronic transportation ticket for the Marine to proceed to the joining command.

f. Failure to Comply with Stragglers Orders. The commander to whom the Marine has been directed to report will join the Marine by unit diary as of the date/time reported as returned to military control on the stragglers orders; drop the Marine to desertion as of 0001 the day following the reporting date; and publish a new DD Form 553. NOTE: In the remarks section of the DD Form 553 write "CAUTION: Subject violated stragglers orders. Request guards; do not release on own recognizance." If the SRB/OQR is not held, the commander will request it, by message, from the Marine's former command or from CMC (PSL), as appropriate. If the SRB/OQR is missing or in the possession of the Marine, the commander will request a copy of the Marine's OMPF from CMC (MMSB-10) and prepare a temporary service record per MCO P1070.12_, IRAM.

g. Dangerous Absentees/Deserters. Absentees and deserters may be reported as dangerous by any commander, the immediate family, any law enforcement agency, or any member of the medical profession. It is imperative that absentees and deserters not be issued stragglers orders if they are reported as dangerous by law enforcement officers at the time of apprehension. Absentees and deserters classified as dangerous to themselves or to the general public, will be returned to the joining command under guard and evaluated by the commanding officer or the officer in charge of the joining command to determine the appropriateness of continuing such "dangerous" classification.

(1) "Dangerous" behavior includes, but is not limited to, current violent behavior or a history of violent crime, suicidal, irrational or erratic behavior, hard drug usage, or sales of any narcotic or other dangerous drugs.

(2) To facilitate the identification of Marines who may be dangerous to themselves or the general public, commanding officers will ensure that classification information and appropriate cautionary statements are included in the remarks section of the DD Form 553.

(3) If, subsequent to publication of the DD Form 553, information is received which indicates that the deserter is dangerous, the command receiving the information will notify CMC (PSL), who will take appropriate action. If a copy of the DD Form 553 is not held, advise CMC (PSL), by priority message, of the circumstances for reclassification. CMC (PSL) will make the appropriate changes to the DD Form 553 and redistribute it.

h. Stragglers Orders - Weekly Reports. On a weekly basis, commands issuing stragglers orders will prepare a message report of

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stragglers orders issued (Report Symbol MC-5800-04, figure 5-5).

Distribution will be: CMC (PSL), joining commands, and former commands for absentees reassigned. Upon receipt of the weekly stragglers report, joining commands will prepare and distribute a DD Form 616 for each absentee who complied with the stragglers orders for whom a DD Form 553 had previously been prepared and distributed. For absentees who failed to comply, the joining command will take action as outlined in paragraph 5010.5f.

6. Return of Absentee to the Command. Upon transport of the absentee/deserter by cross country chasers, CMC (PSL) will release a transport under guard message to the appropriate unit or major command. That unit/command will join the individual from absentee/deserter status, and prepare and distribute DD Form 616 based upon the time and date of return to military control contained in the message.

a. Instructions for Joining Commands. Upon return of an absentee, the commander will take the following actions:

(1) Join the Marine by unit diary from desertion or report a "from UA," as appropriate, per MCO P1080.40_, MCTFSPRIM. If a Marine is joined after EAS, a determination must be made as to whether the Marine will be returned to a full duty status or will merely be retained in the service for disciplinary action (see DoD Financial Management Regulation, Volume 7A for a definition of full duty status).

(2) Make appropriate entries in the Marine's SRB per MCO P1070.12_, IRAM. In the event the SRB is not held, request by message that either the former command or CMC (PSL), as appropriate, forward the SRB. If the SRB/OQR has been lost, request a copy of the Marine's OMPF from CMC (MMSB-10) and prepare a temporary service record per MCO P1070.12_, IRAM.

(3) Upon receipt of documentation (e.g., an official death certificate) verifying the death of a Marine absent 180 days or less, the command from which the Marine absented him/herself will join the Marine from desertion as of 2359 one day prior to date of death, and report the death on unit diary on the effective date, per MCO P1080.40_, MCTFSPRIM. Questionable cases will be referred to CMC (PSL) for determination. For Marines absent more than 180 days, CMC (PSL) will effect the required unit diary entries.

(4) If a DD Form 553 has been published, distribute a DD Form 616 to the addressees of the DD Form 553. The signed original of the DD Form 616 will be forwarded to CMC (PSL). Ensure that a DD Form 616 reports both the date and time of return to military control or death. See Figure 5-11 for instructions on completing the DD Form 616.

b. Confinement of Absentees Returned Under Guard. Absentees

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returned under guard will remain in custody until the commander determines whether, under the circumstances, pretrial confinement is appropriate. Confinement should be distinguished from custody. Custody is restraint which is imposed by apprehension and which may be, but is not necessarily, physical. Custody may be imposed by anyone authorized to apprehend (see R.C.M. 302(b), MCM) and may continue until a proper authority under R.C.M. 304(b) is notified and takes action. Thus, a person who has been apprehended could be physically restrained, but this would not be pretrial confinement in the sense of this rule until a person authorized to do so under R.C.M. 304(b) directed confinement. The commander must be notified immediately upon the absentee's return, and within 24 hours must decide whether continued confinement is appropriate. A written memorandum justifying pretrial confinement must be prepared and signed by the commanding officer within 72 hours of the absentee's return, and forwarded to the Initial Review Officer (IRO). If the commander determines that pretrial confinement should continue, the IRO will conduct a hearing within 7 days of the absentee's return to review the reasons for confinement and whether it should continue. Pretrial confinement may only be imposed in accordance with R.C.M. 305, MCM. Such restraint shall not be imposed for an absentee pending NJP or summary court-martial. In arriving at this decision, the commander should carefully consider the Marine's previous UA history, the circumstances of return to military control and the Marine's apparent and expressed willingness to comply with a lesser form of restraint.

5011. ESCAPED PRISONERS

1. An escape by a prisoner is a deliberate absence from the place of arrest, confinement, or from a guard.
2. As soon as it is known that a prisoner has escaped, the commander of the correctional facility, or unit commander will:
 - a. Activate the local escape bill as required by paragraph 4407 of SECNAVINST 1640.9_.
 - b. Notify the escapee's immediate commanding officer.
 - c. Immediately notify the DIP via telephone with a message to follow the next working day.
 - d. Publish a DD Form 553 and immediately forward the signed original by the most expeditious means to the DIP (Report Symbol MC-5800-02). Pending receipt of the signed original, a facsimile copy of the DD Form 553 is acceptable for the DIP to enter the Marine into the NCIC. The circumstances of the escape will be documented in the remarks section of the DD Form 553.
3. The immediate commanding officer of an escapee will:
 - a. As soon as possible, notify the armed forces police activities

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in the area and local and State police agencies. Give a complete description of the escapee, all significant facts regarding the time, place, and circumstances of the escape, and the names and addresses of relatives, friends, or places under the jurisdiction of such police, to which the escapee might go.

b. Make appropriate entries on the unit diary per MCO P1080.40_, MCTFSPRIM, and make appropriate entries on pages 3 and 12 of the prisoner's service record per MCO P1070.12_, IRAM.

4. In cases of convicted prisoners being transferred, the commander of the transferring activity will be considered the prisoner's commander until the prisoner has been delivered to the destination or until otherwise notified by higher authority. When a prisoner escapes while en route to another activity, the guard will immediately notify the prisoner's commander by telephone or message giving the necessary information so that the commander may proceed as prescribed in paragraph 5011.3.

5012. PROCEDURE WHEN ABSENTEES AND DESERTERS OF OTHER SERVICES COME INTO THE CUSTODY OF THE MARINE CORPS

1. Commanders of Marine Corps activities will comply with this paragraph when members of other branches of the armed forces in the following categories report, surrender, or are delivered:

a. Unauthorized absentees.

b. Personnel on leave who are without funds and who request transportation.

2. When absentees of other services report, surrender, or are delivered to a Marine Corps activity, the commander will take the following action:

a. Contact the appropriate service Deserter Information Point. A confirmation of the individual's status and a disposition may be needed in these cases.

(1) US Army: USAEREC, United States Army, Deserter Information Point (UDADIP), 8899 East 56th Street, Indianapolis, IN 46249-5301, (317) 510-3711.

(2) US Navy: Navy Absentee Collection and Information Center (NACIC), 2834 Greenbay Road, North Chicago, IL 60064, (847) 688-2106.

(3) US Air Force: Headquarters AF Personnel Center (DPWCM), 550 C Street West, Suite 14, Randolph AFB, TX 78150-4716, (210) 566-3752.

(4) US Coast Guard: CGIS, 4200 WILSON BOULEVARD, STE 740 ARLINGTON, VA 22203-1800, (202) 493-6600.

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5013. REMOVAL OF THE MARK OF DESERTION

1. The mark of desertion is the administrative declaration entry on page 3 of the SRB. Commanding officers and officers in charge shall remove, as erroneous, the mark of desertion of any Marine who was declared a deserter but who subsequently has been:

- a. Punished by NJP for unauthorized absence only.
- b. Referred to trial for the offense of UA only.
- c. Tried and convicted of UA only.
- d. Tried and acquitted.
- e. Determined, pursuant to R.C.M. 706, MCM, or as a result of approved medical disability proceedings, to have been mentally incompetent at the time of the absence.
- f. Determined by CMC (MRC), as designated by SecNav pursuant to MCO P3040.4_, MARCORCASPROC MAN, to be declared missing as defined in the Missing Persons Act, 37 U.S.C. § 551-558.
- g. Determined to have been dropped to desertion because of an administrative error.

2. When the mark of desertion is removed for reasons outlined in paragraph 5013.1d, 1f, or 1g, and a DD Form 553 has been published, the command will so inform all addressees listed on the DD Form 553 and request that the DD Form 553 be returned or destroyed. In addition, delete as erroneous the entries on pages 3 and 12 of the SRB. Refer to MCO P1070.12_, IRAM, concerning removal of the conduct mark of "0" resulting from the declaration of desertion.

3. All other cases regarding the removal of the mark of desertion, when removal is recommended, will be referred to CMC (PSL) for decision. In the absence of a clear showing that a mark of desertion was erroneously entered, the entry will not be removed. Removal of a mark of desertion is not necessary prior to discharge.

4. The mark of desertion shall be removed, as soon as possible, after the determination that the entry was erroneous. The removal of the mark of desertion will be reported to the disbursing officer carrying the pay accounts of the Marine so that the member may be credited with any monies due on the date of the reported desertion entry. This is accomplished by forwarding a copy of the DD Form 616 with an entry signed by the commanding officer, giving the reason the mark of desertion was removed in the remarks section. A copy of the DD Form 616 so annotated will be forwarded to CMC (PSL) if the original DD Form 616 was not so annotated.

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5. Instructions for removal of the mark of desertion on pages 3 and 12 of the SRB are contained in MCO P1070.12_, IRAM. MCO P1080.40_, MCTFSPRIM, and MCO P1070.12_, IRAM, contain instructions for removal of the conduct mark of "0" and other conduct and duty proficiency markings reported as a result of the declaration of desertion.

5014. DELIVERY OF MARINES TO CIVIL AUTHORITIES AND MARINES WITH PENDING CIVIL CHARGES

1. The JAG Manual, Chapter VI, prescribes the procedure for delivery or refusal of delivery of Marines to civil authorities. Refer to JAGMAN, Section 0610 for reporting requirements relating to refusal of delivery to civil authorities.

2. No assurance will be given to civil authorities that any particular Marine will be retained in or discharged from the service. If the local authorities contact a military installation directly, that installation will notify CMC (PSL) of the absentee's name, location, point of contact, whether or not civil charges are pending, and circumstances of detainment (whether surrendered or apprehended).

3. If civil charges are pending, CMC (PSL) will forward message traffic to the Marine Corps activity nearest the place of detention directing establishment of liaison with civil authorities per the provisions of paragraph 5015.

4. Upon notification that an absentee or deserter has surrendered and is considered a risk or unusual case, or has been apprehended by the local authority and verified as an absentee or deserter, with NO civil charges pending, cross country chasers will be dispatched by CMC (PSL).

5. Marine Corps commands will accept custody of Marines with pending civil charges when they are released on bond or on their own recognizance only after advising civil authorities that the Marine must be returned to the parent command, and that while the Marine Corps cannot guarantee the Marine's presence for trial, the member will be given the opportunity to appear in court if requirements of the service so permit.

6. When Marine absentees and deserters are released on bond, on their personal recognizance, or on a work release program, and they are not restricted to the court's jurisdiction, action will be taken in accordance with paragraph 5014.3. Marines who are not absentees or deserters will be issued orders to return to their parent command, unless classified as dangerous under paragraph 5010.5g. In cases where the conditions are that the Marine remain in the State or County under the court's jurisdiction, CMC (PSL and MMEA-86A) will be notified to coordinate assignment of the Marine to the nearest appropriate Marine Corps activity for accountability while under such restrictions.

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7. The nearest Marine Corps activity receiving information that civil charges have been brought against a Marine absentee or deserter will file a military detainer using the format in figure 5-6. Forward a naval message to the Marine's parent command and CMC (PSL) that includes the date, time, and place of arrest; place of confinement; charges pending; prospective date of trial; and status of the court proceedings, e.g., pending grand jury hearing, etc. (See also figure 5-7.) In the event civil authorities bring charges against the Marine after custody has been accepted, paragraph 5014.1 applies.

8. Marine absentees against whom civil charges are pending who have surrendered to or have been apprehended by civil authorities, and who have not been released from custody, will remain on the rolls of their parent organization. Deserters will be assigned by CMC (PSL) per paragraph 5010.3 and Table 5-1. Marines on orders to or members of OCONUS commands will be reassigned to a CONUS command per paragraph 5010.4 and Table 5-1 pending resolution of the civil charges.

9. When Marines are confined by foreign authorities in connection with criminal charges, the Marine's command will promptly notify CMC (PSL) by message, with a copy to the Judge Advocate General of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400 (see figure 5-8). Periodic message updates will be submitted by the Marine's command when there is any change in the status of the case, e.g., rescheduled court dates, changes in the place of confinement, completion of trial (report the findings and sentence of the court). (See figure 5-9) In addition to this reporting requirement, unit commanders must also comply with any/all other local reporting requirements (i.e. under applicable SOFA USFJ/MCBJ regulations).

