



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

MCO 5800.16 CH-2
JA
19 JUN 2020

MARINE CORPS ORDER 5800.16 CH-2

From: Commandant of the Marine Corps
To: Distribution List

Subj: LEGAL SUPPORT AND ADMINISTRATION MANUAL (SHORT TITLE: LSAM)

Ref: (a) 10 U.S.C. §§ 5041-5043
(b) DoD Directive 5100.01 of 21 December 2010
(c) U.S. Navy Regulations
(d) SECNAVINST 5430.7R Ch 2
(e) 10 U.S.C. § 162
(f) SECNAVINST 5430.27E
(g) MCO 5430.2
(h) NAVMC DIR 5210.11E
(i) SECNAVINST 5430.25F
(j) 5 U.S.C. 552a
(k) SECNAVINST 5211.5F
(l) SECNAV M-5210.1 CH-1
(m) MCO 5210.11F

Encl: (1) Listing of Volumes

Report Required: I. Military Issues of Significant Interest and/or High Visibility Report (Report Control Symbol EXEMPT), Volume 16, Chapter 1, paragraph 010502
II. Sexual Assault Disposition Report (SADR) (Report Control Symbol EXEMPT), Volume 16, Chapter 5, paragraph 050206
III. Grant of Permission Report (Report Control Symbol EXEMPT), Volume 16, Chapter 6, paragraph 060704

1. Situation. To transmit new Volume 16 (Military Justice) of the Legal Support and Administration Manual.

2. Mission. To notify all on the distribution list of the new Volume within this Order.

3. Execution. In accordance with the references (a) through (m), policy changes are as follows:

a. Volume 16 is added. This Volume promulgates service standards, policies, and procedures for the provision and functional supervision of military justice within the Marine Corps.

4. Administration and Logistics

a. Distribution Statement A directives issued by CMC are published

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

electronically and can be accessed online via the Marine Corps homepage at <http://www.usmc.mil> and MCPPEL CD-ROM.

b. Additional information, forms, and resources are located at (<http://www.hqmc.marines.mil/sja/UnitHome.aspx>).

a. Records Management. Records created as a result of this Order shall be managed according to National Archives and Records Administration (NARA)-approved dispositions per reference (l) to ensure proper maintenance, use, accessibility and preservation, regardless of format or medium. Records disposition schedules are located on the Department of Navy/Assistant for Administration (DON/AA), Directives and Records Management Division (DRMD) portal page at: <https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/Records-and-Information-Management/Approved%20Record%20Schedules/Forms/AllItems.aspx>. Refer to reference (m) for Marine Corps records management policy and procedures.

b. Privacy Act. Any misuse or unauthorized disclosure of Personally Identifiable Information (PII) may result in both civil and criminal penalties. The Department of the Navy (DON) recognizes that the privacy of an individual is a personal and fundamental right that shall be respected and protected. The DON's need to collect, use, maintain, or disseminate PII about individuals for purposes of discharging its statutory responsibilities shall be balanced against the individuals' right to be protected against unwarranted invasion of privacy. All collection, use, maintenance, or dissemination of PII shall be in accordance with the Privacy Act of 1974, as amended (reference (j)) and implemented per reference (k).

5. Command and Signal

a. Command. This Order is applicable to the Marine Corps Total Force.

b. Signal. This Order is effective the date signed.



D. J. LECCE
Staff Judge Advocate to the
Commandant of the Marine Corps

DISTRIBUTION: PCN 10209190802

Listing of Volumes

VOLUME	TITLE
1	Legal Support Within The Marine Corps
2	Oversight Of The Marine Corps Legal Community
3	Marine Corps Defense Services Organization
4	Marine Corps Victims' Legal Counsel Organization
5	Marine Corps Legal Assistance Program
6	International And Operational Law
7	Ethics
8	Gifts, Civil Litigation, and Claims
9	Dependent Support And Paternity
10	Indebtedness
11	Administrative Separations and Investigations
12	Command Responsibilities in the Provision of Legal Services
13	Compliance with Criminal Court Orders By Marines, Dependents, and Civilian Employees Serving Overseas
14	Enlisted Non-Judicial Punishment Matters and Preparation of the Unit Punishment Book
15	Officer Misconduct and Substandard Performance of Duty
16	Military Justice



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

MCO 5800.16 Ch 1
JA
08 AUG 2018

MARINE CORPS ORDER 5800.16 Ch 1

From: Commandant of the Marine Corps
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Ref: (a) 10 U.S.C. §§ 5041-5043
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(h) NAVMC DIR 5210.11E
(i) SECNAV M-5210.1
(j) SECNAVINST 5430.25E
(k) 5 U.S.C. 552a
(l) SECNAVINST 5211.5E

Encl: (1) Listing of Volumes

1. Situation. Pursuant to references (a) through (d), and consistent with the authority of the unified and specified commanders in reference (e), the Commandant of the Marine Corps (CMC) is directly responsible to the Secretary of the Navy for the well-being, morale, and discipline of the force, to include implementing and administering the Uniform Code of Military Justice. This includes the responsibility, and corresponding authority, to organize and supervise Marine Corps Service-level legal support and administration to assist in the day-to-day operations of the Marine Corps. The provision of legal support and the conduct of unit legal administration within the Marine Corps are decentralized to the extent possible, consistent with Marine Corps doctrine. Due to this decentralization there exists a need for unifying guidance to implement the various legal statutes and regulations that are applicable to the Marine Corps.

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

2. Cancellation. MCO P5800.16A.

3. Mission. To implement references (a) and (d) through (g) and provide the Marine Corps with direction regarding the provision of professional, effective, and efficient legal support and unit legal administration to the Marine Corps Total Force.

4. Execution

a. Commander's Intent and Concept of Operations

(1) Commander's Intent. This Order replaces MCO P5800.16A and provides guidance on the provision of legal support and unit legal administration throughout the Marine Corps.

(2) Concept of Operations. This Order promulgates uniform standards, policies, and procedures for the provision of legal support and unit legal administration in accordance with law, regulation, and policy.

b. Subordinate Element Missions. This Order shall be reviewed and applied by all commands in the provision of legal support and the conduct of unit legal administration.

5. Administration and Logistics

a. Distribution Statement A directives issued by CMC are published electronically and can be accessed online via the Marine Corps homepage at <http://www.usmc.mil> and MCPPEL CD-ROM.

b. Additional information, forms, and resources are located at (<http://www.hqmc.marines.mil/sja/UnitHome.aspx>).

c. Records created as a result of this Order shall be managed according to the National Archives and Records Administration approved dispositions per references (h) and (i) to ensure proper maintenance, use, accessibility and preservation, regardless of format or medium.

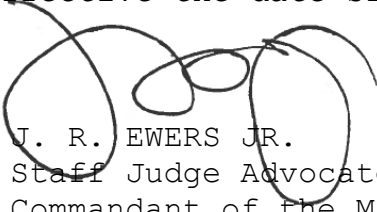
d. Privacy Act. Any misuse or unauthorized disclosure of Personally Identifiable Information (PII) may result in both civil and criminal penalties. The DON recognizes that the privacy of an individual is a personal and fundamental right that shall be respected and protected. The DON's need to collect, use, maintain, or disseminate PII about individuals for

purposes of discharging its statutory responsibilities will be balanced against the individuals' right to be protected against unwarranted invasion of privacy. All collection, use, maintenance, or dissemination of PII will be in accordance with the Privacy Act of 1974, as amended (reference (k)) and implemented per reference (l).

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J. R. EWERS JR.
Staff Judge Advocate to the
Commandant of the Marine Corps

DISTRIBUTION: PCN 10209190801

Listing of Volumes

VOLUME	TITLE
1	Legal Support Within The Marine Corps
2	Oversight Of The Marine Corps Legal Community
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4	Marine Corps Victims' Legal Counsel Organization
5	Marine Corps Legal Assistance Program
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DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
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5800.16
JA
20 FEB 2018

MARINE CORPS ORDER 5800.16

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c. Records created as a result of this Order shall be managed according to the National Archives and Records Administration approved dispositions per references (h) and (i) to ensure proper maintenance, use, accessibility and preservation, regardless of format or medium.

d. This Order does not apply to, nor does it affect the legal support currently provided by General Counsel of the Navy, the Judge Advocate General of the Navy, or the Counsel for the Commandant on behalf of the General Counsel of the Navy.

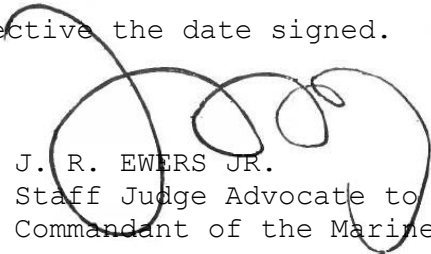
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MCO 5800.16
20 FEB 2018

b. Signal. This Order is effective the date signed.



J. R. EWERS JR.
Staff Judge Advocate to the
Commandant of the Marine Corps

DISTRIBUTION: 10209190800

VOLUME 1

“LEGAL SUPPORT WITHIN THE MARINE CORPS”

SUMMARY OF VOLUME 1 CHANGES

Hyperlinks are denoted by ***bold, italic, blue and underlined font.***

The original publication date of this Marine Corps Order (right header) will not change unless/until a full revision of the MCO has been conducted.

The date denoted by **blue font** (left header) will reflect the date this Volume was last updated.

All Volume changes denoted in **blue font** will reset to black font upon a full revision of this Volume.

VOLUME VERSION	SUMMARY OF CHANGE	ORIGINATION DATE	DATE OF CHANGES
ORIGINAL VOLUME	N/A	DD MMM YYYY	N/A

Submit recommended changes to this Volume, via the proper channels, to:

CMC (JA)
 3000 Marine Corps Pentagon
 Washington, DC 20350-3000

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VOLUME 1: LEGAL SUPPORT WITHIN THE MARINE CORPS

TABLE OF CONTENTS

REFERENCES.....REF-1

CHAPTER 1: STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS AND JUDGE ADVOCATE DIVISION1-3

0101 GENERAL ROLES.....1-3

0102 LEGAL SUPPORT WITHIN HEADQUARTERS MARINE CORPS.....1-3

0103 ORGANIZATION OF JAD.....1-4

CHAPTER 2: COMMAND LEGAL ADVICE AND LEGAL SERVICES2-3

0201 LEGAL SUPPORT2-3

0202 COMMAND LEGAL ADVICE.....2-3

0203 LEGAL SERVICES.....2-3

0204 SUPPORTED-SUPPORTING RELATIONSHIPS.....2-4

0205 LSSS AND LSST CHAIN OF COMMAND2-5

0206 LEGAL SUPPORT TO DEPLOYED MAGTFS2-6

FIGURE 1: LEGAL SERVICES SUPPORT SECTION2-7

REFERENCES

- (a) SECNAVINST 5430.7R
- (b) SECNAVINST 5430.27D
- (c) SECNAVINST 5430.25E
- (d) 10 U.S.C. §§ 806, 1044, 1044e, 1059, 1072, 1565b, 1588, and 5046
- (e) MCO 5430.2
- (f) JAGINST 5803.1E
- (g) Manual for Courts-Martial, (2016 ed.)
- (h) U.S. Navy Regulations, (1990)
- (i) MCO 5800.14
- (j) MCO 1001.62A
- (k) MCO 1200.17E
- (l) JAGINST 5803.2B
- (m) SECNAVINST 1920.6C
- (n) Uniform Code of Military Justice, (2016)
- (o) MCO 1610.7
- (p) MCO 1300.8
- (q) MCO 1000.6
- (r) JAGINST 5800.7F
- (s) SECNAVINST 5211.5E
- (t) 5 U.S.C. §§ 101, 552a, and 3111
- (u) JAGINST 5801.2
- (v) 37 U.S.C. §§ 601-604
- (w) 38 U.S.C. §§ 4301-4334
- (x) DoD Instruction 1205.12
- (y) 31 U.S.C. § 1342
- (z) DoD Instruction 1100.21
- (aa) 8 U.S.C. § 1400
- (bb) Executive Order 13269, (July 3, 2002)
- (cc) DOD Directive 2311.01E
- (dd) MCO 3300.4A
- (ee) DoD Directive 2310.01E
- (ff) DoD Directive 5146.13
- (gg) Executive Order 12333, (December 4, 1981)
- (hh) DoD Directive 5240.01
- (ii) DoD 5240.1-R
- (jj) DoD Instruction 3025.21
- (kk) DoD Instruction 5525.03
- (ll) SECNAVINST 5710.25B
- (mm) 1 U.S.C. § 112b
- (nn) 22 CFR Part 181
- (oo) DoD Directive 5530.3
- (pp) DoD 5500.07-R
- (qq) 18 U.S.C. § 202
- (rr) 5 C.F.R. § 2634

“REFERENCES”

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

The original publication date this MCO (right header) will not change unless/until a full revision of the MCO has been conducted.

The date denoted by **blue font** (left header) will reflect the date these References were last updated as changes/revisions are made within this MCO.

VOLUME 1: CHAPTER 1

**“STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS
AND JUDGE ADVOCATE DIVISION”**

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by *bold, italic, blue and underlined font*.

The original publication date of this Marine Corps Order (MCO) Volume (right header) will not change unless/until a full revision of the MCO has been conducted.

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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CHAPTER 1

STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS
AND JUDGE ADVOCATE DIVISION

0101 GENERAL ROLES

010101. Staff Judge Advocate to the Commandant of the Marine Corps

Pursuant to statute and regulations, the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) is the senior uniformed legal advisor to the Commandant. The SJA to CMC is responsible for overseeing and supervising the provision of legal support within the Marine Corps, as well as the professional responsibility oversight of individual Marine judge advocates, legal administrative officers, legal services specialists, and certain civilian legal support providers. This Order does not address the legal support provided to Marine Corps organizations by Department of the Navy General Counsel (GC) field offices.

010102. Judge Advocate Division Branches

The branches within Judge Advocate Division (JAD) assist the SJA to CMC with the roles and responsibilities that the Secretary of the Navy (SECNAV) and CMC assign.

010103. Applicability

This Order does not apply to, nor does it affect the legal support currently provided by GC of the Navy, the Judge Advocate General of the Navy, or the Counsel for the Commandant (CL) on behalf of the GC of the Navy.

0102 LEGAL SUPPORT WITHIN HEADQUARTERS MARINE CORPS

010201. Roles of the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC)

A. Senior uniformed legal advisor to the Commandant of the Marine Corps (CMC) and Headquarters Marine Corps (HQMC)

The SJA to CMC provides independent legal advice, counsel, and guidance to the CMC and Headquarters Marine Corps (HQMC) staff and agency personnel on any matter under the SJA to CMC's cognizance based on statute or regulation or on any matter that the SJA to CMC determines should be brought to the attention of CMC, HQMC staff, or agency personnel.

B. Director, Judge Advocate Division (JAD)

The SJA to CMC directly supervises and manages JAD and its branches.

C. Functional Proponent

As the functional proponent for command legal advice and legal services, in accordance with MCO 5311.6 the SJA to CMC assists the CMC and relevant functional advocates by identifying capabilities, deficiencies, and solutions related to legal support structure and staffing.

D. Functional Supervision

Functional supervision includes the authority to formulate, promulgate, implement, supervise, inspect, and enforce standards of practice and the use of uniform standards and procedures for the performance of legal support tasks. The SJA to CMC supervises the performance of the following legal support functions: military justice, international and operational law, administrative law, civil law, legal assistance, and legal administration. This authority does not include direction and control of individual judge advocates, legal services specialists, or other legal support providers in the performance of their duties. Direction and control of legal support personnel remains an inherent function and responsibility of the respective commander. Additionally, the SJA to CMC does not exercise functional supervision over judge advocates assigned to the Office of General Counsel.

E. Professional Responsibility Oversight

The SJA to CMC serves as Rules Counsel with the responsibility to exercise professional responsibility oversight over all Marine judge advocates, legal administrative officers, legal service specialists, and those civilian attorneys who practice law under the SJA to CMC's cognizance.

010202. Additional Guidance

See 10 U.S.C. §§ 806, 1044, 1044e, and 5046; SECNAVINST 5430.27D, MCO 5430.2, and JAGINST 5803.1E for additional information regarding the roles and responsibilities of the SJA to CMC.

0103 Organization of Judge Advocate Division (JAD)

010301. Deputy Staff Judge Advocate to the Commandant/Deputy Director, Judge Advocate Division (JAD)

The Deputy Staff Judge Advocate to the Commandant/Deputy Director, JAD (DSJA to CMC/DepDir, HQMC Legal Support) assists the SJA to CMC in performing his duties. The DSJA to CMC/DepDir, HQMC Legal Support is the SJA to CMC's primary deputy and acts in place of the SJA to CMC in his absence. The DSJA to CMC/DepDir, HQMC Legal Support is responsible for the day-to-day operations of JAD. The DSJA to CMC/DepDir, HQMC Legal Support supervises the Administrative Support Branch, Civil and Administrative Law Branch, Military Personnel Law Branch, and the International and Operational Law Branch.

010302. Administrative Support Branch (JAA)

JAA is primarily responsible for managing the internal administrative requirements of JAD, including the JAD Reserve Individual Mobilization Augmentee (IMA) Detachment. These duties include management of awards, civilian and military performance evaluations, JAD accountability and training, files and directives control, law library, budget and fiscal management, travel, and reserve orders preparation. The civilian Executive Assistant and Enlisted Executive Assistant to the SJA to CMC also fall within this branch.

010303. Civil and Administrative Law Branch (JCA)

JCA provides legal review and guidance to the SJA to CMC, HQMC staff agencies, and to the Marine Corps legal community on civil and administrative law matters, to include: processing complaints of wrongs under Article 138, UCMJ, or Article 1150, U.S. Navy Regulations; conducting legal review of administrative investigations and any Department of Defense (DoD), Department of the Navy, or United States Marine Corps issuances; reviewing release of Government records under the Freedom of Information Act or the Privacy Act. JCA assists the SJA to CMC in his role as a Deputy Designated Agency Ethics Official responsible for managing the Marine Corps government ethics program and in his role as Rules Counsel for professional responsibility oversight of Marine judge advocates. JCA also supports the Office of the Judge Advocate General and the U.S. Department of Justice on civil litigation and claims issues affecting the Marine Corps.

010304. Military Personnel Law Branch (JPL)

JPL advises the SJA to CMC, HQMC staff agencies, and the Marine Corps legal community on the full range of military personnel law matters affecting the Active and Reserve Marine components to ensure the provision of timely, efficient, consistent, and appropriate legal advice and support from the SJA to CMC to Deputy Commandant for Manpower and Reserve Affairs (DC M&RA), CMC, and SECNAV. JPL duties include reviewing officer misconduct and substandard performance cases, reviewing selection board precepts and guidance, screening results of selection boards and monthly promotion MARADMINs, processing adverse officer promotion packages, and reviewing enlisted administrative separation packages for cases requiring approval by DC M&RA or SECNAV. In addition, on behalf of the SJA to CMC, JPL provides advisory opinions to the Performance Evaluation Review Board (PERB) and the Board for Correction of Naval Records.

010305. International and Operational Law Branch (JAO)

JAO assists the SJA to CMC in his capacity as the legal advisor to CMC and HQMC on operational law matters. JAO provides operational law support to CMC in his role as both a Service Chief and as a member of the Joint Chiefs of Staff, to HQMC staff agencies, and to Marine judge advocates worldwide. On behalf of the SJA to CMC, JAO maintains HQMC staff cognizance over the operational law function, including legal issues associated with treaty interpretation and compliance, negotiation and conclusion of international agreements, law of war (LOW), detainee operations, rules of engagement, law of the sea, funding of military operations, training and equipping foreign forces, cyberspace law, non-lethal weapons, intelligence activities, and domestic operations. While Deputy Commandant for Plans, Policies and Operations is the primary staff sponsor, JAO is the subject matter expert and manager of the Marine Corps LOW Program and provides support to Marine judge advocates, to include: instruction and guidance, web-based resource and information portal, training materials and reference documents, and after-action reports/legal lessons learned.

010306. Deputy Director, Judge Advocate Division (JAD) (Military Justice and Community Development)

The Deputy Director, JAD (Military Justice and Community Development) (DepDir, MJCD) is responsible to the SJA to CMC for military justice matters and for the legal community planning and development to ensure the Marine Corps provides high-quality legal support across the entire spectrum to commanders, Marines, Sailors, and their families. The DepDir, MJCD oversees the Military Justice Branch; the Community Development, Strategy, and Plans Branch; and the Legal Assistance Branch.

Additionally, the DepDir, MJCD serves as the SJA to CMC in the absence of the SJA to CMC and the DSJA to CMC.

010307. Military Justice Branch

Military Justice Branch contains two sections, the Military Justice Policy and Legislation Section, and the Trial Counsel Assistance Program.

A. Military Justice Policy and Legislation Section

Military Justice Policy and Legislation Section provides military justice advice to the SJA to CMC, CMC, HQMC staff agencies, and the Marine Corps legal community on all military justice policy or legislation matters, informs lawmakers and other federal officials regarding military justice matters, and drafts, reviews, and oversees implementation of military justice-related legislation, regulations, and policy.

B. Trial Counsel Assistance Program

Trial Counsel Assistance Program supports all Marine trial counsel by providing training, advice, and assistance to trial counsel on performing their duties, helping to standardize the trial counsel practice, coordinating training, serving as a helpdesk, providing trial counsel resources, and managing the Marine Corps Victim-Witness Assistance Program in accordance with MCO 5800.14.

010308. Plans & Innovation Branch (JPI)

JPI works in conjunction with the legal community to set standards for legal support providers, manage and develop training and equipment to help the community meet those standards, and create metrics by which those standards can be inspected. JPI is responsible for the following specific functions: (1) performing the long-term strategic planning for the Marine Corps legal community; (2) using lessons learned to propose and draft organizational and doctrinal changes; (3) providing overall coordination of the IT assets and support provided to the legal community; (4) managing both internal and external strategic communications; and (5) coordinating all manpower requirements of legal support providers, both active and reserve.

010309. Information, Plans, and Programs Section (JPI-1)

This section within JPI provides overall management of legal community and Judge Advocate Division information technology activities, operations, and applications. JPI-1 serves as the principal advisor to the SJA to CMC regarding the use of information technology to increase the productivity and efficiency of legal support. JPI-1's primary focus is to ensure successful operation of case management applications for courts-martial, officer misconduct, legal assistance, victims' legal counsel, Disability Evaluation System counsel, and administrative law.

010310. Legal Assistance Branch (JLA)

JLA administers the Marine Corps Legal Assistance Program, provides functional supervision and guidance to Marine legal assistance attorneys and staff, disseminates legal assistance policies and procedures, fosters communication amongst the legal assistance programs, assists JAD with inspecting

the effectiveness of the legal assistance programs, and assists and advises the SJA to CMC on all legal assistance policies, procedures, and related matters.

010311. Deputy Director, Judge Advocate Division (JAD) (Reserve Legal Support)

The Deputy Director, JAD (Reserve Legal Support) (DepDir, RLS) oversees the provision of RLS to the Marine Corps on behalf of the SJA to CMC. The DepDir, RLS is the head of the JAD IMA Detachment and is responsible for oversight of the unit's branches. The DepDir, RLS, in coordination with the JPI Branch, ensures that all JAD IMA billets are filled by the most qualified reserve judge advocates and legal services specialists. The JAD IMA Detachment consolidates IMA judge advocate billets providing legal services within the Marine Corps, and legal support to the Department of the Navy and Department of Defense. Command legal advice billets are located within the supported commanders Reserve structure. The Operational Sponsor (OpSponsor) for the JAD IMA Detachment is located with the JPI Branch and assists the DepDir, RLS in overseeing the provision of RLS to the total force. The specific duties of the OpSponsor are contained in MCO 1001.62A. All members of the JAD IMA Detachment in defense, victims' legal counsel, or judiciary billets receive administrative support from the JAD IMA Detachment and the JAA and JPI Branches, but operate under the supervision of the Chief Defense Counsel; Officer-in-Charge, Victims' Legal Counsel Organization; Chief Judge of the Navy-Marine Corps Trial Judiciary; or the Chief Judge of the Navy-Marine Court of Criminal Appeals, as appropriate.

010312. Chief Defense Counsel of the Marine Corps (CDC)

The CDC is the head of the Marine Corps Defense Services Organization (DSO) and is responsible to the SJA to CMC for the supervision of all Marine defense personnel and the provision of defense counsel services throughout the Marine Corps. The roles and responsibilities of the CDC and the DSO are set forth in Volume 3 of this Order.

010313. Officer-in-Charge, Victims' Legal Counsel Organization (OIC, VLCO)

The Officer-in-Charge, Victims' Legal Counsel Organization (OIC, VLCO) is the head of the VLCO and responsible for the provision of victims' legal counsel services throughout the Marine Corps, as well as the supervision of all personnel assigned to the VLCO. The roles and responsibilities of the OIC, VLCO and other personnel assigned to the VLCO are set forth in Volume 4 of this Order.

010314. Legal Administrative Officer of the Marine Corps (LAO)

The LAO is the senior chief warrant officer in legal administrative officer community and serves as the SJA to CMC's primary advisor on legal administrative matters. The LAO acts as the occupational field manager for legal administrative officers. The LAO advises the SJA to CMC on the adequacy of active and reserve legal administrative officer billets.

010315. Legal Services Chief of the Marine Corps (LSC)

The Legal Services Chief (LSC) acts as the senior enlisted advisor to the SJA to CMC. Through the JPI Branch, he oversees enlisted training and education, assignments, and promotions. The LSC advises the SJA to CMC on the adequacy of active and reserve legal services specialist billets within the T/O.

VOLUME 1: CHAPTER 2

“COMMAND LEGAL ADVICE AND LEGAL SERVICES”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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CHAPTER 2

COMMAND LEGAL ADVICE AND LEGAL SERVICES

0201 LEGAL SUPPORT

Legal support is provided in two forms, command legal advice and legal services. This order does not apply to, nor does it affect, the legal support provided by the GC, JAG, or by CL on behalf of the GC. Generally, Marine judge advocates are only authorized to practice law while serving in legal support billets (44XX BMOS). Questions regarding the authorized practice of law should be directed to the Civil and Administrative Law Branch (JCA) at Judge Advocate Division.

0202 COMMAND LEGAL ADVICE

Command legal advice is that legal advice provided by judge advocates in their role as command advisors, generally while in a command judge advocate billet (e.g., staff judge advocate). Command legal advice informs the commander's decision making process with respect to ensuring good order and discipline, maintaining unit readiness, and accomplishing assigned missions. The provision of command legal advice is a component of command and control. Command legal advice includes that advice required by law and regulation. Command legal advisors are part of a commander's special staff and advise on all matters within their cognizance, including military justice, operational law, administrative law, claims, and ethics. Under 10 U.S.C. § 5046(d)(2), no officer or employee of DoD may interfere with the ability of judge advocates assigned or attached to, or performing duty with, military units to give independent legal advice to commanders. Similarly, under 10 U.S.C. § 806, convening authorities shall at all times communicate directly with their staff judge advocate in matters relating to the administration of military justice. Throughout this order, the term "command legal advice" is used as a term of art, understood to mean the independent legal advice prescribed in 10 U.S.C. § 5046(d)(2).

0203 LEGAL SERVICES

Legal services are those recurring legal support tasks that are executed to implement a commander's decision, sustain the force, and support service members, retirees, and their families. Marine Corps judge advocates and legal support personnel perform legal services support tasks in the following functional areas: military justice, administrative law, operational law, and legal assistance.

020301. Legal Administration

Legal administration is an additional non-substantive legal support functional area that encompasses those tasks and associated capabilities necessary for the internal administration of legal organizations across all substantive functional areas (e.g., budget management, contracting, correspondence, embark, information technology, knowledge management).

020302. Provision of Legal Services

Legal services are provided by judge advocates, legal administrative officers, and legal services specialists through four regional Legal Services Support Sections (LSSSs), nine subordinate Legal Services Support Teams (LSSTs), and subordinate Legal Services Support Detachments established within Marine Corps Installations Command, which provide consolidated legal services in garrison that are beyond the organic capability of a command's legal advisor. Each LSSS provides support to

commands and individual Marines, Sailors, retirees, dependents, and other eligible recipients within its designated Legal Services Support Area (LSSA). Generally, each LSSS's respective LSSA is aligned to an MCI region. Legal services performed by a command legal advisor are limited to those within the organic capability of that command legal advisor's office and ordinarily do not require the establishment of an attorney-client relationship. Legal services required beyond the organic capability of the command legal advisor are provided by LSSTs and LSSSs as combat service support. Legal services provided by the Supporting Establishment in general support of both Supporting Establishment and Operating Forces are a function of general sustainment.

0204 SUPPORTED-SUPPORTING RELATIONSHIPS

Each LSSS and its corresponding subordinate LSSTs will provide general legal services support to all supporting establishment and operating force commands within their respective LSSA, except as otherwise provided below.

020401. Marine Forces Reserve

All Marine Forces Reserve (MARFORRES) units and organizations will receive general support from LSSS National Capital Region (NCR). Each LSSS and its subordinate LSSTs will provide legal services support to MARFORRES units and organizations located within their respective LSSAs when practical and after coordination with LSSS NCR.

020402. Legal Services Support Section (LSSS) Pacific

LSSS Pacific and all of its subordinate LSSTs provide general support to Marine Corps Forces Korea and Marine Corps Forces Pacific. All Western Recruiting Region (WRR) units and organizations within LSSA Pacific will receive general support from LSSS West. When practical, LSSS Pacific will provide legal services to WRR units located in LSSA Pacific after coordination with LSSS West. LSST Okinawa provides direct support to Marine Corps Bases Japan, and the following subordinate installations: Marine Corps Base Camp Butler; Marine Corps Air Station (MCAS) Iwakuni; MCAS Futenma; Combined Arms Training Center, Camp Fuji; and all tenant commands. LSST Kaneohe Bay provides direct support to Marine Corps Bases, Hawaii, and all tenant commands.

020403. Legal Services Support Section (LSSS) East

LSSS East and all of its subordinate LSSTs provide general support to Eastern Recruiting Region (ERR); U.S. Marine Corps Forces, Central Command; U.S. Marine Corps Forces, South (MARFORSOUTH); U.S. Marine Corps Forces, Special Operations Command; Marine Corps Logistics Command; and Marine Corps Security Forces (MCSF) Kings Bay. LSST Lejeune provides direct support to MCB Camp Lejeune, Camp Johnson, MCAS New River, Stone Bay, and all tenant commands. LSST Cherry Point provides direct support to MCAS Cherry Point and all tenant commands. LSST Parris Island provides direct support to Marine Corps Recruit Depot (MCRD) Parris Island, MCAS Beaufort, Marine Corps Support Facility Blount Island, Marine Corps Logistics Base (MCLB) Albany, Marine Aviation Training Support Group-21, Marine Aviation Training Support Group-23, and all tenant commands.

020404. Legal Services Support Section (LSSS) West

LSSS West and all of its subordinate LSSTs provide general support to WRR, Marine Corps Forces Pacific (CONUS), and MCSF Bangor. LSST Pendleton provides direct support to MCB Camp Pendleton and all tenant commands. LSST Miramar provides direct support to MCAS Miramar; MCRD San Diego; MCAS Yuma; and all tenant commands. LSST 29 Palms provides direct support to Marine Air Ground Task Force Training Command (MAGTFTC)/Marine Corps Air Ground Combat Center (MCAGCC); Marine Corps Mountain Warfare Training Center, Bridgeport; MCLB Barstow, and all tenant commands.

020405. Legal Services Support Section (LSSS) National Capital Region (NCR)

LSSS NCR and its subordinate LSST Quantico provide general support to MARFORRES; Marine Corps Forces Command; U.S. Marine Corps Forces, Europe; U.S. Marine Corps Forces, Africa; U.S. Marine Corps Forces, Cyber Command; U.S. Marine Corps Forces, Northern Command (MARFORNORTH); MCSF Norfolk; and Marine Corps Embassy Security Group. All ERR units and organizations within LSSS NCR LSSA will receive general support from LSSS EAST. When practical LSSS NCR will provide legal services support to ERR units located in LSSA NCR after coordination with LSSS East. LSST Quantico provides direct support to MCB Quantico, Marine Barracks Washington, Joint Base Myer-Henderson Hall, their tenant Marine Corps units and organizations, and all Marine Corps units and organizations in the NCR.

020406. Relationships with Navy

LSSS and LSST leadership must foster a close and cooperative relationship with the servicing Navy Region Legal Service Office (RLSO), Navy DSO, and Navy VLCO. An LSSS should not provide legal services in cases that are normally tried by a RLSO unless specifically requested by the convening authority. When such a request is received, the LSSS shall coordinate with the SJA and the supporting RLSO prior to assuming responsibility for the prosecution of the case.

0205 Legal Services Support Section (LSSS) and Legal Services Support Teams (LSST) CHAIN OF COMMAND

The chain of command runs from the LSST OIC up through the LSSS OIC to the respective regional MCI commander. The chain of command is separate from and independent of the local command providing administrative support, the MCI SJA, or any other judge advocate serving in a position responsible for providing command legal advice. The OICs of the LSSSs and LSSTs exercise direction and control over their respective sections and teams, exercising authority derivative of, and delegated down from, the MCI CG's service command authority. This provision does not apply to judge advocates or legal services specialists who are serving in defense billets as members of the DSO and operate under the supervision of the CDC, or who are serving in victims' legal counsel billets operating under the supervision of the OIC, VLCO, in so far as separate relationships are established for fitness reporting, detailing authority, and other aspects of supervision as detailed in Volumes 3 and 4.

0206 LEGAL SUPPORT TO DEPLOYED MAGTFS

Legal support to deployed MAGTFs is task organized based on mission requirements. Legal services personnel are organized within the Marine Expeditionary Force (MEF) for their warfighting mission, which is to provide real-time, decentralized command legal advice to battlefield commanders. The MEF commander has ready, integrated, scalable legal support across the legal functional areas for the entire range of military operations.

020601. Requests for Legal Personnel

The supported unit's cognizant SJA (e.g., MEF SJA, MARFOR SJA, etc.) will conduct legal support planning for operations and exercises, including the preparation of any applicable Legal Annexes/Appendices, estimates of supportability, and proposed augmentation requirements. The LSSS provides personnel to fill validated augmentation requirements for deploying MAGTFs, by either returning Fleet Assistance Program (FAP) personnel in accordance with the applicable FAP MOU, or through global sourcing. The cognizant SJA will coordinate with the respective LSSS OIC in the development of legal support personnel augmentation requirements early in the planning process.

020602. Organization

Operating force tables of organization (T/O) reflect personnel structure for current and emerging mission requirements for the provision of legal support to deployed MAGTFs. Those legal services billets structured in the Marine Logistics Group (MLG) and not resident in the Office of the SJA will be retained on the MLG's T/O to task organize LSSTs for MAGTF operations based on mission requirements; however, while in garrison, those legal services personnel staffed to the MLG shall be assigned via the FAP (Category 1) to the garrison LSSS/LSST. Additionally, some legal services billets are structured in MEF Command Element (CE) and Division Headquarters (HQ) to meet requirements for command legal advice during operational missions and exercises. Similar to the MLG, some Marines staffed to these legal services billets within the MEF CE and Division HQ will be assigned in garrison via the FAP (Category 1) to the garrison LSSS/LSSTs.

020603. Readiness

Those legal services Marines provided to the LSSS/LSST should generally be available for recall and immediate deployment with their operational unit. In those instances when a judge advocate's recall will likely create a professional or ethical conflict for the individual judge advocate or result in a significant degradation of the LSSS/LSST mission, a similarly qualified Category 1 FAP judge advocate may be provided to the operational unit.

Legal Services Support Section

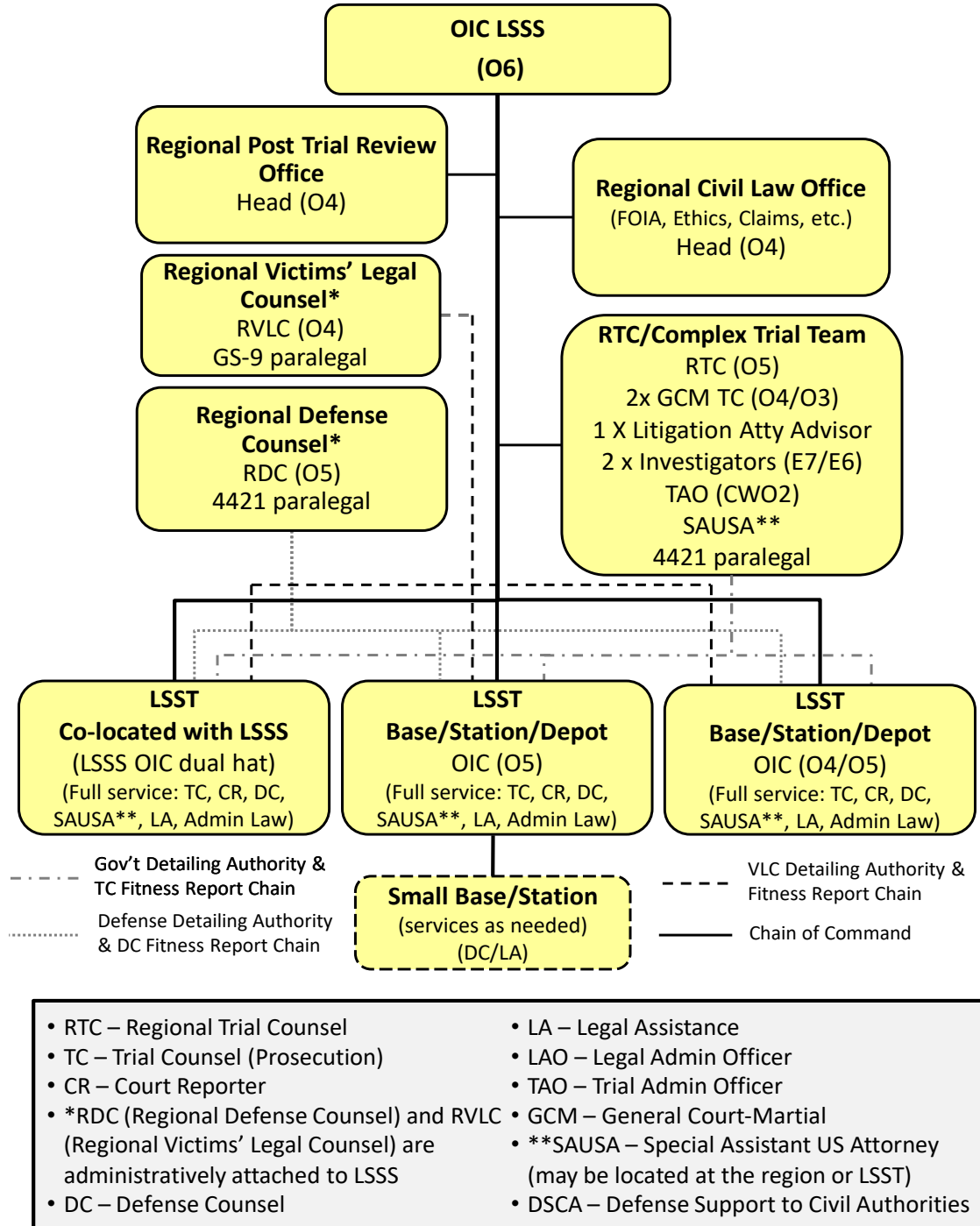


Figure 1

VOLUME 2

“OVERSIGHT OF THE MARINE CORPS LEGAL COMMUNITY”

SUMMARY OF VOLUME 2 CHANGES

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 Washington, DC 20350-3000

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VOLUME 2: OVERSIGHT OF THE MARINE CORPS LEGAL COMMUNITY

TABLE OF CONTENTS

REFERENCES.....REF-1

CHAPTER 1: GENERAL OVERSIGHT PROVISIONS.....1-3

0101 GENERAL1-3

0102 EXERCISE OF FUNCTIONAL SUPERVISION1-3

0103 PROFESSIONAL RESPONSIBILITY OVERSIGHT.....1-3

0104 EVIDENCE OF GOOD STANDING WITH LICENSING AUTHORITY1-3

0105 ASSIGNMENT RECOMMENDATIONS1-4

CHAPTER 2: LEGAL SUPPORT INSPECTION PROGRAM.....2-3

0201 GENERAL2-3

0202 OVERVIEW2-3

0203 OBJECTIVES2-3

0204 RESPONSIBILITIES2-4

CHAPTER 3: LEGAL RESEARCH AND RESOURCE MANAGEMENT3-3

0301 PURPOSE3-3

0302 GENERAL.....3-3

0303 CORE LEGAL REQUIREMENTS.....3-3

0304 LEGAL RESEARCH RESOURCES COORDINATOR RESPONSIBILITIES3-3

0305 LEGAL INFORMATION TECHNOLOGY3-4

CHAPTER 4: COURT REPORTER PROGRAM.....4-3

0401 PURPOSE4-3

0402 BACKGROUND4-3

0403 TRAINING4-3

0404 NOMINEE APPLICATIONS.....4-4

REFERENCES

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

“REFERENCES”

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

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“GENERAL OVERSIGHT PROVISIONS”

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(This page intentionally left blank)

CHAPTER 1

GENERAL OVERSIGHT PROVISIONS

0101 GENERAL

The general roles and authorities of the Staff Judge Advocate (SJA) to Commandant of the Marine Corps (CMC) are described in Volume 1. This Order does not restrict the advice or support provided to the Marine Corps by the Judge Advocate General of the Navy (JAG), or the Counsel for the Commandant (CL) on behalf of the General Counsel of the Navy, in accordance with SECNAVINST 5430.7R, SECNAVINST 5430.25E, and SECNAVINST 5430.27D.

0102 EXERCISE OF FUNCTIONAL SUPERVISION

As described in Volume 1 of this Order and in MCO 5430.2, the SJA to CMC exercises functional supervision over the Marine Corps legal community. The SJA to CMC exercises this supervision through the formulation and implementation of standards of practice and uniform standards and procedures for the performance of legal support tasks, and the conduct of frequent visits to the field to inspect compliance. Chapter 2 of this Volume describes the SJA to CMC's inspection program. The SJA to CMC will generally exercise his functional supervision through SJAs, the Officers-in-Charge of the four regional Legal Services Support Sections Officer in Charge (LSSS OICs), the Chief Defense Counsel (CDC), the OIC of the Victims' Legal Counsel Organization (OIC, VLCO).

0103 PROFESSIONAL RESPONSIBILITY OVERSIGHT

The SJA to CMC, as Rules Counsel, has the responsibility to exercise professional responsibility oversight over all Marine Corps judge advocates and over those civilian attorneys who practice law under the SJA to CMC's cognizance. The SJA to CMC has professional supervisory authority over all active-duty and reserve Marine Corps judge advocates, legal administrative officers, and legal services specialists. This authority stems from SECNAVINST 5430.27D, and JAGINST 5803.1E.

0104 EVIDENCE OF GOOD STANDING WITH LICENSING AUTHORITY

In accordance with JAGINST 5803.1E and JAGINST 5803.2B, all judge advocates, and civilians practicing under the cognizance of the SJA to CMC, shall maintain their "good standing" status at all times with the licensing authority admitting the covered attorney to the practice of law. The requirements of this paragraph do not apply to Marine Corps judge advocates serving as trial or appellate judges.

010401. Proof of Good Standing

All judge advocates, and civilians practicing under the cognizance of the SJA to CMC, are required to provide proof of good standing with their licensing authority every two years.

A. Certification Period

During a year in which good standing certification is required, the certification period will begin 15 January and conclude on 1 April. Proof of good standing must be dated between those dates and is due to Judge Advocate Division (JAD) no later than 1 April. Specific guidance during each reporting year will be provided by MARADMIN.

B. Proof of Good Standing

Covered attorneys admitted to practice law in more than one State need only provide proof of good standing with one State. However, pursuant to JAGINST 5803.1E, covered attorneys are reminded that they are required to immediately report if any jurisdiction in which the attorney is or has been a member in good standing commences a disciplinary investigation or action against him, or if the covered attorney is disciplined, suspended, or disbarred from the practice of law in any jurisdiction.

C. Non-Compliance

Failure of a judge advocate to comply with the requirement to provide proof of good standing may result in professional disciplinary action, loss of certification under Articles 26 or 27 of the Uniform Code of Military Justice (UCMJ), adverse entries in military service records, or processing for administrative separation under SECNAVINST 1920.6C based on the officer's failure to maintain professional qualifications. Failure of a civil service or contracted attorney practicing under the cognizance and supervision of the SJA to CMC to comply with the requirement to provide proof of good standing may result in adverse administrative action under applicable personnel regulations, including termination of employment.

D. Student Judge Advocates

Student judge advocates (MOS 4401) in the Funded Law Education Program and Excess Leave Program (Law) are required to submit either an original letter of good standing or original certificate of admission from their licensing authority to JAD within 30 days of receiving their notification of admission to the practice of law from their licensing authority. Student judge advocates (MOS 4401) in the Officer Candidate Course (Law) Program and Platoon Leaders Class (Law) Program are required to submit either an original letter of good standing or original certificate of admission from their licensing authority to JAD prior to graduation from The Basic School.

E. Authority of Supervisory Judge Advocates

Supervisory judge advocates, as described in JAGINST 5803.1E, may at any time require any officer over whom they exercise supervisory authority to document that he or she continues to be in good standing with that officer's licensing authority.

F. Additional Guidance

Further guidance is provided in JAGINST 5803.1E and JAGINST 5803.2B. Additional guidance will be provided in a biennial MARADMIN.

0105 ASSIGNMENT RECOMMENDATIONS

010501. Authority

Under Article 6, UCMJ, the assignments for duty of Marine Corps judge advocates are made by direction of the CMC. MCO 1300.8 and MCO 1000.6 provide guidance on assigning personnel to duty stations throughout the Marine Corps. In accordance with SECNAVINST 5430.27D and MCO 5430.2, the SJA to CMC advises and makes recommendations to the Deputy Commandant for Manpower and Reserve Affairs (DC M&RA) on the assignment of active duty and reserve 44XX Marines. The Deputy

Director, JAD, Military Justice and Community Development (MJCD), with the assistance of the Community Development, Strategy, and Plans Branch, the Legal Administrative Officer of the Marine Corps, and the Legal Services Chief of the Marine Corps, serves as the primary liaison between DC (M&RA) to express SJA CMC's recommendations.

010502. Assignment Goals

The goals of the SJA to CMC's assignment recommendations are to ensure that the right 44XX Marine is assigned to the right billet, and that there is an appropriate distribution of experienced judge advocates at each duty station. In furtherance of those goals, the SJA to CMC may consider the following criteria when making recommendations to MM: (1) the nature of the billet (e.g., senior trial counsel, staff judge advocate, etc.) and whether it is coded for a particular MOS (e.g., 4405, 4409, etc.); (2) the individual Marine's prior service, including his or her experience in different practice areas; (3) the individual's additional military occupational specialty (e.g., 4405, 4409, etc.), if any; (4) input from the leadership of the gaining units; (5) approximate caseloads at the various LSSS and Teams; and (6) requests for specific 44XX Marines to fill specific billets. The needs of the Marine Corps retain ultimate priority.

VOLUME 2: CHAPTER 2

“LEGAL SUPPORT INSPECTION PROGRAM”

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CHAPTER 2

LEGAL SUPPORT INSPECTION PROGRAM

0201 GENERAL

This section promulgates policy, assigns responsibilities, and establishes procedures to inspect and assess the provision of legal support by the Marine Corps legal community. This section applies to SJA offices, LSSSs, Legal Services Support Teams, Legal Services Support Detachments, and any other office over which the SJA to CMC exercises functional supervision. This section does not apply to offices practicing under the cognizance of the General Counsel of the Navy. No inspections conducted under this section shall inspect the content of privileged files, except as authorized by the JAGINST 5803.1E. An inspection made pursuant to this chapter shall be referred to as a “Legal Support Inspection.”

0202 OVERVIEW

020201. Authority

Legal Support Inspections are conducted under the authority of 10 U.S.C. §§ 806, 1044, 1044e, 5046; SECNAVINST 5430.27D; and MCO 5430.2 in order to assess, assist, and enhance the overall effectiveness of legal support provided throughout the Marine Corps. Legal Support Inspections encompass the full range of legal support provided under the cognizance of the SJA to CMC, to include legal services and command legal advice.

020202. Process

The SJA to CMC will conduct inspections of legal support providers as appropriate. The results of these inspections will, among other things, provide potential Operational Advisory Group research topics for presentation to the Marine Corps Judge Advocate Advisory Board. Through this mechanism, the community continuously evaluates itself in order to improve and adapt to the ever-changing and increasingly complex legal practice.

020203. Relationship to Other Inspections

Legal Support Inspections are not a substitute for assessments or evaluations done by commanders or officers-in-charge, or that may be required by other directives (e.g., Commanding General’s Inspection Program). However, to the extent practicable and advisable, Legal Support Inspections will seek to complement or reinforce other evaluations.

0203 OBJECTIVES

020301. Compliance

Ensure compliance with established laws, regulations, policies, practice advisories, and procedures. The focus of inspections conducted on SJA offices will be limited to regulations, policies, and procedures, and not on the advice provided to their respective commanders.

020302. Quality Control

Verify that the quality of legal support remains consistent and the provision is standardized.

020303. Process Improvement

Identify deficiencies and make recommendations to correct deficiencies. Identify, recognize, and disseminate best practices, and promulgate efficient and effective processes throughout the legal community.

020304. Evaluation

Evaluate judge advocates, legal administrative officers, and legal services specialists in the field, providing an opportunity for discussion on issues affecting legal professionals, and facilitating the SJA to CMC's ability to make informed decisions about their professional development and overall force development within the legal community.

020305. Observation

Observe, firsthand, the challenges facing OICs and SJAs, their staffs, and their commands.

0204 RESPONSIBILITIES

020401. Staff Judge Advocate (SJA) to Commandant of the Marine Corps (CMC)

The SJA to CMC shall: conduct frequent visits to all legal support providers acting under the cognizance of the SJA to CMC; provide a written report on the results of the Legal Services Inspections to the relevant SJAs and OICs who underwent an inspection; and conduct an annual review of the Legal Services Inspection program.

020402. Deputy Director, Judge Advocate Division (JAD), Military Justice and Community Development (MJCD)

The Deputy Director, JAD, MJCD shall: serve as the lead inspector for Legal Services Inspections; identify inspectors to assist in preparing for, conducting, and reporting the results of Legal Services Inspections; ensure that best practices are promulgated throughout the community; and identify areas of practice that should be assessed as part of the Legal Services Inspection process.

020403. Officer in Charge (OIC), Legal Services Support Sections (LSSS) or Staff Judge Advocate (SJA)

The OIC, LSSS or SJA shall provide inspectors full access to all unprivileged records within the control of the inspected legal office and relevant to the areas on the inspection checklist, as well as any records needed to provide a full assessment of the inspected office. If pertinent records are held by other base agencies, the inspected office will work with those agencies to obtain access to the records. Inspectors will be permitted access to classified materials, subject to their possession of the appropriate clearance. Provide a written response of measures taken to correct any deficiencies identified in the Legal Services Inspection report within 60 days. Promulgate approved best practices to their respective LSSTs.

020404. Chief Defense Counsel (CDC)

The CDC shall implement an inspection program within the DSO consistent with statute, regulations, and this section.

020405. Officer in Charge (OIC), Victims' Legal Counsel Organization (VLCO)

The OIC, VLCO shall implement an inspection program within the VLCO consistent with statute, regulations, and this section.

VOLUME 2: CHAPTER 3

“LEGAL RESEARCH AND RESOURCE MANAGEMENT”

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CHAPTER 3

LEGAL RESEARCH AND RESOURCE MANAGEMENT

0301 PURPOSE

To set minimum resource requirements and management responsibilities for Marine Corps legal research resources, computer-assisted legal research (CALR) services, and enterprise legal information technology (IT) systems.

0302 GENERAL

Marine judge advocates, civilian attorneys, legal administrative officers, and legal services specialists require access to adequate legal research resources, CALR services, and enterprise legal IT systems to assist them in providing timely, efficient, and competent legal support.

0303 CORE LEGAL RESEARCH REQUIREMENTS

030301. Legal Services Support Sections (LSSS), Legal Services Support Team (LSST), and Staff Judge Advocate (SJA) Offices

These offices must maintain the core legal resource requirements for the mission of their legal office. A list of the core legal resource requirements is maintained on the Legal Administrative Officer of the Marine Corps (JAD LAO) SharePoint site. The JAD LAO will review and update the core requirements annually. Requests may be submitted to the JAD LAO to add locally-procured “titles” to the core legal resource list. Requests to purchase titles readily accessible at no cost via the internet, or accessible through existing CALR services, will not likely be favorably considered.

030302. Deployable Legal Resource Requirements

Each deployable law library must contain, at a minimum, the items listed on the JAD LAO SharePoint site in the Deployable Law Libraries section. All efforts should be made to minimize the movement of bound or printed materials into the expeditionary environment. Electronic library resources must be organized, legible, and available to all judge advocates and legal services support personnel in the operating theater. All deployed judge advocates and legal services support personnel must also have accounts and passwords for CALR services. Electronic versions of resources, to include those available via CALR, are considered to meet the minimum requirements.

030303. Judge Advocate Division (JAD) Resources

JAD provides CALR accounts to all judge advocates and law offices under the cognizance of the SJA to CMC. In addition, JAD provides print materials to law offices as indicated on the JAD LAO SharePoint site. Requests for JAD purchase of additional resources may be submitted to the JAD LAO for consideration or purchased locally.

0304 LEGAL RESEARCH RESOURCES COORDINATOR RESPONSIBILITIES

Each LSSS and LSST will assign a legal research resources coordinator in writing and provide the name of the assigned individual to the JAD LAO. The legal research resources manager must be in the grade of

corporal or higher and have the appropriate experience, maturity, and temperament for this position of responsibility. This position may also be filled by a civilian.

030401. Legal Resources

The legal research resources coordinator is responsible for tracking, receiving, cataloguing, and distributing all legal research resources for his respective law office. Upon receipt of bound, printed legal resources, the legal research resources coordinator will mark these items as the property of the United States Marine Corps.

030402. Library Management

The legal research resources coordinator is responsible for the general management of the law office library and must ensure proper disposal of materials no longer required, no longer being updated, or clearly outdated (copies of certain outdated materials may be kept for reference).

030403. Annual Inventory

The legal research resources coordinator will conduct an annual inventory of library books during August and submit the results to the JAD LAO by 1 September to assist in making the next fiscal year purchases. Requests to add or delete items on the core law library resources lists maintained by the JAD LAO should be submitted with the annual inventory.

030404. CALR Duties

Legal research resources coordinators are responsible for the local management of CALR services within their respective law office. Specific duties include coordinating training, managing accounts and passwords, notifying the CALR service representative or JAD LAO of personnel changes for purposes of issuing or deactivating passwords, and tracking the law office's CALR usage.

0305 LEGAL INFORMATION TECHNOLOGY

Continuing advancements in IT provide opportunities for the Marine Corps legal community to streamline efforts to achieve greater efficiency and to employ hardware, software, and web-based technologies to further enhance the mission capabilities of Marine Corps legal services. JAD's Information, Plans, and Programs Section (JPI-1) maintains managerial responsibility for the implementation, accreditation, administration, and lifecycle management of "enterprise" legal information systems and applications that are used by the Marine Corps legal community.

030501. JPI-1 Responsibilities

To ensure standardized practice and use of legal IT software, JPI-1 serves as the Marine Corps Legal Functional Area Manager (FAM). As the FAM, JPI-1 is responsible for entering all legal software into the Department of the Navy's Application and Database Management System (DADMS). Accordingly, prior to purchasing any legal software, legal support organizations must first contact and coordinate DADMS entry and approval with JPI-1. JPI-1 personnel will assist with the testing and accreditation of commercial off-the-shelf software when it is found to benefit the entire Marine Corps legal community. Additionally, JPI-1 manages IT assets and software license requirements within the Marine Corps legal community.

030502. Mandatory Use of the Case Management System

JPI-1 manages the Case Management System application, which includes modules for military justice case tracking, Victims' Legal Counsel Services, officer discipline, and legal assistance. The use of CMS modules, or successor systems or applications, as appropriate, is mandatory within the Marine Corps legal community.

VOLUME 2: CHAPTER 4

“COURT REPORTER PROGRAM”

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by *bold, italic, blue and underlined font.*

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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CHAPTER 4

COURT REPORTER PROGRAM

0401 PURPOSE

To set forth information, guidance, and instructions for administering the Marine Corps Legal Services Court Reporter (LSCR) Program for the necessary MOS 4422.

0402 BACKGROUND

040201. Military Justice

The court reporter program spans all three phases of the military justice process: pre-trial, trial, and post-trial. Pre-trial and trial proceedings require court reporters to record the proceedings and to capture the spoken word through speech dictation, also known as voice writing. The post-trial process produces the record of trial necessary for the convening authority's action and subsequent review, to include appellate court review if required.

040202. Administrative

Court reporters may be assigned as the court reporter of record for administrative hearings, such as boards of inquiry, investigations, non-judicial punishments, or other hearings as directed.

0403 TRAINING

Court reporter training consists of intense instruction in English grammar, punctuation, courtroom procedures, production of a record of trial, and real-time capture of the spoken word. Real-time capture is the production of verbatim text, punctuation, and speaker identification immediately after the words are spoken in a military justice or administrative proceeding.

040301. Selection

Each fiscal year, two LSCR courses are held at Naval Justice School, Newport, Rhode Island. JAD will announce course dates and solicit nominees from the legal services specialist (4421) MOS. Upon receipt of all applications, a selection board comprised of JAD members will select those best qualified for participation in the program. JAD will notify commands of selected attendees no later than 30 days prior to any course convening date.

040302. Qualifications

Court reporter qualifications are identified in the Military Occupational Specialties Manual (MCO 1200.17E).

040303. Waivers

Waivers of any of the basic qualifications should be submitted to Plans & Innovation Branch (JPI) of JAD and will be considered on a case-by-case basis.

0404 NOMINEE APPLICATIONS

Applications shall be submitted via the LSSS or LSST Officer-in-Charge to JPI. At a minimum, applications must include a completed court reporter checklist and a completed JPI Quota Submission Form. Letters of recommendation are unnecessary and are discouraged.

VOLUME 3

“MARINE CORPS DEFENSE SERVICES ORGANIZATION”

SUMMARY OF VOLUME 3 CHANGES

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Submit recommended changes to this Volume, via the proper channels, to:

CMC (JA)
 3000 Marine Corps Pentagon
 Washington, DC 20350-3000

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VOLUME 3: MARINE CORPS DEFENSE SERVICES ORGANIZATION

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 PURPOSE1-3

0102 APPLICABILITY.....1-3

0103 GENERAL.....1-3

0104 ATTORNEY-CLIENT RELATIONSHIPS.....1-4

0105 GUIDING PRINCIPLES1-4

0106 PERSONNEL1-5

0107 TOUR LENGTH.....1-11

0108 REASSIGNMENT.....1-12

0109 COLLATERAL DUTIES1-13

0110 DETAILING1-13

0111 REPRESENTATION AT INITIAL REVIEW OFFICER HEARINGS.....1-15

0112 REQUESTS FOR INDIVIDUAL MILITARY COUNSEL.....1-15

0113 PROFESSIONAL RESPONSIBILITY COMPLAINTS.....1-16

0114 MISCONDUCT ALLEGATIONS1-16

0115 ADMINISTRATIVE AND LOGISTICAL SUPPORT.....1-17

0116 PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION1-17

0117 BUDGETING AND FUNDING GUIDANCE.....1-17

0118 GUIDANCE ON REFERRALS TO CIVILIAN DEFENSE COUNSEL1-17

REFERENCES

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

“REFERENCES”

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

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VOLUME 3

“MARINE CORPS DEFENSE SERVICES ORGANIZATION”

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(This page intentionally left blank)

MARINE CORPS DEFENSE SERVICES ORGANIZATION

0101 PURPOSE

This Chapter describes the organization, roles, and responsibilities of the Marine Corps Defense Services Organization (DSO) and its personnel, as a functionally independent organization and as required by law, regulations, and the rules of professional conduct.

0102 APPLICABILITY

This Volume is applicable to: Marine judge advocates assigned duty as Marine defense counsel; civilian attorney advisors; legal services specialists assigned as defense enlisted support personnel; members of the Judge Advocate Reserve Defense Services Branch; and military personnel from other services assigned to the DSO. This Volume does not apply to judge advocates or legal services specialists attached to commands external to the Marine Corps.

0103 GENERAL

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 defense.” This right to counsel has been specifically assigned to service members by Congress through Article 27, Uniform Code of Military Justice (UCMJ), and is 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 5800.7F, 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 Volume, which supplements the JAGMAN, provides Service policy regarding the delivery of defense counsel services within the Marine Corps. The Chief Defense Counsel of the Marine Corps (CDC) also publishes policy, administrative procedures, and standards of practice applicable to judge advocates serving as Marine defense counsel. These documents are available on the DSO website. Where feasible, they are also made available on the DSO public website.

010301. Defense Counsel

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 the DSO. Marine defense counsel serve at locations throughout the Marine Corps and are administratively attached to Legal Services Support Sections (LSSS). However, Marine defense counsel are under the functional supervision of and responsible and accountable to the CDC via the responsible Regional Defense Counsel (RDC) for the delivery of defense counsel services at their respective locations.

010303. Representation

A Marine defense counsel must exhibit unfettered loyalty and professional independence in representing his or her client, and is ultimately responsible for acting in his or her 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 5803.1E).

0104 ATTORNEY-CLIENT RELATIONSHIPS

010401. Establishment

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

010402. Severance

Once established, the attorney-client relationship, whether for a court-martial or administrative separation board, may only be severed under the provisions of R.C.M. 505 and R.C.M. 506 of the UCMJ and the Rules of Professional Conduct. 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 or post-board matters; however, for purposes of paragraph 0108 of this Volume, a Marine defense counsel's tour with the DSO is considered complete when R.C.M. 1105/1106 matters, if applicable, have been submitted for every criminal case to which the defense counsel was detailed and comments on the Report of the Board have been submitted for every officer and enlisted administrative separation board to which the defense counsel was detailed.

0105 GUIDING PRINCIPLES

010501. Functional Independence

In order to be free from either apparent or unlawful pressure or influence, the Marine Corps DSO must not only be functionally independent, but it must appear to the public as functionally independent, and must be treated as functionally independent.

010502. Funding

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

010503. Case-Related Funding

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

010504. Access to Clients

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, confinement facilities, courtrooms, and all other places where clients and counsel must confer in confidence.

010505. Workload

To ensure that a Marine defense counsel's workload is not too 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.

010506. Assignment of Counsel

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

0106 PERSONNEL

Marine Corps Defense Services Organization (DSO). The Marine Corps DSO encompasses all defense counsel and defense support personnel assigned to Marine Corps Commands. The DSO is functionally independent. It operates under the functional supervision of, and is responsible and accountable to, the CDC for the delivery of defense services throughout the Marine Corps.

010601. Chief Defense Counsel of the Marine Corps

Chief Defense Counsel of the Marine Corps (CDC). The CDC is the Officer-in-Charge of the DSO. He exercises functional, day-to-day supervision over personnel assigned to the DSO, and is directly responsible to the Staff Judge Advocate (SJA) to the Commandant for supervision of all Marine defense personnel and the delivery of defense counsel services throughout the Marine Corps. The CDC shall be an experienced judge advocate serving in or selected to the grade of O-6/Colonel. The CDC is assigned in accordance with Article 6, UCMJ. The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) should, when possible, consult with the current CDC and take into consideration the following when selecting a successor CDC: designation with the Additional Military Occupational Specialty (AMOS) of 4409 (criminal law); prior experience as a Defense Counsel (DC), Senior Defense Counsel (SDC), Officer-in-Charge, Defense Counsel Assistance Program (DCAP), and/or Regional Defense Counsel (RDC); significant litigation experience as either a trial or defense counsel or as a military judge.

010602. Assignment of Chief Defense Counsel of the Marine Corps (CDC)

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). This appointment should normally be for no less than two (2) years. The CDC's reporting senior and reviewing officer is the SJA to CMC. The CDC is administratively assigned to Judge Advocate Division (JAD), Headquarters Marine Corps (HQMC) and receives administrative support from HQMC.

010603. Support of Chief Defense Counsel of the Marine Corps (CDC)

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

010604. Chief Defense Counsel of the Marine Corps (CDC) Supervision

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

010605. Specific Chief Defense Counsel of the Marine Corps (CDC) DutiesA. Establishing Policies and Procedures

Establishing standing operating procedures and Standards of Practice for the delivery of defense counsel services throughout the Marine Corps. Establishing policies and procedures to ensure that the internal organization structure of the DSO best facilitates the accomplishment of the DSO mission. Establishing policies to provide proper mentorship and training for all officer and enlisted DSO members.

B. Inspections

Conducting, at a minimum, one site inspection at each LSSS and subordinate LSST annually. On behalf of the SJA to CMC, inspecting at least annually the availability of funds, training opportunities, resources and personnel within each LSSS. Reporting to the SJA to CMC annually regarding the delivery of defense counsel services within the Marine Corps.

C. Performance Observation

Assessing through personal observations, inspections, reports of others, and records reviews, the practice, procedure, and techniques of defense counsel and enlisted support personnel in the performance of defense functions. Monitoring the experience level of judge advocates assigned as defense counsel relative to judge advocates assigned as trial counsel.

D. Facility Assessment

Assessing the adequacy of facilities and assets provided to defense counsel. Establishing and maintaining a JAD CDC/DSO Headquarters Branch, functionally independent of but administratively assigned to and supported by JAD.

E. Detailing

Detailing Marine defense counsel and auxiliary defense counsel to cases consistent with paragraph 0110 of this Volume and JAGMAN section 0130. Making availability determinations for Marine defense counsel to serve as Individual Military Counsel (IMC) consistent with paragraph 0112 of this Volume and JAGMAN section 0131.

F. Assignments

Consulting with JAD in the identification of the DSO leadership, including but not necessarily limited to RDCs, DCAP, and the CDC/DSO Chief.

G. Funding

In coordination with JAD, ensuring the availability of Headquarters-level resources and funds for training.

H. Ethics Complaints

Investigating and resolving all informal ethics complaints made in the case of DSO personnel. Investigating and forwarding all formal ethics complaints to the SJA to CMC.

I. Personal Caseload

The CDC may maintain a personal caseload that does not interfere with the responsibilities otherwise described in this Volume.

010606. Officer-in-Charge, Defense Counsel Assistance Program (DCAP)

DCAP is directly responsible to the CDC for the training and support of the DSO Marines. The OIC, DCAP is a Marine judge advocate, preferably serving in or selected to the grade of O-4/Major with the AMOS of 4409 (criminal law). DCAP is administratively assigned to JAD and receives administrative support from HQMC.

010607. Specific Defense Counsel Assistance Program (DCAP) Duties

A. Planning and coordinating DSO-wide and regional training events to ensure that defense counsel and support personnel receive appropriate training.

B. 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.

C. Providing advice and consulting with defense counsel in the field on pending litigation, either face-to-face, telephonically or through SharePoint.

D. Assessing and reporting to the CDC on the adequacy of support, assets, and facilities provided to defense counsel at their location.

E. Maintaining and updating web-based support, such as the DSO SharePoint site and the DSO public website.

F. DCAP may maintain a caseload that does not interfere with DCAP's responsibilities for training and mentoring personnel within the DSO.

010608. Regional Defense Counsel (RDC)

RDCs are administratively supported by the regional LSSS but are functionally independent of the LSSS. They are under the functional supervision of, and are directly responsible to the CDC for the delivery of defense counsel services within their region. RDCs are assisted by a legal services specialist SNCO.

A. Qualifications

RDCs are Marine judge advocates serving in or selected to the grade of O-5/Lieutenant Colonel, with considerable expertise in military justice matters and will normally possess the AMOS of 4409 (criminal law). They are identified as being qualified for service as an RDC by JAD acting in the capacity of occupational field sponsor, in coordination with and after receiving advice from the CDC.

B. Funding

Funding for administrative and logistical support of RDCs and their support personnel, including travel, per diem, training and continuing legal education in connection with duties described in this Volume, will be provided by the commands to which the RDCs are administratively attached. RDCs are administratively supported by their regional LSSS and assigned through the normal assignment process as follows:

1. National Capital Region. The RDC, National Capital Region and support personnel are administratively attached to Headquarters and Service Battalion, Marine Corps Base, Quantico, with Monitored Command Code TEM.

2. Eastern Region. The RDC, Eastern Region and support personnel are administratively attached to Headquarters Battalion, Marine Corps Base, Camp Lejeune, with Monitored Command Code TEH.

3. Western Region. The RDC, Western Region and support personnel are administratively attached to Headquarters Battalion, Marine Corps Base, Camp Pendleton, with Monitored Command Code TEJ.

4. Pacific Region. The RDC, Pacific Region and support personnel are administratively attached to Headquarters and Support Battalion, Marine Corps Base, Camp Smedley D. Butler, with Monitored Command Code 1FU.

C. Responsibilities

RDCs serve as the supervisory attorney for the SDCs and DCs assigned to their LSSS and their subordinate LSSTs. While assignment of counsel within the LSSS and LSST remains within the purview of the LSSS and LSST OICs, selection of personnel with the qualifications to serve as either Senior Defense Counsel or Defense Counsel is a coordinated effort between the RDC and LSSS OIC. Subject to the approval of the CDC, RDCs organize defense leadership billets in their region to ensure efficient and effective DSO mission accomplishment.

F. Specific Regional Defense Counsel (RDC) Duties

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

2. Conducting, at a minimum, quarterly site visits to each subordinate LSST defense branch.

3. Monitoring defense counsel performance through personal observation, reading records of trial and briefs, and meeting and corresponding with senior judge advocates, military judges, commanders, and Naval Criminal Investigative Service supervisory special agents (NCIS SSA).

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 delegated by the CDC consistent with paragraph 0110 of this Volume.

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 0110 of this Volume.

G. Regional Defense Counsel (RDC) Priorities

An 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.

010609. Senior Defense Counsel (SDC)

An 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 his or her LSSS or LSST. SDCs are Marine judge advocates, preferably serving in or selected to the grade of O-4/Major, normally with the AMOS of 4409 (criminal law), who serve as head of the defense section for the LSST. SDCs will be appointed in writing by the RDC. SDCs are assisted by legal service specialists of appropriate grade and experience assigned by the LSSS or LSST OIC in consultation with the SDC. SDCs are administratively attached to an LSST or LSSS, but are functionally independent of the LSST or LSSS. They are under the functional supervision of and are directly responsible and accountable to their RDC and the CDC for the delivery of defense services by their LSST or LSSS.

010610. Specific Senior Defense Counsel (SDC) Duties

A. Ensuring that defense counsel and enlisted support personnel receive appropriate training.

B. Monitoring defense counsel performance through personal observation, reading records of trial, briefs, motions, and meeting and corresponding with senior judge advocates, military judges, commanders, and NCIS SSAs.

C. Assessing and reporting to the RDC on the adequacy of support, assets, and facilities provided defense counsel at their location.

D. 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 0110 of this Volume.

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

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

010611. 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 an LSSS or LSST, but once assigned to a defense billet in the DSO, they are functionally independent of the LSST or LSSS and remain under the supervision of and are responsible and accountable to his or her SDC, RDC, and the CDC. Defense counsel will be assigned to their duties by the cognizant LSSS OIC or LSST OIC detailing authority in a written memorandum that includes an anticipated end date for their tour as a defense counsel.

010612. Auxiliary Defense Counsel

If needed to meet requirements, the LSSS or LSST OIC may identify a judge advocate that will be available to be detailed by the CDC or his or her designee to be a defense counsel for a particular case. SJA, deputy SJAs, trial counsel, victims' legal counsel, or review officers may not serve as auxiliary defense counsel. As outlined in paragraph 2010.3 of MCO 1610.7, Performance Evaluation System, auxiliary defense counsel concurrently performing non-defense duties may receive simultaneous fitness reports from a member of the DSO to evaluate the auxiliary defense 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.

010613. Student Judge Advocates

Student judge advocates (MOS 4401) may be assigned by the LSSS or LSST OIC to support the LSSS or LSST defense branch in a manner similar to that provided to support the military justice section. Student Judge Advocates may likewise be assigned to augment the CDC/DSO Headquarters Element. While assigned to the DSO, student judge advocates are under the supervision of and responsible and accountable to the DSO. While they may assist in the preparation of cases and are bound by the attorney-client privilege, they may not be detailed to represent clients. With the approval of the military judge, student judge advocates may sit at counsel table.

010614. Enlisted Support Personnel

A defense legal services specialist's primary duties are to assist defense counsel in their representation of Marines and Sailors in courts-martial, administrative boards, and other proceedings and to perform other duties as prescribed by the SDC, DCAP, RDC, or CDC. Defense legal services support specialists are administratively assigned to the LSSS or LSST, but once assigned to a defense billet in the DSO, they are under the supervision of and responsible and accountable to his or her SDC, RDC, and the CDC.

A. Enlisted Support to Chief Defense Counsel

The Office of the Chief Defense Counsel of the Marine Corps/Officer-in-Charge, Defense Services Organization shall be supported by a legal services support specialist in the rank of at least a staff sergeant/E-6 or higher to serve as CDC/DSO Chief. This SNCO should have formal paralegal training and prior experience as an RDC Chief, DSO section chief, defense clerk, or other relevant military justice experience.

B. Duties of the Chief Defense Counsel/Defense Services Office Chief

1. Lead, supervise, train, and support all Marine Corps DSO enlisted personnel.
2. Serve as senior enlisted advisor to the CDC on all matters pertaining to the DSO personnel, to include mentoring and the training of 4421s.
3. Support the four DSO regions and provide litigation support to defense counsel.
4. Serve as the CDC's representative for the DSO Inspection Program, inspecting all DSO office branches at least annually to ensure compliance with the standards set by the CDC are being met.
5. Other duties as required by the CDC.

B. Enlisted Support to Regional Defense Counsel

The Offices of the Regional Defense Counsel shall be supported by a legal services support specialist. This Marine should be in the rank of at least an E-6/Staff Sergeant, normally will have formal paralegal training, have previously served as a DSO section chief, defense clerk, or possess other relevant military justice experience, and will be administratively assigned as described in paragraph 0108 supra.

010615. Judge Advocate Reserve Defense Services Branch

The DSO includes judge advocates who are members of the Reserve Component of the Marine Corps. These Reserve DSO members serve in billets within the Office of the CDC or in the RDC Offices. The most senior-ranking billet for a Reserve Component member of the DSO is Branch Head, Judge Advocate Reserve Defense Services Branch. This billet is held by an O-6/Colonel and is the Reserve counterpart to the Chief Defense Counsel of the Marine Corps. Reserve DSO members may be detailed as respondent's counsel for administrative separation boards and boards of inquiry, but should normally not be detailed to courts-martial. The Reserve DSO members are administratively attached to the Reserve Legal Support Branch at the JAD, Headquarters, Marine Corps. However, these judge advocates are under the functional supervision of and responsible and accountable to the CDC.

0107 TOUR LENGTH

All members of the DSO shall have an established tour length and established rotation date. After consultation with the RDC, the LSSS or LSST OIC will establish an anticipated end date for a Marine's tour with the DSO, which normally will be at least 18 months for defense counsel, SDCs, and DSO

enlisted support personnel. When assigning a Marine to the DSO, the OIC will memorialize the anticipated end of tour date in writing and provide a copy of the assignment letter to the RDC.

010701. The RDC will ensure, as far as practicable, that the agreed upon tour length for a defense counsel coincides with the termination of that defense counsel's duties and responsibilities.

010702. If circumstances arise that require curtailing a defense counsel's tour before the previously established agreed upon end of tour date, the LSSS OIC and RDC shall together establish a new end of tour date.

010703. If the parties cannot mutually agree upon a new end of tour date, the cognizant OIC, shall report, in writing, the circumstances requiring the tour curtailment to the SJA to CMC via the CDC.

010704. A defense counsel tour is not considered to be complete until R.C.M. 1105/1106 and post-board matters have been submitted for every case to which the defense counsel remains detailed and written matters are submitted concerning the reports of administrative separation boards such as Boards of Inquiry or Involuntary Enlisted Administrative Separation Boards.

0108 REASSIGNMENT

The reassignment of any Marine defense counsel requires careful planning and coordination between the RDC and the LSSS OIC. Once a Marine defense counsel is slated for reassignment by the OIC, 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 OIC. If the RDC and the OIC 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.

010801. Reassignment Prior to Completion of Duties

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.

010802. Concurrent Service

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, SAUSA, or a victims' legal counsel on any case.
- B. The deputy SJA or SJA to the convening authority of any case in which the defense counsel is still performing defense counsel duties, including post-trial representation.
- C. The LSST OIC that the defense counsel is assigned to.
- D. Other billets which carry the mantle of command presence and therefore would create a conflict of interest with concurrent service as a defense counsel.

010803. Resolution of Assignment Disputes

Disputes over internal LSSS or LSST assignment or reassignment of DSO personnel will be resolved at the lowest possible level. Those disputes which cannot be resolved through the cooperative effort of the RDC and LSSS OIC will be adjudicated by the SJA to CMC, after consultation with the CDC.

0109 COLLATERAL DUTIES

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

0110 DETAILING

011001. Chief Defense Counsel of the Marine Corps (CDC) Detailing Authority

The CDC is the detailing authority for all judge advocates assigned to the DSO and auxiliary 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. With the consent of the SJA to CMC, the CDC may detail himself or herself to a case. The CDC is authorized to detail, or to delegate detailing authority, to assign

counsel in certain officer and E8 and above cases pending investigation under Chapter 2, JAGINST 5800.7F or under investigation by an Inspector General.

011002. Detailing Considerations

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 expected location of the hearing 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 defense counsel's training and education requirements. The detailing of assistant defense counsel to contested and/or complex cases is encouraged.

011003. Detailing Responsibilities

When detailing a defense counsel to a particular case, the detailing authority shall ensure that:

- A. Standard detailing criteria are used.
- B. The needs of the local commands are taken into consideration.
- C. Every accused receives zealous representation by a fully qualified counsel.
- D. Every accused is detailed counsel in a timely manner.

011004. Detailing Timeline

The responsible detailing authority shall detail a defense counsel in writing to a particular case as soon as practicable. Absent good cause, the detailing authority shall detail a defense counsel within:

- 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 notice of the appointment of an Article 32, UCMJ, Investigating Officer.
- D. Five days of being served an administrative separation/board of inquiry package.
- E. As otherwise required by law or regulation.

011005. Detailing Memorandum

The detailing authority will provide a copy of the detailing memorandum to the appropriate representative of the client's command and the cognizant prosecution section.

011006. Regional Defense Counsel (RDC) Detailing Authority

If delegated the authority, RDCs may detail defense counsel assigned to their regions, except themselves, to cases supported by their LSSS.

011007. Senior Defense Counsel (SDC) Detailing Authority

If delegated the authority, SDCs may only detail counsel assigned to their LSST, including themselves, to cases supported by their LSST or an element thereof either because of geography or a specific request for legal services. However, SDCs who write fitness reports on subordinate counsel may not detail themselves to cases that involve clients with a conflict of interest with clients of a defense counsel for whom the SDC is the reporting senior.

011008. Special Detailing Cases

Defense counsel are normally only detailed to represent an accused assigned to an organization that is supported by that defense counsel's LSST either as a consequence of geography or through a specific request for legal services. However, a defense counsel may be detailed to represent an accused assigned to an organization that is not normally supported by the defense counsel's LSST on a case-by-case basis. Factors that may necessitate such a detailing include, but are not limited to, the following: unique requirements of the case; supporting units and organizations without defense counsel; conflict-of-interest cases; gaps in defense counsel coverage; and savings by using a counsel from another location. If such detailing decisions will result in non-local travel costs as defined by the Joint Federal Travel Regulations beyond those implicit in the request for legal services, then prior to detailing a defense counsel to the case, the authorized detailing authority shall get approval from the Convening Authority (CA) or his or her SJA for travel costs associated with that detailing decision. If the CA will not agree to fund the non-local travel costs associated with the detailing decision the issue will be forwarded to the CDC for resolution. If the CDC cannot resolve the funding issue, it will be forwarded to the SJA to CMC for final decision.

0111 REPRESENTATION AT INITIAL REVIEW OFFICER HEARINGS

Unless the accused has previously been detailed a defense counsel, the responsible detailing authority shall ensure a defense counsel is assigned to represent Marines and Sailors at Initial Review Officer (IRO) Hearings conducted under R.C.M. 305. The defense counsel need not be assigned to the LSST that normally supports the command to which the accused is assigned and may instead come from the LSST closest to the confinement facility or by another Service's defense organization as approved by the RDC. A defense counsel's representation at an IRO hearing is a limited attorney-client relationship related solely to that hearing and does not create an attorney-client relationship for any other purpose or create an entitlement that the accused later be detailed the counsel who represented him or her at this hearing.

0112 REQUESTS FOR INDIVIDUAL MILITARY COUNSEL (IMC)

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

011201. Determining Authority for Individual Military Counsel (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 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 and DCAP. For IMC availability purposes, an RDC's organization encompasses the Legal Services Support Area of the LSST assigned, not the unit the RDC is administratively assigned. The DCAP OIC's organization is the DSO, not the unit to which the DCAP OIC is administratively assigned.

D. If delegated the authority, RDCs are determining authorities on IMC requests for SDCs and defense counsel assigned to their LSSS and subordinate LSSTs. For IMC availability purposes, an SDC or defense counsel's organization is the LSSS or LSST assigned and the location of the units supported from that location, not the units to which the SDC or DC is administratively assigned.

E. The determining authority for IMC requests for judge advocates not assigned to the DSO, including auxiliary defense counsel with active defense cases, is that judge advocate's OIC or commanding officer (CO).

011202. 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.

011203. Administrative Review and Appeal of Individual Military Counsel 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 an RDC, the CDC is the immediate superior in command for administrative review and appeal.

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

0113 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 judge advocates performing duties as 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 (JCA) for resolution in accordance with any applicable CDC policy memos in effect.

0114 MISCONDUCT ALLEGATIONS

Allegations of misconduct (other than professional responsibility complaints) concerning members of the DSO will be investigated and resolved through the administrative chain of command. Except in those cases where disclosure may jeopardize ongoing sensitive police operations, the responsible LSSS OIC shall immediately notify the responsible RDC and CDC in any case where a member of the DSO is suspected of any offense, and shall keep the RDC and CDC apprised of ongoing case developments. In cases where sensitive police operations are ongoing, notification shall be made as soon as doing so no longer hazards the investigation.

0115 ADMINISTRATIVE AND LOGISTICAL SUPPORT

Cognizant commands will provide personnel, administrative, and logistical support, commensurate with mission requirements, to defense sections equitably with that provided to military justice sections. Absent a judicial order to the contrary, nothing in this paragraph shall be construed to establish a requirement for assignment of investigators to the DSO on a permanent basis.

0116 PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

Defense counsel will ensure that all personally identifiable information (PII) is properly handled, redacted, and disposed of in accordance with SECNAVINST 5211.5E, the Privacy Act, 5 U.S.C. § 552a, paragraph 0141a of JAGINST 5800.7F, this Volume, and any policies or procedures established by the CDC, USMC/OIC, DSO to prevent the unlawful or unauthorized disclosure of PII. All PII provided to defense counsel during discovery is provided pursuant to the Official Use exception of the Privacy Act and SECNAVINST 5211.5, which is not applicable to defense clients. While a defense counsel may discuss information with includes PII with a client when necessary for the preparation of the client's case, under no circumstances shall a defense counsel allow a client to copy or otherwise maintain PII.

0117 BUDGETING AND FUNDING GUIDANCE

Funding to support the defense function should be provided equitably with command funding provided to support the prosecution function. Funding for administrative and logistical support and training expenses for RDCs, SDCs, DCs, and their support personnel will be provided by local commands or LSSS/LSST to which they are administratively attached, as available. All case-related expenses shall be provided by the convening authority, as required by JAGMAN section 0145.

0118 GUIDANCE ON REFERRALS TO CIVILIAN DEFENSE COUNSEL

011801. Acceptable Practices

Marines retain the right to be represented by counsel of their choice, including civilian defense counsel hired at no expense to the United States Government. Marines periodically request advice or referrals from their detailed or IMC for private, non-governmental defense counsel representation. DSO attorneys are obligated to honestly answer any and all questions posed to them by their clients, but will typically avoid recommending to a client which attorney among a group of two or more the client should select. When asked for advice, DSO attorneys may answer specific questions about civilian attorneys, but shall make clear that any information they provide does not reflect any Federal, Department of the Navy, or Marine Corps endorsement of that attorney. Clients will be advised to consult publically available resources such as attorney referral services, local bar and state association web sites, etc. when making their decision.

011802. Prohibited Practices

DSO Branch Offices shall not maintain a list of private attorneys for purposes of referral. Reserve judge advocates serving in any defense counsel capacity are prohibited from soliciting or receiving fees or compensation for the same matter about which they consulted with or advised a DSO client. Nothing in this section prevents or interferes with an attorney's ability to provide free, unfettered, and independent advice to individual clients consistent with this Volume.

VOLUME 4

“MARINE CORPS VICTIMS’ LEGAL COUNSEL ORGANIZATION”

SUMMARY OF VOLUME 4 CHANGES

Hyperlinks are denoted by *[bold, italic, blue and underlined font.](#)*

The original publication date of this Marine Corps Order (right header) will not change unless/until a full revision of the MCO has been conducted.

The date denoted by *blue font* (left header) will reflect the date this Volume was last updated.

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Submit recommended changes to this Volume, via the proper channels, to:

CMC (JA)
 3000 Marine Corps Pentagon
 Washington, DC 20350-3000

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VOLUME 4: MARINE CORPS VICTIMS’ LEGAL COUNSEL ORGANIZATION

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 PURPOSE 1-3

0102 GENERAL 1-3

0103 ORGANIZATION AND PERSONNEL 1-4

0104 ELIGIBILITY 1-10

0105 SCOPE OF SERVICES 1-10

0106 ATTORNEY-CLIENT RELATIONSHIP 1-12

0107 DETAILING 1-14

0108 TOUR LENGTH..... 1-16

0109 REASSIGNMENT 1-16

0110 REQUEST FOR INDIVIDUAL MILITARY COUNSEL 1-17

0111 COLLATERAL DUTIES 1-18

0112 PROFESSIONAL RESPONSIBILITY 1-18

0113 ADMINISTRATIVE AND LOGISTICAL SUPPORT 1-18

0114 BUDGETING AND FUNDING GUIDANCE..... 1-18

0115 APPLICABILITY 1-18

REFERENCES

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

“REFERENCES”

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

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VOLUME 4

“MARINE CORPS VICTIMS’ LEGAL COUNSEL ORGANIZATION”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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MARINE CORPS VICTIMS' LEGAL COUNSEL ORGANIZATION

0101 PURPOSE

The purpose of this Volume is to describe the organization, roles, and responsibilities of the Marine Corps Victims' Legal Counsel Organization (VLCO), as provided for in law, regulations, and rules of professional conduct.

0102 GENERAL

010201. Purpose of Victims' Legal Counsel Organization (VLCO)

Victims' legal services are provided to eligible service members and dependents who are victims of sexual assault and other crimes in accordance with 10 U.S.C. §§ 1044, 1044e and 1565b. This Volume, which implements these statutes as they relate to victims of crime, provides Service policy regarding the delivery of victims' legal services within the Marine Corps. The Officer in Charge of the VLCO (OIC, VLCO) will publish further policy and administrative procedures applicable to Marine judge advocates serving as Victims' Legal Counsel (VLC).

010202. Supervision

Marine Corps victims' legal services are performed under the supervision of the OIC, VLCO and provided by commissioned officers who are licensed attorneys, certified under Article 27(b) and sworn under Article 42(a) of the Uniform Code of Military Justice (UCMJ), assigned to VLCO billets, and certified by the Judge Advocate General of the Navy in accordance with 10 U.S.C. § 1044e as qualified to serve as VLC. Marine VLC serve at locations throughout the Marine Corps and are administratively attached to Legal Services Support Sections (LSSS). However, Marine VLC are under the functional supervision of, and responsible and accountable to, the OIC, VLCO and the responsible Regional Victims' Legal Counsel (RVLC) for the delivery of victims' legal services within their respective regions.

010203. Duty

A Marine VLC must exhibit unfettered loyalty and professional independence in representing his or her client, and is ultimately responsible for acting in the client's best interest. A Marine VLC's primary duty is to provide zealous, ethical, and effective representation to Marines and other eligible clients. This duty is limited only by law, regulation, and the Rules of Professional Conduct (JAGINST 5803.1E).

010204. Other Resources

Victims' legal services supplement, but do not replace, other victim services such as the Family Advocacy Program (FAP), the Sexual Assault Prevention and Response (SAPR) program, victim advocates (VAs), the victim-witness assistance program (VWAP), and services provided by chaplains and medical personnel.

010205. Guiding Principles

A. Independence

The Marine Corps VLCO and all VLC must be independent of unlawful pressure or influence.

B. General Funding

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 services provided by Victims' Legal Counsel, defense counsel, and trial counsel with respect to the following: access to resources, capabilities, and facilities; seats at continuing legal education courses; training funds; and support staff.

C. Case Specific Funding

Requests for specific case-related funding submitted to the convening authority shall be considered and processed consistent with the Manual for Courts-Martial, the Manual of the Judge Advocate General (JAGMAN), and other applicable authorities.

D. Client Access

Marine VLC 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, confinement facilities, in the vicinity of the courtroom, and all other places where clients and counsel must confer in confidence.

E. Workload and Client Obligations

To ensure that a Marine VLC's workload is not too 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. Victims' Legal Counsel Experience and Qualification

A Marine VLC'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.

0103 ORGANIZATION AND PERSONNEL

010301. Marine Corps Victims' Legal Counsel Organization (VLCO)

The Marine Corps VLCO encompasses all VLC and VLCO support personnel assigned to Marine Corps commands. The VLCO operates under the supervision of, and is responsible and accountable to the OIC, VLCO for the delivery of victims' legal services throughout the Marine Corps. For purposes of this Volume, "supervision" includes professional responsibility oversight, VLC specific training, assignment of VLC to particular cases, and execution of the day-to-day operations of the VLCO. All judge advocates and support personnel nominated to serve in VLCO billets must meet the requirements provided below and satisfy sensitive position screening criteria.

010302. Officer in Charge, Victims' Legal Counsel Organization (OIC, VLCO)

The OIC, VLCO is the head of the VLCO and responsible for supervision of all assigned personnel and the delivery of victims' legal services throughout the Marine Corps.

A. Officer in Charge, Victims' Legal Counsel Organization (OIC, VLCO)

Qualifications

The OIC, VLCO shall be an experienced judge advocate serving in or selected to the grade of O-6/Colonel. The SJA to CMC should, when possible, consult with the current OIC, VLCO and take into consideration the following when selecting the next OIC, VLCO:

1. Additional Military Occupational Specialty (AMOS). Designation with the Additional Military Occupational Specialty (AMOS) of 4409 (criminal law).

2. Military Justice Experience. Prior military justice experience, particularly litigation experience as a trial counsel, defense counsel, victims' legal counsel, or a military judge.

B. Appointment

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

C. Assignment

The OIC, VLCO is assigned to Judge Advocate Division, Headquarters Marine Corps (HQMC) and receives administrative support from HQMC.

D. Support Personnel

The OIC, VLCO is supported by a Deputy OIC and civilian paralegal specialist.

E. Supervision

The OIC, VLCO serves as the supervisory attorney for the Deputy OIC, RVLC and VLC.

F. Specific Duties

Specific OIC, VLCO duties include, but are not limited to:

1. Establishing standing operating procedures for the delivery of victims' legal services throughout the Marine Corps.

2. Conducting, at a minimum, one site inspection at each VLC office annually.

3. Assessing through personal observations, inspections, reports of others, and records reviews, the practice, procedure, and techniques of VLCs and support personnel in the performance of victims' legal counsel functions.

