



**Headquarters, U.S.
Marine Corps**

**MCO P5800.16A
PCN 10209190800**

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

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



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

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

MCO P5800.16A

JA-2

31 Aug 99

MARINE CORPS ORDER P5800.16A W/CH 1-7

From: Commandant of the Marine Corps
To: Distribution List

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

Encl: (1) LOCATOR SHEET

Reports Required: List, page v

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

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

h. Chapter 17 revises the list of required publications.

i. Chapter 20 contains material from former chapter 1.

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

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

6. Certification. Reviewed and approved this date.



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

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

BT

UNCLAS //N05800//

MARADMIN 135/01

MSGID/GENADMIN/CMC WASHINGTON DC/JA//

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

REF/A/SECNAVINST 1920.6B/-//

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

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

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

RMKS/1. TO DIRECT CHANGES TO THE BASIC ORDER THAT EFFECT CMC'S
DELEGATION OF SHOW CAUSE AUTHORITY (I.E., THE AUTHORITY TO INITIATE
AN OFFICER ADMINISTRATIVE HEARING) TO LIEUTENANT GENERALS IN COMMAND.
2. ACTION: MAKE THE FOLLOWING PEN/REPLACEMENT CHANGES AS INDICATED.

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

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

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

BT

MARADMIN 542/02

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

FM CMC WASHINGTON DC(n)

TO ML MARADMIN(n)

MARADMIN

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MARADMIN 542/02

MSGID/GENADMIN/CMC WASHINGTON DC/JA//

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

/ADMINISTRATION (LEGADMINMAN)//

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

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

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

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

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

10132 UNIT PUNISHMENT BOOK AND CHANGES TO LEGAL ADMINISTRATIVE

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

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

THAT ANNOUNCES CH 1 TO THE MARINE CORPS INDIVIDUAL RECORDS

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

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

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

RMARKS/1. TO DIRECT CHANGES TO CHAPTER 3 OF THE BASIC ORDER THAT
GIVES DETAILED INSTRUCTIONS IN PREPARATION OF THE UNIT PUNISHMENT
BOOK (UPB).

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

A. PARA 3006.5. "DETAILED PREPARATION INSTRUCTIONS"

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

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

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

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

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

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

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

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

IMPOSITION

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

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

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

AND SIGN ITEM 4.

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

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

VIDED

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

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

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

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

(ALWAYS STATE FORFEITURES IN WHOLE DOLLAR AMOUNTS.)

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

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

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

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

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

THE

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

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

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

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

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

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

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

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

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

APPEAL DENIED - 25 JUN 98.

APPEAL GRANTED, PUNISHMENT SET ASIDE - 25 JUN 98.

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

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

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

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

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

GENERAL RECOMMENDATION - "FWD TO BNCO RECOM NJP."

SPECIFIC RECOMMENDATION - "FWD TO BNCO RECOM RED."

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

FORF OF \$250 PER MO FOR 1 MO IMPOSED AND SUSP ON

10 DEC 98 VACATED - 26 DEC 98.

RED TO PFC, E-2, IMPOSED ON 10 DEC 98 AND SUSP ON

15 DEC 98 VACATED - 26 DEC 98.

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

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

STAYED.

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

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

EXAMPLE:

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

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

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

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

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

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

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

ADD THE FOLLOWING PARAGRAPH:

PARA 3006.11. "DISPOSITION INSTRUCTIONS."

1. DISPOSITION IS AS FOLLOWS:

A. FILE THE ORIGINAL IN THE SRB

B. COPY TO OFFICIAL MILITARY PERSONNEL FILE (OMPF)

C. COPY TO UNIT FILES

D. COPY TO MEMBER

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

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

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

18 Mar 03

MARINE CORPS ORDER P5800.16A Ch 3

From: Commandant of the Marine Corps

To: Distribution List

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

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

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

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

3. Summary of Change.

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

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

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

5. Certification. Reviewed and approved this date.



K. M. SANDKUHLER

Staff Judge Advocate to the
Commandant of the Marine Corps

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

MARINE CORPS ORDER P5800.16A Ch 4

From: Commandant of the Marine Corps
To: Distribution List

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

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

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

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MARADMIN 258/05

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Date signed: 06/09/2005MARADMIN Number: 258/05
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ADMINISTRATION

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



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

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

MARINE CORPS ORDER P5800.16A Ch 5

From: Commandant of the Marine Corps
To: Distribution List

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

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

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



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

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

MCO P5800.16A Ch 6
JA
26 SEP 11

MARINE CORPS ORDER P5800.16A Ch 6

From: Commandant of the Marine Corps
To: Distribution List

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

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

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

/S/
V. A. ARY
By direction

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MCO P5800.16A Ch 7
JA
10 Feb 2014