5015. ADMINISTRATION OF MARINES DETAINED BY CIVIL AUTHORITIES (DOMESTIC OR FOREIGN)

1. The nearest Marine Corps activity receiving information that a Marine (including absentees and deserters) has been apprehended by civil authorities and has civil charges pending will take the following actions:

a. Establish liaison with civil authorities. File a military detainer using the format of figure 5-6. Send a message to the Marine's parent command and CMC (PSL) providing the information contained in paragraph 5014.7.

b. Maintain liaison with civil authorities in order to accomplish the following:

(1) Inform CMC (PSL) and the Marine's parent command by message of:

(a) Any change in the date of trial or continuance;

(b) Any change in the civil charges;

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(c) Any action by a grand jury;

(d) Any other change of status including movement to another confinement facility, release on bond, or release on own recognizance; or,

(e) Completion of sentence.

(2) In the event the Marine is released on bond or on own recognizance, the Marine Corps activity having cognizance will advise the civil authorities that regulations do not provide for retention by such activity pending further civil determination and that the Marine will be returned to the parent organization. Civil authorities will be further advised that the Marine will be given the opportunity to return, at own expense, to stand trial, providing the exigencies of the service so allow.

(3) Upon release of the Marine on bond or on own recognizance, without restriction to court's jurisdiction, the activity having cognizance will issue the Marine stragglers orders or transport by cross country chasers, as appropriate, per paragraph 5010.

c. Upon conclusion of the civil court action, the following will be accomplished:

(1) Report the results by message to CMC (PSL) and the Marine's parent command in the event a Marine is:

(a) Convicted by civil authorities (foreign or domestic); or action is taken which is equivalent to a finding of guilty of an offense for which a punitive discharge would be authorized for the same or a closely related offense under the UCMJ; sentenced by civil authorities to confinement for 6 months or more without regard to suspension or probation; or convicted by civil authorities of an offense which involves moral turpitude (IF THE OFFENSE IS NOT LISTED IN PART IV, MCM, 2002 Edition, OR IS NOT CLOSELY RELATED TO AN OFFENSE LISTED THEREIN, THE MAXIMUM PUNISHMENT AUTHORIZED BY THE U.S. CODE APPLIES); or

(b) Adjudged a juvenile delinquent, wayward minor, or youthful offender or is placed on probation or receives punishment in any way as the result of an offense involving moral turpitude.

(2) A copy of the court order or order of commitment, or the certificate of the judge, or the clerk of the court, listing the charge(s) of which the Marine was convicted, the sentence adjudged and the disposition of the appeal, if one is made, or a certification that no appeal was made, will be forwarded to the Marine's commanding officer and CMC (MMSB-20) for filing in the Marine's OMPF. Where available, a copy of the arresting officer's report and/or a copy of the pre-sentence report of the probation officer will be forwarded.

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Extreme care must be taken to ensure that the particular offense(s) of which the Marine was convicted by civil authorities and the circumstances of their commission are clearly and specifically identified and described so that the maximum permissible penalty under the UCMJ (or U.S. Code) can be determined. In making this determination, neither the name nor label attached to an offense, nor the characterization of the nature of the crime (e.g., a crime involving moral turpitude, a felony or misdemeanor), by civil authorities is controlling.

(3) As used in paragraph 5015.1c(1)(a), the term "convicted (or a conviction) by civil authorities" includes not only final convictions by civil courts of record, but all final determinations by civil authorities (including those made by a magistrate, a justice of the peace, a municipal court, or other inferior courts) of criminality on the part of a Marine and those cases in which civil authorities have adjudged a Marine a juvenile delinquent, a youthful offender or a wayward minor. It is immaterial whether, as a result thereof, probation is imposed; a sentence is executed; execution of sentence is deferred, delayed or suspended; or, by local law, custom or procedure, charges are dismissed or expunged from civil courts' records after payment of a fine, completion of a term in jail or penitentiary, or completion of a period of probation, as these do not change the initial characterization of the conviction.

(4) If the Marine is confined as a result of sentencing by a civil court for such crimes, a request for or waiver of rights will immediately be obtained from the Marine (see MCO P1900.16_, MARCORSEPMAN), together with a physical examination (see Manual of the Medical Department) and both will be forwarded to the Marine's parent command for appropriate action along with the court documents. It is imperative that this action be taken by the local commander as soon as possible after the conviction has been entered by the court and without waiting for a request from the Marine's parent command.

2. Commanders must ensure that discharge action contemplated for convicted Marines is completed as soon as possible after the conviction. See MCO P1900.16_, MARCORSEPMAN, paragraphs 6210.6 and 6210.7.

a. In the event a Marine is confined as a result of sentencing by civil court, and the parent command does not receive both the request for or waiver of rights and a copy of the physical examination within 14 days of such judgment, the commander will, by message, immediately request the local unit assuming cognizance of the Marine's case to take action in accordance with paragraph 5015.1c.

b. In cases where the discharge action is not completed within 30 days of conviction, the commander will advise CMC (PSL) on a monthly basis of the status of the discharge proceedings or the reason discharge proceedings will not be initiated.

c. Upon discharging a Marine serving sentence in a civil confinement facility, the commander will send a message to the

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confinement facility, the commander who assumed cognizance of the case on the local level, and CMC (PSL), reporting the unit diary number and date of discharge and requesting that the military detainer be canceled.

d. For Marines detained by civil authorities on civil charges whose prior service reflects a pattern of misconduct, see MCO P1900.16_, MARCORSEPMAN.

5016. WORK RELEASE PROGRAM. No commander will lift a military detainer to allow a Marine to participate in a work release program. If local or State laws permit the release of a prisoner to a work release program, although the detainer remains in effect, the Marine Corps will interpose no objection to the Marine being so released, providing the Marine remains under the jurisdiction of the correctional institution. In such cases, the Marine will be considered to remain in the hands of civil authorities serving sentence the same as if the Marine remained incarcerated.

5017. RESERVISTS ORDERED TO INVOLUNTARY ACTIVE DUTY WHO DO NOT REPORT

1. Per MCO P1080.40_, MCTFSPRIM, Reservists who fail to report for assignment to involuntary active duty must be:

a. Reassessed into MCTFS; and

b. Joined and dropped to desertion in the SRB/OQR and MCTFS by the inspector-instructor/4th MAW site commander, as appropriate.

c. On the 31st day of absence publish a DD Form 553, fax to CMC (PSL).

2. When an individual is no longer in a deserter status, provide CMC (PSL) with a copy of the DD Form 616 per paragraph 5010.6.

3. For additional information regarding processing Reservists to involuntary active duty status, refer to MCO P1001R.1_, MCRAMM.

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Rule	If Marines absent themselves from:	and the Marines:	The Marines will be:
1	CONUS commands not listed in Rule 2	Have been absent 180 days or less	returned to the command from which they originally absented themselves (see Note 1).
		are male and have been absent over 180 days	assigned to the command listed in Note 2 which is closest to the point of surrender or apprehension and based on their location (i.e. East/West of the Mississippi).
		are female and have been absent over 180 days	assigned to MCAS Miramar
2	any of the following commands: MATSGs, Marine barracks, Marine Corps security force companies, Marine detachments, formal schools and inter-service schools, commands within the 4th Marine Aircraft Wing, 4thFSSG, or 4th Marine Division, and separate (independent) Marine commands which do not have general court-martial convening authority	Have been absent 30 days or less and have not been dropped to desertion	returned to the unit from which they originally absented themselves.
		Have been absent over 30 days or have been dropped to desertion	assigned to the command listed in Note 2 which is closest to the point of surrender or apprehension and based on their location (i.e. East/West of the Mississippi).
3	WESTPAC commands, to include Hawaii, not listed in Rule 2	are returned to military control while in WESTPAC	assigned as directed by CMC (PSL) (see Note 3).
		are returned to military control in CONUS after being absent 180 days or less	assigned as directed by CMC (PSL) (see Note 3).
		are male and are returned to military control in CONUS after being absent more than 180 days	assigned to the command listed in Note 2 which is closest to the point of surrender or apprehension, and based on their location (i.e. East/West of Mississippi).
		are female and are returned to military control in CONUS after being absent more than 180 days	assigned to MCAS Miramar
4	any command not covered by rules 1 through 3	Have been absent 30 days or less and have not been dropped to desertion	returned to the command from which they originally absented themselves
		Have been absent over 30 days or have been dropped to desertion	assigned as directed by CMC (PSL) (see Note 3).

Note 1. Students absent from SOI, MCSSS, and MCES less than 180 days will be returned directly to the respective school. Those students absent greater than 180 days will be assigned per Note 2. **Note 2.** MCB Quantico; MCB Camp Lejeune; MCB Camp Pendleton; MCAS Cherry Point; MCAS Miramar; MCRD/ERR Parris Island; MCRD/WRR San Diego. **Note 3.** CMC (PSL) will assign deserters to the command listed in Note 2 nearest the point of apprehension or surrender compatible with the Marine's MOS (ground or aviation).

LEGADMINMAN

Table 5-1.--Rules for Assignment Upon Return to Military Control.

Unit Heading

5800
Code
Date

Mr. and Mrs. John R. Brown
1234 5th Street
Anytown, VA 54321-0001

Dear Mr. and Mrs. Brown:

I regret to inform you that your (son) (daughter) (other relationship), (grade, name, USMC) has been absent from this organization since (date). If you know where (he) (she) is, please tell (him) (her) to return. Absence without leave is a serious military offense that becomes more serious as the length of absence increases.

If (grade, last name) remains absent more than 30 days, (he) (she) will be declared a deserter and we will ask civil law enforcement authorities to assist in (his) (her) apprehension. (Pay allotments) (and) (family members' eligibility for military medical care, commissary privileges, or other benefits) may also be terminated. *(Only include the second sentence if the addressee is receiving allotments or is entitled to benefits.)*

I don't want your (son) (daughter) (other relationship) to become a fugitive. If (he) (she) doesn't have enough money to cover the trip to this command, or if you need further assistance, please call the Marine Corps representative at (703) 696-2031 or 696-2032, or call the Marine Corps representative listed in your phone book under "United States Government." If I can be of any assistance in this matter, please call me at (phone number), or write me at (address).

Sincerely,

JOHN J. MARINE
Captain, U.S. Marine Corps
Commanding Officer

(Separate letters should be sent to the parents and spouse (if any), with copies being provided to the Marine Corps unit with administrative cognizance nearest the absentee's home of record.)

Figure 5-1.--Sample Format for a Letter of Notification to Next of Kin.

LEGADMINMAN

STATEMENT TO ACCOMPLISH PAYMENT OF REWARD OR EXPENSES FOR RETURN OF ABSENTEE
 NAVMC 11145 (8-84) (EF)
 SN: 0109-LF-065-5400

SEE REVERSE FOR PREPARATION INSTRUCTIONS

PRIVACY ACT STATEMENT (5 U.S.C. 552a) AUTHORITY: Title 10, U.S. Code, Sections 807 and 808 and Annual DOD Appropriations Act. PRINCIPAL PURPOSE (S): To document facts concerning apprehension of military absentee. ROUTINE USES: To substantiate payment of rewards for apprehensions; to document delivery of absentee into military custody; to reimburse for actual expenses with regard to apprehension and detention.		DATE
1. IDENTIFICATION OF ABSENTEE		
a. NAME AND GRADE	b. SSN	c. ORGANIZATION AND STATION
2. ARREST AND DELIVERY		
a. DATE OF ARREST	b. PLACE OF ARREST	c. PLACE OF DELIVERY TO MILITARY CONTROL (if applicable)
3. ITEMIZED STATEMENT OF ACTUAL EXPENSES INCURRED BY CLAIMANT (Execute this statement when reimbursement of expenses is claimed. Do not execute item 4, below)		
DATE	ITEM	AMOUNT
These expenses were incurred in connection with apprehension and delivery of the absentee identified in item 1, above.		TOTAL \$
SIGNATURE OF CLAIMANT	TITLE	ADDRESS (Street, City, State and Zip Code)
4. STATEMENT BY CLAIMANT OF APPREHENSION, DETENTION, DELIVERY, AND RECEIPT OF NOTICE (Execute this statement when reward is claimed. Do not execute item 3, above)		
I or the agency I represent, effected the apprehension and detention or delivery of the absentee identified in item 1, above, and (check one, below)		
<input type="checkbox"/> APPREHENSION AND DETENTION (Held by local authority) (\$50.00)		
<input type="checkbox"/> APPREHENSION AND DELIVERY TO MILITARY AUTHORITY (\$75.00)		
SIGNATURE OF CLAIMANT	TITLE	ADDRESS (Street, City, State and Zip Code)
5. STATEMENT BY RESPONSIBLE MILITARY AUTHORITY AS TO DELIVERY OF ABSENTEE		
a. DATE OF DELIVERY	b. PERSON OR AGENCY EFFECTING DELIVERY	c. DELIVERY WAS MADE TO (Check one)
		<input type="checkbox"/> MILITARY FACILITY <input type="checkbox"/> MILITARY CONTROL
Delivery of the absentee identified in item 1, above, actually was made to military facility or military control.		
TYPED NAME AND GRADE OF MILITARY AUTHORITY		SIGNATURE OF MILITARY AUTHORITY

Designed Using FormFlow 2.15, HOMCIARAE, May 98

Figure 5-2.--Statement to Accomplish Payment of Reward or Expenses for Return of Absentee.

LEGADMINMAN

INSTRUCTIONS FOR PREPARATION:

1. Identification of Absentee:

- a. Name (self explanatory)
- b. SSN (self explanatory)
- c. Organization and Station (USMC or Absentee's Command)

2. Arrest and Delivery

- a. Date of Arrest (self explanatory)
- b. Place of Arrest (self Explanatory)
- c. Place of Delivery to Military Control (if applicable)

3. Itemized Statement of Actual Expenses Incurred by Claimant: (Paid in lieu of reward and not to exceed \$75.00)

- Only Item No. 3 or Item No. 4 to be completed, not both.
- Actual expenses include expenses for food while in custody of claimant.
- Transportation expenses (10¢ of miles x 17¢ per mile) for privately owned vehicle.
- Other (incidental) expense incurred while in custody).