4. Assessing the adequacy of facilities and assets provided to VLC.
5. Supervising the training of VLC, and ensuring each VLC is certified by the Judge Advocate General of the Navy in accordance with 10 U.S.C. § 1044e.
6. Monitoring the experience levels of judge advocates assigned as VLC relative to judge advocates assigned as trial counsel or defense counsel.
7. Reporting to the SJA to CMC annually regarding the delivery of victims' legal services within the Marine Corps.
8. Detailing VLC and Auxiliary VLC to cases consistent with paragraph 0107 of this Volume.
9. Ensuring that the organizational structure of the VLCO is sufficient to accomplish the VLCO mission.

010303. Deputy Officer in Charge, Victims' Legal Counsel Organization (Deputy OIC, VLCO).

The Deputy OIC assists the OIC, VLCO in exercising his or her responsibilities for the supervision of all assigned personnel and the delivery of victims' legal services throughout the Marine Corps.

A. Deputy Officer in Charge, Victims' Legal Counsel Organization (OIC, VLCO)
Qualifications

The Deputy OIC, VLCO shall be a judge advocate serving in the grade of O-4/Major, or O-5/Lieutenant Colonel, with expertise in military justice matters, to include experience in at least one contested complex case, six months or more of military justice experience, and will normally possess the NMOS of 4409 (criminal law), unless waived by the OIC, VLCO.

B. Specific Duties

Specific Deputy OIC, VLCO duties include, but are not limited to:

1. Acting as the OIC, VLCO in the OIC's absence.
2. Ensuring compliance with policies and standing operating procedures issued by the OIC, VLCO.
3. Monitoring the performance of RVLC and VLC and advising the OIC, VLCO of such observations, as well as recommending modifications to VLCO policies and standing operating procedures.
4. Training, mentoring, and supervising the civilian paralegal specialist assigned to the VLCO headquarters element.

5. Assessing the adequacy of facilities and assets provided to VLC and reporting findings to the OIC, VLCO.

6. Attending appropriate meetings of Department of Defense, Department of the Navy, HQMC, and other organizations on behalf of the OIC, VLCO as directed.

7. Coordinating with external agencies as necessary to accomplish the mission of the VLCO.

8. Providing legal advice and assistance to the RVLC, VLC, and support staff throughout the Marine Corps.

9. Maintaining and updating web-based support, including the VLCO SharePoint site and VLCO case management system.

10. Providing legal advice and representation to clients when detailed by the OIC, VLCO.

010304. Regional Victims' Legal Counsel (RVLC).

A RVLC is directly responsible to the OIC, VLCO for the delivery of victims' legal services within a region. There will be one RVLC assigned to each LSSS whose region corresponds to the LSSS Legal Services Support Area. A legal services specialist or civilian paralegal specialist with prior criminal law experience is assigned to each RVLC office.

A. Regional Victims' Legal Counsel (RVLC) Qualifications

RVLC are Marine judge advocates serving in or selected to the grade of O-4/Major, who normally have at least two years combined experience as a trial counsel or defense counsel or military judge, to include experience in at least one contested general court-martial case, and will normally possess the NMOS of 4409 (criminal law).

B. Reporting Relationships

RVLC are administratively attached to the LSSS, but are responsible and accountable to the OIC, VLCO for the delivery of victims' legal services in their region.

C. Supervisory Responsibility

RVLC serve as the supervisory attorney within their assigned region, and are responsible for the training, mentoring, and supervision of all VLCO judge advocates and support personnel within it.

D. Victims' Legal Counsel (VLC) Assignment

RVLC coordinate with the Officers in Charge of the LSSS and LSST in the assignment of judge advocates as VLC and auxiliary VLC.

E. Specific Duties

Specific RVLC duties include, but are not limited to:

1. Supervising and monitoring the performance of subordinate VLC through personal observation, reading records of trial and briefs, and meeting and corresponding with senior judge advocates, military judges, sexual assault response coordinators (SARCs), and VAs.
2. Detailing VLC within their region, provided that authority has been delegated by the OIC, VLCO consistent with paragraph 0107 of this Volume.
3. Providing legal counsel and representation to victim clients. The RVLC's case load should not interfere with the RVLC's responsibilities for training, mentoring, and supervising personnel within the region.
4. Assessing and reporting to the OIC, VLCO on the adequacy of support, assets, and facilities provided to VLC offices within the region.
5. Conducting site visits to subordinate VLCO offices within the region and to supported military installations. The frequency of visits required will vary, but at a minimum should be conducted at least twice per year to each subordinate office and annually to supported commands.
6. Coordinating with local agencies and individuals, including the SARC and VAs, to ensure the efficient and effective delivery of victims' legal services.
7. Coordinating with local commands to ensure that VLC and support personnel receive appropriate training.

010305. Victims' Legal Counsel (VLC).

A VLC is directly responsible to the RVLC and OIC, VLCO for the delivery of victims' legal services in support of eligible victims serviced by their LSST or an element thereof.

A. Victims' Legal Counsel (VLC) Qualifications

VLC are Marine judge advocates, serving in or selected to the grade of O-3/Captain, preferably with six months or more military justice experience and at least one contested case.

B. Reporting Relationships

VLC are administratively attached to the LSST, but are responsible and accountable to their RVLC and the OIC, VLCO for the delivery of victims' legal services by their LSST.

C. Duties

A VLC's primary duties are to advise and represent victims as required by law, regulation, and policies and procedures issued by the OIC, VLCO. VLC also perform other duties as prescribed by the RVLC or OIC, VLCO.

010306. Auxiliary Victims' Legal Counsel (AVLC)

A. Selection

The OIC of each LSSS and LSST shall nominate a judge advocate available to serve as an Auxiliary Victims' Legal Counsel (AVLC). The AVLC may be detailed by the OIC, VLCO as needed to meet high caseloads or to serve when there is a conflict of interest.

B. Auxiliary Victims' Legal Counsel (AVLC) Qualifications

AVLC must possess at least six months military justice experience and satisfy sensitive selection screening criteria. Staff judge advocates, deputy staff judge advocates, trial counsel, defense counsel, or review officers may not serve as AVLC.

C. Auxiliary Victims' Legal Counsel (AVLC) Client Representation

AVLC who are assigned victim clients may simultaneously continue to serve in their primary billet, but shall in all cases avoid conflicts of interest. When assigned a case, the AVLC remains administratively assigned to their respective LSSS or LSST, but becomes supervised by and accountable to the RVLC and OIC, VLCO for victims' legal matters.

D. Auxiliary Victims' Legal Counsel (AVLC) Performance Evaluation

AVLC concurrently performing VLC and non-VLC duties should ordinarily receive simultaneous fitness reports, as provided in paragraph 2010.3 of MCO 1610.7, Performance Evaluation System. The respective RVLC may determine that a simultaneous VLC fitness report is unnecessary where the AVLC did not serve sufficient time performing VLC duties during the reporting period.

010307. Support Personnel

A. Duties

The primary duty of civilian paralegal specialists and enlisted legal services specialists (MOS 4421) assigned to VLCO is to support the VLCO mission by assisting VLC, RVLC, and the OIC, VLCO in the performance of their duties. Support personnel must ensure strict confidentiality of all VLCO matters.

B. Reporting Relationships

VLCO support personnel are administratively assigned to the LSST, but once assigned to a VLCO billet, they are responsible and accountable to his or her supervising VLC, RVLC, and the OIC, VLCO.

C. Civilian Paralegal

One civilian paralegal specialist shall be assigned to assist the OIC, VLCO.

D. Regional Victims' Legal Counsel (RVLC) Support Personnel

One civilian paralegal specialist or enlisted legal services specialist in the rank of E-5/Sergeant, shall be assigned at each RVLC office, and one civilian paralegal specialist, or enlisted legal services specialist in the rank of E-4/Corporal, shall be assigned to other VLCO offices.

010308. Reserve Support

Victims' Legal Counsel Organization Branch augments the active duty structure and provides surge capability to meet increases in demand for VLCO services, as well as the ability to handle conflicts of interest.

010309. Sensitive Screening Process

The Secretary of Defense requires there be a "sensitive screening process" for "sensitive positions" within all the Services. Individuals considered for such positions must undergo an "enhanced screening" process before being selected. VLC assignments are "sensitive positions." The sensitive screening process for a judge advocate nominated to assume the assignment of a VLC will, at a minimum, consist of a review of judge advocate's Official Military Personnel File to determine appropriate experience and temperament. Further, an individual that has a conviction for, a substantiated incident of, or is currently facing an open investigation into any of the following offenses is expressly prohibited from serving as a VLC: (1) sexual assault, (2) domestic violence, (3) child abuse, or (4) any other felony-level offense.

0104 ELIGIBILITY

Victims of sexual assault and other crimes under the UCMJ may seek assistance from a VLC as permitted by 10 U.S.C. §§ 1044, 1044e, and 1565b, the Manual of the Judge Advocate General (JAGINST 5800.7F (JAGMAN)), and pursuant to guidance published by the OIC, VLCO. Approval authority may be delegated and exercised in accordance with policy and procedures published by OIC, VLCO.

010401. Victim Definition

A victim is a person who alleges to have suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime in violation of the UCMJ.

010402. Appointment of Representative

In the case of a victim who is incompetent, incapacitated, deceased, or a non-service member under 18 years of age, the convening authority may, and the military judge shall, appoint a representative to assume the victim's rights under Article 6b, UCMJ. When a representative is appointed, the victim remains the VLC's client per Rule 1.14 of JAGINST 5803.1E. However, because the representative is appointed to make decisions on behalf of the victim, all communications among the representative, victim, and detailed VLC are privileged pursuant to M.R.E 502 and the representative is further covered by Rule 4.2 of JAGINST 5803.1E.

010403. Notification Requirement

Pursuant to 10 U.S.C. § 1565b, all eligible victims shall be informed of the right to, and when a victim so elects, the opportunity to consult with a VLC as soon as the member or dependent seeks

assistance from a SARC, SAPR or FAP VA, military criminal investigator, victim-witness liaison or coordinator, or trial counsel.

0105 SCOPE OF SERVICES

010501. Legal Counseling and Advice

VLC will provide confidential legal counseling and advice to eligible victims, including, but not limited to the following topics:

A. Other Services

VWAP, SAPR program, and FAP, including the rights and benefits afforded the victim (including those under 10 U.S.C. § 1565b), the role of the victim advocate and what privileges do or do not exist between the victim and the victim advocate, and the nature of the communication made to the victim advocate as opposed to those made to VLC.

B. Report Types

The differences between restricted and unrestricted types of reporting in sexual assault cases.

C. Military Justice System

Information concerning the military justice system, including the roles and responsibilities of the convening authority, trial counsel, defense counsel, and investigators, and applicable Military Rules of Evidence (MRE), to include MRE 412, 513, and 514.

D. Testimony

The ability of the government to compel testimony.

E. Counseling and Medical Services

The services available from appropriate agencies or offices for emotional and mental health counseling and other medical services.

F. Protective Orders

The availability of and protections offered by military protective orders and civilian restraining orders.

G. Transitional Compensation

Eligibility for and benefits potentially available as part of the transitional compensation benefits established in 10 U.S.C. § 1059 and in other State and federal victims' compensation programs. VLC will assist victims to initiate requests for transitional compensation when eligible.

H. Benefits

Other rights or benefits provided to victims under law or regulation, to include statute, Department of Defense Directives or Instructions, Secretary of the Navy Instructions, and Marine Corps Orders.

010502. Representation.

Representation involves the formation of an attorney-client relationship and is only authorized when a VLC is detailed, assigned, or otherwise authorized to do so by his or her detailing authority and in accordance with paragraph 0107 of this Volume. When requested, VLC may be detailed to:

A. Sexual Assault

All eligible victims of sexual assault.

B. Domestic Violence and Child Abuse

Eligible victims of domestic violence and child abuse, subject to counsel availability.

C. Other Crime Victims

Other crime victims with an opportunity to be heard under MRE 412, 513, 514, or regarding other rights provided by statute, regulation, or case law.

010503. Collateral Misconduct

If a victim appears to have committed collateral misconduct related to the crime of which he or she is a victim, the VLC may advise the victim on his or her legal options, including seeking testimonial or transactional immunity. Victims may be referred to the Marine Corps Defense Services Organization to consult with a defense counsel as appropriate for misconduct committed that may require defense counsel services.

010504. Traditional Forms of Legal Assistance

If a victim requires traditional legal assistance services, the VLC will refer the victim, when appropriate, to the Legal Assistance Office. Traditional forms of legal assistance are those matters without a direct nexus to the crime of which he or she is a victim and include areas such as family law, immigration law, leases, taxes, consumer affairs, estate planning, and powers of attorney.

0106 ATTORNEY-CLIENT RELATIONSHIP

010601. General

A Marine VLC will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by his or her detailing authority. In cases where the victim files an unrestricted report or has already made a formal report to law enforcement, VLC shall provide a Notice of Representation to the commands of the victim and accused, Staff Judge Advocates to the command of the victim and accused, Senior Trial Counsel, detailed trial counsel, Senior Defense Counsel, detailed defense counsel, SARC, VA, Victim Witness Liaisons, and criminal investigative departments

involved in the case, including both Naval Criminal Investigative Service and Criminal Investigation Division.

010602. Duration

A Marine VLC shall continue to represent a victim post-trial until the convening authority takes action on the case. Where a case or matter is resolved at non-judicial punishment, administrative separation proceedings or other administrative means, a VLC may continue to represent the victim's interests and assert any applicable victim's rights at such proceedings. Further representation of a victim after the convening authority takes action will be determined on a case-by-case basis by the OIC, VLCO.

010603. Severance

Once established, the attorney-client relationship may only be severed under the provisions of the Rules of Professional Conduct or by statute, other regulation, or case law. The following guidance applies:

A. Transfer or End of Military Service

If the VLC transfers or leaves military service, the attorney-client relationship may be terminated under the Rules of Professional Conduct by the detailing authority, subject to the requirements in paragraph 0109.

B. Victim Transfer

If the victim transfers to a new duty station and the case remains active with military authorities at the victim's prior duty station, the VLC may continue representation at the victim's request. The victim may also request a replacement VLC at his or her new duty station, subject to approval by the detailing authority.

C. Victim End of Military Service

If the victim leaves military service, the attorney-client relationship may be terminated under the Rules of Professional Conduct by the detailing authority, unless the victim satisfies other eligibility requirements under 10 U.S.C. § 1044 or if approved by the RVLC after consultation with the OIC, VLCO.

010604. Communication with Victims Represented by Victims' Legal Counsel (VLC)

Communication with represented victims related to the subject of representation requires notice to the detailed VLC, unless otherwise authorized by law or court order. This requirement includes requests to interview the victim by trial counsel, defense counsel, and criminal investigators acting on behalf of the trial counsel.

010605. Documents Provided to Victims' Legal Counsel (VLC)

Trial counsel shall provide the following material to the detailed VLC unless otherwise directed by a court:

A. Upon Notification of Representation

1. A copy of all statements and documentary evidence, in possession of the trial counsel, produced or provided by the victim.

2. The date, time, and location of any pretrial confinement review pursuant to R.C.M. 305.

B. Upon Referral of Charges

1. A copy of the charge sheet, redacted for PII, setting forth the preferred specifications pertaining to that victim.

2. The date, time, and location of any preliminary hearing pursuant to Article 32, UCMJ, and any request for continuance.

C. Upon Receipt or Filing by the Government

1. A transcript or summarized transcript of the victim's testimony at the preliminary hearing.

2. A copy of the charge sheet, redacted for PII, setting forth the referred specifications pertaining to that victim.

3. Any docket requests, as well as docketing or scheduling orders, including deadlines for filing motions and the date, time, and location for any session of trial.

4. A copy of any filing, including attachments, that may limit a victim's ability to participate in the court-martial, affect the victim's possessory rights in any property, concern the victim's privileged communications or private medical information, or involve the victim's right to be heard.

5. Any request to interview the victim received from defense counsel.

6. Notice of pretrial agreement negotiations, and an opportunity to express the views of the victim regarding all proposed terms of the agreement relevant to that victim.

7. A copy of any approved pretrial agreement.

8. Upon request, counsel for the government shall provide the victim access to, or a copy of, the recording of the Article 32, Preliminary Hearing. Such access or copy shall be provided to the victim not later than a reasonable time following dismissal of the charges, unless charges are dismissed for the purpose of re-referral, or court-martial adjournment. Nothing in this Volume shall be construed to create an obligation to retain records beyond the period specified by SECNAV M-5210.1 or other applicable authority.

0107 DETAILING

010701. Officer in Charge, Victims' Legal Counsel Organization Authority

The OIC, VLCO is the detailing authority for the VLCO, permitting VLC to represent victims as provided in paragraph 0105 of this Volume. Detailing authority includes the authority to remove a counsel from a case for good cause. The OIC, VLCO may further delegate detailing authority to RVLC, but no lower, subject to the restrictions set forth below.

010702. Detailing Factors

Prior to detailing a VLC to a particular case, the detailing authority will consider such factors as: the geographic locations of the victim and counsel, the expected location of the hearing, the anticipated rotation date of the counsel, the counsel's caseload and experience, any applicable conflict-of-interest analysis, the case complexity, collateral duties, and the counsel's training and education requirements.

010703. Detailing Procedure

When detailing a VLC 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 victim receives zealous representation by a fully qualified counsel; and (4) every victim is detailed counsel in a timely manner.

010704. Timing

The responsible detailing authority shall detail a VLC in writing to a victim requesting representation as soon as practicable and in accordance with guidance published by the OIC, VLCO.

010705. Notice of Representation

VLC detailed to a case shall immediately provide notice of representation to the client's command, the investigating law enforcement agency, and the cognizant prosecution and defense sections. A notice of appearance shall be filed with the military judge upon referral.

010706. Detailing of Officer in Charge, Victims' Legal Counsel Organization

With the consent of the SJA to CMC, the OIC, VLCO may be detailed to a case.

010707. Regional Victims' Legal Counsel Detailing

If delegated the authority, RVLC may detail VLC assigned to their region, including themselves, to cases supported by their regional LSSS, LSST, or an element thereof, based upon geography or a specific request for legal services. However, RVLC who write fitness reports on subordinate VLC may not detail themselves to cases that involve clients with a conflict of interest with clients of a VLC for whom the RVLC is the reporting senior. Such matters must be brought to the attention of the OIC, VLCO.

010708. Additional Detailing Considerations

VLC will normally be detailed to represent a victim assigned to an organization that is supported by that VLC's LSSS, LSST, or an element thereof. However, a VLC may be detailed to represent a victim assigned to an organization not normally supported by the VLC's LSSS or LSST on a case-by-case

basis. Factors that may necessitate such detailing include: unique requirements of the case; location of victim due to transfer; change of convening authority due to reassignment of accused; supporting units and organizations without VLC; conflict-of-interest cases; and gaps in VLC coverage. If such detailing decision results in non-local travel costs beyond those implicit in the request for legal services, and the convening authority will not agree to fund the non-local travel costs associated with the detailing decision, the issue will be forwarded to the OIC, VLCO for resolution in consultation with the staff judge advocate of the convening authority. If the funding issue cannot be resolved, it will be forwarded to the SJA to CMC for final decision.

0108 TOUR LENGTH

010801. Establishment of Date

After consultation with the RVLC and OIC, VLCO, the OIC of the LSSS or LSST will establish an anticipated end date for a Marine's tour with the VLCO, which normally will be at least 18 months for RVLC, at least 12 months for VLC billets, and 12 months for enlisted support personnel. When assigning a Marine to the VLCO, the OIC of the LSSS or LSST will memorialize the anticipated end of tour date in writing and provide a copy of the assignment letter to the RVLC and OIC, VLCO.

010802. Termination of Duties

The RVLC will ensure, as far as practicable, that the agreed upon tour length for VLC coincides with the termination of that VLC's duties and responsibilities.

010803. Early Termination

If circumstances arise that require curtailing a VLC's tour before the previously established end of tour date, the OIC of the LSSS or LSST shall coordinate with the RVLC and OIC, VLCO to establish a new end of tour date.

010804. Termination Decision Authority

If the parties cannot mutually agree upon a new end of tour date, the cognizant OIC shall forward the matter to the OIC, VLCO for consideration. If still unable to reach a mutual agreement, the cognizant OIC shall report, in writing, the circumstances requiring the tour curtailment to the SJA to CMC via the OIC, VLCO. The SJA to CMC may intervene and override the OIC's decision; otherwise, the cognizant OIC's decision is final.

010805. Termination of Representation

Judge advocates assigned as VLC shall continue representing the victim until the convening authority acts in all cases to which the VLC is detailed unless the attorney-client relationship has been severed in compliance with JAGINST 5803.1E and consistent with paragraph 0106.

0109 REASSIGNMENT

010901. Coordination

The reassignment of a VLC requires careful planning and coordination between the RVLC, OIC, VLCO and the OIC of the LSSS and LSST.

010902. Reassignment and Client Representation

Once a VLC is slated for reassignment by the OIC of the LSSS or LSST, the responsible RVLC must ensure that the VLC is not detailed to a client with a case anticipated to extend beyond the targeted reassignment date without first seeking the permission of the OIC, VLCO and OIC, LSSS or LSST. If the OIC, VLCO and the OIC, LSSS cannot reach an agreement on the detailing decision involving a case that will likely extend beyond the VLC's anticipated rotation date, the matter will be forwarded to the SJA to CMC for final decision.

010903. Reassignment Prior to Completion of Representation

If a VLC is pending reassignment, including discharge or retirement, prior to the completion of victims' legal counsel duties, the responsible RVLC must ensure the VLC 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. Offered for the client to consult with another conflict-free counsel about the matter.
- D. Ensured that the client's understanding of VLC's reassignment is memorialized in writing, and signed by the client and counsel.
- E. If applicable, notified the military judge, trial counsel, and defense counsel detailed to any ongoing courts-martial of the VLC's pending reassignment.

010904. Concurrent Service

Absent a knowing and affirmative waiver by the client of an apparent conflict of interest, and approval by the OIC, VLCO, judge advocates may not serve concurrently, including periods of transition between billets, as a judge advocate assigned to the VLCO or an auxiliary VLC and as:

- A. A trial counsel or defense counsel on any case.
- B. The deputy staff judge advocate or staff judge advocate to the convening authority of any case in which the VLC is still performing VLCO duties.
- C. The OIC or assistant OIC of an LSSS or LSST.
- D. Other billets which would create a conflict of interest with concurrent service as a VLC.

0110 REQUEST FOR INDIVIDUAL MILITARY COUNSEL (IMC)

The OIC, VLCO is the determining authority for requests for Marine VLC to serve as individual military counsel (IMC) to defend a service member. Marine VLC are normally considered not “reasonably available” under the meaning of JAGMAN section 0131. Notwithstanding this limitation, the OIC, VLCO shall have the discretion to approve an IMC request in exceptional circumstances.

0111 COLLATERAL DUTIES

VLCO shall perform routine non-VLC 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.

0112 PROFESSIONAL RESPONSIBILITY

011201. Compliance

Judge advocates assigned to the VLCO shall act in full compliance with JAGINST 5803.1E, ethical rules of jurisdictions in which they are a member of the bar, and other legal practice guidance published by the Judge Advocate General of the Navy, the SJA to CMC, or the OIC, VLCO related to professional responsibility. VLC should request policy clarification and guidance from the OIC, VLCO in all cases where there are potential ethical issues.

011202. Complaints

The SJA to CMC is the Rules Counsel for all Marine judge advocates, including Marine VLC. Informal professional responsibility complaints regarding Marine VLC will be resolved within the VLCO. Formal professional responsibility complaints regarding Marine VLC will be routed via the responsible RVLC and OIC, VLCO, to the SJA to CMC for resolution.

0113 ADMINISTRATIVE AND LOGISTICAL SUPPORT

Cognizant commands will provide personnel, equipment, administrative, and logistical support, commensurate with mission requirements, to VLC offices equitably with that provided to military justice and defense sections. The LSSS shall ensure that VLCO personnel are provided appropriate office-space that facilitates walk-in clients, including a reception area and private offices for VLC to conduct attorney-client meetings.

0114 BUDGETING AND FUNDING GUIDANCE

011401. Administrative and Logistical Support

Funding for administrative and logistical support and training expenses for RVLC, VLC, and their support personnel will be provided by the local command or LSSS/LSST to which they are administratively attached. VLC specific training shall be funded by the VLCO.

011402. Case-Related Expenses

All case-related expenses, including victim and VLC travel, shall be funded by the convening authority as required by regulations, to include JAGMAN sections 0145 and 0205.

0115 APPLICABILITY

This Volume is applicable to Marine Corps judge advocates and supporting personnel.

VOLUME 5

“MARINE CORPS LEGAL ASSISTANCE PROGRAM”

SUMMARY OF VOLUME 5 CHANGES

Hyperlinks are denoted by *bold, italic, blue and underlined font*.

The original publication date of this Marine Corps Order (right header) will not change unless/until a full revision of the MCO has been conducted.

The date denoted by *blue font* (left header) will reflect the date this Volume was last updated.

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VOLUME VERSION	SUMMARY OF CHANGE	ORIGINATION DATE	DATE OF CHANGES
ORIGINAL VOLUME	N/A	DD MMM YYYY	N/A

Submit recommended changes to this Volume, via the proper channels, to:

CMC (JA)
3000 Marine Corps Pentagon
Washington, DC 20350-3000

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VOLUME 5: MARINE CORPS LEGAL ASSISTANCE PROGRAM

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 PURPOSE1-3

0102 AUTHORITY FOR MARINE CORPS LEGAL ASSISTANCE PROGRAM1-3

0103 APPLICABILITY1-4

0104 RESPONSIBILITIES1-4

0105 ELIGIBLE CLIENTS1-6

0106 SCOPE OF SERVICES1-8

0107 ATTORNEY-CLIENT RELATIONSHIP.....1-9

0108 CONFIDENTIALITY.....1-10

0109 PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION1-10

0110 ELECTRONIC COMMUNICATIONS.....1-11

0111 LIMITATIONS ON LEGAL ASSISTANCE SERVICES1-12

0112 EXPANDED LEGAL ASSISTANCE PROGRAM AND EXCEPTIONAL FAMILY MEMBER COUNSEL PROGRAM1-15

0113 CLIENT REFERRALS.....1-15

0114 VOLUNTEER SERVICES.....1-15

0115 NOTARIZATIONS1-17

0116 WILLS, TRUSTS, AND ESTATE PLANNING.....1-17

0117 CONSUMER PROTECTION AND THE SCRA.....1-17

0118 DOMESTIC RELATIONS AND FAMILY LAW1-17

0119 IMMIGRATION AND NATURALIZATION SERVICES1-18

0120 INCOME TAX PREPARATION AND FILING ASSISTANCE1-19

0121 PREVENTATIVE LAW PROGRAMS, UNIT BRIEFS, AND SUICIDE AWARENESS OFFICE PROCEDURES.....1-19

REFERENCES

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

“REFERENCES”

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

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VOLUME 5

“MARINE CORPS LEGAL ASSISTANCE PROGRAM”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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MARINE CORPS LEGAL ASSISTANCE PROGRAM

0101 PURPOSE

This Volume promulgates policy, prescribes standardized procedures, and assigns responsibilities for the Marine Corps Legal Assistance Program (MCLAP) in order to promote increased mission readiness and enhance the morale and quality of life for military personnel, dependents, and other eligible clients by providing timely and quality legal advice and services concerning their personal civil legal affairs. This Volume is supplemented with the MCLAP Policy and Practice Manual published by Judge Advocate Division (JAD), Legal Assistance Branch (JLA).

0102 AUTHORITY FOR MARINE CORPS LEGAL ASSISTANCE PROGRAM (MCLAP)

010201. Statutory Authority

10 U.S.C. § 1044 authorizes the Service Secretaries to provide legal assistance to eligible persons in connection with their personal civil legal affairs and places responsibility with the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) to establish and supervise the Marine Corps Legal Assistance Program (MCLAP) under regulations issued by the Secretary of the Navy.

010202. Implementation

The policy and guidance in this Volume implement the Department of the Navy (DON) legal assistance program policy contained in JAGINST 5800.7F, Manual of the Judge Advocate General (JAGMAN). The JAGMAN, Chapter VII, provides policy regarding persons authorized to provide legal assistance services, categories of eligible clients, the attorney-client relationship and confidentiality, scope of legal assistance services, specific types of services that are not authorized, referrals and fees, and the Expanded Legal Assistance Program (ELAP). The JAGMAN, Chapter IX, provides policy and procedures for performing notarial acts. Pertinent provisions in the JAGMAN are restated in this Volume only to the extent necessary for clarity, emphasis, elaboration, or convenience of reference.

010203. Organization

Legal Assistance (LA) office organization under the Legal Services Support Section (LSSS)/Legal Services Support Team (LSST) construct.

A. Remote Support

In addition to providing legal assistance services at their own locations, the LSSTs support Yuma, MCRD San Diego, Barstow, New River, Albany, Beaufort, and Iwakuni. The LSSS National Capital Region (NCR)/MFR coordinates legal assistance support to active duty Marines at Marine Forces Reserve (MFR), New Orleans.

B. LA Offices

Twelve (12) separate LA offices were established under the LSSTs and located at: (1) Camp Pendleton, (2) Miramar, (3) Yuma, (4) MCRD San Diego, (5) Twentynine Palms, (6) Camp Lejeune, (7) Cherry Point, (8) MCRD Parris Island, (9) Hawaii (Kaneohe Bay), (10) Okinawa (11) Iwakuni, and (12) Quantico. Barstow, New River, Albany, and Beaufort do not have LA offices. The

Twentynine Palms LA office supports Barstow; the Camp Lejeune LA office supports New River; the MCRD Parris Island LA office supports Albany and Beaufort. To the maximum extent practicable considering available resources, the supporting LSST LA office shall provide LA services to eligible clients at supported installations comparable to those services provided to clients at the LSST location. Services may be provided to supported installations through scheduled periodic on-site LA visits and, when determined necessary by the OIC LSST, through alternate forms of communication with clients such as VTC and telephone, taking appropriate steps to verify identity and eligibility.

C. Supervision of Remote Offices

1. OIC, LSST Miramar supervises the LA offices at MCRD San Diego and Yuma.
2. OIC, LSST Okinawa supervises the LA office at Iwakuni.

0103 APPLICABILITY

The legal assistance policy and procedures contained in this Volume apply to all military and civilian attorneys, paralegals, clerks, and any other personnel who supervise and/or work within the MCLAP; Reserve judge advocates who, while performing official DON duties, provide legal assistance services to eligible persons under the authority of 10 U.S.C. § 1044; judge advocates (JAs) providing legal assistance in a deployment environment; and other JAs providing limited legal assistance services as part of SJA command advice services (i.e. notarizations/powers of attorney).

010301. Deviation

Legal assistance providers may request deviation from the provisions in this Volume by submitting justification through their respective OIC to JAD (JLA).

010302. Personnel Assigned to the Navy

Marine Corps personnel assigned to work in Navy Legal Assistance Offices are subject to JAGINST 5801.2, Navy Legal Assistance Program Manual, which is not applicable to the MCLAP.

0104 RESPONSIBILITIES

010401. Legal Assistance Branch

JLA, Judge Advocate Division (JAD), Headquarters Marine Corps, is responsible for MCLAP policy development, implementation and oversight, and assisting and advising the SJA to CMC on all legal assistance policies, procedures, and related matters, including inspecting the effectiveness of the MCLAP. JLA is responsible for developing and promulgating standardized forms, worksheets, and uniform procedures that will be posted on the JLA website and used by LA offices. JLA is authorized to issue periodic authoritative policy letters and practice advisories to update and clarify policy and guidance contained in this Volume. JLA is the Program Manager for the Immigration and Naturalization Program and the Volunteer Income Tax Assistance (VITA) Program. JLA provides a representative to the Department of Defense (DoD) Armed Forces Tax Council (AFTC) and acts as the Marine Corps Liaison to the ABA Legal Assistance for Military Personnel Committee. JLA is the Marine Corps Liaison for the DON Disability Evaluation System (DES) Counsel Program. JLA coordinates with other-Service Heads of Legal Assistance, DoD, and other federal agencies on issues of mutual concern, to include proposed

legislation, Department of Justice enforcement of service member rights, immigration and naturalization, and Service-wide legal issues directly affecting military members and their families.

010402. Deputy Director, Reserve Legal Support Branch

The Deputy Director, Reserve Legal Support Branch is responsible for coordinating with JLA on matters concerning Reserve LA support services.

010403. Regional Legal Assistance Directors

Regional Legal Assistance Directors (RLADs), LSSSs are responsible for providing general expertise and professional guidance to LA offices in their respective LSSS region; assisting and advising OICs, LSSSs on legal assistance matters; directly supervising Exceptional Family Member (EFM) legal assistance counsel; acting as the reach-back legal assistance subject matter expert for JAs in deployment environments, and coordinating policy matters with JLA. Resolving conflict of interest cases within the LSSS region, to include those involving supervisory attorneys, is addressed elsewhere in this Volume. Prior to the LA Office Head leaving the position, the RLAD shall review the LA Office Head's turnover binder to help ensure the incoming replacement is prepared to execute his or her responsibilities.

010404. LA Office Head

The LA Office Head is responsible for direct LA office management and supervision of office personnel. The LA Office Head shall ensure LA office personnel have access to and routinely check the secure JLA website, adhere to the LA office SOP, use JLA-approved worksheets and forms, and are proficient in using office software for case management, estate planning, and domestic relations. The LA Office Head shall ensure all personnel and office volunteers understand client confidentiality and Personally Identifiable Information (PII) safeguarding requirements. The LA Office Head shall routinely review the work product of personnel under his or her supervision and provide them with additional training as needed. The LA Office Head shall use standardized check-in procedures for incoming LA personnel. The LA Office Head is responsible for developing and maintaining a comprehensive turnover binder for his or her replacement. At least thirty (30) days prior to leaving the LA position, the LA Office Head shall provide a copy of the turnover binder to the RLAD for review.

010405. LA Attorneys

LA attorneys are responsible for maintaining their professional skills and delivering quality legal assistance services to their clients consistent with the JAGINST 5800.7F, Manual of the Judge Advocate General (JAGMAN), JAGINST 5803.1E, Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General, this Volume, JLA Policy Letters, the MCLAP Policy and Practice Manual, and other applicable statutes and regulations.

010406. LA Support Personnel

LA support personnel are responsible for maintaining their professional skills and contributing positively toward efficient office management, client interaction, and effective attorney support consistent with the JAGMAN, this Volume, JLA Policy Letters, the MCLAP Policy and Practice Manual, and other applicable statutes and regulations. Although JAGINST 5803.1E does not specifically apply to non-attorneys, it provides the model for acceptable conduct when providing legal services and shall be observed. LA support personnel may assist attorneys, but they may not provide legal advice or provide

services that call for the professional judgement of an attorney. LA support personnel must keep all client matters confidential and safeguard client files from unauthorized access.

0105 ELIGIBLE CLIENTS

Categories of persons eligible to receive LA services pursuant to 10 U.S.C. § 1044 and the JAGMAN are as follows:

010501. Members of the Armed Forces

Members of the Armed Forces on active-duty for 30 days or more. Legal assistance is intended primarily for active-duty personnel, including Reservists and members of the National Guard on active duty for 30 days or more. Legal assistance may be provided to dependents, or the legally appointed fiduciary, of active-duty personnel on behalf of personnel incapacitated or otherwise incapable of seeking such assistance personally, and

010502. Members of Reserve Components

Members of Reserve components following release from active-duty under a call or order to active-duty for more than 30 days issued under a mobilization authority, as determined by the Secretary of Defense, for a period of time that begins on the date of the release and is not less than twice the length of the period served on active-duty under that call or order to active-duty, for legal issues that relate to serious wounds, illnesses, or injuries incurred during the period of mobilization.

010503. Other Categories

As resources permit, LA services may also be provided to the following categories of people in the order listed:

A. Dependents of Deceased Personnel

Dependents of active-duty personnel and of personnel who died while on active-duty.

B. Retired Members

Retired members who are entitled to military disability compensation or Department of Veterans Affairs compensation or members entitled to retired or retainer pay.

C. Dependents of Retired Members

Dependents of retired members and dependents of deceased retired members.

D. Reservists

Reservists on active-duty for single periods of 29 days or less and their dependents may be provided LA in emergency cases as determined by the Head, LA office.

E. Mobilizing Reservists

For the purpose of enhancing the readiness of Reserve personnel for mobilization, pre-mobilization legal counseling and assistance may be provided to active-duty or inactive Reserve personnel consistent with mobilization readiness needs. Pre-mobilization assistance normally will consist of drafting or updating Wills, Advance Medical Directives, and Powers of Attorney. Other assistance may be provided if it relates to recall or mobilization. Examples of such assistance include advice concerning rights under the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA). Pre-mobilization legal assistance services are not authorized for dependents with the exception of dependents of Reserve personnel with mobilization orders for more than 30 days.

F. Reservists Released from Active-Duty

Members of Reserve components, other than those described above, following release from active-duty under a call or order to active-duty for more than 30 days issued under a mobilization authority, as determined by the Secretary of Defense, for a period of time that begins on the date of the release and is not less than twice the length of the period served on active-duty under that call or order to active-duty.

G. Dependents of Reservists Released from Active-Duty

Dependents of members of the Reserve components listed in subsection (F) above.

H. Department of Defense (DoD) Civilian Personnel

DoD civilian personnel deploying for at least 30 days to a combat zone, in support of a contingency operation, or aboard a naval vessel may be provided pre-deployment LA services. LA may also be provided to dependents of these civilian personnel, both before and during deployment, on deployment-related matters. All services are to be provided within current means and capabilities. Additionally, LA services are authorized to be provided to civilian personnel and their dependents for a reasonable period, but not to exceed 30 days, after he or she returns from deployment to close out ongoing LA matters related to deployment that arose before or during deployment.

I. Department of Defense (DoD) Civilian Personnel who are U. S. Citizens

DoD civilian personnel who are U. S. citizens, other than local hire employees, employed by, serving with, or accompanying the Armed Forces of the United States, when they are assigned to a foreign country or to a vessel or unit of the Armed Forces of the United States deployed in excess of 30 days. Dependents who accompany DoD civilian personnel authorized under this subsection are also eligible.

J. Non- Department of Defense (DoD) United States (U.S.) Government

Employees

Non-DoD U.S. Government employees who are U.S. citizens and not contractors, serving in locations in a foreign country or on a vessel of the Armed Forces of the United States, where legal assistance from non-military legal assistance providers is not reasonably available. Such legal assistance is generally limited to ministerial services (for example, notarial services), legal counseling (to include the review and discussion of legal correspondence and documents), legal document preparation (limited to Powers of Attorney and Advance Medical Directives), and help with retaining civilian lawyers.

K. Civilian Contractors

Civilian contractor personnel who are U.S. citizens and are serving with or accompanying U.S. forces in a theater of operations, and produce documentation of an employment contract that requires the U.S. government to provide legal assistance, may be provided with services as addressed in the contract. If the employee's contract does not specify services, services are limited to notarizations and provision of deployment-related Powers of Attorney.

L. Members of Allied Forces

Members of allied forces and their dependents in the United States, serving with the Armed Forces of the United States.

M. 20/20/20 Spouse

A 20/20/20 un-remarried former spouse as defined in 10 U.S.C. § 1072.

N. Victims of Abuse

Spouses, former spouses, and children who are victims of abuse by members losing the right to retired pay under 10 U.S.C. § 1408(h) and dependents of members separated for dependent abuse consistent with the transitional compensation provisions of 10 U.S.C. § 1059.

O. Other

Other persons authorized by the JAG or, for the Marine Corps, the SJA to CMC.

010504. Eligibility Requests

Requests to designate others as eligible for LA services in addition to those persons authorized in the JAGMAN should be addressed to the SJA to CMC (JAD (JLA)) via the OIC, LSSS and include the following information: who is to be assisted, the types of services to be offered, the period for which authorization to provide services is sought, and the reasons why the extension of LA services furthers the mission of the local command and the Marine Corps.

010505. Service Prioritization

The OIC, LSSS may prioritize categories of persons served in LA offices as necessary for mission accomplishment.

0106 SCOPE OF SERVICES

MCLAP services are provided subject to availability of legal resources and mission priority. Accordingly, services and/or categories of eligible clients may be restricted from time to time as authorized by the OIC, LSSS or his or her designee. Limiting services may be necessary in situations that include emergent requirements, increased demand for specific services, personnel shortages, limited resources, and lack of requisite expertise to adequately address the requested service. The general order of priority for Department of the Navy LA services is provided below:

010601. Tier I Services

Tier I services are standard legal readiness services/first priority services. Advice or services regarding the following matters are normally available to eligible persons but may be limited due to availability of a qualified attorney or other resources: basic foreclosure advice and counseling; consumer finance issues; demobilization briefings, family law matters; deployment briefings and assistance; disaster relief support/advice; military rights under the SCRA; naturalization and immigration advice and counseling; notary services; powers of attorney advice and drafting; simple estate planning; and tenant advice and counseling.

010602. Tier II Services

Tier II services are second priority services. Advice or services regarding the following matters are normally available to eligible persons but may be limited due to availability of a qualified attorney or other resources: limited adoption advice and counseling; guardianship (conservatorship) of the person advice and counseling; guardianship of the estate advice and counseling, immigration paper-work filing, review, and advice for dependents; small claims court pro se pleadings advice, counseling, and drafting; and service as a temporary guardian to a mentally incompetent Service member for purposes of Department of Defense proceedings conducted under 37 U.S.C. §§ 601-604, and under Bureau of Medicine and Defense Finance and Accounting Service regulations.

010603. Tier III Services

Tier III services are third priority services not normally provided by active duty military legal assistance providers. In rare circumstances where Tier I and Tier II support is fully established, addressed and sustainable, support in the following matters shall only be extended to eligible clients by fully qualified providers with the express permission of the SJA to CMC (Code JA) or his or her designee: Bankruptcy advice and counseling; Drafting of family law/domestic relations documents; and federal and state tax advice and counseling.

010604. Tier IV Services

Tier IV services are the lowest-priority services not normally provided by active duty military legal assistance providers. In rare circumstances where Tier I and Tier II support is fully established, addressed and sustainable, support in the following matters may be balanced against Tier III services and extended to eligible clients by fully qualified providers with the express permission of the SJA to CMC (Code JA) or his or her designee: ELAP cases; obtaining benefits and services under State and Federal disability laws for family members enrolled in the Exceptional Family Member Program; complex estate planning; real estate purchase agreement contract review and explanation of terms; and LA offices may provide additional services not specifically prohibited by regulation if the LA providers are competent to provide such services and they are approved by the SJA to CMC or his or her designee.

0107 ATTORNEY-CLIENT RELATIONSHIP

010701. Acknowledgement of Limited Representation

Prior to establishing an attorney-client relationship, LA attorneys must ensure potential clients understand the limited nature of military LA. In order properly to inform clients, the LA office should

provide them with a written “Acknowledgement of Limited Representation” similar to the form posted on the JLA website.

010702. Ongoing Attorney-Client Relationship

An ongoing attorney-client relationship must be respected, and clients returning for a follow-up appointment or with a new question concerning the same or substantially the same legal matter will be directed to the same attorney, unless the client requests a different attorney and the LA Office Head concurs or the original LA attorney is no longer able to provide LA services (e.g., PCS, EAS, duty reassignment, removal from LA duties by competent authority, etc.). With client consent, the LA Office Head will transfer the attorney’s ongoing LA cases to another LA attorney and ensure completed cases are appropriately closed.

010703. Attorney Unavailability

In the event that the original attorney is only temporarily unavailable, a different LA attorney may, with the client's consent and LA Office Head approval, be assigned to handle the immediate issue. However, the original attorney should handle any subsequent follow-up matters with that client and any file created by the substitute attorney should be provided to the original attorney as soon as practicable. In the event the attorney becomes no longer available to provide legal assistance, the attorney's LA cases will be transferred to another LA attorney or completed and closed by the departing attorney. An attorney is not available to perform LA duties when the attorney leaves a LA billet regardless of the reason (i.e., PCS, EAS, duty reassignment, involuntary removal from legal assistance duties by competent authority, etc.). Departing LA attorneys shall not take client files with them from the LA office, but may copy material they think is important to maintain their professional responsibility obligations. For ongoing cases, the LA office shall inform clients of the need to transfer their case to another LA attorney. If a client objects, the LA office will terminate services and provide the client, at his or her request, with referral sources in accordance with this Volume.

0108 CONFIDENTIALITY

After formation of an attorney-client relationship, information concerning a client’s appointments or meetings with a LA attorney or staff member may not be disclosed unless an exception to the attorney-client privilege applies or the client gives informed consent. LA attorneys should be provided with individual private offices with floor-to-ceiling walls to safeguard confidentiality of consultations with clients. In locations where this is not possible (e.g., deployment environments) maximum efforts should be made to ensure client confidentiality. Each LA office must ensure that client records are protected from unauthorized access and disclosure. LA offices and VITA Tax Centers should be accessible after-hours only by authorized LA and Tax Center personnel. Client information may not be stored on shared office drives if that information could be accessible by persons not working within the MCLAP.

0109 PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

PII may not be maintained on personal computers, laptops, or devices. PII may only be maintained on DoD owned, contracted or leased assets. LA documents containing client information and PII must be safeguarded, to include client intake forms and worksheets. LA email containing PII must be encrypted. LA worksheets, correspondence, and emails may not contain Social Security Numbers unless required to effectuate services for the client and as otherwise authorized by applicable regulations.

010901. Reserve JA Laptops and PII Security

Reserve JAs providing LA services related to unit mobilization may request government laptop support from JAD (RLS). DL Wills software should be pre-loaded on the laptops. Software used to produce LA documents containing PII, worksheets, and the documents themselves may not be loaded onto personal laptops.

010902. Shared Drives.

Electronic client files and documents containing PII must not be placed on shared drives that are accessible by persons other than those providing LA services.

0110 ELECTRONIC COMMUNICATIONS

011001. Government Computers

The DON uses various tools to monitor user activity on government computers and to implement varying levels of capacity and filtering restrictions. Generally speaking, communications using or information stored on DON IT are not private and are subject to routine monitoring, interception, and search; and may be disclosed for any authorized purposes.

011002. LA Communications

JAs providing LA services shall place language substantially as follows after the JA's signature line on all electronic communications:

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION OR ATTORNEY WORK PRODUCT

FOR OFFICIAL USE ONLY: This e-mail may contain confidential and Privacy Act (5 U.S.C. § 552a) information. Any misuse or unauthorized disclosure may result in both civil and criminal penalties.

Please handle in accordance with the following notices and disclaimer:

CONFIDENTIALITY NOTICE: The information contained in or attached to this communication may be legally privileged, confidential, and intended for use only by the individual or entity to which it is transmitted. Any other use of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately at the above email or phone number, and delete or destroy this message.

PERSONAL INFORMATION NOTICE: Information contained within this document or its attachments may contain personal information, disclosure of which is generally prohibited by the Privacy Act (5 U.S.C. § 552a). Protected information included in this document or its attachments is being communicated in accordance with section (b)1 of the Act which permits disclosure to individuals within the Department of Defense (DoD) with an official need to know. Release of such protected information outside of the DoD is prohibited.

DISCLAIMER: Any opinions in this e-mail are the personal legal/administrative opinions of the sender and do not represent an official position of the United States Marine Corps, Department of Defense, or United States Government.

011003. Encryption

Email transmissions containing client information and PII must be digitally signed and encrypted.

0111 LIMITATIONS ON LEGAL ASSISTANCE SERVICES

011101. Personal Legal Matters Only

LA is authorized only for personal civil legal affairs. Legal advice and assistance may not be provided regarding criminal matters or commercial business ventures. By way of example, a service member who leases his or her single residence due to a PCS move may obtain assistance regarding the lease of that single personal residence. On the other hand, providing legal advice to a service member regarding multiple leased residences or a business partnership or venture is not of a personal nature.

011102. Non-federal Entities

LA may not be provided to non-federal entities that have been chartered by appropriate authority to function on military installations (e.g., spouses clubs, booster clubs, command fundraising committees, social committees, etc.).

011103. Ethics and Standards of Conduct Matters

LA attorneys may not provide advice concerning government ethics and standards of conduct, to include post-government employment restrictions. Persons seeking such advice should be referred to the appropriate ethics counselor. LA attorneys may conduct general informational briefings during transition assistance programs to Marines retiring or otherwise departing the Marine Corps. The briefing attorney should refer all requests for individual advice to the appropriate ethics counselor. In the event an attorney who provides LA services in an SJA office or deployment environment is also designated as an ethics counselor, refer to the Joint Ethics Regulation.

011104. Employment and Uniformed Services Employment and Reemployment Rights Ac (USERRA) Matters

LA attorneys may not provide advice on civilian employment matters but may provide general information related to the USERRA, 38 U.S.C. §§ 4301-4334. The Employer Support of the Guard and Reserve is the primary DoD office for all matters concerning employer support of the National Guard and Reserve, and serves as the lead proponent for USERRA matters within DoD. DoDI 1205.12, Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services, establishes policy and procedures for informing service members and applicants of the uniformed services of their employment and reemployment rights, benefits, and obligations and provides contact information for government agencies responsible for assisting those persons.

011105. Real Estate

LA attorneys may not draft real estate sale or purchase documents, perform title examinations, issue title opinions, or conduct real estate closings.

011106. Advice and Assistance in Official Military Matters

LA duties are separate and apart from responsibilities of Trial Counsel, Defense Counsel, Victims' Legal Counsel (VLC), and others involved in processing courts-martial, non-judicial punishments, administrative boards or proceedings, and investigations, except as provided below.

A. Disciplinary Matters

Service members accused or suspected of offenses or conduct that may result in disciplinary or judicial proceedings under the Uniform Code of Military Justice (UCMJ) or processing for administrative separation should be referred to the appropriate Defense Services Office (DSO). This does not preclude providing LA advice to service members regarding family support obligations.

B. Missing, Lost, or Stolen Government Property

Marines who are the subject of a command investigation of missing, lost, or stolen government property have the right to legal assistance at various stages of the investigation. If the approving authority intends to hold the Marine liable, the Marine has the right to receive legal advice from the local Legal Assistance Office.

C. Administrative Complaints

LA attorneys may not assist service members in filing complaints under the UCMJ and DON regulations, petitions for relief to the Board of Correction of Naval Records or Naval Discharge Review Board, fitness report or evaluation rebuttals, Request Mast, or other similar administrative complaints. LA attorneys may not assist clients in filing Inspector General (IG) complaints, but LA attorneys may provide general procedural information. All such matters should be referred to the appropriate DSO, VLC office, or DES Counsel.

011107. Proceedings Involving the United States

Title 18, United States Code, prohibits any officer or employee of the government from representing or assisting anyone in any claim or other matter in which the United States is a party or has a direct and substantial interest, other than in the proper discharge of his or her official duties. Accordingly, LA attorneys may not represent or assist an individual in a matter in which the United States has a direct and substantial interest, whether or not the government's position is adverse to that of the individual, except as otherwise authorized by the SJA to CMC.

011108. Advice to Third Parties

The privileged attorney-client relationship requires personal and private communication with the client. LA advice or assistance normally may not be provided through third parties. This prohibition does not bar delivery of substantive advice to court-appointed guardians on behalf of a ward or to an agent on behalf of an incapacitated or disabled principal where the agent is acting under a duly executed Power of Attorney or by court appointment. When command representatives seek information or assistance on behalf of a specific service member, they normally should be advised to have the service member obtain a LA appointment or go to the LA office during walk-in hours.

011109. Telephonic Inquiries

The initial delivery of LA normally should not be provided over the telephone except as otherwise authorized in this Volume.

011110. Representation of Opposing Parties or Interests

When two or more eligible persons with conflicting interests seek advice from the same LA office on the same or substantially the same matter, the party first establishing an attorney-client relationship may be provided with representation. The LA attorney and other LA attorneys in the same LA office may not represent the other conflicted party, except as provided below. The party without the attorney-client relationship may be directed toward other legal resources. LA attorneys are not prohibited from representing both husband and wife in a joint legal matter (e.g., Estate Planning and Will drafting) provided the LA attorney obtains a “Dual Representation Waiver of Conflicts” statement signed by both parties and such representation is not otherwise prohibited.

011111. Supervisory Conflicts of Interest

Supervisors and RLADs may not knowingly provide advice concerning a particular case to both LA attorneys representing opposing parties.

011112. Debt Collection Activity Against Other Service Members and Dependents

LA attorneys and LA personnel may not engage in commercial debt collection activities against service members and/or their dependents on behalf of a client. For purposes of this paragraph, prohibited debt collection activities include, but are not limited to, contacting the alleged debtor’s command or employer, sending demand letters or email, and making telephone calls to the alleged debtor or household members. LA attorneys may, however, advise clients on commercial debt collection options that are legally available to them under State and Federal law.

011113. Discretion to Limit Services

The OIC, LSSS or his or her designee may limit the scope of services delivered by LA offices under his or her authority, as necessary. Limitation of services may be necessary in situations that include emergent requirements, increased demand for specific services, personnel shortages, limited resources, or the unavailability of requisite expertise to adequately address the requested service.

011114. Landlord/Tenant Disputes - Military Housing

LA attorneys may provide legal assistance to clients concerning landlord/tenant disputes arising from their lease with privatized military housing (also called PPV housing) companies. LA attorneys shall not provide advice and/or assistance in connection with the underlying housing privatization initiative (contract with the government).

0112 EXPANDED LEGAL ASSISTANCE PROGRAM (ELAP) AND EXCEPTIONAL FAMILY MEMBER (EFM) COUNSEL PROGRAM

011201. Expanded Legal Assistance Program (ELAP)

The ELAP may be established in LA offices with prior authorization from the SJA to CMC (JAD (JLA)). ELAP services are provided in addition to, rather than in place of, normal LA services. ELAP may be authorized for LA offices able to commit sufficient personnel and resources to maintain an active and effective LA program in addition to the ELAP.

011202. Exceptional Family Member (EFM) Counsel Program

The ELAPs at Camp Lejeune and Camp Pendleton include Exceptional Family Member (EFM) Counsel who provide specialized LA services to assist families enrolled in the EFM Program. The scope of EFM Counsel representation is primarily to obtain benefits and services for the EFM under education laws that include the Individuals with Disabilities Education Act (IDEA) and other disability laws and regulations benefiting individuals with disabilities.

0113 CLIENT REFERRALS

011301. Approved Resources

Referral sources for clients needing services beyond those available at the LA office include, but are not limited to, the following: American Bar Association (ABA) Military Pro Bono Program (MPBP); law school clinical programs; local legal aid offices; American Immigration Lawyers Association (AILA) Military Assistance Program; and reserve JAs in an active or drilling status may participate in the MCLAP and advise LA clients, provided their participation is approved by the OIC, LSST.

011302. Private Attorneys

Referral to specifically named private attorneys normally is not authorized except in emergencies as determined by the client's LA attorney, in consultation with the Head, LA Office or RLAD. Emergencies include such things as clients needing immediate court representation to protect their legal interests when other avenues are not available. To avoid the appearance of favoritism and impropriety when making such an emergency referral, the LA office should, when possible, provide the names of at least three (3) private attorneys for the client's consideration. The Head, LA Office or RLAD should ensure that the private attorneys to whom a client is referred are licensed and, as evidenced by the applicable State Bar Association website, are in good standing and have no disciplinary action taken or pending.

0114 VOLUNTEER SERVICES

011401. Authority

A Federal agency may accept uncompensated volunteer services provided it is authorized by law; otherwise, acceptance could be a violation of the Anti-Deficiency Act (31 U.S.C. § 1342). With SJA to CMC approval, LA offices may use certain volunteer services pursuant to 10 U.S.C. § 1044, 10 U.S.C. § 1588, 5 U.S.C. § 3111, and DoDI 1100.21, Voluntary Services in the Department of Defense.

011402. Volunteer Agreements

All volunteers must sign Part II of DD 2793, Volunteer Agreement for Appropriated Fund Activities, in accordance with DoDI 1100.21. A copy of the signed Volunteer Agreement should be given to the volunteer before he or she begins providing volunteer services. Part IV should be completed at the end of the volunteer's service in order to document the dates of the volunteer service.

011403. Attorney Volunteers

The volunteer attorney must be licensed in the State where the LA office is located. However, at an overseas location, the attorney may be licensed to practice law in any U.S. State or Territory. Pursuant to JAGINST 5803.2B, Certification of Good Standing with Licensing Authority, the volunteer attorney

must provide proof of good standing with their licensing authority and ensure they will not be in violation of their State's rules governing pro bono practice in other jurisdictions and/or overseas. The attorney volunteer may act as a notary for eligible LA clients under Federal authority of 10 U.S.C. § 1044a after completing notarial training prescribed by the SJA to CMC and posted on the SJA to CMC website. The attorney volunteer is considered to be a "covered attorney" subject to JAGINST 5803.1E, Professional Conduct of Attorneys Practicing under the Cognizance and Supervision of the Judge Advocate General.

011404. Paralegal Volunteers

The paralegal volunteer must provide documentary evidence of their training and paralegal certification. The paralegal volunteer is authorized to perform notarial acts under the federal authority of 10 U.S.C. § 1044a provided the volunteer is supervised by legal assistance counsel.

011405. Legal Services Support Section (LSSS) Training Syllabus for Incoming Volunteer Attorneys and Paralegals

A sample syllabus detailing LA office on-the-job training requirements for the volunteer is posted on the JLA website.

011406. Acceptance Procedures

The OIC, LSSS should submit a request for approval to accept voluntary services to the SJA to CMC (JAD (JLA)). A sample request package is posted on the secure JLA website.

011407. Other Volunteer Services

A. Law School Student Intern Services

LA offices may accept uncompensated Law School student services with the permission of the institution at which the student is enrolled. Law schools may have programs that allow this type of student internship and may also offer the student academic credit. The OIC LSSS should request approval to participate in a Law School Intern Program from the SJA to CMC (JAD (JLA)).

B. High School Student Services

LA Offices may accept volunteer services of local high school students participating in an established LSSS program to provide students with educational experiences. The OIC LSSS should request approval from the SJA to CMC (JLA)).

011408. Volunteer Access to Privacy Act Protected Records

DoDI 1100.21, para. 5.2.3, provides that volunteers to Appropriated Fund activities (e.g., LA offices) may have access to records contained in a Privacy Act system of records when needed to perform their duties. The LA Office Head should ensure all volunteers are briefed on requirements to protect client information and safeguard PII and take associated on-line PII/IA training.

0115 NOTARIZATIONS

Chapter IX of the JAGMAN contains policy and procedures for performing notarial acts under Federal authority (10 U.S.C. § 1044a). Prior to performing notarial acts under authority of 10 U.S.C. § 1044a and the JAGMAN, personnel shall complete notary training, which includes signing a “Duties and Responsibilities” form, that is posted on the publicly accessible SJA to CMC website under “JAD Resources” at <http://www.hqmc.marines.mil/sja/unithome.aspx>. The notary’s OIC should maintain training documentation. Failure to complete the training due to military exigencies will not affect the validity of the notarial acts, but training should be completed as soon as practicable. Notaries may provide notarial services only for those authorized under 10 U.S.C. § 1044a.

0116 WILLS, TRUSTS, AND ESTATE PLANNING

Basic estate planning (e.g., drafting simple Wills, Advance Medical Directives, Living Wills, Durable Powers of Attorney, and SGLI and DD-93 beneficiary designations) is a large part of LA practice. Complex estate planning, to include drafting complex trusts, may not be undertaken unless there is requisite expertise within the LA office.

0117 CONSUMER PROTECTION AND THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

011701. Consumer Matters

LA attorneys advise clients on a wide range of consumer matters involving such things as landlord/tenant disputes, mortgage foreclosures, automobile repossessions, debt collections, and identify theft. Helpful resources and consumer complaint avenues are in the MCLAP Policy and Practice Manual.

011702. Servicemembers Civil Relief Act (SCRA) and Department of Justice Enforcement

LA attorneys must be prepared to advise clients on all aspects of the SCRA, which includes stays of civil court and administrative proceedings, repossession protection, prohibition against non-judicial foreclosures on pre-service mortgages, default judgment protection, prohibition against non-judicial enforcement/foreclosure on storage liens, interest rate cap provisions, lease termination, cellular phone contract termination, eviction protection, and tax and residency protection.

0118 DOMESTIC RELATIONS AND FAMILY LAW

011801. General

Military family law practice can be complicated and state laws vary; accordingly, great care must be taken to avoid injuring a client’s interests. Unlike the other Services, Marine Corps LA attorneys do a great deal of legal work involving domestic relations, to include drafting separation agreements and helping clients file pro se in some jurisdictions as a Tier III legal assistance service.

011802. Family Law Mediation Program

As authorized by the OIC, LSSS, LA offices may establish Family Law Mediation Programs as a service to divorcing couples. The Program should have an established SOP that substantially complies with the Model Standards of Conduct for Mediators adopted by the ABA, American Arbitration Association and Association for Conflict Resolution.

011803. Separation and Divorce Briefs

LA offices may offer group informational briefs to persons contemplating divorce and are encouraged to consider offering alternate means, such as video briefs, that persons may watch in private. LA attorneys should not give specific legal advice to an individual at a group brief, but should instead recommend an appointment with a LA attorney.

0119 IMMIGRATION AND NATURALIZATION SERVICES

011901. General

Department of Defense regulations require the military Services to provide assistance to service members seeking naturalization based upon qualifying military service. For the Marine Corps, JAD (JLA) is the Immigration and Naturalization Program Manager. LA offices should contact JLA for assistance, as needed. LA offices may provide services to other LA-eligible persons (e.g., family members), depending on expertise within the office.

011902. Expedited Naturalization Processing at Recruit Training

Pursuant to 8 U.S.C. § 1400, Executive Order 13269 (July 3, 2002), as modified by the Office of the Under Secretary of Defense's Memorandum entitled Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization (October 13, 2017), allows expedited naturalization of non-citizens serving in an active-duty status in the Armed Forces of the United States during armed conflict with a hostile foreign force (i.e., War on Terrorism) beginning 11 September 2001 until a termination date established by future Executive Order. One hundred eighty days of honorable service qualifies the service member to file for expedited naturalization processing. LA offices shall assist in processing recruit applications for naturalization in cooperation with the local U.S. Citizenship and Immigration Service (USCIS) office.

011903. Resources

The MCLAP Policy and Practice Manual contains a list of resources that includes the USCIS website dedicated to military personnel and family members at <https://www.uscis.gov/military/citizenship-military-personnel-family-members>. USCIS also has established a toll-free military help line, 1-877-CIS-4MIL (1-877-247-4645), exclusively for members of the military and their families. After-hours callers should receive an email address that they can use to contact USCIS for assistance.

0120 INCOME TAX PREPARATION AND FILING ASSISTANCE (VITA PROGRAM)

VITA Program promotes increased mission readiness and enhances the morale and quality of life for military personnel, retirees, and their families by providing them with free income tax preparation and filing services through the use of trained military personnel and volunteers. The OICs, LSSS determine the most effective method of providing tax preparation and filing assistance services at their installations (e.g., installation Tax Centers, facilitated self-help kiosks, etc.). As the Marine Corps VITA Program Manager and member of AFTC, JLA coordinates with the IRS to provide software and training material to Tax Center sites.

0121 PREVENTIVE LAW PROGRAMS, UNIT BRIEFS, AND SUICIDE AWARENESS OFFICE PROCEDURES

012101. Preventative Law and Unit Briefs

LA offices shall have Preventive Law and Legal Awareness Programs that offer timely and concise educational information to the military community. Topics should include identity theft, unfair and deceptive trade practices, life insurance designations, SCRA protections, and other significant legal issues affecting military personnel and their families. Information shall be posted on the LA Office website. Further dissemination may include newspaper articles, handouts, etc. LA Offices shall develop and use standardized briefing presentations geared toward personal and family readiness. Topics should include availability of LA services at the installation.

012102. Suicide Awareness Office Procedures

Each LA Office shall have written procedures that LA personnel will follow in the event of a perceived risk of suicide.

VOLUME 6

“INTERNATIONAL AND OPERATIONAL LAW”

SUMMARY OF VOLUME 6 CHANGES

Hyperlinks are denoted by *[bold, italic, blue and underlined font.](#)*

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Washington, DC 20350-3000

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VOLUME 6: INTERNATIONAL AND OPERATIONAL LAW

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 PURPOSE 1-3

0102 GENERAL 1-3

0103 PERSONNEL 1-4

0104 SUPERVISION AND OVERSIGHT 1-6

0105 CRITICAL INFORMATION REQUIREMENTS 1-6

0106 RECURRING REPORTING REQUIREMENTS 1-8

0107 STANDARDS FOR ASSIGNMENT AND TRAINING OF MARINES 1-9

0108 RECURRING SUBSTANTIVE LEGAL ISSUES 1-12

0109 RESOURCES 1-13

FIGURE 1: 1-14

REFERENCES

- (a) SECNAVINST 5430.7R
- (b) SECNAVINST 5430.27D
- (c) SECNAVINST 5430.25E
- (d) 10 U.S.C. §§ 806, 1044, 1044e, 1059, 1072, 1565b, 1588, and 5046
- (e) MCO 5430.2
- (f) JAGINST 5803.1E
- (g) Manual for Courts-Martial, (2016 ed.)
- (h) U.S. Navy Regulations, (1990)
- (i) MCO 5800.14
- (j) MCO 1001.62A
- (k) MCO 1200.17E
- (l) JAGINST 5803.2B
- (m) SECNAVINST 1920.6C
- (n) Uniform Code of Military Justice, (2016)
- (o) MCO 1610.7
- (p) MCO 1300.8
- (q) MCO 1000.6
- (r) JAGINST 5800.7F
- (s) SECNAVINST 5211.5E
- (t) 5 U.S.C. §§ 101, 552a, and 3111
- (u) JAGINST 5801.2
- (v) 37 U.S.C. §§ 601-604
- (w) 38 U.S.C. §§ 4301-4334
- (x) DoD Instruction 1205.12
- (y) 31 U.S.C. § 1342
- (z) DoD Instruction 1100.21
- (aa) 8 U.S.C. § 1400
- (bb) Executive Order 13269, (July 3, 2002)
- (cc) DoD Directive 2311.01E
- (dd) MCO 3300.4A
- (ee) DoD Directive 2310.01E
- (ff) DoD Directive 5146.13
- (gg) Executive Order 12333, (December 4, 1981)
- (hh) DoD Directive 5240.01
- (ii) DoD 5240.1-R
- (jj) DoD Instruction 3025.21
- (kk) DoD Instruction 5525.03
- (ll) SECNAVINST 5710.25B
- (mm) 1 U.S.C. § 112b
- (nn) 22 CFR Part 181
- (oo) DoD Directive 5530.3
- (pp) DoD 5500.07-R
- (qq) 18 U.S.C. § 202
- (rr) 5 C.F.R. § 2634

“REFERENCES”

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

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VOLUME 6

“INTERNATIONAL AND OPERATIONAL LAW”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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INTERNATIONAL AND OPERATIONAL LAW

0101 PURPOSE

This Volume promulgates Marine Corps policy for the provision of international and operational law support throughout the Total Force and establishes service-wide standards for the performance of international and operational law.

0102 GENERAL

The increasing scope, complexity, and intensity of international and operational law issues that arise during the planning and execution of military operations demands increasing knowledge and expertise by judge advocates. Judge advocates practicing in the international and operational law arena must be conversant with the numerous manuals, orders, and publications to guide judge advocates on substantive legal issues as well as issues of training, organizing, and administration for the practice of international and operational law.

010201. International Law

International law is generally the law governing relations between nations, international organizations, and persons. International law is derived from international agreements, customary international law (resulting from a general and consistent practice of states observed out of a sense of legal obligation), or rules derived from general principles common to the major legal systems of the world.

010202. Law of War

It is important to recognize that “law of war” (LOW), also referred to as the “law of armed conflict,” is but one part of international law binding on the United States that may directly affect military operations. Judge advocates practicing international law are expected to be able to ascertain the existence of, and interpret, international law applicable to a particular operation. The most common will be international agreements, including Status-of-Forces Agreements, Acquisition and Cross-Serving Agreements, Defense Cooperation Agreements, and Article 98 Agreements. Judge advocates must also be familiar with the authority for, and the limitations on, negotiating and concluding such agreements.

010203. Operational Law

Operational law addresses the international laws, foreign (host nation) laws, and domestic laws, regulations, and policies that directly affect the planning and execution of U.S. military operations across the range of military operations (ROMO). While traditionally associated with areas such as the LOW and rules of engagement (ROE), operational law also encompasses such divergent areas as international human rights law; intelligence law; international agreements; national authority to execute operations; review of contingency / operational plans for compliance with statute and regulations; information and cyberspace operations; noncombatant evacuation operations; sea, air, and space law; humanitarian assistance and disaster relief operations; detainee and interrogation operations; funding for U.S. operations; funding for foreign security assistance; domestic operations; foreign and deployment claims; and contingency and deployment contracting. The practice of international law is only one of several components that comprise the operational law functional area. The art of providing operational law support is to proactively identify legal and related policy issues in many divergent areas; rapidly

synthesize them in order to give timely and coherent legal advice to commanders, staffs, and Marines; and to assist commanders in the assessment and mitigation of legal risk by considering alternate courses of action. The ultimate goal of operational law support is to ensure the Marine Corps can maintain unit readiness and conduct operations in accordance with applicable laws, regulations, and policies. One of the keys to providing proactive legal advice is gaining unfettered access to all staff and participating throughout the entire duration of the staff planning process.

0103 PERSONNEL

010301. Roles and Responsibilities of Judge Advocates in the Provision of International and Operational Law Support

A. General

Within the Marine Corps, international and operational law support is provided to commanders, their staffs, and their Marines by judge advocates in their role as command advisors. This support is provided primarily by the Office of the SJA organic to the command element of the Marine Air Ground Task Forces (MAGTF) and the headquarters of the Marine service component commands. In addition, at the Marine Expeditionary Force (MEF) Office of the SJA, there are structured operational law billets dedicated to supporting the MEF operational mission. Furthermore, there are structured operational law billets for Marine judge advocates at Headquarters, Marine Corps (HQMC) International and Operational Law Branch (JAO), Office of the Judge Advocate General (Code 10), Joint Staff (Chairman's Legal and J-5), and training commands. Judge advocates also compete for assignment to operational law billets at combatant commands. Finally, judge advocates may serve on temporary duty to augment the organic SJA office of deployed Marine units, provide task-organized legal support to contingency MAGTFs, or to fill Individual Augmentation (IA) requirements on Joint Task Forces (JTF) and multinational force headquarters staffs.

B. Structured Billets

The following billets are essential to the provision of international and operational law advice and support.

1. Staff Judge Advocate. Provide overall, unfettered command advice on international and operational law issues to the Commander; serve as the legal advisor who provides advice to the staff on international laws, foreign national laws, and applicable domestic laws and regulations; serve as the legal advisor for operational exercises and contingencies and provide legal advice during the Marine Corps Planning Process and the development of Operation Plans (OPLANS)/Operation Orders (OPORDS); and serve as the key staff interface with external organizations such as non-governmental organizations or international organizations during contingency operations.

2. Operational Law Attorney. Provide advice to the SJA and staff on international laws, foreign national laws, and applicable domestic laws and regulations; provide advice to the SJA and staff on the LOW and the development, formulation, and interpretation of the ROE; conduct LOW and other operational law training for all deploying personnel; assist the Operations Section (S-3) with ROE and Escalation of Force training, as necessary; coordinate with servicing legal assistance attorneys for the provision of legal assistance to Marines preparing for deployment; assist the SJA as the legal planner for operational exercises and contingencies; and assist the SJA in providing legal advice during the Marine Corps Planning Process and during the development of OPLANS/OPORDS.

3. Legal Chief. Assist the SJA and Operational Law Attorney in all associated billet functions.

010302. Role of the Office of the Staff Judge Advocate in International and Operational Law

A. Staff Integration

To be most responsive, judge advocates practicing international and operational law must be integrated members of the commander's staff. It is not enough to just know "the law." The judge advocate must understand the mission and the commander's intent, and provide legal advice that facilitates the development of courses of action to accomplish the unit's mission consistent with applicable law and policy. This requires participation on operational planning teams, boards, and cells as well as presence within the combat operation center. This also requires Marine judge advocates to maintain their proficiency as well-rounded MAGTF officers, imbued with an expeditionary mindset.

B. Marine Corps Planning Process (MCP)

To be effective on operational planning teams, boards, and cells Marine judge advocates must be well-versed in MCP and the Rapid Response Planning Process (R2P2), the truncated version of MCP used at the Marine Expeditionary Unit and battalion-level. Practical understanding and experience with the MCP and R2P2 positions a judge advocate to spot legal issues and to provide timely solutions to the commander and staff to facilitate further course of action development consistent with the law.

C. Operational Plans (OPLANS) and Orders (OPORDS)

By Department of Defence (DoD) Directive and Marine Corps Order, all OPLANS, OPORDS, directives, and similar documents concerning operational matters must be reviewed by judge advocates for legal sufficiency. Within the OPLAN/OPORD particular attention should be given to the following:

1. Base Plan.
2. Annex B, Intelligence.
3. Annex C, Operations. In particular, appendices for Concept of Operations, ROE, and Fire Support Plan/Targeting. The ROE Appendix contains the applicable ROE for the specific operation. The tasks of drafting this appendix, requesting supplemental ROE, disseminating the ROE, and providing ROE training is the responsibility of the unit's operations officer (e.g., G-3, S-3) and ultimately the commander; however, the SJA must be prepared to assist with these tasks as directed.
4. Annex E, Personnel. In particular, the Legal Appendix. The Legal Appendix contains references to documents pertinent to the specific operation, and general and specific guidance on matters such as international legal considerations, legal assistance, claims, military justice, fiscal law, LOW, detainee handling, and interaction with the ICRC and other non-governmental organizations.
5. Annex J, Command Relationships.

0104 SUPERVISION AND OVERSIGHT

010401. Chain of Command

In a deployed environment, Marine judge advocates must be cognizant of the separate and distinct service and operational chains of command, to include respective underlying authorities and responsibilities of each, as well as the supervisory and oversight roles of the SJA to CMC and the Navy Judge Advocate General (JAG).

010402. Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) and Judge Advocate Division (JAD)

The SJA to CMC is responsible for the operational and international law functions within the Marine Corps. This includes Service-level supervision and management of operational law matters arising in the Marine Corps. Within HQMC, the SJA to CMC is the legal advisor to CMC and HQMC on all operational and international law matters. Beyond HQMC, the SJA to CMC formulates, implements, supervises, and inspects the use of standard policies and procedures for the delivery of operational and international law support throughout the Marine Corps, with the exception of those matters assigned to the Navy JAG. The International and Operational Law Branch (JAO) within JAD assists the SJA to CMC with these responsibilities.

010403. International and Operational Law Branch (JAO)

JAO provides advice and guidance to CMC in his capacity as both a Service Chief and as a member of the Joint Chiefs of Staff, to the HQMC staff, and to Marine judge advocates worldwide. JAO also provides service input to the Office of the Secretary of Defense and the Joint Staff, and participates as a standing member of the DoD LOW Working Group. JAO focuses on international and operational law matters such as treaty interpretation and compliance, negotiation and conclusion of international agreements, LOW, detention operations, rules of engagement, law of the sea, training and equipping foreign forces, non-lethal weapons, cyberspace law, intelligence law, and domestic operations law. JAO also assists in the establishment and supervision of standard policies and procedures, manages the Marine Corps LOW Program, represents the Marine Corps at various domestic and international forums, and provides support for Marine judge advocates within the operating forces. Support includes providing advice, a web-based information portal, reference documents, and an after-action reports/legal lessons learned clearinghouse.

010404. Staff Judge Advocates (SJAs) and Title 10 Authority

Section 806 of Title 10 (Article 6, UCMJ) allows for the free flow of communication between SJAs within the operational and service chains of command, including the SJA to CMC. The SJA to CMC's role with regard to the delivery of operational and international law support to the operating forces and the supporting establishment, however, is limited to providing advice and establishing standards of performance and conduct. Consistent with Section 5046 of Title 10, no officer or employee of the DoD may interfere with the ability of judge advocates to give independent legal advice to their commanders.

0105 CRITICAL INFORMATION REQUIREMENTS (CIRs)

Certain CIRs exist in order to ensure proper execution of the Staff Judge Advocate to the Commandant's supervisory and oversight roles. In addition to a commander's responsibility to inform his operational chain of command regarding the types of events described below, the staff judge advocate

will simultaneously notify CMC (JAO) by the most expeditious means available when any of the following events occur:

010501. Law of War (LOW) Violation

Any possible, suspected, or alleged violation of the LOW by Marine Corps personnel, or DoD civilians assigned to or supporting Marine Corps units, for which there is credible information; or conduct during military operations other than war that would constitute a violation of the LOW if it occurred during an armed conflict (see DODD 2311.01E, DOD Law of War Program, and MCO 3300.4A, *Marine Corps Law of War Program*).

010502. Treatment of Detainees

Any alleged or suspected violation of U.S. law or policy governing the treatment of detainees as well as possible, suspected, or alleged violations of the LOW, for which there is credible information, that occur in the context of detention operations, and is committed by Marine Corps personnel, DoD civilians and contractors assigned to or supporting Marine Corps units, and non-DoD personnel (including foreign government representatives) who have access to DoD detention facilities or to detainees under DoD control. A detainee is any person captured, detained, held, or otherwise under the control of Marine Corps personnel (military, civilian, or contractor employee); a detainee does not include persons being held primarily for law enforcement purposes, except where the the United States is the occupying power (see DoD Directive 2310.01E, *DoD Detainee Program*).

010503. Questionable Intelligence Activity

Any questionable intelligence activity (QIA) or significant or highly sensitive matters, as defined in DoDD 5146.13, reasonably believed to have been committed by Marine Corps personnel or DoD civilians assigned to or supporting Marine Corps units, for which there is credible information. (see Executive Order 12333; DoD Directive 5240.01, *DoD Intelligence Activities*; and DoD 5240.1-R, *Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons*).

010504. Participation in Civilian Law Enforcement Activities

Any actual or suspected direct participation of Marine Corps personnel in civilian law enforcement activities in violation of applicable U.S. law and U.S. policy, for which there is credible information (see DoD Instruction 3025.21, *Defense Support of Civilian Law Enforcement Agencies*).

010505. Foreign Arrest or Detention of Marine Corps Personnel

Any arrest or detention of Marine Corps personnel by a foreign nation that occurs outside of the United States.

010506. Accusation of Misconduct

When a Marine serving overseas as an exchange officer, liaison officer, Marine Security Guard, Defense Attaché, or other similar position, has been accused of misconduct which, if proven, would be punishable under host nation law, U.S. law, including the UCMJ, or is involved in an incident that could bring discredit or cause embarrassment to the Marine Corps.

010507. Exercise of Criminal Jurisdiction over Friendly Foreign Forces

Any arrest, detention, confinement, or other exercise of criminal jurisdiction by Marine Corps personnel over friendly foreign military forces for offenses committed by its members within the United States. This CIR includes any facilitation for the exercise of criminal jurisdiction by service courts of friendly foreign forces or sending states in the United States (see DoD Instruction 5525.03, *Criminal Jurisdiction of Service Courts of Friendly Foreign Forces and Sending States in the United States*).

010508. Negotiation, Conclusion, or Implementation of an International Agreement

Any negotiation, conclusion, or implementation of an international agreement on behalf of the Marine Corps that falls within one of the following categories: implementing agreements; cooperative or reciprocal support agreements; plans, exercises, operations, and exchange agreements; foreign military intelligence agreements; military information exchange agreements; health and medical agreements; communications agreements; or any other international agreement that SECNAV has delegated the authority to negotiate, conclude, and implement to CMC (see SECNAVINST 5710.25B, *International Agreements*). This CIR excludes those international agreements that concern operational command of joint forces or other non-single-Service matters under the cognizance of the Chairman, Joint Chiefs of Staff and the Combatant Commanders.

010509. Breach of an International Agreement

When an international agreement signed by CMC, or his designee, is breached by the other party.

0106 RECURRING REPORTING REQUIREMENTS

010601. After-Action Reports (AARs)

The completion of an AAR is an important part of capturing legal lessons learned from operational experiences and developing the operational law “community of practice.” Therefore, within 90 days of redeployment, all Marine judge advocates, regardless of the duration or type of deployment/operational exercise, will complete and submit an AAR to the Marine Representative at the Center for Law and Military Operations (CLAMO), The U.S. Army’s Judge Advocate General’s Legal Center and School (TJAGLCS).

A. Responsibilities

Judge advocates will contact CLAMO or CMC (JAO) upon their redeployment to begin the AAR process. The responsibility to submit an AAR to CLAMO is separate and distinct from any other AAR requirement (e.g., unit AAR, submissions to Marine Corps Center for Lessons Learned, etc.). CMC (JAO), in coordination Marine Corps Staff Judge Advocates and Officers-in-Charge, will assist CLAMO with identifying and contacting those judge advocates whose deployment or participation in an operational exercise may provide valuable lessons learned to the legal community.

B. AAR Process

The AAR will be completed in the prescribed format located on the JAO SharePoint site within the After Action Reports section. The AAR may either be conducted with a member of CLAMO in person, electronically, or by telephone. The AAR will be unclassified, For Official Use Only; any

classified comments will be submitted in a classified annex. The AAR will follow an “Issue, Discussion, and Recommendation” format by identifying a legal issue, discussing the issue and actions taken to resolve it, and then providing a recommendation to address the issue in the future. CLAMO has an established collection process and it is strongly recommended that redeploying judge advocates coordinate with the Marine Representative at CLAMO prior to completing the AAR.

C. Resource Publication

CLAMO is the central repository for all AARs completed in accordance with paragraph 0106. CLAMO maintains the AARs in its own repository and in the JAGCNET website document library (CAC Access Required). Lessons learned from the AARs are also incorporated into various CLAMO publications such as *Forged in the Fire: Legal Lessons Learned During Military Operations* and its supplement, and *Tip of the Spear*. The Marine Representative at CLAMO will ensure that copies of completed AARs are distributed to CMC(JAO), Marine Expeditionary Force SJAs, Marine Division SJAs, and any other designated Marine Corps components that CLAMO, in consultation with CMC(JAO), determines to have a legitimate requirement. CMC(JAO) will also maintain all AARs in a secure web portal that is accessible to Marine judge advocates upon request.

010602. Case Act Reporting

Pursuant to the Case-Zablocki Act (Pub.L. 92-403; 1 U.S.C. § 112b) (the “Case Act”), all international agreements shall be transmitted to the Department of State (DoS) within 20 days of signing. SECNAVINST 5710.25B designates the Navy JAG as the Central Office of Record and the Central Repository for all Department of the Navy international agreements, including those negotiated and concluded by CMC. SECNAVINST 5710.25B tasks CMC (JAO) to provide required legal support to CMC for all efforts associated with those international agreements that CMC is authorized to negotiate and conclude. Therefore, the original or certified true copies of all international agreements concluded by CMC or pursuant to a CMC grant of authority, shall be forwarded to CMC (JAO) as soon as possible after they have been concluded, to assist in meeting the 20-day notification period imposed by the Case Act. Commands, HQMC departments, agencies, or other officials submitting certified true copies of concluded agreements to CMC (JAO) shall include copies of all related documents, including all accompanying papers, such as agreed minutes, exchanges of notes, or side letters, and background statements. Background statements include information explaining the agreement, the negotiating history, the effect of the agreement, and a precise citation of legal authority to be submitted (*see* 22 CFR Part 181, section 181.7; and DoD Directive 5530.3). All contemplated international agreements should be coordinated with CMC (JAO) prior to negotiation to determine whether authority has been delegated to negotiate and conclude the international agreement.

0107 STANDARDS FOR ASSIGNMENT AND TRAINING OF MARINES

010701. Garrison Environment

Dedicated Operational Law Attorney billets are structured in each of the MEF and Division SJA offices (see Appendix I). All International and Operational Law billet assignments will be screened by Plans and Innovation Branch (JPI) to ensure the right Marine is assigned to the right billet at the right time. JPI ensures that the billet holder has the appropriate education, experience, and skill necessary to provide the gaining command with competent advice to accomplish its mission. Although not required by order or regulation, JPI considers the possession of MOS 4405 (Operational Law) as a major criterion in the decision to assign a judge advocate to an operational law billet. Similarly, operational law skill sets

and experience may demonstrate competence to handle a specific billet assignment. Regardless of the achieved qualifications, the requirements of HQMC will dictate the placement of personnel in international/operational law billets.

010702. Deployed Environment

A. General

Judge advocates will generally be assigned to operational law duties in a deployed environment in one of several ways: as permanent personnel, assigned to the organic SJA office of a deploying Marine organization; on temporary duty, attached to the organic SJA office, headquarters, or command element of a deploying Marine organization; or on temporary duty, as an individual augmentee (IA) to a JTF or other Joint and/or combined force.

B. Augmentation Requests

Organizations requesting judge advocate augmentation should clearly identify the legal support requirements for their assigned mission. Given the steady state garrison military justice services requirements for judge advocates, provision of judge advocate support must be judicious and efficient. Judge advocates should not be provided to meet a deploying unit's pre-existing, traditional legal administration requirements (e.g., adjutant duties, JAGMAN investigating officer, SRB Page 11/NJP/ADSEP administration, etc.). These traditional requirements are to be filled by the unit's organic assets (i.e., legal officer, S-1, adjutant, executive officer, etc.). Active participation by a judge advocate in the mission planning process can help units anticipate, articulate, and validate their unit legal support requirements.

C. Experience, Education, and Training

In assigning judge advocates as augmentees to deploying commands to provide operational law support, the supporting organization shall ensure that augmentees have the requisite experience, education, and training, and that such assignment will not conflict with professional responsibility obligations inherent in their current assignment. This is particularly important where the judge advocate will be assigned as the primary command legal advisor. Supporting organizations shall, insofar as practicable, assign judge advocates who: have at least one-year experience in MOS 4402; have the ability to complete individual pre-deployment training requirements established by the respective MEF, MARFOR, or other responsible higher headquarters (e.g., MARCENT pre-deployment training program (PTP) requirements); hold the requisite level security clearance; have completed advanced Continuing Legal Education (CLE) courses in operational and international law, or are able to complete those courses prior to, or in conjunction with, assignment to the billet, or possess the 4405 secondary MOS; have experience in MCPP/R2P2, or have completed grade-appropriate Professional Military Education (PME) requirements (e.g., Expeditionary Warfare School); do not have remaining defense client representation obligations; and are available for immediate assignment. Judge advocates designated to fill augmentation requirements shall complete individual training requirements as soon as possible, and be made available to the supported organization as early as possible to allow for staff integration and participation in operational planning, unit training, and unit exercises.

010703. Entry and Graduate-Level Professional Military Education

A. Operational Law Training at Naval Justice School

All judge advocates will receive operational law courses as part of the Basic Lawyer Course at the Naval Justice School (NJS). These courses provide student judge advocates a basic working foundation in the international and operational law practice area and is in accordance with the requirements set forth in MCO 3300.4A (Marine Corps Law of War Program).

B. Graduate Program at The U.S. Army's Judge Advocate General's Legal Center and School (TJAGLCS); Special Education Program (SEP); and Advanced Degree Program (ADP)

The Marine Corps has identified and validated several billets required to be staffed by judge advocates who possess specific postgraduate level education. The Commandant's Professional Intermediate-Level Education Board and Career-Level Education Board annually select the best and most qualified officers for career/intermediate-level PME and graduate-level education, to include the TJAGLCS Graduate Program, SEP, and ADP. These programs provide selected judge advocates the opportunity to earn a Masters of Law degree with a specialization in international and operational law.

010704. Pre-deployment Training for Judge Advocates

Commanders and SJAs must make every attempt to ensure that judge advocates assigned to provide operational law support have the appropriate education and training that includes, but is not limited to:

A. Pre-Deployment Legal Training (PDLT)

PDLT is a program in which judge advocates preparing to deploy receive the latest updates and training on legal issues relevant to their anticipated area of operations. These training periods are organized and managed by the respective MEF SJAs. CMC (JAO) supports the MEF with their PDLT curriculum development as well as with their instruction requirements.

B. Unit Pre-Deployment Training Program (PTP) and Assessment

Deploying operational units are required to conduct training and assessment exercises. Judge advocates assigned to, and expected to deploy with, such units should attend these training and assessment exercises along with the unit.

C. Continuing Legal Education

Numerous options are available for judge advocates to obtain CLE in the fields of international and operational law. Commanders should encourage and allow their assigned judge advocates to attend the international and operational law short courses available at both NJS and TJAGLCS. Additionally, NJS, TJAGLCS, and the Air Force Judge Advocate School offer on-line classes that encompass many aspects of international and operational law.

D. Operational Law Branch (JAO)

JAO may, upon request, and as resources permit, provide additional instruction in international and operational law to judge advocates within the operating forces.

E. Law of War Training

LOW training for commanders and their staffs is addressed in MCO 3300.4A. MEF SJAs, JAO, and the Marine Corps Law of War Detachment (LOW-Det) perform central roles in supervising and executing this program. The LOW-Det's primary mission is to support the efforts of the MEF SJAs as they provide LOW training and education in support of commanders and staffs of operational forces. All courses and periods of instruction will be reviewed and approved by, and reported to, JAO by the LOW-Det prior to occurring. The four levels of Law of War training are outlined in MCO 3300.4A and are as follows:

1. “Entry-level” Training. “Entry-level” LOW training, as set forth in enclosure (2) of MCO 3300.4A, will be provided to every newly accessing Marine, whether officer or enlisted, at Officer Candidates School or the Marine Corps Recruit Depots.

2. “Follow-on” Training. Marines attending Marine Corps formal or unit-run schools such as The Basic School, School of Advanced Warfighting, Schools of Infantry, and Expeditionary Warfare School. Additionally, Follow-on Training also consists of formal operational pre-deployment unit training.

3. “Specialized” Training. “Specialized” LOW training is required for Marines occupying certain billets or assigned particular duties and responsibilities such as directing or planning operations. These personnel are identified in enclosure (4) of MCO 3300.4A.

4. “Detailed” Training. All Marine Corps judge advocates will receive “Detailed” LOW training while attending the Basic Lawyer Course at NJS and refresher “Detailed” LOW training prior to deployment.

F. Instructional Training Packages

LOW baseline training materials used in the “Entry-level” and “Follow-on” classroom instruction periods and realistic training exercise scenarios will be obtained through Marine Corps Combat Development Command (MCCDC), Training and Education Command (Code 465). SJA to CMC (JAO) is tasked with supporting MCCDC by creating, monitoring, and reviewing all “Entry-level” and “Follow-on” LOW instruction and instructional materials. The baseline training materials for the “Specialized” classroom instruction periods and realistic training exercise scenarios will be obtained from JAO through the JAO SharePoint site. These training materials are meant to be the baseline content for instruction for each of the training curriculums stated above. Instructors are permitted to add pertinent substance to these training packages, but they should not deviate from the substantive content within the training materials without previous authorization from JAO.

0108 RECURRING SUBSTANTATIVE LEGAL ISSUES

Certain international and operational legal issues recur with some consistency while in a deployed or garrison environment. Fiscal law, captured enemy property, LOW application, interpreting international agreements, and weapons legal reviews are a few of the substantive matters confronted by operational law judge advocates. See the JAO web portals for more detailed explanation of these issues.

0109 RESOURCES

Although primary source documents (international agreements, statutes, regulations, etc.) should be relied upon when researching legal issues, a variety of informal international and operational law resources exist that capture and explain in great detail issues frequently encountered by units and judge advocates.