MARINE CORPS ORDER P5800.16A Ch 7

From: Commandant of the Marine Corps
To: Distribution List

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

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

1. Situation. To transmit new page inserts to the Order.
2. Mission. This change updates the misconduct and military justice Chapters of the Order. The 2012 reorganization of the Marine Corps legal community significantly transformed the delivery of trial services, necessitating an update. Additionally, this change updates policies surrounding officer misconduct cases, enlisted nonjudicial punishment, and absentees and deserters. This change to the Order also implements the Secretary of Defense's directive to establish a victim's advocacy capability.
3. Execution
 - a. Remove page iii and v and replace with the corresponding page iii and v in the enclosure.
 - b. Remove Chapters 1 through 6 and replace with the corresponding Chapters in the enclosure.
4. Summary of Changes. This change should be reviewed in its entirety. The major modifications to the Order include the renaming of trial services organizations; clarification of the duties and responsibilities of trial services personnel; more detailed guidance on reporting, case tracking, and required documents in officer misconduct cases; and providing policy on victims' legal counsel services.
5. Filing Instructions. File this change transmittal in front of the original Order.


V. A. ARY
Staff Judge Advocate to the
Commandant of the Marine Corps

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ENCLOSURE (1)

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RECORD OF CHANGES

Log completed change action as indicated.

CHANGE NUMBER	DATE OF CHANGE	DATE RECEIVED	DATE ENTERED	SIGNATURE OF PERSON ENTERING CHANGE

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II.	Unauthorized Absence of Officers	MC-1621-03	5003
III.	Report of Return of Absentees and Stragglers Orders Issues/Guards Requested	MC-5800-04	5011.5h
IV.	Public Financial Disclosure	DN-5370-01	11003.1
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VII.	Gifts of Travel	EXEMPT	12002.9c
VIII.	Regional Legal Assistance Council Summary	MC-5800-01	14010.6b

LEGADMINMAN

INTRODUCTION

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

0002. SCOPE

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

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CHAPTER 1

MILITARY JUSTICE

SECTION 1: INTRODUCTION

1100. PURPOSE. This Chapter promulgates Service standards, policies, and procedures for the provision and functional supervision of military justice within the Marine Corps, except for those who provide defense and victims' legal counsel services.

1101. APPLICABILITY. This Chapter applies to all judge advocates, legal administrative officers, and legal services specialists, 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 Chapter affects or restricts the legal services provided by members of the DSO or the VLCO. The DSO and its mission are covered in detail in Chapter 2. The VLCO and its mission are covered in detail in Chapter 6.

1102. GENERAL

1. 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."

2. Judge advocates provide military justice legal support within the Marine Corps through 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).

3. The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) exercises overall functional supervision over the provision of military justice services and professional responsibility oversight over all Marine Corps judge advocates.

a. 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. Direction and control of legal services personnel remains an inherent function and responsibility of the chain of command.

b. 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 unless assigned as a trial or appellate judge.

4. All standardized forms, memorandums, and letters referenced in this chapter are available through the "FORMS" tab on the JAD public website.

1103. EXECUTION OF MILITARY JUSTICE SERVICE FUNCTION

1. Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC). The 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. § 5046, SECNAVINST 5430.27_ series, and JAGINST 5803.1_ series. The Military Justice Branch (JAM) within Judge Advocate Division (JAD), Headquarters, Marine Corps (HQMC), assists the SJA to CMC in providing military justice legal support to the Commandant of the Marine Corps (CMC). The Deputy Director, JAD, Community Development, Strategy, and Planning (CDSP) assists the SJA to CMC in performing his functional supervision of military justice services.

2. Staff Judge Advocates. SJAs provide command legal advice on military justice matters directly to their supported commands.

3. Legal Services Support Section (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.

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

a. All Marine Forces Reserve (MARFORRES) units and organizations will receive general support from LSSS 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.

b. LSSS PACIFIC and all of its subordinate LSSTs provide general support to Marine Corps Forces Korea and Marine Corps Forces Pacific (OCONUS). 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 support to WRR units located in LSSA PACIFIC after coordination with LSSS WEST. LSST Foster 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.

c. LSSS EAST and all of its subordinate LSSTs provide general support to Eastern Recruiting Region (ERR); U.S. Marine Corps Forces, Central Command (MARCENT); U.S. Marine Corps Forces, South (MARFORSOUTH); U.S. Marine Corps Forces, Special Operations Command (MARSOC); Marine Corps Logistics Command (MCLC); and Marine Corps Security Forces (MCSF) Kings Bay. LSST Lejeune provides direct support to MCB Camp Lejeune, Camp Johnson, MCAS New River, 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, and all tenant commands.

d. 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 (through a detachment); 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.

e. LSSS NCR and its subordinate LSST Quantico provide general support to Marine Forces Reserve (MARFORRES); Marine Corps Forces Command (MARFORCOM); U.S. Marine Corps Forces, Europe (MARFOREUR); U.S. Marine Corps Forces, Africa (MARFORAF); U.S. Marine Corps Forces, Cyber Command (MARFORCYBER); U.S. Marine Corps Forces, Northern Command (MARFORNORTH); MCSF Norfolk; and Marine Corps Embassy Security Group (MCESG). 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 National Capital Region.