4. Statement by Claimant of Apprehension, Detention, Delivery:

- Only Item No. 3 or Item No. 4 to be completed, not both.
- Only one box to be checked in Item no. 4.

5. Statement by Responsible Military Authority as to Delivery of Absentee:

- a. Date of Delivery (to military control or military facility)
- b. Person or Agency Effecting Delivery
- c. Delivery was made to (check one)

Figure 5-2.--Statement to Accomplish Payment of Reward or Expenses
for Return of Absentee--Continued.

LEGADMINMAN

VOUCHER FOR DISBURSEMENT AND/OR COLLECTION - NAVCOMPT FORM 2277 (SPT) (REV. 8-88)

Page 1 of Pages

1. Purpose DISB. <input type="checkbox"/> COLLECT <input type="checkbox"/>		2. Date	3. Reference Document No.	4. Bill Number	5. Voucher No.						
6. FROM: Officer in Charge Marine Corps Absentee Collection Unit Headquarters, U.S. Marine Corps (POS-40) Washington, DC 20380				7. PAID BY: CHECK NO.							
8. TO: (Sheriff/Police Dept. Address)											
9. ARTICLES, SERVICES OR ITEMS											
A. INVOICE OR ORDER NO.	B. DATE OF DELIVERY/SERVICES	C. DESCRIPTION (REMITTER, EXPLANATION, DETAILS, ETC.)		D. QUANTITY	E. UNIT PRICE COST PER	F. AMOUNT					
Auth IAW NAVSO P1000; par	Date	REWARD FOR THE APPREHENSION OF MILITARY DESERTER Name: SSN: Date Apprehended: Certified to be Correct: (CCPET)									
G. DISCOUNT TERMS					H. TOTAL						
10. TYPE OF PAYMENT OR BILL: COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL <input type="checkbox"/> PROGRESS <input type="checkbox"/> ADVANCE <input type="checkbox"/>											
11. ACCOUNTING CLASSIFICATION TO BE CREDITED (COLLECTION)											
A. ACRN	B. APPROPRIATION	C. SUB-HEAD	D. OBJ. CLASS	E. BUREAU CONTROL	F. SA	G. AAA	H. TT	I. PAA	J. COST CODE	K. AMOUNT (U.S. CURRENCY ONLY)	
	(BLANK)										
12. DEDUCTIONS											
A. ACRN	B. TRANSPORTATION	C. DISCOUNT	D. TAX	E. RESERVE	F. MISCELLANEOUS	G. TOTAL FOR ACRN (U.S. CURRENCY ONLY)					
	(BLANK)										
H. CURRENCY:		EXCHANGE RATE			= \$1.00		I. TOTAL DEDUCTIONS				
13. ACCOUNTING CLASSIFICATION TO BE CHARGED (DISBURSEMENT)											
A. ACRN	B. APPROPRIATION	C. SUB-HEAD	D. OBJ. CLASS	E. BUREAU CONTROL	F. SA	G. AAA	H. TT	I. PAA	J. COST CODE	K. AMOUNT (U.S. CURRENCY ONLY)	
AA	1741105	2760	025	51690	0	067443	2D	000000	000000071165	\$50.00	
L. TOTAL NET AMOUNT TO BE PAID (BLOCK 9-H MINUS BLOCK 12-1)											
14. INSPECTION REPORT NOS:				15. GOV'T B/L NOS:							
16. APPROVED BY _____				17. CERTIFIED BY _____							
TITLE _____				TITLE _____							
(DATE) _____				(DATE) _____							
18. PAYMENT RECEIVED: PAYEE- PER- TITLE-											

Designed using FormFlow 2.15, HCM CMARAE, Feb 08

Figure 5-3.--Sample Voucher for Disbursement and/or Collection.

Unit Heading

1320
Code
Date

From: (Title of Officer Issuing Orders)
To: (Grade, Name, SSN/MOS, Service Component)

Subj: STRAGGLERS ORDERS

Ref: (a) MCO P5800.16_ (LEGADMINMAN)
(b) CMC WASHDC _____ (use this as a reference ONLY when
specific instructions are received to issue orders)

1. Having surrendered to this (activity) (organization) at (hour) on (date), you will proceed in accordance with references (a) and (b), as routed below, to (name and location of post, camp or station) and upon arrival will report to (designation of specific command to which the individual is to report) by (time/date).

ITINERARY OF TRAVEL (show all stops, transfers, and names of transportation facilities)

<u>LOCATION</u>	<u>HOUR/DATE</u>	<u>(NAME OF TRANSPORTATION CO)</u>
-----------------	------------------	------------------------------------

Depart:
Arrive:
Depart:
Arrive:

OR

1. Having (been apprehended by) (surrendered to) (military authority first taking custody) at (hour) on (date) and subsequently delivered to this (activity) (organization) at (hour) on (date), you will proceed, as routed below, etc.

(This form to be used when an individual is taken into custody by civil or military authorities and subsequently delivered to activity or command which issued the orders.)

2. You are advised that deviation from this schedule constitutes disobedience of orders, a serious military offense. Should you not maintain the schedule because of sickness, accident, or disaster, you will advise CMC (PSL) by collect telegram and request instructions.

3. By authenticated copy of these orders, your commander is requested to declare you a deserter in the event you fail to report immediately

Subj: STRAGGLERS ORDERS

upon completion of the travel directed herein, and to publish a warrant for your arrest (DD Form 553).

4. TravCharAppn: 17X1105.2702/OC-11/BCN12691/AAAN 067443/TT21/PAA000000/CC71130

(Add last digit of current FY where "X" appears)

5. GTR(s) _____ issued in connection with these orders. You will report to the passenger transportation officer at your destination to report all unused tickets, transportation requests, and meal ticket requests, and change of service to a lesser value than authorized by the tickets. Cost to the Government for GTR(s) issued: \$_____.

I. M. COMMANDING

Date

FIRST ENDORSEMENT

1. I received the original of these orders at _____ on _____ at _____ (hour) (date) _____ (location). These orders have been read and explained to me and I understand them. I certify that I do not have sufficient funds to defray the cost of my travel.

(Signature - sign all copies)

Distribution:

Signed original to absentee or deserter
Signed copy to CMC (PSL)
Signed copy to commander named in paragraph 1 of the orders
Signed duplicate original to file
DFAS (CTAR), 1500 E. 95th St., Kansas City, MO 64197-0001 (plus original and 2 copies of DD Form 139);
CG (Code 470), Marine Corps Logistics Base, 814 Radford Blvd., Albany, GA 31704-5001 (plus one copy of DD Form 139, GTR/meal ticket).

Figure 5-4.--Sample Format for Stragglers Orders--Continued.

UNCLASSIFIED

01 01

FROM: COGNIZANT COMMAND

TO: JOINING COMMANDS

INFO: CMC WASHINGTON DC//PSL//

UNCLAS//N01610//

SUBJ: RPT OF RET OF ABSENTEE ISS STRAGO FOR WEEK OF _____ (RPT
SYMBOL MC-5800-04)

A. LEGADMINMAN, CHAP 5

1. IAW THE REF, FOL MARINES RMC AND WERE DIR TO RPT TO INDC COMDS BY
THE INDC DATE/TIME:

	ABS FR	RMC	RPT BY	
<u>GRADE/NAME/SSN</u>	<u>RUC/MCC</u>	<u>DATE/TIME</u>	<u>RPT TO</u>	<u>DATE/TIME</u>

2. IAW PARA 5010.5H OF THE REF, COMDRS ARE REQ TO JOIN AND DROP TO
DES ABSENTEES LISTED HEREON WHO HAVE FAILED TO RPT.

BT

Figure 5-5.--Weekly Report of Stragglers Orders Issued.

Unit Heading

5800
Code
Date

Chief of Police/Sheriff
2345 6th Street
Anytown, VA 54321-0002

Dear Sir or Madam:

This is in regard to Private I. M. Outahere, U.S. Marine Corps, who is currently confined in your facility.

Private Outahere is a Marine Corps absentee. Upon his release from confinement, I request that he be released only to the custody of a Marine Corps or other military representative. The authority to detain Private Outahere for the military is contained in the provisions of the Interstate Agreement on Detainers Act, Public Law Number 91-538, Sections 1-8 (Codified at 18 U.S.C. § App) 1970.

(The above paragraph only applies if the Marine is serving a sentence awarded by a civil court.)

OR

This is in regard to Private I. M. Outahere, U.S. Marine Corps, who is currently being detained in your facility.

Private Outahere is a Marine Corps absentee. I request that he be released only to the custody of a Marine Corps or other military representative, in the event he is released on his own recognizance or posts bond.

The authority to detain Private Outahere for the military is the DD Form 553, Absentee Wanted by the Armed Forces.

(The above paragraph applies in all other cases.)

USE THE FOLLOWING STATEMENTS, AS APPROPRIATE

Private Outahere has been classified by the Marine Corps as an escape risk, or dangerous to himself or the general public, so he must be returned to his parent organization by prisoner escort.

If you can advise me in writing or by telephone when the Marine Corps can assume physical custody of Private Outahere, I will arrange to have prisoner escorts report to your confinement facility for return to his parent organization.

Figure 5-6.--Sample Format for Military Detainer Letter.

USE THE FOLLOWING STATEMENTS, AS APPROPRIATE

Upon notification from a member of your staff that Private Outahere is available for return to military control, I will issue him orders to return to his parent organization. If it is your opinion that he should be considered an escape risk, or dangerous to himself or the general public, please have a member of your staff contact my office and prisoner escorts will return him to his parent organization. For your information, the Marine Corps may not have jurisdiction to try Private Outahere in a military court for the offenses he may have committed in your community. If I can be of any further assistance to you in this matter, please do not hesitate to write me or call me at (Area Code) _____.

Sincerely,

I. M. COMMANDING
Captain, U.S. Marine Corps
Commanding Officer

UNCLASSIFIED

01 01

FROM: COGNIZANT UNIT

TO: PARENT COMMAND-COMMANDING GENERAL

INFO: CMC WASHINGTON DC//PSL//MMEA

UNCLAS//N01610//

SUBJ: IHCA UPDATE NR _____ *CASE OF PVT I. M. OUTAHERE 123 45
6789/0000 USMC

A. LEGADMINMAN, CHAP 5

B. DTG (ORIG IHCA MSG)

1. IAW REF A, FOL ADD INFO IS PROVIDED PERTAINING TO REF B:

A. LIST ANY CH OF STATUS; I.E., COURT DATE ESTAB AS _____; SNM
BOUND OVER TO GRAND JURY _____; COURT ADJOURNED UNTIL _____; ADD
CHGS _____ FILED; SNM CONV OF _____; SENT TO _____ YRS; REL DATE
_____; CONFED _____ (PLACE) _____.

2. SNM REL BY CIVIL AUTH ON (DATE/TIME). REQ GDS.

OR

2. SNM REL BY CIVIL AUTH ON (DATE/TIME). ISSUED STRAGO PARENT COMD.
TO RPT YOUR COMD NLT (DATE/TIME).

*NOTE: INITIAL MSG IS CONSIDERED RPT NO 1. ALL ADDITIONAL MESSAGES
PERTAINING TO THE SAME CASE/INDIVIDUAL WILL BE NUMBERED SEQUENTIALLY.

Figure 5-7.--Sample Format for Message Update Report of Marine
Detained by Civil Authorities.

UNCLASSIFIED

01 01

FROM: MARINE'S COMMAND

TO: CMC WASHINGTON DC//PSL

INFO: NAVY JAG ALEXANDRIA VA

UNCLAS//N01610//

SUBJ: IHFA CASE OF PVT I. M. OUTAHERE 123 45 6789/0000 USMC

A. SECNAVINST 5820.4

B. LEGADMINMAN CHAP 5

1. IAW REFS A AND B, FOL ADD INFO PVD. SNM WAS APPRND BY _____ AT
_____ ON _____. CHG WITH _____. RTD

A. SNM CURR CNFD AT (NAME OR JAIL/CITY/COUNTRY).

B. COURT DATE SKED _____/NOT SKED.

2. (APPROPRIATE COMMAND) HAS ASSUMED COGNIZANCE OF CASE ON LOCAL
LEVEL IAW REF A.

FURTHER INFO WILL BE FORWARDED AS RECEIVED.

BT

Figure 5-8.--Sample Format for Message Report of Marine Detained by
Foreign Authorities.

UNCLASSIFIED

01 01

FROM: COGNIZANT COMMAND

TO: CMC WASHINGTON DC//PSL

INFO: NAVY JAG ALEXANDRIA VA

UNCLAS//N01610//

SUBJ: IHFA UPDATE NR _____ CASE OF PVT I. M. OUTAHERE 123 45
6789/0000 USMC

A. LEGADMINMAN, CHAP 5

B. DTG (ORIG IHFA MSG)

1. IAW REF A, FOL ADD INFO IS PROVIDED PERTAINING TO REF B:

A. LIST ANY CH OF STATUS; I.E., COURT DATE ESTAB AS _____.
SNM INDICTED _____. COURT ADJOURNED UNTIL _____. ADD CHGS _____.
FILED. SNM CONV OF _____. SENT TO _____ YRS. REL DATE _____
_____. CONFID _____ (PLACE) _____.

2. SNM REL BY FOREIGN AUTH ON (DATE/TIME). CHGS PENDING. SNM PLACED
ON LEGAL HOLD.

OR

2. SNM REL BY FOREIGN AUTH ON (DATE/TIME). CHGS DISMISSED.

OR

2. SNM REL BY FOREIGN AUTH ON (DATE/TIME). FOREIGN JURISDICTION
WAIVED.

BT

*NOTE: INITIAL MSG IS CONSIDERED RPT NR 1. ALL ADDITIONAL MESSAGES
PERTAINING TO THE SAME CASE/INDIVIDUAL WILL BE NUMBERED SEQUENTIALLY.