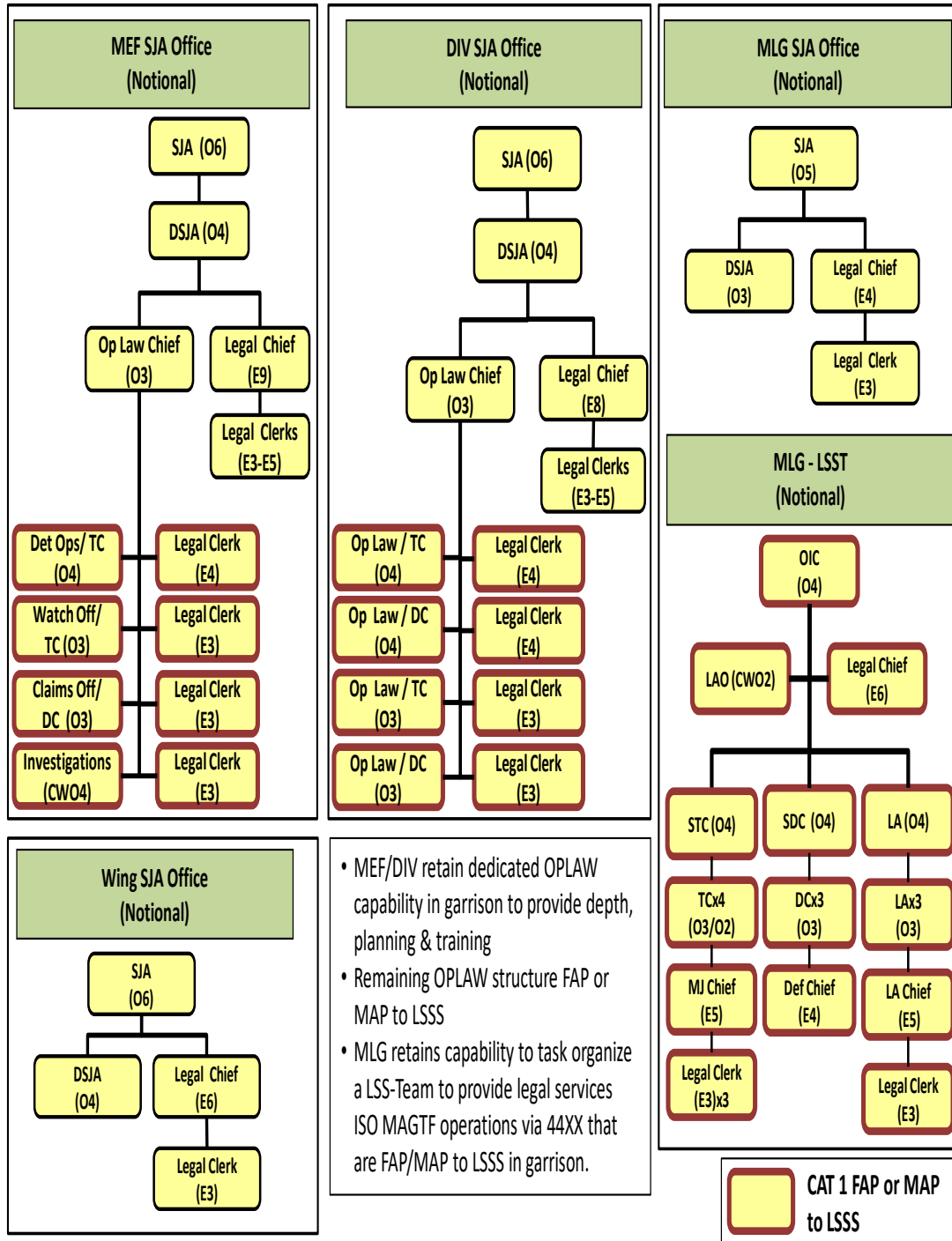
010901. Operational Law Branch (JAO) Web Portal and Publishing Policy Guidance

JAO maintains both unsecured and secured unclassified web portals which contain references, opinions, and articles on the latest operational and international law issues, as well as historical documents and publications with respect to recurring legal issues. Additionally, further policy guidance and administrative procedures applicable to judge advocates serving in operational law billets will be published separately on these JAO web portals. Both sites are designed to assist the garrison and deployed judge advocate across the ROMO. The JAO unsecured web portal may be accessed at: [https://hqmc.usmc.afpims.mil/sja/Branches/InternationalOperationalLawBranch\(JAO\).aspx](https://hqmc.usmc.afpims.mil/sja/Branches/InternationalOperationalLawBranch(JAO).aspx). The JAO secured web portal may be accessed at: <https://ehqmc.usmc.mil/org/sja/JAO/default.aspx>. Requests for access should be sent to the JAD Plans and Innovation, Information Branch (JPI-1) at JAIWebmaster@usmc.mil.

010902. Marine Representative at the Center for Law and Military Operations (CLAMO)

CLAMO is a joint, interagency, and multinational legal center at TJAGLCS that collects and synthesizes data relating to legal issues arising in military operations, manages a central repository of information relating to such issues, and disseminates resources addressing those issues. A Marine judge advocate serves as the Marine Representative at CLAMO. The Marine Representative is able to assist redeploying judge advocates with the AAR process and can be contacted at (434)971-3145, usarmy.pentagon.hqda-tjaglcs.mbx.clamo-tjaglcs@mail.mil (NIPR), or clamo.clamotjaglcs@us.army.smil.mil (SIPR). In addition to AARs, the Marine Representative can mail hard copy publications of the *Operational Law Handbook* and the *Deployed MAGTF Judge Advocate Handbook*. The Marine Representative can also help Marine judge advocates access the Army JAGCNET website (www.jagcnet.army.mil) and answer requests for information/assistance from currently deployed judge advocates.

Legal Support to Operations & Exercises – Command Advice



- MEF/DIV retain dedicated OPLAW capability in garrison to provide depth, planning & training
- Remaining OPLAW structure FAP or MAP to LSSS
- MLG retains capability to task organize a LSS-Team to provide legal services ISO MAGTF operations via 44XX that are FAP/MAP to LSSS in garrison.

Figure 1

VOLUME 7

“ETHICS”

SUMMARY OF VOLUME 7 CHANGES

Hyperlinks are denoted by *bold, italic, blue and underlined font.*

The original publication date of this Marine Corps Order (right header) will not change unless/until a full revision of the MCO has been conducted.

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VOLUME 7: ETHICS

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 SCOPE.....1-3

0102 JOINT ETHICS REGULATION.....1-3

0103 RESPONSIBILITIES1-3

0104 CMC (JA).....1-3

0105 ETHICS COUNSELORS1-5

0106 FINANCIAL DISCLOSURE REPORTS1-6

0107 TRAINING1-8

0108 ETHICS REPORTS1-8

0109 RESOURCES1-8

FIGURE 11-9

REFERENCES

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

“REFERENCES”

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VOLUME 7

“ETHICS”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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ETHICS

0101 SCOPE

This Volume addresses administrative instructions for the Marine Corps ethics program. Figure 1-1 is the annual calendar of filing and reporting dates under the program.

0102 JOINT ETHICS REGULATION

DoD 5500.07-R, the Joint Ethics Regulation (JER), is the single source for standards of ethical conduct and ethics guidance, including direction in the areas of public and confidential financial disclosure systems, activities with non-Federal entities, conflicts of interest, seeking other employment, post-government service employment rules, enforcement, and training for the Department of Defense.

0103 RESPONSIBILITIES

Supervision of the Marine Corps ethics program is shared between the Staff Judge Advocate to the Commandant (CMC (JA)) and Counsel for the Commandant (CMC (CL)), each of whom has been appointed as a Deputy Designated Agency Ethics Official (Deputy DAEO) by the Department of Navy General Counsel, who serves as the Designated Agency Ethics Official (DAEO) of the Department of the Navy (DON). CMC (JA) and CMC (CL) provide ethics advice and training and monitor financial disclosure reporting (including Office of Government Ethics (OGE) 278s and 450s) in their areas of responsibility, as set forth below. As Deputy DAEOs, CMC (JA) and CMC (CL) are delegated authority by the DAEO to grant extensions for OGE 278 filing deadlines in accordance with applicable regulations. Staff judge advocates and designated CL attorneys serve as Ethics Counselors and supervise the ethics programs within their commands or areas of responsibility. The most recent Ethics Counselor designation letter is located on the JCA SharePoint site.

0104 Civil and Administrative Law Branch

The Civil and Administrative Law Branch (JCA) administers the ethics program for CMC (JA). CMC (JCA) provides timely, individual, written notification, including delivery of the Public Financial Disclosure Report (OGE 278) and instructions, to Marine Corps general officers, advising them of their obligation and deadline for submission of a new entrant, annual, or termination report, and monitors submissions to ensure that all reports are timely filed. CMC (JCA) assists local SJAs in their ethics counselor review of OGE 278 to ensure all reports are administratively complete, accurate, and reviewed for conflicts of interest. JCA also maintains the original OGE 278s of all Marine Corps general officers on file for a period of six years (see JER 7-207.b). CMC (JA) completes the final review and certification of the OGE 278 reports of all Marine Corps general officers, except for those assigned to Joint Staff and Combatant Command billets and those general officers at HQMC who fall under the cognizance of CMC (CL).

010401. Headquarters Marine Corps Office of Government Ethics (OGE) 278 Areas of Responsibility

A. Staff Judge Advocate to the Commandant

CMC (JA) conducts the final review and certification of the OGE 278 reports of the following general officers at HQMC: Assistant Commandant of the Marine Corps, Director Marine Corps

Staff, Deputy Commandant, Combat Development and Integration/Commanding General Marine Corps Combat Development Command, Deputy Commanding General, Marine Corps Combat Development Command, Commanding General, Training and Education Command, Assistant Deputy Commandant, Combat Development and Integration (MOB), Deputy Commandant for Manpower and Reserve Affairs, Director, Manpower Management Division, Director, Reserve Affairs Division, Deputy Commandant for Plans, Policies, and Operations, Assistant Deputy Commandant for Plans, Policies, and Operations (Plans), Assistant Deputy Commandant for Plans, Policies, and Operations (Operations), Inspector General of the Marine Corps, Commanding General, Marine Corps Recruiting Command, Director, Public Affairs, Director, Legislative Affairs, Chaplain of the Marine Corps, and Medical Officer of the Marine Corps.

B. Counsel for the Commandant

CMC (CL) conducts the final review and certification of the OGE 278 reports of the following offices/entities: Commandant of the Marine Corps, Deputy Commandant for Aviation, Assistant Deputy Commandant for Aviation, Deputy Commandant for Installations and Logistics, Assistant Deputy Commandant for Installations and Logistics/Commander, Marine Corps Installations Command, Assistant Deputy Commandant for Installations and Logistics, Deputy Commandant for Programs and Resources, Assistant Deputy Commandant for Programs and Resources, Deputy Commandant for Information, Director for Command, Control, Communications, and Computers, Director of Intelligence, Commander, Marine Corps Logistics Command, Commander, Marine Corps Systems Command, and all Marine Corps Senior Executive Service members.

010402. Office of Government Ethics (OGE) 450 Review

CMC (JA) and CMC (CL) conduct the legal review and certification of the Confidential Financial Disclosure Report (OGE 450) for HQMC personnel who report to the individuals identified above, and maintain those reports on file for a period of six years.

010403. Ethics Program Reports

CMC (JCA) and CMC (CL) compile and submit for the Marine Corps reports required by the ethics program.

010404. Advice and Opinions

CMC (JCA) and CMC (CL) provide advice and written opinions on outside activities, acceptance of gifts, conflicts of interest, post-Government service employment matters, and training and education on ethics rules and regulations.

010405. Staff Judge Advocate (SJA) Advice and Guidance

CMC (JCA) provides advice and guidance to SJAs in fulfilling their roles as Ethics Counselors within their respective organizations.

010406. Military Personnel Law Branch

The Military Personnel Law Branch (JPL) provides legal advice and support on military personnel law matters for CMC (JA). As part of the process for approving nominees for appointment to

O-9 and O-10 general officer positions, JPL ensures, in consultation with CMC (CL), that the nominee has a current OGE 278 on file and that the report has been reviewed by the appropriate DoD Component DAEO or designee in relation to the position for which the nominee is being considered.

0105 ETHICS COUNSELORS

Ethics Counselors are responsible for supervising the ethics program for their respective organizations, activities, and/or geographic areas, including: the initial review of OGE 278 reports; the initial review and certification of periodic transaction reports (OGE 278-T reports); the initial review and certification of OGE 450 reports; the issuance of appropriate letters of caution to filers in conjunction with such reports; the provision of advice and assistance (in writing, when practicable) on matters relating to ethics and standards of conduct, including, but not limited to, outside activities, acceptance of gifts, conflicts of interest, post-Government service employment matters, and training and education on ethics rules and regulations; and the issuance of written opinions under the Procurement Integrity Act (41 U.S.C. §§ 2101-2107).

010501. Appointed Ethics Counselors

As DAEO for the DON, the General Counsel appointed Ethics Counselors within the Marine Corps by General Counsel Memorandum of 11 September 2012. The following individuals are appointed Ethics Counselors within the Marine Corps: Deputy Staff Judge Advocate, Judge Advocate Division, HQMC; Head, Civil and Administrative Law Branch, HQMC (JCA); Deputy Head, Civil and Administrative Law Branch, HQMC (JCA); Directors and Deputy Directors, Joint Law Centers, for all Marine Corps Air Stations; Staff Judge Advocates and Deputy Staff Judge Advocates at all Marine Corps Bases; Staff Judge Advocates and Deputy Staff Judge Advocates for all staffs and commands having general court-martial convening authority; and Navy OGC attorneys under the cognizance of CMC (CL).

010502. Delegation

Named Ethics Counselors may delegate the authority for review and certification of Confidential Financial Disclosure Reports (OGE 450) to attorneys in their offices.

010503. Designation

Pursuant to JER section 1-401, Ethics Counselors must be designated in writing by the DAEO (DON General Counsel Memorandum of 11 September 2012), who delegated authority to designate additional Ethics Counselors in writing to Deputy DAEOs. Submit requests for additional designations to CMC (JA) or CMC (CL), as appropriate. CMC (JA) and CMC (CL) will notify each other if they make additional designations.

0106 FINANCIAL DISCLOSURE REPORTS

The purpose of financial disclosure reports is to assist Federal agencies in identifying potential conflicts of interest between an employee's official duties and his or her private financial interests and affiliations. The Office of Government Ethics establishes rules and regulations for both the public and confidential financial disclosure systems.

010601. Public Financial Disclosure Report (OGE 278)

Regular and reserve military officers whose pay grade is O-7 or above, and civilian employees in an SES position are required to file and are considered to be in covered positions.

A. Time of Filing

1. New Entrant Reports. Within 30 days of assuming a covered position, a reporting individual must submit an OGE 278. Official promotion to pay grade O-7 (not frocking) triggers the filing requirement. Reserve general officers must file a new entrant report within 30 days after the 61st day of serving on active duty during any calendar year.

2. Annual Reports. Any time after 1 January, but not later than 15 May, an individual who served in a covered position for more than 60 days during the preceding calendar year shall file an annual OGE 278. For reserve general officers, only active duty service pursuant to orders issued under Title 10, United States Code, is counted.

3. Termination Reports. Not later than 30 days after termination from a covered position, an individual must submit an OGE 278. General officers should sign and date the termination report no earlier than their last day of active duty military service (not to be confused with their change of command or terminal leave date).

4. Combined Annual/Termination Report. Individuals who anticipate terminating their DoD employment on or within 90 days after the 15 May annual deadline may file a combined annual/termination report if they request and receive an agency extension of the annual filing deadline from a Deputy DAEO (CMC (JA) or CMC (CL)), as appropriate. Combined annual/termination reports must be filed within 30 days after termination of employment and not later than 13 August.

B. Extension of Filing Deadlines

Per 5 U.S.C. App. § 101(g)(2)(A), OGE 278 filers serving in an area designated by the President as a combat zone (i.e., an area subject to the combat zone tax exclusion) when an OGE 278 report is due are authorized an automatic extension of the filing deadline. The date for filing is extended 180 days after the later of: (1) the last day of service in the combat zone; or (2) the last day of hospitalization as a result of injury or disease from service in the combat zone. CMC (JA) and CMC (CL), as Deputy DAEOs, are delegated authority to grant, for good cause shown, a filing extension of up to 90 days. All requests for extensions shall be provided, in writing, by the individual filing the report. The request shall contain a clear statement of the reasons for the request and shall be submitted in advance of the original filing deadline.

C. Late Filing Fee

Any individual who is required to file an OGE 278 and does so more than 30 days after the required filing date, or 30 days after the last day of the filing extension period, shall be subject to a \$200.00 late filing fee. CMC (JA) and CMC (CL), as Deputy DAEOs, are the sole delegated authorities for waiving, in accordance with applicable regulations, the late filing fee for OGE 278 filers.

010602. Periodic Transaction Report (OGE 278-T)

Regular and reserve military officers whose pay grade is O-7 or above and civilian employees in an SES position are required to file periodic transaction reports (OGE 278-T). Filers must report the

purchase, sale, or exchange of stocks, bonds, commodities futures, or other forms of securities owned or acquired by the filer, his spouse, and/or dependent children if the individual transaction exceeds \$1,000. No report is required for transactions involving mutual funds, real estate, cash accounts, insurance, annuities, Thrift Savings Plan, Treasuries, and other investments. The Stop Trading on Congressional Knowledge Act Act requires that the filer disclose periodic transactions no more than 30 days after receiving notification of the transaction, and if no notice is received, then no more than 45 days after the actual transaction. This includes transactions made by a broker or financial manager on a filer's behalf. Filers will submit their OGE 278-T to the local ethics counselor, who will perform the conflict of interest review and sign the OGE 278-T as final reviewing official. Thereafter, the local ethics counselor will email a PDF copy to the filer's supervisor and the cognizant Deputy DAEO. Unlike the annual OGE 278, the local ethics counselor has the authority to approve (before the filing deadline) filing extensions of up to 90 days for "good cause" shown. After the filing deadline, OGE 278-T filing extensions may only be granted by CMC (JA) or CMC (CL). Failure to timely file a periodic transaction report will result in the assessment of a monetary penalty in the amount of \$200.00. The penalty is applicable only to the required report, not to individual transactions. OGE 278-T late filing fees may only be waived by CMC (JA) and CMC (CL).

010603. Confidential Financial Disclosure Report (OGE 450)

A. Individuals Required to File

1. Military personnel (below O-7) who are commanding officers, executive officers, and heads and deputy heads of installations, bases, air stations, or activities.

2. Special Government Employees (SGEs), i.e., an individual who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. See 18 U.S.C. § 202 and JER 1-232. SGEs are individual experts or consultants recruited for temporary service to the Government because they provide outside expertise or perspectives that might be unavailable among an agency's regular employees. In the DoD, the term also includes Reserve military officers on active duty for training involuntarily or for training for any length of time, and one who is serving voluntarily for active duty for training for 130 days or less; and to Reserve enlisted members to the same extent that military officers are included in the meaning of the term. (But see exclusion of DON Reservists by determination of Navy General Counsel, dated 18 November 2011, on next page).

3. Military personnel (below O-7) and civilian personnel (below SES), including detailees, whose official responsibilities require them to participate personally and substantially through decision-making or the exercise of significant judgment in taking an official action for contracting or procurement; administering or monitoring grants, subsidies, licenses, or other Federally-conferred financial or operational benefits; regulating or auditing any non-Federal entity, or other activities in which their final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity.

B. Time of Filing

1. New Entrant Reports. A reporting individual must submit an OGE 450, with information current as of the filing date for the preceding 12 months, through their supervisor to their Ethics Counselor not later than 30 days after assuming duties in a covered position.

2. Annual Reports. A reporting individual who was employed at least 61 days during the preceding reporting period must submit an OGE 450 to the Ethics Counselor by 15 February of each year, covering the preceding calendar year. Individuals who have previously filed an OGE 450 may be eligible to file the OGE Optional Form 450-A (short form), except in a year (e.g., 2020) divisible by four. See 5 C.F.R. § 2634.905(b) and JER 7-300.b(3)(d). Refer to the JER for further guidance.

0107 TRAINING

010701. Initial Ethics Orientation (IEO) for New DoD Employees

Within 90 days of entering duty, all new DoD employees who have not previously received ethics training shall receive an IEO. Within 180 days of entering active duty, active duty enlisted members of the armed services will receive initial ethics training. An IEO shall be a minimum of one hour of official duty time. The amount of official duty time given to new employees to review written materials required by the IEO may be reduced by the amount of time they spend receiving verbal ethics training during official duty time.

010702. Annual Ethics Training

All DoD employees who file an OGE 278 or OGE 450 shall receive 1 hour of annual ethics training, to be completed by 31 December.

010703. Training Materials

The Department of the Navy Assistant General Counsel (Ethics) prepares an annual on-line ethics training module that can be used to fulfill the annual ethics training requirement. This training material may be accessed from the CAC ethics site at <https://donogc.navy.mil/Ethics> or the public ethics website at <http://ethics.navy.mil>.

0108 ETHICS REPORTS

Figure 1 lists required reporting dates and a schedule of important ethics dates.

Ethics Program Calendar

9 January: Ethics Counselors submit data report to CMC (JCA) concerning Navy General Gift Fund for 1st quarter of fiscal year.

10 January: CMC (JCA) submits consolidated Navy General Gift Fund first quarter report to AAUSN (FMD).

15 January: Ethics Counselors submit responses to Annual OGE Agency Ethics Program Questionnaire to CMC (JCA).

20 January: CMC (JCA) submits consolidated report to Navy OGC concerning Annual OGE Agency Ethics Program Questionnaire.

25 January: Ethics Counselors report on gifts of more than minimal value (tangible gifts or gifts of travel or travel expenses) from foreign government sources during previous calendar year to CMC (JCA).

31 January: CMC (JCA) submits consolidated calendar year Federal Register Foreign Gift Report to Office of the Chief of Protocol, U.S. Department of State.

15 February: All annual Confidential Financial Disclosure reports (OGE 450) are due to Ethics Counselors. Ethics Counselors should review and certify reports within 60 days of receipt.

9 April: Ethics Counselors submit data report to CMC (JCA) concerning Navy General Gift Fund for 2d quarter of fiscal year.

10 April: CMC (JCA) submits consolidated Navy General Gift Fund second quarter report to AAUSN (FMD).

15 April: Unless further information is required, Ethics Counselors should have completed the review and certification of OGE 450 reports.

30 April: Ethics Counselors report Semiannual Report of Acceptance of Travel Benefits from a Non-Federal Source, under 31 U.S.C. § 1353 (OGE Form 1353), concerning gifts of travel/travel related expenses in excess of \$250.00 for period of 1 October to 31 March to CMC (JCA).

1 May: CMC (JCA) submits consolidated Semiannual Report of Acceptance of Travel Benefits from a Non-Federal Source, under 31 U.S.C. § 1353 (OGE Form 1353), to Navy OGC.

15 May: All annual Public Financial Disclosure reports (OGE 278) are due to Ethics Counselors.

29 June: All annual OGE 278 reports from filers granted first 45-day extensions are due to Ethics Counselors.

29 June: Last day for OGE 278 filers to request a second 45-day extension to OGE 278 filing deadline.

9 July: Ethics Counselors submit data report to CMC (JCA) concerning Navy General Gift Fund for 3d quarter of fiscal year.

10 July: CMC (JCA) submits consolidated Navy General Gift Fund third quarter report to AAUSN (FMD).

14 August: All annual OGE 278 reports from filers granted second 45-day extensions are due to Ethics Counselors.

14 September: The late filing fee applies to OGE 278 filers who were granted second 45-day filing extensions but have not submitted their reports to Ethics Counselor.

1 October: Ethics Counselors report on Gifts of More than Minimal Value to Foreign Individuals (either purchased with appropriated funds or not obtained by appropriated funds, e.g., donations) during preceding fiscal year to CMC (JCA).

9 October: Ethics Counselors submit data report to CMC (JCA) concerning Navy General Gift Fund for 4th quarter of fiscal year.

10 October: CMC (JCA) submits consolidated Navy General Gift Fund fourth quarter report to AAUSN (FMD).

15 October: CMC (JCA) submits consolidated report on Gifts of More than Minimal Value to Foreign Individuals (either purchased with appropriated funds or not obtained by appropriated funds, e.g., donations) during preceding fiscal year to DON OGC.

31 October: Ethics Counselors submit Semiannual Report of Acceptance of Travel Benefits from a Non-Federal Source, under 31 U.S.C. § 1353 (OGE Form 1353), concerning gifts of travel/travel related expenses in excess of \$250.00 for period of 1 April to 30 September to CMC (JCA).

15 November: CMC (JCA) submits consolidated Semiannual Report of Acceptance of Travel Benefits from a Non-Federal Source, under 31 U.S.C. § 1353 (OGE Form 1353), to Navy OGC.

15 December: CMC (JCA) emails Annual OGE Agency Ethics Program Questionnaire to Ethics Counselors.

31 December: All OGE 278 and OGE 450 filers are required to complete their annual ethics training requirement.

Figure 1

VOLUME 8

“GIFTS TO THE MARINE CORPS, CIVIL LITIGATION, AND CLAIMS”

SUMMARY OF VOLUME 8 CHANGES

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VOLUME 8: GIFTS TO THE MARINE CORPS, CIVIL LITIGATION, AND CLAIMS

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 GIFTS TO THE MARINE CORPS 1-3

0102 CIVIL LITIGATION COORDINATION AND RELEASE OF OFFICIAL
INFORMATION..... 1-7

0103 DELIVERY OF PERSONNEL AND SERVICE OF PROCESS..... 1-10

0104 ARTICLE 139 CLAIMS AND GENERAL CLAIMS PROVISIONS 1-10

REFERENCES

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

(ss) SECNAV M-5214.1

Reports Required: I. General Gift Funds Report (Report Control Symbol MC-5800-0),
par. 010306.B
II. Semiannual Report of Payments Accepted from a Non-Federal Source (Report
Control Symbol Exempt) par. 010308.C

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VOLUME 8

“GIFTS TO THE MARINE CORPS, CIVIL LITIGATION, AND CLAIMS”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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GIFTS TO THE MARINE CORPS, CIVIL LITIGATION, AND CLAIMS

0101 GIFTS TO THE MARINE CORPS

010101. Scope

This Volume implements policy and procedures for accepting gifts to the Marine Corps in accordance with SECNAVINST 4001.2 (series) and SECNAVINST 1650.1H. This guidance does not pertain to gifts given to individuals covered under 5 C.F.R. Part 2635 and DOD 5500.07-R (Joint Ethics Regulation (JER)). This guidance pertains to foreign gifts offered to individual Marine Corps personnel, pursuant to 5 U.S.C. § 7342.

010102. Gifts to the Marine Corps

Any gift, regardless of value, will be refused by the Marine Corps if acceptance would be inconsistent with applicable law or regulation, reflect unfavorably on the ability of the Marine Corps to carry out any responsibility or duty in a fair and objective manner, compromise the integrity of any Marine Corps program or personnel involved in such program, or not be in the best interests of the Marine Corps (e.g., at some future time it might embarrass or lead to criticism of the Marine Corps or the DON by reason of favors which might be expected as a result of the gift, by creating the appearance of a relationship in which favors are granted, or if it might result in unwarranted publicity for the donor).

010103. Gift Acceptance Procedures

Offers of gifts to any Marine Corps organization must be handled in accordance with SECNAVINST 4001.2 (series). This Volume provides supplementary guidance. The following procedures should be employed in processing gifts to the Marine Corps:

A. When any Marine Corps organization is offered a gift, the recipient acknowledges the offer and advises the prospective donor that the offer has been forwarded to the appropriate acceptance authority.

B. Offers of gifts shall be forwarded promptly to the acceptance authority via the chain of command. Gifts of real property or memorials and statues that will be fixtures to real property must be processed for acceptance by the Under Secretary of the Navy or Assistant Secretary of the Navy (Energy, Installations, and Environment) per the requirements of SECNAVINST 4001.2 (series).

C. Whenever possible, the receiving organization should not accept custody of a gift before final acceptance. If custody of the gift is taken, the receiving organization shall advise the donor that accepting custody does not constitute official (final) acceptance of the gift.

D. Upon final approval, acceptance authorities shall direct the recipient of the gift to acknowledge the generosity of the donor in appropriate correspondence.

E. Upon receipt and approval of an offer of a gift having significant public affairs implications, the acceptance authority shall notify the appropriate public affairs officer.

F. The command that accepts the gift shall maintain appropriate records, in accordance with SECNAV M-5210.1.

010104. Acceptance Authorities

The following officials are authorized to accept gifts under their cognizance:

A. Any Marine commander may accept gifts of consumable or perishable products, such as food, nonalcoholic beverages, flowers, candy, etc., intended for personnel of that command, provided that acceptance of such a gift does not violate the policies set forth in this Volume. Alcoholic beverages and tobacco products may not be accepted. This acceptance authority is limited to items which will be consumed at one specific event (e.g., command picnic, delayed entry pool party, etc.). This authority may not be delegated.

B. Travel approving authorities may accept gifts of official travel benefits and related expenses from non-federal sources under the authority of 31 U.S.C. § 1353 of a value not to exceed \$3,000.00. This authority may not be delegated.

C. Officers exercising special court-martial convening authority are authorized to accept gifts to the Marine Corps, under the authority of 10 U.S.C. § 2601 or § 7220, and gifts of official travel benefits from non-federal sources under 31 U.S.C. § 1353, of a value not to exceed \$3,000.00. This authority may not be delegated.

D. The Commanding Officer, Wounded Warrior Regiment, is authorized to accept gifts to the Marine Corps, under the authority of 10 U.S.C. § 2601 or § 7220, and gifts of official travel benefits from non-federal sources, under 31 U.S.C. § 1353, of a value not to exceed \$5,000.00. This authority may not be delegated.

E. Installation commanders exercising general court-martial convening authority are authorized to accept gifts to the Marine Corps, under the authority of 10 U.S.C. § 2601 or § 7220, and gifts of official travel benefits and related expenses from non-federal sources, under 31 U.S.C. § 1353, of a value not to exceed \$12,000.00. This authority may not be delegated.

F. Marine Corps Recruiting District Commanding Officers may accept gifts to the Marine Corps, under the authority of 10 U.S.C. § 2601 or § 7220, and gifts of official travel benefits and related expenses from non-federal sources, under 31 U.S.C. § 1353, of a value not to exceed \$12,000.00. This authority may not be delegated.

G. General officers in command may accept gifts to the Marine Corps, under the authority of 10 U.S.C. § 2601 or § 7220, and gifts of official travel benefits and related expenses from non-federal sources, under 31 U.S.C. § 1353, of a value not to exceed \$12,000.00. This authority may not be delegated.

H. The SJA to CMC and CL may accept gifts to the Marine Corps, under the authority of 10 U.S.C. § 2601 or § 7220, and gifts of official travel benefits and related expenses from non-federal sources, under 31 U.S.C. § 1353, of a value not to exceed \$12,000.00. This authority may not be delegated.

I. The Director, Marine Corps History and Museums may accept gifts to the Marine Corps, under the authority of 10 U.S.C. § 2601 or § 7220, and gifts of official travel benefits and related

travel expenses from non-federal sources, under 31 U.S.C. § 1353, of a value not to exceed \$12,000.00. This authority may not be delegated.

J. The Director of a Marine Corps Community Services activity may accept gifts to the Marine Corps, under the authority of 10 U.S.C. § 2601 or § 7220, and gifts of official travel benefits and related expenses from non-federal sources, under 31 U.S.C. § 1353, of a value not to exceed \$3,000.00. The Director, Non-appropriated Fund Business and Support Services Division and the Director, Marine and Family Programs will be the acceptance authority for gifts to programs and activities under their respective cognizance of a value not to exceed \$12,000.00.

K. The President of Marine Corps University may accept gifts offered to any institution or organization reporting to the Marine Corps University, under the authority of 10 U.S.C. § 2601 or 31 U.S.C. § 1353, of a value not to exceed \$200,000.00.

L. The CMC, Assistant Commandant of the Marine Corps (ACMC), and the Director, Marine Corps Staff (DMCS), may accept gifts to the Marine Corps, under the authority of 10 U.S.C. § 2601 or 7220, and gifts of official travel benefits and related expenses from non-federal sources under 31 U.S.C. § 1353, of a value not to exceed \$200,000.00. The authority to accept such gifts of a value exceeding \$25,000.00 may not be delegated except with approval of the Secretary of the Navy. Gifts which may be accepted only by the CMC, ACMC, or DMCS shall be forwarded to CMC (JCA) or CMC (CL) for processing.

010105. Records, Reports, and Files Relating to Gifts Made to the Marine Corps

A. Records shall be maintained by the designated acceptance authority, in accordance with the requirements of DoD 7000.14-R Financial Management Regulation Volume 12, Chapter 30.

B. General gift funds are required to be reported quarterly to CMC (JCA) by the ninth day after each quarter (i.e., 9 January, 9 April, 9 July, and 9 October). Report Control Symbol MC-5800-06 has been assigned to this reporting requirement.

010106. Gifts from Foreign Governments

A. Article I, Section 9, Clause 8, of the Constitution provides that “no Person holding any Office of Profit or Trust under [the United States] shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatsoever, from any King, Prince, or foreign State.” Accordingly, no individual may accept a gift from a foreign government except as provided by an act of Congress and regulations promulgated under that authority.

B. Pursuant to 5 U.S.C. § 7342, Congress authorized individuals to accept and retain gifts of minimal value received as souvenirs or marks of courtesy. Minimal value is set by the General Services Administration and changes every 3 years. As of the publication of this Volume, the minimal value is \$390.00.

C. If possible, gifts of greater than minimal value should be refused. If refusal of a gift will cause embarrassment or offend the donor, the gift may be accepted on behalf of the United States. The gift may normally be retained by the receiving command. For guidance on the handling of gifts from foreign governments, review SECNAVINST 1650.1H.

010107. Gifts of Travel

A. 31 U.S.C. § 1353 permits non-Federal sources to pay the Government, in kind or by reimbursement, for the expenses of travel, accommodations, and meals for Government officials and employees attending meetings, conferences, or events of a similar nature. See 10 U.S.C. § 2601, SECNAVINST 4001.2 (series), and JER subsection 4-101.b for acceptance of travel benefits not accepted under 31 U.S.C. § 1353, (e.g., reimbursement for travel benefits of flight crew members that accompany Federal Government aircraft to air shows or expenses incurred by the attendance of DoD employees at ceremonial events in order to enhance DoD public relations).

B. Before accepting payments for travel from a non-Federal source, the travel approving authority should make the following determinations: (1) Payment is for attendance at a meeting or similar function. This excludes events required to carry out an agency's statutory and regulatory functions. It also excludes promotional vendor training; (2) Payment is for travel related to the employee's official duties; (3) Payment is from a non-Federal source not disqualified on conflict of interest grounds. A "conflicting source" of payments is a non-Federal entity that has interests that may be substantially affected by the performance or nonperformance of the employee's duties. In this case, the official must determine that the agency's interest in the employee's attendance at or participation in the event outweighs concern that acceptance of the payment may reasonably appear to improperly influence the employee in the performance of his/her official duties; (4) The travel is primarily for the benefit of the Government, not the non-Federal entity; and (5) The travel-approving authority must approve the gift acceptance in writing, in consultation with an Ethics Counselor.

C. If the total value of the travel payments received in connection with an event exceeds \$250.00, the gift must be reported, 41 C.F.R. 304-6.4; JER subsection 4-101.a(5). OGE Form 1353 (OGE-Approved Alternative for Standard Form (SF) 326 must be used to make this report. OGE Form-1353 is entitled "Semiannual Report of Payments Accepted from a Non-Federal Source." The OGE Form 1353 is available on the OGE website at: <http://www.oge.gov/Forms-Library/OGE-Form-1353--Semiannual-Report-of-Payments-Accepted-from-a-Non-Federal-Source/>. Each travel-approving authority shall report gifts of travel to CMC (JCA) semiannually on 30 April and 31 October (negative reports are required). This reporting requirement is exempt from reports control according to reference (ss), Part IV, paragraph 7n.

0102 CIVIL LITIGATION COORDINATION AND RELEASE OF OFFICIAL INFORMATION

Guidance on this subject is contained in JAGINST 5800.7F (JAGMAN), SECNAVINST 5820.8A (Release of Official Information for Litigation Purposes and Testimony by Department of the Navy (DON) Personnel), and 32 C.F.R. Parts 97 and 725.

010201. Marine Corps or United States as a Party to Litigation

A. When the Marine Corps, the United States, or an individual Marine (for actions taken in his/her official capacity) is a party to litigation, the Judge Advocate General or the OGC is the Determining Authority. The Staff Judge Advocate to the Commandant (CMC (JA)) or Counsel for the Commandant (CMC (CL)), as appropriate, will coordinate the Marine Corps position with the OJAG, General Litigation Division (Code 14).

B. If delivery, service, or attempted service of a summons and complaint is attempted on a Marine Corps command or on any DON member or civilian employee arising from official duties, the Marine Corps command involved in the service of process should immediately notify the appropriate SJA. The SJA will comply with the following procedures: (1) Immediately contact the OJAG (Code 14), General Litigation Division, DSN 325-5450 [(202) 685-5450], and then CMC (JCA) DSN 224-2510 [(703) 614-2510]; (2) Exeditiously forward a copy of the complaint, summons, and all pleadings to the OJAG (Code 14), General Litigation Division and CMC (JCA) via e-mail, express mail, or FAX. (OJAG (Code 14) General Litigation FAX (202) 685-5472; CMC (JCA) FAX (703) 695-0335); and (3) Coordinate with OJAG (Code 14), General Litigation Division, and CMC (JCA) to ensure both are aware of local activities involving the case.

010202. Subpoenas for Documents and Witnesses

A. If a Marine Corps command is served with a subpoena seeking DON documents or witnesses, the command should refer the matter to the command SJA. The SJA, in most cases, should return the papers to the civilian counsel, refer them to 32 C.F.R. § 725.7 (which publishes SECNAVINST 5820.8A), and advise the attorney that the OGC is the sole DON agent for service of process, and can be contacted at the following address: OGC c/o The Department of the Navy, Washington, DC 20350-1000.

B. To obtain pay records of active-duty or reserve Marines, a separate subpoena must be served on the Defense Finance and Accounting Service - Cleveland. The address for service by mail is: Defense Finance and Accounting Service - Cleveland, Corporate Communications, 1240 E. 9th Street, Rm 2679, Cleveland, OH 44199-2055. The telephone number is (216) 522-5225/5046.

C. To obtain pay records of retired or Fleet Marine Corps Reserve Marines, a separate subpoena must be served on the Defense Finance and Accounting Service – Cleveland at the above address.

D. For garnishment matters, the address for service by mail is: Defense Finance and Accounting Services - Cleveland Attention: DFAS-HGA/CL, PO Box 998002, Cleveland OH 44199-8002. The telephone number is (216) 522-5118.

E. Military Service Records and Health Records. Depending on the date when the Service Member was discharged, these records may be located with the Personnel Branch of the Service Member's last unit or may be found at the National Archives. See a list of various addresses for service or health record requests on the National Archives website at <http://www.archives.gov/veterans/military-service-records/locations/index.html>.

F. Privacy Act Compliance. Subpoenas for service record books, medical records, pay records, and other records maintained in a system of records subject to the Privacy Act must be signed by the judge of a court of competent jurisdiction (see 5 U.S.C. § 552a(b)(11)). A requester must present a subpoena or court-order signed by the judge who has cognizance over the case to obtain the release of the protected records. A subpoena or order signed by one other than the judge of a court of competent jurisdiction (Federal or State court), such as a clerk or attorney, will not be construed as a valid court order. See *Doe v. DiGenova*, 779 F.2d 74 (D.C. Cir. 1985). An alternative to a judge-signed subpoena or court order is a written consent or authorization for the release of the records signed by the subject of the records.

010203. Requests for Documents, Depositions, Witnesses, or Site Inspections - United States a Party

In cases where the United States is, or may reasonably become, a party to the lawsuit, the following procedures apply to requests for documents, depositions, witnesses, or site inspections, the following actions are required:

A. Navy Office of General Counsel (OGC) Matters. If subject matter involved is a matter assigned to OGC (see SECNAVINST 5430.25E), such as business and commercial law, patent law, civilian personnel law, or contract claims and litigation: (1) forward the request to OGC; (2) send a copy of the request to CMC (CL); and (3) send a letter to the requesting counsel advising of the referral.

B. For all other matters (pursuant to SECNAVINST 5430.27D): (1) forward the request to the OJAG, Claims and Tort Litigation Division (Code 15), or OJAG, General Litigation Division (Code 14), as appropriate; (2) send a copy to CMC (JCA); and (3) send a letter to the requesting counsel advising of the referral.

010204. Requests for Documents, Depositions, Witnesses, or Site Inspections - United States not a Party

In cases where the United States is not a party and may not reasonably become a party to the lawsuit, the following procedures apply to requests for documents, depositions, witnesses, or site inspections:

A. If the subject matter is an OGC matter (pursuant to SECNAVINST 5430.25E): (1) forward the request to CMC (CL). CL will staff the request to the appropriate Area Counsel's office; and (2) send a letter to the requesting counsel advising of the referral.

B. If the subject matter is a request for DON personnel to testify as expert witnesses: (1) forward the request to the OJAG, General Litigation Division (Code 14) via CMC (JCA); and (2) send a letter to the requesting counsel advising of the referral.

010205. Other Requests

For any other matters, the Marine Corps “determining authorities” (i.e., general courts-martial convening authorities listed in SECNAVINST 5820.8A) will respond as follows:

A. If the determining authority finds the request does not meet the requirements of SECNAVINST 5820.8A, then it is an improper request. Determining authorities will return improper requests to the requesting counsels and refer them to 32 CFR § 725.7.

B. Normally, requests made in accordance with 32 CFR § 725.7 will be forwarded for action to the respective Marine Corps command from the OJAG, General Litigation Division (Code 14). In addition to specific direction from the OJAG, General Litigation Division (Code 14) or CMC (JCA), the determining authority will take the following actions: respond directly to the requester (copy to CMC (JCA)); refer the request to another determining authority where the requested witness or document is located and send a letter to the requesting attorney advising of the referral; or coordinate the request with CMC (JCA). This is appropriate in cases where a response from several different regions or determining authorities is necessary (for example, a request to depose a number of Marines located at

several different commands or geographic areas), or where a requested witness is no longer a member of the Marine Corps.

010205. Freedom of Information Act, Privacy Act, and Health Insurance Portability and Accountability Act

A. The Freedom of Information Act (FOIA) provides a framework to analyze requests for records that either cite or implicate the FOIA. The FOIA is codified in 5 U.S.C. § 552. DoD 5400.7-R provides policies and procedures for the DoD implementation of the Freedom of Information Act and promotes uniformity in the DoD. DoD Directive 5400.07 further updates policies and responsibilities for implementing the DoD FOIA Program. SECNAVINST 5720.42F issues DON policies and procedures for implementing DoD Directive 5400.07 and DoD 5400.7-R, and promotes uniformity in the DON FOIA program. The Department of Justice's Freedom of Information Act Guide is available on the Department of Justice's FOIA Web site at: <http://www.justice.gov/oip/foia-guide.html>. DON FOIA Office: <https://www.foia.navy.mil>. HQMC's FOIA Office: <http://www.hqmc.marines.mil/Agencies/USMCFIOA.aspx>.

B. The Privacy Act applies to records in a system of records maintained by an agency from which information is normally retrieved by an individual's personal identifier. The Privacy Act is implicated if the requestor cites the Privacy Act or requests information about themselves that is retrievable by a personal identifier. The Privacy Act of 1974 is codified in 5 U.S.C. § 552a. DoD Directive 5400.11 updates the policies and responsibilities of the DoD Privacy Program. DoD 5400.11-R, Chapter 6, provides publication requirements of documents for the Federal Register, and Chapter 5 provides the general guidance for establishing exemptions for systems of records. SECNAVINST 5211.5E implements the DON Privacy Program to ensure that all DON military members and civilian/contractor employees are made fully aware of their rights and responsibilities under the provisions of the Privacy Act. DON Chief Information Officer: <http://www.doncio.navy.mil/PolicyView.aspx?ID=1493>. USMC Privacy Act Office at HQMC: <http://www.hqmc.marines.mil/Agencies/USMCFIOA/USMCPPrivacyAct.aspx>.

C. The most important aspect of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Pub.L. 104–191, 110 Stat. 1936, enacted August 21, 1996) is the HIPAA Privacy Rule. The HIPAA Privacy Rule is to prevent inappropriate use and disclosure of individual health information. This information can be in electronic, paper, or verbal form. DoD 8580.02-R establishes policies, procedures, and standards governing DoD medical programs in accordance with HIPAA. DoD 6025.18-R proscribes the use and disclosure of protected health information. 45 C.F.R. Part 164 provides standards, requirements, and implementation specifications for HIPAA. 45 C.F.R. Part 160 and Subparts A and E of Part 164 provide the HIPAA Privacy Rule, which establishes national standards to protect individuals' medical records and other personal health information, and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically.

D. A common question regarding HIPAA involves a commander's authority to access a subordinate's medical records. Paragraph C7.11.1.2.1 of DoD 6025.18-R allows commanders who exercise authority over a Service Member, or other person designated by such a commander to receive protected health information in order to carry out an activity under the authority of the commander. In accordance with 45 C.F.R. 164.512, if a Service Member is being treated at a civilian facility, the commander may still access protected health information when necessary for mission accomplishment, under HIPAA's "specialized government functions" rule.

0103 DELIVERY OF PERSONNEL AND SERVICE OF PROCESS

The installation SJA will ensure that personnel are delivered to the appropriate authorities, in accordance with Chapter 6 of JAGINST 5800.7F (JAGMAN).

0104 ARTICLE 139 CLAIMS AND GENERAL CLAIMS PROVISIONS

The installation SJA will ensure that Article 139 claims are processed in accordance with Chapter 4 of JAGINST 5800.7F (JAGMAN). The installation SJA will ensure that claims against the United States are processed in accordance with Chapter 8 of JAGINST 5800.7F (JAGMAN) AND JAGINST 5890.1A.

VOLUME 9

“DEPENDENT SUPPORT AND PATERNITY”

SUMMARY OF VOLUME 9 CHANGES

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ORIGINAL VOLUME	N/A	DD MMM YYYY	N/A

Submit recommended changes to this Volume, via the proper channels, to:

CMC (JA)
 3000 Marine Corps Pentagon
 Washington, DC 20350-3000

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VOLUME 9: DEPENDENT SUPPORT AND PATERNITY

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 PURPOSE 1-3

0102 PRESENCE OF SEPARATION AGREEMENT OR COURT ORDER 1-3

0103 COMPLAINTS OF INADEQUATE SUPPORT 1-4

0104 INTERIM FINANCIAL SUPPORT STANDARDS 1-5

0105 MODIFICATION OF INTERIM FINANCIAL SUPPORT REQUIREMENTS 1-6

0106 FORM AND TIMING OF FINANCIAL SUPPORT PAYMENTS 1-7

REFERENCES

- (a) SECNAVINST 5430.7R CH-1
- (b) SECNAVINST 5430.27D
- (c) SECNAVINST 5430.25E
- (d) 10 U.S.C. §§ 806, 1044, 1044e, 1059, 1072, 1565b, 1588, and 5046
- (e) MCO 5430.2
- (f) JAGINST 5803.1E
- (g) Manual for Courts-Martial, (2016 ed.)
- (h) U.S. Navy Regulations, (1990)
- (i) MCO 5800.14
- (j) MCO 1001.62B
- (k) MCO 1200.18
- (l) JAGINST 5803.2B
- (m) SECNAVINST 1920.6C
- (n) Uniform Code of Military Justice, (2016)
- (o) MCO 1610.7
- (p) MCO 1300.8
- (q) MCO 1000.6
- (r) JAGINST 5800.7F
- (s) SECNAVINST 5211.5E
- (t) 5 U.S.C. §§ 101, 552a, and 3111
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- (v) 37 U.S.C. §§ 601-604
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- (x) DoD Instruction 1205.12
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“DEPENDENT SUPPORT AND PATERNITY”

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DEPENDENT SUPPORT AND PATERNITY

0101 PURPOSE

This Volume establishes Marine Corps policy regarding financial support of dependent family members. This Order does not authorize a commanding officer to divide marital property or allocate marital debts; that is a matter left to agreement between the parties, or, in the absence of an agreement, to the courts. Family support issues are closely aligned with readiness, morale, discipline, and the reputation of the Service. The provisions of this Volume may serve as the basis for a commanding officer to issue a lawful order to a Marine to provide family support. For purposes of this Volume, “commanding officer” means a commanding officer with Special Court-Martial Convening Authority. Marines who fail to provide adequate support for their dependent family members in accordance with a lawful order or who fail to comply with the terms of a written support agreement signed by both parties, civil court orders, decrees, or judgments issued or recognized by a United States court concerning family support, may be subject to administrative or disciplinary action, which can include nonjudicial punishment, the initiation of court-martial proceedings and/or administrative separation proceedings. Commanding officers who receive a complaint of nonsupport against a member of another Service component attached to their command should process the complaint in accordance with the member’s Service regulation (MILPERSMAN 1754-030; AR 608-99; AFI 36-2906; COMDINST M1000.6A, Ch. 8). The activity responsible for this Volume is the Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps.

0102 PRESENCE OF SEPARATION AGREEMENT OR COURT ORDER

What is adequate or reasonably sufficient support is a highly complex and individual matter, dependent on numerous factors and should be resolved by mutual agreement between the parties or a civil court of competent jurisdiction. Marines shall comply fully with the provisions of written support agreements signed by both parties and court orders, decrees, or judgments issued or recognized by a United States court addressing the support of family members.

010201. If a court order establishes the amount of support, a commanding officer shall counsel the Marine regarding his or her obligation to comply with the order and may issue a lawful order to comply, but may not order additional support even if the amount of support provided for in the court order is less than the support that would be payable under the guidelines set forth in this Volume.

010202. Upon court issuance of a final divorce decree, temporary order for support, or the establishment of a written support agreement signed by both parties, the obligation to provide interim support amounts as provided in this Volume are no longer applicable.

010203. A court order, such as a decree of divorce, which is silent on the issue of child support does not negate a Marine's obligation to support his or her biological or adopted minor children. Until a court order or written agreement of the parties exists that specifically addresses the issue of child support, a commanding officer can order child support in accordance with this Volume.

010204. A court order that paternity has not been established ends a Marine's obligation to provide interim support for a child under this Volume (unless the Marine has adopted the child), and the commanding officer may not order interim support for that child.

010205. For purposes of this Volume, the phrase “court orders” shall include administrative support orders and their functional equivalents. Unless a court order for support issued by

a foreign country is recognized by a United States court, commanding officers may not require compliance.

010206. Absent a written support agreement signed by both parties or court order, and conditioned upon a complaint of nonsupport made by or on behalf of the nonsupported party to a commanding officer, the support standards set forth in this Volume shall be enforced as interim measures until the issues are resolved in court or settled by written support agreement signed by the parties. Depending on available resources, legal assistance offices may assist in drafting marital separation agreements, parenting agreements, and child support agreements and in preparing uncontested divorce pleadings.

010207. A commanding officer may not require the parties to enter into a marital separation agreement as a condition for Early Return of Dependents (ERD) from Outside Continental United States locations. Conditions for ERD are found in Joint Travel Regulation (JTR), Ch. 5, and MCO 1300.8, Marine Corps Personnel Assignment Policy.

010208. The support standards set forth in this Volume apply only to a Marine's spouse, minor biological children, and minor adopted children. For purposes of this Volume, "minor" means an unmarried child less than 18 years of age.

010209. All children born in wedlock are presumed to be the biological children of the Marine and the Marine's spouse, unless (1) rebutted by a DNA or blood paternity test conducted by a licensed facility which reasonably concludes that the Marine is not the father of the child in question; (2) a court order exists eliminating parentage; or (3) there exists a factual impossibility of paternity (e.g., the child was conceived and born within a period during which the Marine was deployed, and did not leave the deployed location or have contact with the mother).

010210. The standards for support set forth herein do not extend to stepchildren or other DoD-recognized dependents of the Marine, unless the child has been adopted by the Marine.

010211. There is no requirement under this Volume for spousal support between active-duty military spouses.

010212. The application of the standards contained herein shall commence only after the commanding officer has received a complaint of nonsupport. Support shall be calculated starting from the date on which a complaint is received by the commanding officer. Retroactive support shall not be ordered; however, recoupment of housing allowance may result in accordance with the JTR, Ch. 10.

0103 COMPLAINTS OF INADEQUATE SUPPORT

010301. All complaints alleging inadequate support of family members shall be directed to the commanding officer of the Marine concerned.

010302. In the absence of extraordinary circumstances, the commanding officer shall meet with the Marine and take appropriate action under this Volume within five working days of the commanding officer receiving the complaint. If the Marine who is the subject of the complaint is not assigned to the command receiving the request for support, the commanding officer shall forward it to the commanding officer having authority to take action, and shall inform the complaining party of the action

taken as soon as possible. If the commanding officer is unable to initiate action within five working days, the commanding officer shall so advise the party seeking support.

010303. When a complaint alleging inadequate support of family members is received, the commanding officer shall inform the Marine about the nature of the complaint, and shall encourage the Marine to consult with a legal assistance attorney. After the Marine has had a reasonable opportunity to consult with counsel, the commanding officer shall then meet with the Marine and determine the content of an order or warning, if any, to be given to the Marine to ensure compliance with this Volume. The Marine may not be compelled to disclose the substance of confidential communications with a legal assistance attorney.

010304. In instances where a request for support is made for a child born out of wedlock, the Marine shall only be required to provide interim support under this Volume when paternity is established by court or administrative order, or formal written acknowledgement by the Marine. Prior to responding to paternity allegations, the Marine shall be encouraged to consult with a legal assistance attorney regarding the full consequences of an admission of paternity. Notably, some states hold that an admission of paternity creates a legal presumption that paternity is established, and that based upon such an admission, a court may order the payment of child support.

0104 INTERIM FINANCIAL SUPPORT STANDARDS

010401. The interim support standards set forth herein are not intended for use outside the Marine Corps or as part of any civilian judicial proceeding.

010402. The JTR, Chapter 10 addresses housing allowances. A Marine must comply with JTR regulations in order to be authorized to receive his or her housing allowance.

010403. In cases where the amount of support has not been fixed by court order or written support agreement signed by both parties, and upon a complaint of nonsupport to a commanding officer, each family member entitled to support under this Volume shall receive, at a minimum, a pro-rata share of the applicable Basic Allowance for Housing or Overseas Housing Allowance to which the Marine is entitled, as reflected below.

Total Number of Family Members Entitled to Support (not including the Marine)	Share of Monthly BAH/OHA per Requesting Family Member
1	1/2
2	1/3
3	1/4
4	1/5
5	1/6
6 or more	1/7 or etc.

010404. The number of family members entitled to support under this Volume does not include (1) a Marine’s former spouse, regardless of whether the Marine is providing financial support to the former spouse; (2) a Marine’s present spouse who is on active duty in one of the military services; or (3) a family member for whom the Marine is not required to provide financial support under this Volume,

or for whom the Marine has been released by his or her commanding officer from the regulatory requirement to provide financial support under this Volume.

010405. Commanding officers should refer to the JTR, Chapter 10, which details various types of Marine and family member living arrangements that will affect BAH/OHA eligibility. The intent of this Volume is to ensure that Marines provide, at a minimum, support consistent with their BAH/OHA eligibility.

010406. Under no circumstances shall the total amount of support paid to all family members entitled to support exceed 1/3 of the Marine's gross military pay per month. Gross military pay is defined as the total of all military pay and allowances before taxes and other deductions.

010407. The Marine may request the commanding officer deviate from the amount of interim support required under this Volume. If the facts of the particular case are consistent with one of the reasons for modification as set forth in paragraph 0105, the commanding officer may decrease or terminate the amount of interim support to be paid, but only after consulting with the appropriate Staff Judge Advocate.

010408. Financial support established by a commanding officer under this Volume shall continue until such time as a written support agreement signed by both parties is reached, a court order is obtained, or the commanding officer modifies or terminates the interim support order in accordance with paragraph 0105.

0105 MODIFICATION OF INTERIM FINANCIAL SUPPORT REQUIREMENTS

010501. A commanding officer has discretion (but is not required) to reduce or eliminate the interim financial support standards under certain circumstances as listed in paragraph 010504 below, but only after consulting with the appropriate Staff Judge Advocate. A commanding officer does not have authority to reduce or eliminate the interim financial support standards in any situation not listed in paragraph 010504 below. Note that while a commanding officer may reduce, or in certain cases completely eliminate, a support requirement under this Volume, reduction of support below "BAH DIFF" may render the Marine ineligible for BAH under applicable regulations. Marines should be directed to visit their local administrative section to determine future housing allowance eligibility.

010502. The Marine has the burden of coming forward with sufficient information and documents (for example, receipts, tax returns, pay vouchers, court orders, etc.) to establish a basis for a commanding officer's action under this paragraph.

010503. A commanding officer must be satisfied by a preponderance of the evidence that the underlying intent of this Volume (to provide adequate and continuous support to dependent family members) would be furthered before he or she may reduce or eliminate the interim financial support standards established herein. Before granting relief, the commanding officer should when practical contact the family member requesting support for whatever additional information may be necessary to make an informed decision on the matter.

010504. The following constitute situations warranting consideration of reduction or elimination of financial support requirements:

A. The gross income of the spouse exceeds the gross military pay of the Marine (including allowances). The income of the non-Service Member spouse will be based on his or her wages, before deductions are taken for taxes, voluntary allotments, and garnishments, together with income from all other sources, such as interest, dividends, and profits derived from property in that spouse's possession. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children; or

B. The parties have been separated for twelve (12) months or longer; the Marine has made the financial support required in paragraph 0104 for the entire twelve (12) months (including instances where the Marine has voluntarily complied with this Volume in the absence of a complaint for support to a commanding officer); and, the Marine has not acted in any manner to avoid service of process or to otherwise prevent a court from ruling on the issue of support, except to enforce rights afforded the Marine under the Service Member's Civil Relief Act or state equivalent. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children; or

C. The Marine has been the victim of physical abuse by a spouse seeking support. Evidence of physical abuse may include, but is not limited to: police reports, a court judgment amounting to a conviction for the offense, issuance of a permanent restraining order (or similar order) against the complaining spouse, or other reliable evidence. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children; or

D. The Marine is paying regular and recurring obligations (such as rent or consumer debts) for the dependent family member(s) and such regular and recurring payments are of sufficient magnitude and duration as to justify a reduction or elimination of support specified herein. If the commanding officer elects to give credit for such payments, the credit should be limited to the extent that such payments do not benefit the Marine, and should continue for as long as support is paid under this Volume. This includes a situation where the Marine's family is residing in base housing, and as a result the Marine does not receive BAH. In this situation, the Marine's commanding officer may reduce or even eliminate the Marine's financial support requirement, depending on the specific circumstances; or

E. The commanding officer's next senior officer in the chain of command determines that releasing the Marine from the obligation to pay interim support is a matter of fundamental fairness, given the totality of the circumstances. The senior commanding officer must seek the advice of the appropriate Staff Judge Advocate before making such a determination.

010505. If relief from interim support is granted, the commanding officer shall notify the complaining spouse, in writing, of his or her decision.

0106 FORM AND TIMING OF FINANCIAL SUPPORT PAYMENTS

010601. Unless otherwise required by court order or by written support agreement signed by both parties, a financial support payment shall be made to the dependent family member or legal custodian of a minor by check, money order, electronic transfer, or dependent support allotment.

010602. Unless otherwise required by a court order or by a written support agreement signed by both parties, the commanding officer shall establish the date(s) support will be paid each month.

VOLUME 10

“INDEBTEDNESS”

SUMMARY OF VOLUME 10 CHANGES

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VOLUME 10: INDEBTEDNESS

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 PURPOSE 1-3

0102 POLICY 1-3

0103 CREDITOR AND DEBT COLLECTOR DEFINED 1-4

0104 PERSONAL FINANCIAL RESPONSIBILITY AND EDUCATION..... 1-4

0105 PROCESSING DEBT COMPLAINTS 1-4

0106 COMMAND STEPS..... 1-5

REFERENCES

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

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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INDEBTEDNESS

0101 PURPOSE

This Volume establishes Marine Corps policy and procedure for processing certain debt complaints against active-duty Service Members from creditors and debt collectors. Financial support of dependents is governed by Volume 9 of this Order.

010101. The following types of debts are not processed under this Volume, but are processed using Department of Defense (DoD) Financial Management Regulation (FMR) procedures:

- A. Garnishments and involuntary allotments for enforcement of child support and alimony obligations and involuntary allotments for debts reduced to judgment other than for child or spousal support (FMR, Vol. 7A, Ch. 41);
- B. Collection of debts owed to and collected by the DoD (FMR, Vol. 16, Ch. 2, 3 and 4); and,
- C. Salary offset for delinquent government travel card debt (FMR, Vol. 7A, Ch. 43 and Vol.16, Ch. 2).

010102. The activity responsible for this Volume is the Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps.

0102 POLICY

010201. Marines are expected to manage their personal affairs satisfactorily and pay their financial obligations in a proper and timely manner. A Marine's dishonorable failure to pay just debts may result in administrative or disciplinary action, which can include nonjudicial punishment, the initiation of court-martial proceedings and/or administrative separation proceedings. Indebtedness also may adversely impact security clearances. (32 CFR Part 147)

010202. Enforcement of private obligations is a matter for civil authorities. Except as otherwise authorized by statute or regulation, the Marine Corps has no legal authority to require Marines to pay a private debt or to divert any part of their pay for its satisfaction. The extent to which commanding officers may assist original creditors is limited to administrative referral of the complaint to the Marine.

010203. Whenever possible, indebtedness disputes should be resolved through amicable means between the parties. The Marine's chain of command shall not attempt to arbitrate disputed debts or act as a collection agent. Commanders will not tell a creditor whether adverse action has been or will be taken against the Marine as a result of the claim.

010204. Debt complaints meeting the requirements of this Volume shall receive prompt processing assistance from commanders.

010205. Assistance with indebtedness matters should not be extended to those who have not made a bona fide effort to collect the debt directly from the Service Member, whose claims are patently false and misleading, or whose claims are obviously exorbitant.

010206. Assistance with indebtedness matters shall not be extended to debt collectors or creditors who violate applicable Federal or State law. Commanders are encouraged to report violators to the installation Inspector and to the officer in charge of the appropriate Legal Assistance office.

010207. Commanders should contact the appropriate Staff Judge Advocate for assistance with questionable indebtedness complaints.

010208. Service Members and their families who are victims of suspected illegal debt collection activity should be encouraged to consult military legal assistance counsel who can advise them on filing complaints with the Consumer Financial Protection Bureau, Federal Trade Commission, and other government agencies and possible civil court action against the debt collector. Commanders are encouraged to provide copies of correspondence to the Marine concerned.

0103 CREDITOR AND DEBT COLLECTOR DEFINED

010301. A creditor is any person who offers or extends credit creating a debt owed to that person. State law generally regulates the conduct of creditors collecting on their own behalf. Such laws are often similar to the Fair Debt Collection Practices Act (FDCPA) and may require them to have a court order or consent of the debtor prior to contacts with third parties, including the debtor's command. Such laws may also require that the consent be in writing and given after default. Generally, the military Services comply with State law when that law does not infringe upon significant military interests.

010302. A debt collector is normally a third party attempting to collect a debt on behalf of the original creditor. The FDCPA prohibits debt collectors, as defined therein, from contacting third parties, such as commanding officers, in connection with the collection of a debt unless they have a valid court order or prior consent of the debtor.

0104 PERSONAL FINANCIAL RESPONSIBILITY AND EDUCATION

010401. Commanders must ensure that members of their command are instructed in financial responsibility, the Marine Corps policy concerning indebtedness, and the avoidance of predatory, unfair, deceptive, and abusive consumer practices. Personal financial education classes, including such subjects as insurance, government benefits, savings, credit and debt management, budgeting, and other financial education and assistance, may only be presented by persons and organizations authorized by the DoD and Service regulations.

010402. Before making decisions that impact their financial welfare, Marines are strongly encouraged to seek financial education, training, counseling, and their unit Command Financial Specialists, the Marine Corps Community Services Personal Financial Management Specialists, and/or Legal Assistance attorneys. Approved non-profit entities may assist Marines. In providing counseling, these entities may not endorse or favor any commercial supplier, product, or service, or promote the services of a specific financial institution.

010403. Marines and family members who are being subjected to unfair or unconscionable debt collection tactics from debt collectors, or who are the target of threatening scammers alleging nonpayment of fictitious debts, should seek legal assistance immediately. Commanders who become aware of such cases should inform the appropriate Staff Judge Advocate.

0105 PROCESSING DEBT COMPLAINTS

010501. Requests for Locator Service. Creditors seeking locator information for Marines should send a written request to Headquarters U.S. Marine Corps, Manpower Management Records and Performance Branch, 2008 Elliott Road, Quantico, VA 22134-5030 (phone number: 1-800-268-3710). There may be an associated processing fee. Base locators are also available at all major Marine Corps installations.

010502. Debt Complaints Based on Dishonored Checks

A. Writing checks against an account with insufficient funds is a serious matter. Doing so may result in civil or criminal penalties, including disciplinary action under the Uniformed Code of Military Justice (UCMJ) or administrative separation proceedings.

B. Checks made good within five days of notice do not require any command action if the complaint is based on bank error, failure to date the check, inconsistent or not legible amounts shown on the check, and/or lack of a legible signature.

C. Dishonored checks written by family members are not processed under this Volume. Generally, Service Members are not responsible for repaying dishonored checks written by their family members absent evidence of personal involvement in criminal conduct by the Service Member; however, dishonored checks may result in suspension of the Service Member's check cashing privilege aboard the installation. Commanders should consult with the appropriate Staff Judge Advocate.

010503. Complaints from Creditors

A. Creditors contacting commands should be informed that all debt complaints must be submitted in writing.

B. Creditors must submit the following with their debt complaint: (1) information sufficient to identify the Marine and his or her unit; (2) a copy of the contract or other instrument establishing the obligation to include a copy of applicable consumer credit disclosures given to the Marine during the credit transaction, as required by Federal and State law; (3) evidence of their attempts to contact the Marine before asking for command assistance; and (4) the Marine's written consent authorizing contact with third parties regarding the matter.

C. Complaints not meeting the requirements of this Volume will be returned to the creditor without further action.

D. Creditors who abuse the debt complaint process may be denied assistance. This includes those who contact the command in violation of applicable Federal and State law requiring a court order or permission from the debtor to contact the command.

0106 COMMAND STEPS

010601. Complaints received alleging indebtedness of a Marine who is no longer a member of the command will be forwarded to the Marine's new command. If the individual has been separated from the Marine Corps, the correspondence will be returned to the sender so informing the party. The creditor may be informed of the Marine's new military address (except in the case of a

deployed unit), but in no case shall the permanent (home) mailing address be disclosed, except as may otherwise be authorized under the Freedom of Information Act or Privacy Act of 1974.

010602. Commanders receiving a complaint that meets the requirements of this Volume shall:

A. Review the evidence submitted. Questionable claims should be discussed with the appropriate Staff Judge Advocate and incomplete claims should be returned to the creditor.

B. Advise the Marine that just financial obligations are expected to be paid in a timely manner, and that failure to pay just debts may lead to administrative or disciplinary action within the Marine Corps and to civil action by the creditor seeking a judgment from a civilian court for the amount of the debt. Advise the Marine of the opportunity to seek legal assistance and financial counseling with regard to resolving the indebtedness.

C. Consult the appropriate Staff Judge Advocate when the Marine is suspected of criminal conduct. Questioning the Marine when criminal conduct is suspected requires that the Marine be advised of his or her rights under Article 31(b), UCMJ.

D. After discussing the complaint with the Marine, inform the creditor, , without commenting on the merits of the claim, that the complaint was brought to the Marine's attention.

VOLUME 11

“ADMINISTRATIVE SEPARATIONS AND INVESTIGATIONS”

SUMMARY OF VOLUME 11 CHANGES

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VOLUME 11: ADMINISTRATIVE SEPARATIONS AND INVESTIGATIONS

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 PURPOSE 1-3

0102 GENERAL 1-3

0103 ADMINISTRATIVE LAW SECTION 1-3

0104 ENLISTED INVOLUNTARY ADMINISTRATIVE SEPARATIONS 1-3

0105 ADMINISTRATIVE INVESTIGATIONS 1-4

REFERENCES

- (a) SECNAVINST 5430.7R CH-1
- (b) SECNAVINST 5430.27D
- (c) SECNAVINST 5430.25E
- (d) 10 U.S.C. §§ 806, 1044, 1044e, 1059, 1072, 1565b, 1588, and 5046
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- (i) MCO 5800.14
- (j) MCO 1001.62B
- (k) MCO 1200.18
- (l) JAGINST 5803.2B
- (m) SECNAVINST 1920.6C
- (n) Uniform Code of Military Justice, (2016)
- (o) MCO 1610.7A
- (p) MCO 1300.8
- (q) MCO 1000.6
- (r) JAGINST 5800.7F
- (s) SECNAVINST 5211.5E
- (t) 5 U.S.C. §§ 101, 552a, and 3111
- (u) JAGINST 5801.2
- (v) 37 U.S.C. §§ 601-604
- (w) 38 U.S.C. §§ 4301-4334
- (x) DoD Instruction 1205.12
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- (hh) DoD Directive 5240.01
- (ii) DoD 5240.1-R
- (jj) DoD Instruction 3025.21
- (kk) DoD Instruction 5525.03
- (ll) SECNAVINST 5710.25B
- (mm) 1 U.S.C. § 112b
- (nn) 22 CFR Part 181
- (oo) DoD Directive 5530.3
- (pp) DoD 5500.07-R
- (qq) 18 U.S.C. § 202
- (rr) 5 C.F.R. § 2634

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

(This page intentionally left blank)

ADMINISTRATIVE SEPARATIONS AND INVESTIGATIONS

0101 PURPOSE

This Volume provides a general overview of the matters that fall within the administrative law functional area and specific information regarding administrative law services within the Marine Corps.

0102 GENERAL

Administrative law includes military personnel law, government information practices, administrative investigations, involuntary administrative separations, and any area of law not specifically addressed within the military justice, legal assistance, international and operational law. This Volume specifically details functions related to enlisted involuntary administrative separations, administrative investigations, and claims.

0103 ADMINISTRATIVE LAW SECTION

The Administrative Law Section of the Legal Services Support Team (LSST) is supervised by the Administrative Law Officer (ALO) and is responsible for providing legal services support in enlisted involuntary administrative separations processed within the specified Legal Services Support Area (LSSA), pursuant to Administrative Board Procedures under DoD Instruction 1332.14, the current edition of MCO 1900.16, and the MILPERSMAN (for U.S. Navy personnel assigned to Marine Corps commands). In coordination with the local OSJAs, the Administrative Law Section may also provide the respective Marine Corps Installations and Marine Expeditionary Force convening authorities and reviewing authorities with technical assistance on administrative investigations appointed pursuant to JAGINST 5800.7F or Rule for Courts-Martial 303, MCM.

0104 ENLISTED INVOLUNTARY ADMINISTRATIVE SEPARATIONS

For complete guidelines for processing Marine Corps enlisted involuntary separations see MCO 1900.16. For complete guidelines for processing U.S. Navy personnel assigned to Marine Corps commands, see the MILPERSMAN.

010401. Non-boards

A. Enlisted involuntary administrative separations processed pursuant to notification procedures under DoD Instruction 1332.14 and either MCO 1900.16 or the MILPERSMAN (for U.S. Navy personnel assigned to Marine Corps commands) shall be initiated at the appropriate unit level and processed directly through the chain of command to the separation authority via the cognizant Staff Judge Advocate, using standard naval correspondence or a Marine Corps-approved standardized electronic processing system.

B. The Administrative Law Section may provide technical advice or assistance through the cognizant Staff Judge Advocate, to commanders within the respective Marine Corps Installation and Marine Expeditionary Force on enlisted involuntary administrative separations processed pursuant to notification procedures, but is not ordinarily involved in or responsible for routing or records retention.

010402. Boards

A. Enlisted involuntary administrative separations processed pursuant to board procedures under DoD Instruction 1332.14 and MCO 1900.16 or the MILPERSMAN (for U.S. Navy personnel assigned to Marine Corps commands) shall be initiated at the appropriate unit level and processed, with the technical assistance of the Administrative Law Section to the separation authority via the cognizant Staff Judge Advocate, using standard naval correspondence or a Marine Corps-approved standardized electronic processing system.

B. The Administrative Law Section will: (1) review all enlisted involuntary administrative separation board packages processed within the LSSA pursuant to board procedures for technical compliance with the applicable references; (2) serve a copy of an involuntary administrative separation board package upon the defense section within five working days of receipt of a package; (3) provide, upon request from the convening authority and subject to availability, a commissioned, warrant, or staff noncommissioned officer to perform the duties of a non-voting government recorder, in accordance with paragraphs 6315.3 of MCO 1900.16 and 1910-502 of the MILPERSMAN (for U.S. Navy cases); (4) coordinate with the Officer-in-Charge (OIC), LSST to ensure availability of a judge advocate to serve as a legal advisor for the board; (5) coordinate with the non-voting Government recorder, president of the board, and counsel for the respondent, the time, date, and location for the conduct of the board; (6) ensure that the administrative board is convened within 30 working days of receipt of an administrative separation board package; and (7) prepare a record of proceedings of the board for signature, as required by the references.

C. The Administrative Law Section may: (1) prepare proposed endorsements for the convening authority, endorsing commanders, and separation authority if processed via standard naval correspondence; (2) prepare proposed correspondence for the cognizant Staff Judge Advocate if processed via standard naval correspondence; (3) distribute and forward completed enlisted involuntary administrative separation board packages; (4) forward those enlisted involuntary administrative separation board packages that require additional action beyond the local separation authority; and/or (5) maintain working copies of all board reports (including summary of proceedings and exhibits) and audio (CD) for the respective Marine Corps Installation and Marine Expeditionary Force commands until processing is complete.

D. Provide other administrative or clerical actions directed or authorized by the OIC, LSSS, or OIC, LSST, to ensure timely and efficient processing consistent with established processing time goals contained in paragraphs 6102 of MCO 1900.16 and 1910-010 of the MILPERSMAN (for U.S. Navy cases).

0105 ADMINISTRATIVE INVESTIGATIONS

010501. The command Staff Judge Advocate is responsible for providing advice on and the overall management and tracking of administrative investigations convened by cognizant commanders.

010502. Technical assistance to commands regarding administrative investigations is a service of the Administrative Law Section, LSST. Upon request by the command SJA and approval by the LSSS/T OIC, the Administrative Law Section may:

A. Provide pre-investigation technical investigative assistance to appointed investigating officers.

B. Provide technical review of completed investigations endorsed and forwarded by the convening authority.

VOLUME 12

“COMMAND RESPONSIBILITIES IN THE PROVISION OF LEGAL SERVICES”

SUMMARY OF VOLUME 12 CHANGES

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VOLUME 12: COMMAND RESPONSIBILITIES IN THE PROVISION OF LEGAL SERVICES

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 PURPOSE 1-3

0102 GENERAL 1-3

0103 ROLES DEFINED 1-3

0104 COURT-MARTIAL SUPPORT 1-3

0105 PREPARATION OF THE NAVMC 118(13) AND NAVMC 118(13A)..... 1-4

0106 MILITARY PROTECTIVE ORDER 1-7

REFERENCES

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

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

(This page intentionally left blank)

COMMAND RESPONSIBILITIES IN THE PROVISION OF LEGAL SERVICES

0101 PURPOSE

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

0102 GENERAL

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

0103 ROLES DEFINED

010301. Commanding Officers

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

010302. Legal Officer

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

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

0104 COURT-MARTIAL SUPPORT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. General

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

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

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

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

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

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

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

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

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

010506. Restoration/Clemency or Waiver of Restoration

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

0106 MILITARY PROTECTIVE ORDER

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

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

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

VOLUME 13

**“COMPLIANCE WITH CRIMINAL COURT ORDERS BY MARINES, DEPENDENTS,
AND CIVILIAN EMPLOYEES SERVING OVERSEAS”**

SUMMARY OF VOLUME 13 CHANGES

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DEPENDENTS, AND CIVILIAN EMPLOYEES SERVING OVERSEAS**

TABLE OF CONTENTS

REFERENCES.....REF-1

0101 SCOPE.....1-3

0102 POLICY1-3

0103 REQUESTS FOR ASSISTANCE1-3

0104 MARINE AS THE SUBJECT OF A REQUEST1-4

0105 DoD CIVILIAN AS THE SUBJECT OF A REQUEST1-4

0106 FAMILY MEMBER OF A MARINE OR EMPLOYEE AS THE SUBJECT OF A
REQUEST.....1-4

0107 RESPONSIBLE OFFICIALS1-4

REFERENCES

- (a) SECNAVINST 5430.7R CH-1
- (b) SECNAVINST 5430.27D
- (c) SECNAVINST 5430.25E
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**COMPLIANCE WITH CRIMINAL COURT ORDERS BY MARINES,
DEPENDENTS, AND CIVILIAN EMPLOYEES SERVING OVERSEAS**

0101 SCOPE

This Volume designates responsible Marine Corps officials for acting on a request or order from a court or from Federal, State or local authorities concerning a criminal court order (i.e., arrest warrants or similar process, generally in connection with a criminal prosecution) for the return to the United States of Service members and their family members or civilian employees and their family members serving overseas. Detailed procedural and policy guidance regarding the processing of requests or orders for the return of Service members, civilian employees, and their family members are set forth in DoD Instruction 5525.09, SECNAVINST 5820.9A, and JAGMAN chapter VI. Procedural and policy guidance regarding the release of official information for litigation purposes and providing testimony by Department of the Navy personnel as witnesses for litigation purposes is provided in DoD Directive 5405.2, SECNAVINST 5820.8A, and MCO 5800.16, Volume 8. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

0102 POLICY

The Marine Corps shall cooperate with courts and Federal, state, and local officials in enforcing court orders relating to Marines and DoD civilian employees stationed outside the United States, as well as their family members who accompany them, who have been charged with, or convicted of, a felony in a court, have been held in contempt by a court for failure to obey the court's order, or have been ordered to show cause why they should not be held in contempt for failing to obey the court's order. Marine Corps mission requirements (including operational readiness), the provisions of applicable international agreements, and ongoing DoD investigations and courts-martial shall be considered when determining the degree of cooperation required.

0103 REQUESTS FOR ASSISTANCE

010301. CMC (MM) shall determine whether the request from a court, or a Federal, State, or local official concerning a court order is based on an order issued by a court of competent jurisdiction. Every reasonable effort will be made to resolve the matter to the satisfaction of the court without returning Marines to the United States or by taking other action authorized by SECNAVINST 5820.9A against civilian employees or the family members of Marines and civilian employees. Before action is taken, the Subject of the court order shall be afforded the opportunity to provide evidence of legal efforts to resist the court order, or otherwise show legitimate cause for noncompliance. If CMC(MM) determines such efforts warrant a delay in taking action under this section, CMC(MM) may grant a brief delay (not more than 90 days). All delays shall be promptly reported to the USD(P&R) and the GC, DoD.

010302. Requests to return Marines for felonies or for contempt involving unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or other person awarded custody by a court order will normally be granted, but only if the Marine cannot resolve the issue with the court without return to the United States. When the Marine's return is inconsistent with mission requirements, applicable international agreements, or ongoing DOD investigations or courts-martial, DOD approval of denial will be requested.

010303. If the request does not pertain to a felony or contempt involving the unlawful or contemptuous removal of the child from the jurisdiction of a court or the custody of a parent or another

person awarded custody by court order, and the matter cannot be resolved with the court without the return of the Subject to the United States, CMC (MM) shall promptly take the action prescribed in Enclosure 1 of DoDI 5525.09, when deemed appropriate under the facts and circumstances of each particular case, following consultation with CMC (JCA).

0104 MARINE AS THE SUBJECT OF A REQUEST

If a Marine is the Subject of the request, the Marine shall be ordered, under Section 814 of title 10, United States Code (Article 14, UCMJ), to return expeditiously to an appropriate port of entry at Government expense, contingent on the party requesting return of the Marine providing transportation, and escort, if desired from such port of entry to the jurisdiction of the party. The party requesting return of the Marine shall be notified at least 10 days before the member's return to the selected port of entry, absent unusual circumstances. The Marine will normally be returned on a temporary additional duty (TAD) basis unless there are compelling reasons the return should be a permanent change of duty station (PCS).

0105 DEPARTMENT OF DEFENSE (DoD) CIVILIAN EMPLOYEE AS THE SUBJECT OF A REQUEST

Involuntary return of a DoD civilian employee is not authorized. If a DoD employee is the Subject of the request concerning the court order, the employee shall strongly be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawal of command sponsorship and adverse action against the DoD employee, including removal from the Federal Government. Proposals to take such adverse action must be approved by the Head of the DoD Component concerned. Such proposals shall be coordinated with the cognizant civilian personnel office and legal office.

0106 FAMILY MEMBER OF MARINE OR EMPLOYEE AS THE SUBJECT OF A REQUEST

Involuntary return of family members is not authorized. If the family member of a Marine or civilian employee is the Subject of a request concerning the court order, the family member shall strongly be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawing the command sponsorship of the family member.

0107 RESPONSIBLE OFFICIALS

010701. CMC (MM) is the responsible official for acting on all requests involving Service members and their family members who are not civilians employed by the DON or a component service, including an individual paid from non-appropriated funds, who is a citizen or national of the United States.

010702. Commanding officers who receive a request for the return of a Marine or family members of a Marine belonging to the command will comply with procedures set forth in SECNAVINST 5820.9A, and forward the request to CMC (MM) for action.

010703. Commanding officers are the responsible officials for acting on all requests involving civilian employees and their family members who are not active-duty military members, and will take appropriate action in accordance with SECNAVINST 5820.9A.

010704. CMC (JA) will provide legal review and advice on requests under the cognizance of CMC (MM). CMC (JCA) is the point of contact for authorities issuing requests for return or other action.

010705. The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall grant exceptions on a case-by-case basis, with the concurrence of the GC, DoD.

VOLUME 14

**“ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND
PREPARATION OF THE UNIT PUNISHMENT BOOK”**

SUMMARY OF VOLUME 14 CHANGES

Hyperlinks are denoted by *[bold, italic, blue and underlined font.](#)*

The original publication date of this Marine Corps Order (right header) will not change unless/until a full revision of the MCO has been conducted.

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VOLUME VERSION	SUMMARY OF CHANGE	ORIGINATION DATE	DATE OF CHANGES
ORIGINAL VOLUME	N/A	DD MMM YYYY	N/A

Submit recommended changes to this Volume, via the proper channels, to:

CMC (JA)
3000 Marine Corps Pentagon
Washington, DC 20350-3000

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VOLUME 14: ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND PREPARATION OF THE UNIT PUNISHMENT BOOK

TABLE OF CONTENTS

REFERENCES.....REF-1
0101 PURPOSE 1-3
0102 GENERAL 1-3
0103 AUTHORITY TO IMPOSE NONJUDICIAL PUNISHMENT 1-3
0104 JURISDICTION OVER ACCUSED 1-4
0105 JURISDICTION OVER RESERVISTS 1-5
0106 EFFECT OF EXPIRATION OF ACTIVE SERVICE (EAS) OR RESERVE EXPIRATION OF CURRENT CONTRACT (RECC) OF MARINES PENDING OR UNDERGOING NONJUDICIAL PUNISHMENT 1-5
0107 ADVICE TO ACCUSED BEFORE IMPOSITION OF NONJUDICIAL PUNISHMENT... 1-5
0108 QUANTUM OF PUNISHMENTS-COMBINATION 1-6
0109 FORFEITURE IMPOSED AS NONJUDICIAL PUNISHMENT 1-6
0110 SUSPENSION, REMISSION, MITIGATION, AND SETTING ASIDE..... 1-7
0111 UNIT PUNISHMENT BOOK..... 1-8
0112 VACATION OF SUSPENSION 1-13
0113 NONJUDICIAL PUNISHMENT APPEALS..... 1-14
0114 JUDGE ADVOCATE REVIEW 1-14

REFERENCES

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

“REFERENCES”

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

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VOLUME 14

**“ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND
PREPARATION OF THE UNIT PUNISHMENT BOOK”**

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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**ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND
PREPARATION OF THE UNIT PUNISHMENT BOOK**

0101. PURPOSE

This Volume provides information and instruction on enlisted nonjudicial punishment matters and the preparation of the Unit Punishment Book (UPB).

0102. GENERAL

Nonjudicial punishment (NJP) provides commanders with an essential and prompt means of maintaining good order and discipline.

0103. AUTHORITY TO IMPOSE NONJUDICIAL PUNISHMENT

010301. 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. For this Volume, "absence" means a condition that prevents effective command and control of the unit by the commander. For example, a commander who is sitting on a board without regular access to e-mail and phone communication would normally be considered absent, whereas a commander who is taking leave in the area and is maintaining contact with the command via e-mail and phone would not normally be absent. "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 JAGINST 5800.7F (JAGMAN), section 0106c), the authority to impose NJP cannot be delegated unless by specific authorization of the Secretary of the Navy.

010302. Major or Lieutenant Commander or Above

Pursuant to Manual for Courts-Martial (MCM), Part V, paragraph 5b(2)(B), a commanding officer of the grade of major or lieutenant commander or above, or a principal assistant, as defined in paragraph 2c of Part V, even if filling a billet traditionally filled by a captain or lieutenant (O-3), may impose the following punishments:

- A. Correctional custody for not more than 30 consecutive days.
- B. Forfeiture of not more than one-half of one month's pay per month for two months.
- C. Reduction at NJP may only be imposed if the grade from which demoted is within the promotion authority of the officer imposing reduction, as provided in paragraph 1200.3b of MCO P1400.32D. Commanders or officers-in-charge not listed in paragraph 1200.3.b may submit a

request for promotion authority to CMC (MMPR-2) via the chain of command. Marines may only be reduced to the next inferior paygrade. Marines in the grade of E-6 or above and Sailors in the grade of E-7 or above may not be reduced in paygrade.

D. Extra duties, including fatigue or other duties, for not more than 45 consecutive days.

E. Restriction to specified limits, with or without suspension from duty, for not more than 60 consecutive days.

010303. Captain or Lieutenant (O-3) and Below

Pursuant to (MCM), Part V, paragraph 5b(2)(a), a commanding officer of the grade of captain or lieutenant (O-3) and below exercising company command may impose the following punishments:

A. Correctional custody for not more than 7 consecutive days.

B. Forfeiture of not more than 7 days' pay.

C. Reduction in grade if authorized as outlined above in 010301.

D. Extra duties, including fatigue or other duties, for not more than 14 consecutive days.

E. Restriction to specified limits, with or without suspension from duty, for not more than 14 consecutive days.

010304. Officer-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); orders of the senior officer present; or designated as a special court-martial convening authority are empowered to impose NJP upon enlisted personnel assigned to their unit. An officer-in-charge, regardless of grade, may impose upon enlisted persons assigned to the unit an admonition or reprimand, and one or more of those punishments authorized by the UCMJ for company grade officers.

010305. A "command" in the meaning of subparagraph 010301 above is a company or higher unit recognized in an official table of organization.

0104. JURISDICTION OVER ACCUSED

010401. When nonjudicial punishment is imposed, the accused must be a member of the command or of the unit of the officer (commander or officer-in-charge) imposing 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. However, paragraph 1f(1) of Part V, MCM, prohibits double punishment (specifically, when NJP has been imposed for an offense, punishment may not again be imposed for the same offense under Article 15, UCMJ).

010402. For the imposition of NJP, 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 JAGMAN section 0107a(2)).

010403. Command authority and administrative control over members of the supported command may pass to an Inspector-Instructor (I-I) or Site Commander in the absence of the Reserve Commanding Officer or other officers that could act for the Commanding Officer when the reserve officers are not in a duty status, or are otherwise unavailable to execute command functions, unless this succession of command authority is otherwise directed by Commander Marine Forces Reserve or the unit's General Court-Martial Convening Authority. This delegation of authority is authorized for routine matters and expressly excludes establishing organizational policy, changing the unit's mission, or countermanding the Reserve Commanding Officer's guidance.

010404. Except as provided in paragraph 010402, if, at the time NJP 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 accused's chain of command. In the case of an officer, the referral normally should be made to the officer who exercises general court-martial jurisdiction.

0105. JURISDICTION OVER RESERVISTS

010501. 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 JAGMAN sections 0107b, 0123d, 0123e, and 0123f).

010502. Any NJP punishment amounting to a deprivation of liberty (for example, restriction, correctional custody, extra duties, or arrest in quarters) imposed upon a member of the reserve component during a period inactive duty training, may be served during a normal period of inactive-duty training and/or a subsequent period of active duty. Unserved punishments may be carried over to subsequent periods of inactive-duty training or active duty.

0106. EFFECT OF EXPIRATION OF ACTIVE SERVICE (EAS) OR RESERVE EXPIRATION OF CURRENT CONTRACT (RECC) OF MARINES PENDING OR UNDERGOING NONJUDICIAL PUNISHMENT

A Marine may not be involuntarily retained beyond their normal EAS or RECC for the purpose of imposing NJP or to serve punishment previously imposed at NJP or to be a witness at NJP. However, a Marine previously involuntarily extended beyond his or her EAS or RECC for a proper purpose (for example, pending charges at a court-martial) may agree to have those charges disposed of at NJP in lieu of trial by court-martial.

0107. ADVICE TO ACCUSED BEFORE IMPOSITION OF NONJUDICIAL PUNISHMENT

010701. An accused Marine may have NJP imposed without first being afforded the opportunity to consult with counsel, 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 afforded to those who request such, if at all practicable (telephonic consultation may be used). While preferred, that counsel need not be a member of the DSO. This will ensure the Marine has been afforded all legal rights prior to the imposition of NJP as provided by JAGMAN section 0109 (see also JAGMAN Appendices A-1-b, A-1-c, and A-1-d).

010702. Pursuant to Article 43, UCMJ, NJP may not be imposed for an offense committed more than two years before the imposition of punishment. In comparison, the statute of limitations at court-martial is typically five years. An accused may affirmatively agree to accept NJP in lieu of trial by court-martial for offenses that are over two years old, but within the five year court-martial statute of limitations. In such cases, the accused must knowingly and intelligently waive any claim that punishment is barred by the Article 43, UCMJ, statute of limitations. It is advisable to memorialize this understanding in a pretrial agreement or other similar written document.

0108. QUANTUM OF PUNISHMENTS-COMBINATION

Paragraph 5d of Part V, MCM, contains instructions concerning combination of nonjudicial punishments.

0109. FORFEITURE IMPOSED AS NONJUDICIAL PUNISHMENT

010901. Forfeiture imposed as NJP must be expressed in whole-dollar amounts only, not in dollars and cents (e.g., \$300.25), 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).

010902. The maximum permissible forfeiture is determined by rounding down to whole-dollar amounts.

010903. The maximum permissible forfeiture that may be imposed at NJP by a company grade officer or officer-in-charge is determined by dividing a month's base pay by 30, multiplying the result by seven, and rounding down to a whole-dollar amount.

010904. If a reduction is also imposed, whether or not such reduction is suspended, the maximum permissible forfeiture must be computed on the pay of the grade to which reduced (see paragraph 5 of Part V, MCM).

010905. Selected Marine Corps Reserve (SMCR) Marine Forfeiture Calculation

A. To calculate 1/2 month's pay for an SMCR Marine to determine maximum forfeitures at NJP imposed by a company grade officer or officer-in-charge, use the following formula: $([One\ Drill\ Pay] \times [Number\ of\ Drills\ scheduled\ within\ the\ next\ 60\ days] \times 0.2333 + [Active\ Duty\ Basic\ Pay]) / (30 \times [Number\ of\ Days\ assigned\ to\ active\ duty\ orders\ within\ the\ next\ 60\ days] / 2)$.

B. To calculate 1/2 month's pay for an SMCR Marine to determine maximum forfeitures at NJP imposed by a field grade officer of higher, use the following formula: $([One\ Drill\ Pay] \times [Number\ of\ Drills\ scheduled\ within\ the\ next\ 60\ days] \times 0.5) + ([Active\ Duty\ Basic\ Pay] / 30 \times [Number\ of\ Days\ assigned\ to\ active\ duty\ orders\ within\ the\ next\ 60\ days] / 2)$.

C. One Drill Pay is based on current year's drill pay chart. Active Duty Basic Pay is based upon current year's active duty basic pay chart.