1104. CRITICAL INFORMATION REQUIREMENTS (CIRs)

1. General

a. Critical information requirements are those events that potentially can have a strategic impact on the legal community or the Marine Corps. OICs and SJAs are directed to immediately report any of the CIRs specified below via e-mail to the SJA to CMC, Deputy SJA to CMC, and Deputy Director, JAD, CDSP. When in doubt about whether to report an item, the guidance is to over-report. Updates should be provided continuously or when specifically requested. This reporting does not relieve OICs or SJAs of any other applicable requirements to advise the chain of command.

b. Information reported pursuant to this paragraph does not substitute or alter any other formal reporting requirements and does not eliminate the need to ensure appropriate entries in the Case Management System (CMS) and/or the Officer Disciplinary Notebook Management System (ODNMS).

2. The following are CIRs that must be reported immediately:

a. High Visibility Cases. Any military justice issue with potential media impact or that has the potential for CMC-level interest. Examples include, but are not limited to: potentially high-profile cases involving reported sexual assault, hazing, hate crimes, or battlefield misconduct; and, when a Marine is detained in or charged with a felony-level offense by a foreign nation.

b. Unlawful Command Influence (UCI). Any unlawful command influence allegation against general officers or any UCI allegation that may have potential media impact or CMC-level interest.

c. Untimely Processing. Any motion alleging speedy trial violations, of either Article 10 or Rules for Courts-Martial (R.C.M.) 707, and any violation of post-trial processing timelines, as described in paragraph 1308 of this Chapter.

d. National Security Cases. Those cases that are designated as a national security case, as defined in JAGINST 5800.7_ series, Manual of the Judge Advocate General (JAGMAN).

e. Article 32, UCMJ, Investigations. The detailing of a commissioned officer who is not a judge advocate as an Article 32, UCMJ, Investigating Officer, in accordance with paragraph 1106.2.c. below.

f. Professional Responsibility Complaints. Any written allegation concerning a judge advocate's failure to comply with the Rules of Professional Conduct contained in JAGINST 5803.1_ series. The phrase "written allegation" includes, but is not limited to: written motions, correspondence with military judges or SJAs that specifically alleges a violation of the Rules of Professional Conduct, and formal complaints to the Rules Counsel.

1105. RECURRING REPORTING REQUIREMENTS

1. Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR). JAGINST 5800.9_ series 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 JAM. Format for submission of the QCAR and further information is contained in JAGINST 5800.9_ series.

2. Case Management System (CMS) Entries

a. CMS is an online case tracking system maintained by JAD for both the Marine Corps and the Navy. CMS establishes a common operating picture for the tracking of courts-martial throughout the military justice system. Procedures for the proper use of CMS are contained in the CMS Desktop Manual available on the CMS website.

b. All SJAs, LSSSs, and LSSTs will use CMS for tracking military justice cases from receipt of the request for legal services (RLS), or the imposition of pretrial restraint under R.C.M. 304(a)(2)-(4), until completion of the appellate review process. Any case, regardless of posture in the court-martial process, that comes to the attention of the LSSS or LSST and requires services from the LSSS or LSST shall be entered into CMS. There is a continuing requirement to update the case information in CMS throughout the court-martial process.

3. Court-Martial Results Publication. The Marine Corps publishes all general and special courts-martial results on a monthly basis. In coordination with the Division of Public Affairs, the SJA to CMC shall ensure accurate and timely publication of the data.

a. Each week, the four regions (East, West, Pacific, and National Capital) will prepare summarized results of all special and general courts-

martial serviced by their regional LSSS and its subordinate LSSTs. The regional summarized results will then be published weekly on the homepage of each installation in that region in the format prescribed by the SJA to CMC. The prescribed format will be published by the Deputy Director, JAD, CDSP.

b. On a monthly basis, each LSSS will submit the compiled summarized results from the previous month to JAD. The compiled summarized results shall be submitted no later than the 10th day of the following month.

1106. DETAILING OF ARTICLE 32, UCMJ, INVESTIGATING OFFICERS

1. General Detailing Criteria. Prior to detailing an Article 32, UCMJ, Investigating Officer, 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 Article 32, UCMJ, Investigating Officers; 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 Article 32, UCMJ, Investigating Officers; the geographic locations of the accused and counsel; the expected location of the hearing; media interest in the case; any implications for cases that include evidence that is classified; and the expected duration of the hearing.

2. The investigating officer in all Article 32, UCMJ, pretrial investigations shall be a judge advocate certified under Article 27(b), UCMJ; sworn under Article 42(a), UCMJ; 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. A judge advocate below the grade of O-4/Major may be detailed as an investigating officer if he or she has at least six months of experience as a trial or defense counsel, subject to the limitations in paragraphs 1106.1 and 1106.2.b., and the exception in paragraph 1106.2.c.

b. In those cases involving special victims, as defined in paragraph 1201.8, a judge advocate below the grade of O-4/Major may not be detailed as an investigating officer unless he or she has previously acted as a trial counsel, assistant trial counsel, defense counsel, associate defense counsel, or assistant defense counsel in at least one contested case involving one of the offenses listed in paragraph 1201.8.

c. In exceptional cases, the interests of justice may dictate the detailing of an Article 32, UCMJ, Investigating Officer who is not a judge advocate. This exception does not apply to cases involving sexual assault offenses (UCMJ Articles 120, 120b, 120c, 125 (with a child or forcible), 134 (assault with intent to commit one of the previously listed offenses), or 80 (attempts to commit the previously listed articles). Any use of this exception should be reported as a CIR in accordance with paragraph 1104 above.