Figure 5-9.--Sample Format for Message Update Report of Marine
Detained by Foreign Authorities.

INSTRUCTIONS FOR COMPLETING DD FORM 553 NOV 2002

Block 1. DATE PREPARED. Enter date of preparation, year/month/day; e.g., 1991/12/28.

Block 2. TO. One of three major entries is usually entered in this block.

OQR/SRB of Marine (absentee),

CMC (PSL) ,or

See Distribution List.

Block 3. FROM. Enter the absentee's organization or activity and place from which absent. If UA occurs while in transit, list old and new units in Block 19, Remarks. (Source of information: SRB/OQR, page 3.)

Block 4. DISTRIBUTION

1. Forward the original DD Form 553 to CMC (PSL) as soon as possible. Immediately fax the DD Form 553 to PSL. DD Form 553s forwarded with missing/incomplete information will be returned to the parent command via their chain of command for corrective action.

2. Copy to document side of the service record.

3. Copy to primary next of kin. (Source of information: RED in the SRB/OQR).

4. Copy to units assigned reporting and prisoner escort responsibilities. (See MCO 5800.10_).

Block 5. ABSENTEE IDENTIFICATION

5a. NAME. Enter the last name, first name, and middle initial, in that sequence.

5b. GRADE/RANK/RATE. Enter the military grade/rate (name and code) of the named absentee; for example; Private, Airman Basic, Seaman Recruit, E-1; Corporal, E-4; etc.

5c. SEX. Enter the absentee's sex; i.e., Male (M), or Female (F).

5d. RACE. Enter the absentee's race code as contained in the MCTFS. See MCO P1080.20_, MCTFSCODESMAN.

Figure 5-10.--Instructions for Completing DD Form 553.

- 5e.** ETHNICITY. Enter the absentee's ethnicity code per MCTFS.
- 5f.** PLACE OF BIRTH. Enter the city, state, and country, in that order. (Source of information: DD Form 4, NAVMC 763, or DD Form 1966 in SRB/OQR).
- 5g.** DATE OF BIRTH. Enter the year, month, and day, in that order. (Source of information: DD Form 4, NAVMC 763, or DD Form 1966 in SRB/OQR).
- 5h.** HEIGHT. Enter the absentee's height in inches; e.g., 72". (Source of information: Medical Record).
- 5i.** WEIGHT. Enter the absentee's weight in pounds. (Source of information: Medical Record).
- 5j.** EYE COLOR. Enter the color of the absentee's eyes; i.e., blue (BL), green (GR), brown (BR), or hazel (HA). (Source of information: Medical Record).
- 5k.** HAIR COLOR. Enter the color of the absentee's hair; i.e., brown (BR), black (BK), blonde (BL), gray (GR), red (RD), bald (BA), or white (WH). (Source of information: Medical Record).
- 5l.** DIP CONTROL NO. (Deserter Information Point Control Number). Enter the appropriate sequential DIP Control Number assigned by the using agency to account for cases entered into the National Crime Information Center (NCIC) of the FBI. If unknown, leave blank.
- 5m.** SERVICE. Enter the code for the absentee's branch of service; i.e., Army (A), Navy (N), Marine Corps (M), or Air Force (F).
- 5n.** SOCIAL SECURITY NO. Enter the absentee's SSN. (Source of information: DD Form 4, NAVMC 763, or DD Form 1966 in the SRB/OQR).
- 5o.** CITIZENSHIP. Enter the country of which the absentee is a citizen. (Source of information: NAVMC 763 or DD Form 1966 in the SRB/OQR).
- 5p.** MARITAL STATUS. Enter the code for the absentee's marital status; i.e., Married (M), Single (S), or Divorced (D).
- 5q.** MILITARY OCCUPATION. Enter the absentee's primary MOS and title. (Source of information; SRB/OQR, page 8a).
- 5r.** CIVILIAN OCCUPATION. Enter the absentee's prior civilian employment. Enter specific job skills. (Source of information: SRB/OQR, page 8a).

Figure 5-10. --Instructions for Completing DD Form 553--Continued.

5s. PERMANENT RESIDENCE ADDRESS. Enter the absentee's permanent residence address, including ZIP code.

Block 6. CURRENT ENLISTMENT

6a. DATE. Enter the most recent date of entry the absentee signed an enlistment or appointment contract, i.e., year/month/day (1995/10/25).

6b. PLACE. Enter the most recent location the absentee signed an enlistment or appointment contract, e.g., MCAS Camp Pendleton, CA.

Block 7. ENTRY INTO CURRENT PERIOD OF SERVICE

7a. DATE. Enter the date of entry that the absentee physically reported for active duty on current enlistment, i.e., year/month/day (1995/10/25). If the date is the same as the date entered in 6a, enter "Same as 6a." (Source of information: DD Form 4, NAVMC 763, DD Form 1966, and/or page 3 in the SRB/OQR).

7b. PLACE. Enter the place of entry that the absentee physically reported for active duty on current enlistment, e.g., MCAS Camp Pendleton, CA. If the place is the same as the date entered in 6b, enter "Same as 6b." (Source of information: DD Form 4, NAVMC 763, DD Form 1966, and/or page 3 in the SRB/OQR).

Block 8. ATTACH PHOTOGRAPH. If available.

Block 9. TIME OF ABSENCE

9a. DATE. Enter the date that the unauthorized absence commenced ensuring that it is the same date that was ran on the unit diary, i.e., year/month/day (1995/10/25).

9b. HOOR. Enter the hour the absence commenced, per the unit diary, i.e., 1830.

Block 10. ADMINISTRATIVE DATE OF DESERTION. Enter the date on which the absentee was administratively classified a deserter (31 day) i.e., year/month/day (1995/11/24).

Block 11. ESCAPED OR SENTENCED PRISONER. Enter the status of absentee by marking the appropriate box. For escaped or sentenced prisoners, indicate in the appropriate space the specific offense (civil or military) of which convicted. If military, include reference to the appropriate punitive article of the UCMJ.

Block 12. DISCHARGE STATUS. Enter the absentee's discharge status by marking the appropriate box.

Block 13a-c. OPERATOR'S LICENSE. This block is self-explanatory. Information for this block will normally come from the Provost Marshall Office. If information is unknown, enter the word "unknown."

Block 14a-d. VEHICLE LICENSE. See Block 13 comment.

Block 15a-f. VEHICLE. See Block 13 comment.

Block 16. RELATIVES AND/OR PERSONS KNOWN BY ABSENTEE. Enter the absentee's nearest relatives, friends, and other persons most likely to have some knowledge or indication of the absentee's whereabouts. Enter their names, addresses, and ZIP codes. List additional names in Block 19, Remarks. (Source of information: RED in SRB/OQR, interview, etc.).

Block 17. CERTIFICATION (May be used by military and civil law enforcement authorities to obtain search or arrest warrants). Complete each line carefully. The information displayed in this block will likely be the determining factor in whether the request for a warrant by law enforcement authorities is approved or denied. Complete every block in this part with precision and detail.

Block 18. COMMANDING OFFICER

18a. TYPED NAME. Enter the last name, first name, and middle initial, in that sequence.

18b. GRADE. Enter the military grade of the named commanding officer or designee, e.g., Colonel (Col), Lieutenant Colonel (LtCol), Major (Maj), etc.

18c. TITLE. Self-explanatory.

18d. ORGANIZATION AND INSTALLATION. Self-explanatory.

18e. SIGNATURE. All copies must contain an original signature.

18f. DATE SIGNED. Enter the date, i.e., year/month/day (1995/11/25).

Block 19. REMARKS

1. List peculiar habits and traits of character, unusual mannerisms and speech, peculiarities in appearance, clothing worn, aliases (names), marks and scars, tattoos, facial characteristics, complexion, posture, build, other SSNs used by the individual, or other data that may assist in identification.

Figure 5-10.--Instructions for Completing DD Form 553--Continued.

2. If the Marine is considered an escape risk, pending charges or under investigation for violations of the UCMJ other than unauthorized absence or desertion, dangerous to him/herself or others, a violator of previous stragglers orders, or drug or alcohol addicted, appropriate cautionary statements will be placed in the remarks section of the DD Form 553 in CAPITAL LETTERS.
3. WESTPAC units with FPO and APO addresses will include a comment to the effect that the absentee deserted in CONUS or in a specific foreign country.
4. When a Marine is dropped to desertion prior to the 30th day of UA, the unit will indicate the reason for dropping the Marine to desertion.
5. Use letter-size bond paper for continuation of remarks or blocks on the front of the form.

Figure 5-10.--Instructions for Completing DD Form 553--Continued.

INSTRUCTIONS FOR COMPLETING DD FORM 616

Block 1. DISTRIBUTION. Same as the DD Form 553. (Exception: when the pay record is at DFAS, Kansas City, a copy of this form will be sent to DFAS.)

Block 2. NAME. Enter the service member's last name, first name, and middle initial.

Block 3. SERVICE. Enter the code for the service member's branch of service; i.e., Marine Corps (M), Army (A), Navy (N), or Air Force (F).

Block 4. SOCIAL SECURITY NO. Enter the service member's social security number.

Block 5. GRADE OR RATE. Enter the military grade and pay grade of the service member.

Block 6. FORMER ABSENTEE STATUS

6a. Former Status. Enter an "x" in the appropriate block to indicate if the service member was an escaped or sentenced prisoner, absentee, or deserter.

6b. Date and Hour Absence Began. Enter the date and hour the absence began.

6c. Organization and Installation From Which Absent. Enter the complete mailing address of the organization the service member was absent from.

Block 7. CIRCUMSTANCES OF ABSENTEE'S RETURN

7a. Mode of Return. Place an "x" in the block to indicate how the service member was returned to military control.

7b. Indicate Authorities to Whom Absentee Surrendered or by Whom Apprehended. Place an "x" in the appropriate block to indicate who the service member surrendered to or was apprehended by.

7c. Place of Initial Return. Enter where the service member initially returned.

7d. Date and Hour of Initial Return. Enter the date and hour of initial return.

Figure 5-11.--Instructions for Completing DD Form 616.

7e. Required Action. Enter the required action by placing an "x" in the appropriate box.

7f. Military Organization and Installation or Civil Location. Enter the complete mailing address of the service member's location.

7g. Date Returned to Military Control. Enter the date the service member returned to military control.

Block 8. DISPOSITION OF ABSENTEE

8a. Action by Military Authorities. Place an "x" in the appropriate box.

8b. To. Enter the complete organizational address of the command that is in charge of the absentee (joining command).

8c. Cost of Transportation. Enter the amount of the ticket purchased to return the absentee back to the unit.

Block 9. REMARKS. This block is used to place any remarks that the command deems necessary. You should include in the remarks section the location of the individual's service, pay, and health records.

Block 10. AUTHORIZING OFFICIAL.

10a. TYPED NAME. Type the last name, first name, and middle initial of the person who will be signing this form.

10b. GRADE. Type the grade of the officer signing this form.

10c. TITLE. Type the official title of the officer signing this form.

10d. ORGANIZATION. Type the organization of the officer signing this form.

10e. SIGNATURE. Signature of officer indicated in block 10a. An original signature is required on all copies.

10f. DATE. Enter the date the form is being published (signed) in this block.

LEGADMINMAN

CHAPTER 6

VICTIM AND WITNESS ASSISTANCE PROGRAM (VWAP)

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LEGADMINMAN

CHAPTER 6

VICTIM AND WITNESS ASSISTANCE PROGRAM

6000. PURPOSE. This chapter sets forth procedures and responsibilities under the Victim and Witness Assistance Program (VWAP) established by DoD Directive 1030.1 and SECNAVINST 5800.11_, and defines the policies, responsibilities, and procedures for Marine Corps compliance with DoD Instruction 1030.2 and the aforementioned directives.

6001. DEFINITIONS

1. Central Repository. A headquarters office, designated by the Secretary of the Navy to serve as a clearinghouse of information on confinee status and to collect and report data on the delivery of victim and witness assistance, including notification of confinee status changes. The central repository for the Marine Corps is CMC (PSL) (Corrections).
2. Component Responsible Official. Person designated by the CMC primarily responsible for coordinating, implementing, and managing the Victim and Witness Assistance Program. The component responsible official is the Staff Judge Advocate to CMC.
3. Investigative and Law Enforcement Personnel. The term "investigative and law enforcement personnel" includes NCIS, CID, military police, installation security, and other individuals with authority to conduct a criminal investigation or inquiry into a crime. For the purposes of this chapter, this term does not include individuals appointed to conduct investigations under chapters II, III, IV, VIII and XII of JAGINST 5800.7_ (JAGMAN).
4. Service Providers. Those personnel responsible for providing support services including, but not by way of limitation: Marine and Family Services (MFS) personnel (counselors and victim advocates), chaplains, legal assistance attorneys, and health care professionals. This term does not include investigative and law enforcement personnel nor does it include trial counsel or staff judge advocates.
5. Victim. A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ, or in violation of the law of another jurisdiction if any portion of the investigation is conducted primarily by the DoD Components. Such individuals shall include, but are not limited to, the following:

- a. Military members and their family members.
- b. When stationed outside the continental United States, DoD

civilian employees and contractors, and their family members. This applies to services not available to DoD civilian employees and contractors and their family members in stateside locations, such as medical care in military medical facilities.

c. When a victim is under 18 years of age, incompetent, incapacitated, or deceased, the term includes one of the following (in order of precedence): a spouse, legal guardian, parent, child, sibling, another family member, or another person designated by the court or the component responsible official, or designee.

d. The term "victim" does not include an individual involved in the crime as a perpetrator or accomplice, even though the individual may be one of the representatives described above.

e. For a victim that is an institutional entity, an authorized representative of the entity. Federal departments and State and local agencies, as entities, are not eligible for services available to individual victims.

6. Victim and Witness Assistance Coordinator (VWAC). The command's primary point of contact for victim and witness assistance matters.