D. Scheduled drills are assessed on the date the notification of NJP is signed by the Convening Authority. Scheduled drills include any type of drills for which pay is authorized, per the Marine Corps Reserve Administrative Management Manual (MCRAMM).

E. The 60-day time period is measured as 60 consecutive calendar days. This 60-day period for calculating total drills and active duty days begins on the date of NJP. This 60-day period cannot be adjusted even if the unit is not drilling during one or both of the next two months.

0110. SUSPENSION, REMISSION, MITIGATION, SETTING ASIDE

011001. Article 15(d), UCMJ, paragraph 6 of Part V, MCM, and JAGMAN section 0118 provide that an officer who imposes NJP may: (1) suspend, remit, or mitigate any part or amount of the unexecuted portion of that punishment; (2) set aside in whole or in part that punishment, whether executed or unexecuted; and (3) may restore all rights, privileges and property affected by that punishment.

011002. 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.

011003. 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 ordinarily be exercised within four months after the date of execution (see paragraph 6b of Part V, MCM).

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

D. Removal and set aside. Pursuant to JAGMAN section 0114i, material properly placed in an official record may not normally be removed or destroyed.

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

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

3. If the removal or set aside occurs after a copy of the punitive letter has been forwarded, a copy of the letter of cancellation shall be forwarded to MMRP via encrypted email to SMB.MANPOWER.MMRP@USMC.MIL. The letter of cancellation must contain the Marine's full name, date of NJP, the reason/rationale for the cancellation, and actions by the Commander, e.g. all rights, privileges, and property affected by the punishment are restored. The commander should also forward the letter of cancellation to any other addressees to whom copies of the punitive letter were forwarded. Upon receipt of the copy of the letter of removal or set aside, addressees will ensure that copies of the punitive letter shall not be filed in or, if already filed, shall be removed from, the member's official record and destroyed. The order or letter of removal or set aside or a copy thereof shall not be filed in the member's official records.

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

0111. UNIT PUNISHMENT BOOK

011101. A UPB form (NAVMC 10132) will be used to record the imposition of NJP for U.S. Marine Corps enlisted personnel. When reporting NJP of officers, comply with Volume 15 of this Manual.

011102. When an officer exercising Article 15, UCMJ, authority receives information that an offense punishable under the UCMJ was allegedly committed by an enlisted person under that officer's jurisdiction, and that officer further determines that the possible offense should either be disposed of at NJP or be referred to higher authority, a UPB form will be prepared.

011103. The original UPB form will be prepared electronically, typewritten, or handwritten (legibly) in black or blue-black ink. The completed original UPB form will be maintained in the originating command's correspondence files (Standard Subject Identification Code 5812) until all proceedings are complete, and all signatures and required entries made. Once the UPB is complete with all signatures, provide a copy to the member, a copy to the Installation Personnel Administration Center (IPAC) or Administrative section for unit diary reporting and scanning into the Marine's official military personnel file (OMPF) and electronic service record (ESR). The copy UPB form does not require original signatures or initials. Authorized abbreviations are encouraged (see MCO P1070.12K, Individual Records Administration Manual (IRAM)). When there is insufficient space for an item, type "See Supplemental Page" and any additional information shall be listed on page 2. Additional sheets will be securely stapled to the UPB form and must contain the Marine's name and EDIPI, as appropriate.

011104. 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 individual making the correction will then legibly initial next to the correction. The new information will be entered directly above or below

the original information, or explained in item 16, as applicable. See paragraphs 011105.F and 011105.G for corrective action requirements specific to blocks 6 and 7 of the UPB.

011105. Detailed Preparation Instructions

A. Item 1. Enter the UCMJ article(s) allegedly violated and a summary of each offense, to include date, time, and place of the alleged offense. It is not necessary to use model charges and specifications as in courts-martial, however, it is permissible to do so. If there are multiple infractions of an article of the UCMJ, repeat the article as indicated below. Examples:

(1) Art. 90. Struck Capt Smith with fists at HqCo, HqBn, 3d MarDiv, at 0930, 10 Nov 12.

(2) Art. 90. At Co A, 1st Bn, 7th Mar (deployed) on 11 Mar 12, willfully disobeyed Capt Green's order to get a haircut.

(3) Art. 86. UA fr HqCo, HqBn, 3d MarDiv dur the prd 0800, 11 May 12 through 2359, 15 May 12.

(4) Art. 86. At HqCo, HqBn, 3d MarDiv, failed to go at the time prescribed to morning formation at 0800 on 15 Nov 12.

B. Item 2. After advising the Marine in accordance with Article 31, UCMJ, and JAGMAN section 0104, 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 JAGMAN section 0109). 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 allowing the Marine the opportunity to consult with individual counsel, require the Marine to indicate that he has had the opportunity to do so by striking out the inapplicable provisions and signing item 4.

E. Item 5. If unauthorized absence (UA) is not a part of the NJP, leave item 5 blank. If the Marine was UA in excess of 24 hours, then enter the period of time over which the absence occurred as well as any marks of desertion.

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, no record will be maintained in the UPB binder and no unit diary action will be taken. In the case where all punishment is suspended, the NJP is valid and a record of the NJP shall be maintained in the UPB even if all suspended punishment is later remitted. Any corrections or changes made in block 6 (Final Disposition Taken) may only be made by and initialed by the officer who imposed

or is imposing punishment (see paragraph 011104 for corrective action guidelines). 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.

(1) Restr to the limits of HQSVCCo, 1st Bn, 3d Mar for 14 days, w/o susp fr du. 2 Jun 12 (see para. 5c(2) of Part V, MCM).

(2) Forf of \$250 pay per month for 2 months. Total forf \$500. 2 Jun 12. (Note: always state forfeitures in whole dollar amounts.)

(3) Corr cust for 7 days w/susp fr du. 2 Jun 12.

(4) Corr cust for 6 days w/o susp fr du. 2 Jun 12.

(5) 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 days and extra du for 14 days, to run concurrently. 2 Jun 12.

(6) To be red to LCpl, E-3, and to be orally reprimanded. 2 Jun 12.

G. Item 7. Enter the date and the specific terms of the suspension. If no part of the punishment is 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 12. Red to LCpl, E-3, susp for 3 mos, at which time, unless sooner vacated, the red will be remitted w/o further action. Any corrections or changes made in block 7 (Suspension of Execution of Punishment) may only be made by and initialed by the officer who imposed or is imposing punishment. See paragraph 011104 for corrective action guidelines.

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, and JAGMAN section 0110f). 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 the 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. 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. Examples:

- (1) Appeal denied - 25 Jun 12.
- (2) Appeal granted, punishment set aside- 25 Jun 12.
- (3) Red set aside, no further relief granted - 25 Jun 12.

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. Entries are required in this item under the following conditions:

1. 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.

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

- (a) General Recommendation - "Fwd to BnCO recom NJP."
- (b) Specific Recommendation - "Fwd to BnCO recom red."

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

- (a) Forf of \$250 per mo for 1 mo imposed and susp on 10 Dec 12 vacated - 26 Dec 12.
- (b) Red to PFC, E-2, imposed on 10 Dec 12 and susp on 15 Dec 12 vacated - 26 Dec 12.

4. 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 five 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). An entry reflecting the stay of punishment will be made. Example: 7 Dec 12: Appeal submitted. Punishment of (insert punishment) stayed.

5. When an executed or unexecuted punishment is set aside, the "set aside" 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 12: Red to Cpl, E-4, is set aside. All rights, privileges and property affected will be restored.

6. 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, to include verifying the copy of the UPB form with all signatures is on file in the Marine's OMPF, 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. A copy of the initialed form will be sent to the originating unit so the unit diary number and date can be recorded on the unit's copy of the UPB. Ensure completion of all unit diary entries in accordance with Marine Corps Total Force System Personnel Reporting Instructions User's Manual (MCTFSPRIUM).

R. Items 18-21. Items 18 through 21 are self-explanatory.

011106. 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 JAGMAN Appendix A-1-f 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.

011107. When an appeal from NJP is forwarded to higher authority for decision, compliance with JAGMAN sections 0116 and 0117 is required. Furthermore, applicable Page 11 entries, the Marine's Record of Service (corporals and below), the original UPB form, the summarization of proceedings, and all allied papers shall be forwarded to the higher authority. The appeal authority is required to sign block 14 of the UPB and the correspondence responding directly to the Marine regarding the appeal authority's final decision on the appeal. After action on the appeal, the original NJP appeal paperwork and all allied papers will be returned to the officer originating the UPB. Allied papers may include, but are not limited to statements, investigative reports, documents, records, or photographs. A copy of the appeal, will be provided to the Marine concerned. Item 15 will be completed by the individual providing notice to the accused of the decision on the appeal 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's correspondence files in accordance with current directives. Factual disputes should be addressed by endorsers and resolved by the Appeal Authority.

011108. NJP proceedings are considered complete and final when the appeal period has expired, or when the Marine is notified of the decision on an appeal. Once final, an appeal which has been granted may not be reconsidered and denied.

011109. The commanding officer will forward a copy of the UPB to the IPAC/Administrative section for the unit diary reporting and scanning in to the Marine's OMPF and ESR. The CO will deliver a copy to the Marine once proceedings are complete and final.

011110. The UPB will be maintained in either a binder or an electronic file 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 or digital file. Each Article 15, UCMJ, jurisdiction should be maintained separately by means or divider or individual electronic file (e.g., battalion, Co A, Co B).

- A. The UPB file will consist of the original UPB forms including attached pages, appeals and summary transcripts of the impartial hearings, filed alphabetically in a loose-leaf binder or digital file in accordance with the command's file plan.
- B. A new UPB binder or digital file shall be opened at the beginning of each calendar year. UPB binders or digital files will be retained in the organization for two full calendar years after closure as required by disposal instructions (see SECNAV M-5210.1).
- 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, no NJP has occurred and the UPB form will not be maintained in the UPB binder.
- D. When all imposed punishment is suspended and ultimately remitted, NJP is still deemed to have occurred and the UPB form will remain in the UPB binder. When a commanding officer sets aside an NJP pursuant to Part V, MCM, paragraph 6d, the UPB form will be removed from the UPB binder. If the commanding officer sets aside an NJP after the UPB has been forwarded to a higher level in the chain of command, a copy of the set-aside letter shall be forwarded to MMRP via encrypted email to smb.manpower.mmrp-20@usmc.mil. The set-aside letter must contain the Marine's full name, date of NJP, the reason/rationale for the cancellation, and actions by the Commander, e.g. all rights, privileges, and property affected by the punishment are restored.
- E. Copies of UPB forms with signatures will be prepared and maintained in accordance with paragraph 0111 above. However, copies forwarded to a higher level in the chain of command for disposition will not be maintained in the UPB binder.

0112. VACATION OF SUSPENSION

011201. 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. If the commander is going to impose additional NJP during a suspension period, the vacation of suspension shall occur first. 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 and provide a copy to the IPAC/Administrative section for any required reporting per the MCTFSPRIUM. 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(s) warranting the vacation of suspended punishment.

- C. A statement that punishment for the additional offense (is/is not) contemplated.

011202. The unit commander will generate the vacation letter that notifies the Marine of the commander's decision to vacate the punishment in whole or in part. The unit administrators will update block 16 on the original UPB with the vacated punishment information from the commander's letter and forward a copy of the vacation letter and a copy of the updated UPB to the IPAC/Administration Section for unit diary reporting. Upon completion of the unit diary reporting, the unit administrators will provide a copy of the completed UPB with the Unit Diary number and date of the action taken to the unit. The IPAC/Administration Section will scan the corrected UPB to the ESR/OMPF in accordance with established procedures. The unit must validate that the copy in the ESR/OMPF matches the original UPB on file in the UPB binder.

0113. NONJUDICIAL PUNISHMENT APPEALS

011301. Legal review of an NJP appeal is a function of the SJA of the command to which the Marine who received NJP belongs.

011302. Upon a request from the cognizant SJA within the LSSA to the LSSS OIC, the LSSS OIC will designate a judge advocate to conduct a legal review of an NJP appeal.

011303. Upon request by the cognizant SJA, the Regional Review Office (RRO) will coordinate all requested legal reviews of NJP appeals.

011304. Upon completion of the requested legal review, the RRO will return the NJP paperwork and review with recommendations to the requesting SJA.

0114. JUDGE ADVOCATE REVIEW

011401. Before acting on an NJP appeal that includes any of the NJP punishments contained in subparagraph 011402 below, the NJP Appeal Authority must refer the case to a judge advocate for consideration and advice. This referral shall involve a full documentary review by the judge advocate.

011402. NJP cases that are being appealed and include any of the following NJP punishments, require judge advocate review prior to an NJP Appeal Authority's action on the NJP Appeal:

- A. Arrest in quarters for more than seven days.
- B. Correctional custody for more than seven days.
- C. Forfeiture of more than seven days' pay.
- D. Reduction of one or more pay grades from the fourth or a higher pay grade.
- E. Extra duties for more than 14 days.
- F. Restriction for more than 14 days.

- G. Detention of more than 14 days' pay.

VOLUME 15

“OFFICER MISCONDUCT AND SUBSTANDARD PERFORMANCE OF DUTY”

SUMMARY OF VOLUME 15 CHANGES

Hyperlinks are denoted by *[bold, italic, blue and underlined font.](#)*

The original publication date of this Marine Corps Order (right header) will not change unless/until a full revision of the MCO has been conducted.

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VOLUME 15: OFFICER MISCONDUCT AND SUBSTANDARD PERFORMANCE OF DUTY

TABLE OF CONTENTS

REFERENCES.....REF-1
0101 PURPOSE 1-3
0102 GENERAL..... 1-3
0103 SPECIAL CONSIDERATIONS..... 1-4
0104 REPORTING OFFICER MISCONDUCT IN THE OFFICER DISCIPLINARY NOTEBOOK (ODN) 1-10
0105 DISPOSITION OF ALLEGATIONS OF MISCONDUCT..... 1-13
0106 REPORTING DISPOSITIONS OF MISCONDUCT..... 1-15
0107 ACTION BY SHOW CAUSE AUTHORITIES..... 1-20
0108 REPORTING AND PROCESSING ALLEGATIONS OF SUBSTANDARD PERFORMANCE OF DUTY 1-20
0109 ADMINISTRATIVE SEPARATION OF OFFICERS WITH BOARD ACTION 1-22
0110 ADMINISTRATIVE SEPARATION OF OFFICERS WITHOUT BOARD ACTION 1-27
0111 RELATED PERSONNEL ACTIONS 1-33
0112 PROMOTIONS..... 1-34
FIGURE 15-1 NONJUDICIAL PUNISHMENT NOTIFICATION AND ACKNOWLEDGEMENT 1-37
FIGURE 15-2 NONJUDICIAL PUNISHMENT NOTIFICATION BASED ON FACT-FINDING BODY 1-40
FIGURE 15-3 ACKNOWLEDGEMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS 1-42
FIGURE 15-4 ACKNOWLEDGEMENT OF PUNITIVE LETTER OF REPRIMAND 1-44
FIGURE 15-5 REPORT OF NONJUDICIAL PUNISHMENT 1-45
FIGURE 15-6 REPORT OF NO MISCONDUCT..... 1-48

FIGURE 15-7 ACKNOWLEDGEMENT OF ADVANCE EDUCATION RECOUPMENT..... 1-49

FIGURE 15-8 ACKNOWLEDGEMENT OF RECEIPT OF REPORT..... 1-50

FIGURE 15-9 REPORT OF MISCONDUCT 1-51

FIGURE 15-10 REPORT OF CIVILIAN CONVICTION..... 1-53

FIGURE 15-11 REPORT OF COURT-MARTIAL CONVICTION 1-55

FIGURE 15-12 REPORT OF NO SUBSTANDARD PERFORMANCE 1-57

FIGURE 15-13 REPORT OF SUBSTANDARD PERFORMANCE 1-58

FIGURE 15-14 BOARD OF INQUIRY DIRECTION LETTER (NOT RETIREMENT ELIGIBLE)
..... 1-60

FIGURE 15-15 BOARD OF INQUIRY DIRECTION LETTER (RETIREMENT ELIGIBLE) 1-62

FIGURE 15-16 BOARD OF INQUIRY NOTIFICATION (NOT RETIREMENT ELIGIBLE) 1-64

FIGURE 15-17 BOARD OF INQUIRY NOTIFICATION (RETIREMENT ELIGIBLE) 1-66

FIGURE 15-18 BOARD OF INQUIRY CONVENING ORDER 1-68

FIGURE 15-19(a) REQUEST FOR WAIVER OF MINIMUM LEGAL ADVISOR
QUALIFICATIONS 1-69

FIGURE 15-19(b) REQUEST FOR WAIVER OF MINIMUM BOARD OF INQUIRY RECORDER
QUALIFICATIONS 1-70

FIGURE 15-20 BOARD OF INQUIRY SCRIPT 1-71

FIGURE 15-21(a) BOARD OF INQUIRY FINDINGS WORKSHEET (NOT RETIREMENT
ELIGIBLE)..... 1-86

FIGURE 15-21(b) BOARD OF INQUIRY FINDINGS WORKSHEET (RETIREMENT
ELIGIBLE)..... 1-89

FIGURE 15-22 REPORT OF BOARD OF INQUIRY (NOT RETIREMENT ELIGIBLE)..... 1-92

FIGURE 15-23 REPORT OF BOARD OF INQUIRY (RETIREMENT ELIGIBLE)..... 1-95

FIGURE 15-24 MINORITY REPORT 1-98

FIGURE 15-25 BOARD OF INQUIRY CERTIFICATE OF SERVICE..... 1-99

FIGURE 15-26 ENDORSEMENT 1-100

FIGURE 15-27 NOTIFICATION OF ADMINISTRATIVE SEPARATION VIA NOTIFICATION
PROCEDURE 1-104

FIGURE 15-28 ACKNOWLEDGEMENT OF ADMINISTRATIVE SEPARATION 1-106

FIGURE 15-29 RECOMMENDATION FOR ADMINISTRATIVE SEPARATION VIA
NOTIFICATION 1-107

FIGURE 15-30 VOLUNTARY RETIREMENT IN LIEU OF FURTHER ADMINISTRATIVE
PROCESSING 1-110

FIGURE 15-31 RESIGNATION IN LIEU OF FURTHER ADMINISTRATIVE PROCESSING .. 1-112

FIGURE 15-32 RESIGNATION IN LIEU OF TRIAL 1-115

FIGURE 15-33 WAIVER OF BOARD OF INQUIRY (NOT RETIREMENT ELIGIBLE) 1-117

FIGURE 15-34 WAIVER OF BOARD OF INQUIRY (RETIREMENT ELIGIBLE) 1-119

FIGURE 15-35 COMMAND DELAY LETTER 1-121

REFERENCES

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

(ss) SECNAV M-5214.1

“REFERENCES”

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Report Required: Officer Misconduct Report (Report Control Symbol EXEMPT) par. 010404.A

VOLUME 15

“OFFICER MISCONDUCT AND SUBSTANDARD PERFORMANCE OF DUTY”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

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OFFICER MISCONDUCT AND SUBSTANDARD PERFORMANCE OF DUTY

0101. PURPOSE

This Volume promulgates policies, standards, and procedures for the reporting and disposition of instances of alleged officer misconduct or substandard performance of duty, and administrative processing of officers for possible separation as a consequence of such alleged misconduct or substandard performance. This Volume also provides policies, standards, and procedures for related personnel actions, including personnel/administrative hold, and promotion delay, withhold, and removal.

0102. GENERAL

010201. References

A. The authoritative sources for the policies, standards, and procedures governing the administrative separation of officers in the Naval Service are Title 10, United States Code (U.S.C.); Department of Defense Instruction (DoD Instruction) 1332.30, Separation of Regular and Reserve Commissioned Officers; and Secretary of the Navy Instruction (SECNAVINST) 1920.6_, Administrative Separation of Officers. Marine Corps Order (MCO) 1900.16, Marine Corps Separation and Retirement Manual (MARCORSEPMAN), supplements the policies, standards, and procedures set forth in SECNAVINST 1920.6_ and this Volume. Any inconsistencies are resolved in favor of SECNAVINST 1920.6_.

B. The authoritative sources for the policies, standards, and procedures governing officer promotion delay, withhold, and removal in the Naval Service are Title 10, U.S.C.; DoD Instruction 1320.04, Military Officer Actions Requiring Presidential, Secretary of Defense, or Under Secretary of Defense for Personnel and Readiness Approval or Senate Confirmation; DoD Instruction 1320.14, Commissioned Officer Promotion Program Procedures; SECNAVINST 1412.6_, promotion of Officers to the Grade of Lieutenant (Junior Grade) and to the Grade of First Lieutenant in the Marine Corps; SECNAVINST 1412.9_, Marine Corps Limited Duty Officer and Warrant Officer Programs, Promotions, and Continuation Procedures; SECNAVINST 1420.1_, Promotion, Special Selection, Selective Early Retirement, and Selective Early Removal Boards for Commissioned Officers of the Navy and Marine Corps. MCO P1400.31C, Marine Corps Promotion Manual, Volume 1, Officer Promotions (MARCORPROMAN, VOL 1, OFFPROM), supplements the policies, standards, and procedures set forth in these sources and this Volume. Any inconsistencies shall be resolved in favor of these sources.

010202. Show Cause Authority

Paragraph 13d of SECNAVINST 1920.6_ designates the Deputy Commandant for Manpower and Reserve Affairs (DC, M&RA) as the Show Cause Authority for the Marine Corps. Generals and lieutenant generals in command have been delegated Show Cause Authority and are hereinafter referred to as Alternate Show Cause Authorities.

010203. Expeditious Processing

A. SECNAVINST 1920.6_ and this Volume establish time processing goals for officer misconduct and substandard performance cases. These time processing goals do not provide a basis of appeal or redress for officers.

B. The Commandant of the Marine Corps (CMC) expects all matters involving officer discipline to be handled promptly. However, it is also important that commanders dispose of cases consistently, equitably, and in a manner that best promotes good order and discipline. The disposition decisions of commanders relative to officer misconduct cases are fundamentally important to good order and discipline and shall take into consideration those factors and guidance articulated in the discussion of Rule for Courts-Martial (R.C.M.) 306(b), Manual for Courts-Martial (MCM). Within the limits established by the MCM and SECNAVINST 1920.6_, commanders retain the authority to determine the most appropriate forum for resolution of a particular case. What is desired is not a “rush to judgment” but, rather, deliberate speed in handling officer discipline cases in the most appropriate manner.

C. To ensure the timely, efficient, and accurate processing of officer misconduct and substandard performance cases, general court-martial convening authorities (GCMCAs) are responsible for the following tasks: (1) through the command SJA, use the Officer Disciplinary Notebook Management System (ODNMS) to report and track all officer misconduct and substandard performance cases; (2) through the command SJA, as reportable events occur, and at least monthly, update the status of all cases reported on the ODNMS; (3) regularly meet with the SJA to discuss all pending officer misconduct and substandard performance cases; (4) ensure that officer cases are not postponed because of operations, exercises, or training commitments (commands shall coordinate with CMC (JPL) before deploying an officer with an active misconduct or substandard performance case); and (5) ensure that expedited mail, courier service, or electronic submission is used to transmit officer misconduct and substandard performance cases during all phases of processing and to each level of command.

0103. SPECIAL CONSIDERATIONS

Certain types of cases involve additional processing requirements. Failure to adhere to such requirements may result in significant delay.

010301. Substance-Related Offenses

A. General

1. The policies and procedures in this section supplement the policies and procedures set forth in SECNAVINST 5300.28_, Military Substance Abuse Prevention and Control, and MCO 5300.17, Marine Corps Substance Abuse Program. Commanders must ensure that the policies and procedures set forth in SECNAVINST 5300.28_ and MCO 5300.17 are followed for all officers alleged to have committed a substance-related offense. Additionally, commanders must consult MCO 1610.7A, Performance Evaluation System (PES), for substance-abuse fitness reporting requirements.

2. Substance (alcohol and drug) abuse by members of the Armed Forces is incompatible with the maintenance of high standards of performance, military discipline, readiness, and reliable mission accomplishment.

3. In all substance-abuse incidents, the officer involved shall be assessed, counseled by the unit commander, disciplined (if warranted, as determined by the commander, in the commander's sole discretion), and referred in a timely manner to the nearest substance-abuse counseling center (SACC)—or other Service equivalent—for screening.

4. Regardless of the type of discharge, all commanders will ensure that no officer requiring treatment is separated until the treatment process is completed. This requirement,

however, does not include aftercare or treatment failures. (For example, a commander will not delay the discharge of a drug-dependent officer for medical or rehabilitation treatment for drug dependency after the officer completes the initial treatment program recommended by the SACC.) In all cases, upon completion of treatment, the treatment facility will advise the Marine of his or her Veterans Affairs (VA) substance-abuse treatment eligibility.

5. Retained officers will be ordered into a treatment program recommended by the SACC and will comply with aftercare program requirements.

B. Alcohol-Related Incidents

1. Definition. Pursuant to SECNAVINST 5300.28_, an alcohol-related incident occurs when an officer commits an offense punishable under the UCMJ or by civilian authorities for which, in the judgment of the officer's commanding officer (CO), the consumption of alcohol was a contributing factor. Although the determination that an incident is alcohol-related is generally a matter within a CO's discretion, enclosure (3) to SECNAVINST 5300.28_ defines what constitutes a substantiated incident of impaired driving and requires that such incidents be properly documented in officer fitness reports, appropriate administrative record entries, and other reports required by instruction.

2. Formal Counseling. In accordance with MCO 5300.17, an officer involved in an alcohol-related incident will receive formal written counseling per paragraph 3005 of MCO P1070.12K (IRAM). The officer's blood alcohol concentration, if known, will be included in the counseling entry. Because such counseling will be included in the officer's Official Military Personnel File (OMPF) in accordance with MCO P1070.12K, Individual Records Administration Manual (IRAM), the officer must be given the opportunity to make a statement in rebuttal. Formal counseling is in addition to any directed comments required by MCO 1610.7.

3. Counseling and Treatment Referral. Timely alcohol screening is vital to determine appropriate administrative actions and is required for later promotion determinations. Accordingly, in any case involving an alcohol-related incident, commanders shall ensure the immediate completion of alcohol screening by appropriate military or civilian medical agencies in accordance with paragraph 010301.C.3, below, to determine the existence of alcohol dependence or abuse.

4. Subsequent Alcohol-Related Incident. An officer who incurs a second driving-under-the-influence (DUI) or driving-while-impaired (DWI) conviction during their naval career (whether or not the member has entered a prescribed treatment program) or a subsequent alcohol-related incident after entering a prescribed treatment program (successful completion notwithstanding) precipitated by a prior alcohol-related incident shall be disciplined as appropriate and processed for administrative separation.

5. Subsequent Abuse of Alcohol. An officer who again abuses alcohol, or whose standards of conduct and performance decline following the successful completion of a treatment or aftercare program, shall be processed for separation if determined by a physician or clinical psychologist credentialed and privileged through the Naval Hospital not to be amenable to or qualified for additional treatment.

C. Drug-Related Incidents

1. Definition. Pursuant to SECNAVINST 5300.28_, a drug-related incident is any incident where the use of a controlled substance or illegal drug, or the misuse of a legal drug or intoxicating substance (other than alcohol), is a contributing factor. Mere possession or trafficking in a controlled substance, illegal drug, legal drug intended for improper use, or drug paraphernalia may be classified as a drug-related incident. Additionally, testing positive for a controlled substance, illegal drug, or a legal drug not prescribed, may be considered a drug-related incident.

2. Mandatory Processing. Drug-related incidents require mandatory processing for separation per SECNAVINST 5300.28_ and the MARCORSEPMAN.

3. Counseling and Treatment Referral. In accordance with MCO 5300.17, commanders shall refer to the nearest SACC—or other Service equivalent—officers who test positive for or who admit to using illegal drugs for screening in a timely manner.

D. In accordance with MCO 5300.17, the Marine Corps is required to identify, counsel, and treat Marines identified as having a substance-use disorder. Accordingly, all substance-related incidents must be properly documented in accordance with paragraph 010301.E, below.

E. Any report, recommendation for administrative separation, or endorsement on a resignation/retirement request in a case involving a substance-related incident that is submitted to CMC (JPL) pursuant to paragraphs 010603., 011003, or 011006 of this Volume must include the following information to document that the officer was screened in accordance with MCO 5300.17:

1. Who conducted the screening (counselor, credentialed provider, etc.) and the name of the appropriate military or civilian medical agency.

2. What diagnosis/finding was made by the qualified counselor/credentialed provider, and what treatment was recommended or mandated, if any.

3. When the screening was completed.

4. When the officer completed the recommended or mandated initial treatment, or refused or failed treatment.

5. Proof of completion of any recommended or mandated initial treatment.

F. Failure to properly document the substance-related incident, to complete the SACC screening, or to include proof of completion or refusal or failure of any recommended or mandated initial treatment, will result in CMC (JPL) being unable to process the case.

G. Promotion Implications of Alcohol-Related Incidents

1. Any officer involved in an alcohol-related incident risks removal from a promotion list by the Secretary of the Navy (SECNAV) in the absence of evidence that qualified personnel screened the officer and the officer completed the recommended treatment in accordance with the procedures set forth in this Volume.

2. Pursuant to SECNAVINST 5300.40, the Department of the Navy has zero tolerance for driving under the influence. All alcohol-related vehicle incidents will be properly

reviewed before an officer's promotion to determine whether that officer is suitable for advancement to the next higher pay grade. Accordingly, all alcohol-screening and treatment documentation must be in the officer's OMPF before the convening of the promotion selection board, or the officer's promotion may be withheld.

H. Treatment Failure

Any officer who refuses, fails to participate in, or does not successfully complete a prescribed alcohol-abuse or dependency treatment/aftercare program and is deemed a treatment failure by a certified Substance Abuse Counselor, physician, or psychologist credentialed and privileged through the Naval Hospital shall be processed for administrative separation.

010302. Medical Qualification for Separation and Medical Evaluations

A. Paragraph 1011 of the MARCORSEPMAN sets forth the requirements for a medical evaluation before separation and retirement.

B. Medical Evaluation Requirements

With certain exceptions, a Marine officer being separated from active duty must receive a separation health physical evaluation (SHPE).

1. These medical evaluations are standard separation evaluations per Article 15 of NAVMED P-117, Manual of the Medical Department (MANMED). At a minimum, a SHPE will include: (1) the officer's completion of DD Form 2807-1 (Report of Medical History), (2) an interview and completion of DD Form 2808 by an appropriately privileged medical provider, and (3) the medical provider's completion and signature on these and any other required documents.

2. Medical providers, COs and GCMCAs in the chain of command, the Alternate Show Cause Authority, or the Show Cause Authority may direct further medical evaluation as warranted by the circumstances of each case.

C. Exceptions to Medical Evaluation Requirements

While every reasonable attempt will be made to provide a separating Marine officer with a SHPE, there will be rare situations when that will be difficult or impossible to provide. Such situations include, but are not limited to:

1. Officers in the hands of civilian authorities (IHCA). Officers IHCA may be evaluated and reported by any of the following: a medical officer of the Armed Forces or other Federal Government agency; credentialed civilian contract physicians; penal institution physician; or, in the absence of the foregoing, a certificate signed by the official in charge of the penitentiary reflecting an opinion about the present state of health of the Marine to be discharged.

2. Officers in a status otherwise beyond the control of the Marine Corps. When a Marine officer is otherwise beyond the control of the Marine Corps (e.g., in the hands of foreign authorities), the command recommending separation will contact the holding authority and request an evaluation be conducted.

3. Marine officers who fail to respond to notification. A medical evaluation is not required for the purposes of this section for Marine officers who are undergoing administrative separation proceedings and do not respond to notification or other requirements for administrative separation. Medical evaluations must be directed in writing and hand-delivered or, in the case of a Reserve officer or other officer not available for personal service, sent to the officer via certified mail. If, after a reasonable amount of time—approximately 45 calendar days—from the date of the request for the medical evaluation, there is no response, or a negative answer is received, the command recommending separation will document the command's efforts to obtain a medical evaluation in the requisite report/endorsement and include an explanation as to why it was the evaluation was not possible.

4. Reserve Marine officers not on active duty with no history of combat experience or deployment. A medical evaluation is not required for the purposes of this section for Reserve Marine officers not on active duty with no history of combat service or deployment; however, the first GCMCA in the chain of command is required to certify that the officer had no combat service or deployment and was not diagnosed with PTSD or TBI.

D. Post-Traumatic Stress Disorder (PTSD)/Traumatic Brain Injury (TBI) Evaluation

1. When Required. In addition to the normal SHPE, an officer shall receive a medical evaluation to assess whether the effects of PTSD or TBI constitute matters in extenuation that relate to the basis for administrative separation if the officer (a) has been previously diagnosed with PTSD or TBI by an appropriately privileged medical provider as described below, or reasonably alleges that PTSD or TBI played a role in the officer's misconduct or substandard performance; (b) was deployed overseas to a contingency operation or was sexually assaulted during the 24 months before the initiation of separation processing, or (c) is being recommended for separation with an Other Than Honorable characterization of service. (The officer's CO, after considering the advice of an appropriately privileged medical provider, shall determine if PTSD or TBI is reasonably alleged and should be further evaluated by a more appropriate medical provider.)

2. Evaluation Requirements. The medical provider who conducts a PTSD or TBI evaluation must specifically comment on the presence or absence of these conditions and, if present, the extent to which they affected the officer's judgment and may have been a contributing factor in the basis for separation. In cases involving PTSD, the evaluations must be performed by a clinical psychologist, psychiatrist, licensed clinical social worker, or psychiatric advanced practice registered nurse as experiencing PTSD. In cases involving TBI, the evaluations must be performed by a neurologist, clinical psychologist, psychiatrist, or other healthcare professional with expertise in diagnosing or treating brain injuries.

3. An officer's separation package will not be processed by CMC (JPL) without the required medical evaluation and appropriate report/endorsement.

4. GCMCA Report/Endorsement Requirements. For those cases in which an appropriately privileged medical provider determined that PTSD or TBI may have been a contributing factor to one or more of the bases for separation, the GCMCA's report/endorsement shall, in light of that identified possible PTSD or TBI contributing factor, explain the reasons for the recommended separation and characterization of service. In contrast, in cases in which the criteria set forth in paragraph 010302.D.1, above, are inapplicable, the GCMCA's report/endorsement must note specifically the reason(s) that a PTSD/TBI evaluation is not required.

E. If the medical evaluation results in a diagnosis of PTSD or TBI and the Separation Authority determines it is service-related, sufficiently mitigating, and possibly a disability, the Separation Authority should consider processing for separation for physical disability under chapter 8 of the MARCORSEPMAN.

F. A PTSD or TBI evaluation is not required if the officer is being separated pursuant to a dismissal adjudged by a general court-martial. However, a PTSD or TBI evaluation and compliance with this section is required for administrative separation in lieu of court-martial.

G. Officers separated under these provisions shall be directed to consult with a representative from the Department of Veteran Affairs regarding veteran benefits and services prior to separation with that counseling dated and signed in DD Form 2648, pre-separation counseling checklist.

H. This section does not provide a basis of appeal or redress for officers.

010303. Security Clearances

Any officer misconduct or substandard performance reportable under this regulation should be analyzed under SECNAVINST 5510.30, Department of the Navy Personnel Security Program Instruction, for possible security clearance issues and any related reporting requirements, to include coordination with unit security managers. SECNAVINST 1920.6_ permits separation processing of an officer who is disqualified for a security clearance. Typically, however, the revocation of the security clearance itself is not the primary basis for separation, but rather it is the substandard performance of duty or misconduct that led to the loss of status that serves as the basis. SECNAV M-5510.30, the Department of the Navy Personnel Security Program Manual, provides that all officers must submit to and must maintain secret eligibility and that those officers determined to be not eligible will be subject to discharge. Officers shall not be separated for failure to meet the requirements of that Manual if separation can be effected under administrative (non-security) military regulations. Moreover, no separation under Other Than Honorable conditions will be taken with respect to an officer in any case where the officer has held access to SCI within 18 months prior to the proposed action, unless approval is first received from the program manager (i.e., the DNI for SCI access).

010304. Domestic Abuse

A. Lautenberg Amendment

The applicability of the “Lautenberg Amendment” should be considered and addressed in any instance of a domestic abuse conviction. The Lautenberg Amendment makes it a felony for anyone convicted of a crime of domestic abuse to ship, transport, possess, or receive firearms or ammunition. A “qualifying conviction” includes a conviction for a “crime of domestic violence” tried by a general or special court-martial, or in a civilian court where the defendant was represented by counsel. Commanders are directed to ensure draw case code “FF” is reported in the Marine Corps Total Force System (MCTFS) for all such convictions. See MARADMIN 186/03, Policy for Implementation of the Lautenberg Amendment, for additional guidance.

B. Marine Corps Family Advocacy Program

Child abuse and domestic abuse in Marine Corps families detracts from military performance, negatively impacts the efficient functioning and morale of military units, and diminishes the

reputation and prestige of the Marine Corps. Commanders must ensure that the policies and procedures set forth in MCO 1754.11, Marine Corps Family Advocacy and General Counseling Program, are followed upon the receipt of allegations of child or domestic abuse. Failure to follow the requirements of MCO 1754.11 may result in delayed processing of a related officer misconduct case.

C. Domestic Abuse Repeat Offenders

1. Domestic abuse is (1) domestic violence or (2) a pattern of behavior resulting in emotional/psychological abuse, economic control, and/or interference with personal liberty when such violence or abuse is directed toward a person who is: (a) a current or former spouse; (b) a person with whom the abuser shares a child in common; or (c) a current or former intimate partner with whom the abuser shares or has shared a common domicile.

2. Repetition of a domestic abuse offense for which rehabilitation/behavior education and counseling services had previously been afforded, or failure to meet the conditions of court orders or terms of probation, should normally result in processing for administrative separation. Additionally, military members who have admitted guilt or have been found guilty at NJP, court-martial, or a civilian criminal trial of child or domestic abuse and thereafter refuse rehabilitation, refuse to cooperate with or complete behavior modification programs, or who are not able to cease their abusive behavior during or after an education or counseling program, should be processed for separation.

3. COs who convene administrative discharge proceedings in child sexual abuse cases shall, in all cases, assign a judge advocate as the recorder unless there is a compelling reason not to do so. In cases of domestic abuse and other types of child abuse, COs shall, where available, assign judge advocates as recorders. Nothing in this paragraph, however, limits the right of the CO to take appropriate measures under the UCMJ and/or to initiate separation proceedings for a first offense involving domestic abuse.

4. When initiating an administrative separation as a result of domestic abuse involvement, the domestic abuse must be included as the reason for separation so the spouse and eligible children may initiate the application process for financial compensation and retention of ID card benefits and privileges through the Transitional Compensation for Abused Family Members program.

010305. Marine Officers Who Fail To Respond To Notification.

Notifications and other requirements (e.g., acknowledgments, medical evaluations, substance-abuse screenings) for administrative separation may be difficult or impossible to obtain from Marine officers who do not respond. The relevant requirement must be directed in writing and hand-delivered or, in the case of a Reserve officer or other officer not available for personal service, sent to the officer via certified mail. If, after a reasonable amount of time—approximately 45 calendar days—from the date of the request, there is no response or a negative answer is received, the command recommending separation will document the command's efforts to obtain the requirement in the requisite report/endorsement and include an explanation as to why it was impossible to obtain.

0104. REPORTING OFFICER MISCONDUCT IN THE OFFICER DISCIPLINARY NOTEBOOK (ODN)

010401. General

The CMC's ODN is a database used to track officer misconduct and substandard performance in the Marine Corps. All information submitted to CMC (JPL) pursuant to the following paragraphs will be placed in the CMC's ODN and will only be provided to those with a need to know. ODN entries are not included in an officer's OMPF.

010402. Responsibility to Report Officer Misconduct to CMC (JPL)

Each GCMCA—and each CO/officer-in-charge (OIC) of a Marine unit where the officer is not under the command of a Marine GCMCA—shall report officer misconduct to CMC (JPL) in a timely manner. For officers assigned to joint commands that lack a Marine GCMCA, CO, or OIC, the Marine GCMCA geographically closest to the officer's joint command shall make the required reports.

A. Misconduct Committed by Marine Officers

Upon receipt of credible information described in paragraph 010403, below, regarding alleged, suspected, or reported misconduct committed by a Marine officer, the cognizant SJA, on behalf of the GCMCA/CO/OIC, shall report the alleged misconduct to CMC (JPL).

B. Misconduct Committed by Officers of Other Services

Upon receipt of credible information described in paragraph 010403, below, regarding alleged, suspected, or reported misconduct committed by a non-Marine officer under the administrative control of a Marine command, the cognizant SJA, on behalf of the GCMCA/CO/OIC, shall report the alleged misconduct to CMC (JPL). In the case of officers of the Navy, the SJA must also coordinate with Navy Personnel Command (PERS 834).

010403. Circumstances that Trigger an Initial Report

A. Officer misconduct must be reported to CMC (JPL) if a Marine officer (or an officer of any other branch of military service serving under the administrative control of a Marine command) is:

1. Alleged, suspected, or reported to have committed misconduct for which NJP, court-martial, civilian prosecution, or a recommendation to CMC (JPL) for administrative discharge proceedings is possible under existing statutes and regulations. While minor traffic offenses need not be reported, all DUI or DWI allegations must be reported. [Note: This is intended to be a low threshold.]

2. Incarcerated in a civilian, foreign, or military detention facility. An incident of this nature must be reported to CMC (JPL) within 24 hours of the command becoming aware of the incarceration.

B. When doubt exists as to whether an initial report is required, contact CMC (JPL) for guidance.

010404. When an Initial Report Must be Made

A. Upon receipt of credible information described in paragraph 010403, above, the cognizant SJA, following consultation with the GCMCA, must immediately report the allegation to CMC (JPL) unless otherwise coordinated with CMC (JPL). However, consultation with the GCMCA shall not

unreasonably delay the notification to CMC (JPL). This report is exempt from reports control according to reference (ss), Part IV, paragraph 7n.

B. In determining the timeliness of the report to CMC (JPL), consideration should be given to the gravity of the alleged, suspected, or reported misconduct, the anticipated media interest, and any pending personnel actions involving the officer (e.g., promotion, PCS move, retirement, and command slating).

010405. How Misconduct is Reported

All officer misconduct is reported to CMC (JPL) using the Officer Disciplinary Notebook Management System (ODNMS). The ODNMS is an internet-based database for reporting and tracking open officer misconduct and substandard performance cases. An ODNMS user's guide is available on JAD's public website (<http://www.hqmc.marines.mil/sja/JADForms.aspx>).

A. Initial Reporting Requirements

Upon receipt of credible information described above, the cognizant SJA will (1) enter the initial report in the ODNMS, and (2) inform the cognizant Marine Force Commander and Alternate Show Cause Authority. This notification shall not delay the immediate notification to CMC (JPL).

1. The initial report shall contain all of the information specified in the ODNMS user's guide (e.g., case status, type of offense, offense, additional offense, companion case, officer's personal data).
2. The initial report shall also contain a detailed statement of the allegation, to include the time, date, and location of the alleged offense.
3. If the incident included involvement by law enforcement, the initial report must include the name of the city/county/state/federal law enforcement agency.
4. In the event of a DUI/DWI arrest, the detailed statement must include the officer's BAC level, if available, and whether or not there were injuries to any person or damage to property.
5. Although all of the facts may not be immediately available to the command, every effort must be made to provide a robust, detailed account of the allegation.
6. Initial allegations may change following more detailed investigation. Any additional facts or allegations, or facts or allegations that have been adequately refuted, must be reflected in a separate paragraph, rather than altering the initial account.

B. Ongoing Reporting Requirements

To ensure that the CMC is apprised of the most current status of open officer misconduct cases, the cognizant SJA must:

1. Immediately enter updates reflecting significant events in the chronology section of the ODNMS for each case pending their review. A significant event is one that may affect the

disposition of a case or increase the public attention drawn to it. Significant events include, but are not limited to: the signing of recommendations, reports, or endorsements; new allegations of misconduct; pre-trial confinement; the referral, withdrawal, or dismissal of charges; acceptance of NJP; acceptance of a pre-trial agreement; the delay or conclusion of a court-martial, BOI, or civilian court proceeding; and a finding that misconduct did not occur.

2. Update and certify each case from their command pending their review in the ODNMS by the 20th of each month. (This requirement is in addition to the real-time update discussed in the preceding paragraph.) Certification ensures that all cases are reviewed every month, even in the absence of developments in a case. When an SJA “certifies” an entry, he or she is endorsing the current case status on behalf of his or her commander and approving the release of the updated information to CMC.

3. Monitor each of their cases in the ODNMS until the case is closed. Although SJAs are only responsible for entering immediate and monthly updates into the ODNMS when a case is pending action at their commander’s level of review, they must monitor all cases under their cognizance to facilitate the timely, efficient, and accurate processing of officer misconduct cases through the chain of command.

0105. DISPOSITION OF ALLEGATIONS OF MISCONDUCT

010501. General

Ultimately, as to each allegation of misconduct reported, the GCMCA must determine that the officer either did or did not commit the misconduct alleged. When the GCMCA determines that the officer did commit misconduct, the GCMCA must take appropriate action to dispose of the case under R.C.M. 306. If not an Alternate Show Cause Authority (ASCA), the GCMCA must also forward the case to an ASCA with a show cause recommendation. If the GCMCA determines that the officer did not commit misconduct, the GCMCA must notify CMC (JPL) of that conclusion and forward a Report of No Misconduct directly to CMC (JPL) per paragraph 010602, below. This section details options available to the GCMCA. In each case, a Report must be submitted to CMC (JPL) in accordance with paragraph 0106, below.

010502. Disposition Options

If the GCMCA determines that the officer did commit misconduct, the GCMCA must choose one of the following options per R.C.M. 306:

A. Non-Punitive or Administrative Measures

The GCMCA may decline to take disciplinary action against the officer. Instead, the GCMCA may document the incident in a Report of Misconduct. The GCMCA may also counsel (formally or informally) the officer or issue the officer a non-punitive letter of caution (NPLOC). [Note: In some instances, the GCMCA may determine that a Report of Misconduct with a recommendation that the officer be administratively separated or required to show cause is, by itself, the appropriate administrative disposition action under R.C.M. 306.]

1. Formal Administrative Counseling. Pursuant to paragraph 3005 of the IRAM, officers may receive a Page 11 entry for misconduct or substandard performance of duty. The

entry shall note that the counseling is pursuant to paragraph 3005 of the IRAM, not paragraph 6105 of the MARCORSEPMAN, which applies only to enlisted Marines. (MARCORSEPMAN 6105 counseling entries will not be used in officer cases.) The officer will acknowledge the adverse counseling and be provided with an opportunity to submit a rebuttal. The entry shall be included as an enclosure to a Report of Misconduct. CMC (JPL) will forward the adverse matters for inclusion in the officer's OMPF.

2. Informal Counseling or Non-Punitive Letter of Caution. Although an informal counseling or NPLOC is not entered in an officer's OMPF, it shall be documented in a Report of Misconduct with the following language: "SNO's misconduct was addressed via administrative measures."

B. Nonjudicial Punishment (NJP)

1. The Unit Punishment Book (UPB) will not be used in officer NJP cases. Instead, the officer should be advised of those matters using the documentation provided in Figures 15-1 or 15-2, as appropriate.

2. The procedures for imposing NJP upon an officer are contained in the pertinent sections of chapter 1 of the Manual of the Judge Advocate General, JAGINST 5800.7F (JAGMAN) and in paragraph 4, Part V, MCM.

3. If NJP is imposed, the officer must be advised of the right to appeal as specified in JAGMAN section 0116 (must use Figure 15-3).

4. If a punitive letter of reprimand is awarded, the officer must be advised of the right to appeal and to submit a statement in rebuttal as specified in JAGMAN section 0114 (must use Figure 15-4).

5. Because UPBs are not used in officer NJPs, if forfeitures are awarded at an officer NJP, a copy of the Report of NJP (see paragraph 010605, below) must be provided to the local administrative center to serve as the source document to run the appropriate Unit Diary entry for the forfeitures (must use Figure 15-5).

6. Pursuant to JAGMAN section 0124, NJP may be imposed at any time before adjudication by a civilian court. After civilian adjudication, NJP may be imposed for an offense only in certain limited circumstances after receiving the permission of the GCMCA, and grants of such permission shall be reported by the GCMCA via letter to CMC (JCA), describing the offense alleged, the action taken by civil authorities, and the circumstances bringing the case within one or more of the exceptions to the general policy. However, officers who have been tried by courts that derive their authority from the United States Federal Government, such as U.S. District Courts, shall not be subjected to NJP for the same act or acts.

7. An appeal shall be submitted within five working days of imposition of punishment, excluding weekends and holidays; thereafter, 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 within the five-day period (see paragraph 7, Part V, MCM, and JAGMAN sections 0110 and 0116).

8. No report of officer NJP shall be made to CMC (JPL) until the appropriate authority has taken final action upon an appeal of NJP or the five-day period has elapsed after the imposition of NJP without an appeal having been submitted.

C. Court-Martial of Officers

1. CMC (JPL) must be notified via the ODNMS when charges are preferred, referred, withdrawn, or dismissed against an officer, and when a court-martial is delayed or concluded.

2. Pursuant to JAGMAN section 0124, charges may be referred to a court-martial at any time before adjudication by a civilian court. After a civilian adjudication, charges may be referred to a court-martial only in certain limited circumstances after receiving the permission of the GCMCA, and grants of such permission shall be reported by the GCMCA via letter to CMC (JCA), describing the offense alleged, the action taken by civil authorities, and the circumstances bringing the case within one or more of the exceptions to the general policy. However, officers who have been tried by courts that derive their authority from the United States Federal Government, such as U.S. District Courts, shall not be tried by court-martial for the same act or acts.

3. If the officer was acquitted, or the findings and sentence were disapproved or set aside, the GCMCA must forward a report to the Show Cause Authority in accordance with paragraph 0106, below. The GCMCA must determine that the officer did not commit the alleged misconduct and forward a Report of No Misconduct in accordance with paragraph 010602, below, or determine that the officer committed the alleged misconduct and forward a Report of Misconduct in accordance with paragraph 010603, below. This provision recognizes that the burden of proof at a court-martial (beyond a reasonable doubt) is substantially higher than the burden of proof at a BOI (preponderance of the evidence)(see SECNAVINST 1920.6_).

4. If the officer was convicted and no dismissal was adjudged, or a dismissal was disapproved in the convening authority's action, a Report of Court-Martial Conviction will be forwarded in accordance with paragraph 010607, below.

5. If the officer was convicted and a dismissal was adjudged and approved in the convening authority's action, the convening authority's action will be forwarded to CMC (JPL) and the case will be closed in the ODNMS.

D. Commanders shall not discharge a dismissed officer outside CONUS, except under special circumstances and upon SECNAV's approval.

0106. REPORTING DISPOSITIONS OF MISCONDUCT

010601. General

After the disposition is complete, the GCMCA must report the disposition in accordance with this paragraph and make a recommendation as to whether the officer should be required to show cause for retention at a BOI or, for probationary officers, administratively separated via notification procedures. All allegations of misconduct must be formally closed with a report of disposition.

010602. Reporting Unsubstantiated Allegations of Misconduct

In all cases where the GCMCA determines that misconduct did not occur, the GCMCA will generate a Report of No Misconduct (must use Figure 15-6). The Report of No Misconduct will mirror the Report of Misconduct; however, instead of disposition action, the report will detail the investigative efforts by the command and include an explanation from the command detailing how it reached the conclusion that no misconduct occurred. Once signed, the GCMCA will forward the Report directly to CMC (JPL). The GCMCA must provide a courtesy copy of the Report to each intermediate endorser in the chain of command and the Alternate Show Cause Authority. Upon receipt of the Report and review for compliance with this order, CMC (JPL) will normally close the case in the ODNMS. This Report will not be placed in the officer's OMPF.

010603. Reporting Dispositions of Substantiated Misconduct

A report must be generated in all cases where the GCMCA determines that the officer committed misconduct. This report serves two purposes. First, it provides the Alternate Show Cause Authority and the Show Cause Authority with sufficient information to make a decision on whether to process the officer for administrative separation. Second, it provides a complete record of the misconduct and its disposition for inclusion in the officer's OMPF.

A. Routing

The report is forwarded to the Show Cause Authority via the chain of command and the Alternate Show Cause Authority in the officer's chain of command (or the Alternate Show Cause Authority geographically located nearest to the command if there is no Alternate Show Cause Authority in the chain of command) in order to make a show cause determination. Only the SECNAV; ASN, M&RA, or DC, M&RA, may close the case if an officer is determined to have committed misconduct. If an officer either appropriately requests or is recommended for separation (and has been notified of the recommendation), the report must be forwarded to the ASN, M&RA, via the DC, M&RA, for final disposition. The ASN, M&RA, remains the sole separation authority for officer separations resulting from adverse administrative processing. Nothing in this Volume should be interpreted to preclude an Alternate Show Cause Authority from directing an officer to show cause.

B. Factual Basis

All reports shall include a brief factual statement of the misconduct/offense(s) and the punishment imposed (if NJP conducted) or method of disposition of the misconduct.

C. Matters in Aggravation, Extenuation, and Mitigation

All reports shall include a concise explanation of the circumstances surrounding the offense(s), including significant matters in aggravation, extenuation, and mitigation.

D. Recommendation

All reports shall include a recommendation as to whether the officer should show cause or be administratively separated via notification procedures (for probationary officers) under SECNAVINST 1920.6_, including the basis for such recommendation.

E. Investigation

All reports must include a copy of the investigation (unless classified) upon which the substantiation of the misconduct was based, including, but not limited to, preliminary inquiries, command investigations, Inspector General investigations, CID investigations, NCIS investigations, PMO incident reports, civilian traffic citations, and civilian police reports.

F. Evidence

All reports must include a legible copy of all of the evidence considered, or photographic representations of such evidence, or descriptions through affidavit of any evidence that is not easily includable.

G. Substance-Abuse Counseling Center Screen

If the misconduct involved a substance-related incident, the report must include the substance-abuse screening results and proof of completion of any recommended or mandated initial treatment. The report will not be forwarded to the DC M&RA until this information/documentation is provided to CMC (JPL) (see paragraph 010301.E, above).

H. Medical Evaluation

If separation is recommended, the report must include documentation showing that the officer is qualified for separation as set forth in paragraph 010302, above. The report must also include documentation of the completion of a PTSD/TBI screen, if required, with comments on the presence or absence of such conditions and, if present, the extent to which they affected the officer's judgment and may have been a contributing factor in the basis for separation. If PTSD or TBI is identified as a possible contributing factor, the GCMCA's report/endorsement shall explain the reasons for the recommended separation and characterization of service.

I. Advanced Education Assistance

1. All reports must contain an acknowledgment from the officer that, if separated before fulfilling a service obligation resulting from the receipt of advanced education assistance, the officer may be required to reimburse the Government for the unserved portion of the service obligation on a pro-rata basis (must use Figure 15-7).

2. If the officer received advanced education assistance, all reports must set forth the amount and type of advanced education assistance received.

3. If the officer received advanced education assistance, all reports and endorsements must include a recommendation as to whether the officer should be required to reimburse the Government, on a pro-rata basis, for the unserved portion of the officer's service obligation (see 10 U.S.C. § 2005 for guidance).

J. Official Military Personnel File Acknowledgement

All reports must contain the officer's acknowledgement that adverse material concerning the misconduct will be included in the officer's OMPF. After the report is signed, it shall be provided to the officer, and the officer shall be given 10 calendar days in which to prepare a rebuttal. The officer may

waive the right to submit a rebuttal (must use Figure 15-8).

K. Rebuttal Matters

If the officer submits a rebuttal, the GCMCA who prepared the report must prepare an endorsement to the report and include the matters as an enclosure to the endorsement. If the officer's submission alleges legal errors, the GCMCA, in the endorsement, must address each allegation of legal error.

010604. Report of Misconduct

A Report of Misconduct is required in all cases of misconduct described in paragraph 010403, above, in which a Report of NJP, Report of Court-Martial Conviction, or Report of Civilian Conviction is not applicable, where the first GCMCA in the chain of command determines that the officer committed the misconduct. A sample Report of Misconduct is contained in Figure 15-9. In all cases in which the command addresses the officer's misconduct administratively, a copy of the officer's formal counseling or adverse fitness report, if any, will be included as an enclosure to the Report of Misconduct. Per paragraph 010502.A.2, above, however, if the officer receives an informal counseling or a NPLOC, the Report shall state that "SNO's misconduct was addressed via administrative measures" (see JAGMAN section 0105).

010605. Report of Nonjudicial Punishment

A Report of NJP is required in all cases in which NJP is imposed. A sample Report of NJP is contained in Figure 15-5. In addition to the general requirements set forth above, the Report of NJP will include:

- A. All correspondence incident to the imposition of NJP—i.e., the notification of NJP, the officer's acknowledgement of rights and acceptance of NJP, any matters submitted by the officer, etc.
- B. All matters relating to an appeal.
- C. A verbatim transcript of the NJP hearing.

010606. Report of Civilian Conviction

A Report of Civilian Conviction is required in all cases in which the officer is convicted in civilian court. A sample Report of Civilian Conviction is contained in Figure 15-10. A Report of Civilian Conviction is also required even in cases where the officer pleads to a lesser offense, receives a deferred prosecution, receives a probation in judgment, participates in a court-sanctioned diversionary program that permits the subsequent dismissal of the charge, or similar cases. (Depending on the circumstances of the case, however, the Report may be more appropriately characterized as a Report of Misconduct vice a Report of Civilian Conviction.) In addition to the general requirements set forth above, the Report of Civilian Conviction will include:

- A. Copies of the civilian court documents reflecting the findings of the court with respect to all charges and the sentence imposed.

- B. Documents reflecting the satisfaction of any sentence imposed.

010607. Report of Court-Martial Conviction

A Report of Court-Martial Conviction is required in all cases in which the officer is convicted at a court-martial but a dismissal is not adjudged. A sample Report of Court-Martial Conviction is contained in Figure 15-11. In addition to the general requirements set forth above, the Report of Court-Martial Conviction will include the record of trial, which includes, but is not limited to, the preferred and referred charges, pre-trial agreement, results of trial, and convening authority's action.

010608. Coordination When an Officer is Pending Civilian Adjudication

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/DWI" cases often are extended by numerous continuances. Additionally, following a conviction, sentencing is often delayed. In general, CMC (JPL) will not take action on a case while civilian adjudication remains pending. However, in certain cases, proceeding with a Report of Misconduct before civilian adjudication may be appropriate. Commanders may request—in writing and with appropriate justification—that a case be forwarded before the conclusion of civilian adjudication. Such requests shall be forwarded via the chain of command to CMC (JPL) for action. For example, if a command recommends that an officer be required to show cause, a Report of NJP or Misconduct may be routed to the Alternate Show Cause Authority or Show Cause Authority before the adjudication of the civilian charges if the command believes that there is a sufficient basis to direct the officer to show cause for retention at a BOI. Likewise, if a command recommends that a probationary officer be separated via notification procedures before the adjudication of civilian charges, a Recommendation for Administrative Separation may be routed to the ASN, M&RA, via the Alternate Show Cause Authority and Show Cause Authority if the command believes that there is a sufficient basis to separate the officer for cause.

010609. Nonjudicial Punishment /Administrative Action Concurrent with Civilian Adjudication

If NJP is imposed or other administrative action is taken shortly before a civilian conviction is adjudged, the misconduct for which NJP was imposed and the civilian conviction may be documented in one report, e.g., a "Report of NJP and Civilian Conviction."

010610. Timing

GCMCAs shall forward reports to CMC (JPL) as follows: (1) thirty calendar days from the imposition of NJP, if no appeal is submitted; (2) thirty calendar days from final action on the NJP appeal; (3) thirty calendar days from the signing of the convening authority's action following court-martial; and (4) thirty calendar days from the date of civilian conviction.

A. Each intermediate endorser before the Alternate Show Cause Authority shall have 20 calendar days to forward a report.

B. The first GCMCA in the chain of command and all intermediate endorsers shall explain all delays that exceed the specified processing times. If delay is anticipated due to difficulties scheduling or completing the SACC screen, recommended or mandated initial treatment, or medical evaluation, notify CMC (JPL) of the reason for the delay and the anticipated completion date.

010611. Service of Report on Officer

As discussed in the general requirements, a copy of the report with the commander's recommendation as to administrative processing shall be provided to the officer. The officer shall have 10 calendar days to submit a rebuttal. The first GCMCA in the chain of command may grant, in writing, an extension setting forth a specific period of delay, upon the officer's written request, with explanation of the supporting reasons for the requested delay. If the commander recommends that the officer be required to show cause at a BOI, the officer shall be allowed an opportunity to submit a resignation/retirement request (see paragraphs 011006 through 011008, below).

010612. Officer Disciplinary Notebook Management System Actions

The SJA, Deputy SJA, or authorized support staff shall upload all reports and endorsements to the ODNMS and make appropriate entries to the chronology section. CMC (JPL) will update and certify all cases pending review and/or endorsement by CMC (JPL), or the SJA to CMC, DC, M&RA, or ASN, M&RA.

0107. ACTION BY SHOW CAUSE AUTHORITIES

010701. Alternate Show Cause Authority.

Upon receipt of one of the reports identified above, the Alternate Show Cause Authority may direct an officer to show cause at a BOI in accordance with SECNAVINST 1920.6_ and this Volume, initiate separation via notification procedures (if applicable), or forward the report with a recommendation to the Show Cause Authority that an officer not be required to show cause and that the case be closed. If the Alternate Show Cause Authority does not direct an officer to show cause or initiate separation via notification procedures, the package shall be forwarded immediately to the DC, M&RA, via CMC (JPL) for processing. Only the DC M&RA, ASN, M&RA, or SECNAV may close the case of an officer who has been found to have committed misconduct. The Alternate Show Cause Authority shall direct show cause, initiate separation via notification procedures (if applicable), or forward a recommendation of no show cause within 20 calendar days of receipt of the report. The Alternate Show Cause Authority shall explain any delay that exceeds the specified processing time.

0108. REPORTING AND PROCESSING ALLEGATIONS OF SUBSTANDARD PERFORMANCE OF DUTY

010801. General

Officers who do not maintain required standards of performance—or professional or personal conduct—may be processed for administrative separation. Cases of substandard performance of duty are handled in accordance with SECNAVINST 1920.6_ and this Volume. In cases in which the sole basis for separation is substandard performance of duty, the only characterization of service an officer may receive is Honorable.

010802. Reporting Substandard Performance of Duty in the Officer Disciplinary Notebook

Like cases involving officer misconduct, cases involving an officer's substandard performance of

duty are reported via the ODNMS.

010803. Responsibility to Report Officer Substandard Performance of Duty

The same persons specified in paragraph 010402, above, are responsible for reporting officer substandard performance of duty to CMC (JPL).

010804. Circumstances that Trigger an Initial Report

Officer substandard performance of duty must be reported to CMC (JPL) if the performance or conduct of a Marine officer (or an officer of any other branch of military Service serving under the administrative control of a Marine command) is such that processing for separation may be appropriate, as indicated by:

A. A commander's recommendation for administrative separation based on performance or conduct that constitutes substandard performance of duty in accordance with SECNAVINST 1920.6_.

B. An adverse fitness report for performance or conduct that forms a basis of separation established in SECNAVINST 1920.6_.

C. A recommendation for promotion is delayed or withheld due to performance or conduct that constitutes substandard performance of duty.

010805. When an Initial Report Must be Made

The same procedures specified in paragraph 010405, above, are applicable to reporting officer substandard performance of duty to CMC (JPL).

010806. How Substandard Performance of Duty is Reported

All substandard performance of duty is reported to CMC (JPL) using the ODNMS. An ODNMS user's guide is available on JAD's public website (<http://www.hqmc.marines.mil/sja/JADForms.aspx>). The same procedures detailed in paragraph 010405, above are applicable to reporting and tracking substandard performance of duty cases.

010807. Disposition of Allegations of Substandard Performance of Duty

A. General

Allegations of substandard performance of duty will result in the GCMCA either finding that the officer's performance or conduct was substandard or that the officer's performance or conduct was not substandard. When the GCMCA finds that the officer's performance or conduct was substandard, the GCMCA must take appropriate disposition action. If not an ASCA, the GCMCA must also forward the case to an ASCA with a show cause recommendation. If the GCMCA determines that the officer's performance was not substandard, the GCMCA must notify CMC (JPL) of that conclusion and forward a Report of No Substandard Performance directly to CMC (JPL) per paragraph 010807.C, below. In any case, a Report must be submitted to CMC (JPL) in accordance with paragraphs 010807.C and 010807.D, below. Figures 15-12 and 15-13 must be used.

B. Disposition Options

If the GCMCA finds that the officer's performance or conduct was substandard, the GCMCA may take any action detailed in paragraph 010502.A, above, regarding non-punitive or administrative measures.

C. Reporting Dispositions of Substandard Performance of Duty

After the disposition is complete, the GCMCA must report the disposition and recommend whether the officer should be required to show cause for retention at a BOI, administratively separated via notification procedures (for probationary officers), or that the Show Cause Authority close the case. All allegations of substandard performance of duty must be formally closed with a report of disposition.

D. Report of Unsubstantiated Allegations of Substandard Performance of Duty

In all cases where the GCMCA finds that the officer's performance or conduct was not substandard, the GCMCA will generate a Report of No Substandard Performance of Duty (must use Figure 15-12). The Report of No Substandard Performance of Duty will mirror the Report of Substandard Performance of Duty; however, instead of disposition action, the report will detail the investigative efforts by the command and include an explanation from the command detailing how it reached the conclusion that the officer's performance or conduct was not substandard. Once signed, the GCMCA will forward the Report directly to CMC (JPL). The GCMCA must provide a courtesy copy of the Report to each intermediate endorser in the chain of command and the Alternate Show Cause Authority. Upon receipt of the Report, CMC (JPL) will close the case in the ODNMS. This Report will not be placed in the officer's OMPF.

E. Report of Substandard Performance of Duty

In all cases where the GCMCA finds that the officer's performance or conduct was substandard, the GCMCA will generate a Report of Substandard Performance of Duty. (See Figure 15-13 for an example of such a report.) The routing, format, and content requirements set forth in paragraph 010603, above, apply to Reports of Substandard Performance of Duty. Additionally, the service requirements and ODNMS actions detailed in that paragraph apply to Reports of Substandard Performance of Duty.

F. Action by Show Cause Authorities

The same procedures specified in paragraph 0107, above, are applicable to Show Cause Authority and Alternate Show Cause Authority action on a Report of Substandard Performance of Duty.

0109. ADMINISTRATIVE SEPARATION OF OFFICERS WITH BOARD ACTION

010901. General

The purpose of a BOI—and the policies, standards, and procedures for the conduct of a BOI—are set forth in DoD Instruction 1332.30 and SECNAVINST 1920.6_. The information in this section supplements the provisions of those references.

010902. Convening a Board of InquiryA. Direction

The Show Cause Authority or Alternate Show Cause Authority will convene or direct the GCMCA of an officer [hereinafter referred to in this section as “respondent”] to convene a BOI in appropriate cases as provided in SECNAVINST 1920.6_ and this Volume. The SJA for the Alternate Show Cause Authority—or CMC (JPL) for the DC, M&RA—will forward the order directing the BOI to the respondent’s GCMCA. The BOI direction letter may be forwarded electronically. The BOI direction letter will be uploaded to the ODNMS. (Sample BOI direction letters are contained in Figures 15-14 and 10-15, and a sample BOI convening order is contained in Figure 15-18.)

B. Notification

A Notification of BOI is prepared by a GCMCA or Alternate Show Cause Authority following the decision by the Alternate Show Cause Authority or Show Cause Authority that the respondent be directed to show cause at a BOI. A Notification of BOI informs the respondent of his/her rights, which may be exercised or waived. The Notification of BOI will also be uploaded to the ODNMS. Sample Notifications of BOI are contained in Figures 15-16 and 15-17.

1. The respondent shall be formally served with a copy of the Notification of BOI. Service of the Notification of BOI constitutes the respondent's official notification of show cause proceedings.

2. The GCMCA should ensure that the respondent is served with a copy of the Notification within two working days of the command’s receipt of the show cause order.

3. If the respondent refuses service of a copy of the Notification of BOI, then the GCMCA shall document its efforts to serve the Notification on the respondent in lieu of the respondent’s formal acknowledgement of receipt.

C. Timing

The GCMCA should ensure that each BOI is scheduled to commence, absent an approved continuance, not earlier than 30 but no more than 60 calendar days from the date the respondent is served with the Notification of BOI. The respondent may request a continuance in accordance with the procedures set forth in SECNAVINST 1920.6_. Any delay in the commencement of the BOI beyond the specified time limits shall be explained in the GCMCA’s endorsement to the Report of the BOI.

D. Members

The GCMCA shall detail members consistent with the procedures and membership eligibility requirements set forth in 10 U.S.C. §§ 1187 or 14906, and DoD Instruction 1332.30 and SECNAVINST 1920.6_. BOIs shall consist of not less than three officers.

E. Respondent a Regular commissioned officer commissioned warrant officer

Each member shall be a lieutenant colonel or above. The senior member shall be a colonel or above. Every member must be senior in grade to the respondent (no member may be in the same grade as the respondent). For purposes of BOI membership, a frocked officer is deemed to hold the grade from which frocked, not the higher grade to which frocked. All members must be Regular officers on the active-duty list.

F. Respondent a Reserve Commissioned Officer Commissioned Warrant Officer

In addition to the requirements set forth above—except for the requirement that all members be Regular officers on the active-duty list—at least one member must be a Reserve officer.

G. Respondent a Warrant Officer

The members shall be senior to the respondent unless otherwise directed by SECNAV. Unlike cases involving commissioned officer respondents, members in cases involving warrant officers need only be senior in rank to the respondent; they need not be lieutenant colonels or colonels.

H. When a sufficient number of highly qualified and experienced active-duty officers are not available, the convening authority shall complete Board membership with available retired officers who meet the criteria set forth above other than the active-duty or active-status-list requirement, and who have been retired for fewer than 2 years.

010903. Minimum Qualifications for Recorder and Legal Advisor

A. Recorder

The convening authority must appoint a nonvoting recorder. The recorder for a BOI must be a judge advocate in the pay grade of O-3 or above who has had at least one year of experience as a trial or defense counsel. A frocked O-3 meets the pay grade requirement to serve as a recorder. An assistant recorder need not meet these qualifications. This paragraph is intended to ensure that adequately qualified personnel are detailed as BOI recorders and is not intended to, and does not, create any rights, entitlements, or defenses arising out of the failure to comply with its provisions.

B. Legal Advisor

The convening authority must appoint a legal advisor for a BOI. The legal advisor shall be a judge advocate in the pay grade of O-4 or above who has previously been a BOI recorder, a BOI counsel for the respondent, or who is or has been a military judge or a staff judge advocate to a GCMCA. A frocked O-4 meets the pay grade requirement to serve as a legal advisor. The legal advisor cannot be the SJA or Deputy SJA to any GCMCA in the respondent's chain of command. The legal advisor does not need to be physically present at the proceeding but must be available via telephone for consultation by the BOI members. The legal advisor shall not participate in closed sessions of the Board or engage in non-administrative ex parte communications with members as to the proceedings. If judge advocates meeting the minimum qualifications for the BOI recorder or legal advisor are not available, the SJA for the GCMCA may request a waiver of the minimum requirements from CMC (JPL) (see Figure 15-19). This paragraph is intended to ensure that adequately qualified personnel are detailed as BOI legal advisors and is not intended to, and does not, create any rights, entitlements, or defenses arising out of the failure to comply with its provisions.

010904. Conduct of the Board of Inquiry

The Board shall follow the script contained in Figure 15-20. The Findings Worksheet (see Figure 15-21) shall be completed and signed by all voting members of the Board and counsel for the respondent directly upon conclusion of the Board.

A. Transcript of Hearing

The BOI proceedings shall be recorded using audio tapes, a digital audio recording device, or a court reporter if available. In all cases, a summarized transcript shall be completed within 30 calendar days and delivered to the Recorder for review and any corrections before inclusion in the Report of the BOI, unless a verbatim transcript is directed by the authority directing show cause—either the Show Cause Authority or Alternate Show Cause Authority. Any delay in the preparation of the transcript shall be explained in the GCMCA's endorsement to the Report of the BOI. In all cases, the cognizant LSSS shall retain all materials necessary to prepare a verbatim transcript.

B. Report of the Board of Inquiry

The Report of the BOI is prepared in accordance with SECNAVINST 1920.6. Additionally, the following provisions apply:

1. Within 30 calendar days of completion of the verbatim or summarized transcript, the transcript and the Report of the BOI (see Figures 15-22 and 15-23) shall be provided by the Government to the Senior Member of the Board for review. Within 10 calendar days of receipt, the Senior Member will sign the Report of the BOI and authenticate the BOI transcript.

2. Upon receipt of the Report of the BOI from the Senior Member, the Report of the BOI shall be forwarded to any non-concurring member. Within 10 calendar days of receipt, the non-concurring member will sign the Report of the BOI. The non-concurring member must also concurrently submit a minority report that includes the extent of non-concurrence as to each finding and recommendation and the reasons therefore (see Figure 15-24).

3. The final Report of the BOI shall then be served on respondent's counsel (or respondent, if no counsel was elected). A certificate of service shall be included with the Report of the BOI verifying service of the Report on respondent's counsel (or respondent, if no counsel was elected) (see Figure 15-25).

4. Respondent's counsel (or respondent, if no counsel was elected) shall have 10 calendar days after receipt of the Report of the BOI to submit the respondent's comments, rebuttal, or a waiver of rebuttal. The respondent's counsel (or respondent, if no counsel was elected) may request an extension from the Alternate Show Cause Authority or Show Cause Authority who directed the BOI. Such extensions shall not exceed 20 calendar days.

5. If the BOI finds substandard performance of duty, misconduct, or moral or professional dereliction, the respondent must acknowledge receipt of the Report of the BOI and acknowledge that adverse material concerning the incident will be included in the officer's OMPF, even if the respondent's counsel receives a copy of the Report of the BOI. The officer shall be given 10 calendar days in which to prepare a rebuttal. The officer may waive, in writing, the right to submit a rebuttal (must use Figure 15-8). Failure to submit matters within the 10-day period (and any extensions) will also

constitute waiver, absent good cause.

6. After the respondent and the respondent's counsel have been afforded the opportunity to review the Report of BOI and submit matters in accordance with the deadline prescribed above, the Report and all exhibits and enclosures shall be provided to the GCMCA for endorsement. If the respondent or respondent's counsel alleges legal errors, the GCMCA must address each alleged error in the endorsement. The GCMCA must also explain any delay in the preparation of the transcript or the processing of the Report of the BOI.

C. Endorsements and Recommendations

The first GCMCA in the chain of command must forward the Report of the BOI to the SECNAV or the ASN, M&RA, via the chain of command, the Alternate Show Cause Authority, and Show Cause Authority (must use Figure 15-26). The first GCMCA in the chain of command and each intermediate endorser, including the Alternate Show Cause Authority, shall have 20 calendar days to forward the Report of the BOI. In addition to the requirements set forth in SECNAVINST 1920.6_, the endorsements to the Report of the BOI must include/address the following:

1. If the BOI finds substandard performance of duty, misconduct, or moral or professional dereliction, and recommends separation, a recommendation as to whether the findings and recommendations of the BOI should be approved or disapproved. If the BOI does not find substandard performance of duty, misconduct, or moral or professional dereliction, or finds substandard performance of duty, misconduct, or moral or professional dereliction but recommends that the respondent be retained, the endorsements need not include a recommendation as to whether the findings and recommendations of the BOI should be approved or denied but may include a recommendation as to whether matters should be included in the officer's OMPF.

2. If separation is recommended and the officer is not retirement eligible, a recommendation as to characterization of service, or, in the case of a respondent who is retirement eligible, a recommendation for retirement grade. (Retirement-eligible LDOs may not be reduced below the last CWO grade satisfactorily held).

3. If separation is recommended, a medical evaluation in accordance with paragraph 010302 of this Volume, if not already included in the package. The medical evaluation shall include the PTSD/TBI screen, if required, including comments on the presence or absence of these conditions and, if present, the extent to which they affected the respondent's judgment and may have been a contributing factor in the basis for separation. If PTSD or TBI was determined to be a possible contributing factor to one or more of the bases for separation, the GCMCA's report/endorsement shall, in light of that identified possible PTSD or TBI contributing factor, explain the reasons for the recommended separation and characterization of service.

4. If the officer was involved in a substance-related incident, the substance-abuse screening results and proof of completion of any recommended or mandated initial treatment, as set forth in paragraph 010301.E of this Volume, if not already included in the package.

5. If separation is recommended and the officer has yet to complete his/her advanced education assistance service obligation, the amount and type of advanced education assistance received and a recommendation as to whether the Government should recoup the advanced education assistance on a pro-rata basis for the unserved portion of the officer's service obligation.

D. Involuntary Leave

Under 10 U.S.C. § 1182 and SECNAVINST 1920.6_, if a BOI recommends that an officer should be separated, that officer may be required to take involuntary leave, beginning at any time following the expiration of the period allotted for the officer to submit a rebuttal to the Report of the BOI (which is after the officer's receipt of the Report of the BOI). (MCO P1050.3J, Regulations for Leave, Liberty, and Administrative Absence, enclosure (1), paragraph 26 implements the Marine Corps policy on leave awaiting administrative separation and excess leave.)

0110. ADMINISTRATIVE SEPARATION OF OFFICERS WITHOUT BOARD ACTION

011001. General

In accordance with SECNAVINST 1920.6_, a commander, an Alternate Show Cause Authority, or the Show Cause Authority may recommend to the ASN, M&RA, that a probationary officer be administratively separated via notification procedures for misconduct or substandard performance of duty. This procedure does not afford an officer a hearing and serves as an expeditious means to separate an officer at the discretion of the ASN, M&RA. When separated in accordance with the notification procedure for misconduct, the least favorable characterization of service that an officer may receive is General (Under Honorable Conditions). When separated in accordance with the notification procedure for substandard performance of duty, the only characterization of service that an officer may receive is Honorable. Therefore, if an Alternate Show Cause Authority or the Show Cause Authority determines that an Other Than Honorable characterization of service would be more appropriate for a probationary officer, he must direct a BOI.

011002. Who May Be Separated Via Notification Procedures

Only probationary officers may be separated via notification procedures. Commissioned officers on the active-duty list with fewer than six years of active commissioned service and Reserve commissioned officers with fewer than six years of commissioned service are in a probationary status. Active-duty warrant officers (WO) are in a probationary status for three years from the date upon which they receive their warrant appointing them to the grade of WO. Reserve WOs are in a probationary status for six years from the date upon which they receive their warrant appointing them to the grade of WO. Officers who have exceeded the applicable probationary threshold are non-probationary and thus cannot be processed for separation without being afforded the opportunity to show cause for retention at a BOI.

011003. Procedures for Processing an Officer for Separation via Notification ProceduresA. Notification

The officer shall be notified of the rights contained in SECNAVINST 1920.6_.

B. Notification by the Show Cause Authority

In cases in which the recommendation for separation via notification procedures originates with the Show Cause Authority, the notification of the separation recommendation will be prepared by CMC (JPL).

C. Notification by the Alternate Show Cause Authority or Command

In cases in which the recommendation for separation via notification procedures originates with the Alternate Show Cause Authority or the officer's command, the notification of the separation recommendation will be prepared by the command (see Figure 15-27).

D. Service on the Respondent

The notification (with all enclosures) will be forwarded to the respondent via the chain of command within five working days of its signing by the commander, the Alternate Show Cause Authority, or the Show Cause Authority, as appropriate. Service of the notification constitutes the respondent's official notification that the officer is being processed for administrative separation.

E. Respondent's Right to Submit Matters

The respondent shall be afforded the opportunity to submit matters in response to the separation recommendation (see Figure 15-28). The respondent's response to the recommendation for separation (or a written waiver of the right to respond) shall be submitted within 10 calendar days of the respondent's receipt of the notification. The GCMCA may, in writing, grant an extension for a specified period upon written request with justification. Failure to submit matters within the 10-day period (and any extensions) will also constitute waiver, absent good cause.

011004. Submission to the Secretary of the NavyA. Recommendation

The command recommending separation—or the first GCMCA in the chain of command—must prepare the Recommendation for Administrative Separation. A sample is contained in Figure 15-29. The Recommendation shall contain the following:

1. Notification and Rebuttal Matters.
2. Report of Misconduct/NJP/Civilian Conviction/Court-Martial Conviction (if applicable).
3. Recommended characterization of service.
4. Medical evaluation in accordance with paragraph 010302 of this Volume, if not already included in the package.
5. If the officer was involved in a substance-related incident, the substance-abuse screening results and proof of completion of any recommended or mandated initial treatment as set forth in paragraph 010301.E of this Volume, if not already included in the package.
6. If the officer has yet to complete his/her advanced education assistance service obligation, the amount and type of advanced education assistance received, if not already included in the package, and a recommendation as to whether the Government should recoup the advanced education assistance on a pro-rata basis for the unserved portion of the officer's service obligation.

B. Endorsements and Routing

The Recommendation for Administrative Separation is forwarded to the ASN, M&RA, via the chain of command, the Alternate Show Cause Authority, and the Show Cause Authority. Each intermediate endorser and the Alternate Show Cause Authority shall have 20 calendar days to forward the recommendation. Each endorsement shall contain:

1. A recommendation as to whether the Recommendation for Administrative Separation should be approved or disapproved.
2. If approval is recommended, the recommended characterization of service.
3. If approval is recommended, a recommendation as to whether the Government should recoup the advanced education assistance on a pro-rata basis for the unserved portion of the officer's service obligation.

011005. Administrative Separation of Non-Probationary Officers. Officers who have exceeded the applicable probationary threshold are non-probationary and thus cannot be processed for separation without being afforded the opportunity to show cause for retention at a BOI. BOI procedures are provided in paragraph 0109, above.

011006. Resignation/Retirement Request in Lieu of Further Administrative Processing. An officer may tender a resignation/retirement request in lieu of further administrative processing at any time during, or in anticipation of, show cause processing. The type of resignation, the characterization of service available, and the requested retirement grade are all important factors in this decision, and are therefore critical in each submission and any subsequent endorsement(s). Samples of requests for retirement, resignation in lieu of further administrative processing, and resignation in lieu of trial are contained in Figures 15-30, 15-31, and 15-32, respectively.

011007. Requirements for Request for Retirement in Lieu of Further Administrative Processing

A. A request for retirement in lieu of further administrative processing shall contain the information contained in paragraph 2 to enclosure (6) of SECNAVINST 1920.6_.

B. Pursuant to 10 U.S.C. § 6329, no officer may be retired because of misconduct for which trial by court-martial would be appropriate.

011008. Requirements for Request for Resignation in Lieu of Further Administrative Processing

A. A request for resignation in lieu of further administrative processing shall include:

1. A statement that the officer understands that a BOI will not be convened to make a separation recommendation to SECNAV if the request is approved.
2. A statement that the officer understands that the request is voluntary and

may only be withdrawn with the permission of SECNAV.

3. As applicable, a statement that the request is *unqualified* (least favorable characterization is Honorable), *qualified* (least favorable characterization is General (Under Honorable Conditions)), or *for the good of the service* (least favorable characterization is Other Than Honorable) under the definitions provided in enclosure (1) to SECNAVINST 1920.6_.

4. A statement that the officer understands the least favorable characterization of service specifically available for the type of resignation requested and a statement that the officer understands the consequences of that characterization as set forth in paragraph 4104 of the MARCORSEPMAN.

5. The officer's requested characterization of service.

6. A statement that the officer has consulted with counsel, including counsel's name, grade, and branch of Service for military counsel, or counsel's name and address if civilian counsel is retained.

7. A statement that the officer admits that his or her performance of duty was substandard, or, if the officer is being required to show cause for misconduct or is being recommended for separation for misconduct, that he or she admits to committing the misconduct.

8. The investigation and any other documentation (e.g., NJP, civilian conviction, court-martial, etc.) evidencing the substandard performance or misconduct, and a summary of the relevant evidence.

9. A statement that the officer understands that sworn or unsworn testimony or other materials may be submitted on his or her behalf, and that such submissions, 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.

10. A statement that the officer understands that he or she is not entitled to receive a Reserve commission.

11. A statement that the officer understands that he or she may be required to reimburse the Government for advance education assistance that included an active-duty service requirement that has not been completed.

011009. Resignation in Lieu of Trial (RILT)

A RILT shall contain the information required by enclosure (3) of SECNAVINST 1920.6_ and paragraph 4104.4 of the MARCORSEPMAN.

011010. Separation/Retirement Date

Separation and retirement dates are effective upon approval by the ASN, M&RA, or SECNAV, as applicable, and subsequent issuance of the discharge electronic mail and unit diary transaction from CMC (MMSR). Consequently, an officer need not, and normally should not, request a specific separation date.

011011. Endorsements and Routing

Requests for resignation or retirement shall be addressed to the ASN, M&RA, or SECNAV, respectively, via the chain of command, the Alternate Show Cause Authority, and the DC, M&RA. The DC, M&RA, is the denial authority for all resignation and retirement requests. The endorsements shall contain:

- A. A recommendation as to whether the request should be approved or disapproved.
- B. If approval is recommended, for resignation requests, the recommended characterization of service, or, for retirement requests, a recommended retirement grade. (Retirement-eligible LDOs may not be reduced below the last CWO grade satisfactorily held.)
- C. If approval is recommended, a medical evaluation in accordance with paragraph 030102 of this Volume, if not already included in the package. The medical evaluation shall include the PTSD/TBI screen, if required, including comments on the presence or absence of these conditions and, if present, the extent to which they affected the respondent's judgment and may have been a contributing factor in the basis for separation. If PTSD or TBI was determined to be a possible contributing factor to one or more of the bases for separation, the GCMCA's report/endorsement shall, in light of that identified possible PTSD or TBI contributing factor, explain the reasons for the recommended separation and characterization of service.
- D. If the officer was involved in a substance-related incident, the substance-abuse screening results and proof of completion of any recommended or mandated treatment as set forth in paragraph 010301.E of this Volume, if not already included in the package.

011012. Advanced Education Assistance Recoupment

If approval is recommended and the officer has yet to complete his or her advanced education assistance service obligation, the amount and type of advanced education assistance received, if not already included in the package, and a recommendation as to whether the Government should recoup the advanced education assistance on a pro-rata basis for the unserved portion of the officer's service obligation.

011013. Voluntary Board of Inquiry Waiver

An officer may waive a BOI at any time during, or in anticipation of, show cause processing. A waiver of a BOI may not be conditional.

- A. The waiver shall include the following (use Figure 15-33 for non-retirement-eligible officers and Figure 15-34 for retirement-eligible officers):
 - B. A statement that the officer understands that a BOI will not be convened to make a separation recommendation to SECNAV if the request is approved.
 - C. A statement that the officer understands that the request is voluntary and may only be withdrawn with the permission of SECNAV.

D. If the officer is not retirement eligible, a statement that the officer understands that he or she may be separated with an Other Than Honorable characterization of service and that the officer understands the consequences of an Other Than Honorable characterization, as set forth in paragraph 4104 of the MARCORSEPMAN. If the officer is retirement eligible, a statement that the officer understands that SECNAV may retire him or her in a lesser pay grade than currently held and the retirement grade will be the highest grade in which the officer served satisfactorily, as determined by SECNAV. (Retirement-eligible LDOs may not be reduced below the last CWO grade satisfactorily held.)

E. If the officer is not retirement eligible, the officer's requested characterization of service, or, if retirement eligible, the officer's requested retirement grade.

F. A statement that the officer has consulted with counsel, including counsel's name, grade, and branch of service for military counsel, or counsel's name and address if civilian counsel is retained.

G. A statement that the officer admits that his or her performance of duty was substandard, and if the officer is being required to show cause for misconduct or is being recommended for separation for misconduct, that he or she admits to committing the misconduct.

H. The investigation and any other documentation (e.g., NJP, civilian conviction, court-martial, etc.) evidencing the substandard performance or misconduct, as well as a summary of the relevant evidence.

I. A statement that the officer understands that sworn or unsworn testimony or other materials may be submitted on his or her behalf, and that such submissions, 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.

J. If the officer is not retirement eligible, a statement that the officer understands that he or she is not entitled to receive a Reserve commission.

K. A statement that the officer understands that he or she may be required to reimburse the Government for advance education assistance that included an active-duty service requirement that has not been completed.

L. BOI waivers shall be addressed to the SECNAV (retirement-eligible officers) or the ASN, M&RA (non-retirement-eligible officers) via the chain of command, the Alternate Show Cause Authority, and the DC, M&RA. The endorsements shall contain:

1. A recommendation as to whether the BOI waiver should be approved or denied.

2. If approval is recommended, the recommended characterization of service for non-retirement eligible officers, or the recommended retirement grade for retirement-eligible officers. (Retirement-eligible LDOs may not be reduced below the last CWO grade satisfactorily held.)

3. If approval is recommended, a medical evaluation in accordance with paragraph 010302 of this Volume, if not already included in the package. The medical evaluation shall include the PTSD/TBI screen, if required, including comments on the presence or absence of these

conditions and, if present, the extent to which they affected the respondent's judgment and may have been a contributing factor in the basis for separation. If PTSD or TBI was determined to be a possible contributing factor to one or more of the bases for separation, the GCMCA's report/endorsement shall, in light of that identified possible PTSD or TBI contributing factor, explain the reasons for the recommended separation and characterization of service.

4. If the officer was involved in a substance-related incident, the substance-abuse screening results and proof of completion of any recommended or mandated initial treatment, as required by paragraph 010301.E of this Volume, if not already included in the package.

5. If approval is recommended and the officer has yet to complete their advanced education assistance service obligation, the amount and type of advanced education assistance received, if not already included in the package, and a recommendation as to whether the Government should recoup the advanced education assistance on a pro-rata basis for the unserved portion of the officer's service obligation.

011014. Resolution of Retirement Requests and Waivers Prior to Board of Inquiry

Upon receipt of a request for retirement in lieu of further administrative processing, a request for resignation for the good of the Service, or a request for a BOI waiver, and in coordination with CMC (JPL), the GCMCA who convened the BOI may hold the BOI proceedings in abeyance pending approval or disapproval of the request. This paragraph does not apply to unqualified or qualified resignation requests.

0111. RELATED PERSONNEL ACTIONS

011101. Personnel/Administrative Hold

Upon receipt of the required notification of officer misconduct or substandard performance of duty under paragraph 0104 or 0108 of this Volume, the Director, Manpower Management (Dir, MM), in conjunction with local administrative centers, will hold in abeyance all pending personnel actions (i.e., promotion, retirement, separation, transfer to the Reserve component, or PCS/PCA orders) for the reported officer. Personnel/Administrative Hold carries with it no punitive stigma but, rather, is implemented to maintain the *status quo* until matters are resolved by the cognizant commander or civilian authorities. In limited circumstances (e.g., mission requirements or extraordinary delay in the adjudication of a civilian case) commanders may request, in writing and with appropriate justification, execution of PCS orders or transfer to the Reserve component before resolution of the allegation(s). Such requests shall be forwarded via the chain of command to CMC (JPL) for approval on a case-by-case basis.

011102. Service Obligation

As provided in SECNAVINST 1920.6_, officers serve at the pleasure of the President and no terminal dates are established for their commissions. In addition, as provided in SECNAVINST 1920.6_, neither retirement nor release from active duty alters an individual's status as a commissioned or warrant officer until the officer's commission or warrant has been terminated. Accordingly, officers may be kept past their EAS or retirement date for administrative proceedings as appropriate. As provided in 10 U.S.C. § 1181 and SECNAVINST 1920.6_, SECNAV and the ASN, M&RA, have been delegated the authority to administer the separation of officers for voluntary and involuntary reasons.