1107. COORDINATION WITH NAVY REGION LEGAL SERVICE OFFICES (RLSO)

1. For those Marine Corps commands that have a traditional mutually supporting relationship with a Navy RLSO, that relationship should continue to the extent practicable. Convening authorities should deviate from these traditional relationships only in rare cases and by exception.

2. SJAs and LSSS and LSST leadership must foster a close and cooperative relationship with the servicing RLSO. Marine Corps Trial Services Offices shall coordinate with the convening authority, the SJA, and the supporting RLSO prior to assuming responsibility for the prosecution of a case normally tried by the RLSO.

1108. SIGNING OF DOCUMENTS AND CORRESPONDENCE RELATED TO MILITARY JUSTICE MATTERS. 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, and convening authority actions. Such documents shall not be signed "acting" or "by direction".

1109. STANDARDIZED FORMS. The Deputy Director, JAD, CDSP is responsible for overseeing the standardization of military justice forms and letters. Approved standardized forms and letters that are not designated as Navy and Marine Corps (NAVMC) forms or Department of Defense (DD) forms will be available through the "FORMS" tab on the JAD public website.

1110. SEXUAL ASSAULT MEMORANDUMS

1. Sexual Assault Initial Disposition Authority (SA-IDA) Memorandums. The initial disposition decision for allegations of certain sex-related offenses shall only be made by an O-6 Special Court-Martial Convening Authority (SPCMCA), or higher. When acting in this role, the O-6 SPCMCA, or higher, is known as a Sexual Assault Initial Disposition Authority (SA-IDA). The withhold of initial disposition authority to the SA-IDA applies to the following offenses: rape, sexual assault, aggravated sexual contact and abusive sexual contact in violation of Article 120, UCMJ; rape of a child, sexual assault of a child, and sexual abuse of a child in violation of Article 120b, UCMJ; forcible sodomy in violation of Article 125, UCMJ; and attempts to commit those offenses in violation of Article 80, UCMJ. All SA-IDA decisions required by this withhold must be documented on an "SA-IDA Memorandum." The signed memorandum will be maintained by the first General Court-Martial Convening Authority (GCMCA) SJA in the chain of command of the SA-IDA, and a copy will be forwarded to the military criminal investigative organization investigating the alleged sex-related offense. The purpose of the form is to ensure consistency of data collection and reporting related to the DoD Sexual Assault Prevention and Response Office (SAPRO) Annual Report. The SA-IDA Memorandum is available through the "FORMS" tab on the JAD public website.

2. Sexual Assault Case Disposition Memorandum. In every case that requires a SA-IDA Memorandum pursuant to paragraph 1110.1 of this Chapter that did not result in referral of an alleged sex-related offense to court-martial, a "Case Disposition Memorandum" will be completed by the cognizant convening authority. The purpose of the memorandum is to ensure consistency of data collection and reporting related to the DoD SAPRO Annual Report. The memorandum is not required for offenses that are referred to trial because disposition of those offenses will be recorded in the Report of Results of Trial. The Case Disposition Memorandum will be maintained by the GCMCA SJA, and a copy will be forwarded to the military criminal investigative organization that investigated the alleged sex-related offense. The Case Disposition Memorandum is available through the "FORMS" tab on the JAD public website.

1111. PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII). Each LSSS and SJA Office must have adequate policies in place to ensure PII is properly handled, redacted, and disposed of in accordance with 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 CMS. When documents, forms, correspondence, or CMS require a unique identifier for an individual, the Electronic Data Interchange Personal Identifier (EDIPI) will be substituted for the social security number.

1112. BUDGETING AND FUNDING GUIDANCE. In accordance with JAGMAN section 0145, convening authorities will fund all case-related expenses, except local travel.

1113. NON-ENFORCEABILITY OF A LEGAL RIGHT. Nothing in this Chapter creates a right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies or instrumentalities, its officers or employees, or any other person.

CHAPTER 1

MILITARY JUSTICE

SECTION 2: TRIAL SERVICES

1200. PURPOSE. This section provides guidance for the provision of trial services within the Marine Corps and describes the organization, roles, and responsibilities of RTC Offices and TSOs, and the counsel assigned to those offices, as provided by relevant law, regulations, and rules of professional conduct.

1201. GENERAL

1. As provided by Congress in Article 27, UCMJ, and implemented by the President in R.C.M. 502 and 503, Manual for Courts-Martial, trial counsel (TC) 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 military courts-martial.

2. Marine Corps trial services are usually performed by commissioned officers who are licensed attorneys, certified as a 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 or contingency.

3. Professional conduct of Marine Corps TC is governed by JAGINST 5803.1 series. TC should be familiar with the entire document and refer to Rule 3.8 in particular regarding the special responsibilities of a TC.