7. Victim and Witness Liaison Officer (VWLO). The installation commander's representative responsible for the coordination of victim and witness assistance efforts aboard the installation.

8. Witness. A person who has information or evidence about a crime, and provides that knowledge to a DoD component about an offense in the investigative jurisdiction of a DoD component. When the witness is a minor, that term includes a family member or legal guardian. The term witness does not include a defense witness or an individual involved in the crime as a perpetrator or accomplice.

6002. BACKGROUND

1. Between 1982 and 1990, the U.S. Congress enacted a series of laws designed to inform crime victims and witnesses of their rights and position in the criminal justice system. The last of the series, the Victims' Rights and Restitution Act of 1990, imposed a duty upon departments and agencies of the U.S. engaged in law enforcement and criminal justice functions to ensure that crime victims are provided specific rights and services.

2. Victims and witnesses of crime normally suffer some adverse impact from the crime. The VWAP is designed to minimize the effects of crime, and to help victims and witnesses understand and meaningfully participate in the military justice system. The VWAP ensures that Marine Corps personnel are trained to provide appropriate information, referrals, and services.

3. Victims of sexual assault often require assistance beyond the

information and referrals required under the VWAP. SECNAVINST 1752.4, Sexual Assault Prevention and Response and MCO 1752.5, Sexual Assault Prevention and Response Programs, provide additional guidance, training requirements, responsibilities, and assistance programs for sexual assault victims.

6003. APPLICABILITY. The provisions of this chapter apply to all Marine Corps personnel, and Navy personnel attached to Marine Corps units, engaged in detecting, investigating, or prosecuting crime, and to personnel assisting crime victims and witnesses. This chapter is not limited to criminal offenses prosecuted at courts-martial. Crime victims and witnesses do not forfeit their status when offenses are referred to nonjudicial punishment or administrative separation proceedings.

6004. POLICY. It is Marine Corps policy that:

1. Marines shall treat all victims and witnesses of crime with dignity and respect.
2. The necessary role of crime victims and witnesses in the criminal justice process should be protected. Humanitarian and practical concerns demand that Marine Corps authorities responsible for effective functioning of the criminal justice system consider the needs of victims and witnesses participating in command investigations or disciplinary proceedings within the cognizance of Marine Corps activities. Responsible authorities must mitigate, within the means of available resources and in accordance with applicable law, the physical, psychological, and financial hardships suffered by crime victims and witnesses and make all reasonable efforts to foster their cooperation in the criminal justice process.
3. The Marine Corps will do all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the Constitutional rights of an accused. Particular attention should be paid to victims of serious, violent crime, including child abuse, domestic violence, and sexual misconduct.
4. Law enforcement, criminal investigation, and legal personnel directly engaged in the detection, investigation, or prosecution of crimes, shall ensure victims are accorded their rights. Crime victims have the following rights:
 - a. To be treated with fairness and with respect for the victim's dignity and privacy.
 - b. To be reasonably protected from the accused.
 - c. To be notified of court-martial proceedings and any scheduling changes which will affect their appearance at court-martial.

d. To be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.

e. To confer with trial counsel

f. To receive available restitution.

g. To be notified of the apprehension of an accused, the initial appearance of an accused before a military judge, the release of the accused pending court-martial, and trial proceedings (including entry of guilty pleas).

h. To receive information about the conviction, sentence, confinement, and release of the accused.

5. Court-martial convening authorities and clemency and parole boards shall consider making restitution to the victim a condition of pretrial agreements, sentence reduction, clemency, and parole. They may also consider victim statements on the impact of the crime.

6. In cases of sexual assault, the specialized concerns and issues surrounding such assaults require all personnel involved in the case to give additional consideration to the sensitive treatment of such victims. SecNavInst 1752.4, Sexual Assault Prevention and Response, expressly prohibits releasing the names of any victim of sexual assault to the media without the consent of the victim.

7. Under MCO 1752.5, the Sexual Assault Prevention and Response Office (SAPRO) has oversight over all programs and services provided to sexual assault victims. Coordination with SAPRO is necessary prior to creating new, or modifying existing, programs or procedures designed to benefit sexual assault victims.

8. This chapter is not intended to, and does not, create any entitlement, cause of action, or defense in favor of any person arising out of the failure to provide the assistance outlined in this chapter. No limitations are placed on the lawful prerogatives of the Marine Corps or its officials.

6005. PROGRAM OVERVIEW. VWAP is a multi-disciplinary model designed to identify and assist crime victims and witnesses through the criminal justice process beginning with the initial report of a crime and continuing through the investigation, prosecution, sentencing, confinement, and release of an offender.

1. Installation commanders are responsible for implementing VWAP and shall be the central points of contact for VWAP issues on aboard the installation.

2. Unit commanders, commanding officers, and OICs are responsible for

ensuring that victims and witnesses in their commands are afforded their rights and are informed of the status of a criminal case through final disposition. Commanders are advised that crime victims and witnesses identified in command preliminary inquiries or investigations must be afforded the rights provided in this chapter.

3. All disciplines (e.g., law enforcement, security, criminal investigations, convening authorities, legal, corrections) are responsible for ensuring a smooth transition of victim and witness assistance at all stages of the criminal justice process.

4. Service providers are responsible for providing available support services to victims and witnesses and, when appropriate, shall provide referrals to community-based services.

6006. RESPONSIBILITIES

1. The SJA to CMC shall:

a. Ensure victim and witness assistance materials are available for law enforcement personnel, judge advocates serving as trial counsel, and legal assistance attorneys.

b. Receive and compile the reports required by DoD Instruction 1030.2 and prepare the annual report (DD Form 2706) for submission to the Assistant Secretary of the Navy (Manpower and Reserve Affairs).

c. Provide a representative for the DoD VWAP Council established by DoDI 1030.2.

2. Service Providers shall understand and support VWAP and know the rights of victims and witnesses under VWAP as provided herein.

3. Marine and Family Services (MFS) shall:

a. Inform crime victims and witnesses about VWAP when they receive counseling, treatment, or advice, if such information has not already been provided.

b. Inform victims of spousal or intrafamilial abuse of the benefits provided under "Transitional Compensation for Abused Family Members." The purpose of this program is to help ease the transition from military to civilian life for spouses and/or dependent children of a service member who is separated from active duty as a result of a family abuse offense. The spouse and/or family should be referred to the member's commanding officer for assistance with completion of DD Form 2698 "Application for Transitional Compensation."

c. Encourage victims of spousal or intrafamilial abuse by service members to contact the local legal assistance office for additional information on their rights and other benefits that they may be entitled to receive.

d. As appropriate, inform crime victims of State crime compensation funds that may be available to reimburse victims for certain expenses incurred as a result of the crime.

e. Know the VWAP points of contact at your installation. The VWLO is responsible for maintaining a directory of VWAP points of contact for their respective installation.

f. Appoint by name and in writing, a representative to the local Victim and Witness Assistance Council.

4. CMC (Code PSL (Corrections)). CMC(PSL), as the designated Marine Corps Central Repository, will serve as a clearinghouse of information on prisoner status and to collect and report data on the delivery of victim and witness assistance including notification of prisoner status changes. CMC (PSL) will:

a. Ensure a DD Form 2704 is received for every confinee, including those confined pursuant to summary court-martial.

b. Establish a victim and witness notification program in each brig and detention facility. VWAP procedures will apply to all prisoners confined in Marine Corps brig facilities, regardless of service.

c. Ensure that upon receipt of a DD Form 2704 that indicates a victim or witness has requested notification, establish a prisoner adjunct file to track notification of status changes. Any DD Form 2704 indicating a victim or witness does not desire notification will be filed at the brig where the prisoner is confined. The DD forms and adjunct files will be destroyed 2 years from the date the prisoner is released from confinement or parole, whichever is later.

d. Ensure that the corrections database accurately reflects all prisoners enrolled in the notification program.

e. Verify compliance with notification requirements prior to directing any prisoner transfer or transport per MCO 1640.3_.

f. Review the notification program and, when appropriate, direct termination from the notification program of victims or witnesses that brig personnel are unable to contact after reasonable efforts. For prisoners of other services, forward the request to the appropriate service central repository.

g. Inform brig of any victim or witness requests received at CMC(PSL) indicating a desire to be terminated from the notification program.

h. Submit reports per paragraph 6007.

5. Installation Commanders are designated the Local Responsible Officials pursuant to SECNAVINST 5800.11 and DoD Directive 1030.1. Installation commanders are responsible for implementing and maintaining VWAP on their respective installation. They must coordinate with the commanding officers of tenant activities to insure that all victim- and witness- related services and requirements are fulfilled. Additionally, installation commanders shall:

a. Ensure close coordination between local VWAP representatives from NCIS, LSSS or law center, military police, commanding officers, medical facilities, MFS, corrections facilities, and chaplains.

b. Appoint in writing, by name, title, duty address, and telephone number, a Victim and Witness Liaison Officer (VWLO). VWLO responsibilities are outlined in this chapter. Ensure all VWAP representatives onboard the installation are provided the VWLO's name and phone number.

c. Establish a local Victim and Witness Assistance Council to coordinate the efforts to provide a comprehensive assistance program and comply with VWAP notification and reporting requirements. Installation commanders shall designate the VWLO as council chairperson. VWLO responsibilities are outlined in paragraph 6010. At a minimum, the local council shall consist of a PMO, legal, chaplain, and MFS representative. When available, representation from the local confinement facility is encouraged.

d. Ensure processes are in place to maintain data on the number of victims and witnesses who received DD Forms 2701-2704 from personnel listed in this chapter.

e. Construct and maintain, with the assistance of the local MFS, a directory of programs, services, and crime victim compensation funds available within their geographic area, both military and civilian, to which a victim or witness may be referred. When appropriate, enter into Memoranda of Agreement, after consultation of the base staff judge advocate, with civilian agencies to ensure victims and witnesses are provided required services.

f. Ensure that victims and witnesses are receiving the information and services as required under VWAP.

g. Ensure VWAP is included as an item of interest during regular inspections.

h. Appoint, in writing, by name, title, duty address, and telephone number, a local law enforcement representative to serve as the investigative and law enforcement victim witness assistance coordinator (VWAC), and ensure the law enforcement VWAC meets the responsibilities delineated in paragraph 6011.

i. When a confinement facility is located onboard the installation, appoint, in writing, by name, title, duty address, and telephone number, a confinement facility representative to serve as the corrections victim witness assistance coordinator (VWAC) and representative to the local Victim and Witness Assistance Council.

6. Unit Commanders, Commanding Officers, and Officers in Charge are responsible for understanding and aggressively supporting VWAP and ensuring compliance with this chapter. VWAP rights, responsibilities, and procedures apply to deployed units to the extent reasonably possible. Every commander (battalion/squadron level and above) shall appoint, in writing, a Victim and Witness Assistance Coordinator (VWAC). The appointment letter shall include the VWAC's name, title, duty address, and duty telephone number. VWAC responsibilities are set forth in para 6011. A copy of this appointment letter will be provided to the VWLO. In addition to a commander's responsibility to support and assist victims and witnesses of crime, commanders have specific reporting requirements as follows:

a. Sexual Assault Incidents. MCO 1752.5 requires commanders to report all alleged sexual assaults to the Provost Marshal Office. See MCO 1752.5 for additional responsibilities in responding to sexual assaults. In addition, commanders should consider reporting all serious incidents of a criminal nature via OPREP-3SIR (See MCO 5740.2) in appropriate cases. Personnel reporting sexual assault incidents via OPREP-3 SIR need to be mindful of victim privacy and withhold victim identifying information to the maximum extent practical. The SJA to CMC shall be included as an addressee on these reports.

b. Sexual Harassment Incidents. As required by MCO P5354.1, Equal Opportunity Manual, commanders shall submit a Discrimination and Sexual Harassment (DASH) report when a formal complaint of sexual harassment is filed and a Marine is the complainant or alleged offender. The command that receives the complaint is responsible for submitting the DASH report.

c. In cases of summary court-martial where confinement is adjudged and approved, commanders shall coordinate with a trial counsel for completion of DD Form 2704.

d. Military Protective Orders (MPOs). It is imperative that every appropriate effort be made to protect victims of violence or abuse from further harm. Accordingly, DoD has promulgated guidance on the issuance of MPOs.

(1) When Issued. Commanding officers shall issue MPOs when necessary to safeguard victims, quell disturbances, and maintain good order and discipline. It is DoD policy that DD Form 2873, Military Protective Order, shall be used to issue MPOs. The current version of DD Form 2873 can be found at DoD Publications and Forms website: <http://web1.whs.osd.mil/icdhome/forms.htm>.

(2) Distribution and Retention. Commanders shall retain the original, completed DD Form 2873 in the service member's record. Commanders shall provide a signed DD Form 2873 to both the service member and protected person in accordance with the distribution list contained on the form. However, prior to providing the form, the commanding officer will ensure that personal information of both the service member and the protected person (i.e., home address, home phone number, social security number, date of birth) are not released to either party. The DD Form 2873 maintained in the service member's record shall be destroyed 6 months after the order expires.

7. Investigative and Law Enforcement Personnel shall:

a. Understand VWAP, provide crime victims and witnesses the information described in this chapter, and meet the following specific responsibilities:

(1) All law enforcement personnel must identify victims and witnesses of crimes and treat them with fairness and with respect for their dignity and privacy.

(2) Threat assessment. All law enforcement personnel have a continuing duty to take reasonable measures to protect victims and witnesses from further threat, harm, and intimidation. To that end investigative and law enforcement personnel shall make an immediate assessment of the situation and take action to minimize the threat to the victim or witness. Exercise care in discussing any protective measures that may be afforded the victim or witness to avoid creating unrealistic expectations concerning the level of protection available.

(3) The individual in charge of a criminal investigation will ensure that the victims and witnesses in the case are provided with a completed DD Form 2701 (Initial Information for Victims and Witnesses of Crime) and ensure that victims and witnesses understand the rights afforded under the law and this chapter. DD Form 2701 shall be completed by investigative and law enforcement personnel. The form shall include the name and telephone number of the investigator, the VWLO, and the cognizant command VWAC, and, when appropriate, a number to contact a victim advocate... The home address and telephone number of victims and witnesses will not be included in investigative reports unless they are specifically pertinent (e.g., the crime scene is at the victim's home).