011103. Mandated Separation Dates

SECNAVINST 1920.6_ addresses specific cases in which officers are either involuntarily separated or retired due to age, service limitations, or failure to be selected for promotion. In such cases, because separation is mandated by statute, it can only be deferred in the case of action taken with a view toward trial by court-martial, or, in limited instances, for medical reasons. Administrative processing for cause is not a valid reason to retain an officer on active duty beyond a mandated separation date.

0112. PROMOTIONS

011201. General

The Marine Corps must select those officers who are best and fully qualified for promotion to meet the needs of the Marine Corps. Accordingly, selection boards should have all relevant information available when making a recommendation regarding an officer's qualifications for promotion. The timely processing of officer misconduct and substandard performance of duty cases ensures that appropriate adverse information is properly included in an officer's OMPF for review by promotion selection boards.

011202. Procedure

Adverse information is not always available to promotion selection boards. Usually, this occurs when an officer has a pending misconduct or substandard performance of duty case at the time the board convenes, when adverse material was not entered into the officer's OMPF until after the board convened, or when an officer commits misconduct or engages in substandard performance of duty after being recommended for promotion by a board. CMC (JPL) is responsible for screening the results of selection boards for any substantiated or alleged adverse information that might affect an officer's suitability for promotion. Additionally, CMC (JPL) is responsible for screening each monthly promotion MARADMIN before its release as an additional safeguard. If an officer selected for promotion has adverse information or alleged adverse information, that officer's promotion may be delayed or withheld. The difference between delay and withhold is largely a matter of timing. A promotion withhold occurs when SECNAV withholds an officer recommended for promotion by a board from nomination to the Secretary of Defense, the President, or the Senate, as appropriate. Promotion withholds are coordinated between CMC (JPL) and Officer Promotions (MMPR-1). A promotion delay occurs when CMC (or designee) or an officer's CO delays an officer's promotion after the nomination and approval processes have been completed but before the promotion has been effectuated. Withholds and delays of promotion will be handled in accordance with applicable directives and are not automatic.

011203. Reporting

Monthly promotion MARADMINs charge COs with ensuring that officers to be promoted are mentally, physically, morally, and professionally qualified for promotion. In cases where officers are not qualified, the CO can initiate a delay of promotion. Officers selected for promotion but not listed in the monthly MARADMIN may not be delayed until the officer's name appears in a promotion MARADMIN. Guidance on effectuating promotion delays is detailed in each MARADMIN announcing the promotion authority. When a command desires to delay a promotion, it should contact CMC (JPL) and Officer Promotions (MMPR-1) immediately to ensure appropriate notifications are made to the officer and in the MCTFS. Commanders must give written notice to an officer outlining the grounds for delay before the effective date of promotion, unless it is impracticable to do so. This notice must give the officer the opportunity to submit a statement. Commanders are highly encouraged to contact CMC (JPL) for

assistance in drafting the written notice. Figure 15-35 provides a command promotion delay template that may be used in the event that consultation with CMC (JPL) is not possible before the effective date of promotion.

011204. Closed Cases

If an officer's promotion has been withheld or delayed, and the misconduct or substandard performance of duty case is closed by the appropriate authority without the officer's separation, CMC (JPL) will notify the officer via a Notice and Comment letter of the right to submit matters in support of the promotion. CMC (JPL) will send the Notice and Comment letter directly to the officer via electronic mail. CMC (JPL) will send a courtesy copy to the appropriate staff judge advocate. The officer will have 10 calendar days to submit matters in support of his or her promotion. This 10-day period may be extended for an additional 20 calendar days upon the officer's request. CMC (JPL) will coordinate with the staff judge advocate in the officer's command before acting upon the officer's request. If no matters are received within the 10-day period, and an extension has not been requested and approved, the officer will be deemed to have waived the right to submit matters, and the promotion delay or withhold will be processed accordingly. Promotion matters shall be addressed to CMC (JPL) via the officer's chain of command. The promotion matters shall be endorsed through the commanding general (CG) at the top of the officer's operational chain of command. CG endorsements shall be processed by that CG's SJA. Once endorsed by the CG, the promotion matters will be forwarded to CMC (JPL) for routing to CMC. If the officer declines to submit matters, he or she shall notify the chain of command in writing using the acknowledgement letter that CMC (JPL) provides as an enclosure to the Notice and Comment letter. The declination shall then be forwarded to CMC (JPL) via the chain of command using the process described in this paragraph.

011205. Adverse Material Advisory Board (AMAB)

Promotion withholds and delays are reviewed by the AMAB. The AMAB consists of the SJA to CMC; the Dir, MM; and the DC, M&RA. After AMAB review, the Staff Director, Headquarters Marine Corps, and the Assistant CMC will also review promotion withholds and delays. Each general officer in this process personally reviews the promotion withhold or delay and makes a recommendation to the CMC. The CMC will personally review every promotion withhold or delay and make a final decision or recommendation. The routing of a promotion withhold or delay after AMAB review depends on the rank of the officer and whether his or her promotion has been delayed or withheld (see MCO P1400.31C, Marine Corps Promotion Manual, Volume 1, Officer Promotions; SECNAVINST 1420.1_, Promotion, Special Selection, Selective Early Retirement, and Selective Early Removal Boards for Commissioned Officers of the Navy and Marine Corps; SECNAVINST 1412.6_, Promotion of Officers to the Grade of Lieutenant (Junior Grade) in the Navy and to the Grade of First Lieutenant in the Marine Corps; and SECNAVINST 1412.9_, Marine Corps Limited Duty Officer and Warrant Officer Programs, Promotions, and Continuation Procedures; for additional guidance on promotion delays and withholds). Commanders should contact their SJA for guidance regarding grade-specific promotion delay and withhold issues.

011206. Promotion Recommendations

Per paragraph 011204, above, command endorsements should contain a recommendation regarding promotion and, if applicable, an appropriate date of rank. An officer's promotion withhold or delay will ultimately result in promotion with original date of rank, promotion with an adjusted date of rank, or removal from the promotion list. In the case of a second lieutenant or warrant officer, however, promotion withhold or delay will ultimately result in promotion with original date of rank, promotion

with an adjusted date of rank, notice to reapply for promotion in six months, or discharge. Promotion with original date of rank is generally appropriate if the allegations against an officer have been unsubstantiated. If promotion is authorized, SECNAV may adjust an officer's date of rank for any part of delay in which SECNAV determines that an officer was unqualified for promotion. SECNAV has delegated this authority to the CMC for second lieutenants. A recommendation for an adjusted date of rank shall not be punitive in nature but, rather, should reflect the time needed for an officer to recover from an incident such that he or she may regain the moral authority to lead Marines. Command endorsements should appropriately address this concern. If an officer is removed from the promotion list, he or she will be considered to have failed selection.

Figure 15-1

NJP Notification and Acknowledgement

From: Commanding General/Officer

To: Rank First Name MI Last Name MOS USMC/R

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT

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

(b) JAGINST 5800.7F (JAGMAN)

(c) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard Performance of Duty)

(d) Investigation/Evidence

(e) SECNAVINST 1920.6_

1. In accordance with references (a) through (c), and based upon the information in reference (d), you are hereby notified that I intend to conduct an Article 15, Uniform Code of Military Justice (UCMJ), nonjudicial punishment (NJP) hearing in your case.

2. You are advised of the following with regard to the proposed NJP:

a. That you are accused of the following violations of the UCMJ:
[List offense(s) and respective UCMJ articles violated.]

b. Unless attached to or embarked in a vessel, you have the right to refuse NJP. You may demand trial by court-martial in lieu of NJP. If trial by court-martial is demanded, charges could be referred for trial by special or general court-martial. At a special or general court-martial, you have the right to be represented by counsel.

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

d. That you have the right not to make any statement concerning these offenses.

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

f. 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.

g. To be present at the hearing, or if you waive such personal appearance, to submit written matters for consideration.

h. That, if you request personal appearance, you will receive a hearing at which you will be accorded the following rights:

(1) To be advised of the offense(s) of which you are alleged to have committed;

(2) 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;

(3) 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;

(4) To have made available to you for inspection, all items of information in the nature of physical or documentary evidence to be considered by me;

(5) To submit, orally, or in writing, or both, any matter in defense, extenuation, or mitigation, for consideration by me in determining whether you committed the offense(s) in question and, if so, an appropriate punishment;

(6) To have present witnesses, upon request, if their statements are relevant and they are reasonably available;

(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 I determine that the proceedings should be closed for good cause, or unless the punishment to be imposed will not exceed restriction for 14 days and an oral reprimand.

3. You are further advised that if NJP is imposed, you have the right to appeal the NJP to the next superior authority within five working days, if you consider the punishment unjust or disproportionate to the offense(s) for which it is imposed. 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 five 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 five days after the appeal was submitted, and you so request, any unexecuted punishment involving restraint shall be stayed until action on the appeal is taken.

4. You are further advised that a report of this NJP will be made to the Commandant of the Marine Corps, (Deputy Commandant, Manpower and Reserve Affairs (DC M&RA)) and that you may be subject to involuntary separation proceedings directed by DC M&RA or an Alternate Show Cause Authority in accordance with the procedures set forth in reference (c). If you are voluntarily or involuntarily separated before you complete an active duty

service requirement incurred because you received advanced education assistance (United States Naval Academy, Reserve Officer Training Corps, Platoon Leaders Class, Funded Law Education Program, etc.), you may be required to reimburse the Government on a pro-rata basis for the unserved portion of your service obligation.

5. You will indicate, by return endorsement hereon, your understanding of the foregoing and your decision whether to accept NJP, and return the endorsement to the [Unit] Staff Judge Advocate within five working days.

I. M. COMMANDING

(Date)

FIRST ENDORSEMENT

From: Rank First Name MI Last Name MOS USMC/R
To: Commanding General/Officer

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of NJP.

2. I [do]/[do not] desire to demand trial by court-martial and [am]/[am not] willing to accept punishment under Article 15, UCMJ.

3. Prior to making my decision, I [did not have]/[had] the opportunity to consult with a lawyer. I understand that action under reference (e) is not precluded by my acceptance of NJP.

(Signature of accused)

(Date)

(Witness, typed or printed name)

08 AUG 2018

Figure 15-2

NJP Notification Based on Fact-Finding Body

From: Commanding General/Officer

To: Rank First Name MI Last Name MOS USMC/R

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT

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

(b) JAGINST 5800.7F (JAGMAN)

(c) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard Performance of Duty)

(d) SECNAVINST 1920.6_

Encl: (1) Record of formal fact-finding body

1. You are hereby informed that, in accordance with the references, I intend to impose nonjudicial punishment (NJP) on you based upon the information contained in the enclosure.

2. You are advised that the offense(s) for which you will receive NJP is/are: [List offense(s) and respective UCMJ articles violated].

3. You are advised that under the references, 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(s) in question and, if so, an appropriate punishment.

c. The right to appeal the NJP to the next superior authority within five working days, if you consider the punishment unjust or disproportionate to the offense(s) for which it is imposed. 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 five 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 five days after the appeal was submitted, and you so request, any unexecuted punishment involving restraint shall be stayed until action on the appeal is taken.

4. You are further advised that a report of this NJP will be made to the Commandant of the Marine Corps, (Deputy Commandant, Manpower and Reserve Affairs (DC M&RA)) and that you may be subject to involuntary separation proceedings directed by DC M&RA or an Alternate Show Cause Authority in

accordance with the procedures set forth in references (c) and (d). If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (United States Naval Academy, Reserve Officer Training Corps, Platoon Leaders Class, Funded Law Education Program, etc.), you may be required to reimburse the Government on a pro-rata basis for the unserved portion of your service obligation.

5. You will indicate, by return endorsement hereon, your understanding of the foregoing and your decision whether to accept NJP, and return the endorsement to the [Unit] Staff Judge Advocate within five working days.

I. M. COMMANDING

(Date)

FIRST ENDORSEMENT

From: Rank First Name MI Last Name MOS USMC/R
To: Commanding General/Officer

- 1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of NJP.
- 2. I [do]/[do not] desire to demand trial by court-martial and [am]/[am not] willing to accept punishment under Article 15, UCMJ.
- 3. Prior to making my decision, I [did not have]/[had] the opportunity to consult with a lawyer. I understand that action under reference (d) is not precluded by my acceptance of NJP.

(Signature of accused)

(Date)

(Witness, typed or printed name)

Figure 15-3
Acknowledgement of NJP Appeal Rights

From: Rank First Name MI Last Name MOS USMC/R
To: Commanding General/Officer who imposed NJP
Subj: ACKNOWLEDGMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS
Ref: (a) SECNAVINST 1920.6_
(b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard Performance of Duty)
(c) MCO 1900.16 w/ch 1 (MARCORSEPMAN)

1. I [Rank First Name MI Last Name 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 working 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 five-day period, I should immediately advise you 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; or

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

3. I understand that, if I submit an appeal, it may 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.

[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) through (c).

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

(signature) (date)

(witness signature) (date)

Figure 15-4

Acknowledgement of Punitive Letter of Reprimand

From: Commanding General/Commanding Officer who imposed NJP

To: Rank First Name MI Last Name MOS USMC/R

Subj: ACKNOWLEDGEMENT OF PUNITIVE LETTER OF REPRIMAND AND
APPEAL RIGHTS

Ref: (a) CG/CO, [Command] ltr [SSIC] [Code] of [Date]

(b) JAGAINST 5800.7F (JAGMAN)

1. I acknowledge receipt of reference (a) on _____.

2. As indicated in the references, I understand that I may appeal the punitive letter of reprimand. I acknowledge that I have five working days from the date I received the punitive letter of reprimand to submit an appeal. The appeal, if made, will be addressed to the Commanding General, [Unit] via the Commanding General [Unit].

In view of the above, I [do not] intend to appeal the punitive letter of reprimand.

3. Per the references, I understand that I may forward, within 15 days of receipt of the final decision on my appeal, or five days of the date of my notification of my intent not to appeal, a statement concerning this letter for inclusion in my Official Military Personnel File (OMPF).

In view of the above, I [do not] intend to submit a statement concerning the punitive letter of reprimand for inclusion in my OMPF.

I. M. OFFICER

Figure 15-5
Report of NJP

From: Commanding General/Officer (who imposed NJP)
To: Commandant of the Marine Corps (JPL)
Via: (1) Chain of Command
(2) Alternate Show Cause Authority
Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF [RANK FIRST NAME MI
LAST NAME MOS USMC/R]
Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)
(b) Paragraph 4, Part V, MCM
(c) JAGINST 5800.7F (JAGMAN)
(d) UCMJ
(e) SECNAVINST 1920.6
(f) MCO 1900.16 w/ch 1 (MARCORSEPMAN)
Encl: (1) Verbatim record of NJP hearing
(2) [Punitive letter of reprimand]
(3) Investigation/Evidence
(4) Notification of intent to impose NJP and
acknowledgement
(5) Acknowledgement of NJP appeal rights
(6) [Acknowledgement of receipt of punitive letter of
reprimand and appeal rights]
(7) [Appeal]
(8) SACC screen and treatment completion (if required)
(9) Medical evaluation (if required)
(10) PTSD/TBI screen (if required)
(11) Acknowledgment of advanced education assistance
reimbursement requirement
(12) Acknowledgment of receipt

- 1. This report is submitted per paragraph 010605 of reference (a).
2. On [date], following the applicable provisions of references (b), (c),
and (d), I imposed nonjudicial punishment (NJP) on [Rank Name]. The
charges and disposition thereof are as follows:

Table with 4 columns: Charge(s) Article, Plea [G/NG], Finding [G/NG], Appeal/Status [Yes/Denied], [Yes/Approved], [No]

3. [Rank Name] voluntarily accepted NJP and I imposed the following
punishment: [set forth punishment imposed-forfeitures shall be expressed
in whole dollar amounts]. See enclosures (1) and (2).

4. The circumstances giving rise to the imposition of NJP in this case
are: [Provide concise, even-handed explanation of the offense(s),

including significant matters in aggravation, extenuation, and mitigation.] See enclosure (3).

5. A verbatim record of the NJP hearing is contained in enclosure (1). [Rank Name] was present at the hearing and was accorded all rights contained in enclosure (4). [Rank Name] indicated [his/her] acceptance of the imposition of NJP and [his/her] desire not to demand court-martial in enclosure (4).

6. I advised [Rank Name] of [his/her] right to appeal the NJP [and punitive letter of reprimand]. See enclosure(s) (5) [and (6)].

7. [On [date],] [Rank Name] [did not] appeal[ed] the NJP [and/or the punitive letter of reprimand]. See enclosures (5)-(7).

8. [If substance-related incident] On [date], the [Name] Substance Abuse Counseling Center evaluated [Rank Name] and found that [he/she] [did/did not] meet the criteria for a substance-related disorder. The counselor recommended that [Rank Name] attend [treatment]. On [date], [Rank Name] completed the recommended treatment. See enclosure (8).

9. [If separation recommended] On [date], a medical provider evaluated [Rank Name] and found that he/she is qualified for separation, enclosure (9). [Brief synopsis of any condition(s) and whether the condition(s) had impact on the officer's behavior.]

10. [If separation recommended and PTSD/TBI screen required per paragraph 010302.D of reference (a)] On [date], an appropriately privileged medical provider—as enumerated in paragraph 010302.D of reference (a)—evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), enclosure (10). [Rank Name] screened positive for PTSD/TBI. [State whether PTSD/TBI had impact on the officer's behavior.] [Explain reason for recommended separation and characterization of service]. [OR]

10. [If separation recommended and PTSD/TBI screen required per paragraph 010302.D of reference (a)] On [date], an appropriately privileged medical provider—as enumerated in paragraph 010302.D of reference (a)—evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and found that he/she does not have PTSD/TBI, enclosure (10).

11. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (11). I am not aware that [Rank Name] received any advanced education assistance. [OR]

11. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (11). [[Rank Name] attended the Naval Academy and received advanced education assistance in the approximate amount of \$____.]/[[Rank Name] received advanced education assistance via the [Platoon Leaders Class/Naval Reserve Officer Training

Corps program] in the approximate amount of \$_____.] I [do not] recommend that the reimbursement requirement be waived in this case.

12. [Rank Name] will be afforded the opportunity to read this report. [Rank Name] will acknowledge that adverse information pertaining to this incident may be included in [his/her] Official Military Personnel File, enclosure (12).

13. I [do not] recommend that [Rank Name] be required to show cause for retention in the Marine Corps at a Board of Inquiry pursuant to reference (e). [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

13. [For probationary officers] I [do not] recommend that [Rank Name] be separated via notification procedures for [substandard performance of duty and misconduct and moral or professional dereliction] with a [General (Under Honorable Conditions)/Honorable] characterization of service pursuant to reference (e). [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.]

I. M. GENERAL

Figure 15-6
Report of No Misconduct

From: Commanding General
To: Commandant of the Marine Corps (JPL)
Subj: REPORT OF NO MISCONDUCT IN THE CASE OF [RANK FIRST NAME MI LAST
NAME MOS USMC/R]
Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)
(b) SECNAVINST 1920.6_
Encl: (1) Investigation/Evidence

1. This report is submitted per paragraph 010602 of reference (a).
2. I have reviewed the allegations involving [Rank Name] contained in the enclosure and find that [Rank Name] did not commit the alleged misconduct.
3. [Summary of incident, investigative efforts, and reason misconduct is unsubstantiated.] Accordingly, the allegations are unsubstantiated and this case is closed.

I. M. GENERAL

Copy to:
SJA, [Alternate Show Cause Authority]
SJA, [Chain of Command]
[Rank Name of Accused]

Figure 15-7

Acknowledgement of Advance Education Recoupment

From: Rank First Name MI Last Name MOS USMC/R

To: Commanding General/Officer, Unit

Subj: ACKNOWLEDGEMENT OF ADVANCED EDUCATION ASSISTANCE RECOUPMENT

1. 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 (United States Naval Academy, Reserve Officer Training Corps, Platoon Leaders Class, Funded Law Education Program, etc.), I may be required to reimburse the Government on a pro-rata basis for the unserved portion of my service obligation.

I. M. OFFICER

Figure 15-8

Acknowledgement of Receipt of Report

From: Rank First Name MI Last Name MOS USMC/R

To: Commanding General, Unit

Subj: ACKNOWLEDGEMENT OF RECEIPT OF REPORT OF [NJP, MISCONDUCT, CIVILIAN CONVICTION, COURT-MARTIAL CONVICTION, BOI] AND INCLUSION OF ADVERSE MATERIAL IN OFFICIAL MILITARY PERSONNEL FILE

Ref: (a) CG, [Unit] ltr [SSIC] [Code] of [date] (Report)

(b) MCO P1070.12K w/ch 1 (IRAM)

1. I hereby acknowledge that I received reference (a) on _____ (date) and that I have 10 calendar days to submit either a response or written indication that I have no matters to submit.

2. I understand that the adverse material in reference (a) will be forwarded to the Deputy Commandant, Manpower and Reserve Affairs (DC M&RA) for a decision on whether the material will be included in my Official Military Personnel File (OMPF) in accordance with reference (b). I further understand that if DC M&RA elects to include the adverse material into my OMPF, any statement I submit will be included in my OMPF along with the adverse material. If I choose not to submit a statement and DC M&RA elects to include the adverse material into my OMPF, I understand that this letter will be included in my OMPF along with the adverse material in reference (a).

3. () I desire to submit a statement.

() I do not desire to submit a statement and understand that this letter will be included in my OMPF if DC M&RA elects to include the adverse material in my OMPF.

I. M. OFFICER

Figure 15-9
Report of Misconduct

From: Commanding General/Officer
To: Commandant of the Marine Corps (JPL)
Via: (1) Chain of Command
(2) Alternate Show Cause Authority

Subj: REPORT OF MISCONDUCT IN THE CASE OF [RANK FIRST NAME MI
LAST NAME MOS USMC/R]

Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)
(b) MCO P1070.12K w/ch 1 (IRAM)
(c) SECNAVINST 1920.6_

Encl: (1) Investigation/Evidence
(2) Administrative Counseling
(3) SACC screen and treatment completion (if required)
(4) Medical evaluation (if required)
(5) PTSD/TBI screen (if required)
(6) Acknowledgment of advanced education assistance
reimbursement requirement
(7) Acknowledgement of receipt

1. This report is submitted per paragraph 010604 of reference (a).
 2. [Synopsis of offense] The circumstances giving rise to this Report are: [Provide concise, even-handed explanation of the reported misconduct including significant matters in aggravation and extenuation and mitigation.] See enclosure (1).
 3. [Synopsis of disposition, if any] [On [date], I administratively counseled [Rank Name] in accordance with paragraph 3005 of reference (b), enclosure (2).] [I addressed [Rank Name's] misconduct via administrative measures.*]
- (*Note: Do not mention the issuance of non-punitive letters of caution or informal counseling. Generically describe such actions as "administrative measures.")
4. [If substance-related incident] On [date], the [Name] Substance Abuse Counseling Center evaluated [Rank Name] and found that [he/she] [did/did not] meet the criteria for a substance-related disorder. The counselor recommended that [Rank Name] attend [treatment]. On [date], [Rank Name] completed the recommended treatment. See enclosure (3).
 5. [If separation recommended] On [date], a medical provider evaluated [Rank Name] and found that [he/she] is qualified for separation, enclosure (4). [Brief synopsis of any condition(s) and whether the condition(s) had impact on the officer's behavior.]

6. [If separation is recommended and PTSD/TBI screen required per paragraph 010302.D of reference (a)] On [date], an appropriately privileged medical provider—as enumerated in paragraph 010302.D of reference (a)—evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), enclosure (5). [Rank Name] screened positive for PTSD/TBI. [State whether PTSD/TBI had impact on the officer's behavior.] [Explain reason for recommended separation and characterization of service.] [OR]

6. [If separation is recommended and PTSD/TBI screen required per paragraph 010302.D of reference (a)] On [date], an appropriately privileged medical provider—as enumerated in paragraph 010302.D of reference (a)—evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and found that [he/she] does not have PTSD/TBI, enclosure (5).

7. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (6). I am not aware that [Rank Name] received any advanced education assistance. [OR]

7. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (6). [[Rank Name] attended the Naval Academy and received advanced education assistance in the approximate amount of \$____.]/[[Rank Name] received advanced education assistance via the [Platoon Leaders Class/Naval Reserve Officer Training Corps program, etc.] in the approximate amount of \$____.] I [do not] recommend that the reimbursement requirement be waived in this case.

8. [Rank Name] will be afforded the opportunity to read this report. [Rank Name] will acknowledge that adverse information pertaining to this incident may be included in [his/her] Official Military Personnel File, enclosure (7).

9. I [do not] recommend that [Rank Name] be required to show cause for retention in the Marine Corps at a Board of Inquiry pursuant to reference (c). [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.]

9. [For probationary officers] I [do not] recommend that [Rank Name] be separated via notification procedures for [substandard performance of duty and misconduct and moral or professional dereliction] with a [General (Under Honorable Conditions)]/[Honorable] characterization of service pursuant to reference (c). [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.]

I. M. GENERAL

Figure 15-10
Report of Civilian Conviction

From: Commanding General/Officer
To: Commandant of the Marine Corps (JPL)
Via: (1) Chain of Command
(2) Alternate Show Cause Authority

Subj: REPORT OF CIVILIAN CONVICTION IN THE CASE OF [RANK FIRST NAME MI
LAST NAME MOS USMC/R]

Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)
(b) MCO P1070.12K w/ch 1 (IRAM)
(c) SECNAVINST 1920.6_

Encl: (1) Civilian arrest/court documents
(2) SACC screen and treatment completion (if required)
(3) Medical evaluation (if required)
(4) PTSD/TBI screen (if required)
(5) Acknowledgment of advanced education assistance
reimbursement requirement
(6) Acknowledgement of receipt

1. This report is submitted per paragraph 010606 of reference (a).
2. [Synopsis of offense] The circumstances giving rise to this report are: [Provide concise, even-handed explanation of the civilian conviction, including significant matters in aggravation and extenuation and mitigation.] See enclosure (1).
3. [Synopsis of disposition], enclosure (1). [Include documentation reflecting the satisfaction of any sentence imposed.]
4. [If substance-related incident] On [date], the [Name] Substance Abuse Counseling Center evaluated [Rank Name] and found that [he/she] [did/did not] meet the criteria for a substance-related disorder. The counselor recommended that [Rank Name] attend [treatment]. On [date], [Rank Name] completed the recommended treatment. See enclosure (2).
5. [If separation recommended] On [date], a medical provider evaluated [Rank Name] and found that [he/she] is qualified for separation, enclosure (3). [Brief synopsis of any condition(s) and whether the condition(s) had impact on the officer's behavior.]
6. [If separation recommended and PTSD/TBI screen required per paragraph 010302.D of reference (a)] On [date], an appropriately privileged medical provider—as enumerated in paragraph 010302.D of reference (a)—evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), enclosure (4). [Rank Name] screened positive for PTSD/TBI. [State whether PTSD/TBI had impact on the officer's behavior.] [Explain reason for recommended separation and characterization of service]. [OR]

6. [If separation recommended and PTSD/TBI screen required per paragraph 010302.D of reference (a)] On [date], an appropriately privileged medical provider—as enumerated in paragraph 010302.D of reference (a)—evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and found that he/she does not have PTSD/TBI, enclosure (4).

7. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (5). I am not aware that [Rank Name] received any advanced education assistance. [OR]

7. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (5). [[Rank Name] attended the Naval Academy and received advanced education assistance in the approximate amount of \$____.]/[[Rank Name] received advanced education assistance via the [Platoon Leaders Class/Naval Reserve Officer Training Corps program, etc.] in the approximate amount of \$____.] I [do not] recommend that the reimbursement requirement be waived in this case.

8. [Rank Name] will be afforded the opportunity to read this report. [Rank Name] will acknowledge that adverse information pertaining to this incident may be included in [his/her] Official Military Personnel File, enclosure (6).

9. I [do not] recommend that [Rank Name] be required to show cause for retention in the Marine Corps at a Board of Inquiry pursuant to reference (c). [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

9. [For probationary officers] I [do not] recommend that [Rank Name] be separated via notification procedures for [substandard performance of duty and misconduct and moral or professional dereliction] with a [General (Under Honorable Conditions)]/ [Honorable] characterization of service pursuant to reference (c). [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.]

I. M. GENERAL

Figure 15-11
Report of Court-Martial Conviction

From: Commanding General/Officer
 To: Commandant of the Marine Corps (JPL)
 Via: (1) Chain of Command
 (2) Alternate Show Cause Authority

Subj: REPORT OF COURT-MARTIAL CONVICTION IN THE CASE OF [RANK FIRST NAME
 MI LAST NAME MOS USMC/R]

Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
 Performance of Duty)
 (b) MCO P1070.12K w/ch 1 (IRAM)
 (c) SECNAVINST 1920.6_

Encl: (1) Record of trial
 (2) SACC screen and treatment completion (if required)
 (3) Medical evaluation (if required)
 (4) PTSD/TBI screen (if required)
 (5) Acknowledgment of advanced education assistance
 reimbursement requirement
 (6) Acknowledgement of receipt

1. This report is submitted per paragraph 010607 of reference (a).
2. [Synopsis of offense] The circumstances giving rise to this report are: [Provide concise, even-handed explanation of the court-martial conviction, including significant matters in aggravation and extenuation and mitigation.] See enclosure (1).
3. [Synopsis of disposition], enclosure (1). [Include documentation reflecting the satisfaction of any sentence imposed.]
4. [If substance-related incident] On [date], the [Name] Substance Abuse Counseling Center evaluated [Rank Name] and found that [he/she] [did/did not] meet the criteria for a substance-related disorder. The counselor recommended that [Rank Name] attend [treatment]. On [date], [Rank Name] completed the recommended treatment. See enclosure (2).
5. [If separation recommended] On [date], a medical provider evaluated [Rank Name] and found that [he/she] is qualified for separation, enclosure (3). [Brief synopsis of any condition(s) and whether the condition(s) had impact on the officer's behavior.]
6. [If separation recommended and PTSD/TBI screen required per paragraph 010302.D of reference (a)] On [date], an appropriately privileged medical provider—as enumerated in paragraph 010302.D of reference (a)—evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), enclosure (4). [Rank Name] screened positive for PTSD/TBI. [State whether PTSD/TBI had impact on the officer's behavior.] [Explain reason for recommended separation and characterization of service.] [OR]

6. [If separation recommended and PTSD/TBI screen required per paragraph 010302.D of reference (a)] On [date], an appropriately privileged medical provider—as listed in paragraph 010302.D of reference (a)—evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and found that [he/she] does not have PTSD/TBI, enclosure (4).

7. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (5). I am not aware that [Rank Name] received any advanced education assistance. [OR]

7. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (5). [[Rank Name] attended the Naval Academy and received advanced education assistance in the approximate amount of \$____.]/[[Rank Name] received advanced education assistance via the [Platoon Leaders Class/Naval Reserve Officer Training Corps program, etc.] in the approximate amount of \$____.] I [do not] recommend that the reimbursement requirement be waived in this case.

8. [Rank Name] will be afforded the opportunity to read this report. [Rank Name] will acknowledge that adverse information pertaining to this incident may be included in [his/her] Official Military Personnel File, enclosure (6).

9. I [do not] recommend that [Rank Name] be required to show cause for retention in the Marine Corps at a Board of Inquiry pursuant to reference (c). [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

9. [For probationary officers] I [do not] recommend that [Rank Name] be separated via notification procedures for [substandard performance of duty and misconduct and moral or professional dereliction] with a [General (Under Honorable Conditions)/ Honorable] characterization of service pursuant to reference (c). [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.]

I. M. GENERAL

Figure 15-12
Report of No Substandard Performance

From: Commanding General
To: Commandant of the Marine Corps (JPL)
Subj: REPORT OF NO SUBSTANDARD PERFORMANCE OF DUTY IN THE CASE OF [RANK
FIRST NAME MI LAST NAME MOS USMC/R]
Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)
(b) SECNAVINST 1920.6_
Encl: (1) Investigation/Evidence

1. This report is submitted per paragraph 010807.D of reference (a).
2. I have reviewed the allegations involving [Rank Name] contained in the enclosure and find that [Rank Name's] performance was not substandard.
3. [Summary of incident, investigative efforts, and reason substandard performance of duty is unsubstantiated.] Accordingly, the allegations are unsubstantiated and this case is closed.

I. M. GENERAL

Copy to:
SJA, [Alternate Show Cause Authority]
SJA, [Chain of Command]
[Rank Name of Accused]

Figure 15-13
Report of Substandard Performance

From: Commanding General/Officer
To: Commandant of the Marine Corps (JPL)
Via: (1) Chain of Command
(2) Alternate Show Cause Authority

Subj: REPORT OF SUBSTANDARD PERFORMANCE OF DUTY IN THE CASE OF [RANK
FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)
(b) SECNAVINST 1920.6_

Encl: (1) Investigation/Evidence
(2) SACC screen and treatment completion (if required)
(3) Medical evaluation (if required)
(4) PTSD/TBI screen (if required)
(5) Acknowledgment of advanced education assistance
reimbursement requirement
(6) Acknowledgement of receipt

1. This report is submitted per paragraph 010807.E of reference (a).
2. The circumstances giving rise to this Report are: [Provide concise, even-handed explanation of the reported substandard performance of duty including significant matters in aggravation and extenuation and mitigation.] See enclosure (1).
3. [If substance-related incident] On [date], the [Name] Substance Abuse Counseling Center evaluated [Rank Name] and found that [he/she] [did/did not] meet the criteria for a substance-related disorder. The counselor recommended that [Rank Name] attend [treatment]. On [date], [Rank Name] completed the recommended treatment. See enclosure (2).
4. [If separation recommended] On [date], a medical provider evaluated [Rank Name] and found that [he/she] is qualified for separation, enclosure (3). [Brief synopsis of any condition(s) and whether the condition(s) had impact on the officer's behavior.]
5. [If separation recommended and PTSD/TBI screen required per paragraph 10302.D of reference (a)] On [date], an appropriately privileged medical provider—as enumerated in paragraph 010302.D of reference (a)—evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), enclosure (4). [Rank Name] screened positive for PTSD/TBI. [State whether PTSD/TBI had impact on the officer's behavior.] [Explain reason for recommended separation.] [OR]
5. [If separation recommended and PTSD/TBI screen required per paragraph 010302.D of reference (a)] On [date], an appropriately privileged medical provider—as enumerated in paragraph 010302.D of reference (a)—evaluated

[Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and found that [he/she] does not have PTSD/TBI, enclosure (4).

6. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (5). I am not aware that [Rank Name] received any advanced education assistance. [OR]

6. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (5). [[Rank Name] attended the Naval Academy and received advanced education assistance in the approximate amount of \$____.]/[[Rank Name] received advanced education assistance via the [Platoon Leaders Class/Naval Reserve Officer Training Corps program, etc.] in the approximate amount of \$____.] I [do not] recommend that the reimbursement requirement be waived in this case.

7. [Rank Name] will be afforded the opportunity to read this report. [Rank Name] will acknowledge that adverse information pertaining to this incident may be included in [his/her] Official Military Personnel File, enclosure (6).

8. I [do not] recommend that [Rank Name] be required to show cause for retention in the Marine Corps at a Board of Inquiry pursuant to reference (b). [Comments as to the character of the officer and the allegations of substandard performance of duty.] [OR]

8. [For probationary officers] I [do not] recommend that [Rank Name] be separated via notification procedures for substandard performance of duty with an Honorable characterization of service. [Comments as to the character of the officer and the allegations of substandard performance of duty.]

I. M. GENERAL

08 AUG 2018

Figure 15-14
BOI Direction Letter (Not Retirement Eligible)

From: Commanding General/Commander
To: Commanding General, Unit

Subj: BOARD OF INQUIRY IN THE CASE OF [RANK FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.6_
(b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard Performance of Duty)
(c) [Report of NJP/Misconduct/etc.]

1. Pursuant to paragraphs 13d of reference (a) and 010202 of reference (b), I have been designated an Alternate Show Cause Authority for the Marine Corps. In that capacity, I have reviewed the allegations in reference (c), and have determined that there is sufficient information to refer this case to a Board of Inquiry (BOI) for a recommendation as to whether [Rank Name] should be retained in the Marine Corps and, if separation is recommended, the recommended characterization of service.

2. Accordingly, you are directed to convene a BOI under the provisions of references (a) and (b) to consider [Rank Name's] case. The specific reasons for separation to be considered by the Board are [substandard performance of duty, misconduct, and moral or professional dereliction] as evidenced by one or more of the following:

a. [Applicable bases from Enclosure (3) of reference (a). If the officer is directed to show cause for the commission of an offense under the Uniform Code of Military Justice (UCMJ) punishable by confinement of six months or more, include the applicable Article(s)].

*Note: BOI Notification (Figure 15-16) may only list bases listed here

3. [Rank Name] will be notified by separate correspondence that separation proceedings have been initiated and of his/her right to 30 days delay in which to prepare his/her case.

4. The written report of the BOI shall be forwarded to this Command (staff judge advocate (SJA)) via the chain of command. A verbatim transcript of the proceedings is required in any case where the Board finds that any of the allegations are supported by a preponderance of the evidence.

5. Correspondence relating to this and all other officer administrative separation processing should be mailed using Federal Express.

6. Reference (b) provides time goals for processing officer administrative separation cases. Failure to comply with those standards shall be addressed in the return endorsement.

I. M. GENERAL

Copy to:

CMC (JAM)

SJA, [Alternate Show Cause Authority]

SJA, [Chain of Command]

[Rank Name of Accused]

08 AUG 2018

Figure 15-15
BOI Direction Letter (Retirement Eligible)

From: Commanding General/Commander
To: Commanding General, Unit

Subj: BOARD OF INQUIRY IN THE CASE OF [RANK FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.6_
(b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard Performance of Duty)
(c) [Report of NJP/Misconduct/etc.]

1. Pursuant to paragraphs 13d of reference (a) and 010202 of reference (b), I have been designated an Alternate Show Cause Authority for the Marine Corps. In that capacity, I have reviewed the allegations in reference (c), and have determined that there is sufficient information to refer this case to a Board of Inquiry (BOI) for a recommendation as to whether [Rank Name] should be involuntarily retired from the Marine Corps and, if retirement is recommended, whether [Rank Name] should be retired in his/her current grade or a lesser grade.

2. Accordingly, you are directed to convene a BOI under the provisions of references (a) and (b) to consider [Rank Name's] case. The specific reasons for separation to be considered by the Board are [substandard performance of duty, misconduct, and moral or professional dereliction] as evidenced by one or more of the following:

a. [Applicable bases from Enclosure (3) of reference (a). If the officer is directed to show cause for the commission of an offense under the Uniform Code of Military Justice (UCMJ) punishable by confinement of six months or more, include the applicable Article(s)].

*Note: BOI Notification (Figure 15-17) may only list bases listed here

3. [Rank Name] will be notified by separate correspondence that separation proceedings have been initiated and of his/her right to 30 days delay in which to prepare his/her case.

4. The written report of the BOI shall be forwarded to this Command (staff judge advocate (SJA)) via the chain of command. A verbatim transcript of the proceedings is required in any case where the Board finds that any of the allegations are supported by a preponderance of the evidence.

5. Correspondence relating to this and all other officer administrative separation processing should be mailed using Federal Express.

6. Reference (b) provides time goals for processing officer administrative separation cases. Failure to comply with those standards shall be addressed in the return endorsement.

I. M. GENERAL

Copy to:

CMC (JMJ)

SJA, [Alternate Show Cause Authority]

SJA, [Chain of Command]

[Rank Name of Accused]

Figure 15-16
BOI Notification (Not Retirement Eligible)

From: Alternate Show Cause Authority/Commanding General

To: Rank First Name MI Last Name MOS USMC/R

Subj: NOTIFICATION OF BOARD OF INQUIRY

Ref: (a) SECNAVINST 1920.6

(b) CG, [Unit] ltr 1920 Code of [date] (BOI dir ltr)

Encl: (1) Rights of a Respondent

(2) Acknowledgment of Notice

1. Pursuant to references (a) and (b), you are notified that a Board of Inquiry (BOI) will be convened to make a recommendation on your retention in the U.S. Marine Corps. The specific reason[s] for separation to be considered by the Board [is]/[are] [substandard performance of duty], [misconduct, and moral or professional dereliction] as evidenced by [one of] the following:

a. [Basis/Bases for separation from reference (b).]*

*Note: May only notify the officer of the reason(s) and basis/bases as directed by the Show Cause Authority/Alternate Show Cause Authority.

2. The BOI will make the following determinations, by majority vote, based on evidence presented at the hearing:

a. A finding on the reason[s] for separation. This finding is based on a preponderance of the evidence standard; and

b. One of the following:

(1) If the Board finds that [one or more of] the reason[s] for separation [is]/[are] supported by sufficient evidence to warrant separation, it may recommend your separation and make an additional recommendation as to the appropriate characterization of service; or

(2) If the Board finds that the reason[s] for separation are not supported by sufficient evidence to warrant separation for cause, upon receipt of the Report of the BOI, the Deputy Commandant, Manpower and Reserve Affairs will close your case.

3. The most adverse characterization of service that the Board may recommend is ([Honorable*]/[Other Than Honorable]).

*Note: If the officer is only directed to show cause for substandard performance of duty, the board may only separate the officer with an Honorable characterization of service.

4. You have 30 days in which to prepare your case. As the respondent, you are entitled to exercise the rights set forth in enclosure (1). Your failure to invoke any of these rights will not be considered as a bar to the BOI proceedings.

5. This letter is the notice required by reference (a). You will be notified of the names of the Board members and of the date and location of the hearing by separate correspondence.

6. You are directed to acknowledge receipt of this notification by completing enclosure (2) and returning it to this Command (staff judge advocate (SJA)) within five working days of receipt.

I. M. Commanding
(Can be signed by direction)

Copy to:
CMC (JAM)
SJA, [Alternate Show Cause Authority]
SJA, [Chain of Command]
[Rank Name of Respondent]

Figure 15-17
BOI Notification (Retirement Eligible)

From: Alternate Show Cause Authority/Commanding General

To: Rank First Name MI Last Name MOS USMC/R

Subj: NOTIFICATION OF BOARD OF INQUIRY

Ref: (a) SECNAVINST 1920.6

(b) CG, [Unit] ltr 1920 Code of [date] (BOI dir ltr)

Encl: (1) Rights of a Respondent

(2) Acknowledgment of Notice

1. Pursuant to references (a) and (b), you are notified that a Board of Inquiry (BOI) will be convened to make a recommendation on your retention in the U.S. Marine Corps. The specific reason[s] for involuntary retirement to be considered by the Board [is]/[are] [substandard performance of duty], [misconduct, and moral or professional dereliction] as evidenced by [one of] the following:

a. [Basis/Bases for retirement from reference (b).]*

*Note: May only notify the officer of the reason(s) and basis/bases as directed by the Show Cause Authority/Alternate Show Cause Authority.

2. The BOI will make the following determinations, by majority vote, based on evidence presented at the hearing:

a. A finding on the reason[s] for retirement. This finding is based on a preponderance of the evidence standard; and

b. One of the following:

(1) If the Board finds that [one or more of] the reason[s] for retirement [is]/[are] supported by sufficient evidence to warrant retirement, it may recommend your retirement and make an additional recommendation as to retirement grade; or

(2) If the Board finds that the reason[s] for retirement are not supported by sufficient evidence to warrant retirement for cause, upon receipt of the Report of the BOI, the Deputy Commandant, Manpower and Reserve Affairs will close your case.

3. Because you are a retirement-eligible officer, if the Board recommends retirement, the Board will also recommend whether you should be retired in your current grade or a lesser grade. The Board must recommend the grade in which you last served satisfactorily. [If the DC M&RA has authorized the Board to recommend a characterization of service: "The board may make an additional characterization as to the appropriate characterization of your service. The most adverse characterization of service of service that the Board may record is _____." The Board's recommendation is

merely a recommendation; the final decision as to retirement grade rests with the Secretary of the Navy.

4. You have 30 days in which to prepare your case. As the respondent, you are entitled to exercise the rights set forth in enclosure (1). Your failure to invoke any of these rights will not be considered as a bar to the BOI proceedings.

5. This letter is the notice required by reference (a). You will be notified of the names of the Board members and of the date and location of the hearing by separate correspondence.

6. You are directed to acknowledge receipt of this notification by completing enclosure (2) and returning it to this Command (staff judge advocate (SJA)) within five working days of receipt.

I. M. Commanding
(Can be signed by direction)

Copy to:
CMC (JAM)
SJA, [Alternate Show Cause Authority]
SJA, [Chain of Command]
[Rank Name of Respondent]

Figure 15-18
BOI Convening Order

From: Commanding General
To: Senior Member USMC/R

Subj: APPOINTING ORDER FOR THE BOARD OF INQUIRY IN THE CASE OF [RANK
FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.6
(b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)

1. In accordance with the references, you are hereby appointed as the Senior Member of the Board of Inquiry (BOI) in the case of [Rank First Name MI Last Name MOS USMC/R]. The following other officers are appointed as members:

- a. [Rank Initials Last Name], U.S. Marine Corps; and
- b. [Rank Initials Last Name], U.S. Marine Corps.

2. [Rank Initials Last Name], U.S. Marine Corps is appointed as the Legal Advisor.

3. You will be guided in the performance of your duties by the provisions of references (a) and (b). The BOI hearing shall be held at [Marine Corps Base Name] in [physical location] or as otherwise directed. The BOI is scheduled for [date]. The hearing is anticipated to take [no more than one day][x days]. The uniform will be [uniform].

I. M. GENERAL

Copy to:
SJA, [Unit]
BOI Members
Recorder
Counsel for Respondent
Legal Advisor

Figure 15-19(a)

Request for Waiver of Minimum Legal Advisor Qualifications

From: Command SJA
To: Commandant of the Marine Corps (JPL)

Subj: REQUEST FOR WAIVER OF MINIMUM LEGAL ADVISOR QUALIFICATIONS IN THE
CASE OF [RANK FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)

1. Background. Pursuant to paragraph 010903.B of the reference, a legal advisor for a Board of Inquiry (BOI) must be a judge advocate in the pay grade of O-4 or above who has previously been a BOI recorder, a BOI counsel for the respondent, or who is or has been, a military judge or a staff judge advocate to a GCMCA. A frocked O-4 meets the pay grade requirement to serve as a legal advisor. The reference further provides that if the minimum qualifications for a BOI legal advisor cannot be met, the Staff Judge Advocate for the General Court-Martial Convening Authority may request a waiver of the minimum qualifications from the Commandant of the Marine Corps (JPL).
2. Request. Request a waiver of the minimum recorder qualifications for [Attorney Rank Name].
3. Justification. [As applicable]
4. The point of contact for this matter is [...].

I. M. SJA

Figure 15-19(b)

Request for Waiver of Minimum BOI Recorder Qualifications

From: Command SJA

To: Commandant of the Marine Corps (JPL)

Subj: REQUEST FOR WAIVER OF MINIMUM RECORDER QUALIFICATIONS IN THE CASE OF [RANK FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard Performance of Duty)

1. Background. Pursuant to paragraph 010903.A of the reference, a recorder for a Board of Inquiry (BOI) must be a judge advocate in the pay grade of O-3 or above who has had at least one year of trial experience. The reference further states that if the minimum qualifications for a BOI recorder cannot be met, the Staff Judge Advocate for the General Court-Martial Convening Authority may request a waiver of the minimum qualifications from the Commandant of the Marine Corps (JPL).

2. Request. Request a waiver of the minimum recorder qualifications for [Attorney Rank Name].

3. Justification. [As applicable]

4. The point of contact for this matter is [...].

I. M. SJA

Figure 15-20
BOI Script

BOARD OF INQUIRY SCRIPT

IN THE CASE OF _____

PRELIMINARY NOTES

1. Attendance at the board hearing is the primary duty of an officer so detailed. Members, the recorder, and the defense counsel cannot miss the board proceedings unless prevented by illness, ordered away, or excused IN WRITING by a written modification to the convening order signed by the convening authority.

2. This guide is based on SECNAVINST 1920.6 and Volume 15 of the LSAM. All participants should thoroughly familiarize themselves with the references.

3. The recorder must obtain a Privacy Act statement from the respondent if the respondent plans to provide sworn or unsworn testimony at the hearing.

4. The following abbreviations are used throughout this Guide:

- SRMBR: Senior Member of the Board
- MBR: Member of the Board
- COUNSEL: Counsel for the Respondent
- REC: Recorder for the Board
- RESP: Respondent
- BOARD: Board of Inquiry
- UCMJ: Uniform Code of Military Justice

SECTION I. PRELIMINARIES

SRMBR: This board of inquiry will come to order. The reporter will note the time and date for the record.

REC: The Commanding General, _____ [Convening Authority], convened this board by an appointing order dated _____ (with a modification dated _____). The following officers named in that order are present:

_____ as the SENIOR MEMBER
_____ and _____ as the Board.

(If the respondent is a reserve officer, state the following: The following members are reserve officers, as is the respondent: _____).

REC: (All officers named in the appointing order are present) (The following officer(s) listed in the appointing order(s) (is) (are) absent with the express consent of the convening authority)

_____).

REC: _____ has been named as recorder for the board and is present. _____ has been assigned as the counsel for the respondent and is present. The respondent does not have an individual military counsel (_____, has been assigned as the individual military counsel for the respondent and is present).

REC: Both the recorder and (the) (both) counsel for the respondent are lawyers certified under Article 27(b) (1), UCMJ.

REC: [(The respondent has no civilian counsel) (_____, a member of the _____ state bar, is the civilian counsel for the respondent and is present).]

REC: _____ has been appointed as court reporter and has been previously sworn.

REC: The board's legal advisor is _____, a judge advocate certified under Article 27(b) (1) of the UCMJ. The legal advisor provides such assistance as the board requires, but does not participate in closed sessions of the board.

SRMBR: The respondent is (present) (absent) (if absent, explain absence).

NOTE: ABSENCE OF RESPONDENT. The board may proceed with the respondent absent if he/she (1) is incarcerated by civil authorities, (2) has waived personal appearance by stating in writing or through counsel that he/she does not want to appear, or (3) fails to appear after he/she or his/her counsel has received notice of the date, time, and place of this hearing. See SECNAVINST 1920.6_ concerning orders for reservists to appear at boards.

SRMBR: The record will reflect that this board is properly convened and constituted. The purpose of this board is to consider relevant facts in the case of the respondent and determine whether the respondent should be retained in the naval service or recommended for (discharge) (retirement) from the naval service by reason of (substandard performance of duty) (misconduct) (moral or professional dereliction) (retention not clearly consistent with the interests of national security (discharge) (retirement) from the naval service by reason of (substandard performance of duty) (misconduct) (moral or professional dereliction) (retention not clearly consistent with the interests of national security) (_____).

SECTION II. RIGHT TO COUNSEL

SRMBR: I will now advise the respondent of his/her right to counsel before the board. These rights were listed in the notification. Does counsel desire that I explain these rights to the respondent?

COUNSEL: The respondent (desires explanation) (fully understands his/her right to counsel and does not desire further explanation).

SECTION III. EXPLANATION OF RIGHT TO COUNSEL
(OMIT AND GO TO SECTION IV IF RESPONDENT WAIVES EXPLANATION)

SRMBR: I will now advise the respondent of his/her right to counsel before this board. If you have any questions, you should direct them to me, or, in private, to your counsel.

You have the following rights:

a. To have appointed as military counsel, a military lawyer certified under Article 27(b) (1), UCMJ.

b. To request individual military counsel of your own choice if the counsel is reasonably available. Both the appointed and individual military counsel may represent you only if the convening authority, in his or her sole discretion, approves a written request from you requesting representation by both counsel and stating in detail why such representation is necessary to ensure a fair hearing.

c. To retain civilian counsel at no expense to the government, in addition to, or in lieu of, military counsel. Consultation with, or retention of civilian counsel, shall not delay orderly processing of the board. The government will not reimburse you for costs or fees of civilian counsel or for any other expenses incurred concerning any board proceedings.

SRMBR: Do you understand your right to counsel before this board of inquiry?

RESP: (Yes) (No) sir/ma'am.

SRMBR: By whom do you wish to be represented?

RESP: _____ sir/ma'am.

NOTE: The respondent may elect to represent him/herself at the board, but his/her detailed defense counsel should still be present. If he/she desires to represent him/herself, he/she must so state on the record and sign a written waiver of counsel, which will be included as a government exhibit. The senior member, after inquiring to ensure that the respondent is knowingly and voluntarily waiving his/her right to counsel, should state, "I find your waiver of counsel to be knowing and voluntary."

SECTION IV. ADDITIONAL RIGHTS

SRMBR: In addition to your right to counsel, you have many other rights at this board. These were listed in the notification and the acknowledgment of rights. Does counsel desire that I explain these additional rights to the respondent?

COUNSEL: The respondent (desires explanation) (fully understands his/her rights and does not desire further explanation).

SECTION V. EXPLANATION OF ADDITIONAL RIGHTS
(OMIT AND GO TO SECTION VI IF RESPONDENT WAIVES EXPLANATION)

SRMBR: I now will now advise you your rights before this board. If you have any questions, you should direct them to me, or, in private, to your counsel. You have the following rights:

1. To request reasonable additional time to prepare your case. This is time in addition to the 30 calendar days provided between the time of the notification and the time of the hearing. Before the hearing convenes, the convening authority decides continuance requests. After the hearing convenes, I, as the senior member, will decide them. However, the show cause authority must approve any request that continues the hearing for more than 60 calendar days from the date of notification.

2. To qualified counsel as explained in Section IV of this guide.

3. To present matters in your own behalf.

4. To full access to, and copies of, U.S. Government records relevant to the case. DC M&RA may withhold (1) classified information, or (2) information whose release is prohibited by federal law. A summary of classified information will be provided to the extent the interests of national security permit.

5. To the names of all witnesses in advance of the board hearing. Failure to provide any information or the name of a witness shall not preclude the board from considering the information or hearing the witness, provided you have had the opportunity to examine any statement, or talk with any witness presented, prior to consideration by the board.

6. To question or to challenge any member or the legal advisor for cause at the hearing or to present any information showing that the member cannot render a fair and impartial decision.

7. To request from the convening authority, or the board, the personal appearance before the board of any witness whose testimony you consider to be pertinent to your case, as provided in paragraph (9) of SECNAVINST 1920.6_.

8. To submit prior to, or during the board, any matter from your service record; sworn or unsworn statements; affidavits; depositions; certificates; stipulations; letters; answers; and any other real or documentary evidence.

9. You and counsel may question any witnesses appearing before the board. Any witness who testifies live to the board (in person or by telephone) must be under oath or affirmation, although you may make an unsworn statement.

10. You may remain silent or give sworn or unsworn testimony. You may testify, sworn or unsworn, personally or through counsel. The members and recorder can question or cross-examine you if you testify under oath. Neither the members nor the recorder may question or cross-examine you if you give unsworn testimony, but the recorder may present evidence to rebut the content of your unsworn testimony.

11. You or counsel may present argument on any matter before the board.

12. To receive a copy of the record of the proceedings. The record is the Report of the BOI and its enclosures, including the transcript and exhibits. Classified material may be redacted from the record and replaced with a summary.

13. To provide, within 10 calendar days after receiving the Report of the BOI, corrections of any errors, comments on the record, and any other matters concerning the board proceedings. You, or your counsel, may request an extension to the Alternate Show Cause Authority or Show Cause Authority who directed the BOI. Such requests for extension shall not exceed 20 calendar days.

14. To appear in person, with or without counsel, at all board proceedings except closed proceedings and deliberations.

Your failure to invoke any of these rights is a waiver of those rights and does not bar the board's proceedings, findings, or recommendations. You are also advised that if you are dissatisfied with the ultimate decision in your case that you may request relief from the Board for Correction of Naval Records or, if you are involuntarily separated, the Naval Discharge Review Board.

SRMBR: Do you have any questions concerning your rights at this board?

RESP: (Yes) (No), sir/ma'am.

SECTION VI: GENERAL INSTRUCTIONS

SRMBR: The purpose of this board is to give the respondent a full and impartial hearing and an opportunity to respond to and rebut the allegations which are the basis for referring this case to a board of inquiry. After hearing evidence from both sides, the board will determine whether the preponderance of the evidence proves those allegations. If a preponderance of the evidence does not support the allegations, the case will be closed by the Deputy Commandant, Manpower and Reserve Affairs (DC M&RA).

A. READ IF THE RESPONDENT IS NOT RETIREMENT-ELIGIBLE

SRMBR: If the preponderance of the evidence supports the allegations, the board will recommend whether the respondent should be discharged. If it recommends discharge, it will also recommend the characterization of the discharge. Since a discharge would be at the grade the respondent currently holds, the board will not recommend a discharge grade if it recommends discharge in the respondent's current grade.

B. READ IF THE RESPONDENT IS ELIGIBLE FOR RETIREMENT (OR TRANSFER TO THE RETIRED RESERVE)

SRMBR: Depending on the officer's duty status, an officer, whether regular or Reserve, may be eligible for retirement; however, a Reserve officer may not be eligible for retirement, but may instead be eligible for transfer to the retired reserve. In this case, the officer is (eligible for retirement)(eligible for transfer to the retired reserve).

SRMBR: If the preponderance of the evidence supports the allegations, the board will recommend whether the respondent should be retired (transferred to the retired reserve). If it recommends retirement (transfer to the retired reserve), it will also recommend to the Secretary of the Navy whether retirement (transfer) should be in the current grade or the last grade satisfactorily held.

SRMBR: If the DC M&RA has authorized this board to recommend a characterization of service, the board will make such a recommendation. However, if DC M&RA has not authorized this board to recommend a characterization of service, the board shall not do so.

C. READ IN ALL CASES

SRMBR: Depending on the board's findings and recommendations, final action on the case will be taken by the DC M&RA or the Secretary of the Navy.

SRMBR: The members are informed that Congress created two separate systems for adjudicating officer misconduct cases.

SRMBR: The first system is the judicial system, implemented by the Uniform Code of Military Justice. The purpose of the judicial system is to determine guilt and punishment, and such determinations are made at nonjudicial punishment hearings or courts-martial.

SRMBR: The second system is the administrative system, which is implemented by statute and regulations. The purpose of the administrative system is not to punish but to determine whether an officer's performance or conduct warrants separation from the service. Thus, the board of inquiry examines allegations against an officer and, if it substantiates them, recommends whether the officer should be retained or separated (involuntarily retired).

SRMBR: The officer's commander reviews each case of officer misconduct and determines the most appropriate means of resolving the allegations against the officer: the judicial system alone; the administrative system alone; or both systems.

SRMBR: The judicial and administrative systems may work independently. For example, a board of inquiry may be held without an officer receiving nonjudicial punishment. On the other hand, an officer may receive nonjudicial punishment but never have the case referred to a board of inquiry.

SRMBR: Likewise, the systems may work together; for example, an officer may receive nonjudicial punishment and then have his case referred to a board of inquiry. Referring an officer's case to a board of inquiry after the officer's case has been to a court-martial or to a nonjudicial punishment hearing is not double jeopardy.

SRMBR: Accordingly, this board of inquiry functions as an administrative rather than a judicial body. The rules of evidence applicable at courts-martial do not apply at this hearing; however, Article 31(b), UCMJ, does apply. No military member may be compelled to testify or produce evidence that will tend to incriminate that member or be required to answer questions not material to issues before the board.

SRMBR: The following will occur during the hearing: voir dire of the members and legal advisor and challenges for cause; motions; opening statements; presentation of exhibits; presentation of the government's case; presentation of the respondent's case; rebuttal; closing arguments from counsel; instructions for the members; and deliberation by the members. The members are cautioned not to make any decisions until after hearing all the evidence; final arguments of counsel; and instructions on deliberation. All board proceedings will be conducted in this room while the board is in session.

SRMBR: This board will consider any matter presented which is relevant to the issues before the board, whether written or oral, sworn or unsworn. Real evidence--as distinguished from testimonial or documentary evidence--may be shown and admitted to the board and should be accurately described or reproduced for the record. The board may refuse to consider any oral or written matter presented if it is irrelevant, not authentic, or unnecessarily repetitive or cumulative. However, evidence will not be excluded merely because it would be inadmissible in a court. If evidence is classified, the provisions of the Department of the Navy information security regulations will be observed.

SRMBR: Board decisions are made by majority vote based on the preponderance of the evidence, which is the standard of proof. A preponderance, which is the same standard for nonjudicial punishment hearings, is less than beyond reasonable doubt, which is the standard at a court-marital. A preponderance of the evidence proves a fact if the greater weight of evidence, i.e., 51% or more of the evidence, supports

the fact. The weight of evidence is not determined by the sheer number of witnesses or volume of evidentiary matter; it is determined by the evidence which best accords with reason and probability. The board members will rely on their individual judgment and experience in determining the weight and credibility to be given to the evidence.

SRMBR: The legal advisor will rule on all matters of procedure, evidence, and challenges, except challenges to themselves. The convening authority will rule on all challenges for cause to the legal advisor.

SRMBR: Since the procedures used at this hearing may be unfamiliar to the board members, the members are encouraged to ask questions during the hearing about those procedures.

SRMBR: The hearing will be conducted in an atmosphere of decorum and dignity. Members and witnesses will be treated with respect and protected from questions which exceed the bounds of proper examination and propriety or which are intended merely to harass, annoy, or humiliate. Witnesses will be excluded from the hearing until after their testimony is complete.

VII. CHALLENGES TO BOARD MEMBERS

SRMBR: Does either side desire to question a member [or legal advisor] on possible grounds for challenge for cause?

REC: The recorder has (a few)(no) questions
(_____).

COUNSEL: The respondent has (a few)(no) questions
(_____).

SRMBR: Does the recorder or the respondent wish to challenge any board member or the legal advisor for cause?

REC: The recorder does (not).

COUNSEL: The respondent does (not).

SRMBR: [If a challenge is made, recess to resolve it. Consult the legal advisor if necessary. The senior member announces the results of the challenge and summarizes the reasoning behind the decision]

SRMBR: Are both sides ready to proceed?

REC: The recorder is ready
(_____).

COUNSEL: Counsel for the respondent is ready
(_____).

SECTION VIII: MOTIONS AND OPENING STATEMENTS

SRMBR: Does either side have any motions?

REC: The government does (not) (_____).

COUNSEL: The respondent does (not) (_____).

SRMBR: [If a motion is made, recess to resolve it. Consult the legal advisor if necessary. The senior member announces the ruling of the motion and summarizes the reasoning behind the decision.]

SRMBR: The recorder may proceed with an opening statement.

REC: (The recorder has no opening statement) (_____).

SRMBR: Counsel for the respondent may proceed with an opening statement or may wait until after the recorder has presented the government's case. When does counsel for respondent desire to give an opening statement?

COUNSEL: Counsel (will wait until after the government's case) (will give opening statement now) (has no opening statement) (_____).

SRMBR: Unless either side objects, the board will receive each side's exhibits now so that the members can review them before hearing testimony. Any exhibits received and reviewed now is merely to assist the Board in understanding the case and possibly ask more informed questions, when appropriate. The Board remains cautioned to not pre-decide any issues before this Board. Does either side object to this procedure?

REC: The recorder (does) (does not) object.

COUNSEL: The recorder (does) (does not) object.

SECTION IX: PRESENTATION OF EXHIBITS

REC: I will hand to the senior member the original government exhibits offered to the board. They are marked as "GE" and numbered as noted in the list of government exhibits in front of government exhibit one. I also have a copy of these exhibits for each member; please write on the copies but not the originals. Included in a separate folder with the original exhibits is the original findings worksheet which the members will use to record findings and recommendations. Instructions are at the top of the worksheet.

SRMBR: Does the respondent object to any of these exhibits?

COUNSEL: The respondent (does) (does not) object (for the following reasons: _____) (If needed, recess to consult legal advisor).

SRMBR: All government exhibits are admitted (except for GE _____) (The following objections are decided as follows: _____ (summarize the reasoning behind the decision)). Does the respondent have any exhibits?

COUNSEL: The respondent offers the following exhibits marked as "RE" and lettered:

- RE A: _____
- RE B: _____
- RE C: _____
- RE D: _____

SRMBR: Does the recorder object to any of these exhibits?

REC: The recorder (does) (does not) object (for the following reasons: _____) (If needed, recess to consult legal advisor).

SRMBR: All respondent exhibits are admitted (except for RE _____) (The following objections are decided as follows: _____ (summarize the reasoning behind the decision)).

SRMBR: The board will recess to review these documents. The reporter will note the time and date for the record.

SECTION X: WITNESSES

SRMBR: The board will come to order. All persons who were present when the board recessed are again present. The reporter will note the time and date for the record. The recorder may present the government's case.

REC: The government (calls _____ as a witness) (has nothing further).

NOTE: All witnesses will be sworn. **OATH: Do you swear or affirm that the evidence you shall provide at this hearing shall be the truth, the whole truth, and nothing but the truth?** The order of questioning: direct examination by recorder; cross-examination by respondent's counsel; redirect (as necessary); re-cross(as necessary); examination by the board. If during live testimony any witness subject to the UCMJ provides information indicating that he or she committed an offense under the UCMJ, s/he will be advised of her/his rights under Article 31(b) of the UCMJ.

SRMBR: Does the government have any more witnesses?

REC: The government (has no further witnesses) (_____).

SRMBR: Does the respondent have any witnesses?

COUNSEL: The respondent (calls _____ as a witness) (has nothing further).

NOTE: All witnesses will be sworn (the respondent, however, may give unsworn testimony; if he/she gives unsworn testimony, neither the board nor the members can cross-examine him/her). **OATH: Do you swear or affirm that the evidence you shall provide at this hearing shall be the truth, the whole truth, and nothing but the truth?** The order of questioning: direct examination by counsel for respondent; cross-examination by the recorder; redirect (as necessary); re-cross(as necessary); examination by the board. If the respondent testifies (sworn or unsworn), he/she will sign and date a Privacy Act statement to be attached to the record as a government exhibit. If during live testimony any witness subject to the UCMJ provides information indicating that he/she committed an offense under the UCMJ, s/he will be advised of her/his rights under Article 31(b) of the UCMJ.

SRMBR: Does the respondent have any more witnesses?

COUNSEL: The respondent (has no further witnesses) (_____).

XI. REBUTTAL

SRMBR: Does the government have any rebuttal evidence?

REC: The government has (none) (calls the following witnesses: _____).
(submits the following exhibits: GE- _____).

SRMBR: (The following government exhibits are admitted: GE- _____)

SRMBR: Does the respondent have any more evidence?

COUNSEL: The respondent has (none) (calls the following witnesses: _____).
(submits the following exhibits: RE- _____).

SRMBR: (The following respondent's exhibits are admitted: RE- _____).

SRMBR: Does any member of the board want to recall a witness, call an additional witness, or obtain any further evidence?

SRMBR: The members (do not want to recall a witness, call an additional witness, or obtain any further evidence) (want to _____).

XII. CLOSING ARGUMENTS

SRMBR: Are both sides prepared for argument?

REC: The government is.

COUNSEL: The respondent is.

SRMBR: The recorder may proceed.

REC: _____.

SRMBR: Counsel for the respondent may proceed.

COUNSEL: _____.

SRMBR: Does the recorder have any final argument?

REC: The government (has no rebuttal) (has the following rebuttal: _____).
_____) .

SRMBR: Does either side have anything further to present?

REC: The Government has (nothing further) (_____).

COUNSEL: The respondent has (nothing further) (_____).

XIII: INSTRUCTIONS ON DELIBERATION

SRMBR: The board will make the following determinations by majority vote based on the preponderance of the evidence presented at the hearing:

A. READ IF RESPONDENT IS NOT ELIGIBLE FOR RETIREMENT (OR TRANSFER TO THE RETIRED RESERVE)

SRMBR: If the board finds that the evidence DOES NOT SUBSTANTIATE the allegations, the board will recommend that the case be closed. If the board finds that the evidence SUBSTANTIATES the allegations, the board will make one of two recommendations:

- (1) it will recommend that the respondent, notwithstanding the substantiated allegations, be retained and that the case be closed, OR
- (2) it will recommend that the respondent be separated.

SRMBR: If the board recommends separation, it must recommend characterization of service. If the basis for separation is substandard performance, the characterization of service must be honorable. If the basis includes misconduct or moral or professional dereliction, the board may recommend an Honorable, a General (Under Honorable Conditions), or an Other Than Honorable characterization of service.

SRMBR: During deliberation, the board will review the guidance in SECNAVINST 1920.6C on determining retention and characterization.

**B. READ IF THE RESPONDENT IS ELIGIBLE FOR
RETIREMENT (OR TRANSFER TO THE RETIRED RESERVE)**

SRMBR: If the board finds that the evidence DOES NOT SUBSTANTIATE the allegations, the board will recommend that the case be closed. If the board finds that the evidence SUBSTANTIATES the allegations, the board will make one of two recommendations:

(1) it will recommend that the respondent, notwithstanding the substantiated allegations, not be retired and close the case, OR

(2) it will recommend that the respondent be retired (transferred to the retired reserve).

SRMBR: If the board recommends retirement (or transfer to the retired reserve), it must recommend a retirement grade.

SRMBR: Since an officer retires at the highest grade in which the officer served satisfactorily, the board must determine if the officer has served satisfactorily in the current grade. If that service is satisfactory, the board recommends retirement (or transfer to the retired reserve) in the current grade; if that service is unsatisfactory, the board recommends retirement (or transfer to the retired reserve) in the last grade satisfactorily held.

SRMBR: In determining if service in grade was satisfactory, the board will consider the record of service during the entire period the grade was held. The board will follow the guidance in enclosure (6) of SECNAVINST 1920.6_.

SRMBR: In order to retire in grade (or be transferred to the retired reserve) the officer must also have served the minimum time required by statute or regulations. The respondent has (has not) served for a minimum time to be retired (transferred to the retired reserve) in grade.

NOTE: The recorder will provide retirement eligibility information to the members. 10 USC §§ 1370 and 6323 address regular and Reserve officers; section 1371 and 1293 address warrant officers; and section 12771 addresses officers eligible for transfer to the retired reserve. MCO 1900.16 w/ch 1 (MARCORSEPMAN) also addresses minimum time in grade requirements. Consult the legal advisor with any questions.

SRMBR: If the DC M&RA has authorized this board to recommend a characterization of service, the board will make such a recommendation. However, if the DC M&RA has not authorized this board to recommend a characterization of service, the board shall not do so.

C. READ IN ALL CASES

SRMBR: Board deliberations include a full and free discussion of all matters presented for the board's consideration. The board will decide its findings and recommendations by majority vote. The senior member will record the findings and recommendations on the findings and recommendations worksheet by placing his or her initials in the blank beside any finding or recommendation decided by majority vote. Instructions are at the top of the worksheet. I have the original worksheet. Does either side object to the worksheet?

REC: The recorder (does) (does not) object (for the following reasons: _____) (If needed, recess to consult legal advisor).

COUNSEL: The respondent (does) (does not) object (for the following reasons: _____) (If needed, recess to consult legal advisor).

SRMBR: (The following objections are decided as follows: _____ (summarize the reasoning behind the decision)).

SRMBR: **[Read if evidence of preservice misconduct has been introduced]**
The board is advised that SECNAVINST 1920.6_ imposes a limitation on considering evidence of preservice misconduct. The board may only consider it for the purpose of deciding whether to recommend separation or retention of the respondent. Such evidence shall not be used in determining the recommendation for characterization of service. The board will affirmatively state on the findings and recommendations worksheet that such evidence was considered only for the purpose of determining whether it should recommend retention or separation.

SRMBR: **[Read if performance or conduct identified more than five years prior to the initiation of processing for separation has been introduced]**
The board is advised that SECNAVINST 1920.6_ imposes a limitation on considering performance or conduct identified more than five years prior to the initiation of processing for separation. Performance or conduct is deemed to have been "identified" when it is reported to the show cause authority. "Initiation of processing" is deemed to have occurred when the the show cause authority officially notifies the officer of administrative separation processing. The board will affirmatively state on the findings and recommendations worksheet that the board did not consider such evidence.

SRMBR: **[Read if the respondent is a Reservist being processed for separation based on conduct in the civilian community committed while the respondent was not on active duty or active duty for training and not wearing the military uniform]** The board is advised that SECNAVINST 1920.6_ imposes a limitation on the characterization of service for conduct in the civilian community of members of a reserve component who are not on active duty or active duty for training. Such conduct may form the basis for an Other Than Honorable characterization of service only if such conduct affects directly the performance of the member's military duties. Such conduct may form the basis for a General (Under Honorable Conditions) characterization of service only if such conduct has an adverse impact on the overall effectiveness of the Naval Service, including the military morale and efficiency. If a military member tests positive for the presence of illegal drugs in the member's body while in an active or inactive status, the drug abuse shall be deemed to have affected directly the member's readiness and performance of military duties. The board will review SECNAVINST 1920.6_ during deliberation.]

SRMBR: Does either side have any questions or anything further?

REC: The Government has (none).

COUNSEL: The respondent has (none).

SRMBR: The board closed for deliberation at _____ hours, on _____ . All parties, except board members, will leave the hearing room.

XIV: ANNOUNCEMENT OF FINDINGS AND RECOMMENDATIONS

SRMBR: The board opened at _____ hours _____ on _____. I will announce the findings and recommendations of the board by reading from the worksheet: (senior member reads findings and recommendations worksheet). The worksheet will be made an enclosure to the board's report.

SRMBR: The board has no minority report (The following member(s) will be submitting minority reports: _____ (summarize reason for minority report(s)); this (these) minority report(s) will include the extent of nonconcurrency with the majority and will be attached as an enclosure (enclosures) to the board's report).

SRMBR: Does anyone have any other business to bring before the board? If not, the board is adjourned.

END OF PROCEEDING

Figure 15-21(a)
BOI Findings Worksheet (Not Retirement Eligible)

(Note: Below is an example using the most common reasons for separation. Each reason listed on the BOI direction letter must be listed on the findings worksheet. The findings worksheet may NOT contain a basis for separation that is not in the BOI direction letter. The worksheet must be tailored for each case.)

FINDINGS OF THE BOARD OF INQUIRY

[AS THE BOARD VOTES DURING DELIBERATION, THE SENIOR MEMBER INITIALS BLANKS ON THIS WORKSHEET TO INDICATE THE BOARD'S DECISIONS. THE SENIOR MEMBER WILL THEN ANNOUNCE THE BOARD'S DECISIONS BY READING THIS WORKSHEET WHEN THE BOARD RECONVENES.]

[Rank First Name MI Last Name MOS USMC/R], by a majority vote, this Board of Inquiry finds that:

[SELECT AND INITIAL NEXT TO PARAGRAPH (1) OR (2). IF 2 IS SELECTED, ALSO SELECT AND INITIAL PARAGRAPHS (3)-(5).]

1. _____ **ALLEGATION(S) UNSUBSTANTIATED.** The preponderance of the evidence substantiates none of the reasons for separation for cause. Accordingly, the Board recommends that your case be closed.

2. _____ **ALLEGATIONS(S) SUBSTANTIATED.** The preponderance of the evidence substantiates [one or more of] the reason(s) for separation for cause as set forth below.
 - a. _____ **Substandard Performance of Duty.** Specifically:
 - (1) _____ Failure to demonstrate acceptable qualities of leadership required of an officer of [his/her] grade.

 - (2) _____ Failure to properly discharge the duties expected of an officer of [his/her] grade and experience.

 - b. _____ **Misconduct and Moral or Professional Dereliction.** Specifically:
 - (1) _____ Commission of a military or civilian offense that, if prosecuted under the UCMJ, could be punished by confinement of six months or more, or if prosecuted under the UCMJ, would require specific intent for conviction. Specifically:
 - (a) _____ A violation of Article [xxx], UCMJ.

 - (b) _____ A violation of Article [xxx], UCMJ.

(list each Article separately)

(2) _____ Intentional misrepresentation or omission of material fact in official written documents or official oral statements.

3. **RETENTION OR SEPARATION.** Having found that the preponderance of the evidence substantiates [one or more of] the reason(s) for separation:

a. _____ **Retention.** The Board finds that none of the reasons listed above warrant [Rank Name's] separation from the naval service and recommends closing the case.

b. _____ **Separation.** The Board recommends separating [Rank Name] from the naval service for the reason(s) listed above. The Board further recommends that [Rank Name's] service be characterized as:

- (1) _____ Honorable*
- (2) _____ General (Under Honorable Conditions)
- (3) _____ Other Than Honorable

*Note: If the CG directed the officer to show cause for substandard performance only, the only available characterization of service is Honorable.

[SEE ENCLOSURE (5) OF SECNAVINST 1920.6_ FOR GUIDANCE ON CHARACTERIZATION OF SERVICE RECOMMENDATION]

4. **MINORITY REPORT**

[IF ANY MEMBER OF THE BOARD DOES NOT CONCUR WITH THE MAJORITY, THE NONCONCURRING MEMBER MUST SUBMIT A MINORITY REPORT WHICH INCLUDES THE EXTENT OF NON-CONCURRENCE AS TO EACH FINDING AND RECOMMENDATION AND THE REASONS THEREFORE.]

- a. _____ There is no minority report. OR
- b. _____ The minority report will be attached to the Report of the Board of Inquiry.

5. **ADDITIONAL CONSIDERATIONS**

a. **Preservice Misconduct**

[IF THE BOARD CONSIDERS PRESERVICE MISCONDUCT, THE SENIOR MEMBER MUST INDICATE THAT THE MEMBERS CONSIDERED THE PRESERVICE MISCONDUCT ONLY FOR THE PURPOSE OF DETERMINING WHETHER TO RECOMMEND RETENTION OR SEPARATION.]

- (1) _____ The Board of Inquiry did not consider preservice misconduct. OR

(2) _____ The Board of Inquiry considered preservice misconduct, but only for the purpose of determining whether to recommend retention or separation.

b. Misconduct Older Than Five Years

[THE BOARD MAY NOT CONSIDER MISCONDUCT IDENTIFIED MORE THAN FIVE YEARS PRIOR TO THE INITIATION OF PROCESSING FOR SEPARATION TO FORM THE BASIS FOR SEPARATION (SUBSTANDARD PERFORMANCE OF DUTY OR MISCONDUCT AND MORAL OR PROFESSIONAL DERELICTION). THE SENIOR MEMBER MUST INDICATE THAT THE MEMBERS DID NOT CONSIDER THIS TYPE OF MISCONDUCT TO FORM THE BASIS OF SEPARATION. THE BOARD MAY CONSULT WITH THE LEGAL ADVISOR WITH QUESTIONS CONCERNING PRIOR MISCONDUCT. SECNAVINST 1920.6_ ENCLOSURE (4), PARAGRAPH 11e]

(1) _____ The Board of Inquiry did not consider misconduct identified more than five years prior to the initiation of processing for separation.

Initials LName
Rank, USMC
President

Initials LName
Rank, USMC
Member

Initials LName
Rank, USMC
Member

Initials LName
Rank, USMC
Recorder

Initials LName
Rank, Service
Respondent's Counsel

Initials LName
Rank, Service
Respondent's Counsel

Figure 15-21(b)
BOI Findings Worksheet (Retirement Eligible)

(Note: Below is an example using the most common reasons for separation. Each reason listed on the BOI direction letter must be listed on the findings worksheet. The findings worksheet may NOT contain a basis for separation that is not in the BOI direction letter. The worksheet must be tailored for each case.)

FINDINGS OF THE BOARD OF INQUIRY

[AS THE BOARD VOTES DURING DELIBERATION, THE SENIOR MEMBER INITIALS BLANKS ON THIS WORKSHEET TO INDICATE THE BOARD'S DECISIONS. THE SENIOR MEMBER WILL THEN ANNOUNCE THE BOARD'S DECISIONS BY READING THIS WORKSHEET WHEN THE BOARD RECONVENES.]

[Rank First Name MI Last Name MOS USMC/R], by a majority vote, this Board of Inquiry finds that:

[SELECT AND INITIAL NEXT TO PARAGRAPH (1) OR (2). IF 2 IS SELECTED, ALSO SELECT AND INITIAL PARAGRAPHS (3)-(5).]

1. _____ **ALLEGATION(S) UNSUBSTANTIATED.** The preponderance of the evidence substantiates none of the reasons for separation for cause. Accordingly, the Board recommends that your case be closed.
2. _____ **ALLEGATIONS(S) SUBSTANTIATED.** The preponderance of the evidence substantiates [one or more of] the reason(s) for separation for cause as set forth below.
 - a. _____ **Substandard Performance of Duty.** Specifically:
 - (1) _____ Failure to demonstrate acceptable qualities of leadership required of an officer of [his/her] grade.
 - (2) _____ Failure to properly discharge the duties expected of an officer of [his/her] grade and experience.
 - b. _____ **Misconduct and Moral or Professional Dereliction.** Specifically:
 - (1) _____ Commission of a military or civilian offense that, if prosecuted under the UCMJ, could be punished by confinement of six months or more, or if prosecuted under the UCMJ, would require specific intent for conviction. Specifically:
 - (a) _____ A violation of Article [xxx], UCMJ.
 - (b) _____ A violation of Article [xxx], UCMJ.

(list each Article separately)

(2) _____ Intentional misrepresentation or omission of material fact in official written documents or official oral statements.

3. **RETENTION OR INVOLUNTARY RETIREMENT.** Having found that the preponderance of the evidence substantiates [one or more of] the reason(s) for involuntary retirement:

a. _____ **Retention.** The Board finds that none of the reasons listed above warrant [Rank Name's] involuntary retirement from the naval service and recommends closing the case.

b. _____ **Involuntary Retirement.** The Board recommends involuntarily retiring [Rank Name] for the reason(s) listed above. The Board further recommends that [Rank/Name] be retired:

(1) _____ In [his/her] current grade.

(2) _____ In the inferior grade of _____.

c. _____ **Characterization of Service.** (Only if authorized by the DC M&RA.) The Board recommends that [Rank/Name's] service be characterized as:

(a) _____ Honorable.

(b) _____ General (Under Honorable Conditions).

(c) _____ Other Than Honorable.

[THE BOARD IS NOT LIMITED TO ONE GRADE LOWER THAN SNO'S CURRENT GRADE IF THE BOARD FINDS THAT SNO HAS NOT SATISFACTORILY HELD THAT INFERIOR GRADE. SEE ENCLOSURES (6) and (8) OF SECNAVINST 1920.6_ FOR GUIDANCE ON RETIREMENT GRADE RECOMMENDATION.]

4. **MINORITY REPORT**

*[THE BOARD MAY NOT CONSIDER MISCONDUCT **IDENTIFIED** MORE THAN FIVE YEARS PRIOR TO THE INITIATION OF PROCESSING FOR SEPARATION TO FORM THE **BASIS** FOR SEPARATION (SUBSTANDARD PERFORMANCE OF DUTY OR MISCONDUCT AND MORAL OR PROFESSIONAL DERELICTION). THE SENIOR MEMBER MUST INDICATE THAT THE MEMBERS DID NOT CONSIDER THIS TYPE OF MISCONDUCT TO FORM THE BASIS OF SEPARATION. THE BOARD MAY CONSULT WITH THE LEGAL ADVISOR WITH QUESTIONS CONCERNING PRIOR MISCONDUCT. SECNAVINST 1920.6_ ENCLOSURE (4), PARAGRAPH 11e]*

a. _____ There is no minority report. OR

b. _____ The minority report will be attached to the Report of the Board of Inquiry.

5. **ADDITIONAL CONSIDERATIONS**

a. Preservice Misconduct

[IF THE BOARD CONSIDERS PRESERVICE MISCONDUCT, THE SENIOR MEMBER MUST INDICATE THAT THE MEMBERS CONSIDERED THE PRESERVICE MISCONDUCT ONLY FOR THE PURPOSE OF DETERMINING WHETHER TO RECOMMEND RETENTION OR INVOLUNTARY RETIREMENT.]

(1) _____ The Board of Inquiry did not consider preservice misconduct. OR

(2) _____ The Board of Inquiry considered preservice misconduct, but only for the purpose of determining whether to recommend retention or involuntary retirement.

b. Misconduct Older Than Five Years

[THE BOARD MAY NOT CONSIDER MISCONDUCT IDENTIFIED MORE THAN FIVE YEARS PRIOR TO THE INITIATION OF PROCESSING FOR SEPARATION TO FORM THE BASIS FOR SEPARATION (SUBSTANDARD PERFORMANCE OF DUTY OR MISCONDUCT AND MORAL OR PROFESSIONAL DERELICTION). THE SENIOR MEMBER MUST INDICATE THAT THE MEMBERS DID NOT CONSIDER THIS TYPE OF MISCONDUCT TO FORM THE BASIS OF SEPARATION. THE BOARD MAY CONSULT WITH THE LEGAL ADVISOR WITH QUESTIONS CONCERNING PRIOR MISCONDUCT. SECNAVINST 1920.6_ ENCLOSURE (4), PARAGRAPH 11.e]

(1) _____ The Board of Inquiry did not consider misconduct identified more than five years prior to the initiation of processing for separation.

Initials LName
Rank, USMC
President

Initials LName
Rank, USMC
Member

Initials LName
Rank, USMC
Member

Initials LName
Rank, USMC
Recorder

Initials LName
Rank, Service
Respondent's Counsel

Initials LName
Rank, Service
Respondent's Counsel

Figure 15-22
Report of BOI (Not Retirement Eligible)

From: Senior Board Member
To: Secretary of the Navy
Via: (1) Chain of Command
(2) Alternate Show Cause Authority
(3) Commandant of the Marine Corps (JPL)

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [RANK FIRST NAME MI
LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.6_
(b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)
(c) CG, [Unit] ltr 1920 Code of [date] (BOI dir ltr)
(d) CG, [Unit] ltr 1920 Code of [date] (BOI convening
order)

Encl: (1) Transcript of the Board's proceedings
(2) Government Exhibits
(3) Respondent Exhibits
(4) Findings and Recommendations Worksheet
(5) [Minority Report]
(6) Certificate of Service
(7) Acknowledgement of Receipt
(8) Privacy Act Statement

1. This report is submitted per enclosure (8) of reference (a) and paragraph 010904.B of reference (b).

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

3. Enclosures (1) through (8) are forwarded pursuant to references (a) and (b).

4. Reasons for showing cause for retention. The purpose of the BOI was to recommend whether the respondent should be separated from the U.S. Marine Corps, and if so, the appropriate characterization of service. The Board considered these specific reasons for separation:

a. [Insert bases from reference (c)].

5. Acts alleged. The specific acts supporting the above bases are: [insert brief summary of allegation(s)].

6. Respondent's position with respect to the allegation(s). The respondent asserts that [insert brief summary of the respondent's position].

PARAGRAPHS SEVEN AND EIGHT WILL DEPEND ON THE BOI'S FINDINGS AND RECOMMENDATIONS.

ALLEGATIONS UNSUBSTANTIATED

7. Findings. The Board found that a preponderance of the evidence did not prove the allegations. See enclosures (1) and (4).

8. Recommendations. The Board recommended closing the case. Enclosures (1) and (4).

ALLEGATIONS SUBSTANTIATED – RETENTION RECOMMENDATION

7. Findings. The Board found that a preponderance of the evidence proved the allegations. See enclosures (1) and (4).

8. Recommendations. The Board recommended that the respondent be retained and that the case be closed. See enclosures (1) and (4).

ALLEGATIONS SUBSTANTIATED – SEPARATION RECOMMENDATION

7. Findings. The Board found that a preponderance of the evidence proved the allegations. See enclosures (1) and (4).

8. Recommendations. The Board recommended that the respondent be separated with [an Honorable][a General (Under Honorable Conditions)][an Other Than Honorable] characterization of service. See enclosures (1) and (4).

9. Service and background. As required by reference (a), 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 _ in enclosure (2).

h. Decorations/awards: See NAVMC 118(9) at Government Exhibit _ in enclosure (2).

i. Disciplinary History: None

10. Preservice misconduct. [The Board did not consider any preservice misconduct.][The Board considered preservice misconduct, but only for the purpose of determining whether to recommend retention or separation. Specifically, the board considered [insert].]

11. Misconduct older than five years. The Board did not consider misconduct identified more than five years prior to the initiation of processing for separation.

12. Minority report. [There is no minority report.] [One of the members submitted a minority report, enclosure (5).] [Provide a brief explanation of the extent of nonconcurrence with the majority.]

13. Respondent's counsel will be served with a copy of this Report, enclosure (6). Respondent's counsel will have 10 calendar days from the date of service to submit written comments to this Report.

14. [Rank Name] will be afforded the opportunity to read this Report. [Rank Name] will acknowledge that adverse information pertaining to this incident may be included in his/her Official Military Personnel File (OMPF), enclosure (7). [Rank Name] will have 10 calendar days from receipt of this Report to submit written comments for inclusion in [his][her] OMPF.

I. M. SRMEMBER

I. M. MINORITY
(If minority report attached)

Figure 15-23
Report of BOI (Retirement Eligible)

From: Senior Board Member
To: Secretary of the Navy
Via: (1) Chain of Command
(2) Alternate Show Cause Authority
(3) Commandant of the Marine Corps (JPL)

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [RANK FIRST
NAME MI LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.6_
(b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)
(c) CG, [Unit] ltr 1920 Code of [date] (BOI dir ltr)
(d) CG, [Unit] ltr 1920 Code of [date] (BOI convening
order)

Encl: (1) Transcript of the Board's proceedings
(2) Government Exhibits
(3) Respondent Exhibits
(4) Findings and Recommendations Worksheet
(5) [Minority Report]
(6) Certificate of Service
(7) Acknowledgement of Receipt
(8) Privacy Act Statement

1. This report is submitted per enclosure (8) of reference (a) and paragraph 010904.B of reference (b).

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

3. Enclosures (1) through (8) are forwarded pursuant to references (a) and (b).

4. Reasons for showing cause for retention. The purpose of the BOI was to recommend whether the respondent should be involuntarily retired from the U.S. Marine Corps, and if so, the recommended retirement grade. [If applicable: The Board was also directed by the DC M&RA to recommend a characterization of service.] The Board considered these specific reasons for involuntary retirement:

a. [Insert bases from reference (c)].

5. Acts alleged. The specific acts supporting the above bases are: [insert brief summary of allegation(s)].

6. Respondent's position with respect to the allegation(s). The respondent asserts that [insert brief summary of the respondent's position].

PARAGRAPHS SEVEN AND EIGHT WILL DEPEND ON THE BOI'S FINDINGS AND RECOMMENDATIONS.

ALLEGATIONS UNSUBSTANTIATED

7. Findings. The Board found that a preponderance of the evidence did not prove the allegations. See enclosures (1) and (4).

8. Recommendations. The Board recommended closing the case. See enclosures (1) and (4).

ALLEGATIONS SUBSTANTIATED – RETENTION RECOMMENDATION

7. Findings. The Board found that a preponderance of the evidence proved the allegations. See enclosures (1) and (4).

8. Recommendations. The Board recommended that the respondent be retained and that the case be closed. See enclosures (1) and (4).

ALLEGATIONS SUBSTANTIATED – RETIREMENT RECOMMENDATION

7. Findings. The Board found that a preponderance of the evidence proved the allegations. See enclosures (1) and (4).

8. Recommendations. The Board recommended that the respondent be retired [in his/her current grade][in the lesser grade of [grade]]. See enclosures (1) and (4). [If applicable: The Board recommended that the respondent's service be characterized as _____.]

9. Service and background. As required by reference (a), 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 _ in enclosure (2).

h. Decorations/awards: See NAVMC 118(9) at Government Exhibit _ in enclosure (2).

i. Disciplinary History: None

10. Preservice misconduct. [The Board did not consider any preservice misconduct.][The Board considered preservice misconduct, but only for the purpose of determining whether to recommend retention or retirement. Specifically, the board considered [insert].]

11. Misconduct older than five years. The Board did not consider misconduct identified more than five years prior to the initiation of processing for retirement.

12. Minority report. [There is no minority report.][One of the members submitted a minority report, enclosure (5).] [Provide a brief explanation of the extent of nonconcurrence with the majority.]

13. Respondent's counsel will be served with a copy of this Report, enclosure (6). Respondent's counsel will have 10 calendar days from the date of service to submit written comments to this Report.

14. [Rank Name] will be afforded the opportunity to read this Report. [Rank Name] will acknowledge that adverse information pertaining to this incident may be included in his/her Official Military Personnel File (OMPF), enclosure (7). [Rank Name] will have 10 calendar days from receipt of this Report to submit written comments for inclusion in [his][her] OMPF.