4. The LSSS provides legal services, including trial services, to supported commands within its LSSA. Trial services include conducting courts-martial on behalf of the government; providing prosecution advice in accordance with R.C.M. 502(d)(5) 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; supervising the collection, maintenance, and custody of evidence; coordinating with law enforcement; and prosecuting federal court cases under the Special Assistant United States Attorney (SAUSA) program.

5. The LSSS OIC is ultimately responsible for the provision of trial services within the LSSA. Individual LSSTs provide direct legal services to designated commands. The LSST OIC is responsible for the provision of trial services to commands supported by the LSST. The SJA remains responsible for updating and providing advice to the commander on the status of the case.

6. Trial services are provided within the LSSA by the RTC Office and by the LSST TSOs. LSST TSOs are the primary provider of trial services. When a court-martial exceeds the capability and expertise of a LSST TSO, the RTC Office, in coordination with the LSST OIC, will provide assistance to the TSO or assume responsibility for prosecuting the court-martial.

7. Consistent with this Order, judge advocates assigned as a TC and personnel assigned to support TSOs may be assigned non-trial duties by the LSST OIC or LSSS OIC.

8. Special Victim Cases. Special victim cases are those cases with alleged violations of UCMJ Articles 118, 119, 119a, 120, 120b, 120c, 125 (with a child or forcible), 128 (domestic violence involving aggravated assault or child abuse), 134 (child pornography or assault with intent to commit the previously listed articles), or 80 (attempts to commit the previously listed articles). All special victims cases will be tried by a complex trial team as described in paragraph 1202.2 below.

1202. TRIAL SERVICES PERSONNEL AND ORGANIZATION

1. Regional Trial Counsel (RTC) Office

a. General Description

(1) The RTC Office provides trial services, as required, across the LSSA; supervision, mentorship, training, and litigation support to TSOs and individual TC within the subordinate LSSTs; and Complex Trial Counsel (CTC) to assist in prosecuting high-profile, complex, special victim cases as defined in paragraph 1201.8, and other significant cases.

(2) The RTC Office is structured with the following personnel: a Regional Trial Counsel (RTC); CTC; where applicable, a Highly Qualified Expert (HQE), or GS-15 equivalent, in the field of prosecution; a Trial Services Administrative Officer (TAO); a RTC Office Paralegal; two RTC Office Investigators (RTIs) with the Military Occupational Specialty of 5821 (Criminal Investigator, Criminal Investigation Division Agent); and appropriate enlisted support staff.

b. Regional Trial Counsel Office Personnel

(1) Regional Trial Counsel (RTC). The RTC is directly responsible to the LSSS OIC for the functional supervision of all trial services within the LSSA.

(a) The RTC is a Marine judge advocate serving in or selected to the grade of O-5/Lieutenant Colonel that possesses considerable expertise in military justice matters and normally has the necessary MOS of 4409 (masters of criminal law). The billet of the RTC requires a Top Secret clearance. The Reporting Senior (RS) for the RTC is the LSSS OIC and his or her Reviewing Officer (RO) is the Marine Corps Installation Commander for that region.

(b) The RTC is responsible for the functional supervision, legal training, and mentoring of all personnel who provide trial services within the LSSA. The RTC supervises all members of the RTC Office, as well as the STC, SAUSA, and TC of the co-located LSST. The RTC and the LSST OIC supervise the STC, SAUSA, and TC at other LSSTs.

(c) Specific RTC duties include, but are not limited to:

1. Train, mentor, and supervise subordinate TC. The RTC shall conduct quarterly training for all CTC, STC, and TC within the LSSS and ensure that all CTC, STC, and TC attend the appropriate annual TCAP training.

2. Serve as the detailing authority for all CTC, STC, and TC assigned to the LSSS. The RTC will normally further delegate this detailing authority, as described in paragraph 1204. Regardless of whom ultimately details the case, the RTC remains responsible for ensuring that the appropriate TC is detailed to each court-martial.

3. Task-organize complex trial teams and detail counsel to the team, as required under paragraph 1202.2.

4. Manage and supervise the RTC Office and its members.

5. Conduct, at minimum, semi-annual visits to all TSOs and their detachments, as applicable.

6. When detailed, serve as a TC and maintain an appropriate case load, so long as it does not interfere with the duties to train, mentor, and supervise subordinate TC within the LSSA.

7. 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.

8. Supervise the maintenance/updating of case entries in the Case Management System (CMS) for all cases in the LSSS.

9. 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 (see paragraph 1202.4 below).

10. Liaise with the Regional Defense Counsel as required.

11. Where applicable, coordinate with all federal, state, and local confinement facilities that may provide confinement services to Marine Corps units and activities located within the LSSA.

12. Act as a Special Victim Capability (SVC) legal representative for the LSSA and perform the following functions: leverage the regional trial assets to deliver a SVC, meet or consult with NCIS SVC members within 48 hours after designation of a special victim investigation, and meet or consult with NCIS at least monthly to assess the progress of investigations and prosecutions. This tasking can be delegated, but to an officer no lower than the rank of O-4/Major who is qualified as Special Victim Qualified Trial Counsel, as defined in paragraph 1203.3.