(4) Assist victims and witnesses, upon request, in contacting the persons responsible for providing the services and relief described in DD Form 2701. The MFS and VWLO are responsible for maintaining a directory of service and relief providers. Investigative and law enforcement personnel shall familiarize themselves with this directory and supply victims and witnesses with appropriate phone numbers and addresses. Further assistance in contacting the service providers should be rendered as necessary and appropriate.

(5) If requested, and to the extent that it will not interfere with the investigation, the individual in charge of the investigation will keep the victim apprised of the status of the investigation/inquiry.

(6) If requested, the individual in charge of the investigation shall promptly notify the victim/witness when a suspect is apprehended.

(7) Investigative and law enforcement personnel shall safeguard the victim's property held as evidence and shall assist in returning it as soon as possible.

(8) The VWLO is required to maintain a directory of command VWACs. Investigative and law enforcement personnel shall familiarize themselves with this directory and supply victims and witnesses with names and telephone numbers of the appropriate command VWACs. Further assistance in contacting the command VWAC should be rendered as is necessary and appropriate.

(9) Ensure that the total number of DD Form 2701 provided to victim and witnesses is reported to the VWLO not later than 15 January for preceding calendar year.

(10) Notification to VWAC

(a) Accused and victim are military members. The individual in charge of the investigation will provide the identity of the victim to both the accused's VWAC and the victim's VWAC.

(b) Only accused is a military member. The individual in charge of the investigation will provide the identity of the victim to the accused's VWAC.

(c) Only victim is a military member. The individual in charge of the investigation will provide the identity of the victim to the victim's VWAC.

8. LSSS and Law Centers. OICs of LSSS and Law Centers, and Staff/Senior Judge Advocates at installations not using the LSSS/Law Center concept, shall appoint, in writing and by name, a representative to the local Victim and Witness Assistance Council and provide a copy of the appointment letter to the VWLO. Additionally, they shall ensure trial counsel meet their responsibilities under VWAP as delineated in this chapter, including the following specific responsibilities:

a. After preferring charges. Once charges have been preferred, the trial counsel assigned to the case shall identify the victims and witnesses in the case and provide them with DD Form 2702 (Court-Martial Information for Victims and Witnesses of Crime) and determine their elections as to those rights. Trial counsel shall ensure that

victims and witnesses are provided information concerning their role in the criminal justice process, including what to expect from the system, what the system expects from them, the stages in the criminal justice process significant to a crime victim or witness, and the proper method for obtaining further information.

b. Victim Notification. When a victim has requested notification, trial counsel shall ensure, at the earliest possible convenience, the victim is advised of:

- (1) The pretrial confinement status of the accused.
- (2) The date charges were referred and the nature of the charges.
- (3) The acceptance of a pretrial plea agreement.
- (4) The scheduling of each court proceeding.
- (5) The findings of the court-martial.
- (6) The sentence adjudged.
- (7) The convening authority's action concerning the court-martial findings and sentence.

c. Witness Notification. When a witness has requested notification, trial counsel shall ensure, at the earliest possible convenience that the witness is advised of:

- (1) The acceptance of a plea.
- (2) The findings of the court-martial.
- (3) The sentence adjudged.
- (4) The action of the convening authority as it may affect the sentence.

d. Victim's Views Concerning Pretrial Plea Negotiations. Victims have a statutorily designated advisory role in decisions involving prosecutorial discretion, such as plea-bargaining. Trial counsel shall ensure victims are aware of their right to act in this advisory capacity. In those cases in which a victim has elected to act in such an advisory capacity, trial counsel shall ensure the victim's views concerning prosecution and plea negotiations are obtained and forwarded to the convening authority.

e. Rescheduling of Court-Martial Proceedings. Trial counsel shall ensure, as soon as possible, that all victims and witnesses who have been scheduled to attend criminal justice proceedings are notified of any schedule changes that may affect their appearances.

f. Separate Waiting Room. During the court-martial proceedings, trial counsel shall ensure, to the extent possible, that victims and prosecution witnesses are provided with a waiting area that is separate from, and out of the sight and hearing of, the accused and defense witnesses.

g. General Assistance at Trial. Trial counsel shall inform and assist victims and witnesses concerning the availability of services such as transportation, parking, childcare, lodging, and courtroom translators or interpreters.

h. Notification of Employer. Upon request by the victim and/or witness, the trial counsel shall take reasonable steps to inform that person's employer of the reasons for absence from work due to court-martial.

i. Explanation to Creditors. When requested by a victim or witness, the trial counsel shall contact the creditor of a victim or witness who is subjected to serious financial strain caused by the crime, or by cooperation in the investigation or prosecution of an offense.

j. Victim's Property. When the trial counsel has possession of a victim's property, they shall safeguard the property of a victim held as evidence and shall return it as soon as possible.

k. Sentencing. Trial counsel shall inform victims of the opportunity to present evidence to the court at sentencing. In compliance with applicable law and regulations, the victim may submit a statement concerning the impact of the crime, including financial, social, psychological, and physical harm suffered by the victim.

l. Post-Trial Information. At the conclusion of a court-martial resulting in a conviction, trial counsel shall provide victims and witnesses with DD Form 2703 (Post-Trial Information for Victims and Witnesses) to convey basic information about the post-trial process.

m. Post-Trial Confinement Status of Accused. At the conclusion of every court-martial in which confinement is adjudged, including Summary Courts-Martial, trial counsel shall prepare DD Form 2704 (Victim/Witness Certification and Election Concerning Inmate Status) with the assistance of the victim or witness (those who fear harm by the offender). Trial counsel shall ensure copies are provided to:

- (1) The confinement facility;
- (2) Victims/witnesses whose entitlement to receive information has been certified by trial counsel; and
- (3) The responsible VWACs.

n. Maintain data on the number of victims and witnesses provided DD Forms 2702, 2703, and 2704.

8. All staff judge advocates will:

a. Comply with the reporting responsibilities in sexual assault cases as provided in MCO 1752.5.

b. Ensure that OPREP-3SIRs are submitted in appropriate cases. See paragraph 6006.6.

6007. VICTIM AND WITNESS ASSISTANCE PROGRAM REPORTING

1. SECNAVINST 5800.11_ and DoD Instruction 1030.2 require an annual report to the Under Secretary of Defense for Personnel and Readiness, via the Assistant Secretary of the Navy (ASN (M&RA)), concerning the assistance provided to victims and witnesses of crime. Not later than 1 March, CMC (JAM) shall forward to ASN (M&RA) a completed DD Form 2706 for data covering the preceding calendar year. In order to ensure timely submission of to ASN(M&RA), the following data must be maintained and forwarded to CMC (JAM) no later than 1 February each year (Report Control Symbol DD-5800-09 has been assigned to this report) for data covering the preceding year:

a. Installation Commanders shall report via DD Form 2706 the total number of victims and witnesses who received DD Form 2701; victims and witnesses who received DD Form 2702 and DD Form 2703; and victims and witnesses who elected via DD Form 2704 to be notified of changes in prisoner status.

b. CMC (PSL) shall report via DD Form 2706, by 1 February, the total number of victims and witnesses to whom Marine Corps brig personnel provided notice of prisoner status changes via DD Form 2705, and a cumulative total (as of 31 December) of each service's prisoners for whom brig must provide victim or witness notifications.

c. LSSS/Law Center OICs (SJAs in the absence of a LSSS/Law Center) shall maintain data on the number of victims and witnesses who received DD Form 2702 (Court-Martial Information For Victims and Witnesses of Crime) and DD Form 2703 (Post-Trial Information for Victims and Witnesses of Crime), and the number of victims and witnesses who elected their rights via DD Form 2704. By 15 January each year, submit to the Local Responsible Official, via the VWLO, DD Form 2706 with the total numbers of DD Forms 2702, 2703, and 2704 provided to victims and witnesses.

2. Commanding Officers of Correction Facilities shall submit a monthly report to each service central repository concerning the status of their service members confined in Marine Corps facilities. The report shall include:

a. Name, social security number.

b. Date of confinement (indicate whether a new confinement or transfer from another facility).

c. Date of admittance into the program and the number of victims or witness for each prisoner.

d. Location of the court-martial convening authority.

e. Number of all victims or witnesses notified (DD Form 2705 or telephonically) and the reason for notification for each prisoner status change during the month.

f. Information regarding unsuccessful attempts to contact a victim or witness who has previously requested notification.

g. Copies of any correspondence received from a victim or witness requesting termination from the notification program.

h. Minimum release date.

i. Parole eligibility date.

j. The cumulative total of the service's prisoners for whom briggs must make victim or witness notifications confined as of the last day of the reporting month.

6008. RESOURCES. The SJA to CMC maintains a website (http://sja.hqmc.usmc.mil/default_new.htm) on VWAP references, training materials, and helpful links to victim-related resources such as the DoD VWAP Council web page, <http://www.defenselink.mil/vwac/>, and the Department of Justice, Office for Victims of Crime web page, <http://www.ojp.usdoj.gov/ovc/>.

6009. FORMS. The DoD VWAP Council web page provided above contains all VWAP-related forms.

6010. VICTIM WITNESS LIAISON OFFICER (VWLO) RESPONSIBILITIES

1. VWLOs shall:

a. Ensure that each organization (battalion/squadron level and above) assigned to the installation, including tenant commands (battalion/squadron level and above) appoints a Victim Witness Assistance Coordinator (VWAC) by name and in writing.

b. Maintain a list of VWAP representatives from PMO, legal, MFS, and all VWACs (both organic and tenant) aboard the installation. Ensure copies of this list are made available to all VWACs and VWAP representatives.

c. Chair and conduct a VWAP council meeting at least quarterly to discuss VWAP-related issues.

d. In conjunction with MFS, maintain a directory of military and civilian programs and services providing counseling, treatment, and

other victim support within the geographic area of the installation.

e. Obtain and distribute relevant information to VWACs (both organic and tenant), including, where appropriate, VWAP-related training material and the directory of local programs and services.

f. In coordination with PMO, legal, and MFS ensure victims and witnesses are notified of their rights.

g. In coordination with PMO, ensure victims are provided the names, titles, duties, addresses, and telephone numbers of the appropriate VWAC involved in their case.

h. Assist, when appropriate, victims in exercising their rights and obtaining support.

i. Assist the installation commander in meeting VWAP reporting requirements.

j. Ensure that that issues surrounding the sensitive needs of victims of sexual assault are properly addressed in local VWAP Council meetings.

k. Ensure that deploying units receive appropriate VWAP training and VWAP material prior to deployment.

l. Ensure that CMC(JAM) is notified when a new VWLO is appointed.

6011. COMMAND VICTIM WITNESS ASSISTANCE COORDINATOR (VWAC) RESPONSIBILITIES

1. The VWAC responsibilities vary depending on the relationship of a victim or witness to the VWAC's command. The VWAC shall:

a. Generally. Obtain and distribute VWAP materials and, at the discretion of the unit commander, provide VWAP training to the members of the command. In cases involving victims, witnesses, or accused from different commands, the VWACs for the respective commands may have overlapping duties and responsibilities. Coordination between VWACs is essential.

b. When the victim or witness is a member of VWAC's command. Once the command is aware that one of their members is a victim or a witness, the VWAC shall ensure that the victim or witness has been advised of applicable rights by providing DD Form 2701 (Initial Information For Victims and Witnesses of Crime), if one has not already been provided. Additionally, the VWAC shall:

(1) Coordinate with the MFS to ensure the victim or witness receives, when appropriate, information concerning the availability of resources including information on compensation programs available to

victims of intra-familial abuse offenses when the offender is a service member;

(2) Assist the victim in obtaining necessary counseling;

(3) Maintain contact with all VWACs, and other VWAP personnel involved in the victim's or witness' case; and

(4) Assist the victim or witness as appropriate and necessary in the exercise of their rights. For cases pending judicial action, the trial counsel will provide notifications, assistance, and explanation of rights (as contained in DD Forms 2702, 2703, and 2704).

c. When the accused is a member of the VWAC's command. Once the command is aware that the accused is a member of the command, the VWAC shall identify the victim and, if available, witnesses. For those victims and witnesses from another command, notify the appropriate VWAC. If the victim or witnesses is from the accused's command, the VWAC for that command will provide the necessary assistance as provided above. Additionally, the VWAC shall:

(1) When necessary, notify the victim of the commander's decisions concerning prosecution, the nature of the charges, and the date charges are preferred. Typically, the trial counsel will provide this information and VWACs will contact the trial counsel prior to discussing this information with the victim or witness;

(2) When necessary, solicit and discuss the victim's views regarding appropriate disposition of the charges against the accused, particularly during pretrial plea negotiations. Typically, the trial counsel will solicit this information. VWACs will contact the trial counsel prior soliciting this information; and

d. Where VWAC's Command is the Convening Authority. After charges have been preferred, the VWAC shall:

(1) Ensure victims and witnesses have been provided the necessary notifications under VWAP. The VWAC must coordinate with PMO, legal, and VWACs of the victims' or witnesses' command.

(2) Confirm that the trial counsel assigned to the case has obtained the victim's views concerning plea negotiations and has forwarded that information to the convening authority;

(3) Confirm that the trial counsel has complied with the victim's request to be notified of the following:

(a) The date charges are referred and the nature of the charges;

(b) Acceptance of a pretrial agreement;

(c) The court-martial findings concerning guilt;

(d) The sentence adjudged; and

(e) The convening authority's action on the findings and sentence of the court-martial.

e. If the accused is sentenced to confinement, including confinement as a result of summary court-martial, confirm that the trial counsel prepared a DD Form 2704 as provided herein prior to transporting the member to the confinement facility.