I. M. SRMEMBER

I. M. MINORITY
(If minority report attached)

Figure 15-24
Minority Report

From: Board Member
To: Secretary of the Navy
Via: (1) Chain of Command
(2) Alternate Show Cause Authority
(3) Commandant of the Marine Corps (JPL)

Subj: MINORITY REPORT IN THE CASE OF [RANK FIRST NAME MI LAST
NAME MOS USMC/R]

Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)
(b) SECNAVINST 1920.6_

1. This report is submitted per paragraph 010904.B.2 of reference (a) and paragraph 12d of enclosure (8) of reference (b).
2. [A detailed explanation of why the member disagrees with the findings and recommendations of the BOI. When able, the member should focus specifically on evidence, testimony, or arguments that he/she found persuasive or unpersuasive.]

I. M. MINORITY

Copy to:
[Rank Name of Respondent]

Figure 15-25
BOI Certificate of Service

From: Rank First Name MI Last Name USMC/R (Recorder)

To: Rank First Name MI Last Name USMC/R (Respondent's
Counsel)

Subj: SERVICE OF THE REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [RANK
FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.6

(b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)

Encl: (1) Report of the Board of Inquiry (BOI)

1. Per the references, you are hereby formally served with a copy of
the Report of the BOI in the subject case.

2. You have 10 calendar days from the date of service to submit
written comments to the Deputy Commandant, Manpower and Reserve
Affairs. You must submit your comments via the chain of command and
the Alternate Show Cause Authority. You may request an extension to
submit comments from the [Alternate Show Cause Authority or Show Cause
Authority who directed the BOI]. Such request for extension shall not
exceed 20 calendar days.

3. You are requested to sign below to indicate acceptance of service.

I. M. RECORDER

Figure 15-26
Endorsement

_____ ENDORSEMENT on [Rank Name] ltr 1920 [Code] of [date]

From: Commanding General/Officer
To: Commandant of the Marine Corps (JPL)
Via: (1) Chain of Command
(2) Alternate Show Cause Authority

Subj: [REPORT OF [REPORT]]/[REQUEST FOR [TYPE] RESIGNATION IN LIEU OF FURTHER ADMINISTRATIVE PROCESSING]/[REQUEST FOR RETIREMENT IN LIEU OF FURTHER ADMINISTRATIVE PROCESSING]/[BOI WAIVER] IN THE CASE OF [RANK FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.C
(b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard Performance of Duty)

Encl: (x) DC ltr [SSIC] [code] of [date]
(x1) SACC screen and treatment completion (if required)
(x2) Medical evaluation
(x3) PTSD/TBI screen
(x4) Acknowledgment of advanced education assistance reimbursement requirement

1. Forwarded, [insert recommendation].

[Sample language to include if endorsement to Report of Misconduct, Report of NJP, Report of Court-Martial Conviction, or Report of Civilian Conviction] recommending that [Rank Name] [not] be required to show cause for retention in the Marine Corps at a Board of Inquiry. [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

[Sample language to include if endorsement to administrative separation via notification procedures recommending separation] recommending that [Rank Name] be separated via notification procedures for [substandard performance of duty, misconduct, and moral or professional dereliction] with a [General (Under Honorable Conditions)]/ [Honorable] characterization of service. [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

[Sample language to include if endorsement to administrative separation via notification procedures recommending retention] recommending that the administrative separation recommendation be denied and that [Rank Name] be retained. [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

[Sample language to include if endorsement to BOI recommending separation] recommending that [Rank Name] be separated for [substandard performance of duty, misconduct, and moral or professional dereliction] with [an Other Than Honorable]/[a General (Under Honorable Conditions)]/[an Honorable] characterization of service. [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

[Sample language to include if endorsement to BOI recommending involuntary retirement] recommending that [Rank Name] be involuntarily retired for [substandard performance of duty, misconduct, and moral or professional dereliction] in [his/her current grade]/[the lesser grade of [grade]]. [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

[Sample language to include if endorsement to BOI recommending retention] recommending that the case be closed. [OR]

[Sample language to include if endorsement to resignation request] recommending that [Rank Name's] request for [unqualified]/[qualified] resignation/[resignation for the good of the service] in lieu of administrative processing be approved and that [he/she] be separated with [an Honorable]/[General (Under Honorable Conditions)]/[Other Than Honorable] characterization of service. [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

[Sample language to include if endorsement to retirement request] recommending that [Rank Name's] request for retirement in lieu of administrative processing be approved and that [Rank Name] be retired in [his/her current grade]/[the lesser grade of [grade]]. [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

[Sample language to include if endorsement to BOI waiver (not retirement eligible)] recommending that [Rank Name] be separated for [substandard performance of duty, misconduct, and moral or professional dereliction] with [an Other Than Honorable]/[a General (Under Honorable Conditions)]/[an Honorable] characterization of service. [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.] [OR]

[Sample language to include if endorsement to BOI waiver (retirement eligible)] recommending that [Rank Name] be involuntarily retired for [substandard performance of duty, misconduct, and moral or professional dereliction] in [his/her current grade]/[the lesser grade of [grade]]. [Comments as to the character of the officer and the allegations of substandard performance of duty/misconduct and moral or professional dereliction.]

2. [Explain any delays in the processing of the case]
3. [Include if officer submits rebuttal matters] On [date], [Rank Name], [through counsel], submitted matters in response to the Report of [report], enclosure (x). [Brief summary of matters.] [Address each legal error raised in the matters.]
4. [Include if substance-related incident and SACC documents not already included in the package] On [date], the [Name] Substance Abuse Counseling Center evaluated [Rank Name] and found that [he/she] [did/did not] meet the criteria for a substance-related disorder. The counselor recommended that [Rank Name] attend [treatment]. On [date], [Rank Name] completed the recommended treatment. See enclosure (x1).
5. [Include if separation/involuntary retirement recommended and medical evaluation not already included in the package] On [date], a medical provider evaluated [Rank Name] and found that [he/she] is qualified for separation, enclosure (x2). [Brief synopsis of any condition(s) and whether the condition(s) had impact on the officer's behavior.] [OR]
5. [Include if separation/involuntary retirement recommended and medical evaluation already included in the package] [Comment on any condition that had an impact on the officer's behavior and explain reason for recommended separation and characterization of service/involuntary retirement and retirement grade.]
6. [Include if: 1) separation/involuntary retirement recommended; 2) PTSD/TBI screen required per paragraph 010302.D of reference (b); 3) screen is positive; and 4) screen is not already included in the package] On [date], a medical provider evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), enclosure (x3). [Rank Name] screened positive for PTSD/TBI. [State whether PTSD/TBI had impact on the officer's behavior.] [Explain reason for recommended separation and characterization of service/ involuntary retirement and retirement grade.] [OR]
6. [Include if: 1) separation/involuntary retirement recommended; 2) PTSD/TBI screen required per paragraph 010302.D of reference (b); 3) screen is negative; and 4) screen is not already included in the package] On [date], a medical provider evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and found that [he/she] does not have PTSD/TBI, enclosure (x3). [OR]
6. [Include if: 1) separation recommended; 2) PTSD/TBI screen required per paragraph 010302.D of reference (b); 3) screen is positive; and 4) screen is already included in the package] [Comment on any positive screen/diagnosis and explain reason for recommended separation and characterization of service/ involuntary retirement and retirement grade.]
7. [Include if acknowledgement is not already in the package and the officer did not receive advanced education assistance] [Rank Name] has

been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (x4). I am not aware that [Rank Name] received any advanced education assistance. [OR]

7. [Include if education acknowledgement, type, and amount is not already included in the package and officer received advanced education assistance] [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [Rank Name's] acknowledgment of this requirement is contained in enclosure (x4). [[Rank Name] attended the Naval Academy and received advanced education assistance in the approximate amount of \$____.]/[[Rank Name] received advanced education assistance via the [Platoon Leaders Class/Naval Reserve Officer Training Corps program, etc.] in the approximate amount of \$____.] I [do not] recommend that the reimbursement requirement be waived in this case. [OR]

7. [Include if education acknowledgement, type, and amount is already included in the package and officer received advanced education assistance] I [do not] recommend that the reimbursement requirement be waived in this case.

I. M. GENERAL

Figure 15-27

Notification of Administrative Separation via Notification Procedure

From: Commander
To: Rank First Name MI Last Name MOS USMC/R

Subj: NOTIFICATION OF RECOMMENDATION FOR ADMINISTRATIVE
SEPARATION IN THE CASE OF [RANK FIRST NAME MI LAST NAME
MOS USMC/R]

Ref: (a) SECNAVINST 1920.6_
(b) [Report of Misconduct/NJP/Civilian Conviction
(c) [Command Investigation/Evidence]

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

1. In accordance with reference (a), I am recommending your separation from the Marine Corps with [a General (Under Honorable Conditions)] [an Honorable] characterization of service.*

*Note: If the officer is recommended for separation only for substandard performance of duty, the officer may only be separated with an Honorable characterization of service.

2. The specific reasons for your separation [is/are] [substandard performance of duty, misconduct, and moral or professional dereliction] as evidenced by the following:

[Insert appropriate [basis/bases] from Enclosure (3) of reference (a).]

3. Based upon reference (b), the factual [basis/bases] for this recommendation [is/are] as follows:

[Insert specific factual [basis/bases] supporting the recommendation.]

4. 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, upon request, 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.

5. You also have the right to waive the rights contained in paragraph 4(a)-(e), and any failure to respond as indicated in paragraph 7, below, shall constitute a waiver of these rights.

6. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (United States Naval Academy, Reserve Officer Training Corps, Platoon Leaders Class, Funded Law Education Program, etc.), you may be required to reimburse the Government on a pro-rata basis for the unserved portion of your service obligation.

7. You are directed to acknowledge receipt of this notification and to designate your election of rights in enclosure (2). All matters you submit concerning this recommendation are due to [me] within 10 calendar days of your receipt of this notice. You may request an extension of this time upon a timely showing of good cause.

I. M. COMMANDING

Figure 15-28

Acknowledgement of Administrative Separation

From: Rank First Name MI Last Name MOS USMC/R
To: CO/CG, Unit

Subj: ACKNOWLEDGMENT OF NOTIFICATION OF SEPARATION RECOMMENDATION

Ref: (a) [CO/CG], [Unit] ltr 1920 [Code] of [date]

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 [a General (Under Honorable Conditions)]/[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 (United States Naval Academy, Reserve Officer Training Corps, Platoon Leaders Class, Funded Law Education Program, etc.), I may be required to reimburse the Government on a pro-rata basis for the unserved portion of my service obligation.
4. I understand that I may submit matters in response to the proposed administrative separation within 10 calendar days of receipt of the notification.
5. _____ I (do) (do not) desire to submit matters to the Secretary of the Navy in rebuttal to this recommendation.
6. _____ I (do) (do not) desire to tender a resignation in lieu of separation processing.
7. _____ I (do) (do not) desire to confer with a judge advocate concerning this matter. _____ I have conferred with _____ on _____.
8. _____ 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.
9. _____ 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.

I. M. MARINE
Date: _____

Figure 15-29

Recommendation for Administrative Separation via Notification

From: CG/CO (who notified officer of adsep)
 To: Secretary of the Navy
 Via: (1) Chain of Command
 (2) Alternate Show Cause Authority
 (3) Commandant of the Marine Corps (JPL)

Subj: RECOMMENDATION FOR ADMINISTRATIVE SEPARATION IN THE CASE
 OF [RANK FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
 Performance of Duty)
 (b) SECNAVINST 1920.6_

Encl: (1) [Notification of AdSep]
 (2) [Acknowledgement of Notification of AdSep]
 (3) [Report of Misconduct/NJP/Civilian Conviction/Court-
 Martial Conviction]
 (4) [Command Investigation/Evidence, if any]
 (5) [Any rebuttal matters by SNO]
 (6) SACC screen and treatment completion (if required)
 (7) Medical evaluation (if required)
 (8) PTSD/TBI screen (if required by 10 USC § 1177 or
 otherwise)
 (9) Acknowledgment of advanced education assistance
 reimbursement requirement

1. This recommendation is submitted per paragraph 011003 of reference (a).

2. Per reference (b), on [date], I notified [Rank Name], via enclosure (1), of my recommendation that [he/she] be administratively separated for cause, specifically: [insert basis for separation verbiage here: substandard performance of duty, misconduct, and moral or professional dereliction]. On [date], [Rank Name] acknowledged receipt of the notification, enclosure (2).

3. [Summary of allegations of misconduct and substandard performance of duty], enclosure (3).

4. On [date], [Rank Name] submitted matters in rebuttal, enclosure (4). [Rank Name] claims [Brief summary of SNO's matters]. [[Rank Name] requests to be retained.]

5. [If substance-related incident] On [date], the [Name] Substance Abuse Counseling Center evaluated [Rank Name] and found that [he/she] [did/did not] meet the criteria for a substance-related disorder. The counselor recommended that [Rank Name] attend [treatment]. On [date], [Rank Name] completed the recommended treatment, enclosure (5). (SACC documents do

not need to be a separate enclosure if they are already attached to an enclosed Report).

6. On [date], a medical provider evaluated [Rank Name] and found that [he/she] is qualified for separation, enclosure (6). [Brief synopsis of any condition(s) and whether the condition(s) had impact on the officer's behavior.] (Medical Evaluation documents do not need to be a separate enclosure if they are already attached to an enclosed Report).

7. [If PTSD/TBI screen is required per paragraph 010302.D of reference (a)] On [date], a medical provider evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), enclosure (7). [Rank Name] screened positive for PTSD/TBI. [State whether PTSD/TBI had impact on the officer's behavior.] [Explain reason for separation and recommended characterization of service.] (PTSD/TBI screen does not need to be a separate enclosure if it is already attached to an enclosed Report). [OR]

7. [If PTSD/TBI screen is required per paragraph 010302.D of reference (a)] On [date], a medical provider evaluated [Rank Name] for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and found that [he/she] does not have PTSD/TBI, enclosure (7). [PTSD/TBI screen does not need to be a separate enclosure if it is already attached to an enclosed Report).

8. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [[Rank Name's] acknowledgment of this requirement is contained in enclosure (8).] I am not aware that [Rank Name] received any advanced education assistance. (Acknowledgement does not need to be a separate enclosure if it is already attached to an enclosed Report). [OR]

8. [Rank Name] has been advised of the reimbursement requirement for advanced education assistance. [[Rank Name's] acknowledgment of this requirement is contained in enclosure (8).] [[Rank Name] attended the Naval Academy and received advanced education assistance in the approximate amount of \$____.]/[[Rank Name] received advanced education assistance via the [Platoon Leaders Class/Naval Reserve Officer Training Corps program, etc.] in the approximate amount of \$____.] I [do not] recommend that the reimbursement requirement be waived in this case. (Acknowledgement does not need to be a separate enclosure if it is already attached to an enclosed Report).

9. I notified [Rank Name] that I would recommend that [he/she] be administratively separated with [a General (Under Honorable Conditions)]/[an Honorable] characterization of service. [After considering [Rank Name's] matters [and any other relevant matters such as a positive screen for PTSD/TBI], I [continue to] recommend [that [Rank Name] be administratively separated with [a General (Under Honorable Conditions)]/[an Honorable] characterization of service.] [Comments as to the character of the officer and the allegations of misconduct/substandard performance.]

I. M. COMMANDING

Copy to:
[Rank Name of Accused]

08 AUG 2018

Figure 15-30

Voluntary Retirement in lieu of Further Administrative Processing

From: Rank First Name MI Last Name MOS USMC/R
To: Secretary of the Navy
Via: (1) Chain of Command
(2) Alternate Show Cause Authority
(3) Commandant of the Marine Corps (JPL)

Subj: VOLUNTARY RETIREMENT REQUEST IN LIEU OF FURTHER
ADMINISTRATIVE PROCESSING FOR CAUSE IN THE CASE OF
[RANK FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.6
(b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
Performance of Duty)
(c) MCO 1900.16 w/ch 1 (MARCORSEPMAN)

Encl: (1) [Report of Misconduct/NJP/Civilian Conviction/Court-
Martial Conviction or, if none, Investigation/
Evidence]
(2) CG, [SCA/ASCA] ltr 1920 [Code] of [date]
(3) Matters

1. Pursuant to references (a) through (c), I voluntarily request to retire in lieu of further processing for administrative separation for cause.

2. I understand that a Board of Inquiry (BOI) will not be convened to recommend my retirement grade to the Secretary of the Navy.

3. This request to retire is purely voluntary and, once submitted, I understand that it can only be withdrawn with the permission of the Secretary of the Navy.

4. I understand that the Secretary of the Navy may retire me in a lesser grade than I currently hold and that the retirement grade will be the highest grade in which I served satisfactorily, as determined by the Secretary of the Navy. I respectfully request to retire [in my current grade of [grade]].

5. This retirement request is based on [my nonjudicial punishment for _____/my civilian conviction for _____/my court-martial conviction for _____/ my misconduct/substandard performance of duty by _____], enclosure (1).

6. [If ASCA/SCA already directed show cause] On [date], [the Alternate Show Cause Authority/Show Cause Authority] directed that I show cause for retention at a BOI for [substandard performance of duty, misconduct, and moral or professional dereliction], enclosure (2). I admit [that I committed misconduct [and/or] that my performance of duty was substandard]. [OR]

6. [If ASCA/SCA has not directed show cause] I admit that I am guilty of [all] the charges/allegations detailed in enclosure (1). I admit [that I committed misconduct [and/or] that my performance of duty was substandard].

Note: The officer must admit that his/her performance of duty was substandard, and if the officer is being required to show cause for misconduct, he/she must admit to committing the misconduct.

7. 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 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. [I hereby decline to submit any matters.]/[My matters are included in enclosure (3).]

8. I understand that, if I am voluntarily or involuntarily retired before I complete an active duty service requirement incurred because I received advanced education assistance (United States Naval Academy, Reserve Officer Training Corps, Platoon Leaders Class, Funded Law Education Program, etc.), I may be required to reimburse the Government on a pro-rata basis for the unserved portion of my service obligation.

9. In submitting this request, I consulted with [insert counsel's rank name, branch of service]/[name and address of civilian counsel], a qualified defense counsel.

I. M. MARINE

Date: _____

Figure 15-31

Resignation in lieu of Further Administrative Processing

From: Rank First Name MI Last Name MOS USMC/R
 To: Assistant Secretary of the Navy (M&RA)
 Via: (1) Chain of Command
 (2) Alternate Show Cause Authority
 (3) Commandant of the Marine Corps (JPL)

Subj: REQUEST FOR RESIGNATION IN LIEU OF FURTHER ADMINISTRATIVE
 PROCESSING FOR CAUSE IN THE CASE OF [RANK FIRST NAME MI
 LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.6
 (b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard
 Performance of Duty)
 (c) MCO 1900.16 w/ch 1 (MARCORSEPMAN)

Encl: (1) [Report of Misconduct/NJP/Civilian Conviction/Court-
 Martial Conviction or, if none, Investigation/
 Evidence]
 (2) CG, [SCA/ASCA] ltr 1920 [Code] of [date]
 (3) Matters

1. Pursuant to references (a) through (c), I voluntarily tender my [unqualified resignation]/[qualified resignation]/[resignation for the Good of the Service] of my commission in the United States Marine Corps [Reserve] in lieu of [further] processing for administrative separation for cause. I understand that a Board of Inquiry (BOI) will not be convened to make a separation recommendation to the Secretary of the Navy.

2. [If unqualified resignation] I understand that, if the Secretary of the Navy approves my request for unqualified resignation, my service will be characterized as Honorable. [OR]

2. [If qualified resignation] I understand that, if the Secretary of the Navy approves my request for qualified resignation, my service may be characterized as General (Under Honorable Conditions). I respectfully request that my service be characterized as _____ . [OR]

2. [If resignation for the good of the service] I understand that, if the Secretary of the Navy approves my request for resignation for the good of the service, my service may be characterized as Other Than Honorable. I respectfully request that my service be characterized as _____ .

3. [If unqualified resignation] I have been informed and understand that if my resignation in lieu of processing for administrative separation for cause is accepted, I shall subsequently receive a certificate of honorable discharge from the naval service. [OR]

3. [If qualified resignation] I have been informed and understand that if my resignation in lieu of processing for administrative separation for

08 AUG 2018

cause is accepted, I may subsequently receive a certificate of general discharge from the Marine Corps; that such a separation, although considered by the Navy Department to be under honorable conditions, is not the highest qualitative type of separation provided for officers of the naval service, and that, while I shall be entitled to the major portion of veteran's rights and benefits presently authorized for former officers whose service has been similar to my own, should any present or future statutes specifically require an honorable discharge as a condition precedent to the granting of rights and benefits thereunder, my eligibility for any such rights and benefits may be at least doubtful.
[OR]

3. [If resignation for the good of the service] 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 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.

4. This resignation is purely voluntary and, once submitted, I understand that it can only be withdrawn with the permission of the Secretary of the Navy.

5. This resignation is based on [my nonjudicial punishment for _____/my civilian conviction for _____/my court-martial conviction for _____/my misconduct/substandard performance of duty by _____], enclosure (1).

6. [If ASCA/SCA already directed show cause] On [date], [the Alternate Show Cause Authority/Show Cause Authority] directed that I show cause for retention at a BOI for [substandard performance of duty, misconduct, and moral or professional dereliction], enclosure (2). I admit [that I committed misconduct [and/or] that my performance of duty was substandard*]. [OR]

6. [If ASCA/SCA has not directed show cause] I admit that I am guilty of the [charges/allegations] detailed in enclosure (1). I admit [that I committed misconduct [and/or] that my performance of duty was substandard*].

*Note: The officer must admit that his/her performance of duty was substandard, and if the officer is being required to show cause for misconduct, he/she must admit to committing misconduct.

7. 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 request, including

LEGAL SUPPORT AND ADMINISTRATION MANUAL

Volume 15

MCO 5800.16 – V15

08 AUG 2018

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. [I hereby decline to submit any matters.]/[My matters are included in enclosure (3).]

8. 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 (United States Naval Academy, Reserve Officer Training Corps, Platoon Leaders Class, Funded Law Education Program, etc.), I may be required to reimburse the Government on a pro-rata basis for the unserved portion of my service obligation.

9. I understand that I do not rate nor do I desire a reserve commission.

10. In submitting this request, I consulted with [military counsel's rank name, branch of service]/[civilian counsel's name and address], a qualified defense counsel.

I. M. MARINE

Date: _____

Figure 15-32
Resignation in lieu of Trial

From: Rank First Name MI Last Name MOS USMC/R
To: Secretary of the Navy
Via: (1) Chain of Command
(2) Alternate Show Cause Authority
(3) Commandant of the Marine Corps (JPL)

Subj: REQUEST FOR RESIGNATION IN LIEU OF TRIAL IN THE CASE OF
[RANK FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) MCO 1900.16 w/ch 1 (MARCORSEPMAN)
(b) SECNAVINST 1920.6_

Encl: (1) Charge Sheet
(2) Evidence
(3) Matters

1. Pursuant to paragraph 4104.3 of reference (a), I voluntarily request to resign in lieu of trial by court-martial.
2. Prior to submitting this request, I have been afforded the opportunity to consult with counsel certified in accordance with Article 27(b), Uniform Code of Military Justice (UCMJ). I have consulted with my detailed defense counsel, [military counsel's name, rank, and branch of service], and I am entirely satisfied with [his/her] advice.
3. I understand that I am currently pending [status of court-martial] for the offense(s) listed in enclosure (1). Before I submitted this request, my detailed defense counsel explained to me each and every element of the offense(s) of which I am accused and I understand each and every element.
4. I acknowledge guilt to [one or more of the charge(s) and specification[s]] in enclosure (1)]. I make this acknowledgement voluntarily and of my own free will. I understand that a punitive discharge is authorized for [any one of the specification(s) contained in enclosure (1)].
5. I have reviewed the evidence in enclosure (2) and have had an opportunity to consult with my counsel regarding the evidence.
6. Having discussed this matter with my defense counsel, I believe that this request is in my best legal and personal interest. I understand that I have an unqualified right to withdraw this request at any time prior to it being approved by the Secretary of the Navy. I understand that any statement submitted by my counsel or me in connection with this request is not admissible against me in a court-martial except as provided by Military Rule of Evidence 410.
7. 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 (United States Naval Academy, Reserve Officer Training Corps, Platoon Leaders Class, Funded Law Education Program, etc.), I may be required to reimburse the Government on a pro-rata basis for the unserved portion of my service obligation.

8. I have been informed and understand that if my resignation in lieu of trial is accepted, I may subsequently 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.

9. With my understanding of the previous paragraph, I respectfully request to be discharged with a characterization of service as [General (Under Honorable Conditions)] per enclosure (5) of reference (b). In support thereof, I respectfully request that you consider [matters], enclosure (3).

I. M. MARINE

I. M. DEFENSE
RANK, USMC
DETAILED DEFENSE COUNSEL

Figure 15-33

Waiver of BOI (Not Retirement Eligible)

From: Rank First Name MI Last Name MOS USMC/R
 To: Secretary of the Navy
 Via: (1) Chain of Command
 (2) Alternate Show Cause Authority
 (3) Commandant of the Marine Corps (JPL)

Subj: VOLUNTARY WAIVER OF A BOARD OF INQUIRY IN THE CASE OF
 [RANK FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.6_
 (b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard Performance of Duty)

Encl: (1) [Report of Misconduct/NJP/Civilian Conviction/Court-Martial Conviction or, if none, Investigation/Evidence]
 (2) CG, [SCA/ASCA] ltr 1920 [Code] of [date]
 (3) Matters

1. Pursuant to the references, I voluntarily waive my right to a Board of Inquiry (BOI) for processing for administrative separation for cause and I understand that a BOI will not be convened to make a separation recommendation to the Secretary of the Navy.

2. This waiver is purely voluntary and, once submitted, I understand that it can only be withdrawn with the permission of the Secretary of the Navy.

3. I understand that, if the Secretary of the Navy approves my waiver, I may be separated with an Other Than Honorable characterization of service. If I am separated from the Marine Corps, I respectfully request that my service be characterized as _____.

4. I have been informed and understand that if I am separated from the Marine Corps, 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.

5. This waiver is based on [my nonjudicial punishment for _____/my civilian conviction for _____/my court-martial conviction for _____/my misconduct/substandard performance of duty by _____], enclosure (1).

6. [If ASCA/SCA already directed show cause] On [date], [the Alternate Show Cause Authority/Show Cause Authority] directed that I show cause for

retention at a BOI for [substandard performance of duty, misconduct, and moral or professional dereliction], enclosure (2).

7. 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 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. [I hereby decline to submit any matters.]/[My matters are included in enclosure (3).]

8. 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 (United States Naval Academy, Reserve Officer Training Corps, Platoon Leaders Class, Funded Law Education Program, etc.), I may be required to reimburse the Government on a pro-rata basis for the unserved portion of my service obligation.

9. [Regular Officers] I understand that I do not rate nor do I desire a reserve commission.

10. In submitting this waiver, I consulted with [military counsel's rank name, branch of service]/[civilian counsel's name and address], a qualified defense counsel.

I. M. MARINE

Date: _____

Figure 15-34
Waiver of BOI (Retirement Eligible)

From: Rank First Name MI Last Name MOS USMC/R
 To: Secretary of the Navy
 Via: (1) Chain of Command
 (2) Alternate Show Cause Authority
 (3) Commandant of the Marine Corps (JPL)

Subj: VOLUNTARY WAIVER OF A BOARD OF INQUIRY IN THE CASE OF
 [RANK FIRST NAME MI LAST NAME MOS USMC/R]

Ref: (a) SECNAVINST 1920.6_
 (b) MCO 5800.16 (LSAM), Vol 15 (Officer Misconduct and Substandard Performance of Duty)

Encl: (1) [Report of Misconduct/NJP/Civilian Conviction/Court-Martial Conviction or, if none, Investigation/Evidence]
 (2) CG, [SCA/ASCA] ltr 1920 [Code] of [date]
 (3) Matters

1. Pursuant to the references, I voluntarily waive my right to a Board of Inquiry (BOI) for processing for involuntary retirement and I understand that a BOI will not be convened to make a separation recommendation to the Secretary of the Navy.

2. This waiver is purely voluntary and, once submitted, I understand that it can only be withdrawn with the permission of the Secretary of the Navy.

3. I understand that the Secretary of the Navy may retire me in a lesser grade than I currently hold and that the retirement grade will be the highest grade in which I served satisfactorily, as determined by the Secretary of the Navy. I respectfully request to retire [in my current grade of [grade]]. [If characterization of service has been authorized by the DC, M&RA: If I am involuntarily retired from the Marine Corps, I respectfully request that my service be characterized as _____.]

4. This waiver is based on [my nonjudicial punishment for _____/my civilian conviction for _____/my court-martial conviction for _____/my misconduct/substandard performance of duty by _____], enclosure (1).

5. [If ASCA/SCA already directed show cause] On [date], [the Alternate Show Cause Authority/Show Cause Authority] directed that I show cause for retention at a BOI for [substandard performance of duty, misconduct, and moral or professional dereliction], enclosure (2). I admit [that I committed misconduct [and/or] that my performance of duty was substandard*]. [OR]

5. [If ASCA/SCA has not directed show cause] I admit that I am guilty of the [charges/allegations] detailed in enclosure (1). I admit [that I committed misconduct [and/or] that my performance of duty was substandard*].

*Note: The officer must admit that his/her performance of duty was substandard, and if the officer is being required to show cause for misconduct, he/she must admit to committing the misconduct.

6. 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 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. [I hereby decline to submit any matters.]/[My matters are included in enclosure (3).]

7. 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 (United States Naval Academy, Reserve Officer Training Corps, Platoon Leaders Class, Funded Law Education Program, etc.), I may be required to reimburse the Government on a pro-rata basis for the unserved portion of my service obligation.

8. In submitting this waiver, I consulted with [military counsel's rank name, branch of service]/[civilian counsel's name and address], a qualified defense counsel.

I. M. MARINE

Date: _____

08 AUG 2018

Figure 15-35
Command Delay Letter

From: Commanding Officer
To: Rank First Name MI Last Name MOS USMC/R

Subj: NOTIFICATION OF PROMOTION DELAY

Ref: (a) MARADMIN XXX/XX
(b) 10 U.S. Code
(c) SECNAVINST 1420.1_ (1stLt and above), 1412.9_ (WO, CWO, and LDO), or 1412.6_ (2ndLt)

Encl: (1) Acknowledgment of receipt

1. Per reference (a), you were scheduled for promotion to the grade of [grade] on [1 Month 20XX].

2. Prior to the release of the promotion authority, you [explain basis for delay, e.g. received nonjudicial punishment for disobeying a lawful order and fraternization].

3. After careful consideration of this information, your promotion has been delayed pending a determination of whether you are mentally, physically, morally, and professionally qualified for promotion. This action is being taken in accordance with references (b) and (c).

4. You are entitled to submit matters for consideration in response to your promotion delay. You may submit matters now or you may wait until all disciplinary and administrative proceedings are completed.

5. Enclosure (1) is an acknowledgment of receipt. Please note your decision and return this acknowledgement upon receipt of this letter. Enclosure (1) and any statements you wish to submit should be addressed, via your chain of command, to the Commandant of the Marine Corps (CMC) (JPL), Headquarters, U.S. Marine Corps, 3000 Marine Corps Pentagon, Washington, DC 20350-3000. Any statement or information you wish to provide must be submitted within 10 calendar days of receipt of this letter. For any questions regarding this matter, please contact your command's OSJA at (XXX)-(XXX)-(XXXX), and if you are represented by counsel, you should direct your attorney to contact your command's OSJA on your behalf with any questions.

I. M. COMMANDING

Copy to:
CMC (MMPR)
CMC (JPL)

<p>VOLUME 16</p> <p><u>MILITARY JUSTICE</u></p> <p>SUMMARY OF VOLUME 16 CHANGES</p> <p>Hyperlinks are denoted by <i><u>bold, italic, blue and underlined font.</u></i></p> <p>The original publication date of this Marine Corps Order (right header) will not change unless/until a full revision of the MCO has been conducted.</p> <p>The date denoted by blue font (left header) will reflect the date this Volume was last updated.</p> <p>All Volume changes denoted in blue font will reset to black font upon a <u>full revision</u> of this Volume.</p>			
VOLUME VERSION	SUMMARY OF CHANGE	ORIGINATION DATE	DATE OF CHANGES
ORIGINAL VOLUME	N/A	19 JUN 2020	N/A

Submit recommended changes to this Volume, via the proper channels, to:

CMC (JA)
 3000 Marine Corps Pentagon
 Washington, DC 20350-3000

VOLUME 16: MILITARY JUSTICE

TABLE OF CONTENTS

REFERENCESREF-1

PART A: GENERAL PROVISIONS, ORGANIZATION, AND DETAILING

CHAPTER 1: GENERAL PROVISIONS.....3
 0101 PURPOSE.....3
 0102 APPLICABILITY3
 0103 GENERAL.....3
 0104 EXECUTION OF MILITARY JUSTICE SERVICE FUNCTION4
 0105 COMMUNICATION AND CASE MANAGEMENT5
CHAPTER 2: ORGANIZATION, PERSONNEL, AND QUALIFICATIONS7
 0201 PURPOSE.....7
 0202 GENERAL ORGANIZATION7
 0203 REGIONAL TRIAL COUNSEL OFFICE8
 0204 REGIONAL TRIAL COUNSEL8
 0205 COMPLEX TRIAL COUNSEL10
 0206 LITIGATION ATTORNEY ADVISOR (LAA).....10
 0207 TRIAL SERVICE ADMINISTRATION OFFICER (TAO)11
 0208 REGIONAL TRIAL COUNSEL OFFICE PARALEGAL (RTC PARALEGAL).....11
 0209 REGIONAL TRIAL INVESTIGATOR (RTI)12
 0210 COMPLEX TRIAL TEAM (CTT)13
 0211 LSST TRIAL SERVICE OFFICE13
 0212 LSST OIC14
 0213 SENIOR TRIAL COUNSEL (STC).....14
 0214 TRIAL COUNSEL15
 0215 TRIAL SERVICES CHIEF16
 0216 TRIAL SERVICES NON-COMMISSIONED OFFICER (NCO).....17
 0217 ADMINISTRATIVE SPECIALIST17
 0218 TRIAL SERVICES CLERK.....17
 0219 TRIAL COUNSEL ASSISTANCE PROGRAM (TCAP).....17
 0220 QUALIFICATIONS FOR TRIAL COUNSEL18
 0221 SPECIAL VICTIM INVESTIGATION AND PROSECUTION (SVIP) QUALIFICATION AND
 PERSONNEL19
 0222 POST-TRIAL ROLES AND RESPONSIBILITIES20
CHAPTER 3: DETAILING.....22
 0301 PURPOSE.....23
 0302 DETAILING CONSIDERATIONS IN ALL CASES23
 0303 DETAILING LETTER23
 0304 TIMELINE23
 0305 DETAILING AUTHORITY OF THE LEGAL SERVICES SUPPORT SECTION OFFICER-IN-
 CHARGE (LSSS OIC)23
 0306 DETAILING AUTHORITY OF THE REGIONAL TRIAL COUNSEL (RTC)23
 0307 DETAILING AUTHORITY OF THE SENIOR TRIAL COUNSEL (STC).....24
 0308 SPECIAL CONSIDERATIONS FOR DUBAY HEARINGS24
 0309 DETAILING MILITARY JUSTICE SUPPORT PERSONNEL24

PART B: SPECIAL CONSIDERATIONS IN VICTIM CASES

CHAPTER 4: VICTIM RIGHTS.....26
 0401 PURPOSE.....26
 0402 TYPES OF VICTIMS.....26

0403 AVAILABILITY OF VICTIMS’ LEGAL COUNSEL26
 0404 DISCLOSURES TO VICTIMS.....26
 0405 ADDITIONAL NOTIFICATIONS TO VICTIMS.....28
 0406 NOTIFICATION TO VICTIMS IN CHILD PORNOGRAPHY CASES28
 0407 INDIVIDUAL TO ASSUME RIGHTS OF CERTAIN VICTIMS29
CHAPTER 5: SPECIAL VICTIM CASES31
 0501 DEFINITIONS32
 0502 PROCESSING REQUIREMENTS AND ELEVATED REVIEW32
 0503 CASE ANALYSIS MEMORANDUM (CAM).....35

PART C: COURTS-MARTIAL

SUBPART C1: PRETRIAL MATTERS

CHAPTER 6: MISCELLANEOUS PRETRIAL MATTERS39
 0601 CONFLICTS OF INTEREST.....40
 0602 FUNDING FOR CASE-RELATED EXPENSES41
 0603 PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.....41
 0604 SIGNING DOCUMENTS RELATED TO MILITARY JUSTICE.....42
 0605 REQUESTING LEGAL SERVICES42
 0606 EXERCISE OF COURTS-MARTIAL JURISDICTION OVER RETIRED, RESERVE,
 FLEET MARINE CORPS RESERVE, AND DISCHARGED PERSONNEL43
 0607 JURISDICTION OVER CASES TRIED IN CIVILIAN COURTS45
 0608 GENERAL CONSIDERATIONS WHEN CONCURRENT JURISDICTION EXISTS45
 0609 COURTS-MARTIAL JURISDICTION OVER MAJOR FEDERAL OFFENSES.....46
 0610 NATIONAL SECURITY CASES47
 0611 AUTHORITY TO GRANT IMMUNITY FROM PROSECUTION.....47
 0612 REFERRING CHARGES TO NON-BCD JUDGE ALONE SPECIAL COURTS-MARTIAL48
CHAPTER 7: INITIAL REVIEW OF PRETRIAL CONFINEMENT49
 0701 DETAILING INITIAL REVIEW OFFICER50
 0702 LOCATION.....50
 0703 RESPONSIBILITIES OF INITIAL REVIEW OFFICER50
 0704 CONTENT OF IRO’S MEMORANDUM50
 0705 NOTICE TO VICTIM(S)50
 0706 RECONSIDERATION OF CONTINUED CONFINEMENT50
CHAPTER 8: MILITARY MAGISTRATES51
 0801 NOT AUTHORIZED52
**CHAPTER 9: INVESTIGATIVE SUBPOENAS, WARRANTS, ORDERS, AND ARTICLE 30(a)
 PROCEEDINGS53**
 0901 COORDINATION BETWEEN TSO AND LAW ENFORCEMENT54
 0902 INVESTIGATIVE SUBPOENAS.....54
 0903 WARRANTS56
 0904 ORDERS FOR WIRE OR ELECTRONIC COMMUNICATIONS.....58
 0905 PROCEDURES FOR ARTICLE 30(a) HEARINGS59
 0906 COST REIMBURSEMENT FOR A SUBPOENA, ORDER, OR WARRANT59
 0907 REQUESTS FOR RELIEF FROM COMPULSORY PROCESS60
CHAPTER 10: ARTICLE 32 PRELIMINARY HEARINGS61
 1001 DETAILING PRELIMINARY HEARING OFFICERS62
 1002 SPECIAL VICTIM CASES62
 1003 ISSUANCE OF INVESTIGATIVE SUBPOENAS OR WARRANTS62
 1004 VICTIM RIGHT NOT TO TESTIFY.....62
 1005 CLOSED SESSIONS62
 1006 PRELIMINARY HEARING OFFICER (PHO) REPORT62
 1007 DISTRIBUTING THE PHO REPORT62
 1008 OBJECTING TO THE PHO REPORT63

1009 FORWARDING THE REPORT TO A SUPERIOR CONVENING AUTHORITY 63
1010 SEALING DOCUMENTS 64
1011 RECORDING THE HEARING 64
1012 HEARINGS CONDUCTED VIA REMOTE MEANS 64

SUBPART C2: TRIAL MATTERS

CHAPTER 11: DISCOVERY 65
1101 PURPOSE..... 66
1102 APPLICABILITY 66
1103 GENERAL..... 66
1104 SOURCES OF DISCOVERY 67
1105 SPECIFIC EVIDENCE TO REVIEW FOR DISCOVERY 68
1106 PREPARING DISCOVERY 70
1107 CONDUCTING DISCOVERY 71
1108 DISCLOSURES TO WITNESSES, VICTIMS, AND VICTIMS’ LEGAL COUNSEL (VLC)..... 73
CHAPTER 12: MILITARY JUSTICE HEARING AND COURT REPORTING PROCEDURES 74
1201 PURPOSE..... 75
1202 APPLICABILITY 75
1203 GENERAL PROCEDURES APPLICABLE TO ALL HEARINGS 75
1204 TRANSCRIPTS FOR NON-JUDICIAL PUNISHMENT OF OFFICERS 75
1205 RECORDING PRELIMINARY HEARINGS..... 75
1206 ENLISTED ADMINISTRATIVE SEPARATIONS 76
1207 BOARDS OF INQUIRY 76
1208 SUMMARY COURTS-MARTIAL 76
1209 SPECIAL OR GENERAL COURTS-MARTIAL 76
1210 OTHER HEARINGS OR RECORDINGS 76
1211 EXHIBIT HANDLING 76
CHAPTER 13: MILITARY JUSTICE DATA COLLECTION 77
1301 PURPOSE..... 78
1302 DATA POINTS MANDATED BY THE SECRETARY OF DEFENSE 78
1303 ELECTRONIC CASE MANAGEMENT SYSTEM (CMS) ENTRIES 78
1304 SUPERVISION 79
1305 REPORTS 79
**CHAPTER 14: CRIMINAL JUSTICE INFORMATION REPORTING,
SEX OFFENDER NOTIFICATION, AND CRIMINAL INDEXING..... 80**
1401 PURPOSE..... 81
1402 BACKGROUND..... 81
1403 THE GUN CONTROL ACT OF 1968 81
1404 THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)..... 83
1405 ROLES AND RESPONSIBILITIES FOR CRIMINAL JUSTICE REPORTING 83

SEX OFFENDER NOTIFICATION

1406 GENERAL PROVISION 84
1407 COVERED OFFENSES 84
1408 NOTIFICATION PROCEDURES 84
1409 REMOVAL FROM SEX OFFENDER REGISTRIES 85

CRIMINAL INDEXING

1410 GENERAL PROVISIONS FOR FINGERPRINT COLLECTION 86

DNA COLLECTION AND INDEXING

1411 PURPOSE 87

1412 GOVERNING STATUTE AND REGULATIONS 87

1413 PROGRAM MANAGMENT 87

1414 QUALIFYING OFFENSES 87

1415 PROBABLE CAUSE REQUIREMENT 87

1416 TIMING OF SUBMISSION 87

1417 DOCUMENTATION OF DNA COLLECTION 87

1418 EXPUNGEMENT PROCEDURES 88

CHAPTER 15: COURTROOM SECURITY..... 89

1501 PURPOSE..... 90

1502 APPLICABILITY 90

1503 NEED FOR SECURITY IN LEGAL BUILDINGS 90

1504 DEFINITIONS 90

1505 RISK ASSESSMENT PROCESS 91

1506 ADDITIONAL SECURITY MEASURES FOR MEDIUM AND HIGH RISK
PROCEEDINGS..... 92

1507 COURTHOUSE DESIGN GUIDELINES 95

1508 ROLES AND RESPONSIBILITIES 95

CHAPTER 16: PRETRIAL AGREEMENTS AND PLEA AGREEMENTS 97

1601 PROHIBITED TERMS 98

1602 CONSULTATION BEFORE ENTERING INTO AGREEMENTS 98

1603 USE OF MODEL PLEA AGREEMENT 99

1604 CONDITIONAL GUILTY PLEAS 99

1605 VARIOUS TERMS IN AGREEMENTS 99

1606 RESIGNATION IN LIEU OF TRIAL FOR OFFICERS 100

SUBPART C3: POST-TRIAL MATTERS

CHAPTER 17: GENERAL POST-TRIAL PROCESSING..... 101

1701 PURPOSE..... 102

1702 APPLICABILITY 102

1703 PREPARATION AND DISTRIBUTION OF CERTIFIED RECORDS OF TRIAL 102

1704 SUMMARY COURTS-MARTIAL 102

1705 SPECIAL AND GENERAL COURTS-MARTIAL..... 103

1706 POST-TRIAL REVIEW OF COURTS-MARTIAL..... 104

CHAPTER 18: TRANSCRIPTION 107

1801 PURPOSE..... 108

1802 APPLICABILITY 108

1803 GENERAL 108

1804 FORMAT 108

1805 SEALED AND CLASSIFIED INFORMATION 108

1806 EVIDENCE OF A SENSITIVE NATURE 109

1807 DIGITAL RECORDS..... 109

1808 ARTIFICIAL INTELLIGENCE ENABLED COMPUTER AIDED TRANSCRIPTION
SOFTWARE (AI-CATS) 109

PART D: MISCELLANEOUS

CHAPTER 19: MISCELLANEOUS 111

1901 MISCONDUCT BY PRISONERS 111

1902 TRANSFER OF PRISONERS 111

1903 HOSPITALIZATION OF THE ACCUSED BY THE ATTORNEY GENERAL 111

REFERENCES

- (a) SECNAVINST 5430.7R CH-2
- (b) SECNAVINST 5430.27E
- (c) SECNAVINST 5430.25F
- (d) 10 U.S.C. §§ 806, 1044, 1044e, 1059, 1072, 1565b, 1588, and 8046
- (e) MCO 5430.2
- (f) JAGINST 5803.1E
- (g) Manual for Courts-Martial, (2019 ed.)
- (h) U.S. Navy Regulations, (1990)
- (i) MCO 5800.14
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- (m) SECNAVINST 1920.6D
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- (o) MCO 1610.7A
- (p) MCO 1300.8
- (q) MCO 1000.6
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- (t) 5 U.S.C. §§ 101, 552a, and 3111
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- (w) 38 U.S.C. §§ 4301-4334
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February
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- (ac) MCO 3300.4A
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- (af) Executive Order 12333, (December 4, 1981)
- (ag) DoDD 5240.01
- (ah) DoD 5240.1-R
- (ai) DoDI 3025.21
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- (am) 22 C.F.R. Part 181
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- (ao) DoD 5500.07-R
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- (ar) NAVMC 3500.82
- (as) SECNAV M-5210.1 CH-1
- (at) MCO 5210.11F
- (au) The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law No. 115-232)
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- (aw) 27 C.F.R. § 478.11
- (ax) JAG/CNLSCINST 5814.1D

PART A – GENERAL MILITARY JUSTICE MATTERS, ORGANIZATION, AND DETAILING

VOLUME 16: CHAPTER 1

GENERAL PROVISIONS

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by ***bold, italic, blue and underlined font.***

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

PART A – GENERAL MILITARY JUSTICE MATTERS, ORGANIZATION, AND DETAILING**CHAPTER 1****GENERAL PROVISIONS**

0101. PURPOSE

This Volume promulgates Service standards, policies, and procedures for the provision and functional supervision of military justice within the Marine Corps, as provided for in law, regulations, and rules of professional conduct.

0102. APPLICABILITY

This Volume applies to all judge advocates, legal administrative officers, litigation attorney advisors, legal services specialists, victim-witness assistance personnel, investigators, and administrative support personnel who provide military justice services within the Marine Corps, with the exception of personnel who serve in billets within the Defense Services Organization (DSO) and the Victims' Legal Counsel Organization (VLCO). Nothing in this Volume restricts the legal services provided by members of the DSO or the VLCO, whose missions, duties, and responsibilities are covered in detail in Volumes 3 and 4 of this Manual.

0103. GENERAL

010301. Purpose of Military Law

The purpose of military law, as stated in the Preamble to the Manual for Courts-Martial, "is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States."

010302. Role of Military Justice Personnel

Military justice legal support within the Marine Corps consists of the provision of command legal advice and legal services. Command legal advice is provided primarily by the cognizant Staff Judge Advocate (SJA), while legal services are provided primarily by the Officer-in-Charge (OIC) of the cognizant Legal Services Support Section (LSSS). Legal services include trial services offices, which fulfill the prosecution function in the Marine Corps and consist of trial counsel who represent the United States in the prosecution of special and general courts-martial. All practitioners are responsible for professionally and diligently processing military justice matters in accordance with the purposes of military law and with respect for the dignity and rights of all participants.

010303. Role of the Staff Judge Advocate to the Commandant of the Marine Corps

The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) exercises overall functional supervision of legal services and professional responsibility oversight within the Marine Corps, as described in Article 6, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 8046, SECNAVINST 5430.27E, and JAGINST 5803.1E.

A. Functional Supervision

Functional supervision includes the authority to formulate, promulgate, inspect, and enforce uniform standards and procedures for the performance of military justice tasks, but does not include direction and control of individual personnel.

B. Rules Counsel

The SJA to CMC serves as Rules Counsel for matters of professional responsibility within the Marine Corps. As Rules Counsel, the SJA to CMC has the responsibility to exercise professional responsibility oversight over all Marine Corps judge advocates who are not assigned as a trial or appellate judge.

010304. Role of Deputy Director, Judge Advocate Division (JAD), Military Justice and Community Development

The Deputy Director, JAD, Military Justice and Community Development (DepDir, MJCD) is responsible to the SJA to CMC for military justice matters and for legal community planning and development to ensure the Marine Corps provides high-quality legal support across the entire spectrum to commanders, Marines, Sailors, and their families. DepDir, MJCD oversees the standardization of military justice forms and letters. Approved standardized forms and letters may be available through the “FORMS” tab on the JAD public website at <https://www.hqmc.marines.mil/sja/JAD-Forms/> or at <https://forms.documentservices.dla.mil/order/>. Where forms are not available through the JAD website, personnel should consult the MCM and its appendices, the JAGMAN, this volume, and the Trial Counsel Assistance Program (TCAP).

010305. Role of Branch Head, Military Justice Branch (JMJ)

The Branch Head, JMJ, is responsible for supporting the SJA to CMC by providing military justice advice and other military justice-related support, to include meeting reporting and information requirements, reviewing and drafting legislation and policy, and providing guidance and training to practitioners and command officials, in order to promote justice and good order and discipline in the Marine Corps. The Branch Head, JMJ, oversees implementation of military justice-related legislation, regulations, and policy, and leads the Marine Corps TCAP in providing litigation training, advice, and resources to Marine Corps trial counsel worldwide, in order to standardize trial counsel practice and manage the Marine Corps Victim-Witness Assistance Program in accordance with MCO 5800.14. The Branch Head, JMJ, also oversees implementation of post-trial processing policies and regulations.

010306. Role of Marine Corps Post-Trial Chief

The Marine Corps Post-Trial Chief is the subject matter expert responsible for determining training standards as a part of the Training and Readiness Manual update team, liaising with Naval Justice School staff regarding court reporter student candidate selection and curriculum changes, drafting and implementing approved policy and legislation, and advising JAD staff and the SJA to CMC on matters relating to post-trial and court reporting.

010307. Role of Navy and Marine Corps Appellate Review Activity (NAMARA) Administrative Support Officer, OJAG

The Administrative Support Officer, OJAG, is designated as the Director, Administrative Support Division (Code 40), and is responsible for overseeing all Department of the Navy (DON) military justice records received at NAMARA, managing process flow of records through the appellate court process, and final archiving. Additionally, the Administrative Support Officer is designated as the Senior Post-Trial Administrative Officer (PTAO) for the Marine Corps providing oversight and mentorship to PTAOs in the field. The NAMARA PTAO provides guidance and advice on questions of policy, advises on recommendations for policy changes related to the administrative processing of court-martial records, develops training and educational products, and facilitates knowledge management. The NAMARA PTAO provides advocacy on issues raised by Regional PTAOs at the OJAG level.

0104. EXECUTION OF MILITARY JUSTICE SERVICE FUNCTION

010401. Judge Advocate Division

The Military Justice Branch (JMJ) within JAD, Headquarters, Marine Corps (HQMC), assists the SJA to CMC in providing military justice legal support to the CMC. The DepDir, MJCD; the Chief Defense Counsel of the Marine Corps; and the Officer-in-Charge, Victims’ Legal Counsel Organization assist the SJA to CMC in performing the functional supervision of military justice services in each of their respective practice areas.

010402. Staff Judge Advocates

SJAs provide command legal advice on military justice matters directly to their supported commands. The ability of SJAs to provide accurate legal advice on military justice matters is a vital part of promoting justice and preventing unlawful command influence. Under 10 U.S.C. § 8046(d)(2), no officer or employee of DoD may interfere with the ability of an SJA to give independent legal advice to commanders.

010403. Legal Services Support Sections (LSSS)

The LSSSs and their subordinate Legal Services Support Teams (LSSTs) provide services, including military justice services, to supported commands within their Legal Services Support Area (LSSA). The LSSS OIC is ultimately responsible to the regional installation commander for the provision of trial services within the LSSA. Subordinate LSSTs provide direct legal services support to designated commands. The LSST OIC is directly responsible to the LSSS OIC for the provision of trial services to units and activities supported by the LSST.

010404. Supported-Supporting Relationships

Each LSSS and its subordinate LSSTs will provide military justice support to all supporting establishment and operating force commands within their respective LSSA in accordance with paragraph 0204 of Volume 1, Chapter 2 of this Manual. Transfer of a case to another region's LSSS must be approved by the gaining LSSS OIC.

0105. COMMUNICATION AND CASE MANAGEMENT

010501. Need for Effective Communication

The SJA to CMC's ability to effectively exercise functional supervision authority depends on effective communication. To that end, the requirements to maintain accurate entries in the Marine Corps' designated military justice electronic case management system are particularly important, as the information in those entries is used to identify military justice requirements, inform policy decision-making within the military justice system, and enhance the quality of reviews of the military justice system by the Military Justice Review Panel, as required by Article 146, UCMJ.

010502. Immediate Communication Required

Military justice related issues and events can potentially have a strategic impact on the legal community and the Marine Corps. LSSS OICs and SJAs shall immediately report, via phone or e-mail, all military justice issues that are likely to garner significant interest from the CMC, senior DoD officials, elected leaders, or members of the media; and military justice issues that could have a strategic impact on the legal community or the Marine Corps. Report such issues to the Deputy SJA to CMC, DepDir, MJCD, and the Branch Head, JMJ. When in doubt about whether to report an item, err on the side of reporting. This reporting requirement is exempt from reports control according to reference (as), Part IV, paragraph 7.g. Nothing in this order shall be construed to impair the authority of any SJA to communicate with their respective convening authority, the SJA to CMC, or with the Judge Advocate General of the Navy.

010503. Case Management and Data Collection

Article 140a, UCMJ, requires the Secretary of Defense to prescribe uniform standards and criteria for the collection and analysis of data concerning military justice matters, as well as military justice case processing and management. Procedures implementing those requirements are described in detail in Chapter 13 of this Volume. To facilitate uniform case management and to avoid imposing excessive administrative burdens on LSSSs and LSSTs, military justice practitioners are encouraged to collect military justice case data only from standardized source documents (legal and investigative documents) that are produced in the normal course of the military justice process. Practitioners should communicate with JAD (JMJ) regarding any proposed changes to electronic case management systems.

VOLUME 16: CHAPTER 2

MILITARY JUSTICE ORGANIZATION, PERSONNEL, AND QUALIFICATIONS

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER 2

MILITARY JUSTICE ORGANIZATION, PERSONNEL, AND QUALIFICATIONS

0201. PURPOSE

This chapter provides guidance for the provision of trial services within the Marine Corps and describes the organization, roles, and responsibilities of the Regional Trial Counsel (RTC) Offices, Trial Service Offices (TSOs), and the counsel and personnel assigned to those offices, as well as specific qualifications required in the prosecution of certain cases.

0202. GENERAL ORGANIZATION

020201. Role of the LSSS in Military Justice

The LSSS provides legal services, including trial services, to supported commands within its Legal Service Support Area (LSSA). Trial services include conducting courts-martial on behalf of the government; providing prosecution advice to convening authorities and cognizant SJAs; assisting in the training of command legal personnel; providing victim and witness support throughout the court-martial process; conducting post-trial processing; coordinating with law enforcement in the investigation of offenses and the collection, maintenance, and custody of evidence; and prosecuting federal court cases under the Special Assistant United States Attorney (SAUSA) program.

020202. Performance of Trial Services

Marine Corps trial services are performed by commissioned officers who are licensed attorneys, certified as Trial Counsel (TC) under Article 27(b), UCMJ, sworn under Article 42(a), UCMJ, and assigned to TC billets at LSSSs and subordinate LSSTs (and detachments) within Marine Corps Installations Command (MCICOM), or assigned/attached to units deployed in support of an exercise, contingency, or operation.

020203. Providing Trial Services

Trial services are provided within the LSSA by the RTC Office and by the LSST TSOs. Legal Service Support Team TSOs are the primary provider of trial services. When a court-martial exceeds the capability and expertise of a LSST TSO, the RTC Office will provide assistance to the TSO or assume responsibility for prosecuting the court-martial.

020204. Other Duties

Consistent with this Order, LSSS and LSST OICs may assign TCs and TSO support personnel to perform non-trial duties.

020205. Professional Conduct of Trial Services Personnel

Professional conduct of Marine Corps trial counsel is governed by JAGINST 5803.1 series. Trial counsel should be familiar with the entire document and refer to Rule 3.8 in particular regarding the special responsibilities of a TC.

020206. Tour Lengths

A judge advocate assigned as a TC will normally serve in that billet for at least eighteen months. A judge advocate assigned as a supervisory trial counsel will normally serve in that billet for at least two years. To the extent possible, new trial counsel should be assigned in a way to allow for an on-ramp process instead of assuming lead counsel responsibilities on multiple, later phase cases.

020207. Reassignment of trial counsel (TC)

The reassignment of TC requires careful planning and coordination between the responsible LSSS OIC, LSST OIC, RTC, and Senior Trial Counsel (STC). The professional administration of military justice requires the United States be represented by qualified and well-prepared TCs. Once a TC is slated for reassignment, the RTC and STC must ensure the TC generates thorough turnover materials, and that a replacement TC is identified and integrated into all cases anticipated to extend beyond the target reassignment date.

020208. Prohibitions

An RTC, STC, or TC may not serve concurrently as a victim witness liaison officer, victim witness assistance coordinator, or military judge. An RTC, STC, or TC normally should not concurrently serve as an SJA, or in the DSO, or VLCO. A transition into or out of another billet while prosecuting cases requires analysis of conflict procedures outlined in paragraph 0601.

020209. Reserve Trial Services Branch (JRT)

The RTC or LSST OIC may request reserve support through the branch head of the Reserve Trial Services Branch (JRT) or the Reserve Legal Support (RLS). Normally, these judge advocates serve as instructors at TC training, assist active duty judge advocates with particular cases, and may be detailed as the TC at courts-martial.

0203. REGIONAL TRIAL COUNSEL OFFICE

020301. General Description

The RTC Office provides trial services, as required, across the LSSA; supervision, mentorship, training, and litigation support to TSOs and individual TC within subordinate LSSTs; and Complex Trial Counsel (CTC) to assist in prosecuting high-profile, complex, special victim cases, and other significant cases.

020302. Structure

The RTC Office is structured with the following personnel: an RTC; CTC; a Litigation attorney advisor (LAA); a Trial Service Administrative Officer (TAO); an RTC office paralegal; two RTC Office Investigators (RTIs) with Military Occupational Specialty of 5821 (Criminal Investigator, Criminal Investigation Division Agent); a SAUSA, where applicable; and appropriate enlisted support staff.

020303. Enlisted Support Staff

Each RTC Office will be staffed with enlisted support staff to assist in the execution of assigned tasks within the RTC Office. The RTC, in consultation with the Legal Services Chief, shall determine the reporting senior and reviewing officer of any assigned enlisted support staff.

0204. REGIONAL TRIAL COUNSEL

020401. General Description

The RTC is directly responsible to the LSSS OIC for the functional supervision of all trial services within the Legal Services Support Area (LSSA). The RTC directly supervises all cases personally detailed by the RTC. The reporting senior for the RTC is the LSSS OIC. The reviewing officer is normally the Marine Corps Installation Commander for that region.

020402. Eligibility

The RTC is a Marine judge advocate serving in or selected to the grade O-5/Lieutenant Colonel possessing considerable expertise in military justice matters and normally has the additional MOS of 4409 (masters of criminal

law). The billet of RTC requires a Top Secret clearance. The OIC, LSSS may waive any of the above prerequisites to serve as an RTC if, in the OIC's determination, the judge advocate possesses the necessary training and experience to fulfill the duties of the billet. If such a waiver is granted, the OIC shall document the rationale for issuing such waiver in a memorandum retained in LSSS files.

020403. Specific Duties

Specific RTC duties include, but are not limited to:

- A. Train, mentor, and supervise subordinate TC;
- B. Conduct quarterly training for all CTC, STC, and TC within the LSSS;
- C. Ensure all CTC, STC, and TC attend the appropriate training courses recommended by TCAP, which will include Trial Counsel Assistance Program (TCAP) developed training, TECOM funded training at military training locations, and other specialized training courses to properly develop individual TC's within their career progression;
- D. Serve as the detailing authority for all CTC, STC, and TC assigned to the LSSS;
- E. Task-organize complex trial teams and detail counsel to the team;
- F. Manage and supervise the RTC office and its members;
- G. When detailed, serve as a TC. The RTC's case load should not interfere with the duties to train, mentor, and supervise subordinate TC within the LSSA;
- H. Maintain a cooperative and close working relationship with the LSST OICs and SJAs to ensure the effective and efficient provision of trial services in the LSSA;
- I. Supervise the maintenance/updating of case entries in any electronic case management system;
- J. Oversee the SAUSA program for the LSSS, and coordinate with the cognizant LSST OICs and U.S. Attorney's Office to support the SAUSA program;
- K. Liaise with the Regional Defense Counsel as required;
- L. When applicable, coordinate with regional military confinement facilities that may provide confinement services to supported commands. Any coordination with federal, state, or local confinement facilities requires CMC, PSL (Corrections) notification.
- M. As appropriate for special victim cases, provide case analysis memos to SJAs in order to assist convening authorities with disposition decisions under R.C.M. 306;
- N. Ensure all Special Victim Investigation and Prosecution (SVIP) requirements are met within the LSSA;
- O. Employ the Complex Trial Team to deliver SVIP capabilities through a task organized combination of prosecutors, Litigation attorney advisors (LAAs), victim witness assistance personnel, investigators, administrative support, and paralegal support from across the region. Leveraging the regional trial assets to deliver a SVIP TC;

P. Ensure SVIP qualified TCs are detailed to a case and meet or consult with the Naval Criminal Investigative Service (NCIS) SVIP members within 48 hours after notification of a special victim investigation;

Q. Ensure TCs are meeting or consulting with NCIS at least monthly to assess the progress of investigations and prosecutions; and

R. Coordinate with TCAP to ensure lessons learned, motions, and best practices are shared across the TC community.

0205. COMPLEX TRIAL COUNSEL (CTC)

020501. General Description

The CTC is directly responsible to the RTC for representing the United States in complex, high visibility, and other cases when detailed as the TC or Assistant Trial Counsel (ATC).

020502. Eligibility

The CTC is a Marine judge advocate in the grade of O-3/Captain or O-4/Major who possesses considerable expertise in military justice matters and has the additional MOS of 4409. The LSSS OIC may waive the requirement to have the MOS of 4409 in a memorandum retained in LSSS files. The CTC billet for the National Capital Region requires a Top Secret clearance. See paragraph 0610 (NCR normally supports national security cases). The CTC's RS is the RTC and their RO is the LSSS OIC.

020503. Specific Duties

The CTC's primary duty is to prosecute cases on behalf of the United States. The CTC should also assist the STC and RTC in facilitating GCM and SVIP qualifications for TCs and in providing mentorship to TCs and ATCs co-detailed to a case.

0206. LITIGATION ATTORNEY ADVISOR (LAA)

020601. General Description

The LAA is an experienced civilian attorney. The LAA is directly responsible to the RTC for providing advice, training, and insight to TC and their support personnel on complex cases throughout the LSSA. The RTC is responsible for providing initial training to newly hired LAAs on the unique aspects of the military justice system and the Marine Corps in general. The LAA's higher level rater is the RTC and their senior rating official is the LSSS OIC.

020602. Specific Duties

Specific LAA duties include, but are not limited to:

A. Provide training, mentoring, and case-specific expertise to TC detailed to complex or special victim cases throughout the region in order to enhance the government's ability to strategically evaluate case specific issues, and fairly and effectively present admissible evidence;

B. Physically visit every LSST at least once annually;

C. Consult and advise on the prosecution of complex and special victim cases, and assist trial counsel, to include detailed preparation of individual cases in anticipation of trial;

D. Develop and implement training and standard operating procedures for the investigation and prosecution of complex and special victim cases;

E. Review Case Analysis Memos and provide input to TCs as required; and

F. Maintain a close, cooperative relationship with all other LAAs to discuss trends, developing cases, and coordinate responses to emerging issues.

0207. TRIAL SERVICE ADMINISTRATION OFFICER (TAO)

020701. General Description

The TAO is directly responsible to the RTC for the efficient operation and overall management of the RTC Office and administration of trial services throughout the LSSA. The TAO is Legal Administration Officer (LAO), normally in the grade of Chief Warrant Officer 2 (CWO2), with military justice experience. The TAO's reporting senior is the RTC. The reviewing officer is the LSSS OIC.

020702. Specific Duties

Specific TAO duties include, but are not limited to:

A. Manage all legal administrative functions, tasks, and correspondence associated with provision of trial services by the RTC or CTC;

B. Manage and provide direct supervision of investigators assigned to the RTC Office;

C. When required and as directed by the RTC, assist TC within the LSSA with discovery obligations, VWAP notifications, witness requests and travel authorizations, and all other administrative tasks associated with a court-martial that do not require Article 27(b) certification;

D. When required, assist the LSST TSOs with their legal administrative functions;

E. Ensure that all RTIs maintain access to the Consolidated Law Enforcement Operations Center (CLEOC), the National Crime Information Center (NCIC), and any future programs.

F. Assist the RTC with VWAP and DTS coordination, tracking, and oversight.

0208. REGIONAL TRIAL COUNSEL OFFICE PARALEGAL (RTC PARALEGAL)

020801. General Description

The RTC paralegal is directly responsible to the RTC for litigation support to the RTC Office and, when assigned, to subordinate LSST TSOs. The RTC paralegal is a staff noncommissioned officer (SNCO), normally between the grades of E-6/Staff Sergeant and E-8/Master Sergeant, who has preferably completed an undergraduate program and obtained a degree in Paralegal Studies from an American Bar Association (ABA) accredited program. The RTC Paralegal's RS is the RTC and their RO is the LSSS OIC.

020802. Specific Duties

Specific RTC Paralegal duties include, but are not limited to:

A. Conduct legal research and draft documents;

B. Create and organize case files;

- C. Track pre-RLS cases and brig confinement reports to alert and assist the RTC in detailing counsel to investigations;
- D. Interview witnesses;
- E. Supervise and mentor enlisted support staff in the RTC Office; and
- F. Coordinate with and assist the LSST Trial Services Chiefs for the provision of trial services.

0209. REGIONAL TRIAL INVESTIGATOR (RTI)

020901. General Description

The RTI is directly responsible to the RTC for trial production support as detailed throughout the LSSA. The RTI is an accredited agent of the U.S. Marine Corps Criminal Investigation Division (USMC CID), PMOS 5821, normally in the grade of E-6/Staff Sergeant or E-7/Gunnery Sergeant. The RTI's reporting senior is the CTC or STC, as designated by the RTC. The reviewing officer is the RTC.

020902. Requirements

The RTI fills a billet that is coded as "Armed" and requires a Top Secret clearance. Regional Trial Investigators shall complete the TC orientation course and attend a TCAP-approved special victim training course. The RTC may waive any of these requirements after consultation with the LSSS OIC.

020903. Specific Duties

Specific RTI duties include, but are not limited to:

- A. Provide trial production support, as approved by the RTC, to all TC within the LSSA. Trial production support refers to all investigative support directly relating to the preparation of the government's case for trial and sentencing by court-martial. Trial production support includes, but is not limited to: liaison with criminal investigative and law enforcement agencies (federal, state, local, and local national); liaison with evidence processing laboratories (e.g., United States Army Criminal Investigation Laboratory [USACIL], Defense Forensics Science Center [DFSC], Defense Cyber Crime Center's Cyber Forensics Laboratory [CFL], Navy Drug Screening Laboratory [NDSL]); witness interviews; preservation, custody, and control of evidence; background investigations of victims and witnesses; Military Rules of Evidence (MRE) 413/414 evidence collection; and other trial investigative duties, as required. Trial production support does not include the initiation of new investigations; however, information regarding previously uninvestigated misconduct should be brought to the attention of the RTC. In every instance possible, trial production support shall be conducted in cooperation with the primary investigative agency; however, if the primary investigative agency is unable to complete RTC directed investigative endeavors in a timely manner as it relates to the impending trial date, RTIs may conduct these endeavors independently while informing and coordinating with the primary investigative agency;
- B. Maintain qualifications to access CLEOC, NCIC, and future law enforcement programs and databases; and
- C. Maintain the proper qualifications to possess individual firearms. Individual RTIs shall obtain their weapon from the local Provost Marshal's office and follow all applicable orders, regulations, and local procedures associated with the possession of firearms by law enforcement personnel, in accordance with DoDD 5210.56, SECNAVINST 5500.29_ series, MCO 5500.6_series, and local USMC CID policy letters.
- D. Assist the RTC and STC with criminal justice information reporting requirements, including the training of counsel and tracking of any reporting requirements. Serve as a liaison between law enforcement agencies and the LSSS to facilitate proper reporting of criminal justice information.

E. Assist with courtroom security requirements and threat assessments for pending courts-martial as directed by the RTC, in support of the requirements listed in Chapter 15 of this Volume.

F. Serve as the evidence custodian for LSSS or LSST evidence locker used to temporarily store any evidence used for trial.

0210. COMPLEX TRIAL TEAM (CTT)

021001. General Description

The CTT will try all cases defined under paragraph 050101 that are detailed by the RTC, or any other case designated as a complex case by the RTC. The CTT will be task-organized to meet the needs of any detailed case. Once assembled, the CTT is responsible to the RTC for representing the United States in that particular case. The CTT will work in conjunction with law enforcement to deliver a comprehensive investigation and, when appropriate, prosecution.

021002. Personnel

The RTC may utilize any combination of personnel from the RTC Office or a LSST TSO to form the CTT. To be detailed as the lead TC of a CTT, the judge advocate must be qualified as an SVIP TC as defined in paragraph 022002.

021003. Special Victim Investigation and Prosecution (SVIP) capability

The RTC will employ the CTT to deliver an SVIP capability through a task organized combination of prosecutors, victim witness assistance personnel, investigators, administrative support, and paralegal support from across the region. The CTT will work in conjunction with the victim, victim support providers, the command, and NCIS to deliver a comprehensive investigation and, when appropriate prosecution.

0211. LSST TRIAL SERVICE OFFICE

Each LSST contains a TSO. The LSST TSO is responsible to the LSST OIC and the RTC for the provision of trial services within the LSSA. The LSST TSO is typically comprised of a STC, TC, a Trial Services Chief, a Trial Services NCO, Legal Service Specialists, and an Administrative Specialist.

0212. LSST OIC

021201. General Description

The LSST OIC is directly responsible to the LSSS OIC for the provision of all legal services, including trial services, to commands supported by the LSST. The LSST OIC is responsible for the direct supervision, legal training, and mentoring of all personnel who provide litigation services on behalf of the government. The LSST OIC also maintains administrative control of those personnel assigned to their respective LSSTs, including but not limited to: medical/dental readiness; routine duty assignments; required annual training; and command events such as unit physical fitness events and safety stand downs. The LSST OIC's RS is the LSSS OIC and their RO is the regional MCI Commander.

021202. Eligibility

The LSST OIC is a Marine judge advocate normally serving in or selected to the grade of O-5/Lieutenant Colonel that possesses a broad range of experience in all areas of military legal services.

021203. Specific Duties

Specific LSST OIC duties include, but are not limited to:

- A. Assign judge advocates within the LSST to TC billets;
- B. Train, mentor, and supervise all TC assigned to the LSST. The LSST OIC shall ensure TC receive at least one monthly training from the Senior Trial Counsel (STC);
- C. Maintain a cooperative and close working relationship with the RTC and the supported SJAs to ensure effective and efficient provision of trial services in the LSST;
- D. Supervise the maintenance/updating of case entries in the applicable electronic case management system for all cases in the LSST.
- E. Manage the SAUSA program within the LSST and coordinate with the RTC and U. S. Attorney's Office to support the SAUSA program.
- F. Liaise with the Regional Defense Counsel as required.
- G. When applicable, coordinate with regional military confinement facilities that may provide confinement services to supported commands. Any coordination with federal, state, or local confinement facilities requires CMC, PSL (Corrections) notification.

0213. SENIOR TRIAL COUNSEL (STC)

021301. General Description

The STC leads the LSST TSO and is directly responsible to the LSST OIC and the RTC for the delivery of trial services to the commands supported by the LSST. The STC's reporting senior is the RTC and the reviewing officer is the LSSS OIC. When the STC and RTC are geographically separated and are not able to have routine personal interaction, the STC's reporting senior is the LSST OIC and the reviewing officer is the RTC or LSSS OIC.

021302. Eligibility

The STC is a judge advocate serving in, or selected to, the grade of O-4/Major, who normally has at least two years of experience as a TC, possesses the additional MOS of 4409 (masters of criminal law), and is qualified to prosecute General Courts-Martial in accordance with paragraph 022001. The STC billet requires a Top Secret clearance to enable litigation of cases with classified material, even if the case is not designated a national security case. The assignment as STC should be based on the leadership and expertise of the judge advocate, not solely on seniority. The OIC, LSSS may waive any of the above prerequisites to serve as an STC if in the OIC's determination, the judge advocate possesses the necessary training and experience to fulfill the duties of the billet. In considering a waiver, the OIC should also consider that the STC must be selected to or in the grade of O-4 to be delegated detailing authority from the RTC. If such a waiver is granted, the OIC shall document the rationale for issuing such waiver in a memorandum to be retained in LSSS files.

021303. Specific Duties

Specific STC duties include, but are not limited to:

- A. Lead, train, mentor, and supervise subordinate TC, the Trial Services Chief, trial services NCO, trial services clerks, and any other personnel assigned to the TSO.
- B. Serve as the RS for TCs and trial services Marines;
- C. Conduct at least one training session for TSO personnel each month;

- D. When delegated detailing authority, ensure the proper TC, with adequate support, is detailed to each individual court-martial. When warranted, request the detailing of trial support assets from the RTC;
- E. Serve as a TC, as required, and maintain a caseload, as appropriate given the STC's supervisory responsibilities;
- F. Supervise the maintenance/updating of CMS for all cases supported by the STC's LSST, and the proper maintenance and disposal of case files in accordance with the references;
- G. Request supported commands to notify the TSO when a Service member is placed in pretrial restraint under R.C.M. 304(a)(2)-(4);
- H. Coordinate with military confinement facilities that provide pretrial confinement services to Marine Corps units and activities located within the LSSA;
- I. Coordinate with military law enforcement agencies for the provision of appropriate legal support by the TSO to investigations and for additional investigative support for cases;
- J. Ensure the proper implementation of the Victim-Witness Assistance Program by the trial counsel in accordance with Article 6b, UCMJ, and MCO 5800.14_ series;
- K. Ensure the proper collection, maintenance, handling, disposal, and appropriate redaction of personally identifiable information in accordance with 5 U.S.C. 552 and 552a, and SECNAVINSTs 5720.42G and 5211.5F, and this instruction by all TC and trial service Marines;
- L. Maintain access passwords for all contraband child pornography exhibits in accordance with JAGMAN section 0155;
- M. Manage overall TSO policy and compliance with CJIR requirements; and
- N. Ensure TCs are including trial services NCOs and trial services clerks in case analysis, witness interviews, and other tasks in a manner that allows the enlisted personnel to gain experience and be assigned tasks of increasing legal complexity.

0214. TRIAL COUNSEL (TC)

021401. Role of TC

As provided by Congress in Article 27, UCMJ, and implemented by the President in R.C.M. 502 and 503, Manual for Courts-Martial, TCs and assistant trial counsel (ATC) prosecute cases on behalf of the United States, cause records of trial to be prepared, and perform other logistical requirements associated with courts-martial. Accordingly, TCs are responsible for representing the United States in administering justice and are not simply advocates for a command or convening authority.

021402. General Description

The TC is directly responsible to the STC for the preparation and conduct of those courts-martial to which the TC is detailed. The TC's reporting senior is the STC and the reviewing officer is normally the RTC. When the STC is geographically separated from the RTC, the TC's reviewing officer is the LSST OIC.

021402. Eligibility

For the purposes of this Chapter, a TC is a judge advocate, generally between the rank of First Lieutenant and Major, who is certified as a TC under Article 27(b), UCMJ, and sworn under Article 42(a), UCMJ.

021403. Specific Duties

Specific TC duties include, but are not limited to:

- A. Prosecute cases on behalf of the United States, in coordination with the cognizant convening authority and SJA;
- B. Ensure prosecutions comply with constitutional, legal, and ethical standards applicable to prosecutors, and any resulting convictions are legally sustainable;
- C. Ensure any electronic case management system is continually updated, current, and accurate for those cases to which the TC is detailed;
- D. Consult with the STC, LAA, and RTC on any complex litigation matters;
- E. Ensure all victims and witnesses are provided timely and appropriate information, notifications, and consultations in accordance with Article 6b, UCMJ, and the Victim-Witness Assistance Program, MCO 5800.14 series;;
- F. Ensure all victims of sexual assault or related offenses are informed of the availability of assistance by a Victims' Legal Counsel (VLC) (see Chapter 6 of this Volume);
- G. Ensure a statement of trial results, including any corrections, is prepared and uploaded to any electronic case management system within 24 hours of the findings or correction;
- H. Ensure completion of the post-trial processing requirements by working with supported commands. This may entail the completion of the following tasks: Confinement Order, DD Form 2704; DD Form 2791; statement of trial results; review and certification of accuracy of the ROT; Sexual Assault Disposition Report; coordinating with the regional review section to provide applicable victims a copy of the authenticated ROT pursuant to Article 54(e), UCMJ; notifying the victim of the right to submit matters for consideration in clemency; informing the victim of any clemency granted by the convening authority; and any other matter prescribed by law, regulation, or policy;
- I. Serve as recorder at administrative separation boards or boards of inquiry when detailed or assigned by the LSST OIC, RTC, or STC;
- J. For cases involving accused service members that are foreign nationals, coordinate with the appropriate SJA to ensure appropriate notification of the consulate and that notification is placed in the record of trial in accordance with SECNAVINST 5820.6 series; and
- K. Provide leadership and mentorship to junior TCs, trial services NCOs, and trial services clerks. Ensure trial services clerks are included in case preparation and analysis in a manner that allows them to be assigned tasks of increasing legal difficulty, depending on the clerk's experience.

0215. TRIAL SERVICES CHIEF

021501. General Description

The Trial Services Chief is directly responsible to the Senior Trial Counsel (STC) for the enlisted support to the Trial Services Offices. The Trial Services Chief's reporting senior is the STC and the reviewing officer is the RTC.

021502. Eligibility

The Trial Services Chief is an enlisted Marine, generally between the rank of E-6/Staff Sergeant and E-

8/Master Sergeant, who assists the STC in the execution of assigned tasks and manages and mentors the enlisted Marines assigned to the LSST TSO.

021503. Specific Duties

Specific Trial Services Chief duties include, but are not limited to:

- A. Lead and supervise TSO NCOs, administrative specialists, and TSO clerks;
- B. Inspect all court-martial documents for completeness, accuracy, and sufficiency;
- C. Manage office correspondence and filing;
- D. Maintain all original standing convening orders;
- E. Maintain a secured evidence locker with controlled access for temporary storage of evidence used at court-martial;
- F. Coordinate court-martial related administrative requirements;
- G. Assist the Trial Counsel (TC) with post-trial processing as required;
- H. Coordinate with the regional TAO;
- I. Provide CJIR information from the TSO to commands and law enforcement agencies to assist them in complying with CJIR requirements;
- J. Serve as manager for the electronic version of a case management system; and
- K. Supervise the retention and destruction of adjudicated or disposed of cases

0216. TRIAL SERVICES NCO

The Trial Services NCO is an enlisted Marine, with the rank of E-4/Corporal or E-5/Sergeant, who assists in the execution of assigned tasks and the management of enlisted Marines assigned to the LSST TSO. The Trial Services NCO's reporting senior is the STC and the reviewing officer is the RTC.

0217. ADMINISTRATIVE SPECIALIST

The Administrative Specialist (MOS 0111) is an enlisted Marine, with the rank of E-4/Corporal, who assists with all administrative aspect of courts-martial.

0218. TRIAL SERVICES CLERK

The Trial Services clerk is an enlisted Marine, between the rank of E-1/Private and E-3/Lance Corporal, who assists in the execution of assigned tasks at the TSO.

0219. TRIAL COUNSEL ASSISTANCE PROGRAM (TCAP)

021901. General Duties

The Director of the TCAP is a judge advocate in the grade of O-4/Major, who has extensive trial experience (former STC/SDC), has formerly been qualified as an SVIP TC under paragraph 022102, and normally possesses the additional MOS of 4409 (masters of criminal law). TCAP reports directly to the Branch Head, JMJ.

TCAP is responsible for developing, publishing, and organizing annual training as required by statutes, instructions, and orders, for TCs throughout the Marine Corps as well as fostering a community of practice among Marine Corps prosecutors and providing litigation advice.

021902. Specific Duties

Specific Director of TCAP duties include, but are not limited to:

- A. Develop standardized procedures for the provision of trial services throughout the Marine Corps;
- B. Maintain a website for trial counsel to share lessons learned, legal research, motions, case disposition reports, and a forum for questions;
- C. Provide litigation advice for individual trial counsel on specific issues on a real-time basis including LAA assistance and case strategy when the regional LAA is unavailable;
- D. Coordinate with other service TCAPs to ensure best practices are shared throughout the services;
- E. Coordinate with DoD providers of forensic testing and expert assistance to ensure trial support and training for TC throughout the Marine Corps;
- F. Provide assessments of the impact proposed legislation, orders, directives, and instructions will have on TCs;
- G. Maintain a close, cooperative relationship with the RTCs and LAAs/GS-15 advisors throughout the LSSSs;
- H. Serve as the Marine Corps representative to the Department of the Navy's Litigation Training Coordination Council; and
- I. Develop and publish an organized annual training plan no later than 1 October of each fiscal year.

0220. GENERAL AND SPECIAL COURT-MARTIAL QUALIFICATIONS FOR TRIAL COUNSEL

022001. General Court-Martial Qualified Trial Counsel (GCM TC)

Qualification as a GCM TC shall be documented in writing by the RTC or LSSS OIC and is non-delegable. Qualification is based on the following requirements:

- A. Be certified as a TC under Article 27(b), UCMJ, and sworn under Article 42(a), UCMJ;
- B. Served as a TC for six months or have a combined eighteen months experience as a trial and/or defense counsel or military judge;
- C. Prosecuted a contested special court-martial as the lead trial counsel or a contested general court-martial as an assistant trial counsel or lead defense counsel;
- D. Received recommendations, in writing, from their STC and, when applicable, their LSST OIC.

In extraordinary situations, as determined by the LSSS OIC, the LSSS OIC may waive the requirements in subparagraphs B and C above. The written qualification letter shall note the extraordinary situations justifying the waiver.

022002. Special Court-Martial Qualified Counsel

Any commissioned officer qualified under Article 27(b), UCMJ and sworn in accordance with Article 42(a), UCMJ, may be detailed as a TC in a special courts-martial, except for special victim cases as defined in paragraph 050101. All TCs must complete a TC orientation course before being detailed to special courts-martial, absent extraordinary situations as determined by the LSSS OIC.

0221. SVIP QUALIFICATIONS AND PERSONNEL

The LSSS OIC shall designate, and maintain a list of, all SVIP personnel. The list shall contain the name, date of SVIP designation, and the location of the individual. Designation of such SVIP personnel shall be at the discretion of the LSSS OIC and may not be delegated. An individual with a conviction for, a substantiated incident of, or who is currently facing an open investigation into any of the following offenses is expressly prohibited from serving as SVIP personnel: any sex-related offense, domestic violence, sexual harassment, child abuse, aggravated assault, or retaliation.

022101. Special Victim Investigative and Prosecution Administrative Personnel

Qualification as SVIP administrative support personnel requires completion of the TC Orientation Course and attendance at a Trial Counsel Assistance Program (TCAP) approved special victim training course. The LSSS OIC may waive these requirements. The written qualification letter shall note the situation justifying the waiver.

022102. Special Victim Qualified Trial Counsel (SVIP TC)

Qualification as a SVIP TC shall be documented in writing by the LSSS OIC, and is non-delegable. Qualifications to become a SVIP TC are based on the following requirements:

- A. Be a GCMTC (qualification as a GCMTC and SVIP TC may occur simultaneously when a TC is detailed as an ATC in a contested general court-martial special victim case);
- B. Demonstrated to the LSSS OIC's satisfaction that the TC possesses the requisite expertise, experience, education, and disposition to competently prosecute special victim cases;
- C. Prosecuted a contested special or general court-martial in a special victim case as an ATC;
- D. Attended an intermediate level trial advocacy training course for the prosecution of special victims (e.g., TJAGLCS Intermediate Trial Advocacy, NJS Prosecuting Special Victims' Cases Course, or TCAP SVIP Training); and
- E. Received recommendations, in writing, from their STC, RTC, and, when applicable, LSST OIC.

The LSSS OIC may waive the requirements in subparagraph C provided the counsel has equivalent experience, such as civilian, defense, VLC, appellate, or other litigation experience in SVIP cases. The LSSS OIC may waive the requirements in subparagraph D provided the counsel has equivalent training, such as attending the defending sexual assaults course, National Criminal Defense College, or similar trial advocacy training. The written qualification letter shall note the situation justifying the waiver as well as the counsel's equivalent experience and training. The LSSS OIC will forward a copy to JAD (JMJ) if any qualifications were waived. If the LSSS OIC waives intermediate level trial advocacy training due to equivalent training, the LSSS OIC shall attempt to send the counsel to a course satisfying paragraph D at the earliest opportunity.

0222 POST-TRIAL ROLES AND RESPONSIBILITIES

022201. Post-Trial Administrative Officers

The Post-Trial Administrative Officer (PTAO) (formerly called review officer) may be a chief warrant officer holding the MOS of 4430 or a judge advocate, at the discretion of the LSSS OIC. The PTAO is responsible to the LSSS OIC for the overall supervision and management of the Regional Post-Trial Office. The PTAO's RS is the LSSS OIC and the RO is normally the Marine Corps Installation Commander for that region, but the LSSS OIC may direct another reporting chain as appropriate, based on the rank of the individual assigned. Specific PTAO duties include, but are not limited to:

- A. Supervise, train, and detail the Marines and civilians of the Court Reporter and Post-Trial Review Sections in support of Special and General Courts-Martial and other military justice proceedings;
- B. Ensure timely and accurate review of Summary, Special, and General Courts-Martial and preparation of Staff Judge Advocate's Review and Convening Authority's Action;
- C. Supervise proper certification and service of records of trial and other appropriate post-trial documents on the accused, defense counsel, and victims of crime;
- D. Report, track, promulgate, and store records and actions for all court-martial proceedings within the region, ensuring proper transfer of records for appellate review or archiving;
- E. Procure, upgrade, and inventory all required hardware, software, and peripheral items relating to court reporter tasks;
- F. Make recommendations to the LSSS OIC regarding personnel assignment/school seat allocations for court reporters and evaluate personnel for the court reporter billet;
- G. Conduct court reporter training at least quarterly; and
- H. If the PTAO is a judge advocate, conduct legal sufficiency reviews of qualifying courts-martial under the MCM. For LSSSs without a judge advocate PTAO, the SJA or DSJA may conduct the legal sufficiency review, or may request the LSSS OIC to cause another neutral judge advocate to conduct the review pursuant to JAGMAN section 0158.

022202. Regional Post-Trial Chiefs

Marines assigned to the billet of Regional Post-Trial Chief are responsible to the PTAO and LSSS OIC for supervising and managing post-trial case tracking, reporting case delay, training and assisting subordinate post-trial personnel, and ensuring the implementation of policy in their area of operation. They are also responsible for assisting the Post-Trial Chief of the Marine Corps with post-trial requests for information and reporting requirements, implementation of new policy and procedures, and providing advice to the SJA to CMC. The Regional Post-Trial Chief normally holds the MOS of 4422.

022203. Post-Trial Chief

Marines assigned to the billet of Post-Trial Chief are responsible for the day-to-day supervision of subordinate court reporters and post-trial clerks, personnel assignment recommendations, and case management and tracking entry, supervision, and validation. The Post-Trial Chief normally holds the 4422 MOS. The Post-Trial Chief coordinates with the LSSS OIC, LAO, Legal Services Chief, and PTAO to recommend eligible 4421s as qualified candidates for court reporter training.

022204. Court Reporters

Marines holding the Military Occupational Specialty (MOS) 4422, and in a court reporting billet, are responsible for the accurate and timely capture, transcription, editing, proofreading, redaction, assembly, and distribution of official records of trial and approved miscellaneous transcription requests. Upon graduation, 4422s are sworn to serve as an officer of the court under R.C.M. 807(b)(2)(D). The goal when filling a 4422 billet is to produce verbatim transcripts on demand. This means recording accurate notes, audio, exhibits, and taking down the correct spelling of parties to the court. Court reporters are in direct support of the military judge when detailed to a general or special court-martial to ensure accurate records of trial that are the result of general and special courts-martial. Court reporters mark and maintain control of exhibits, and maintain a list of witnesses, exhibits, court times, and milestones.

022205. Post-Trial Clerks

Marines assigned as post-trial clerks perform administrative tasks as assigned by the Post-Trial Chief and PTAO, except for those that must be performed by a court reporter sworn under R.C.M. 807(b)(2)(D).

VOLUME 16: CHAPTER 3

DETAILING

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

CHAPTER 3**DETAILING**

0301. PURPOSE

This chapter provides guidance for the detailing of Trial Counsel, and the counsel and personnel assigned to trial services offices, as provided by relevant law, regulations, and rules for professional conduct.

0302. DETAILING CONSIDERATIONS IN ALL CASES

Detailing policies ensure counsel detailed to represent the United States are well qualified to fulfill their duties as trial counsel. The detailing authority will consider the following factors before detailing a trial counsel to a particular case: any potential conflicts of interest in detailing; the trial counsel's caseload, experience, temperament, and qualifications; the case complexity; geographic location of the trial counsel and the expected location of the court-martial; and, the expected rotation date of the counsel. Detailing authority also includes the authority to remove a trial counsel from a case. Detailing authority may be rescinded or withheld at any time. In addition to the limitations of this chapter, the LSSS OIC, or RTC may further limit the detailing authority of any counsel under their supervision.

0303. DETAILING LETTER

Detailing of trial counsel to a court-martial must be in writing and shall specify the supervisory counsel the trial counsel may seek assistance from. The detailing letter will be maintained in the casefile and by the detailing authority. If immediate detailing is necessary, the detailing authority may orally detail a counsel to a case, provided the detailing letter is later signed indicating the date the counsel was detailed.

0304. TIMELINE

An SVIP qualified trial counsel shall be detailed in writing as soon as practicable upon notification by NCIS or another Military Criminal Investigative Organization (MCIO) of an SVIP investigation. The detailing shall not be delayed until the receipt of an RLS. In non-SVIP cases, a trial counsel shall be detailed in writing to a case as soon as practicable, but not later than any one of the following:

- (1) Ten calendar days after an accused has been placed in pretrial confinement;
- (2) Ten calendar days after receipt of a Request for Legal Services (RLS);
- (3) As otherwise required by law or regulation.

0305. DETAILING AUTHORITY OF THE LSSS OIC

The LSSS OIC is the detailing authority for all TCs assigned, or made available, to the LSSS. The LSSS OIC normally delegates this detailing authority to the RTC. The authority to detail the RTC to an individual case may not be delegated.