13. As appropriate for special victim cases, as defined in paragraph 1201.8, provide prosecutorial merit reviews to SJAs and convening authorities in order to assist convening authorities with disposition decisions under R.C.M. 306.

14. Coordinate with TCAP to ensure lessons learned, motions, and best practices are share across the TC community.

(2) Complex Trial Counsel (CTC). 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 ATC.

(a) The CTC is a Marine judge advocate in the grade of O-3/Captain or O-4/Major who possesses considerable expertise, as determined by the LSSS OIC, in military justice matters. The CTC's RS is the RTC and his or her RO is the LSSS OIC.

(b) The CTC's primary duty is to prosecute cases on behalf of the United States. The CTC may provide training and mentorship to TC when approved by the RTC.

(3) Highly Qualified Expert (HQE). The HQE, or GS-15 equivalent, is directly responsible to the RTC for providing advice, training, and insight to TC and their support personnel on complex cases throughout the LSSA.

(a) The HQE/GS-15 is an experienced civilian attorney who has the primary duty of providing training, mentoring, and case-specific expertise to TC detailed to complex cases throughout the region in order to enhance the government's ability to meet its burden of production and proof. The HQE's rating official is the RTC, and his or her senior rating official is the LSSS OIC.

(b) The HQE's/GS-15's primary functions are to consult and advise on the prosecution of complex cases and to develop and implement training and standing operating procedures for the investigation and prosecution of complex cases. The HQE/GS-15 may perform other related duties, including preparation of reports and analysis of TC performance in courts-martial, as assigned.

(4) Trial Services Administration Officer (TAO). 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.

(a) The TAO is a Legal Administrative Officer (LAO), normally in the grade of Chief Warrant Officer 2 (CW02), with military justice experience. The TAO's RS is the RTC and his or her RO is the LSSS OIC.

(b) Specific TAO duties include, but are not limited to:

1. Manage all legal administrative functions, tasks, and correspondence associated with the provision of trial services by the RTC or CTC.

2. Manage and provide direct supervision of investigators assigned to the RTC Office.

3. When required, assist TC within the LSSA with discovery obligations.

4. When required, assist the LSST TSOs with their legal administrative functions.

5. Ensure that all Regional Trial Investigators (RTIs) maintain access to the Consolidated Law Enforcement Operations Center (CLEOC), the National Crime Information Center (NCIC), and any future programs.

6. Serve as a recorder for administrative separations boards when detailed or made available for detailing by the RTC.

7. Coordinate contracts for expert witnesses and expert consultants.

8. Serve as courtroom security officer for the LSSA; and

9. Supervise all Defense Travel System (DTS) reservations, authorizations, and vouchers associated with witness temporary additional duty (TAD) travel and subsequent traveler payment and act as an alternate Authorizing Official for the RTC Office.

10. Support, as required, LSST TSO witness logistics.

(5) Regional Trial Counsel Office Paralegal (RTC Paralegal). The RTC Paralegal is directly responsible to the RTC for litigation support to the RTC Office and, when assigned, to subordinate LSST TSOs.

(a) 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 successfully 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 TAO and his or her RO is the RTC.

(b) Specific RTC Paralegal duties include, but are not limited to:

1. Conduct legal research and draft documents.

2. Create and organize case files.

3. Interview witnesses.

4. Supervise and mentor enlisted support staff in the RTC Office.

5. Coordinate with and assist the LSST Trial Services Chiefs for the provision of trial services.

(6) Regional Trial Investigator (RTI). The RTI is directly responsible to the RTC for trial production support as detailed throughout the LSSA.

(a) The RTI is an accredited agent of the U.S. Marine Corps Criminal Investigation Division, PMOS 5821, normally in the grade of E-6/Staff Sergeant or E-7/Gunnery Sergeant, who has completed a tour as a Marine Special Agent with the Naval Criminal Investigative Service (NCIS). The RTI's RS is the TAO and his or her RO is the RTC.

(b) The RTI fills a billet on the T/O that is coded as "Armed" and requires a Top Secret clearance.

(c) Specific RTI duties include, but are not limited to:

1. Provide trial production support, as approved by the RTC, to all TC with 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 Computer Forensics Laboratory [DCFL], 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.

2. Maintain qualifications to access CLEOC, NCIC, and future law enforcement programs and databases.

3. 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 CID policy letters.

(7) 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. Any assigned enlisted support staff RS will be the TAO and his or her RO will be the RTC.

2. Complex Trial Team (CTT)

a. General Description. All cases under paragraph 1204.1.b. that are detailed by the RTC, or any other case designated as a complex case by the RTC, will be tried by a CTT, which will be task-organized to meet the needs of that case. Once assembled, the CTT is responsible to the RTC for representing the United States in that particular case.

b. 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 Special Victim Qualified Trial Counsel, as defined in paragraph 1203.3.

c. Special Victim Capability (SVC). The RTC will employ the CTT to deliver a SVC 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.