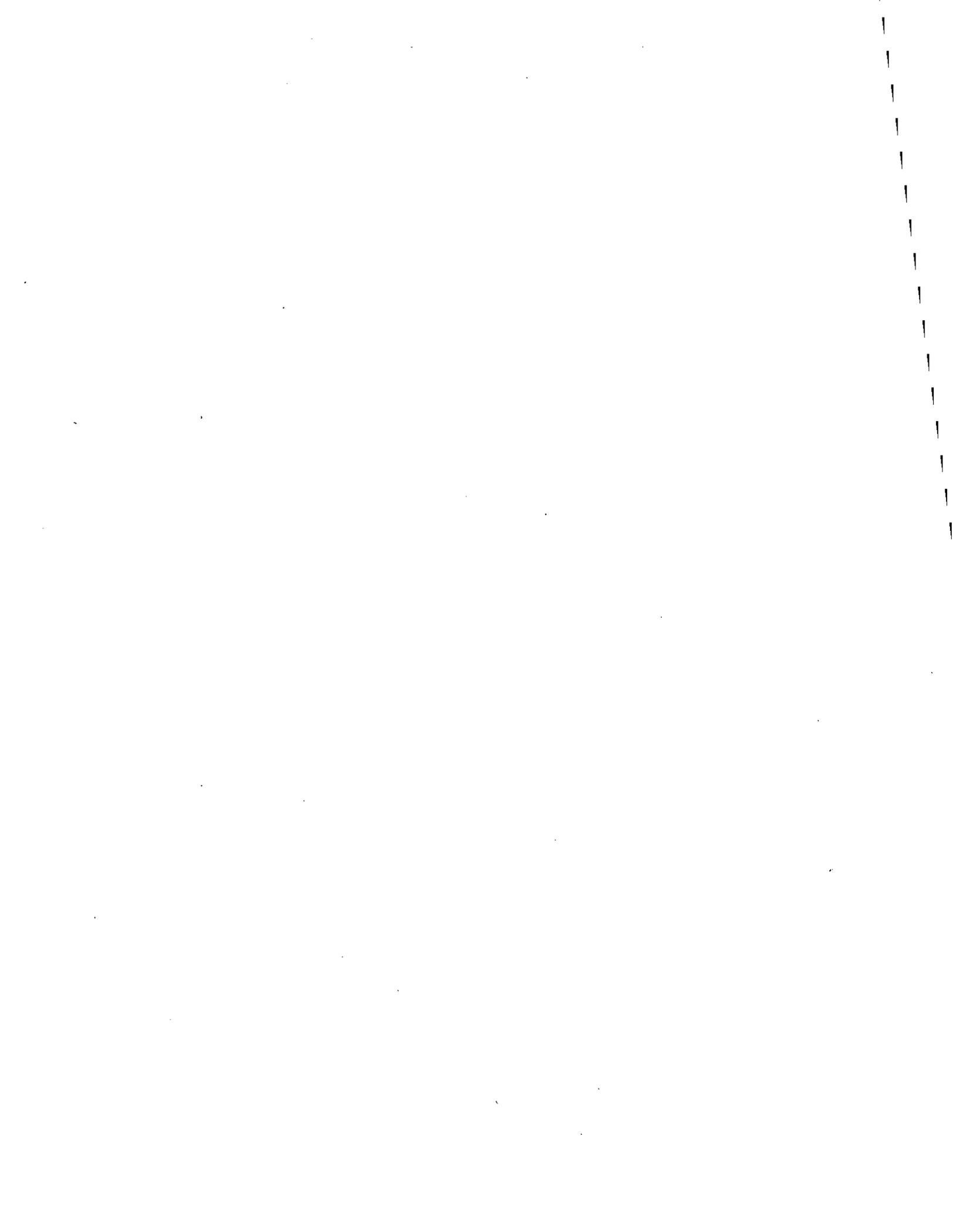
f. In pretrial confinement cases where the victim or witness has requested notification, notify that victim or witness of changes in the accused's pretrial confinement status.

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CHAPTER 7

ADMINISTRATIVE PROCEDURES FOR PAROLEES

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CHAPTER 7

ADMINISTRATIVE PROCEDURES FOR PAROLEES

7000. SCOPE. This chapter sets forth procedures and administrative instructions relating to the processing of Marine Corps prisoners sent on parole. Detailed instructions concerning the legal procedures of parole are contained in SECNAVINST 5815.3H, Department of the Navy Clemency and Parole Systems.

7001. PAROLE AUTHORIZATION. Authority to place a prisoner on parole will be given by the President, Naval Clemency and Parole Board prior to a member going on parole. A prisoner should be processed to a parole status in a timely and accurate manner upon receipt of the parole authorization.

7002. CONDITIONS OF PAROLE. Parole is considered a supervised form of confinement; not appellate leave. Prisoners on parole must continue serving their sentence except that they will serve their sentence in a civilian community, through the guidance and supervision of an officer of the Federal Probation Service. The Naval Clemency and Parole Board will determine an individual's parole conditions. However, all pre-release conditions of parole must be accomplished prior to releasing an individual on parole.

7003. PROCEDURES

1. Upon receipt of the parole authorization, the prisoner must understand the conditions of the parole agreement. The prisoner's signature must be witnessed and verified when signing the receiving endorsement on the parole agreement.
2. Commanders will ensure that all administrative procedures pertaining to the prisoner have been accomplished prior to parole. The commander will transfer the prisoner via unit diary in accordance with MCO P1080.40A (MCTFSPRIM). All records (service, health, dental, and pay) and a copy of the parole agreement must be forwarded to CMC (POS-40) in accordance with MCO P1070.12J (IRAM).
3. In the event a prisoner's discharge is approved and ordered executed before parole, the unit must report the discharge of a prisoner as prescribed in MCO P1080.40A (MCTFSPRIM). All records will be forwarded as above and will include all copies of discharge related documents.

7004. RELEASE FROM PAROLE

1. When a prisoner is released from parole, CMC (POS-40) will place the prisoner on appellate leave until discharge authority is received from the Court of Military Review.
2. If a prisoner was discharged prior to completion of parole, CMC (POS-40) will forward the records of the former prisoner per MCO P1070.12J (IRAM).

7005. PAROLE REVOCATION

1. Upon notification of parole revocation, the parolee is ordered to report to the brig from which released for re-confinement within 24 hours. The receiving brig must ensure that CMC (POS-40) is notified immediately via naval message if the parolee fails to report.
2. A parolee at large, whose parole has been terminated pursuant to SECNAVINST 5815.3H, or whose parole has been suspended or revoked (except those suspended without prejudice), will be considered the same as an escaped military prisoner whose return to military control is desired. Regulations pertaining to apprehension and return to military control of escaped military prisoners will apply. Flash wanted notices will be filed by the Federal Bureau of Investigation (FBI Form I-12).

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CHAPTER 8

MANAGEMENT OF INVESTIGATIONS

8000. SCOPE. The provisions of this chapter provide guidance for managing investigations conducted by Marine Corps commands.

8001. TYPES OF INVESTIGATIONS. When an incident or mishap occurs, there may be several reasons, and separate requirements, to conduct an investigation. Among the reasons for conducting an investigation are to prevent similar incidents in the future and to obtain and preserve available evidence for use in litigation, claims, disciplinary, or adverse administrative actions. The following types of investigations may be required.

1. JAGMAN Investigations. Chapter II of the JAGMAN contains comprehensive guidance for conducting administrative investigations and provides content and sample documentation requirements for specific types of incidents. Section 0202 of the JAGMAN identifies other types of investigations, agencies responsible for conducting these investigations, their relationship to administrative investigations under Chapter II of the JAGMAN, and applicable references. The JAGMAN also provides guidance on the three types of JAGMAN investigations: command investigations, litigation-report investigations, and courts/boards of inquiry.
2. UCMJ Investigations. R.C.M. 303, MCM, 2002, requires immediate commanders to make or cause to be made a preliminary inquiry into allegations that a member of the command has committed an offense or offenses triable by court-martial. Commanders may conduct such inquiry personally, task a subordinate to conduct the inquiry, or seek assistance from law enforcement personnel (e.g., the Provost Marshal's Office, Criminal Investigative Division, or Naval Criminal Investigative Service). If the only basis for an investigation is disciplinary action, a separate JAGMAN investigation should not be conducted.
3. NCIS Investigations. SECNAVINST 5520.3 mandates that, within the DON, the Naval Criminal Investigative Service is primarily responsible for investigating suspected or alleged major criminal offenses, defined as those offenses punishable under the UCMJ (or similarly framed Federal, State, local, or foreign laws or regulations) by confinement for a term greater than 1 year. SJAs and command investigating officers must determine if NCIS is investigating the same incident and, if so, coordinate their efforts with NCIS to ensure their efforts do not compromise or otherwise impede the NCIS investigation.

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4. Investigations into Alleged Security Violations. Pursuant to SECNAVINST 5520.3_, when classified information has been, or is suspected of being, lost, compromised, or subjected to compromise, NCIS will be notified immediately. The command will conduct a preliminary inquiry in accordance with SECNAVINST 5510.36_ unless otherwise directed by NCIS. If NCIS declines investigative action, the command may still request investigative assistance in completing the required inquiry. The preliminary inquiry will often be followed by an in-depth JAGMAN investigation. Therefore, the command must be knowledgeable of both the SECNAVINST 5510.36_ and JAGMAN requirements before commencing the inquiry and investigation.

5. Inspector General Investigations. SECNAVINST 5430.57_ sets forth the mission and functions of the Naval Inspector General (NAVINGEN) and the Deputy Naval Inspector General for Marine Corps Matters (DNIGMC). The NAVINGEN is designated the senior investigative official in the DON and shall initiate and conduct, or direct the conduct of, such inquiries as the NAVINGEN deems appropriate, with particular emphasis on matters relating to DON integrity, ethics, efficiency, discipline, or readiness. The NAVINGEN, however, will ordinarily refrain from conducting investigations that focus on individual criminal activity (normally within the authority of NCIS). SECNAVINST 5430.57_ is to be construed so as to avoid interfering with other independently authorized investigations, such as UCMJ inquiries/investigations, JAGMAN investigations, and NCIS criminal investigations. Commanding officers, however, are required to extend full cooperation to the NAVINGEN. Commanding officers should consult with their local SJA to determine whether a matter falls within the authority of the NAVINGEN.

6. Aircraft Mishap Investigations. Pursuant to DOD Instruction 6055.7_, OPNAVINST 3750.6_, MCO 3750.1_, and the JAGMAN, more than one investigation may be required into aircraft accidents (and for other exceptional incidents described in paragraph 8001.8a). Safety mishap investigations are normally required for all aircraft mishaps, and they are conducted independently and separately from other types of investigations, to include JAGMAN investigations. If evidence of a criminal act is discovered, then no mishap investigation shall be conducted (in-progress mishap investigations shall be terminated) and NCIS should be notified if the matter falls within their investigative jurisdiction.

a. Mishap Investigation Report Requirements are set forth in OPNAVINST 3750.6_ and MCO 3750.1_. Paragraph 0241 of the JAGMAN details the relationship between military mishap and JAGMAN investigations and sets forth limitations on the integration of these investigations, sharing of evidence obtained, and use/disclosure of the separate investigative reports.

b. Privileged Information in Mishap Investigations. Certain

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information contained in mishap investigations is designated as privileged in order to encourage individuals to provide complete information regarding a mishap and aid the discovery of vital safety information. Witness statements, portions of the mishap investigation, and the opinions of mishap investigators normally may not be released for purposes outside of the safety investigation. Exceptions to the privilege and additional details are available in chapter 6 of OPNAVINST 3750.6_ and paragraph 0241 of the JAGMAN.

7. Death Investigations. Paragraph 0220(b) of the JAGMAN implementing Public Law 107-107, the National Defense Authorization Act of Fiscal Year 2002, requires a line of duty determination whenever an active duty service member of the naval service dies. The purpose of the line of duty determination is to enable expedient decisions about eligibility and annuity calculations under the Uniformed Services Survivor Benefit Program. For guidance on death investigations see paragraph 0236 of the JAGMAN.

8. Ground Mishap Investigations. MCO P5102.1_ provides clarification on the types and requirements of ground mishap investigations in the Marine Corps. That Order requires that legal mishap (i.e., JAGMAN) investigations be conducted independently and apart from safety mishap investigations.

a. Limited Use Safety Mishap Investigation Reports are privileged, internal communications of DoD and their sole purpose is prevention of similar mishaps. Aircraft mishap investigations (discussed in paragraph 8001.6) are a type of limited use safety mishap investigation. These investigations are also authorized for ground mishaps involving complex weapons systems or unique military items such as laser devices, remotely piloted vehicles, armored vehicles, etc., when the determination of causal factors is vital to the national defense.

b. General Use Safety Mishap Investigation Reports are used to record data concerning all mishaps not covered by "limited use" investigations discussed in paragraph 8001.8a. Their purpose is to identify the cause(s) of mishaps and resulting damage or injury so that action(s) may be taken to prevent recurrence. Marine Corps ground mishaps will normally be investigated and the information reported as "general use" mishap investigation reports. In determining whether to conduct a safety investigation, commanders should refer to MCO P5102.1_ and consult with their local Director of Safety and Standardization or Safety Officer.

9. Friendly Fire Investigations. An investigation is required into all incidents of friendly fire, as defined by DOD Instruction 6055.7_. Friendly fire is defined by the Instruction as a circumstance in which members of a U.S. or friendly military force are mistakenly or

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accidentally killed or injured in action by U.S./friendly forces actively engaged with an enemy or who are directing fire at a hostile force or what is thought to be a hostile force. In accordance with the Instruction, the Combatant Commander will convene a legal investigation to determine the facts of all incidents falling within the definition of friendly fire. The Combatant Commander will also guide further actions with regard to the investigation, to include release of the investigation. In consultation with the Combatant Commander, commanders may convene a safety investigation as required.

10. Equal Opportunity Complaint Processing. Chapter 4 of MCO P5354.1_, Marine Corps Equal Opportunity Manual, lists command responsibilities when a report of discriminatory conduct is filed. All reported incidents of discrimination, to include sexual harassment, must be investigated. The nature of the investigation will necessarily depend on the alleged misconduct and could result in referral for a NAVINSGEN/DNIGMC investigation, an NCIS investigation, appointment of a preliminary inquiry officer under R.C.M. 303, MCM, 2002, or a JAGMAN investigation.