0306. DETAILING AUTHORITY OF THE REGIONAL TRIAL COUNSEL (RTC)

The RTC is the detailing authority of all trial counsel within the RTC's region, as delegated by the LSSS OIC. The RTC normally delegates detailing authority to the STC for TCs under the STC's supervision. Detailing authority may only be delegated to an officer in the grade or selected to the grade of O-4 or higher. The RTC may not delegate the authority to detail in the following cases: (1) any capital case; (2) national security cases, or cases involving the use of classified information; (3) special victim cases as defined in chapter 4 of this Volume; (4) cases where the accused is an E-8, E-9, CWO3, CWO4, CWO5, or O-3 and above; and (5) detailing of the complex trial counsel.

0307. DETAILING AUTHORITY OF THE STC

The STC may detail counsel under the STC's supervision as delegated by the RTC. The STC may not further delegate detailing authority to any other trial counsel, but the LSSS OIC, RTC, or LSST OIC may appoint a trial counsel as the acting STC during periods when the STC is absent.

0308. SPECIAL DETAILING CONSIDERATIONS FOR *DUBAY* HEARINGS AND REMANDS

The detailing authority must consult with the Appellate Government Division (Code 46) before detailing a TC to a case that has been remanded by an appellate court for retrial, sentencing, or for a fact-finding hearing under *United States v. DuBay*, 17 C.M.A. 147 (C.M.A. 1967). Because the limited purpose of a *DuBay* hearing is to obtain further evidence on a matter under consideration by the court, these hearings often require specialized knowledge of the unique appellate posture of the case. The detailing authority should consider the benefit of having two counsel represent the government for the hearing – a local trial counsel and a counsel assigned to the Appellate Government Division. The cognizant SJA should promptly inform the LSSS so the detailing authority may start coordination between the LSSS and Code 46, thereby protecting an accused's right to speedy post-trial review and meeting the appellate court's timelines.

0309. DETAILING MILITARY JUSTICE SUPPORT PERSONNEL

There is no requirement to detail military justice clerks and other personnel to courts-martial under R.C.M. 503 in the same way that counsel are detailed. However, to ensure military justice clerks gain a breadth of experience and familiarity with the facts of a case, RTCs and STCs should consider developing policies that allow military justice clerks and other support personnel to be assigned to cases for the life of the case, to the greatest extent possible.

PART B: SPECIAL CONSIDERATIONS IN VICTIM CASES

VOLUME 16: CHAPTER 4

VICTIM RIGHTS

SUMMARY OF SUBSTANTIVE CHANGES

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PART B – SPECIAL CONSIDERATIONS INVOLVING VICTIMS**CHAPTER 4****VICTIM RIGHTS**

0401. PURPOSE

This Chapter outlines specific duties of trial counsel and other personnel in military justice sections in cases involving victims. Nothing in this Chapter restricts the legal services provided by members of the VLCO, whose missions, duties, and responsibilities are covered in detail in Volume 4 of this manual.

0402. TYPES OF VICTIMS

Various provisions in the UCMJ, Rules for Courts-Martial, Military Rules of Evidence, and service regulations guarantee victims certain rights throughout the military justice process. Practitioners must ensure they are using the correct definition of victim in all circumstances. For example, certain rights attach once a victim has suffered a direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ, while other rights require the victim to be named in a specification, to have testified at trial, or to have suffered harm as a result of an offense the accused was convicted of. Please refer directly to the text of the statute or rule to determine if an individual meets the definition of a victim based on the right at issue.

0403. AVAILABILITY OF VICTIMS' LEGAL COUNSEL (VLC)

040301. Requirement to Notify Certain Victims of VLC

Every victim, as defined in Article 6(b), UCMJ, shall be notified of the availability of VLC and offered the option of receiving assistance from a VLC. Pursuant to 10 U.S.C. § 1044e and 10 U.S.C. § 1565b, when a trial counsel or representative of a trial counsel meets with a victim who is not already represented by a VLC, the trial counsel shall ensure that the victim has been notified of the availability of VLC and offered the option of receiving assistance from a VLC.

040302. Timing of Notification

Notification of the victim must occur before a trial counsel or representative of the trial counsel interviews or requests a statement from the victim, unless exigent circumstances require the interview to proceed immediately. Exigent circumstances include situations such as the need to collect evidence that is subject to degradation (e.g., sexual assault forensic exams and deoxyribonucleic acid (DNA) collection); or prevent or mitigate a serious and imminent threat to the health or safety of the victim or another person). The trial counsel must document the notification to the victim in the case file, or the exigent circumstances that required the immediate interview of the victim.

040303. Notifying Other Victims of the Availability of VLC

Although 10 U.S.C. § 1044e only requires the notification of the availability of VLC to eligible victims (as defined in § 1044e(a)(2)) of sex-related offenses, Marine Corps policy (*See* Volume 4 of this manual) permits the OIC, VLCO to represent victims of domestic violence and to grant exceptions to policy to represent victims of other crimes, as well as victims who are not eligible for services under 10 U.S.C. § 1044e. Since the OIC, VLCO may exercise discretion in representation, TCs shall notify every Article 6(b) victim of the availability of VLC.

0404. DISCLOSURES TO VICTIMS

The counsel for the government is responsible for the disclosures and notifications listed in this paragraph. If the victim is represented by counsel, the information will be provided to the VLC or civilian counsel. Nothing in this section is intended to prevent the counsel for the government from withholding listed information when necessary

based on the facts of the case, or disclosing additional documents not listed, if doing so is authorized under 5 U.S.C. § 552a and SECNAVINST 5211.5F. Counsel withholding any required information must consult supervisory counsel and should only do so when exceptional circumstances show that disclosing the information to the victim would lead to the destruction of evidence, would compromise the investigation, or would otherwise be inconsistent with the pursuit of justice. Further, nothing in this section is intended to prevent the victim or the victim's counsel, if applicable, from requesting disclosure of additional documents as necessary to safeguard victims' rights. However, as described in chapter 11, providing additional documents or information to a victim may lead to questions about whether their testimony was influenced by knowledge of these additional facts. The disclosure requirements listed in this Chapter do not eliminate any specific requirements to provide information and materials to victims under the UCMJ, the Rules for Courts-Martial, Military Rules of Evidence, Victim Witness Assistance Program, and other sources of applicable law and policy. For purposes of this paragraph, a victim is defined under Article 6b, UCMJ, unless the specific provision states otherwise. Upon request by the victim or the victim's counsel, the counsel for the government, normally the TC, shall provide the following to the victim or victim's counsel unless otherwise directed by supervising attorney or military judge:

040401. Before Preferral

A. A copy of the victim's statements, including video statements, and documentary evidence derived directly from and pertaining directly to the victim that are in the possession of the counsel for the government or the SJA. Obligation to disclose continues throughout the court-martial proceeding.

B. The date, time, and location of any pretrial confinement review pursuant to R.C.M. 305 and any change in confinement status of the accused.

040402. After Preferral

A. Copy of the charge sheet, redacted for personally identifiable information (PII), setting forth the preferred specifications pertaining to the victim making the request.

B. DD Form 2702 (Court-Martial Information for Victims and Witnesses of Crime). See MCO 5800.14 (Victim-Witness Assistance Program) for additional guidance.

C. Subpoenas for personal or private information regarding a victim named in a specification. See paragraph 090206 of Chapter 9 and R.C.M. 703(g)(3)(C)(ii).

D. A copy of any appointing order directing a preliminary hearing under Article 32, UCMJ; the date, time, and location of any preliminary hearing pursuant to R.C.M. 405; and any requests for continuances of the hearing. After the hearing, victims named in a specification will be provided a copy of the recording of the hearing, upon request.

040403. After Referral

A. A copy of the referred charge sheet, redacted for PII, setting forth the referred specifications pertaining to the victim making the request.

B. Any docket requests, as well as docketing or scheduling orders, including deadlines for filing motions and the date, time, and location for any session of trial.

040404. Upon Receipt by the Government

A. A copy of any filing, including attachments, that may limit a victim's ability to participate in the court-martial, affect the victim's possessory rights in any property, concern the victim's privileged communications or private medical information, or any filing where a victim has a right to be heard regarding the filing, such as a motion filed under M.R.E. 412.

B. A copy of any proposed agreement and the final signed agreement, including the signed stipulation of fact, if any, related to the offenses involving that victim.

040405. Post-Trial

A. A copy of the statement of trial results, regardless of whether the accused was found guilty of any offenses related to the victim.

B. A Certified Record of Trial pursuant to R.C.M. 1112(e)(1)(C), if the victim was named in a specification, regardless of whether the accused was found guilty of any offenses related to the victim.

0405. ADDITIONAL NOTIFICATIONS TO VICTIMS

040501. VWAP Notifications

The Victim Witness Liaison Officer (VWLO) will ensure that the victim receives all required notifications and case updates, as required by MCO 5800.14 (Victim-Witness Assistance Program). The trial counsel will coordinate with the VWLO to provide updates, and ensure that required updates are documented in the case file and electronic case management system. The TAO shall assist the trial counsel as directed by the RTC.

040502. Change in Confinement Status

The trial counsel will notify the victim or VLC anytime there is a change in the confinement status of the accused.

040503. Other Regular Updates

The trial counsel shall make other regular updates to the VLC or victim on any significant events impacting the litigation of the case.

0406. NOTIFICATION TO VICTIMS IN CHILD PORNOGRAPHY CASES

040601. Article 6b Applies in Child Pornography Cases

Children depicted in images of child pornography have all the rights guaranteed in Article 6b, UCMJ, including the rights to reasonable, accurate, and timely notice of proceedings, to confer with counsel for the government, and if the accused is convicted, to be reasonably heard during sentencing. *United States v. Barker*, 77 M.J. 377 (C.A.A.F. 2018).

040602. Applicability

When the identity of the child depicted in the images is known to the trial counsel, for example, in cases alleging the production of child pornography, the trial counsel must provide all information required under paragraphs 0403-0405 of this chapter to the victim, or victim's designee. The following paragraphs apply to situations where an image appears to depict an actual victim, but the identity of the victim is unknown to NCIS or the trial counsel.

040603. VWAP Procedures for Child Pornography Cases

A. Case Identified

When a potential child pornography case is identified, NCIS submits gathered images to the National Center for Missing and Exploited Children (NCMEC) for analysis.

B. NCMEC Report

NCMEC will provide a Child Identity Report (CIR) to the NCIS case agent. The CIR will indicate whether a known victim is reflected in the images.

C. Federal Bureau of Investigation (FBI) Report

When a CIR reflects a known victim, the NCIS case agent will forward the CIR to the FBI's Child Pornography Victim Assistance (CPVA) program, which in turn provides a Victim Information Report (VIR) containing the victim's notification preference and indicating whether victim impact statements are available (DOJ maintained). The information contained in the VIR remains valid for only 45 days. The trial counsel may request an updated VIR by sending an electronic copy of the CIR to CPVA@ic.fbi.gov. If an electronic copy is not available, a copy of the CIR can be faxed to 202-324-1311, attention CPVA. Please indicate trial counsel contact information and official work email in the fax cover letter.

D. Known Victim Requesting Not to Receive Notifications

Should a victim elect not to be notified, the VIR will contain no contact information. Trial Counsel and representatives for the government will comply with the victim's preference and will not attempt to make contact. In the event a victim has elected not to be notified or to participate in a hearing, statements by the victim are not admissible during sentencing under R.C.M. 1001A. *See Barker, 77 M.J. at 382-84.* In these cases, trial counsel may only seek to introduce the victim's statement as negotiated through a pretrial agreement or plea agreement, or if the statement is otherwise admissible under the rules of evidence.

E. Known Victim Requesting Notifications

Should a victim request notifications, the VIR will contain contact information including the victim's representative and mailing or email address. The trial counsel will be responsible for providing the DD2702, DD2703, and a copy of the DD2704 with a cover letter explaining the victim's rights and providing contact information for the trial counsel. If a DD2701 has not been provided by law enforcement, the trial counsel should also provide the victim with the form.

F. Completing a DD2704 in a Child Pornography Case

The DD2704 Section 2 will never be applicable since there are always victims in child pornography cases involving actual children. Section 3 of the DD2704 should be signed, as there are eligible victims. Within Section 4, for known victims who elected notification, add their contact information (as reflected on a VIR issued within the past 45 days). When a known victim declines notification or when all victims in a case are either unidentified or are unknown, Section 4 will contain a short statement as to why contact information is unavailable.

0407. INDIVIDUAL TO ASSUME RIGHTS OF CERTAIN VICTIMS

040701. When Appointment May be Warranted

Under R.C.M. 801(a)(6), at the military judge's discretion, the military judge may appoint a person to assume the victim's rights under the UCMJ if the victim is under 18 years of age and not a member of the armed forces, or is incompetent, incapacitated, or deceased. The military judge is not required to hold a hearing before making such a designation. But if the military judge orders a hearing, the trial counsel will ensure the victim is notified of the hearing and the right to be present at the hearing. The trial counsel must consult with the VLC, if applicable, regarding the selection of a designee. The designee may not be the accused. R.C.M. 801(a)(6)(C).

040702. Factors to Consider in Recommending Designee

This paragraph outlines factors and considerations for a trial counsel in recommending a designee for a military judge to appoint. Nothing in this paragraph is intended to restrict or limit a military judge's discretion

under R.C.M. 801(a)(6) to appoint, or not appoint, an appropriate designee. Factors to consider when recommending a person for the military judge to appoint include: the age and maturity, relationship to the victim, and physical proximity of any proposed designee; the costs incurred in effecting the appointment; the willingness of the proposed designee to serve in such a role; the previous appointment of a guardian by another court or competent jurisdiction; the preference of the victim; any potential delay that may be caused by a specific appointment; and any other relevant information that shows appointment of a particular designee is in the best interest of the victim.

040703. Compensation for Designee Paid by Convening Authority

In most cases, the designee will likely be a family member, parent, or legal guardian who does not require compensation for services. However, if the military judge appoints a designee that requires payment for services (such as a civilian guardian *ad litem* or counselor), the trial counsel will seek an order from the military judge fixing the rate and maximum amount of compensation. Costs associated with a designee will be paid by the convening authority. The RTC may direct the TAO to provide administrative assistance to the TC and convening authority to ensure proper funding.

VOLUME 16: CHAPTER 5

SPECIAL VICTIM CASES AND PROCESSING OF SEX-RELATED OFFENSES

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by *[bold, italic, blue and underlined font.](#)*

The original publication date of this Marine Corps Order (MCO) Volume (right header) will not change unless/until a full revision of the MCO has been conducted.

All Volume changes denoted in *blue font* will reset to black font upon a full revision of this Volume.

CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

CHAPTER 5

SPECIAL VICTIM CASES AND PROCESSING OF SEX-RELATED OFFENSES

0501. DEFINITIONS

050101. Special Victim Cases

Special victim cases are those cases involving alleged violations of Articles 117a, 118, 119, 119a, 120, 120a (for stalking offenses committed prior to 1 January 2019), 120b, 125 (with a child or forcible), 128 or 128b (domestic violence involving aggravated assault or child abuse), 132 (when the retaliation was for reporting a sex-related offense), 134 (child pornography or assault with intent to commit the previously listed articles), or 80 (attempts to commit the previously listed articles) of the UCMJ. All special victim cases will have an SVIP TC detailed as lead counsel.

050102. Sex-Related Offenses

“Sex-related offenses” are defined differently depending on the specific provision at issue. *Compare* R.C.M. 307(e) and JAGMAN section 0128(a)(1)(a) with JAGMAN Section 0128(e)(2).

050103. Collateral Misconduct Associated with Sex-Related Offenses and Data Collection Requirements

Collateral misconduct means alleged victim misconduct that might be in time, place, or circumstance associated with the victim’s sexual assault incident. *See* DoDI 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Glossary. In accordance with MCO 1752.5C, disposition authorities authorized to take action on collateral misconduct of an alleged victim should ordinarily defer taking action until after the underlying sex-related offense is resolved. Every allegation of collateral misconduct must be resolved in a fair and just manner based on the unique facts of the case and in accordance with laws governing the disposition of collateral misconduct. Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law No. 115-232) directs the Secretary of Defense to submit a biennial report to the congressional defense committees on the number of instances of collateral misconduct committed by alleged sexual assault victims. Practitioners must ensure collateral misconduct is properly annotated in any electronic case management system.

0502. PROCESSING AND ELEVATED REVIEW OF SEX-RELATED OFFENSES

050201. Sexual Assault Initial Disposition Authority

The authority to make the initial disposition of sex-related offenses is withheld to an officer in the grade of O-6 or above with special courts-martial convening authority. This official is designated as the Sexual Assault Initial Disposition Authority (SA-IDA). *See* JAGMAN section 0128. Note that although JAGMAN section 0128(g) contains a definition of sex-related offenses, it refers to this Volume for Marine Corps cases. The Commandant of the Marine Corps expanded the offenses withheld to the SA-IDA to include aggravated sexual contact and abusive sexual contact in violation of Article 120(c) and 120(d). *See* MARADMIN 372-12. Therefore, the requirements of JAGMAN sections 0128 paragraphs (e) through (j) apply to aggravated sexual contact and abusive sexual contact offenses in Marine Corps cases.

050202. Withholding of Disposition Authority Applies to Collateral Misconduct

The withholding of disposition authority for sex-related offenses applies not only to the sex-related offense, but to all other alleged offenses arising from or relating to the same incident, whether committed by the alleged offender or the alleged victim. The victim’s collateral misconduct will be referred to the first SA-IDA in the victim’s chain of command.

050203. Forwarding to Subordinate Commander Prohibited

The SA-IDA may not forward any offense relating to the initial incident to a subordinate commander. Unless forwarded to a superior commander for disposition, the SA-IDA maintains disposition authority over the case until final adjudication of all offenses arising from the incident, even if the SA-IDA decides to go forward on charges not listed in this paragraph or disposes of the case at a lower forum such as nonjudicial punishment (NJP) or administrative separation. For example, if the SA-IDA finds insufficient evidence for a sex-related offense, but finds sufficient evidence of another offense, such as underage drinking, the SA-IDA will adjudicate that offense and may not send it to a subordinate commander for adjudication.

050204. Sexual Assault Initial Disposition Authority (SA-IDA) Disposition Considerations

Before a SA-IDA makes an initial disposition decision under R.C.M. 306, the SA-IDA must consider the victim's preference, including the victim's views regarding disposition and the victim input on the nature of the offense, as well as the victim's preference in prosecution jurisdiction as described in paragraph 050205, consult with the cognizant SJA, and review any other evidence necessary to make an informed disposition decision. If the SA-IDA directs a preliminary hearing, all documents that were provided to the SA-IDA must be provided to the defense within five days of the SA-IDA ordering a preliminary hearing. See R.C.M. 404A and Chapter 11 of this Volume.

050205. Consultation Regarding Victim's Preference in Prosecution JurisdictionA. Commander's Responsibility to Consider Victim's Preference

Per R.C.M. 306, and JAGMAN section 0128, for allegations of sex-related offenses that occur within the United States, the victim must be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. The SA-IDA will ensure the victim is provided an opportunity to express such views and must consider the victim's preference for jurisdiction, if available, prior to making the initial disposition decision.

B. Victim's Preference is Non-Binding

The commander must consider the victim's preference. However, the victim's preference is not binding. In appropriate cases, the commander may take initial disposition actions inconsistent with the victim's preference.

C. Procedure for Capturing Victim's Preference

The procedures for capturing victim's preferences are listed in JAGMAN section 0128. The detailed SVIP TC will attempt to interview the alleged victim before preferring charges or completing a Case Analysis Memorandum (CAM) as described in paragraph 0503. If the alleged victim is represented by VLC, the SVIP TC will coordinate the interview request through the VLC. During or after the interview, the SVIP TC should normally have the victim sign a standard Victim's Preference Letter, which is contained in Appendix A-1-q of the JAGMAN. Practitioners may use a form that contains additional information, so long as it includes all required information in the JAGMAN form. If the alleged victim declines to be interviewed or declines to provide victim preferences after reasonable attempts to contact the victim, the SVIP TC shall follow the procedure outlined in JAGMAN section 0128 to document the steps taken to ascertain the victim's preference. TC requests for victim input will also be documented in the case file and electronic case management system.

D. Forwarding the Victim's Preference

The TC shall ensure the written victim's preference statement is forwarded to the SJA along with the CAM. The written victim's preference statement and CAM will also be included in the case file and uploaded to the electronic case management system. While the CAM is normally attorney work-product, the victim's preference statement is subject to normal discovery rules and is usually provided to the defense, if applicable, at the appropriate time.

E. Notification to Civilian Authorities

If the victim preference is for prosecution in a civilian court with jurisdiction over the offense, the TC will ensure the appropriate civilian authority is notified. Following notification to the appropriate civilian authority, the cognizant commander is responsible for notifying the victim of any decision by the civilian authority to prosecute or not prosecute the offense in a civilian court. The TC will assist the cognizant commander by notifying the VLC or the victim or victim witness liaison officer, if the victim does not have a VLC. The date the victim was notified of the decision by civilian authorities must be documented on the victim preference letter referenced in subparagraph C above.

050206. Requirement to Submit Sexual Assault Disposition Report (SADR)

The cognizant SA-IDA will complete a SADR no later than fifteen business days after final disposition of a sex-related offense. The SADR will use the NAVMC 1752 SADR form or a DoD-directed form, if one is implemented. The default SA-IDA is the O-6 SPCMCA in the chain of command of the alleged offender. If the alleged offender is not assigned to a Marine Corps command, the SA-IDA in the chain of command of the alleged victim will be responsible for completing and submitting the SADR form if the alleged victim is assigned to a Marine Corps command. The General Court Martial Convening Authority (GCMCA) SJA shall maintain a copy of the SADR in local files, upload it into any electronic case management system (if applicable), and ensure submission to Judge Advocate Division (JAD) by emailing the form to JAD_SADR@usmc.mil, copying the pertinent TC/STC on the submission to JAD. Because the SADR Form contains PII, the email must be sent encrypted. Follow the instructions on the SADR form to submit the form to JAD and NCIS after the last disposition is complete.

050207. Elevated Review of Disposition Decisions

A. SJA recommends referral

In any case in which an SJA, pursuant to Article 34, recommends any specification(s) of sex-related offenses be referred for trial by court-martial and the convening authority does not refer to court-martial all of those specification(s) recommended by the SJA, the convening authority will forward those specifications not referred along with a copy of the case file, containing all items required by JAGMAN section 0128(h)(4), to the Secretary of the Navy for review. A specification recommended for referral by an SJA, but not referred by the convening authority, need not be forwarded if the specification was charged only as an alternative theory of proof to a specification that was referred to court-martial. See JAGMAN section 0128(h)(1).

B. SJA Does Not Recommend Referral

In any case in which an SJA, pursuant to Article 34, UCMJ, recommends that any specification(s) of sex-related offenses not be referred for trial by court-martial and the convening authority does not refer to court-martial those specification(s), the convening authority will forward those specifications not referred along with a copy of the case file, containing all items required by JAGMAN section 0128(h)(4), to the next higher GCMCA for review. A specification not referred by the convening authority need not be forwarded if the specification was charged only as an alternative theory of proof to a specification referred to court-martial. If a single case contains specifications that must be reviewed by the next higher GCMCA under this paragraph, and specifications that must be reviewed by the Secretary of the Navy under paragraph A, the review by the next higher GCMCA will be omitted and the entire case file and all specifications will be forwarded to the Secretary of the Navy for review. See JAGMAN section 0128(h)(2).

C. Detailed Trial Counsel Requests Elevated Review

JAGMAN section 0128(h)(3) allows a detailed trial counsel to request the Chief Prosecutor, as defined in service regulations, to seek Secretary of the Navy review of the case file if the convening authority and next higher GCMCA have both decided not to refer a sex-related offense to court-martial. In the Marine Corps, the DepDir, MJCD, JAD fulfills the role of Chief Prosecutor of the Marine Corps, until such a time as a separate billet

may be created for this role. The DepDir, MJCD may seek Secretary of the Navy review after reviewing the case file and determining the case has prosecutorial merit. All requests from the detailed trial counsel must contain the information listed in JAGMAN section 0128(e)(4), as well as an endorsement of the request signed by the RTC, with input from the LAA.

D. Forwarding the Case File for Elevated Review

Once a SA-IDA decides not to adjudicate charges at court-martial, the charges should normally be dismissed without prejudice, unless there is a substantial likelihood that the statute of limitations for those specification(s) will run before the higher authority has an opportunity for review. When forwarding a case for review to the next higher GCMCA, the charge sheet and case file, including all items listed in JAGMAN section 0128(h)(4), shall be forwarded via secure electronic means, such as a secure electronic file transfer system, or electronic case management system, if possible. The next superior GCMCA is determined by standard command relationships established in the U.S. Navy Regulations and Marine Corps Manual. When forwarding a case for review by the Secretary of the Navy, the case file shall be routed through the Judge Advocate General (Code 20).

E. Notification to Victim Upon Completion of Elevated Review

Upon completion of any review by higher authority under this provision, the SJA will ensure that the victim of the alleged sex-related offense is notified of the results of the elevated review.

050208. Unlawful Influence of Disposition Decision is Prohibited

No person may attempt to coerce or, by unauthorized means, influence the action of a convening authority with respect to any judicial acts, including referring or not referring a charge to a court-martial. If a higher authority conducts an elevated review of a disposition decision and decides referral of specifications is warranted, the higher authority should normally become the convening authority.

0503. CASE ANALYSIS MEMORANDUM (CAM)

050301. Purpose

Fulfillment of the purpose of military law described in paragraph 010301 of Chapter 1 turns on diligence in the investigation, development, analysis, and preparation of cases. The Case Analysis Memorandum (CAM) serves these objectives through three principal means: (1) ensuring competent preparation of a case in order to inform the advice of an SJA and thereby assist a commander in applying and considering the non-binding disposition guidance contained in Appendix 2.1 of the Manual for Courts-Martial and making an initial disposition decision under Rule for Courts-Martial 306; (2) assisting convening authorities in making other disposition decisions, such as accepting a plea agreement, referring charges, or dismissing charges; and (3) enabling supervision of counsel. The CAM also provides a historical record of case analysis for use by the SJA to CMC in supervising the provision of legal services and command legal advice.

050302. Applicability

This section on CAMs applies to government counsel (trial counsel and SJAs) and VLCs, and is issued pursuant to the authority of the SJA to CMC as described in Volume 2 and in Chapter 1 of this Volume.

050303. When Required

The servicing LSSS shall prepare a CAM in all cases involving the actual infliction of grievous bodily harm, or actual, attempted, or solicited offenses involving: death; sex-related offenses; (except for 120a and 120c); and, retaliation under Article 132, when the retaliation was related to a sex-related offense. However, a CAM is not required if the accused is not subject to military jurisdiction, or if the SJA and RTC agree that charges should be preferred and there is no dispute as to which charges and charging theory will be alleged. Additionally, for allegations of abusive sexual contact, the SJA may waive the requirement that a CAM be completed when the

interests of justice support speedy resolution of the case without a CAM, and when the victim's preferences with respect to disposition and the SJA's waiver of the CAM requirement are memorialized. Only one CAM is required in each case, unless by exception when an SJA specifically requests a supplemental CAM.

050304. Detail, Content, and Form

There are two types of CAMs, abbreviated and comprehensive. The contents of each type of CAM are different. The RTC, or designee, will determine whether to issue an abbreviated or comprehensive CAM. If an abbreviated CAM was prepared, the SJA may request the RTC to direct a comprehensive CAM be prepared. The CAM shall be marked, "FOUO – ATTORNEY WORK PRODUCT." The CAM template may be found on the "JAD Forms" tab on the SJA to CMC public website and shall not be modified. While good judgment and careful analysis of the unique facts and circumstances of each individual case will guide preparation of a CAM, the primary focus for trial counsel are factors regarding the availability of victims and witnesses, victim preferences regarding disposition, the admissibility of evidence and likelihood of obtaining a sustainable conviction, and the criminal history of the accused – particularly in those cases where the government has reason to believe prior misconduct is relevant and admissible in the present case. The level of detail in a CAM will necessarily vary with case complexity, availability of witnesses, depth and strength of the evidence, and other legal issues. The determination of how much detail is appropriate is necessarily based on the specialized knowledge, training, and experience of the SVIP TC and RTC supervising the preparation of the CAM. The content of a CAM also varies with case complexity and type. Regardless of the type of CAM or level of detail it contains, all CAMs will be completed and submitted on the form provided by JAD. Completion of the fields in block 1 is mandatory, as is the entry of block 1 data in the electronic case management system.

A. Abbreviated CAM

An abbreviated CAM is appropriate where, following preliminary review, the SVIP TC and RTC determine any of the following:

(1) There is no probable cause to believe the accused committed an offense;

(2) Although probable cause exists, an obvious and fatal flaw in the strength, availability, or admissibility of evidence or a critical witness renders the likelihood of obtaining a sustainable conviction at trial so remote that prosecution is inadvisable based on one or more of the non-binding disposition guidance factors listed in Appendix 2.1 of the MCM;

- *Example:* Where an essential witness is unavailable, and there is no other means by which the government can prove its case, an abbreviated CAM analyzing the availability of the key witness would be proper.
- *Example:* Where the evidence shows probable cause to believe that the accused committed the offense, but the only available evidence was obtained unlawfully and in a manner that will clearly result in its suppression, an abbreviated CAM analyzing only the admissibility issue would be proper.

(3) A victim who, having had the benefit of counsel (or who has affirmatively declined representation), clearly states an informed preference that the government not proceed with the case, and the interests of justice are served by advising the convening authority to dispose of the case without prosecution;

- *Example:* Where a victim submits a signed victim's preference statement through a VLC indicating a desire that proceedings not move forward, an abbreviated CAM that omits the analysis of the strength of the evidence, but memorializes the victim's preference would be proper. The CAM in this situation would note the victim's preference in block 1, and counsel must make appropriate entries in CMS to record that preference.

(4) There is probable cause to believe the accused committed an offense, the strength of the evidence supports trial by court-martial, but there is some dispute as to charging theory;

Example: Where an accused has confessed, the other available evidence is strong and corroborates the confession, and the victim desires prosecution and is willing to participate in the case, an abbreviated CAM that omits detailed analysis of the evidence, but analyzes the different possible charges would be proper.

Note that in this situation, pursuant to paragraph 050303 if both the RTC and the SJA concur that charges should be preferred and there is no dispute as to which charges and charging theory will be alleged, no CAM is required.

B. Comprehensive CAM

More complex cases require more comprehensive analysis. In general, counsel may generate a more comprehensive CAM in any case where, in the judgment of detailed counsel or the RTC, additional analysis is helpful or necessary. However, because the exercise of prosecutorial discretion is a matter within the purview of the convening authority, and because the decision not to proceed to preferral or referral in a case supported by probable cause and admissible evidence should be informed by thorough analysis and careful consideration, a comprehensive CAM will be prepared when, in the judgment of the RTC, there is probable cause to believe the accused committed an offense, there is no obviously fatal flaw in the available evidence or proof, but the preferral of charges is inadvisable based on one or more of the non-binding disposition guidance factors listed in Appendix 2.1 of the Marine Corps Manual (MCM).

- *Example:* Where a victim in a sexual assault case is available for trial and willing to proceed, but there are serious concerns with the credibility of a critical witness, or the ability to obtain a sustainable conviction at trial, the CAM must carefully analyze available evidence for strength and admissibility and carefully document that analysis. In these situations, a comprehensive CAM that includes a full evidentiary analysis would be proper.

050305. Procedure

On receipt of an RLS or notification by NCIS or an MCIO of an SVIP case, the SVIP TC and the RTC will assign the case for preliminary review. Junior counsel not yet certified as an SVIP TC may participate in the preliminary review and preparation of a CAM under the supervision of an SVIP TC. In addition, the input of a prosecution Litigation Attorney Advisor (LAA) may add value in many cases, particularly in complex litigation. VLCs also play a critical role by effectively communicating the inputs of their clients in order to enable the disposition determination of a CA. Accordingly, VLC will provide those inputs in writing, including the victim's preference for military or civilian prosecution, if applicable. If a victim is not represented by a VLC, the SVIP TC should interview the victim and obtain the victim's preference in writing.

050306. Who Can Sign

Both an SVIP TC and the RTC must sign all CAMs. For abbreviated CAMs only, the RTC may delegate authority to review and sign the CAM to the STC. Any employment of this delegation must be noted in the supervisory attorney comments section of the CAM. Any judge advocate may sign a CAM in a case where no CAM is required, but in the judgement of the RTC, a memo will contribute materially to the proper disposition of that case. Use of the CAM to resolve issues in cases where a CAM is not formally required is encouraged. The prosecution LAA may, but is not required to sign any CAM. The LAA must be consulted and provide input on comprehensive CAMs or when otherwise requested by the RTC.

050307. Timelines

A. An abbreviated CAM shall be completed within 30 days of receipt of an RLS accompanied by a substantially complete investigation, except that completion may be delayed to allow a victim a reasonable opportunity to provide a victim's preference. An investigation is "substantially complete" when the STC decides no additional investigative steps are necessary to make a disposition recommendation.

B. A comprehensive CAM shall be completed within 45 days of receipt of an RLS accompanied by a substantially complete investigation, except that completion may be delayed to allow a victim a reasonable opportunity to provide a victim's preference.

C. Where a victim under Article 6b, UCMJ, desires to submit views as to disposition, those views shall normally be submitted in writing within ten (10) days of a request by Counsel for the Government. If a VLC is detailed, Counsel for the Government shall make requests for matters via the VLC. If a victim has not submitted matters within the established timeline, or has not responded after reasonable attempts to contact the victim, the right to submit matters will be deemed to have been waived 30 days after the request. The SVIP TC shall follow the procedure outlined in JAGMAN section 0128 to document the steps taken to ascertain the victim's preference. TC requests for victim input will also be documented in the case file and electronic case management system.

D. Counsel signing a CAM shall upload the CAM, or cause it to be uploaded, to the case management system within five working days of completion.

050308. Confidentiality

By its nature and purpose, a CAM will nearly always contain significant judgments about the proper means of prosecuting a case, and the assessment of government attorneys regarding the best means of doing so. While underlying matters referenced in the CAM, such as victim statements or matters affecting the credibility of a witness, are almost always discoverable, the discussion of those matters and predictions of how the evidence would be used at trial, constitute attorney work product. Because the work product doctrine is well established in military and civilian law, counsel will diligently safeguard the CAM from disclosure. Counsel should not place any matters in the CAM that would make the document discoverable or provide the CAM to a victim, VLC, or other person not included within the trial counsel's work product privilege. An SJA should not include a CAM in the matters forwarded to the convening authority.

PART C: COURTS-MARTIAL

SUBPART C1: PRETRIAL MATTERS

VOLUME 16: CHAPTER 6

MISCELLANEOUS PRETRIAL MATTERS

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by *[bold, italic, blue and underlined font.](#)*

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

PART C – COURTS-MARTIAL**SUBPART C1 – PRETRIAL MATTERS****CHAPTER 6****MISCELLANEOUS PRETRIAL MATTERS**

0601. CONFLICTS OF INTEREST

060101. Obligation to Avoid the Appearance of Conflicts

The SJA to CMC supervises and regulates the practice of law within the Marine Corps. All military justice practitioners have an obligation to adhere to the rules of professional responsibility prohibiting conflicts of interest, such as JAGINST 5803.1E and individual state bar rules. Additionally, practitioners should strive to the greatest extent possible to avoid the appearance of conflicts. Even if no actual conflict exists, counsel should avoid situations where their loyalties might be questioned, or situations that might cause members of the public to question the fairness of the proceedings.

060102. Conflicts by Defense Counsel and VLC

Because the resolution of conflicts within the DSO and VLCO often involves confidential information and relevant facts not known by the government, military justice practitioners aware of possible conflicts of interest with a defense counsel or VLC shall bring those facts to the attention of supervisory counsel within those respective organizations (SDC, RDC, RVLC, or other supervisory personnel). This allows the Chief Defense Counsel (CDC) or the VLCO OIC to resolve potential conflicts. However, if after such notification it appears a potential conflict exists, counsel for the government should timely inform the military judge of the facts creating the potential conflict. See *United States v. Lee*, 70 M.J. 535, 542 (N-M. Ct. Crim. App. 2011). This allows the military judge to take appropriate steps such as determining no conflict exists, an accused has been informed of and waived any potential conflict, finding a conflict exists and there is good cause to excuse the counsel, or taking other appropriate action as determined by the military judge.

060103. Conflicts by Trial Counsel

Trial counsel may not prosecute cases if they are the defense counsel or VLC's immediate supervisor or participate in the evaluation of the defense counsel or VLC, unless the defense counsel or VLC's client has been informed of the conflict, waives the conflict, and the waiver is reflected in the record. Trial counsel may also not prosecute cases when they owe duties to former clients under the rules of professional responsibility, such as having previously served as a defense counsel for the accused, a VLC for the victim, received confidential communications related to a case, or otherwise participated in the case in a way that would create an appearance that the trial counsel's current prosecution of the case creates a conflict. Trial counsel, legal services specialists, or investigators prohibited from being detailed to a case because of previous involvement or other conflicts, must also not provide any assistance to other TSO personnel on the case or reveal information or strategies obtained through their prior involvement in the case, or from their knowledge of the accused or victim. If a conflict prevents a member of the TSO from being detailed to a case, the supervisor of the person not detailed must order the person, in writing, not to participate in the case or provide assistance to those who do. A copy of the order shall be provided to the trial counsel detailed to the case. If the conflicted person serves in a supervisory role, the written order shall also include an alternate supervisor who should be consulted for that case.

0602. FUNDING FOR CASE-RELATED EXPENSES

060201. Convening Authority Responsibility

All case-related expenses shall be paid by the convening authority, as required by JAGMAN section 0145. That section includes detailed guidance for payment of case-related expenses, such as witness travel and expert witness fees. The following paragraphs provide additional definitions and guidance to supplement the JAGMAN.

060202. Definition of Case-Related Expense

Generally, case-related expenses are those expenses that are unique to a particular case, or arise under contracts entered into in support of a particular case. They do not include routine training for counsel, maintenance of facilities or offices, or the purchase of equipment or supplies routinely used by an LSSS. Case-related expenses include the purchase of specialized equipment or supplies required for a particular case, travel expenses for any counsel detailed to a case or a VLC, such as travel to an IRO hearing, a preliminary hearing under Article 32, or any session of court, and necessary investigative or pre-trial expenses such as travel for counsel to interview witnesses, conduct crime scene or site investigations, meet with their clients, review evidence, or conduct other necessary investigation. Case-related expenses also include expenses under DoDI 1030.2 (victim and witness procedures) that allow a victim or witness to participate in court proceedings, such as funding for transportation, parking, child care, lodging, translators, interpreters, as well as funding of travel for a support person, counselor, guardian, or other personnel who enables a victim or witness to participate in a proceeding.

060203. Hardware and Software Contracts

Hardware, software, or other official applications used by military justice offices are funded by each LSSS. Coordination with Policy and Innovation Branch (JPI), JAD is required before entering into contracts or purchasing specialized equipment. This ensures consistency across regions and sometimes allows the government to negotiate for contracts at a more favorable rate, such as for electronic research services (Westlaw or LEXIS), which are usually contracted for the entire Marine Corps or DoD.

060204. Equality in Funding Necessary Case-Related Expenses

Funding for all case-related expenses should be provided equitably, based on need. Recognizing the unique role different counsel play at various stages in the process, this does not mean funding for travel or other case-related expenses for one party necessarily mandates similar expenditures for any opposing parties. However, unequitable funding of necessary case-related expenses in order to provide an advantage to the opposing side is prohibited.

0603. PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

060301. Requirement to Protect PII

Each LSSS and SJA Office, the DSO, and the VLCO must have adequate policies in place to ensure PII is properly handled, redacted, and disposed of in accordance with JAGMAN section 0141a, SECNAVINST 5211.5 (series) and the Privacy Act, 5 U.S.C. § 552a. Social security numbers, or any shortened form of the social security number, will not be used on any military justice forms, documents, or correspondence, including the charge sheet and in any electronic case management system, unless specifically required by authorized policy, such as when reporting criminal justice information to the FBI. When documents, forms, correspondence, or CMS require a unique identifier for an individual, the DoD ID Number will be substituted for the social security number. Chapter 5 provides additional guidance to trial counsel regarding protection of PII during the discovery process.

060302. Redacting Dockets, Filings, and Court Records

Unless otherwise required by law, the Rules for Courts-Martial, or the Military Rules of Evidence, Section 0141a of the JAGMAN requires all counsel to omit PII from all dockets, filings, pleadings, court records, and

exhibits that counsel intend to use at any court proceeding including the Article 32, UCMJ preliminary hearing, or that may otherwise be included in the record of trial. Victims shall be referenced by initials only in any docket, filing, or court record made publicly available by 10 U.S.C. § 140a.

A. Definitions

“Docket” includes information concerning each case docketed with the trial or appellate courts of each military department. The trial court docket includes the name of the case, the location of the hearing, the type of hearing, the military judge presiding over the hearing, and the counsel assigned to the case. The “docket” does not include any hearings before a case has been referred to a court-martial or Article 32 preliminary hearings.

“Filings” consist exclusively of all motions, notices, petitions, and requests submitted to a trial court or Court of Criminal Appeals.

“Court records” consist exclusively of the charge sheet, convening order(s), court rulings, statement of trial results, convening authority’s action, entry of judgment, and appellate court orders and opinions. “Court records” do not include the Article 32 report, a recording of any court session, or a transcript of the proceedings.

B. Redactions Required

Dockets, filings, and court records will be redacted to remove the following information from the documents: (1) all social security numbers; (2) all taxpayer identification numbers; (3) birthdates; (4) names of minors; (5) names of victims; (6) all financial account numbers; (7) any other sensitive information as determined by the Secretary of the Navy. Any counsel responsible for creating a filing or court record is responsible for redacting such information from the document before filing it. If a counsel believes including such information in any filing or court record is necessary, counsel shall first request permission from the military judge to file the document unredacted, in accordance with rules established by the trial judiciary. Counsel for the government should request any filed document containing unredacted information be sealed.

0604. SIGNING DOCUMENTS RELATED TO MILITARY JUSTICE

Only the officer then in command, as defined in the U.S. Navy Regulations 1990, and the Marine Corps Manual, shall sign Article 32 detailing orders, court-martial convening orders, the referral block on charge sheets, plea agreements, and convening authority actions. Such documents shall not be signed by an individual exercising “by direction” authority. While acting commanders who have properly succeeded to command may sign such documents, they shall not use the word “acting” with their signature. Under R.C.M. 1112, a court reporter or military judge may certify a record of trial. As used in R.C.M. 1112(c), “court reporter” means an individual sworn under R.C.M. 807. Signatures on any documents may be handwritten or electronic. Unless specifically stated elsewhere, the preference is for documents to be signed with digital signatures that can be included in the record of trial as originals. Because documents related to military justice are often routed electronically and signed at different times, documents that contain scanned copies of some signatures are acceptable pursuant to the principles contained in M.R.E. 1003, unless a genuine question is raised about the signature’s authenticity.

0605. REQUESTING LEGAL SERVICES

All convening authorities will use approved forms to request legal services from the four regional legal services support sections or subordinate legal services support teams for assistance with courts-martial, case analysis memos, administrative separation boards, or boards of inquiry. Forms are available on the naval forms online website at: <https://forms.documentservices.dla.mil/order/result.cfm> and linked through the SJA to CMC website at <http://www.hqmc.marines.mil/sja/jadforms/militaryjustice.aspx>.

0606. EXERCISE OF COURT-MARTIAL JURISDICTION OVER RETIRED, RESERVE, FLEET RESERVE, FLEET MARINE CORPS RESERVE, AND DISCHARGED PERSONNEL

060601. Purpose

Commanders occasionally determine the needs of good order and discipline or of pursuing justice require the recall of a reservist to active duty or bringing a retiree to face a court-martial. This paragraph supplements section 0123 of the JAGMAN and provides guidance in those situations. The paragraph assumes that there is both subject matter and personal jurisdiction over the alleged crime and individual service member. *See* Articles 2 and 3, UCMJ; JAGMAN sections 0123 and 0145.

060602. Routing of Cases Requiring Prior Secretary of the Navy (SECNAV) Authorization

The authority to refer charges or impose confinement in certain situations is withheld, without the prior authorization of the Secretary of the Navy. Section 0123 of the JAGMAN contains detailed instructions for cases when the exercise of courts-martial jurisdiction requires prior authorization from the Secretary of the Navy. Subparagraph (b) of that provision requires all requests to be addressed to the Secretary of the Navy, via OJAG (Code 20) or HQMC (JA), as appropriate. For Marine cases, forward all requests to the Military Justice Branch Head, Judge Advocate Division, via the TCAP.

060603. Contents of Request

The JAGMAN lists six pieces of information that must be included in the request:

- (1) Draft charge(s) and specification(s) (do not prefer charges until authorization has been received from the Secretary of the Navy; care should be exercised to avoid triggering the speedy trial provisions of R.C.M. 707);
- (2) A summary of the evidence in the case;
- (3) The facts showing amenability of the accused or suspected person to trial by court-martial;
- (4) Whether civilian jurisdiction exists, and if so, whether the civilian jurisdiction has declined to prosecute the case at the time of the request; and in applicable cases, the victim's preference as to jurisdiction (see subsection 0128(a));
- (5) The military status of the accused or suspected person at present and at the time of the alleged offense; and
- (6) The reasons that make trial by court-martial advisable.

In addition to these minimum requirements, requests should strive to provide all relevant information to streamline the process and answer the inevitable questions that arise. For example, instead of a mere summary of the evidence, it is often beneficial to provide a full copy of all the evidence, including the most recent portions of the investigation. The request should contain documented communication from the civilian agency declining jurisdiction, if applicable. At a minimum, an email from a representative of any such agency is desirable. Victim preferences or considerations that make trial by court-martial advisable should also be included in the request.

060604. Disciplinary Disposition Authorities for Reservists and Retirees

Because reservists and retirees are distinct in so many relevant aspects (e.g., jurisdiction, recall requirements, and unit association), this chapter discusses each category separately. Service members who have transferred to the Fleet Marine Corps Reserve after 20 years of service are considered, for purposes of this chapter, with retirees. The disciplinary disposition authority (DDA) is the entity initially authorized to recall a reservist, to

bring a retiree back on active duty, or to otherwise adjudicate reports of misconduct levied against reservists or retirees.

060605. Reservists

A. General Guidance on Reservists

Reservists are “recalled” to active duty when jurisdiction is sought under Articles 2(a)(3), 2(d), and 3(d), UCMJ. Reservists may be recalled to active duty by a General Court-Martial Convening Authority (GCMCA) or by SECNAV. If the recall authority is the GCMCA, then charges against the reservist may be investigated at an Article 32 or sent to court-martial, or disposed of through NJP. However, the reservist may not be sentenced to confinement or be required to serve a punishment of any restraint on liberty during a period other than a period of inactive duty training or active duty unless prior approval from SECNAV was obtained. Furthermore, Section 0123e(3)(a) of the JAGMAN states charges should not be preferred before SECNAV authorization for recall is obtained to avoid prematurely triggering the speedy trial clock.

B. Enlisted Reservists

The DDA is the commanding general of 4th Marine Division, 4th Marine Aircraft Wing, 4th Marine Logistics Group, Force Headquarters Group, or Marine Forces Reserve as appropriate. Any of these commanders may authorize GCMCA recalls of enlisted reservists.

C. Officer Reservists

The disposition authority for officer cases is the Commander, Marine Forces Reserve. Therefore, only Commander, Marine Forces Reserve may authorize GCMCA recalls of officer reservists.

D. Mobilized Reservists and Individual Mobilization Augmentees

Individual Mobilization Augmentees (IMAs) and Reservists mobilized and joined to units not otherwise within the MFR structure are attached to the units they are supporting. Commanders of these units exercise operational control (OPCON) or administrative control (ADCON), as delegated, over assigned or attached forces. In such cases, the DDA is the relevant commander in the chain of command. If the DDA is not a GCMCA, then the GCMCA over the DDA can authorize a recall for such individuals.

060606. Retirees and Members of the Fleet Marine Corps Reserve (FMCR)

Retirees are not “recalled,” although this terminology is often used to connote the action of bringing a retiree to face court-martial. A retiree may be brought to face a court-martial at any time pursuant to Article 2(a)(4), UCMJ. A member of the FMCR (i.e., an enlisted member who retired between years 20 and 30), is subject to recall under Article 2(a)(6) until the individual reaches 30 years and transfers to the Active Duty Retired List (ADRL). While it is possible to prefer charges against a retiree without SECNAV authorization, prior authorization must be sought from SECNAV if referral of charges is desired. In addition to the authorization required to refer charges, separate and specific authorization is required to arrest, apprehend, or confine a retiree. If an investigation implicates a retiree or member of the FMCR with no logical connection to any DDA, the investigation shall be forwarded to Commanding General (CG), Marine Corps Training and Education Command. SECNAV authorization to refer charges, or to arrest, apprehend, or confine a retiree contains authorization to serve as the DDA for that case, unless SECNAV designates another DDA in the authorization.

060607. Requests for Legal Services for the Recall and Prosecution of Reservists and Retirees

Since the LSSS National-Capital Region provides legal support services to the U.S. Marine Corps Forces Reserve (MARFORRES), Headquarters U.S. Marine Corps Manpower and Reserve Affairs (M&RA), and Marine Corps Training and Education Command (TECOM), it will, by default, receive all initial requests for legal services (RLS) for the recall to active duty and prosecution of reservists, members of the FMCR, and retirees. The SJA and

LSSS-NCR may facilitate transfer of an RLS to another LSSS on a case-by-case basis, provided the transfer is approved by the gaining LSSS OIC. The most appropriate venue for a case may depend on a number of factors and could be the last command of a now retired suspect, a command near a retired member's home of record, or a command near where the alleged misconduct took place. SJAs should coordinate with all relevant entities to identify the most logical convening authority and situs for the court-martial.

060608. Templates and Forms

Templates and forms used in requesting a recall are available by contacting TCAP.

0607. JURISDICTION OVER CASES TRIED IN CIVILIAN COURTS

060701. State or Foreign Courts

Section 0124 of the JAGMAN establishes a policy that when a Marine has been tried in a state or foreign court, military charges will not be referred to a court-martial or be the subject of NJP proceedings for the same act or acts, except in those unusual cases where trial by court-martial or the imposition of NJP is considered essential in the interests of justice, discipline, and proper administration within the Naval Service. In those cases, no case will be referred for trial by court-martial or be the subject of NJP proceedings without the prior permission of the first GCMCA over the Marine.

060702. Criteria

JAGMAN subsection 0124(b) lists three criteria where a GCMCA may authorize court-martial or NJP for the same act or act tried in civilian or foreign courts. A GCMCA may not grant authorization unless one of the three criteria apply.

060703. Federal Courts

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

060704. Required Report to HQMC (JA)

The GCMCA must report a grant of permission to HQMC (JA) for Marine Cases. A template to report a grant of permission under this paragraph is available through the "FORMS" tab on the Judge Advocate Division (JAD) public website at <https://www.hqmc.marines.mil/sja/JAD-Forms/>. This reporting requirement is exempt from reports control according to reference (as), Part IV, paragraph 7.g.

0608. GENERAL CONSIDERATIONS WHEN CONCURRENT JURISDICTION EXISTS

060801. General Policy

When concurrent military/civilian jurisdiction exists for a felony-level criminal offense committed by a Marine, it is essential that SJAs proactively engage with the civilian prosecutors representing that jurisdiction. In every such case, the SJA's engagement should demonstrate to civilian prosecutors that military authorities are ready, willing, and able to prosecute. SJAs should also ascertain what the civilian jurisdiction's inclination and capability is with respect to prosecution. Engagement should occur as early as possible. In foreign countries, concurrent jurisdiction is often addressed in status of forces agreements. When negotiations result in civilian prosecutors taking a case for prosecution, SJAs should maintain an open, supportive relationship with the civilian prosecutors until the case is resolved. If at any time throughout the process civilians reconsider their decision to investigate or prosecute, they should know that military authorities retain an interest in the case and should have the SJA's contact information.

060802. Engagement by SJA with Civilian Authority

Engagement does not mean the Marine Corps is trying to prosecute every case in which concurrent military/civilian jurisdiction exists. In certain cases, a state may have a more compelling interest than the Marine Corps in prosecuting or greater experience and capability to prosecute, as might be true in a capital case. In other cases, however, particularly cases that concern Marine-on-Marine offenses, the Marine Corps will generally have a greater interest in acquiring jurisdiction over the case in order to ensure appropriate accountability for the subject/accused, proper support for the victim, and good order and discipline within the command. That said, even in cases where civilian authorities have a strong interest in prosecuting the case and are well equipped to do so, SJAs should engage early and remain involved until completion of the prosecution. Where memoranda of understanding (MOU) exist between commands and local prosecutor's offices, they should be consistent with these principles. Proactive engagement by SJAs is the standard for all concurrent jurisdiction negotiations.

060803. Compliance with JAGMAN Subsection 0124(b)

Judge advocates advising convening authorities shall memorialize jurisdictional analysis along with other relevant factors under Section 3 of Appendix 2.1 to the MCM. When case analysis memos are required, the discussion of concurrent jurisdiction will be included in the SVIP TC's analysis.

060804. Consideration of Victim's Preference Regarding Jurisdiction

Considerations when concurrent military/civilian jurisdiction exists must take into account a victim's preference for jurisdiction, if applicable. See R.C.M. 306, JAGMAN section 0128, and paragraph 0502 of this volume for additional details.

0609. COURT-MARTIAL JURISDICTION OVER MAJOR FEDERAL OFFENSES

060901. Coordination with Civilian Authorities Required

The Attorney General and the Secretary of Defense have signed a Memorandum of Understanding on guidelines for determining which authorities will have jurisdiction to investigate and prosecute major crimes in cases where there is concurrent jurisdiction. See Appendix 3, MCM; DoDI 5525.07; JAGMAN section 0125. NCIS administers this program on behalf of the Naval Service. See SECNAVINST 5430.107 (series). This close coordination and possible limitation on courts-martial jurisdiction ensures that actions under the UCMJ do not preclude appropriate action by civilian federal authorities in cases likely to be prosecuted in U.S. District Courts. Under the Memorandum of Understanding, convening authorities must coordinate with the DOJ in major federal offenses before issuing a grant of immunity, approving a plea agreement, or trial by court-martial.

060902. Procedure

Commanding officers receiving information a service member committed a major federal offense as defined in SECNAVINST 5430.107 (series), including major federal offenses committed on a military installation, will refrain from taking action with a view towards court-martial, but will refer the matter to the senior resident agent of the cognizant NCIS office for a determination in accordance with the SECNAVINST. See JAGMAN section 0125 for further details on appropriate procedures.

060903. Immediate Military Prosecution Required

When federal civilian law enforcement agencies are investigating a case, but existing conditions require immediate military prosecution, the GCMCA (SJA) must contact the cognizant U.S. Attorney to coordinate immediate trial by court-martial. If the GCMCA and cognizant U.S. Attorney cannot reach an agreement on whether immediate military prosecution is advisable, JAGMAN 0125(c)(3) mandates that the matter be referred to Judge Advocate Division "for disposition." As used in that paragraph, "disposition" means only that the SJA for the GCMCA must notify Judge Advocate Division via the Branch Head, Military Justice Branch of the fact the

GCMCA is moving forward with immediate military prosecution without the concurrence of the cognizant U.S. Attorney. Commanding officers may take any lawful action with respect to disposing of charges, unless that authority has been withheld. Commanding officers should consider all relevant non-binding disposition guidance referenced in Appendix 2.1 of the MCM. Commanders should consider whether the military or civilian law enforcement agents and prosecutors have a closer relationship with any potential victim, and the victim's preference regarding prosecution jurisdiction, if applicable, along with any other relevant factors in determining whether immediate military prosecution is necessary.

0610. NATIONAL SECURITY CASES

061001. Definition and Procedure

Paragraph 0126 of the JAGMAN defines a national security case and contains detailed procedures for the processing of these cases.

061002. Required Notifications

NCIS is responsible for investigating actual, suspected, or alleged national security incidents. Commanders must immediately refer any such incidents to NCIS. SECNAVINST 5430.107 (series) and SECNAVINST 5510.36 (series) also pertain. If any NCIS investigation or preliminary inquiry referenced in JAGMAN section 0126(d) indicates a case may meet the criteria of a national security case, the commanding officer must notify the first applicable National Security Case Disposition Authority listed in JAGMAN 0126(f), CG, Marine Corps Training and Education Command, and HQMC, Judge Advocate Division, within 72 hours. Anyone making notifications under this paragraph must consult with applicable classification officials and NCIS before making these notifications to determine whether notification via unclassified means is permitted, keeping in mind that separate pieces of unclassified information may become classified when combined in a single message.

061003. Default Venue for National Security Cases is National Capital Region

The JAGMAN lists convening authorities that are national security case disposition authorities. Regardless of which authority convenes the case, experience from litigating national security cases has shown that the most appropriate venue is often the national capital region (NCR). National security cases often require extensive in-person coordination between TC and the original classification authority, NCIS National Security Law Unit, Code 30, MCIA, and DOJ Main Justice. Additionally, special courtrooms might be necessary to present classified material, such as the courtroom at the Washington Navy Yard. Therefore, the NCR LSSS is the designated responsible LSSS to receive an RLS for a national security case. A national security case disposition authority may determine another venue is better for a particular case, but the cognizant SJA should consult with the NCR LSSS OIC, the cognizant LSSS OIC, and JMJ before advising a disposition authority to litigate a national security case in another venue.

0611. AUTHORITY TO GRANT IMMUNITY FROM PROSECUTION

061101. Types of Immunity

Two types of immunity may be granted under R.C.M. 704. *Transactional immunity*: A person may be granted transactional immunity from trial by court-martial for one or more offenses under the UCMJ. *Testimonial immunity*: A person may be granted immunity from the use of testimony, statements, and any information directly or indirectly derived from such testimony or statements by that person in a later court-martial. See the discussion to the R.C.M. for further details.

061102. Witnesses Subject to the Uniform Code of Military Justice (UCMJ)

A GCMCA, or designee, may grant immunity to a person subject to the UCMJ from prosecution under the UCMJ. However, as specified in R.C.M. 704(c)(1) approval from the Attorney General or designee is required before granting a person immunity from federal civilian prosecution. Use the procedures in the following paragraph

to request immunity from federal civilian prosecution. GCMCAs may delegate in writing the authority to grant immunity to a subordinate SPCMCA, unless limited by superior authority.

061103. Civilian Witnesses

See JAGMAN section 0138(c) for procedures to request immunity for civilian witnesses from the Department of Justice. When the JAGMAN requires such requests to be routed through HQMC (JA), contact JCA (administrative law) for further details. Sample documents related to immunity requests and approvals are available through the “FORMS” tab on the Judge Advocate Division (JAD) public website at <https://www.hqmc.marines.mil/sja/JAD-Forms/>.

061104. National Security Cases

All requests for immunity in national security cases must be routed through OJAG (code 30) for the purpose of consultation with the Department of Justice. See JAGMAN section 0138(d) for further details.

0612. REFERRING CHARGES TO NON-BCD JUDGE ALONE SPECIAL COURTS-MARTIAL

A convening authority may refer certain charges to a special court-martial consisting of a military judge alone, without authority to adjudge a bad conduct discharge. *See* Article 16(c)(2)(A), UCMJ. A convening authority may convene such special court-martial with a separate convening order. Alternatively, a convening authority may also use the referral block, Section V, of the Charge Sheet, to document both the referral and convening of a judge alone SPCM under Article 16(c)(2)(A). In that case, the referral block should read as follows: “Referred for trial to the *Special* court-martial convened by *this document on [Date]*, which convenes a *Special Court-Martial to be tried by judge alone pursuant to Article 16(c)(2)(A), UCMJ*, Dated [*same date as referral*], subject to the following instructions: *The court may not adjudge punishment in excess of the limitations specified in Article 19(b), UCMJ.*”

VOLUME 16: CHAPTER 7

INITIAL REVIEW OF PRETRIAL CONFINEMENT

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER 7

INITIAL REVIEW OF PRETRIAL CONFINEMENT

0701. DETAILING INITIAL REVIEW OFFICER

All General Court-Martial Convening Authorities (GCMCAs) have authority to designate one or more officers of the grade of O-4 or higher to act as the initial review officer (IRO) for purposes of R.C.M. 305(i)(2). The GCMCA exercising jurisdiction over the confinement facility shall coordinate the assignment of initial review officers to specific cases.

0702. LOCATION

Initial reviews shall normally be conducted at the confinement facility. Every effort shall be made to provide an atmosphere appropriate for a review. *See* SECNAVINST 1640.9D

0703. RESPONSIBILITIES OF INITIAL REVIEW OFFICER

The IRO is empowered to order the release from pretrial confinement of anyone ordered into pretrial confinement pursuant to RCM 305 when continued pretrial confinement does not satisfy legal requirements. Although the pretrial confinement review is not an adversarial proceeding, the IRO may exercise discretion by allowing the pretrial confinee, defense counsel or government representative to present evidence and cross-examine witnesses. Upon completion of review, the reviewing officer shall approve continued pretrial confinement or order immediate release.

0704. CONTENT OF IRO'S MEMORANDUM

The IRO decision to continue pretrial confinement or order immediate release must be set forth in a written memorandum. This memorandum will include the factual findings on which their decision is based, whether the victim was notified of the review, whether the victim was given the opportunity to confer with the representative of the command or counsel for the government, and whether the victim was given a reasonable opportunity to be heard. A copy of the memorandum and all documents considered by the IRO shall be provided to the accused or the Government on request.

0705. NOTICE TO VICTIM(S)

The Command shall provide the alleged victim or victim's counsel with the date, time, and location of any pretrial confinement review and notice of the right to be heard during the review. *See* R.C.M. 305(i)(2)(A)(iv). However, the hearing may not be unduly delayed for this purpose. If the reviewing officer orders immediate release of confinement, a victim of an alleged offense committed by the confinee has the right to reasonable, accurate, and timely notice of the release, unless such notice may endanger the safety of any person.

0706. RECONSIDERATION OF APPROVAL OF CONTINUED CONFINEMENT

The IRO shall upon request, and after notice to the parties, reconsider the decision that confinement was warranted based upon any significant information not previously considered.

VOLUME 16: CHAPTER 8

MILITARY MAGISTRATES

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by *[bold, italic, blue and underlined font.](#)*

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

CHAPTER 8

MILITARY MAGISTRATES

0801. NOT AUTHORIZED

The Secretary of the Navy has not authorized the utilization of military magistrates as defined in Article 26a, UCMJ. This Chapter is reserved for future use, if applicable.

VOLUME 16: CHAPTER 9

INVESTIGATIVE SUBPOENAS, WARRANTS, ORDERS, AND ARTICLE 30(a) PROCEEDINGS

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER 9

INVESTIGATIVE SUBPOENAS, WARRANTS, ORDERS, AND ARTICLE 30(a) PROCEEDINGS

0901. COORDINATION BETWEEN TRIAL SERVICES OFFICES AND LAW ENFORCEMENT

090101. Trial Services Office (TSO)

A. The Trial Services Office (TSO) confers regularly with the local CID and NCIS offices to discuss all developing cases. At a minimum, each TSO should consult with any military law enforcement agency at the initiation of, and critical stages in, the investigation of any serious offense. The RTC shall ensure SVIP TCs meet or consult with NCIS SVIP members within 48 hours after notification of a special victim investigation.

B. Once notified of any pending special victim investigation or the investigation of any other serious offense, the designated trial counsel will work closely with and provide legal advice to investigative entities throughout the investigative process. Trial counsel will assist law enforcement in obtaining search and seizure authorizations, subpoenas, orders, and warrants pursuant to the UCMJ.

090102. Law Enforcement

Military law enforcement agencies will work closely with the TSO and designated trial counsel in investigating a case. Requests for investigative subpoenas pursuant to RCM 703(g)(3)(C) and warrants pursuant to RCM 703A will be submitted through the trial counsel. Although RCM 703A allows a law enforcement officer to submit a written application for a warrant to a military judge, section 0132a of the JAGMAN specifies that “only a trial counsel” may submit such application. While the trial counsel submits the application to the judge, the trial counsel does not serve as the affiant for the application. In a case investigated by CID or NCIS which is referred to trial, law enforcement personnel will continue to assist investigating the case consistent with their regulations.

0902. INVESTIGATIVE SUBPOENAS

090201. Applicability

This chapter deals only with investigative subpoenas issued before charges are referred to courts-martial. It does not address subpoenas issued after referral of charges or subpoenas issued by the president of a board of inquiry. Subpoenas issued after referral of charges will comply with R.C.M. 703.

090202. When permitted

A. A pre-referral investigative subpoena issued under RCM 703 may only be used to obtain evidence for use in an investigation of an offense under the UCMJ. An “investigation of an offense under the UCMJ” is a military criminal investigation conducted by investigators or agents from CID, NCIS, Department of Defense police, military police, or any counterpart from the investigative agencies of another military service, or a command investigator appointed to investigate suspected criminal activity likely to result in trial by courts-martial. The issuance of subpoenas for non-criminal administrative investigations is not permitted by 10 U.S.C. §846 or this Chapter, but may be authorized by other authorities.

B. Charges do not need to be preferred nor must a particular suspect be identified before a subpoena may be issued. However, because Article 30(a) and R.C.M. 703-703A are only tools to obtain evidence of crimes under the UCMJ for potential use at a later court-martial, there must be probable cause to believe the suspect would likely be subject to the UCMJ to use these authorities. Law enforcement should closely consult with the SJA and civilian authorities in obtaining subpoenas or warrants when it appears the suspect may not be subject to the UCMJ. This helps avoid violating *Posse Comitatus*-like restrictions under 10 U.S.C. § 275 and DoDI 3025.21, and ensures any compulsory process is issued by a person with authority to do so.

C. A pre-referral investigative subpoena may also be issued in accordance with R.C.M. 309 or 703(g)(3)(D)(v) for the production of evidence not under the control of the government for use at an Article 32 preliminary hearing.

090203. Who May Issue

A. A military judge may issue the subpoena. Trial counsel should ordinarily seek a military judge's issuance of a subpoena whenever possible. Doing so enables the development of uniform standards and procedures, resulting in greater predictability for law enforcement and more uniform protection of service members' rights. It also avoids unnecessarily entangling the GCMCA in investigations under the cognizance of subordinate commanders.

B. Detailed trial counsel or counsel for the government may issue the subpoena when authorized by the GCMCA. The authorization from the GCMCA may not be delegated and must be for the particular subpoena issued. GCMCAs may not give blanket authorization for a trial counsel to issue subpoenas in a case or class of cases. Authorization from the GCMCA may be provided orally, electronically, or in writing. If authorization is given orally, the GCMCA should later provide the trial counsel with written documentation of the authorization. The SJA may sign such written documentation memorializing the GCMCA had authorized the subpoena, but the authorization itself may not be delegated.

C. A GCMCA may not authorize the trial counsel to issue a subpoena if the request for a subpoena has already been denied by a military judge, absent exigent circumstances. A trial counsel requesting authorization from a GCMCA to issue a subpoena under these circumstances must inform the GCMCA a military judge has previously denied the request and must also inform the GCMCA why exigent circumstances require immediate issuance of the subpoena rather than seeking reconsideration from the military judge.

090204. Procedure for Issuing a Subpoena

A. Required Coordination

The assigned trial counsel will coordinate with the supporting law enforcement agency to complete the subpoena request, supporting affidavit if any, and all other matters supporting the request. The request may be submitted to the military judge personally or electronically, at the military judge's discretion or in accordance with the court's rules. Requests to a GCMCA for authorization to issue a subpoena should be routed through the SJA for the GCMCA, and may be submitted to the GCMCA personally or electronically, at the GCMCA's discretion.

B. Contents of request

When seeking a subpoena from a military judge, the request shall include a completed subpoena (DD Form 453) ready for signature by the military judge as the issuing authority. The request shall also include any matters sufficient to show the material sought is relevant to the investigation, and the request is lawful and is not unreasonable or oppressive. A request to a GCMCA for authorization to issue a subpoena should include the same information, except that the DD Form 453 should list the trial counsel or counsel for the government as the issuing authority, and indicate authorization from the GCMCA. For example, the title of the issuing authority would be "Trial Counsel – Authorized by [title of GCMCA]." The form should not be signed by the trial counsel until the GCMCA has authorized its issuance.

090205. Defense Requests for Investigative Subpoenas

A. Applicability

Defense requests for a subpoena in relation to a preliminary hearing pursuant to Article 32, UCMJ, will be processed in accordance with R.C.M. 405(h). This paragraph deals with all other defense requests for pre-referral investigative subpoenas.

B. Contents of Request and Procedure

Defense counsel may request the government counsel make an application for a pre-referral investigative subpoena. All such defense requests will be submitted to the trial counsel. The request must include a completed subpoena (DD Form 453) ready for signature by the issuing authority and sufficient information to show issuance of the subpoena is lawful and not unreasonable or oppressive. The trial counsel may present the defense request to the military judge, request authorization from the GCMCA to issue the subpoena, or may defer considering the request until after a referral decision has been made. Reasons to defer considering the request include the likelihood the referral decision will make the defense request moot or unnecessary. If the request is for perishable matter that may be lost or destroyed in the event of delay, the request shall clearly state so, including the basis for such a belief.

090206. Investigative Subpoenas for Personal or Confidential Information About a Victim

A. Written notice required

The trial counsel will provide a victim named in a specification notice of a request for a subpoena for personal or confidential information about that victim. *See* R.C.M. 703(g)(3)(C)(ii). The trial counsel will maintain a record of such written notice to the victim in the case file.

B. Personal or Confidential Information

Personal or confidential information is information that relates to or comes from a victim, and is generally regarded as private. It includes, but is not limited to, the following types of information: any information which the victim could assert a claim of privilege over; any information for which the victim has a reasonable expectation of privacy; any information where unauthorized release is restricted by law, such as records protected by the Privacy Act, medical records covered by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or student education records covered by the Family Educational Rights and Privacy Act (FERPA); any information specific to a victim that is not normally released by the holder of the information to members of the public, such as employee records, insurance records; and, any financial records of the victim. Subpoenas for financial records might be subject to additional statutory requirements, *e.g.*, the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422, which applies to financial records. Note that classifying information as personal or confidential does not mean the information will not ultimately be subject to subpoena under applicable rules and constitutional provisions. It simply means the victim must be provided notice of the request for the subpoena. Therefore, if in doubt about whether information pertaining to a victim is “personal or confidential,” err on the side of providing notice to the victim, unless there are exceptional circumstances not to.

C. Exceptional Circumstances Not Requiring Notification

Exceptional circumstances may justify withholding the required notice to a victim. The discussion to R.C.M. 703(g)(3)(C)(ii) cites to Fed. R. Crim. P. 17 (Advisory Committee Notes, 2008 Amendments) for the following discussion of exceptional circumstances: “Such exceptional circumstances would include, evidence that might be lost or destroyed if the subpoena were delayed or a situation where the defense would be unfairly prejudiced by premature disclosure of a sensitive defense strategy. The Committee leaves to the judgment of the court a determination as to whether the judge will permit the question whether such exceptional circumstances exist to be decided *ex parte* and authorize service of the third-party subpoena without notice to anyone.” A party believing exceptional circumstances justify withholding notification to a victim must clearly state the exceptional circumstances in the request, including the basis for the belief.

0903. WARRANTS

090301. Authorization

Pursuant to R.C.M. 703A(b) and 18 U.S.C. § 2703, a military judge may issue a warrant authorizing the search for and seizure of information specified in R.C.M. 703A(a) (1), (2), (3), or (4).

090302. When Permitted

A. Although the R.C.M. allows a trial counsel *or* federal law enforcement officer to apply for a warrant, the JAGMAN has restricted that ability to only a trial counsel in the applicable circuit where the warrant will be sought. See JAGMAN section 0132a. The application must contain an affidavit or sworn testimony establishing probable cause to believe that the information contains evidence of a crime. While the trial counsel submits the application on behalf of law enforcement, the trial counsel does not serve as the affiant. “Crime” means an offense under the UCMJ. When applying for a warrant, identification of a particular suspect may not be possible. However, there must be enough information provided in the application to show the crime is an offense under the UCMJ, meaning the suspect is likely subject to the UCMJ. Otherwise, the person applying for the warrant risks violating *Posse Comitatus*-like restrictions under 10 U.S.C. § 275 proscribing direct assistance to civilian law enforcement.

B. A warrant, not a court order, must be used under 18 U.S.C. § 2703 and R.C.M. 703A when the information sought is covered in R.C.M. 703A(a)(1) (disclosure by a provider of electronic communication service of the contents of any wire or electronic communication in electronic storage for 180 days or less). However, paragraph 090402 further restricts the use of court orders when the customer or subscriber has a reasonable expectation of privacy in the information sought. In those cases, a warrant, not a court order, must be sought.

090303. Contents of Warrant Application

The application for a warrant must be completed on DD form 3057, and must contain an affidavit or sworn testimony subject to examination by a military judge. Specific minimum requirements are listed in the JAGMAN, section 0132a.(a). The application must include a completed warrant (DD form 3056), ready for signature by the military judge. The trial counsel may submit the application for a warrant electronically or in person, in accordance with rules established by the trial judiciary and applicable circuit.

090304. Preservation Letters

Pursuant to 18 U.S.C. § 2703(f) and R.C.M. 703A(f), trial counsel or a federal law enforcement officer may request a provider of wire or electronic communication services or a remote computing service take all necessary steps to preserve records and other evidence in its possession pending the issuance of a warrant. Whether preservation has been sought and the expiration date of any preservation period must be included in the application to the military judge.

090305. Defense Requests for Warrants

The defense may request the trial counsel or other counsel for the government to make an application for a warrant. Defense requests shall include all information described in paragraph 090303 above (completed DD forms 3056 and 3057), and a written application ready for signature by the trial counsel. If the request is for perishable matter that may be lost or destroyed in the event of delay, the request shall clearly state so, including the basis for such a belief. If the defense requests issuance of a preservation letter, the defense request must also include a preservation letter ready for signature by the trial counsel or a federal law enforcement officer. If the trial counsel determines the defense request shows probable cause the information sought would contain evidence of a crime, the trial counsel shall inform law enforcement as soon as possible. Unlike subpoenas or court orders, the trial counsel may not delay considering the request until after a referral decision is made.

0904. ORDERS FOR WIRE OR ELECTRONIC COMMUNICATIONS

090401. Authorization

Pursuant to R.C.M. 703A(c) and 18 U.S.C. § 2703(d), a military judge may issue an order authorizing the disclosure of information specified in R.C.M. 703A(a) (2), (3), or (4).

090402. When Permitted

A. Similar to warrants, the JAGMAN restricts the ability to apply for orders to a trial counsel in the applicable circuit where the warrant will be sought. *See* JAGMAN section 0132a. The application must contain specific and articulable facts that establish reasonable grounds to believe that the information sought is relevant and material to an ongoing criminal investigation. The phrase “ongoing criminal investigation” under R.C.M. 703A(c) means the same thing as “investigation of an offense under the UCMJ” as defined in paragraph 090202.A of this chapter. Generally, an ongoing investigation is “criminal” if it is of an offense under the UCMJ and is conducted by law enforcement agencies. The fact that a commander may later dispose of a criminal offense through administrative means does not change the nature of a criminal investigation, or invalidate any evidence obtained through court order during the investigation. But court orders may not be used to obtain evidence for non-criminal administrative investigations.

B. Although 18 U.S.C. § 2703(d) and R.C.M. 703A allow use of a court order to obtain content data that has been in storage for over 180 days, many courts require a warrant. *See e.g., United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010). Warrants are required when a suspect in an investigation has a reasonable expectation of privacy in the information being sought from a third party. For example, historical cell-site location information must be obtained through a warrant, because a suspect maintains a legitimate expectation of privacy in the historical record of their physical movements as captured through cell-site location information. *Carpenter v. United States*, 138 S. Ct. 2206 (2018). Trial counsel should always consult with supervisory counsel and read current case law to determine whether an order is sufficient to obtain the data sought. Unless applicable case law clearly supports getting the information via a court order, the safer course is to seek a warrant.

090403. Contents of Order Request

The order request must contain specific and articulable facts that establish reasonable grounds to believe the information sought is relevant and material to an ongoing criminal investigation. Specific minimum requirements are listed in the JAGMAN, section 0132a.(a). The request must include a completed court order, ready for signature by the military judge. The order must not be unreasonable, oppressive, or prohibited by law. Court orders may be unreasonable or oppressive if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on a provider. Pursuant to R.C.M. 703A(c)(1)(B), the trial counsel seeking the order must also include in the application whether prior notice has been provided to the subscriber or customer of the application for the order, unless delayed notice of an order is requested as outlined below.

090404. Delayed Notice of Order

A trial counsel may include in the application a request for an order delaying the notification to the subscriber or customer required by R.C.M. 703A(c)(1)(B). The request for delayed notice must be included in the application, and must comply with R.C.M. 703A(d). Upon expiration of the applicable period of delay of notification, the federal law enforcement officer, trial counsel, or other authorized counsel for the government may request an additional period of delay, or otherwise shall serve upon, or deliver by registered first-class mail to, the customer or subscriber a copy of the process or request together with the required notices in R.C.M. 703A(d)(3).

090405. Preservation Letters

Pursuant to 18 U.S.C. § 2703(f) and R.C.M. 703A(f), trial counsel or a federal law enforcement officer may request a provider of wire or electronic communication services or a remote computing service take all necessary steps to preserve records and other evidence in its possession pending the issuance of an order. Whether preservation has been sought and the expiration date of any preservation period must be included in the application to the military judge.

090406. Defense requests for orders

The defense may request the trial counsel or other counsel for the government make application for an order for wire or electronic communications. Defense requests shall include all information described in paragraph 090403, and a written application ready for signature by the trial counsel. If the request is for perishable matter that may be lost or destroyed in the event of delay, the request shall clearly state so, including the basis for such a belief. If the defense requests issuance of a preservation letter, the defense request must also include a preservation letter ready for signature by the trial counsel or a federal law enforcement officer. The trial counsel may present the application for an order to a military judge, or may defer considering the request until after a referral decision has been made if it is likely the referral decision will make the defense request moot or unnecessary. If the trial counsel presents the application to the military judge, the trial counsel is responsible for providing the required notice to the subscriber or customer listed in R.C.M. 703A(c)(1)(B), or requesting delayed notice as described in paragraph 090404 above. The military judge may grant or deny the application for an order, or may, as a matter of discretion, afford the defense an opportunity to be heard.

0905. PROCEEDURES FOR ARTICLE 30a HEARINGS

090501. General Guidance

See R.C.M. 309 and JAGMAN, section 0132a for specific guidance on the conduct of pre-referral judicial proceedings. Any request for an *ex parte*, *in camera*, or closed hearing must be made in writing. Military justice practitioners must also ensure they are following procedures for the conduct of pre-referral proceedings established by the trial judiciary.

090502. Preparing, Maintaining, and Distributing Copies of the Proceedings

If hearings are held as part of the proceeding, only witnesses whose testimony is relevant to establishing probable cause for the warrant may be called. A victim, as defined in Article 6b, UCMJ, may not be compelled to testify at the proceeding. The military judge may examine any witnesses called. The hearing will be recorded and the court reporter will maintain a copy of the recording for the later of two years from the date of the proceeding or until final disposition of the charges related to the proceedings. Records are not required to be transcribed before referral. After referral of charges, such record will be transcribed to the same extent as required for post-referral proceedings. The court reporter will provide the record of the proceeding to the trial counsel, who will forward it to the convening authority or officer with authority to dispose of the charges or offenses in the case. If charges are referred, the court reporter will ensure the record is provided to the military judge detailed to the court-martial and the detailed defense counsel and made a part of the official record of trial. If the record of any pre-referral proceeding or part of any such proceeding is ordered sealed by the military judge, the court reporter is responsible for complying with the order pursuant to R.C.M. 1113.

0906 COST REIMBURSEMENT FOR A SUBPOENA, ORDER, OR WARRANT

In accordance with 18 U.S.C. § 2706, electronic communications and electronic service providers are entitled to reimbursement of costs reasonably necessary and directly incurred in searching for, assembling, reproducing, or otherwise providing the information sought. Such reimbursable costs might include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored. Before seeking compulsory process which could obligate the government to pay costs associated with compliance, the trial counsel or law enforcement agent seeking the compulsory process shall inform the relevant convening authority, via the staff judge advocate, of the financial obligation that may be incurred and obtain authorization from the convening authority to obligate the government for any costs associated with the subpoena, order, or warrant. The authorization may be provided orally or in writing.

0907. REQUESTS FOR RELIEF FROM COMPULSORY PROCESS

090701. General Guidance

Under Article 46(e), UCMJ, a military judge shall review requests for relief from a subpoena or other compulsory process such as a warrant or order on grounds compliance is unreasonable or oppressive, or prohibited by law. A military judge detailed in accordance with Article 26 or 30a, UCMJ, shall review the request and shall: (1) order the subpoena or other process be modified or withdrawn, as appropriate; or (2) order the person to comply with the subpoena or other process. Additionally, if the government and an entity providing information cannot mutually agree on the amount of compensation under 18 U.S.C. § 2706, the military judge in the location where a criminal prosecution relating to the information would be brought may determine the amount of the fee.

090702. Procedures for Requesting Relief

Any compulsory process described in this chapter (investigative subpoena, warrant, or court order) will contain contact information for questions and requests for relief. The contact information will include the name, phone number, and email address of the person who can answer questions on filing a request for relief, usually a clerk for a judge in the trial judiciary office in which any request for relief would be filed. The trial judiciary may establish rules for the filing and format of any requests for relief under this paragraph.

090703. Appeals

Appeal of an adverse ruling by a military judge on a request for relief from compulsory process may be sought by petitioning the Navy-Marine Corps Court of Criminal Appeals in accordance with the rules of that court, which are available at <http://www.jag.navy.mil/nmcca.htm>.

VOLUME 16: CHAPTER 10

ARTICLE 32 PRELIMINARY HEARINGS

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER 10

ARTICLE 32 PRELIMINARY HEARINGS

1001. DETAILING OF PRELIMINARY HEARING OFFICERS (PHO)

Prior to detailing an Article 32, UCMJ, Preliminary Hearing Officer (PHO), the detailing authority will choose a capable and fully qualified officer who is reasonably available. Factors to consider in such a decision include, but are not limited to, the following: the education, training, and experience of the potential PHO; any applicable conflict-of-interest analysis; the case complexity; civilian or primary military duties of Reserve Component and Active Duty Component candidates who are available for detailing as PHOs; the geographic locations of the accused and counsel; the expected location of the hearing; media interest in the case; any implications for cases with classified evidence; and the expected duration of the hearing.

100101. Eligibility

The PHO shall be a judge advocate certified under Article 27(b), UCMJ; sworn under Article 42(a), UCMJ; if practicable, equal in grade to or senior in grade to both the trial and defense counsel; and in the grade of O-4/Major or higher, subject to the exceptions below. A judge advocate below the grade of O-4/Major may only be detailed as a PHO if they have at least six months of experience as a trial or defense counsel, subject to the limitations in this section. If the case involves a special victim, the PHO must be a judge advocate. In other exceptional cases not involving a special victim, the interests of justice may dictate detailing a PHO who is not a judge advocate.

100102. Education Requirements

Prior to conducting the hearing, the PHO must familiarize themselves with the “Article 32 Preliminary Hearing Officer’s Guide” which is published by Naval Justice School.

100103. Appointment Letter

The convening authority directs an Article 32 preliminary hearing by appointing the PHO in writing.

1002. SPECIAL VICTIM CASES

Special victim cases are defined in Chapter 5 of this volume. In those cases involving special victims, a judge advocate below the grade of O-4/Major may only be detailed as a PHO if they have previously been SVIP qualified pursuant to paragraph 022102 of this volume.

1003. ISSUING WARRANTS OR SUBPOENAS

See R.C.M. 405(h)(3) regarding production of evidence for a preliminary hearing. The PHO has no authority to issue a subpoena or warrant, but shall note in the report any evidence the PHO determined was relevant, not cumulative, and necessary to the determination of the issues at the preliminary hearing, along with the government’s refusal to obtain the evidence for the hearing.

1004. VICTIM RIGHT NOT TO TESTIFY

A victim named in a specification under consideration at the hearing shall not be required to testify. *See* R.C.M. 405(h)(2)(A)(iii).

1005. CLOSED SESSIONS

Preliminary hearings are public proceedings and should remain open to the public whenever possible. When an overriding interest outweighs the value of an open preliminary hearing, the convening authority or the preliminary

hearing officer may restrict or foreclose access by spectators to all or part of the proceedings. Convening authorities or preliminary hearing officers must conduct a case-by-case, witness-by-witness, and circumstance-by-circumstance analysis of whether restriction or closure is necessary. If the PHO or convening authority orders a closed session, precautions should be employed to ensure no unauthorized personnel enter or attend the closed session. Judge Advocates serving as supervising attorneys to counsel detailed to the closed session are authorized to attend any closed session.

100502. M.R.E. 412 Hearing

If the PHO conducts a hearing to determine the admissibility of the evidence, the hearing shall be closed. The victim shall be afforded a reasonable opportunity to attend and be heard, to include being heard through counsel.

100503. Procedures

The procedures for determining the admissibility and/or sealing of evidence in cases of an alleged sexual offense, as defined under M.R.E. 412(d) are found in R.C.M. 405(i)(2).

1006. PHO REPORT

The PHO shall assemble the preliminary hearing report in accordance with R.C.M. 405(l). In addition to those items listed in the rule, the preliminary hearing report will contain: DD Form 457, Preliminary Hearing Officer Report, and any attachments; DD Form 458, Charge Sheet, and any attachments; and the PHO appointment letter. The PHO must include a copy of the preliminary hearing recording.

1007. DISTRIBUTING THE PHO REPORT

The PHO shall deliver the PHO Report to the appropriate SJA within the time specified by the convening authority in the appointment letter. If no deadline is specified, the PHO shall deliver the PHO report within eight days after the closure of the preliminary hearing or timely receipt of supplementary information under R.C.M. 405(k), whichever is later. The SJA, in turn, delivers the report to the convening authority who directed the preliminary hearing. The convening authority must cause the PHO Report to be served on the accused. Government counsel must obtain a receipt from the accused upon service of the PHO Report.

1008. OBJECTING TO THE PHO REPORT

Any objections to the PHO Report must be submitted in accordance with R.C.M. 405(l)(2)(K)(5) within five days of receipt. The day the accused receives the report is not counted in calculating the five-day window in which the accused may raise objections. The five-day period does not prohibit a convening authority from referring any charge or taking any other action within the five-day period.

1009. FORWARDING THE PHO REPORT TO A SUPERIOR CONVENING AUTHORITY

If the convening authority who directed the preliminary hearing decides to forward the PHO report to a superior convening authority for disposition, the convening authority who directed the hearing must prepare a forwarding letter providing a recommendation for disposition of the charge(s). The forwarding letter will include the following attachments: the charge sheet, the commander's endorsement to the charge sheet, and the PHO Report, with the attachments appended to the report. This letter is forwarded to the superior convening authority through the superior convening authority's SJA.

100901. Uncharged Offenses

If an uncharged offense examined by the PHO in the preliminary hearing is later preferred, the GCMCA may refer the offense to court-martial without convening an additional preliminary hearing, provided the SJA's Article 34, UCMJ pretrial advice addresses the offense per R.C.M. 601(d)(2).

1010. SEALING DOCUMENTS

Refer to R.C.M. 1103A for authority, limitations, and procedures relevant to review of sealed materials in or attached to a PHO Report. Sealed materials will be kept separate. Sealed documents and or each recording/transcripts of the closed portion of the hearing will be placed in its own envelope or other suitable container. The envelope or container shall be marked CLOSED SESSION.

101001. Sensitive Information

If the PHO determines a record contains graphic materials or matters of a sensitive personal nature, the PHO, with the assistance of the trial counsel, shall ensure such materials are enclosed separately in an envelope, wrapping, or other suitable container to conceal and protect the materials from inadvertent exposure or tampering. Any graphic materials or matters of sensitive personal nature shall be properly labeled and separately enclosed prior to inclusion in the PHO's report. The envelope, wrapping, or container should be marked: "CAUTION, CONTAINS SENSITIVE INFORMATION." These sensitive materials are viewable only by authorized reviewing authorities and support personnel with an official need to view the materials. In the absence of such determination, should the cognizant SJA later determine the record includes such matters, the SJA shall ensure the matters are enclosed and marked in accordance with the requirements above.

1011. RECORDING THE PRELIMINARY HEARING

Government Counsel shall ensure the preliminary hearing is recorded by suitable government recording devices. Government counsel may use a secondary suitable recording device to create a back-up recording.

101101. Providing Preliminary Hearing Recording to the Accused

The Accused will receive a copy of the preliminary hearing report, which includes a copy of the recording or transcript. Do not provide any portions of the hearing ordered sealed by the PHO to the accused or counsel.

101102. Providing Preliminary Hearing Recording to the Victim(s)

Upon written request from a victim named in one of the specifications at the preliminary hearing (or victim's counsel), government counsel shall provide the victim with access to, or a copy of, the recording or transcript. Do not provide any portions of the hearing ordered sealed by the PHO to the victim or victim's counsel. Trial counsel is not normally required to redact the recording or transcript except as indicated below. However, to maintain compliance with the Privacy Act, the government should release the recording or transcript in the following manner:

A. If the victim is represented by a VLC, the unredacted recording or transcript should be provided to the victim's VLC as a "For Official Use Only" disclosure under the Privacy Act. The VLC must maintain the recording or transcript in accordance with the Privacy Act.

B. An unredacted recording or transcript may not be provided directly to the victim.

1012. HEARINGS VIA REMOTE MEANS

The preliminary hearing officer or appointing authority may order the use of audiovisual technology, such as video teleconferencing technology, or telephonic participation among the parties and the preliminary hearing officer for purposes of Article 32, UCMJ, proceedings, consistent with similar provisions guiding Article 39(a), UCMJ, sessions and consistent with R.C.M. 405, 804, and 805. Such technology may include two or more remote sites as long as all parties can hear each other. VTC or telephonic participation may also be utilized to facilitate the presence of victims or VLC exercising a victim's right to be present under R.C.M. 405(g). However, the possibility of VTC or telephonic participation does not create a right to use such means when doing so imposes too great of a burden on the government, causes undue delay, or prejudices the rights of the accused.

SUBPART C2: TRIAL MATTERS

VOLUME 16: CHAPTER 11

DISCOVERY

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by ***bold, italic, blue and underlined font.***

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SUBPART C2 – TRIAL MATTERS**CHAPTER 11****DISCOVERY**

1101. PURPOSE

This section provides policy guidance to trial counsel on how to meet their discovery obligations as set forth in the Rules for Courts-Martial, the Military Rules of Evidence, *Brady v. Maryland*, 373 U.S. 83 (1963), and the *Giglio v. United States*, 504 U.S. 150 (1972) line of cases. This policy guidance is not intended to confer any additional rights, privileges, or benefits on any party or third person.

1102. APPLICABILITY

This chapter applies to all trial counsel, legal administrative officers, litigation attorney advisors, legal services specialists, investigators, and administrative support personnel who provide military justice services within the Marine Corps, or who assist the trial services offices in fulfillment of the prosecution function. Discovery obligations of personnel who serve in billets within the Defense Services Organization (DSO) and the Victims' Legal Counsel Organization (VLCO) are covered by relevant constitutional provisions, statutes, rules, and other policies published by the leaders of those organizations.

1103. GENERAL

110301. Role of the Trial Counsel in Discovery

The trial counsel is the gatekeeper for discovery on behalf of the United States and must never abdicate this role. The guiding principle for the trial counsel in every court-martial is not to simply win a case, but that justice shall be done. *Berger v. United States*, 295 U.S. 78, 88 (1935). Any intentional discovery violation is a serious matter and a violation of the rules of professional responsibility. Remaining willfully ignorant of evidence that reasonably tends to be exculpatory so as to avoid a discovery obligation is also a discovery violation inconsistent with the pursuit of justice. See *United States v. Stellato*, 74 M.J. 473 (C.A.A.F. 2015). But it does not matter if the failure to disclose discoverable information is in good faith or bad. *Giglio*, 405 U.S. at 153. Even unintentional isolated lapses can have a disproportionate effect on public and judicial confidence in trial counsel and the military justice system. Beyond the consequences in the individual case, which can include continuances, exclusion of evidence, or dismissal of charges, such a loss in confidence can have significant negative consequences on our effort to achieve justice in every case.