3. Legal Services Support Team (LSST)

a. LSST OIC. The LSST OIC is directly responsible to the LSST OIC for the provision of all legal services, including trial services, to commands supported by the LSST. The LSST OIC is not a part of the LSST TSO, but is

responsible for directly supervising its performance, in close coordination with the RTC.

(1) The LSST OIC is a Marine judge advocate 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. The LSST OIC's RS is the LSSS OIC and his or her RO is the regional MCI Commander.

(2) The LSST OIC is responsible for the direct supervision, legal training, and mentoring of all personnel who provide legal services, except for defense and victims' legal counsel, within the LSST's LSSA. The LSST OIC must be mindful to ensure a parity of resources among all legal services including the defense and victims' legal counsel.

(3) Specific LSST OIC duties relating to trial services include, but are not limited to:

(a) Train, mentor, and supervise all TC assigned to the LSST. The LSST OIC shall ensure that TC receive at least two quarterly trainings from the STC.

(b) When delegated authority by the RTC, serve as the detailing authority for cases within the LSST. In accordance with paragraph 1204, the LSST OIC should normally delegate this detailing authority to the STC as appropriate. The LSST OIC shall ensure that the appropriate TC is detailed to each court-martial.

(c) Maintain a cooperative and close working relationship with the RTC and the SJAs to ensure the effective and efficient provision of trial services in the LSST.

(d) Supervise the maintenance/updating of case entries in the Case Management System (CMS) 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 (see paragraph 1202.4 below).

(f) Liaise with the Regional Defense Counsel as required.

(g) Where applicable, coordinate with all federal, state, and local confinement facilities that may provide confinement services to supported commands.

(h) In exceptional cases, when detailed by the LSSS OIC, serve as a TC.

b. LSST Trial Services Office (TSO)

(1) General Description. Each LSST contains a Trial Services Office (TSO). The LSST TSO is responsible to the LSST OIC and the RTC for the provision of trial services to all supported commands. The LSST TSO is comprised of a STC, TC, a Trial Services Chief, a Trial Services NCO, a Legal Services Specialist, an Administrative Specialist, and, if applicable, a SAUSA.

(2) TSO Personnel

(a) Senior Trial Counsel (STC). 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.

1. 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 necessary MOS of 4409 (masters of criminal law), and is qualified to prosecute General Courts-Martial in accordance with paragraph 1203. The assignment as STC should be based on the leadership and expertise of the judge advocate, not solely on seniority. When geographically separated from the LSSS, the STC's RS is the LSST OIC and his or her RO is the RTC. When co-located with the LSSS, the STC's RS is the RTC and his or her RO is the LSSS OIC.

2. Specific STC duties include, but are not limited to:

a. Train, mentor, and supervise subordinate TC. The STC shall conduct at least two training sessions for the TC within the LSST each quarter.

b. When delegated detailing authority, ensure the proper TC, with adequate support, is detailed to each individual court-martial. When warranted, request, via the LSST OIC, the detailing of trial support assets from the RTC.

c. Serve as a TC, as required, and maintain a caseload, as appropriate given the STC's supervisory responsibilities.

d. Coordinate with law enforcement, upon preferral of charges, to ensure all accused have DNA collected in accordance with DoDI 5505.14.

e. Supervise the maintenance/updating of CMS for all cases supported by the STC's LSST.

f. Coordinate with supported commands to ensure that the TSO receives immediate notification when a Service member is placed in pretrial restraint under R.C.M. 304(a)(2)-(4).

g. Coordinate with DoD confinement facilities that provide pretrial confinement services to Marine Corps units and activities located within the LSSA.

h. 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.

i. 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.

j. Ensure the proper handling, disposal, and appropriate redaction of personally identifiable information by all TC and trial service Marines.

(b) Trial Counsel (TC). The TC is directly responsible to the STC for the preparation and conduct of those courts-martial to which the TC is detailed.

1. For the purposes of this Chapter, a TC is a judge advocate, generally between the grade of O-2/First Lieutenant and O-4/Major, who is certified as a TC under Article 27(b), UCMJ, and sworn under Article 42(a), UCMJ. When geographically separated from the LSSS, the TC's RS is the STC and his or her RO is the LSST OIC. When co-located with the LSSS, the TC's RS is the STC and his or her RO is the RTC.

2. Specific TC duties include, but are not limited to:

a. Prosecute cases on behalf of the United States, in coordination with the respective convening authority and SJA.

b. Ensure CMS is continually updated, current, and accurate for those cases to which the TC is detailed.

c. Consult with the RTC Office on any complex litigation matter.

d. 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.

e. Ensure all victims of sexual assault or related offenses are informed of the availability of assistance by a VLC (see Chapter 6 of this Manual).

f. Ensure that defense counsel are notified in writing of all victims the TC intends to call at an Article 32 hearing or at trial in accordance with Article 46(b), UCMJ.

g. Ensure that the Report of Results of Trial, including any corrected report, is uploaded to CMS within 24 hours of the findings or correction.

h. Ensure that the record of trial (ROT) is prepared in cases prosecuted.

i. 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; Report of Result of Trial; 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.

j. Serve as recorder at administrative separation boards when detailed or assigned by the LSST OIC, RTC, or STC.

k. 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.