11. Supply Investigations. Marine Corps policy is that all missing, destroyed, or damaged Government property will be investigated in accordance with the JAGMAN if either the cause is unknown or to relieve or assign individual responsibility. Chapter 6 of MCO P4400.150_ contains additional requirements concerning the appointment and duties of an investigating officer.

12. BUMED Medical Quality Assurance Program. Guidance regarding medical quality assurance investigations is contained in paragraph 0251 of the JAGMAN and OPNAVINST 6320.7_. Section 1102 of title 10, U.S. Code, requires that documents created by or for DoD as part of a medical quality assurance program are privileged and confidential.

8002. ROLE OF THE SJA. The staff judge advocate (SJA) is responsible for advising the commander on all investigations involving the command. The SJA identifies incidents that require investigation, recommends the appropriate type of investigation to be conducted (command investigations are preferred over litigation-report investigations as they are more responsive to stakeholders; courts/boards of inquiry are rarely conducted), supervises investigations conducted by the command, and provides legal advice to investigating officers or ensures that such advice is otherwise available by assigning a legal advisor to the investigation. The SJA requests investigative assistance from outside agencies, maintains liaison with those agencies, and monitors all investigations involving the command conducted by those agencies. The SJA should be notified whenever an outside agency initiates an investigation involving the command. The SJA resolves conflicts when two or more types of investigations are being conducted involving the same incident and

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maintains liaison with higher headquarters regarding the status of investigations.

8003. SCOPING THE INVESTIGATION. Critical decisions must often be made before a convening or appointing order is drafted and the investigation begins. At the outset, the SJA should determine the purpose of the investigation and the type of investigation(s) necessary to fulfill this purpose. Significant considerations in "scoping" an investigation include:

1. The extent of property damage, injury, and/or death;
2. The impact on civilians, civilian structures, and the environment;
3. Suspected intentional and/or negligent misconduct on the part of servicemembers;
4. The potential for initiating or defending a legal action;
5. The type of expertise needed for conducting a thorough investigation;
6. The experience, grade, education, knowledge, objectivity, and temperament required for an effective investigating officer (IO).
Appearances may also play a role in determining who to assign as an IO. The IO's impartiality should not be reasonably subject to question by any of the stakeholders in an investigation. In some cases, appointment of an IO from outside the command will be required;
7. The identity of those with an interest or stake in the outcome of the investigation (e.g., other commands, victims, parents of interested parties, servicemembers, foreign governments, foreign nationals, State governments, Congress, HQMC, Navy JAG, the media, etc.). This consideration is critical. Failure to identify all the stakeholders "up-front" virtually assures relevant questions will not be addressed and that some stakeholders will be disappointed in the investigatory effort. When stakeholders are disappointed in an investigation, complaints to the command and Congress and charges of "cover-up" may ensue; and
8. The possibility of public inquiries concerning the incident and the need for mobilizing Public Affairs assets.

8004. CONVENING INVESTIGATIONS; CONFLICTS; MULTIPLE COMMANDS

1. If the investigation includes allegations of wrongdoing or negligence on the part of the convening authority (CA) (or even the

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appearance thereof), then the SJA should recommend that the CA consult with the next senior commander (and SJA) in the chain of command to determine if the senior commander should take responsibility for the conduct of the investigation. For example, if a Marine is killed in a training accident and the regimental commander and staff had a role in designing the training, disseminating SOPs and safety information, or controlling the training, then the division commander should select the IO and convene the investigation.

2. If the investigation involves two or more commands, then the SJA should recommend that the CA consult with the common senior commander (and SJA) for all affected commands to determine if the senior commander should take responsibility for the conduct of the investigation or assign the investigation to a single command for responsibility in conducting the investigation.

8005. THE INVESTIGATING OFFICER; EXPERTS; OTHER ADVISORS

1. When practicable, a CA should appoint an IO who is senior to all individuals whose conduct is subject to inquiry.

2. In some cases, consideration should be given to appointing an IO possessing special knowledge or skills in order to conduct a thorough investigation.

3. Experts may be necessary to assist the IO in resolving complex scientific or technical issues requiring specialized knowledge, skill, experience, training, or education (e.g., NCIS/CID agents, other forensic experts, engineers, maintenance officers, etc.). CAs are encouraged to detail experts in the appointing letter to assist the IO, and the IO should affirmatively seek expert assistance when needed.

4. If criminal or civil litigation may result from the matter giving rise to the investigation, consideration should be given to appointing a legal advisor to ensure evidence is legally obtained, preserved, and available for use at a later time.

8006. THE APPOINTING LETTER

1. If there are specific questions that must be resolved by the investigation, the CA should reference them in the appointing letter.

2. In death cases, CAs should direct IOs to exercise discretion when enclosing graphic photographs (e.g., autopsy photos) to the investigative report. In these cases, the appointing order should direct the IOs attention to section 0240b of the JAGMAN.

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8007. NEED FOR CONVENING AN ADMINISTRATIVE OR OTHER TYPE OF INVESTIGATION; NATURE OF INVESTIGATION

1. The conduct of a single investigation may satisfy the requirements for other types of investigations. Commands should strive to combine as many investigative requirements as possible into one investigation, however, safety and mishap investigations normally cannot be combined with JAGMAN investigations.
2. In some instances, it may be appropriate for the CA to appoint a preliminary inquiry officer under section 0204 of the JAGMAN. The CA shall dictate the format and requirements of the preliminary inquiry and may choose to have the preliminary inquiry officer simply gather and document facts for communication to the CA (without providing opinions and recommendations as required by some administrative and other investigations).

8008. ENSURING THAT THE PURPOSE FOR CONDUCTING THE INVESTIGATION IS SATISFIED

1. The SJA must ensure that the CA considers how corrective action, both recommended and concurred with, is initiated, completed, and documented for future reference.
2. In some instances, the IO should be directed to provide interim recommendations to the CA when necessary to avoid further potential injury, destruction, or death. Ensure coordination and follow-up with responsible staff (e.g., S-3/S-4) officers.
3. Regardless of when corrective recommendations are provided, the CA should be advised on the best means for ensuring the recommendations are completed, monitored and, if necessary, modified to ensure that lessons learned are applied for positive results.

8009. CONSIDERATIONS FOR DEATH INVESTIGATIONS.

1. Each active duty death, including combat related deaths, shall be subject to, at a minimum, a preliminary inquiry in accordance with the JAGMAN. The preliminary inquiry shall be conducted by the command to which the deceased member was attached (or the gaining command for service members who die in transit). The command conducting the preliminary inquiry, or higher authority, shall decide whether the preliminary inquiry is sufficient to base a line of duty determination or whether there is need for an investigation. In many cases, a basic letter report attached to a medical record entry, accident report, or

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Personnel Casualty Report (PCR) will meet the requirement for a preliminary inquiry and will be sufficient information upon which to base a line of duty determination..

a. If the command completing the preliminary inquiry or investigation is not a general court-martial convening authority (GCMCA) with an assigned staff judge advocate (SJA), the command will forward the inquiry/investigation to the first GCMCA in its chain of command with an assigned SJA. The command will include a written recommendation concerning the line of duty determination. The GCMCA with an assigned SJA is the cognizant official for making the formal line of duty determination, subject to a limited review process described in paragraph (d) below. The GCMCA shall make the line of duty determination in accordance with the guidance in sections 0222-0227 of the JAGMAN.

b. Before making an adverse determination, the GCMCA or his or her SJA shall afford a known potential Survivor Benefit Plan (SBP) beneficiary the opportunity to review the report of investigation and provide relevant information to the GCMCA. A "known potential SBP beneficiary" is the person who would otherwise be the recognized qualified survivor if a favorable determination were made. The Marine Corps Casualty section will provide assistance for Marine Corps commands in identifying potential SBP beneficiaries. Ordinarily, the known potential SBP beneficiary shall be provided 30 calendar days from receipt of the report of investigation to provide information to the GCMCA. In an adverse determination case in which there is no known potential SBP beneficiary, the GCMCA shall make the line of duty determination following a review of the investigation by the SJA.

c. The line of duty determination shall be made in writing by the GCMCA and forwarded to HQMC (MMSR-6), J. W. Marsh Building, 3280 Russell Road, Quantico, Virginia, 22134. For more information contact MMSR-6 at (703) 784-9310, 9304/9305, 1-800-336-4649, (DSN 278), or (703) 784-9834 (fax).

d. For adverse determination cases, the GCMCA shall forward a complete copy of the investigation to MMSR-6, where it will be reviewed by DC (M&RA). DC (M&RA) shall review the line of duty determination and underlying investigation. The determination of the GCMCA shall be sustained unless DC(M&RA) determines that a substantial error occurred that could materially affect the determination. In such cases, DC(M&RA) can make a different determination or return the case to the GCMCA for further investigation. The review and determination of the DC(M&RA) shall be administratively final.

2. Notification of Next of Kin. A major concern in death cases is forwarding timely, relevant, and factual information to the next of kin (NOK). In many cases, the NOK exhibit frustration with the

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conduct of death investigations and a perceived lack of information from the Marine Corps. On occasion, these frustrations are exhibited through allegations of investigative ineptitude and cover-up. Early and frequent communication from the command to the NOK will aid in preventing the development of adversary relations between the NOK and the command, and will add to the credibility that the NOK give to the death investigation. Guidelines for notifying and communicating with the NOK of a deceased Marine are provided below. More detailed requirements are published in MCO P3040.4_ (MARCORCASPROC MAN) and paragraph 0233 of the JAGMAN.

a. An investigation into the death of a Marine should seek to answer all legitimate questions surrounding the death that , the NOK may have. Using the utmost discretion, IOs should contact NOK to obtain relevant background information about the deceased Marine or Sailor and discover the issues of concern to the NOK.

b. In any case in which the cause(s) or circumstance(s) surrounding a Marine's death are under investigation, the Marine's unit commander will send the NOK a letter notifying them that an investigation has been initiated. The letter will be sent within 14 days after the initial notification of death was provided to the NOK. At a minimum, the letter will include the following: (1) names of DoD agencies conducting the investigation, (2) existence of any reports by such agencies that have been or will be used as a result of the investigation(s), and (3) if NCIS is conducting a death investigation, the name and telephone number of the case agent and NCIS family liaison representative (800-479-9685) at NCIS Headquarters, Washington, D.C.

c. Release of administrative investigation reports outside the DON is governed by SECNAVINST 5720.4_ (FOIA), SECNAVINST 5211.5_ (Privacy Act), and the JAGMAN. As a general rule, no investigative report, evidence, or documents compiled by investigating officials may be released until the report is final. See paragraph 0219 of the JAGMAN. However, special exceptions exist regarding the release of death investigations to the NOK. Within 30 days after the initial notification of death was provided to the NOK and provided that the first general officer in the chain of command has reviewed the investigation, the reviewer will normally provide requesting NOK with copy(ies) of any completed investigative and fatality report(s) unless: the release would violate applicable law (e.g., investigation classified); the endorser can articulate how release would harm the command's mission, would interfere with an ongoing criminal investigation, or why release should not be made for good cause; or the investigation involves a friendly fire incident as described in paragraph 8001.9 and DOD Instruction 6055.7_, and the release has not been authorized by the appropriate Combatant Commander. Review JAGMAN, 0233 for requirements and exceptions. If the investigation is

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not completed within 30 days of the initial notification, then the unit commander is required to notify requesting NOK, in writing, on the status of the investigation. Section 0233d of the JAGMAN also requires, when practicable, hand-delivery of releasable investigations to the NOK by a knowledgeable officer who can discuss the contents with the family.

d. In cases where the Marine's death may have been self-inflicted, it is essential that only accurate facts and not opinions are provided to the NOK.

e. Section 0240b of the JAGMAN requires that graphic photographs enclosed with command investigations be placed in a separate envelope marked: "CAUTION: THIS ENVELOPE CONTAINS GRAPHIC PHOTOGRAPHS. VIEWER DISCRETION WARRANTED." The MARCORCASPROC MAN requires a similar warning if the NOK elect to receive copies of investigative reports containing sensitive or gruesome materials. Said materials must be separated from the investigation and placed in a sealed envelope marked: "CAUTION: THIS ENVELOPE CONTAINS GRAPHIC MATERIALS (INCLUDING PHOTOGRAPHS). VIEWER DISCRETION WARRANTED."

f. Prior to the release of any death investigation to anyone other than NOK, the release authority will coordinate with MRPC, Casualty Branch, (703) 784-9512, to confirm that NOK have been notified of the completed investigation and that they have had the opportunity to request/review a copy of the redacted investigation. Releasing authority will also ensure that NOK are advised that the investigation may soon be released pursuant to a press event, media inquiry or FOIA request. In no circumstance shall a death investigation be released before NOK have an opportunity to review the investigation and NOK are advised that it may soon be released. Before releasing any investigation to the media, the releasing authority, working with MRPC, Casualty Branch, must coordinate with their local public affairs office. For any investigation that may result in local, regional or national media coverage, the releasing authority will ensure that proper coordination has been made with CMC (JAD), (703) 614-2510 CMC (PAM), (703) 614-4309/8010, CMC (OLA), (703) 614-1686/1687, the HQMC FOIA office (ARSF), (703) 614-4008, and any other relevant HQMC department before authorizing release. For any JAGMAN investigation involving an aviation incident, the releasing authority will coordinate with DC, Aviation, (APP), (703) 614-2261/2189/1794, and any other pertinent HQMC department before authorizing release. Releasing authorities are reminded to staff these issues within their respective commands and through the proper chain to ensure all echelons of command are fully informed.

g. Mishap/safety investigation reports. The Commander, Naval Safety Center is the sole release authority for any ground or aviation mishap/safety investigation. Any request for a mishap/safety

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investigation shall be referred to the Naval Safety Center with a copy of the request provided to HQMC, Safety Division, (703) 614-1202/1077/2147, who shall ensure that the appropriate staff offices within HQMC are aware of the request.