110302. Liberal Discovery in Courts-Martial

Consistent with the role to seek justice, broad and early disclosures often lead to speedy resolution of cases and preserve limited resources for other cases. The United States Attorney's Manual requires federal prosecutors to take a broad view of discovery and err on the side of disclosure of exculpatory and impeachment evidence beyond that which is constitutionally and legally required. USAM § 9-5.001. That is true to an even greater extent for trial counsel. "Discovery in the military justice system, which is broader than in federal civilian criminal proceedings, is designed to eliminate pretrial gamesmanship, reduce the amount of pretrial motions practice, and reduce the potential for surprise and delay at trial." *United States v. Jackson*, 59 M.J. 330, 333 (C.A.A.F. 2004). Trial counsel should always evaluate discovery and disclosure issues in light of the "liberal mandate" of discovery practice in courts-martial. *United States v. Roberts*, 59 M.J. 323, 325 (C.A.A.F. 2004). But while broad discovery is desirable, disclosures beyond those required by relevant statutes, rules, and policies may risk harm to victims or witnesses, or have other ramifications contrary to the pursuit of justice. In recognition of these competing goals, the trial counsel must make discovery determinations on a case-by-case basis. The trial counsel should provide timely, open, and broad discovery, while still protecting victim and witness privacy interests as established under 10 U.S.C. § 806b, the Military Rules of Evidence, the Privacy Act, and relevant case law.

110303. Overview of Discovery Process

The discovery process is basically a three step process. Unless a privilege exists, the trial counsel must first actively seek out discoverable material in possession of the government. After obtaining the material, the trial counsel must determine whether or not it shall be disclosed to the defense on a case-by-case and document-by-document basis. Finally, the trial counsel must disclose such materials deemed discoverable expeditiously in accordance with the Rules for Courts-Martial, case law, and this chapter. The disclosure may include the opportunity to inspect the materials. If copies are provided to the defense or VLC, the materials must be properly redacted to remove PII or privileged material, or include a disclosure notice in accordance with paragraph 110704 of this chapter.

110304. Evidence Relevant to Defense Preparation

When making the discovery determination described above, the government must always turn over certain types of information. For example, any material which accompanied the charges when they were referred, the convening order and any modifications, and any sworn or signed statement relating to an offense charged must always be turned over pursuant to R.C.M. 701(a)(1). Other types of information in the possession of the government need only be discovered if they are “relevant to defense preparation.” See R.C.M. 701(a)(2). “Relevant to defense preparation” broadens the scope of discovery from the prior standard of “material” to defense preparation. See App. 15, MCM (2019 ed.). Information does not need to be admissible under the rules of evidence, or be directly related to the government’s case in chief to be relevant to defense preparation. The defense may possess confidential information or have a theory of the case the government is not aware of. Therefore, the trial counsel may not always understand how a piece of requested information is relevant. Trial counsel should normally assume information specifically requested by the defense is relevant to the preparation of a defense, although discovery might not be required for other reasons. However, if the requested information appears to be irrelevant, and unlikely to lead to any useful information, the trial counsel may deny the request or request additional information to demonstrate the relevancy of the requested items.

1104. SOURCES OF DISCOVERY

110401. Exculpatory Information Not in the Trial Counsel’s Files

It is the obligation of trial counsel, in preparing for trial, to seek out, obtain, and disclose to the defense all exculpatory and impeachment information held by government agencies participating in the investigation. The trial counsel must look beyond their own physical files for exculpatory evidence and has a duty to learn of any exculpatory evidence known to others acting on the government’s behalf in the case, including the police. *Kyles v. Whitley*, 514 U.S. 419 (1995). The scope of the trial counsel’s inquiry beyond the trial counsel’s own files depends upon the nature of the request and the trial counsel’s relationship to the holder of the information. *United States v. Williams*, 50 M.J. 436 (C.A.A.F. 1999). A trial counsel must always review law enforcement case files related to the case. Potential files that might also need to be reviewed include those of other federal, state, and local law enforcement agencies, forensic laboratories, child protective services, social services, command investigators, and other civilian or government officials participating in the investigation or testing of evidence in the case.

110402. Information Held by Non-Law Enforcement Government Agencies

A trial counsel is normally not required to review the records of agencies that are not closely aligned with the prosecution. When determining whether another federal, state, or local agency may be in possession of discoverable evidence, trial counsel should look to the following factors:

- A. Whether the agency’s primary purpose is to assist law enforcement or the prosecution, or the agency shared resources with law enforcement;
- B. Whether the agency played an active role in the investigation, including obtaining evidence, interviewing witnesses, or otherwise acting as part of the investigation team;

- C. Whether the trial counsel knows of and has access to discoverable information held by the agency;
- D. The degree to which the trial counsel or law enforcement have shared information with the agency;
- E. The degree to which the agency has provided input on decisions regarding civil, criminal, or administrative charges;
- F. The degree to which the interests of the parties in parallel proceedings diverge such that information gathered by one party is not relevant to the other party;
- G. Whether the agency routinely releases the information requested to representatives of the government;
- H. Whether any person could assert a privilege over any of the information requested;
- I. Whether the information requested is protected from release by other statutes or regulations, such as medical records, school records, counseling records, or mental health or substance-abuse treatment records.

1105. SPECIFIC EVIDENCE TO REVIEW FOR DISCOVERY

110501. Evidence Gathered During the Investigation

The trial counsel must review all evidence and information gathered during the investigation.

110502. The Military Law Enforcement File

The trial counsel shall review all documents within the case file of the investigating agent or the investigating officer upon receipt of the RLS. The trial counsel should not treat the case file as a single document for discovery purposes, but instead should consider the case file as a container for individual documents and media. These documents and media include all documents, reports, witness statements, video recordings, and confidential witness files within the case file as well as case agent notes, e-mails about the case, and any other correspondence regarding the case. Additionally, trial counsel shall inspect any evidence seized by investigative agencies connected to the case.

110503. Impeachment and Bias Information

A. Witness Background Checks

(1) Law Enforcement Witnesses. The trial counsel must make a reasonable inquiry regarding the existence of any material information affecting the agent's credibility or other information favorable to the defense in the personnel files of any law enforcement witness. A reasonable inquiry usually involves asking the law enforcement agent involved. Law enforcement personnel are obligated to notify the trial counsel of any adverse material in their personnel files affecting their credibility. If the trial counsel is aware of any adverse information, the existence of the adverse information shall be disclosed to the defense. If the trial counsel is not aware of any potentially adverse material, the trial counsel only has a duty to examine the personnel files of law enforcement witnesses if an accused requests their production. Balancing the defense's need for potential impeachment material against the privacy interests of the agents, the obligation is normally satisfied by obtaining a *Henthorn* letter or functional equivalent from the appropriate authority. A *Henthorn* letter is a letter signed by a supervisor or other authorized official for the law enforcement agency (NCIS general counsel office for example) certifying they have reviewed the contents of the law enforcement witness's personnel files, and there is no adverse material in the files relevant to the case, such as any information that would affect the witness's credibility, truthfulness, or show a particular bias.

(2) Other Witnesses. The trial counsel should ensure a National Crime Information Center (NCIC) background check is run on all witnesses anticipated to testify at trial. Additionally, all military witness personnel files should be reviewed for adverse materials. When the trial counsel discovers adverse materials, the trial counsel must make a necessity determination under R.C.M. 701 and M.R.E.s 608 and 609, and at a minimum, disclose to the defense the existence of adverse materials.

B. Other Impeachment and Bias Information

Additionally, the following information known by or in the possession of the government about witnesses must be gathered, reviewed, and disclosed to the defense.

- (1) Prior inconsistent statements.
- (2) Statements or reports reflecting witness statement variations.
- (3) Benefits provided to witnesses including:
 - (a) immunity.
 - (b) assistance in state or local criminal proceedings.
 - (c) non-prosecution agreements or reduced charges.
 - (d) letters to other officials setting forth the extent of a witness's assistance.
 - (e) relocation assistance or expedited transfer.
 - (f) benefits to third-parties who have a relationship with the witness.
 - (g) any other consideration or benefit provided that may reasonably affect credibility or bias.
- (4) Other conditions that could affect the witness's impartiality or other items that may arise such as:
 - (a) animosity toward a group of which the accused is a member.
 - (b) relationship with the victim.
 - (c) uncharged criminal conduct.
- (5) Specific instances of truthfulness or untruthfulness under M.R.E. 608.
- (6) Any issue that could affect the witness's ability to perceive or recall events.

110504. Information Obtained in Witness Interviews

A. The trial counsel should have a third person or "prover" present during all witness interviews and all trial preparation meetings conducted by the trial counsel. A best practice is to have the assigned case agent or RTI present during important witness interviews when practicable.

B. The trial counsel must disclose to the defense any signed or adopted statements made by a witness during a witness interview.

C. The prover must memorialize any inconsistent statements or variances within the witness's statement even if they occur within the same interview. Recognizing it is sometimes difficult to assess the materiality of evidence before trial, the trial counsel generally must take a broad view of materiality and err on the side of disclosing exculpatory and impeaching evidence, even when such evidence may not be admissible at trial. These inconsistent statements or material variances shall be disclosed to the defense.

D. The trial counsel or prover should also memorialize all relevant new information learned during the witness interview or trial preparation meeting. This new information, even if it is not exculpatory, should be disclosed to the defense.

110505. Mental Health Records

The trial counsel should not seek to obtain privileged mental health records without permission from the patient or an order from a court pursuant to M.R.E. 513. Upon a request for mental health records, the trial counsel may attempt to determine if mental health records exist and where they are located, and should normally ask potential witnesses if they have or had any medical or mental health issues that may have affected their ability to perceive or understand events, or recall past events. If the trial counsel becomes independently aware of a mental health disorder materially affecting a victim or witness, the existence of that condition must normally be disclosed to the defense. The trial counsel may seek permission from the patient to obtain such records or may otherwise attempt to obtain the records pursuant to M.R.E. 513. Since both sides have equal access to evidence, trial counsel must be aware that a trial counsel's review of mental health records generally waives any claim of privilege, and the defense normally may review all records reviewed by the trial counsel.

1106. PREPARING DISCOVERY

110601. Discovery Inventory Required

The trial counsel shall maintain a discovery inventory of the items reviewed, items disclosed, and the rationale for any items not disclosed. For material that is reviewed and disclosed to the defense, the electronic discovery file may serve as the discovery inventory. For items not disclosed, the trial counsel should provide notice of the existence of these items to the defense.

110602. Privileged Material Log

The trial counsel shall identify material that is protected or privileged under the 500 series of the Military Rules of Evidence. If the trial counsel becomes aware of privileged material that is relevant to defense preparation, the trial counsel must notify the defense of the existence of these documents, but shall not disclose this material until the proper administrative and judicial processes have been followed.

110603. Special Considerations Applicable to a Law Enforcement Case File

A. An investigator's file has law enforcement sensitive information and requires careful handling by the trial counsel and, when applicable, by the defense counsel. *See* SECNAVINST 5211.5E.

B. As described in paragraph 110502, the trial counsel must personally review law enforcement files, determine what information within the file must be disclosed, and determine the manner of disclosure. Investigators' notes should be reviewed for *Brady* material regardless of whether they testify.

C. The trial counsel must inform the case agent of all materials within the file the trial counsel intends to disclose, the timing of the disclosure, and the manner of disclosure to provide the investigation agency sufficient opportunity to assert any privileges over these materials.

D. The trial counsel shall disclose all documents within the file that are relevant to defense preparation and not subject to a claim of privilege.

(1) The trial counsel shall inform the defense of the existence of privileged material under M.R.E.s 505-507, but shall not disclose this material without authorization from the holder of the privilege.

(2) For confidential witness information, trial counsel may produce a summary letter to defense counsel disclosing all necessary and material information while still protecting the identity of the informant. Summary letters must be approved by the holder of the M.R.E. 507 privilege.

E. After the trial counsel has provided copies of or allowed the defense to inspect relevant portions of the case file, the defense might request to inspect the original and complete law enforcement case file. Trial counsel shall forward any request to review the original case file to the law enforcement agency involved. Every request must be evaluated on the unique facts of the case. Allowing the defense to inspect the original case file may help avoid unnecessary delays in the case and save judicial resources by avoiding unnecessary litigation. On the other hand, many courts have held that *Brady* and related cases impose an obligation on the government to disclose, but do not entitle the defense to personally inspect the government's files. "Defense counsel has no constitutional right to conduct his own search of the State's files to argue relevance." *Pennsylvania v. Ritchie*, 480 U.S. 39, 59 (1987). Routinely granting requests to inspect the original case file can create an institutional culture implying such a right exists and ultimately harm the integrity of law enforcement investigations.

110604. Special Concerns Related to Safety Investigations

Safety investigations may contain privileged material protected from discovery by M.R.E. 506. The privilege for safety investigations is held by SECNAV. If SECNAV believes waiver of the privilege is warranted, SECNAV may authorize waiver for the limited use in the trial, subject to appropriate protective measures, and after first consulting with the DoD General Counsel and DUSD (I&E). Outside of authorizing release for *in camera* review, the SECNAV has never waived the safety privilege for a criminal prosecution.

110605. Classified Information

All classified information must be reviewed by the Original Classification Authority (OCA) to determine if the M.R.E. 505 privilege applies and will be invoked in the case, prior to disclosure to the defense. The trial counsel will coordinate with OJAG (Code 30) as soon as possible in all cases involving classified information.

110606. Attorney-Work Product

To the extent any attorney work product is included in material gathered for discovery, such as notes of witness interviews, the trial counsel may redact the material before disclosing to the defense. Redactions shall be clearly labeled indicating attorney work product has been removed. A trial counsel may also meet disclosure obligations by producing a summary document of all exculpatory and new information learned, without disclosing the original notes containing the attorney work product.

1107. CONDUCTING DISCOVERY

110701. Preference for Electronic Discovery

Even if discovery is required, a physical copy of every item subject to disclosure need not be made in every case. For cases involving large volumes of potentially discoverable information, to protect witness privacy, or for other similar rationale, trial counsel may discharge their disclosure obligations by choosing to make items subject to disclosure available to the defense for inspection rather than providing a copy. When trial counsel do provide copies of discovery, they are encouraged to make all efforts to provide electronic copies of discovery, in lieu of paper copies, when practicable.

110702. Timing

A. TCs are encouraged to disclose relevant, non-protected material as soon as it is received, personally reviewed by the trial counsel, and accounted for in the discovery index. Exculpatory material, regardless

of whether the information is memorialized, must be disclosed to the accused promptly after discovery even if court ordered deadlines have not arisen. Impeachment and bias information as described in paragraph 3303.4, shall be disclosed no later than determination that a witness will likely be called by the trial counsel at the court-martial in order to allow defense counsel to prepare for trial.

B. Discovery obligations are on-going and continue after trial. The TC must be alert to developments occurring throughout the preparation, during, and after a trial that may impact their discovery obligations and require disclosure of information not previously disclosed.

110703. Use of Bates Stamp and Electronic Discovery

To the maximum extent practicable, all documents disclosed to the defense shall be electronically served through a shared network drive or a secured internet site. All materials should be bates stamped. A bates stamp refers to numbering each document provided in discovery with a sequential number for that case. All electronic evidence should be available to the defense in a read only manner, and the date of discovery must be recorded electronically. All electronic files should be labeled by the Bates stamp numbers and the name of the case.

110704. Personally Identifiable Information (PII)

If PII is material to the preparation of the defense, it shall be disclosed under the applicable Routine Uses exception as published in the System of Records Notice. If a TC provides defense counsel with materials that include PII under the Routine Uses exception, the TC must use a Privacy Act disclosure cover sheet notifying the defense of their obligation to protect this material. TCs may provide the defense with a copy of discoverable materials with PII redacted, so long as the TC provides the defense access to inspect an unredacted version of all PII material to the preparation of the defense.

110705. Contraband Material

Trial Counsel shall not provide any person with any evidence or copies of evidence that is illegal for the person to possess. Examples include controlled substances, child pornography, and prohibited weapons. In appropriate circumstances, and in coordination with NCIS or the applicable law enforcement agency, contraband materials should be made available for inspection.

110706. Classified Information

Before disclosing the nature of any classified information, trial counsel must ensure an appropriate protective order is in place and the defense counsel has the appropriate security clearance. Contact OJAG (Code 30) early in any case involving classified information for further guidance and best practices.

110707. Other Sensitive Information

Trial Counsel may allow defense an opportunity to inspect other information relevant to the preparation of a defense, copies of which are sensitive and should be kept under close control. Examples of such information include photographs of a person's private area taken during a sexual assault medical forensic exam (SAMFE). Normally, the appropriate way to handle such photographs or other sensitive items is to allow the defense an opportunity to inspect such items if doing so is relevant to the preparation of a defense, while also seeking a court order to seal the items, preventing each side from making copies or showing the photographs to others, including the accused, without a court order.

1108. DISCLOSURES TO WITNESSES, VICTIMS, AND VICTIMS' LEGAL COUNSEL (VLC)

Trial Counsel's disclosures to a victim are covered in chapter 4 of this volume. To avoid tainting potential witness testimony, trial counsel should normally not disclose other investigative materials to a witness, beyond the witness's own statement or materials provided by the witness. In some cases, VLC may request additional documents. For example, if a motion filed under Mil. R. Evid. 412 relied exclusively on facts contained in another witness's

statement, the VLC might request a copy of that statement in order to adequately respond to the 412 motion, even though another witness's statement is not normally disclosed to the VLC. Trial counsel may disclose such a statement, so long as doing so would not violate the Privacy Act or the Rules for Professional Responsibility. If requested by the defense, the TC shall inform the defense what, if any, witness statements or materials were provided to the VLC or victim.

VOLUME 16: CHAPTER 12

MILITARY JUSTICE HEARING AND COURT REPORTING PROCEDURES

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER 12

MILITARY JUSTICE HEARINGS AND COURT REPORTER PROCEDURES

1201. PURPOSE

This chapter sets forth the administrative responsibilities and procedural components to conducting military justice hearings. It does not alter or replace any requirements in the rules for court-martial, rules of evidence, or rules established by the trial judiciary.

1202. APPLICABILITY

This Chapter applies to all cases in which charges were referred to trial by court-martial on or after 1 January 2019 or administrative hearings convened on or after 1 January 2019. Except as otherwise provided in this Order, proceedings in any case not meeting these conditions shall be held in the same manner and with the same effect as if this Chapter had not been prescribed.

1203. GENERAL PROCEDURES APPLICABLE TO ALL HEARINGS

120301. Detailing and Role of Court Reporter

The PTAO shall detail a court reporter to every special and general court-martial. The PTAO may delegate this authority to a post-trial chief as necessary. The detailed court reporter is in direct support of the military judge for the case. The court reporter is responsible for ensuring accurate and complete capture of all proceedings to which they are assigned. In the event of equipment failure, the court reporter is responsible to inform the military judge immediately, interrupting proceedings as necessary.

120302. Control of Recording Devices

After a recording has been initiated, only the detailed court reporter or military judge may stop, pause, mute, disconnect, or in any way modify the recording equipment and/or the software settings.

120303. Inadvertent Recording of Conversations

Recording devices are sensitive and may inadvertently record conversations intended to be private and/or privileged.

120304. Maintaining Recordings

Official recordings will be managed and maintained under the direction and supervision of the PTAO. All records and recordings generated and maintained by a Post-Trial Office shall abide by applicable retention guidelines.

1204. TRANSCRIPTS FOR NON-JUDICIAL PUNISHMENT OF OFFICERS

A verbatim transcript shall be produced in all Officer Non-Judicial Punishment proceedings per LSAM, Volume 15. The detailed court reporter for the proceeding will cause a recording to be made of the proceeding to facilitate transcript production. Use of the hardware and software approved for courts-martial is encouraged. The format of any produced transcript is contained in Appendix I.

1205. RECORDING PRELIMINARY HEARINGS

R.C.M. 405(j)(5) requires preliminary hearings be recorded. Counsel for the government are responsible for ensuring a recording is created. If a court reporter is detailed, he or she will provide the Government with a

complete recording as soon as possible after conclusion of the hearing. Use of the hardware and software approved for courts-martial is encouraged. The format of a produced transcript is contained in Appendix I.

1206. ENLISTED ADMINISTRATIVE SEPARATIONS

Administrative Separation hearings shall be recorded by the Recorder or support personnel assigned this duty. Use of the hardware and software approved for courts-martial is encouraged. A verbatim transcript of a hearing may be requested and approved pursuant to paragraph 1210.

1207. BOARDS OF INQUIRY

Boards of Inquiry shall be recorded by the Government or support personnel assigned this duty. If a transcript is required, the Post-Trial Office shall attempt to create one within 30 days after the hearing concludes. Use of the hardware and software used for courts-martial is encouraged. The format of any produced transcript is contained in Appendix I.

1208. SUMMARY COURTS-MARTIAL

A recording or a transcript is not normally required for a summary court-martial. A court reporter will not normally be detailed to a summary courts-martial, unless the LSSS or LSST OIC authorizes detailing for a particular case.

1209. SPECIAL OR GENERAL COURTS-MARTIAL

All sessions of a special or general court-martial shall be recorded, except for sessions closed for deliberations. The format of any produced transcript is contained in Appendix I.

1210. OTHER HEARINGS OR RECORDINGS

A request for transcription for any other hearing (deposition, investigation, etc.) or of a recording (NCIS videotaped interview, etc.) may be submitted to the Post-Trial Office using standard procedures established by the LSSS OIC. A court reporter may be detailed to the hearing at the discretion of the Regional, Post-Trial Office or the PTAO. Use of the hardware and software approved for courts-martial is encouraged. The format of any produced transcript shall be substantially similar to those contained in Appendix I. Practitioners are encouraged to submit requests for transcription at least 30 days before the transcript is needed.

1211. EXHIBIT HANDLING

121101. Original Exhibits

All original exhibits anticipated for use in a court-martial will be given to the detailed court reporter prior to trial. The use of an automated marking system is permitted. The court reporter will determine the marking of original exhibits.

121102. Marking

Exhibits will be marked in the lower right-hand margin. If marking in this area obscures evidentiary matters, the marking may be moved. Depictions of physical evidence will be marked and inserted in ROTs with the permission of the military judge and in accordance with circuit rules.

121103. Redaction

Section 0141a of the JAGMAN requires all counsel to omit PII from all dockets, filings, pleadings, court records, and exhibits that counsel intend to use at any court proceeding. Exhibits shall use a victim's initials, not name. If an un-redacted exhibit is used at trial, the Regional Post-Trial Office has the responsibility to ensure a Privacy Act compliant version is created prior to distribution.

VOLUME 16: CHAPTER 13

MILITARY JUSTICE DATA COLLECTION

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER 13

MILITARY JUSTICE DATA COLLECTION

1301. PURPOSE

Accurate data collection and management is essential to the effective and fair administration of military justice. Additionally, military justice is routinely an area of intense congressional and public interest. As public servants, we have an obligation to answer congressional inquiries for statistical data concerning military justice. Article 140a, UCMJ, requires the Secretary of Defense to prescribe uniform standards and criteria for the conduct of each of the following functions at all stages of the military justice system, including retrial, trial, post-trial, and appellate processes, using, insofar as practicable, the best practices of Federal and State courts:

(1) Collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and enhances the quality of periodic reviews under section 946 of this title (article 146).

(2) Case processing and management.

(3) Timely, efficient, and accurate production and distribution of records of trial within the military justice system.

(4) Facilitation of access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records.

1302. DATA POINTS MANDATED BY THE SECRETARY OF DEFENSE

Article 140a, UCMJ, requires the Secretary of Defense to prescribe standards for information that is required to be collected in every military justice case. Military Justice practitioners must routinely update CMS entries to ensure the required data points are included in the case entry.

1303. ELECTRONIC CASE MANAGEMENT SYSTEM (CMS) ENTRIES

CMS refers to the applicable electronic case tracking system that is used to track military justice cases that require services from the LSSS. All significant pending actions and case developments must be properly documented. Cases will be tracked through completion of the appellate review process and will be created in CMS—regardless of the anticipated disposition—at the earlier of:

(1) Notification to the LSSS by a Military Criminal Investigative Organization (MCIO) or other law enforcement agency of any Special Victim Case defined in paragraph 5;

(2) Receipt of the request for legal services (RLS), or;

(3) Within 10 calendar days after the imposition of pretrial confinement.

The following documents will be uploaded into CMS as applicable:

(1) Case Analysis Memorandum (CAM);

(2) Signed victim preference letter;

(3) Preferred and referred charge sheet;

(4) Withdrawal/withdrawal and dismissal letter;

- (5) Plea agreement;
- (6) Report of Result of Trial/Statement of Trial Results;
- (7) Entry of Judgment;
- (8) Any notification made pursuant to chapter 14 of this order (criminal justice reporting, sex offender notification, etc.); and
- (9) Sexual Assault Disposition Report (SADR).

1304. SUPERVISION

Leaders at all levels will enforce the use of case management systems and oversee the accuracy, quality, and completeness of the information contained in the system. Senior Trial Counsel should review CMS entries at least once a week to ensure trial counsel and military justice clerks are making appropriate entries in cases and keeping any electronic CMS up to date. The RTC shall periodically review CMS entries to ensure this supervision is taking place. Completion of CMS entries is subject to inspection pursuant to Article 6, UCMJ, and the inspection procedures outlined in Volumes 1-2 of this order.

1305. REPORTS

130501. Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR)

JAGINST 5800.9D sets forth the policy to collect and maintain accurate and timely statistical information reflecting trends in criminal activity and military justice processes necessary for the measurement of the efficiency of personnel and the effectiveness of discipline-related initiatives by the Department of the Navy. Marine Corps general court-martial convening authorities shall submit their QCAR reports quarterly to JMJ. Format for submission of the QCAR and further information is contained in JAGINST 5800.9D.

130502. Publication of Court-Martial Results

The Marine Corps publishes all general and special courts-martial results on a monthly basis. In coordination with COMSTRAT, the SJA to CMC will ensure accurate and timely publication of the data. On a monthly basis, each LSSS will submit the compiled summarized results from the previous month to MCICOM. The compiled summarized results shall be submitted no later than the 10th day of the following month.

130503. Article 146a, Uniform Code of Military Justice (UCMJ) annual report

Article 146a, UCMJ, requires the SJA to CMC to submit an annual report to the Secretary of Defense, Secretary of the Navy, and the House and Senate Armed Services Committees. The report must contain, among other requirements, data on the number and status of pending cases. The SJA to CMC obtains the information for this report from the designated electronic case management system. Therefore, it is vital that practitioners maintain and update cases in accordance with this volume.

130504. Victim Collateral Misconduct Report

Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law No. 115-232) directs the Secretary of Defense to submit a biennial report to the congressional defense committees on the number of instances of collateral misconduct committed by alleged sexual assault victims. The SJA to CMC obtains the information for this report from the designated electronic case management system and submitted SADR forms. Therefore, it is vital that practitioners maintain and update cases in accordance with this volume.

VOLUME 16: CHAPTER 14

**CRIMINAL JUSTICE INFORMATION REPORTING, SEX OFFENDER NOTIFICATION, AND
CRIMINAL INDEXING**

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by *[bold, italic, blue and underlined font](#)*.

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CHAPTER 14

**CRIMINAL JUSTICE INFORMATION REPORTING, SEX OFFENDER NOTIFICATION, AND
CRIMINAL INDEXING**

1401. PURPOSE

The purposes of this chapter are to: (1) ensure judge advocates are familiar with criminal justice information (CJI) reporting requirements; (2) provide policy and guidance to ensure sex offenders are notified of their requirement to register with a sex offender registry and that appropriate authorities are notified of convictions requiring sex offender registration; and (3) ensure required fingerprint and deoxyribonucleic acid (DNA) samples are forwarded for criminal indexing and inclusion in the combined DNA index system (CODIS).

CRIMINAL JUSTICE INFORMATION REPORTING

1402. BACKGROUND

140201. Situation

In 2017, the DoD Inspector General (IG) reported the services were not meeting requirements for collecting and forwarding criminal justice information to systems used by the FBI to prevent unlawful firearms transfers. The accurate and timely reporting of CJI is essential to facilitate identification of persons prohibited by law from purchasing or possessing firearms or ammunition. A Marine Corps Order on CJI is currently pending publication (as of 2020). This order, when published, supersedes any contrary guidance in this Volume.

140202. Overview of Process

A coordinated effort between Commanding Officers, their SJAs, LSSSs, and Law Enforcement Agencies (LEAs) is utilized throughout the investigative and disposition process to determine whether a service member is prohibited by law and regulation from possessing firearms or ammunition (hereinafter: prohibited person). Once a service member is identified as a prohibited person, coordination between the command and the appropriate LEA continues in order to ensure initial entry of CJI into appropriate law enforcement systems. Upon disposition of offenses, COs shall forward associated documentation to the appropriate LEA to ensure a complete record is provided to the FBI and information is accurately reflected in NICS. This chapter provides policy guidance for judge advocates on how to meet criminal justice information reporting obligations as set forth in statutes, DoD Instructions, Department of the Navy regulations, and Marine Corps Orders. This policy guidance is not intended to confer any additional rights, privileges, or benefits on any party or third person and does not supersede any specific Marine Corps Order on crime reporting.

1403. THE GUN CONTROL ACT OF 1968

140301. Legal Framework

The legal framework governing the impact of criminal justice information on possession of firearms and ammunition is found primarily in the Gun Control Act of 1968 (18 U.S.C. § 921 *et seq.*, as amended) (GCA). Several other statutory and regulatory sources both refine and inform the provisions of the GCA. Collectively, these sources promulgate various restrictions on the receipt, possession, transportation, shipment, and transfer of firearms and ammunition, and establish requirements for conducting background checks prior to certain firearms purchases. The precise terms used by the GCA are further defined in the Code of Federal Regulations (27 CFR § 478.11), published by the ATF to aid practitioners and the public in applying the provisions of the Act.

140302. Restrictions of 18 U.S.C. 922(g)

Under section 922(g) of the GCA, it is unlawful for a person to receive, possess, ship, or transport firearms or ammunition if that person:

1. Has been convicted of any offense punishable by more than one year of confinement, regardless of the amount of confinement actually awarded or imposed. This prohibition is often referred to as the “felony” prohibition, and includes convictions by general court-martial of any offense for which more than one year of confinement is authorized. The ATF currently interprets this provision to not include any conviction by special court-martial because that forum is jurisdictionally limited to one year or less confinement.
2. Is a fugitive from justice. This includes a person who has fled from any state to avoid prosecution, who leaves the state to avoid giving testimony in any criminal proceeding, or knows that charges have been preferred or are otherwise pending before any civilian or military court against such person and leaves the state of prosecution without proper authority.
3. Is an unlawful user of or addicted to any controlled substance. This includes a person determined, via a finding at an NJP, administrative separation proceeding, Summary Court-Martial, SPCM to have wrongfully used any controlled substance in violation of Article 112a, UCMJ. This provision results in a 12-month prohibition on weapons possession from the date of adjudication. Law enforcement agencies follow applicable federal regulations for NICS entries to determine whether unlawful use, possession, or distribution of controlled substances meet the requirements of this provision on a case by case basis. This provision does not apply to possession, distribution, or introduction of controlled substances, or use of otherwise legal substances that are not controlled substances, with the intent to stupefy the central nervous system, in violation of service regulations.
4. Is found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 76b of the UCMJ.
5. Has been discharged under dishonorable conditions. This provision is triggered by final discharge from military service, following completion of appellate review.
6. Is subject to a civilian restraining order. The order must have been issued by a civilian court following a hearing of which such person received actual notice, and at which such person had the opportunity to participate. The order must restrain that person from harassing, stalking, or threatening certain persons, and must include specific findings and restrictions on the person restrained.
7. Has been convicted in any court of a misdemeanor crime of domestic violence. The Lautenberg Amendment to the GCA added another prohibition to the receipt, possession, transfer, shipment, and transportation restrictions under 18 U.S.C. 922(g)(9) in cases where a person has a qualifying conviction for a misdemeanor crime of domestic violence. This prohibition applies regardless of the amount of punishment awarded, and includes all special court-martial convictions. DoDI 6400.06 extends this prohibition to general court-martial convictions, but excludes convictions by summary court-martial. A misdemeanor crime of domestic violence is a federal, state, or local offense that: (1) Is a misdemeanor under Federal or State law or, in states which do not classify offenses as misdemeanors, is an offense punishable by imprisonment for a term of one year or less; (2) Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and (3) Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or a person similarly situated to a spouse, parent, or guardian of the victim (two persons who are residing at the same location in an intimate relationship with the intent to make that place their home would be similarly situated to a spouse).

140303. Restrictions of 18 U.S.C. 922(n) – Persons Under Indictment

Section 922(n) of the GCA prohibits receipt, shipment, and transport of firearms and ammunition by persons under indictment for a crime punishable by more than one year of confinement. The term “under indictment” is defined under the CFR provisions published to include those military personnel who are the subject of charges that have been referred for trial by general court-martial. Service members under this restriction are not prohibited from continuing to possess firearms and ammunition already in their possession, but may not receive, ship, or transport them.

140304. Restrictions of 18 U.S.C. 922(d) – Transferring to Prohibited Persons

Section 922(d) of the GCA makes it unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is prohibited to receive or possess a firearm or ammunition.

140305. Government Use Exception

While the GCA imposes significant criminal penalties for unlawful receipt, possession, transportation, shipment, and transfers, section 925 of the Act provides exceptions to most prohibitions in cases where firearms are issued or used for government use. COs may issue government weapons and ammunition for government use (e.g., rifle qualification) to service members who are prohibited persons. However, there are no such exceptions for personally-owned firearms, nor is there any exception under the Act for government use where an individual has a conviction for a misdemeanor crime of domestic violence under section 922(g)(9).

1404. THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)

The holder of a Federal Firearms License (FFL) must contact NICS by telephone or other electronic means to determine whether the transfer of a firearm would violate either state law or section 922(d), (g), or (n) of the GCA. When an FFL initiates a NICS background check, a name and descriptor search is conducted to identify any matching records in three nationally held databases managed by the FBI’s Criminal Justice Information Services (CJIS) Division: the Interstate Identification Index (III), the National Crime Information Center (NCIC), and the NICS indices.

1405. ROLES AND RESPONSIBILITIES FOR CRIMINAL JUSTICE REPORTING

All roles and responsibilities for criminal justice reporting will be established by Marine Corps Order. Until such an order is published, follow the guidance contained in MCBUL 5810. To assist commanders and law enforcement personnel in complying with their responsibilities, LSSS OICs must:

- A. At any phase of the court-martial process, ensure trial counsel forward any documents supporting a determination that a Service Member is a prohibited person to the servicing LEA.
- B. At the conclusion of any court-martial, ensure a copy of the statement of trial results and entry of judgement is forwarded to the servicing LEA to facilitate completion of CJI reporting requirements.
- C. Ensure that information submitted to the servicing LEA for NICS entries is documented in the record of trial, in accordance with JAG/CNLSCINST 5814.1D (Post-trial Processing).

SEX OFFENDER NOTIFICATION

1406. GENERAL PROVISION

These paragraphs implement instructions from the Department of Defense and Secretary of the Navy that require military officials to notify state officials upon release or transfer of unconfined service members who are convicted at SPCM or GCM of sexual offenses and offenses against minor children. Service members convicted of either offenses set forth in appendix 4 to Enclosure 2 of DoDI 1325.07 or of a civilian offense that requires sex offender registration are referred to as “military sexual offenders” (MSO) in these paragraphs. MSOs must register with the applicable authorities in the jurisdiction where they reside. Failing to do so is a criminal offense.

1407. COVERED OFFENSES

Appendix 4 to Enclosure 2 of DoDI 1325.07 lists all UCMJ offenses that trigger sex offender notification requirements. Since sex offender registration requirements vary by state, a member convicted of an offense that does not trigger sex offender notification requirements under DoDI 1325.07 may still be required to register as a sex offender under state law. Note also SECNAVINST 5800.14A currently contains a list of covered offenses that is out of date and more narrow than the list contained in DoDI 1325.07. If there is any conflict, the DoDI controls.

140701. Civilian or Foreign Offenses

If a service member, DoD contractor, or DoD civilian is convicted by state or federal civilian court or a foreign government of a sex offense equivalent or closely analogous to a covered offense, that individual is also an MSO and must submit to registration requirements. If the conviction is of a state offense, the state handles notification and registration requirements in accordance with the laws of that state. If the conviction is of a foreign offense, upon release from the authority of the host nation, the commanding officer, in consultation with the SJA, must ensure the MSO completes a DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*. Copies of the DD Form 2791 and any records of the foreign conviction shall be distributed in the same manner described in paragraph 140803 of this chapter.

140702. Non-Reportable Offenses

Notwithstanding the fact that an offense is listed as a covered offense in DoDI 1325.07, paragraph 6 of the instruction lists situations where that offense is nonetheless not a covered offense in certain situations involving consensual conduct. See DoDI 1325.07 for further details.

1408. NOTIFICATION PROCEDURES

140801. Documentation of Qualifying Offense Conviction

Section 0149 of the JAGMAN requires all crime reporting information, including conviction of a qualifying sex offense, to be included on the statement of trial results and entry of judgment forms signed by the military judge. The court reporter must upload both forms to the electronic case management system. For cases referred to trial prior to 1 January 2019, the report of results of trial and court-martial order must document the qualifying conviction.

140802. Military Sexual Offender in Post-Trial Confinement

If a conviction for a qualifying offense includes post-trial confinement, the trial counsel will provide a copy of the statement of trial results (or report of results of trial) to the confinement facility and NCIS or the responsible MCIO. Confinement officials, or the designee responsible for custody of the inmate, ensure compliance with federal and state laws with regards to sex offender registration and notifications to civilian agencies in accordance with department and service regulations.

140803. No Post-Trial Confinement in Service Operated Confinement Facility

If a conviction for a qualifying offense does not include post-trial confinement (or pretrial or other confinement credit completely offsets any awarded confinement) in a service operated confinement facility, the commander of the accused is ultimately responsible for ensuring the accused completes the DD Form 2791 and appropriate notifications are made. See DoDI 5525.20 and SECNAVINST 5800.14A. To facilitate this, detailed trial counsel shall assist commanders with fulfilling their responsibility. To avoid confusion after trial, the following procedures will apply:

A. After conviction of a qualifying offense, as documented on the Statement of Trial Results, the trial counsel will provide a copy of the STR to the MSO's commander and NCIS or the responsible MCIO, notifying both that completion of a DD Form 2791 is required. The commander of the MSO must ensure the MSO completes and signs a DD Form 2791. The commander may route the request through the defense counsel or allow the defense counsel to be present when the MSO completes the DD 2791. However, completing the DD 2791 should not be unreasonably delayed. The commander shall order the MSO to complete and sign the form within a reasonable amount of time after the military judge signs the Statement of Trial Results indicating conviction of a qualifying offense. Failure of the commander to notify the MSO of their registration requirements or an MSO's refusal to sign the DD 2791 does not relieve an MSO of their duty to register with state and local authorities.

B. After the accused signs the DD Form 2791, the commander will distribute copies along with the Statement of Trial Results as follows:

- (1) the MSO;
- (2) IPAC or personnel section, for inclusion in the MSO's Official Military Personnel File (OMPF);
- (3) NCIS or the responsible MCIO;
- (4) the installation commander where the MSO is stationed or resides, via the installation provost marshal; and
- (5) the nearest military confinement facility.

C. Pursuant to SECNAVINST 5800.14A, NCIS is then required to make all required notifications to civilian law enforcement agencies, jurisdictions, and to the Department of Justice's Sex-Offender Registration Exchange Portal as required by that instruction and DoDI 5525.20.

1409. REMOVAL FROM SEX OFFENDER REGISTRIES

A military sexual offender whose conviction for covered offenses is reversed on appeal or otherwise set aside is not subject to any requirements applicable to sexual offenders imposed by military regulations, even if retrial is pending. Removal from civilian sex offender registries is the service member's responsibility, and is done in accordance with state laws applicable to that jurisdiction.

CRIMINAL INDEXING

1410. GENERAL PROVISIONS FOR FINGERPRINT COLLECTION

141001. DoDI 5505.11

DoDI 5505.11 prescribes procedures for defense criminal investigative organizations (DCIOs) and other DoD law enforcement activities (LEAs) to submit fingerprints and report disposition data to the Criminal Justice Information Services (CJIS) Division of the FBI criminal history database. The instruction is pending revision. If anything in this chapter conflicts with DoDI 5505.11, that instruction controls.

141002. Policy

DCIOs and other Marine Corps law enforcement agencies will collect fingerprints and offender criminal history data upon determination of probable cause, and will electronically submit to the CJIS division of the FBI for all:

1. Service members who are investigated for all offenses punishable by imprisonment listed in the punitive articles of the MCM or the U.S.C.
2. Civilians investigated for offenses equivalent to those listed in the punitive articles of the MCM or U.S.C. offenses punishable by imprisonment. This includes foreign nationals, persons serving with or accompanying the Military Services in the field in time of declared war or contingency operations, and persons subject to Chapter 212 of Title 18, U.S.C., also known as the “Military Extraterritorial Jurisdiction Act of 2000.”
3. Military service members, their dependents, and DoD employees and contractors investigated by foreign law enforcement organizations for offenses punishable by imprisonment equivalent to those listed in the punitive articles of the MCM or U.S.C., if available to the DCIO or other DoD LEA.

Juveniles may only be fingerprinted in accordance with Section 5038 of Title 18, U.S.C.

141003. Qualifying Offenses

Enclosure (2) of DoDI 5505.11 lists all qualifying offenses.

141004. Procedures

DoDI 5505.11 prescribes procedures for defense criminal investigative organizations (DCIOs) and other DoD law enforcement activities (LEAs) to submit fingerprints and report disposition data on criminal justice information. Additionally, a Marine Corps Order on criminal justice information will contain additional procedures for law enforcement agencies to collect fingerprints.

DNA COLLECTION AND INDEXING**1411. PURPOSE**

The purposes for DNA collection are similar to those for taking fingerprints. They include making positive identification and providing or generating evidence to solve crimes through database searches of potentially matching samples.

1412. GOVERNING STATUTE AND REGULATIONS

10 U.S.C. § 1565 requires the services to collect DNA samples from each member of the armed forces who has been convicted of a qualifying military offense, and to forward those samples to the FBI for inclusion in the combined DNA Index System (CODIS). The Department of Defense implemented that statute and provided additional policy guidance in DoDI 5505.14 w/CH 1, March 9, 2017.

1413. PROGRAM MANAGEMENT

The Director, Defense Forensic Science Center, serves as the CODIS program manager for DoD. The U.S. Army Criminal Investigations Laboratory (USACIL) is responsible for conducting DNA analyses and submitting the results to the FBI for entry into CODIS. Under the DoDI, USACIL is responsible for developing a DNA collection kit, which will include a notice of general expungement rights. Navy and Marine Corps law enforcement agencies collect and ship DNA samples to USACIL.

1414. QUALIFYING OFFENSES

Enclosure (3) of DoDI 5505.14 lists all qualifying offenses for which DNA collection is required.

1415. PROBABLE CAUSE REQUIREMENT

Marine Corps law enforcement agencies shall collect DNA samples from subjects when probable cause exists to believe that the person has committed a qualifying offense. If a command investigation reveals probable cause, the command and SJA must coordinate with the applicable law enforcement agency to collect a DNA sample, but need not do so if charges are not likely to be adjudicated at a special or general court-martial. A law enforcement agent may collect a DNA sample anytime the agent believes probable cause exists. However, before forwarding a sample to USACIL for inclusion in CODIS, the law enforcement agent must consult with a judge advocate to make the probable cause determination and document that coordination in the law enforcement investigative file. The judge advocate consulted should normally be the SJA for the convening authority. If the SJA is not available, the law enforcement agent may consult with the installation SJA.

1416. TIMING OF SUBMISSION

Enclosure (4) of DoDI 5505.14 lists the situations when law enforcement agents collect DNA samples and expeditiously forward them to USACIL.

1417. DOCUMENTATION OF DNA COLLECTION

Whether DNA processing is required will be indicated on the Statement of Trial Results and Entry of Judgment forms. Because law enforcement agents may forward DNA samples to USACIL at various times during the investigation and prosecution of a case, the trial counsel and SJA must ensure that Statement of Trial Results and Entry of Judgment forms are sent to law enforcement case agents to ensure that DNA is handled appropriately. If a law enforcement agency investigated a qualifying offense that was not referred to special or general court-martial, the SJA will ensure final disposition documentation is forwarded to the law enforcement agency (e.g., decision not to refer certain offenses to trial, NJP records, notification of administrative separation, separation in lieu of trial, or approval of a request for resignation or retirement in lieu of trial).

1418. EXPUNGEMENT PROCEDURES

If a DNA sample was sent for inclusion in CODIS, but the qualifying offenses were resolved in a manner that did not result in any convictions at special or general court-martial, the service member may request expungement of their DNA from CODIS through the procedures outlined in DoDI 5505.14. Service members must send a written request for expungement to their first commanding officer in the grade of O-4 (major or lieutenant commander) or higher. Written requests should normally include proof that all qualifying offenses were disposed in a manner that did not result in a conviction at special or general court-martial. However, service members will not always have access to the necessary documents to show final disposition and a lack of a conviction, such as when law enforcement closed an investigation and a SA-IDA decided not to send any charges to a court-martial. Therefore, commanders in receipt of an expungement request must consult with their SJA to determine if expungement is warranted and if the command, the SJA, or the TSO possesses relevant documents showing expungement is warranted. If, after consultation with the SJA, the commander determines that expungement is not warranted, the commander must notify the service member in writing, and provide a copy of the denial to NCIS or the appropriate MCIO. If expungement is warranted, the commander will forward the request to NCIS or the other law enforcement agency who forwarded the sample to USACIL. The responsible law enforcement agent will forward the request to USACIL as outlined in DoDI 5505.14.

VOLUME 16: CHAPTER 15

COURTROOM SECURITY

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CHAPTER 15

COURTROOM SECURITY

1501. PURPOSE

To promulgate security policies and procedures for Marine Corps courthouses, courtrooms, and legal offices. LSSS OICs are responsible for courtroom security and may create internal policies, procedures, or additional security measures consistent with the recommendations within this chapter.

1502. APPLICABILITY

This chapter applies to all certified LSSS courthouses and courtrooms and designated temporary courtrooms. When it becomes necessary to hold military justice proceedings in non-LSSS courtrooms, in deployed environments for example, the cognizant SJA of the convening authority for the proceedings shall ensure a risk assessment of the facilities and proceedings is completed, and shall ensure the principles of this chapter are followed to the greatest extent practicable. Nothing in this chapter limits the authority of a military judge to exercise control over proceedings during a court-martial or to alter the guidelines under this chapter as required for an individual proceeding.

1503. NEED FOR SECURITY IN LEGAL BUILDINGS

An effective courthouse security program is essential for the proper administration of military justice. Open public access for military justice proceedings requires a secure environment in which all who attend courtroom proceedings are safe and free from physical harm and intimidation. More than any other place on an installation, the courthouse poses a significant risk of violence. The inherently adversarial, often dramatic, process of a trial brings together people from all sides of an intense and emotional issue. The courtroom security threat spans facilities and personnel resources and implicates each installation commander's physical security obligations. Yet trials are also public hearings that do not fit squarely into the "restricted area" framework normally used to ensure security on installations. Therefore, courtroom security measures in this chapter address deterrence, detection, and limitation of risk. Most importantly, the purpose of this chapter is to identify potentially violent situations and remove the opportunity for violence, especially violence with a weapon.

1504. DEFINITIONS

150401. Courthouse

A building or a designated and secured portion of a building that is designed or used to convene military justice proceedings. A courthouse may include the external areas, such as parking lots in the immediate vicinity of the building and the combined internal space of a building, including, but not limited to courtroom(s); judicial chambers; witness, member, and spectator spaces; trial, defense, VLC, court reporter, and other legal office spaces located in the same building.

150402. Courtroom

A room primarily used to convene military justice proceedings, as further defined and classified below.

A. Permanent Courtroom: A space under the control of the designated LSSS OIC, primarily used to conduct military justice proceedings and inspected on a regular basis under the authority outlined in Volume 2 of this Order.

B. Temporary Courtroom: A room not under the control of the LSSS OIC, not originally or necessarily designed for military justice proceedings, but utilized to convene military justice proceedings while the permanent courthouse or courtroom is undergoing renovations or facility updates, or courtrooms used in a deployed setting. Temporary courtrooms utilized for less than six months do not need to meet all the requirements of this

chapter, such as the installation of duress alarms, but LSSS OIC's, SJAs, and commanders should consider using the principles of this chapter to the greatest extent possible under the circumstances to ensure the safety of all participants.

150403. Military Justice Proceeding

Any pre-trial, trial, or post-trial session or proceeding of a special or general courts-martial, including all Article 30a and 39a sessions, and all preliminary hearings directed under Article 32. A military justice proceeding does not include Article 802 conferences, summary courts-martial, NJP hearings, administrative separation boards, or boards of inquiry, which may be held in courtrooms and with enhanced security procedures, as space allows or when doing so is advisable based on the perceived security risk of the hearing.

150404. Courthouse Security Officer

The person designated in writing by the LSSS OIC to implement the requirements of this chapter and the person primarily responsible for overseeing the daily implementation of facility physical security measures within the respective area of responsibility (AOR). They are also responsible to ensure that LSSS security personnel are trained in security measures, such as the use of metal detectors, personnel searches, and the use of non-lethal force.

150405. Trial Security Officer

The person assigned overall security responsibility for a high or medium risk military justice proceeding. The primary and only duty of a person assigned as the trial security officer is maintaining security of the courthouse and courtroom for the duration of the military justice proceeding. The trial security officer supervises and provides guidance to courtroom security personnel, personnel manning the entry control point, the bailiff, and command chasers, if applicable.

1505. RISK ASSESSMENT PROCESS

The risk assessment process ensures appropriate security measures are in place for any military justice proceeding and optimizes manpower and security resources. Every military justice proceeding will be assessed a risk level of high, medium, or low risk. Proceedings assessed as medium or high risk require additional security measures.

150501. Risk Assessment Factors

The following non-exclusive factors are meant to serve as a guide in evaluating the relative risk associated with a particular military justice proceeding:

- (1) The nature of the underlying crime associated with the proceeding;
- (2) The presence of the accused, alleged victim, witnesses, and family members at the proceeding;
- (3) The mental, physical, and criminal history, if known, of the accused, victim, witnesses, family members, or other parties with a direct or indirect interest in the proceedings;
- (4) Any recommendation from the accused's or victim's chain of command, or request from a victim, victim advocate, or VLC regarding the security risk of the proceedings;
- (5) The level of expected media interest;
- (6) The level of expected community impact or interest;
- (7) The location of the proceeding, for example if the proceeding is held in a foreign country, where U.S. personnel normally do not have unrestricted access to personal firearms; and

(8) Any other relevant facts or circumstances that would assist in assessing the risk of a particular proceedings.

150502. Low Risk Proceedings

A low risk military justice proceeding is a proceeding in which the potential for violence or other types of disruption in and around the courthouse is assessed as unlikely. An assessment of low risk means a violent or disruptive act is not reasonably anticipated, not that one will never occur. Low risk proceedings still require vigilance to the possibility of violence or other disruptions during the proceedings. Using the above criteria, a large portion of military justice proceedings will be assessed as low risk. For illustrative purposes only, a guilty plea at a special court-martial for a non-violent offense – where the only sentencing witness is a character witness for the accused – would likely be assessed as a low risk proceeding.

150503. Medium Risk Proceedings

A medium risk military justice proceeding is a proceeding in which the potential for violence or other types of disruption in and around the courthouse is assessed as possible and merits the implementation of additional security measures. Any proceeding in which an alleged victim or victim's family member or designee will be physically present at the same location as the accused should be assessed as medium risk, at a minimum.

150504. High Risk Proceedings

A high risk proceeding is a procedure in which the potential for violence or other types of disruption in and around the courthouse is assessed as foreseeable, or the emotional nature of the proceeding merits additional security measures. For illustrative purposes only, a contested general court-martial for the alleged rape of a child, with the alleged victim, victim's family, and media present during the proceeding would likely be assessed as high risk.

150505. Risk Assessment Form

At least 48 hours before a scheduled military justice proceeding, the courthouse security officer shall ensure that a risk assessment for the proceeding is conducted using the military justice proceeding risk assessment form available through the "FORMS" tab on the Judge Advocate Division (JAD) public website at <https://www.hqmc.marines.mil/sja/JAD-Forms/>. The courthouse security officer will likely need to obtain some information about the case from the trial counsel, but the responsibility for ensuring the form is completed rests with the courthouse security officer. Risk assessment forms may be maintained on file at the LSSS for low risk proceedings. For medium and high risk proceedings, the LSSS OIC may consider whether additional notification is required to: counsel detailed to the proceeding and the VLC, if applicable; the military judge for the proceeding; the commanding officer of the accused (via the S-1 and executive officer); the installation Provost Marshal's Office; or, any other individuals or entities to facilitate safety during the hearing.

1506. ADDITIONAL SECURITY MEASURES FOR MEDIUM AND HIGH RISK PROCEEDINGS

150601. Additional Security for Medium Risk Proceedings

The following security measures shall normally be used for all medium risk proceedings:

(1) *Courthouse Access.* Visitors to LSSS or LSST facilities should not normally have uncontrolled direct access to workspaces, personnel, and courtrooms. If not already established as a part of the minimum physical security requirements, a designated entry control point (ECP) shall be used for entering a courthouse. A public ECP shall be used as the main point of entry to a courthouse. The public ECP should be positioned at the main entrance of the building and allow for smooth flow of foot traffic through the metal detection area. Witnesses, spectators, the accused, members, command representatives, and all other personnel not assigned to the LSSS must enter the building through the public ECP. All persons entering through the public ECP, with the exception of identified law enforcement personnel, shall be screened in accordance with this instruction. The public ECP shall be staffed by a minimum of two appropriately trained personnel through the conclusion of the proceeding

and until all personnel associated with the proceeding not assigned to the LSSS have departed the courthouse. Personnel assigned to staff the public ECP shall not be tasked with any other duties while manning the ECP. A restricted ECP may be used by counsel, the military judge, law enforcement, and other LSSS staff to enter the courthouse. Access through the restricted ECP must be controlled through cipher lock, swipe card, or other means that prevent uncontrolled access.

(2) *Courthouse Inspection.* The trial security officer shall ensure a security inspection of the courthouse and courtroom is conducted prior to opening the courthouse to visitors for the day. If visitors are already present in the building when the ECP is established, the visitors shall leave the building and reenter through the ECP. The security inspection should not inspect judge's chambers, areas containing privileged information such as defense counsel offices, or any controlled spaces not accessible by members of the public. Personnel in control of those spaces should be reminded to look for any unusual or out of place items within their spaces. During the security inspection, the trial security officer should walk through common areas such as the courtroom, witness waiting rooms, heads, and any other rooms in the courthouse that are unlocked and uncontrolled to inspect for any dangerous or prohibited items or any unsecured entry points, such as an open or unlocked window. Additional and random inspections of common areas should be conducted by the trial security officer and courthouse security officer throughout the duration of the proceeding, or as deemed warranted by the circumstances.

(3) *Placards.* Placards shall be prominently displayed at the ECP notifying all personnel they are subject to search at all times. Those not consenting to a search will not be permitted entry. Placards shall also list prohibited items. Those found to possess such items while in the courthouse may be subject to disciplinary action, removal from the courthouse, or both.

(4) *Visitor Logbook.* A visitors log shall be maintained at the entry control point. All adults who enter through the public ECP shall present photo identification and shall be entered into the visitor logbook. Children accompanied by an adult need not present identification or be logged into the logbook, but do need to pass through a metal detection device, if required. The visitor logbook shall contain the date and time the visitor entered and departed the courthouse, the hearing attended, the name of the visitor, whether the visitor is required to be escorted in the building, and the visitor badge number, if applicable. Local LSSS or LSST OIC's shall determine the circumstances under which visitors are or are not required to be escorted, taking into account the missions and functions of the office, as well as the risk assessment of individual military justice proceedings, and the role of the visitor. To protect the privacy of those seeking DSO, legal assistance, or VLC services, if DSO, legal assistance, or VLC offices are co-located inside a courthouse, the LSSS or LSST OIC may develop local procedures to facilitate visitors to those offices signing a visitor logbook maintained by those offices, provided the visitor passes through a metal detection device at the ECP and proceeds directly to those offices. The contents of any visitor logbook shall be locally maintained for two years and shall not be entered into any information technology system. DSO, legal assistance, or VLC visitor logbooks shall be maintained in accordance with the policies of those organizations.

(5) *Metal Detection Device.* Properly calibrated walk-through metal detectors shall be installed at the public ECP to the courthouse. All personnel, with the exception of identified law enforcement personnel, shall be required to pass through the walk-through metal detectors, and screened, as necessary, with properly tested hand-held metal detectors before entering the courthouse. For persons with disabilities in assisted walking devices (wheelchair, motorized wheelchair, etc.), if sufficient space next to the walk-through metal detector permits passage of an assisted walking device, the individual should bypass the walk-through metal detector and be screened with a hand-held metal detector. If there is insufficient space adjacent to the walk-through metal detector, an American Disabilities Act-compliant metal detector should be used.

(6) *Duress Alarms.* At a minimum, duress alarms capable of notifying base security shall be installed at or near the entry control point, at the judge's bench in the courtroom, and in the judge's chambers. Duress alarms should also be installed in the defense, TSO, and VLC offices, if required by inspection checklists promulgated under the authority outlined in Volume 2 of this Order. Duress alarms shall provide a visual alert to personnel within the courthouse facility and be supplemented with an audio system capable of alerting personnel within the courthouse to the nature of the alarm and to direct personnel movement within the courthouse as necessary to respond to the alarm. Duress alarms may also include an audible alarm to augment the visual alarm. Ideally, duress alarms should directly alert law enforcement without the need for additional LSSS intervention after

the alarm is activated. Where installed duress alarms do not directly alert local law enforcement, local LSSS procedures shall include procedures to ensure local law enforcement is immediately notified of the courthouse emergency. The courthouse security officer should test all duress alarms at least monthly.

(7) *Surveillance Systems.* A video surveillance system linked to a centralized monitoring area shall be used to monitor internal and external courthouse facility spaces, not including counsel offices, judge's chambers, members' deliberation rooms, heads, and changing areas. Placards should be prominently displayed near external areas notifying personnel the area is under video monitoring surveillance. Video surveillance monitoring the interior of a courtroom shall be capable of being disabled so as not to monitor closed sessions of court. Ideally, the judge's bench or court reporter table would contain a mechanism to disable any surveillance system anytime the judge closed a session of court.

(8) *Courtroom Security Officer.* At least one courtroom security officer capable of deterring, detecting and defeating threats directed towards the presiding military judge and personnel within the courtroom shall be present for all medium risk military justice proceedings. The courtroom security officer shall be briefed on their responsibilities by the trial security officer before assuming their duties. The bailiff or command chasers, if present, may serve as the courtroom security officer for medium risk proceedings. Courtroom security officers and command chasers are subordinate to the military judge, who is responsible for protecting the right of the accused to a fair trial. The mere presence of security measures, such as restraints, may indicate to a member the person is dangerous. Notwithstanding these concerns, the military judge exercises authority under R.C.M. 801 & 804 to restrain the accused as appropriate in the event the accused exhibits a threat to safety in the courthouse.

150602. Additional Security for High Risk Proceedings

Any high risk proceeding will normally contain all the security measures applicable to medium risk proceedings, with the following additions and modifications:

(1) *Courthouse Access.* The designated public ECP shall be used by all personnel. All other entry points to the courthouse shall be secured. A restricted ECP may be used by the military judge and members of the trial judiciary, so long as the restricted ECP is controlled by cipher lock, swipe card, or some other means which restricts use of the ECP to only those authorized personnel. For high risk proceedings, the courthouse security officer shall request PMO to provide an armed MP to assist in responding to emergencies in the courthouse as needed.

(2) *Visitor Badges.* In addition to the visitor logbook, each visitor entering the courthouse will be issued a visitor badge. Visitor badges shall be prominently displayed by visitors at all times. Visitors without proper identification badges may be required to leave the courthouse.

(3) *Courtroom Security Officer.* At least two courtroom security officers capable of deterring, detecting and defeating threats directed towards the presiding military judge and personnel within the courtroom shall be present for all high risk proceedings. One of the courtroom security officers may also serve as a bailiff or chaser, if applicable. But at least one security officer must have no other duties except maintaining awareness over courtroom security and conducting secondary screening of those who enter the courtroom.

(4) *Secondary Screening.* One of the courtroom security officers shall be positioned outside the courtroom. The security officer shall ensure anyone attempting to enter the courtroom is either LSSS staff or has a visitors badge issued by the ECP. This screening may be omitted if the public ECP to the courthouse is situated in plain sight of the courtroom entrance, such that anyone who enters the courthouse proceeds directly to the courtroom.

(5) *Movement Plans.* Some high risk proceedings may involve threats to witnesses, court personnel, or spectators. In those circumstances, the security plan should contemplate and provide guidance on secure access and movement within the building for the threatened parties; including, where appropriate, secure transportation to and from the proceedings.

1507. COURTHOUSE DESIGN GUIDELINES

Court design guides for U.S. Federal District courts provide optimal security guidelines. Although those security requirements envision a stand-alone federal courthouse manned with fully trained security staff, and implementation of these requirements is impossible without massive funding increases, they can provide a framework to guide future courthouse design and renovation. Additionally, JAGINST 5530.2 lists courthouse design guidelines for Navy courthouses and courtrooms. Marine courthouses and courtrooms should be designed in accordance with these design guidelines to the greatest extent possible.

150701. Firearms in Courthouses

Per SECNAVINST 5430.107A, NCIS special agents are authorized to carry NCIS-approved firearms at all times, while on or off duty, and while on and off installations, aircraft, and ships. NCIS special agents are required to carry NCIS-approved firearms while on official business. Accordingly, properly credentialed NCIS special agents or other properly credentialed law enforcement agents are permitted access to LSSSs, LSSTs, and courthouses while carrying agency-approved firearms on official business. Properly credentialed law enforcement agents may be armed in military courtrooms as long as the weapon is concealed and the presiding judge is notified and approves, or if exigent circumstances exist.

1508. ROLES AND RESPONSIBILITIES

150801. Legal Services Support Sections (LSSS) or Legal Services Support Teams (LSSTs) Officer-In-Charge (OIC)

- A. Serve as the officer primarily responsible for security of LSSS or LSST courthouses and courtrooms within their respective AOR.
- B. Develop standard operating procedures to ensure training of personnel to implement a courthouse security program in accordance with this Chapter.
- C. Designate a courthouse security officer in writing responsible for implementing this chapter. Notify the cognizant Circuit Military judge and local judiciary.
- D. Ensure the courthouse security officer completes a risk assessment for every military justice proceeding.
- E. Assign, or ensure the designated courthouse security officer assigns, a trial security officer for every medium and high risk proceeding.
- F. Coordinate with the installation commander to ensure a punitive general order prohibits bringing prohibited items into a courthouse.
- G. Coordinate with the installation Provost Marshal if necessary to arrange for support for high risk military justice proceedings consistent with this chapter.

150802. Courthouse Security Officer

- A. Serve as the person primarily responsible for overseeing the daily implementation of security measures established by the LSSS or LSST OIC.
- B. Document that training was provided to all personnel serving as the trial security officer for a proceeding, courtroom security personnel, and ECP personnel.
- C. Maintain records of security system and duress alarm checks.

D. Ensure a risk assessment form is completed for every military justice proceeding. Obtain any unknown information related to a proceeding from the trial counsel or other detailed counsel. Maintain a record of all risk assessments.

E. For every medium and high risk proceeding, ensure additional security measures are implemented in accordance with this Chapter.

F. For high risk proceedings, ensure PMO is notified of the hearing either in-person or telephonically, and MP assistance is requested.

150803. Trial Security Officer

A. Serve as the person primarily responsible for overseeing the security of a given military justice proceeding. Brief the personnel manning the ECP, the bailiff, command chasers, and courtroom security personnel on their required duties and provide supervision as required.

B. Conduct security inspections of the courthouse and courtroom as required by this Chapter.

150804. Trial Counsel

A. Inform the courthouse security officer of any scheduled military justice proceedings. Provide information about the proceeding required to allow the courthouse security officer to complete the risk assessment form, such as the nature of the proceeding, witnesses expected to testify, and history of violence of anyone participating in the proceeding.

B. Inform the courthouse security officer of any security concerns raised by the military judge.

150805. Installation Provost Marshal's Office

A. Upon request, coordinate with the courthouse security officer to ensure security support for all proceedings consistent with the Marine Corps Law Enforcement Manual, MCO 5580.2B CH 2.

B. For high risk proceedings, consider providing at least one armed military police officer to be present at the courthouse. The Provost Marshal or designee shall determine how to best employ the military police in support of the trial. Military police officers should not be employed inside the courtroom without prior approval from the military judge, absent exigent circumstances.

150806. Special Court-Martial Convening Authority for the accused

A. Ensure the unit informs the trial counsel of any recent changes to the accused that could impact the security assessment of a proceeding. Examples include: recent violent or angry outbursts; threats of violence; a change in behavior; recent hospitalizations; treatment for mental health or substance abuse issues; or recent suicidal ideations.

B. Provide chasers and a bailiff for proceedings, if required.

C. For high risk proceedings, provide two additional personnel to serve as courtroom security officers or to work at the ECP for the trial.

D. Coordinate with the LSSS OIC to provide additional support for proceedings as required.

VOLUME 16: CHAPTER 16

PRETRIAL AGREEMENTS AND PLEA AGREEMENTS

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by *[bold, italic, blue and underlined font](#)*.

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

CHAPTER 16

PLEA AGREEMENTS

1601. PLEA AGREEMENTS AND PRETRIAL AGREEMENTS

The term “pretrial agreement” refers to the legal framework prior to the Military Justice Act of 2016 which took effect on 1 January 2019. The term “plea agreement” refers to the current legal framework. Pretrial agreements and plea agreements have different sets of permissible terms and procedures. Practitioners must apply the correct framework to a particular case as outlined in this chapter, the UCMJ, and the Rules for Courts-Martial. See R.C.M. 705 and JAGMAN section 0137 for additional guidance on plea agreements, and section 0126 for special consideration on plea agreements in national security cases.

160101. Pretrial Agreements

Permissible terms of pretrial agreements are governed by Article 60, UCMJ, R.C.M. 705 and R.C.M. 910, along with relevant case law. Pretrial agreements apply to cases where any of the charged offenses occurred prior to 1 January 2019, regardless of when the case was referred to trial. However, in cases with offenses occurring both before and after 1 January 2019 (straddling cases) an accused may elect to opt in to the new procedures and enter into a plea agreement.

160102. Plea Agreements

Plea agreements are governed by the versions of Article 53a, UCMJ, R.C.M. 705 and R.C.M. 910 that are in effect on 1 January 2019, and relevant case law. Plea agreements apply to cases where all of the charged offenses occurred on or after 1 January 2019, and to cases with offenses occurring both before 1 January 2019 and on or after 1 January 2019 (straddling cases) if the accused opts in to the Military Justice Act framework as described above. Note that if all offenses occurred before 1 January 2019, then an accused may not enter into a plea agreement, regardless of the date the charges were referred to courts-martial.

160103. Straddling Offenses

Straddling offenses refer to cases where offenses in the same case occurred both before and after 1 January 2019. In those cases, the following options are available: (1) as described above, the accused may elect to opt into the current framework for all offenses and enter into a plea agreement. If the accused does not opt in, then the parties may not enter into a plea agreement for all charges; (2) The parties may negotiate for the case to be severed and have the convening authority refer the charges to two different proceedings (one applying the pretrial agreement framework and one applying the plea agreement framework); or (3) the parties may enter into a pretrial agreement for all offenses. Option (3) is the least preferred method and should be used with caution. Each term of the pretrial agreement must be carefully considered to avoid scenarios where the convening authority is unable to take action on a sentence to make it conform to the terms of a pretrial agreement.

1602. CONSULTATION BEFORE ENTERING INTO AGREEMENTS

Convening authorities should consult with the SJA and/or trial counsel before acting on an offer to enter into a plea agreement. Some of the factors to be considered when entering into a plea agreement are listed in the Non-Binding Disposition Guidance, Appendix 2.1, MCM. Pursuant to R.C.M. 705(e)(3)(B), convening authorities must provide a victim an opportunity to provide input on a proposed plea agreement. See paragraph 040404. If the victim chooses to provide input, then the convening authority must consider the input. A victim, under this provision, is defined as “an individual who is alleged to have suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under considerations.”

1603. USE OF MODEL PLEA AGREEMENT

To the greatest extent possible, military justice practitioners should use language from model plea agreements, as referenced by the Navy-Marine Corps Trial Judiciary. Approved model plea agreement terms are usually available at http://www.jag.navy.mil/trial_judiciary.htm. Anyone who modifies a standard term in a proposed agreement shall inform the opposing party of the change.

1604. CONDITIONAL GUILTY PLEAS

Pursuant to R.C.M. 910(a)(2), with the approval of the military judge and consent of the government, an accused may enter a conditional plea of guilty, reserving the right, on further review or appeal, to review of the adverse determination of any specified pretrial motion. If the accused prevails on further review or appeal, the accused shall be allowed to withdraw the plea of guilty.

160401. Authority to Consent to Conditional Plea

The R.C.M. further states that unless the Secretary concerned prescribes otherwise, the trial counsel may consent to a conditional guilty plea on behalf of the government. The Secretary of the Navy has not prescribed otherwise. Therefore, under the rule a trial counsel may consent to a conditional plea on behalf of the government. However, trial counsel must consult with the SJA of the convening authority and supervisory counsel before doing so. The trial counsel's authority to consent to conditional pleas only applies when the accused pleads guilty without a plea agreement or pretrial agreement. If the accused has entered into a plea agreement or pretrial agreement, the conditional nature of any plea must be agreed to by the convening authority and made a part of the written agreement.

160402. Information Required in the Record

If the military judge has approved a conditional plea, the trial counsel shall ensure the following is reflected in the record: (1) the entry of the conditional plea is in writing and clearly details the motion the accused wishes to preserve on appeal; (2) the government's consent to the plea is also in writing or clearly annotated in the record; and (3) the motion preserved was fully litigated before the military judge with all necessary findings of fact and conclusions of law reflected in the record.

160403. Effect of Non-Compliance

There is no constitutional right to enter a conditional guilty plea - compliance with R.C.M. 910(a)(2) is the only mechanism to do so. *United States v. Bradley*, 68 M.J. 279 (C.A.A.F. 2010). All other pleas of guilty are unconditional, and generally waive all non-jurisdictional defects occurring earlier in the proceeding. *United States v. Lee*, 73 M.J. 166 (C.A.A.F. 2014).

1605. VARIOUS TERMS IN AGREEMENTS

160501. Prohibited Terms

R.C.M. 705 lists prohibited and permissible terms and conditions in an agreement. R.C.M. 905-907 also lists motions that are not waivable. A plea agreement or pretrial agreement may not prohibit the accused from raising certain motions that are not waivable. The following additional guidance applies to certain common terms in agreements.

160502. Specific Sentence in Plea Agreement

R.C.M. 705(d)(1) allows a plea agreement to limit the maximum and/or minimum punishments that can be imposed. There is no requirement that the maximum and minimum be any specified range apart from each other and they may be the same.

160503. Restitution

As discussed in paragraph 1602 above, a victim must be given the opportunity to provide input on a proposed agreement. A convening authority will consider the appropriateness of requiring victim restitution as a term of an agreement when appropriate or requested by the victim. Restitution may be appropriate if a victim has suffered loss, injury, or financial harm as a result of the offenses, regardless of whether an accused has been personally enriched.

160504. Automatic Reduction

A conviction for an offense committed before 1 January 2019 includes automatic reduction to E-1 if the sentence as approved by the convening authority includes either (a) a dishonorable or bad-conduct discharge; or (b) confinement in excess of 90 days. After the President delegates authority for the Secretary to establish conditions for automatic reduction, reduction based on convictions of offenses committed after 1 January 2019 will occur under the same conditions. See JAGMAN section 0153efor further details and additional guidance for convening authorities to remit or suspend automatic reduction. Because automatic reduction provisions will change based on the signing of an executive order, military justice practitioners should exercise care placing automatic reduction provisions in an agreement to ensure the accused has a correct understanding of applicable automatic reduction provisions and the government is able to comply with the agreement.

160505. Conditions During Confinement

An accused's post-trial confinement is governed by service regulations applicable to the confinement facility and is not within a particular convening authority's ability to control. While a convening authority may agree to make recommendations to a confinement facility or corrections authorities, an agreement shall not include terms requiring an accused to be confined at a certain facility, participate in certain treatment programs, or contain any other terms specifying the manner in which confinement will be carried out.

1606. RESIGNATION IN LIEU OF TRIAL FOR OFFICERS

Officer resignations in lieu of trial must be submitted in accordance with Volume 15 of this Order (Officer Misconduct and Substandard Performance of Duty). Such resignations must be approved by the Secretary of the Navy. The submission of a resignation request normally proceeds simultaneously with any court-martial proceedings.

160601. Convening Authority's Sole Discretion to Delay Court-Martial

A resignation request is normally not grounds to delay a court-martial. While a convening authority may elect to take steps to delay a court-martial pending consideration of a resignation request (such as withdrawing charges from a court-martial or excluding delay before referring charges), such actions are a matter of the convening authority's discretion, are not required, nor does anything in this paragraph require the Secretary of the Navy or the Secretary's designee to act on a resignation request in a certain manner or under a certain timeline. The officer requesting resignation may consider including specific language in a request for delay which excludes any requested delay from both R.C.M. 707 and Article 10 calculations as applicable.

160602. When Court-Martial Has Not Been Delayed

If the convening authority has not taken any action to delay the trial, the convening authority shall forward the resignation request as soon as practicable in accordance with Volume 15 of this Order. An accused may include in the resignation any docketing information about the pending case. Note that if findings are announced, the convening authority (pursuant to Art. 60a & Art. 60b), and the Secretary of the Navy (pursuant to Art. 74) have limited or no authority to set aside the findings of a court-martial. Therefore, an officer who submits a resignation in lieu of trial, but who has not negotiated with the convening authority to delay the court-martial, must submit the resignation as soon as possible to allow the Secretary sufficient time to consider and act on it before findings are announced.

PART C: COURT-MARTIAL

SUBPART C3: POST-TRIAL MATTERS

VOLUME 16: CHAPTER 17

GENERAL POST-TRIAL PROCESSING

SUMMARY OF SUBSTANTIVE CHANGES

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PART C - COURT-MARTIAL**SUBPART C3 - POST-TRIAL MATTERS****CHAPTER 17****GENERAL POST-TRIAL PROCESSING**

1701. PURPOSE

This Volume promulgates uniform policies, standards, and procedures for post-trial processing of courts-martial in the United States Marine Corps. Post-trial processing for all Navy and Marine Corps cases is governed by JAG/CNLSCINST 5814.1D. This Volume supplements and is consistent with that instruction and also provides policies, standards, and procedures for miscellaneous transcription requests, records management, hardware and software implementation and use, and court reporter utilization procedures.

1702. APPLICABILITY

This Order applies to Marines and sailors assigned to the Legal Service Support Sections (LSSSs) including court-reporters, personnel in the Post-Trial/Review Offices, trial counsel, defense counsel, and members of the complex trial teams. This Volume applies to Marines serving in a SJA office, Marines assigned to Appellate Government and Appellate Defense, and to Marine Corps Judge Advocate Division (JMJ).

1703. PREPARATION AND DISTRIBUTION OF CERTIFIED RECORDS OF TRIAL

The government will ensure timely post-trial processing of military justice cases. Each case shall have a separate record maintained of the proceedings. Courts-martial records and certified records of trial shall be made available or provided free of charge to authorized requesting parties. Any transcripts created as attachments to official records shall be included in the distribution. Electronic versions of all court-martial documents, including forms and worksheets digitally signed, are approved for forwarding to official reviewing entities as original records.

1704. USE OF ELECTRONIC CASE MANAGEMENT SYSTEM

All post-trial processing shall be tracked electronically using the prescribed electronic case management system. The electronic system will serve as the primary source for court-martial data. Article 140a, UCMJ, 10 U.S.C. § 940a (eff. Dec. 23, 2016), requires the collection and analysis of data in accordance with the standards prescribed by the Secretary of Defense. All LSSSs will ensure data is collected and reflected accurately in accordance with the Secretary of Defense's standards.

1705. SUMMARY COURTS-MARTIAL

170501. DD Form 2329 Required

Upon the conclusion of a summary court-martial, the summary court-martial officer shall create and certify a record of trial using DD Form 2329. If classified information is included in the record of trial of a summary court-martial, R.C.M. 1112(e)(3)(A) shall apply.

170502. Procedure

Commands and SJAs for commands should consult with the cognizant LSST or LSSS before conducting a summary court-martial. Rule for Courts-Martial 1305 governs the procedures for summary court-martial records of trial. A copy of the record of trial shall be served on the accused as soon as it is certified. Service of a certified electronic copy of the record of trial with a means to review the record of trial satisfies the requirement of service. The accused will sign a receipt for the copy of the record of trial and it will be attached to the original record of trial. If the record of trial was not served on the accused personally, the summary court-martial shall attach a statement

explaining how and when such service was accomplished. If the accused was represented by counsel, such counsel may be served with the record of trial. The original record of trial shall be forwarded to the convening authority after compliance with this paragraph. For procedures to correct a defective record of trial refer to R.C.M. 1305(e)(2).

170503. Post-Trial Matters for Consideration

After a sentence is adjudged by a summary court-martial, the accused and any crime victim shall be afforded 7 days to submit matters for consideration pursuant to R.C.M. 1106 and R.C.M. 1106A. Either party or both may be given an additional 20 days to submit matters upon receipt of a proper request at the convening authority's discretion. Parties are reminded to copy all interested individuals or counsel on correspondence with the SJA or CA concerning these matters. Ensuring all parties are notified will continue to streamline the process and avoid unnecessary delays. The accused has 5 additional days from the last date of submission of matters by a crime victim to respond to those matters.

170504. Convening Authority's Action

Upon expiration of matters submission deadlines, the convening authority shall take action on the sentence and may take action on the findings, in accordance with R.C.M. 1306.

170505. Documentation and Service of Action

The convening authority shall state in writing and insert in the record of trial the convening authority's decision as to the sentence, any suspension and the terms of such action, whether any findings of guilty are disapproved, whether any charges or specifications are changed or dismissed and an explanation for such action, and any orders as to further disposition. The convening authority shall sign the action, including their authority to do so. A copy of the convening authority's action shall be served on the accused or his or her counsel, and, upon request, the victim(s).

1706. SPECIAL AND GENERAL COURTS-MARTIAL

170601. General Requirement for Certified Record for Any Guilty Finding

In all general and special courts-martial in which the judgment includes a finding of guilty, a certified record of trial and attachments required under R.C.M. 1112(f) shall be created.

170602. Statement of Trial Results

Once any special or general court-martial is adjourned, the trial counsel will ensure the Statement of Trial Results is created. The STR will be signed by the military judge and provided to the court reporter in accordance with R.C.M. 1101(a).

170603. Copy of Record to be Provided to Victim

Per R.C.M. 1112(e), trial counsel is responsible for informing any victim entitled to receive a copy of the certified record of trial of the opportunity to receive a copy of the certified record of trial. Upon request, the accused and any entitled victim will receive a copy of, or be provided access to, the court-martial record. The court-martial record consists of unsealed recordings of all open sessions of the court-martial, copies of, or access to, evidence admitted, and any appellate exhibits. This information should be provided within 48 hours after receiving a proper request. The Post-Trial Office shall not release recordings of closed sessions, classified material, or any other matter ordered sealed unless otherwise authorized by a military judge. Prior to releasing a court-martial record, the Post-Trial Office shall include a disclaimer limiting the use of uncertified courts-martial records to the submission of post-trial matters under R.C.M. 1106 and 1106A.

170604. Opportunity to Submit Matters to Convening Authority

The accused and any crime victim shall be afforded 10 days after the announcement of the sentence to submit matters for consideration pursuant to R.C.M. 1106 and R.C.M. 1106A. Either party or both may be given an additional 20 days to submit matters upon receipt of a proper request at the convening authority's discretion. The Accused will be given 5 additional days from the date of submission to rebut any matters submitted by a crime victim.

170605. Post-Trial Advice and Possible Convening Authority Action

Upon receipt of all post-trial matters or expiration of the submission deadline, the Post-Trial Office will forward the court-martial record to the SJA for Convening Authority's Action. The CA, after consultation with the cognizant Staff Judge Advocate, will determine what action, if any, will be taken in accordance with this Chapter and R.C.M. 1109 and 1110 and applicable clemency rules in place at the time the misconduct occurred. The cognizant SJA or legal advisor will promptly forward the action (or no action) of the convening authority to the post-trial office. The convening authority action will be incorporated as an attachment to the record of trial.

170606. Entry of Judgment

The post-trial office will forward the CA's action to the military judge, who will enter the judgment of the court-martial. The entry of judgment will be added to the record of trial and a copy will be provided to the accused and any victim and made available to the public. Errors in the entry of judgement must be corrected in accordance with R.C.M. 1111(c). The entry of judgment terminates the trial proceedings and initiates the appellate process.

170607. Certification of Record of Trial

Certification of the record of trial will be conducted in accordance with R.C.M. 1112 and JAG/CNLSCINST 5814.1D. The Post-Trial Office will notify the accused and crime victims of their right to obtain a copy of the certified record, and provide a copy of the record upon request. The Post-Trial Office will ensure that all copies of the record of trial provided to crime victims are released in compliance with applicable statutes and regulations.

170608. Appellate Rights Forms

Use standard appellate and post-trial rights forms promulgated by the trial judiciary. Upload a complete unredacted form to the electronic case management system and transmit the unredacted form electronically to NAMARA. A victim's post-trial election of rights form must be completed in accordance with JAG/CNLSCINST 5814.1D for cases involving crime victims. Use enclosure (3) if the crime victim is represented by VLC.

1707. POST-TRIAL REVIEW OF COURTS-MARTIAL

170701. Article 64 Review of Summary Courts-Martial

A. A judge advocate will review the record for all summary courts-martial in which there is a finding of guilty. The Regional Post-Trial Office will retain review authority over summary courts-martial. The purpose of the summary court-martial record review is to:

(1) ensure the court-martial had jurisdiction over the accused and the offense(s), that the offense(s) stated an offense, and that the sentence was legal; and,

(2) address any allegations of error.

B. If the reviewing officer determines there is an error in the summary court-martial record, the Regional Post-Trial Office will send the record, including a copy of any claims of error that have been reduced to writing, the original convening authority's action, and judge advocate review letter to the first general courts-

martial convening authority in the accused's chain of command for action. The general court-martial convening authority may take any appropriate action in accordance with R.C.M. 1307(f).

C. The Regional Post-Trial Office will cause a copy of any action the general court-martial convening authority has taken to be provided to the accused.

D. The Regional Post-Trial Office will forward a complete copy of any summary court-martial record resulting in a finding of error and corrective action from a general court-martial convening authority to the Navy-Marine Corps Appellate Review Activity (NMARA) (Code 40).

E. The Regional Post-Trial Office will also send the supplemental action of the general court-martial convening authority to the appropriate administration personnel center to ensure any punishments and disposition are included in the accused's official military personnel file (OMPF).

F. A copy of the complete record of trial for all summary courts-martial, including the Article 64 review officer's letters and any supplemental actions of the general court-martial convening authority, will be retained at the Regional Post-Trial Office in accordance with JAG/CNLSCINST 5814.1D..

170702. Article 65 Review of Special and General Courts-Martial

Pursuant to R.C.M. 1116 and section 0158(d) of the JAGMAN, the SJA of the cognizant general court-martial convening authority, or a neutral judge advocate identified in coordination with the LSSS OIC, will review the record of any court-martial resulting in no punitive discharge and six months or less of confinement. The review will be completed in accordance with standards set out in Article 65(d), UCMJ. If an error requiring corrective action is identified during the course of the review, the record of trial and a request for corrective action will be forwarded to the Office of the Judge Advocate General of the Navy via OJAG (Code 40) for action in accordance with Article 65(e), UCMJ.

170703. Article 66 Review of Special and General Courts-Martial

The certified record of every special and general courts-martial resulting in a sentence that includes death, a punitive discharge, or greater than six months confinement, in which the accused has not waived appellate review under Article 61, UCMJ, will be forwarded to NMARA (Code 40) in accordance with procedures established in section 0158(b) of the JAGMAN. The Regional Post-Trial Office will first ensure a complete, bookmarked digital copy of the record is created. The digital copy will be uploaded to NAMARA (Code 40) via an electronic case management system, if applicable, as soon as practicable after its creation. If technology does not allow for electronic transfer, a CD/DVD of the ROT shall be mailed to NAMARA. The CD shall be password protected and the password shall be maintained in a password logbook by the PTAO and emailed directly to the clerk of court for NMCCA. If the ROT contains sealed sessions or documents, two copies of the ROT shall be mailed on CD – one with the sealed sessions for use by the court, and one with the sealed matters removed for copying and distribution to appellate counsel.

170704. Waiver or Withdrawal of Appeal

Article 61, UCMJ, and R.C.M. 1115 permit the accused to waive or withdraw from appellate review in any case that would normally be reviewed pursuant to Article 66, UCMJ. In any case involving a waiver or withdrawal from appellate review, the Post-Trial Review Office will immediately forward the certified record of trial to NMARA (Code 40) in accordance with JAGMAN section 0158(g).

170705. Post-Trial Processing Time Limits

A service member has a statutory and constitutional right to speedy post-trial review of their conviction. Appellate courts and JAG/CNLSCINST 5813.1D establish timelines for post-trial processing. A written description of the primary cause of any delay exceeding those requirements must be appended to the record of trial.

VOLUME 16: CHAPTER 18

TRANSCRIPTION

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by ***bold, italic, blue and underlined font.***

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CHAPTER VERSION	PAGE PARAGRAPH	SUMMARY OF SUBSTANTIVE CHANGES	DATE OF CHANGE

CHAPTER 18

TRANSCRIPTION

1801. PURPOSE

This Chapter establishes transcription standards when verbatim and summarized transcripts are required under the rules and procedures established by the Military Justice Act of 2016 and the 2019 Manual for Courts-Martial (MCM). This format will also be applied to all administrative transcriptions generated by the post-trial office. This Chapter supplements JAGINST 5813.1D and JAG/CNLSCINST 5814.1D.

1802. APPLICABILITY

This Chapter applies to all personnel involved in the preparation and certification of GCM and SPCM verbatim transcripts and summarized reports required to accompany the record of trial.

1803. GENERAL

180301. Verbatim Transcript Required

R.C.M. 1114 requires a verbatim transcript of the record of trial to be prepared whenever the sentence includes death, dismissal, a dishonorable or bad conduct discharge, or confinement for more than six-months; as otherwise required by a court rule or court order; or under regulations prescribed by the Secretary of the Navy. JAG/CNLSCINST 5814.1D contains additional regulatory guidance and requires a verbatim transcript in any general or special courts-martial where a guilty finding is reached.

180302. Acquittals

When a case ended without any guilty finding and a verbatim transcript is not required, a party may apply to have a certified verbatim transcript of relevant portions of the record of trial prepared. *See* R.C.M. 1114(b). The LSSS or LSST OIC may approve or deny a party's application on behalf of the Judge Advocate General. Factors to consider include the workload of the post-trial and court reporting sections, the ability to prepare the transcript without disrupting other functions, and the likelihood of the transcript being necessary at later military justice or administrative proceedings.

1804. FORMAT

Appendix I contains examples of all formatting requirements. No other formatting styles shall be used by the Post-Trial Office for transcript preparation. Only the Code 40 PTAO may make exceptions to this policy after consulting with the Chief Judge, Navy-Marine Corps Court of Criminal Appeals (NMCCA), and the Chief Judge, Navy-Marine Corps Trial Judiciary.

1805. SEALED AND CLASSIFIED INFORMATION

At no time will classified information be uploaded to any electronic case management system. Classified information included as exhibits will be handled in accordance with rules applicable to the handling of classified information. Sealed material may only be uploaded to a case management system if the permissions protecting that material are sufficient to prevent unauthorized release or review. The NAMARA PTAO must approve all transmittals of sealed information via an electronic case management system. If sealed information is part of a certified ROT, it will be password protected and separated from the ROT. Passwords will be sent to the appropriate authorities separately from the ROT. Passwords will be maintained by the Regional Post-Trial Office. The sealing order will accompany sealed portions at all times.

1806. EVIDENCE OF A SENSITIVE NATURE

For cases in which evidence of a sexual nature is introduced into evidence in a digital format, and published to the military judge or members on a computer, trial counsel will provide the court reporter a password protected CD or DVD containing the electronically formatted evidence for inclusion on the record of trial. The original evidence should be returned to the cognizant law enforcement agency for storage as evidence until certification of the record of trial and completion of the appellate process. The password to any protected CD or DVD in the record of trial shall be provided via encrypted email by the trial counsel to the military judge and those with record of trial review responsibilities, including the Clerk of Court for the Navy-Marine Corps Court of Criminal Appeals.

1807. DIGITAL RECORDS

In addition to the original record of trial, an electronic copy of the record of trial, including the certified transcripts, shall be created. The electronic copy must be an exact duplicate of the hard copy record of trial and be in a bookmarked portable document format (pdf), the Eclipse Bridge File format if the reviewing authority uses Eclipse Bridge, or another format specified in JAGINST 5813.1D as technology advances.

1808. ARTIFICIAL INTELLIGENCE ENABLED COMPUTER AIDED TRANSCRIPTION SOFTWARE (AI-CATS)

The use of artificial intelligence speech-to-text engines in conjunction with computer aided transcription software is authorized. Reference (as) contains the approved software and hardware required for use with AI-CATS systems.

PART D: MISCELLANEOUS

VOLUME 16: CHAPTER 19

MISCELLANEOUS

SUMMARY OF SUBSTANTIVE CHANGES

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PART D – MISCELLANEOUS**CHAPTER 19****1901. MISCONDUCT BY PRISONERS**

When a prisoner commits misconduct and has part of their court-martial sentence suspended as the result of a plea agreement, the convening authority exercising court-martial jurisdiction over the prisoner may, at their discretion, initiate a hearing under R.C.M. 1108 to vacate the suspension of sentence. When the prisoner is a long-term prisoner, the convening authority is the commander of the long-term prisoner unit to which the prisoner is assigned.

1902. TRANSFER OF PRISONERS

Marines serving confinement after completion of convening authority action in their courts-martial are classified as long-term prisoners (LTP). Once a Marine prisoner is transferred to a long-term prisoner unit (LTPU) they will not be transferred back to the previous command unless specifically requested by the previous command. The Army serves as the single point of contact for Marine Corps prisoners transferred to the Federal Bureau of Prisons. Commands requesting a prisoner be transferred back to a military confinement facility should contact Judge Advocate Division, Military Justice Branch (JMJB) for assistance.

1903. HOSPITALIZATION OF THE ACCUSED BY THE ATTORNEY GENERAL

An accused who is found incompetent to stand trial under R.C.M. 909 shall be hospitalized by the Attorney General as provided in 18 U.S.C. § 4241(d). An accused who is found not guilty only by reason of a lack of mental responsibility, who has not satisfied the standard in R.C.M. 1105(c)(3) during the post-trial hearing, may also be committed to the custody of the Attorney General. A general court-martial convening authority commits the accused to the custody of the Attorney General by forwarding the military judge's findings to the Commandant of the Marine Corps (PSL), who will arrange the physical transfer of the accused for hospitalization.