(c) Trial Services Chief. The Trial Services Chief is directly responsible to the STC for the enlisted support to the TSO.

1. 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. When geographically separated from the LSSS, the Trial Services Chief's RS is the STC and his or her RO is the LSST OIC. When co-located with the LSSS, the Trial Services Chief's RS is the STC and his or her RO is the RTC.

2. Specific Trial Services Chief duties include, but are not limited to:

a. Inspect all court-martial documents for completeness, accuracy, and sufficiency.

b. Manage office correspondence and filing.

c. Maintain all original standing convening orders.

d. Maintain a secured evidence locker with controlled access.

e. Coordinate court-martial-related administrative requirements.

f. Assist the TC with post-trial processing as required.

g. Coordinate with the regional TAO and RTC paralegal for administrative support or assistance, as necessary.

(d) 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. When geographically separated from the LSSS, the Trial Services NCO's RS is the STC and his or her RO is the LSST OIC. When co-located with the LSSS, the Trial Services NCO's RS is the STC and his or her RO is the RTC.

(e) Administrative Specialist. The Administrative Specialist (MOS 0151) is an enlisted Marine, with the rank of E-4/Corporal, who assists with all administrative aspects of courts-martial.

(f) Legal Services Specialist. The Legal Services Specialist 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.

4. SAUSA. A SAUSA is responsible for the prosecution of crimes committed by civilians on military installations in federal court pursuant to 28 U.S.C. § 543 and DoDI 5525.07. The organization and reporting chain of the SAUSA program within each LSSS's LSSA is determined by the LSSS OIC.

a. A SAUSA is normally a judge advocate between the grades of O-2/First Lieutenant and O-4/Major. Designation as a SAUSA may be a judge advocate's primary or additional duty.

b. A SAUSA is administratively and operationally responsible to both the LSSS and the cognizant U.S. Attorney for the performance of his SAUSA duties. The specific duties of judge advocates assigned as SAUSAs are described by the laws, rules, and regulations for practice before federal courts and the rules of the supported U.S. Attorney's Office.

1203. QUALIFICATIONS OF TRIAL COUNSEL

1. Trial Counsel (TC). Any commissioned officer may be detailed as a TC in a special court-martial, except for special victim cases as defined in paragraph 1201.8. Only judge advocates qualified as described below may be detailed as a TC in a general court-martial or to a special court-martial containing one of the UCMJ Articles listed in paragraph 1201.8.

2. General Court-Martial Qualified Trial Counsel (GCMTTC)

a. Qualification. Qualification as a GCMTTC shall be in writing by the RTC or LSSS OIC and cannot be delegated. Qualification is based on the following requirements:

(1) Be certified as a TC under Article 27(b), UCMJ, and sworn under Article 42(a), UCMJ.

(2) Served as a TC for six months or have a combined eighteen months experience as a trial and/or defense counsel or military judge.

(3) Prosecuted a contested special court-martial as the lead trial counsel or a contested general court-martial as an assistant trial counsel.

(4) Received recommendations, in writing, from their STC and, when applicable, their LSST OIC.

b. In extraordinary situations, as determined by the LSSS OIC, the LSSS OIC may waive the requirement in paragraph 1203.2.a.(2).

3. Special Victim Qualified Trial Counsel (SVTC)

a. Qualification. Qualification as a SVTC shall be in writing by the LSSS OIC, which cannot be delegated. Qualification is based on the following requirements:

(1) Be a GCMTTC.

(2) Demonstrated to the LSSS OIC's satisfaction that the TC possesses the requisite expertise, experience, education, innate ability, and disposition to competently prosecute special victim cases.

(3) Prosecuted a contested special or general court-martial in a special victim case as an ATC.

(4) Attended an intermediate level trial advocacy training course for the prosecution of special victims (e.g., Prosecuting Alcohol Facilitated Sexual Assaults, TCAP Prosecuting Sexual Assaults Course).

(5) Received recommendations, in writing, from their STC, RTC, and, when applicable, LSST OIC.

b. In extraordinary situations, as determined by the LSSS OIC, the LSSS OIC may waive the requirement in paragraph 1203.3.a.(4).

1204. DETAILING FOR COURTS-MARTIAL

1. Detailing Authority. The LSSS OIC is the detailing authority for all TC assigned, or made available, to the LSSS. The LSSS OIC normally delegates this detailing authority to the RTC, with the exception of the authority to detail the RTC or LSST OIC. The LSSS OIC cannot delegate the authority to detail the RTC or the LSST OIC to courts-martial. All delegations of detailing authority must be in writing.

a. The RTC is the detailing authority for CTC. The RTC normally delegates detailing authority for geographically separated LSSTs to the LSST OIC. For co-located LSSTs, the RTC normally delegates detailing authority to the STC for those TC under that STC's supervision.

b. The RTC cannot further delegate the authority to detail CTC and cannot delegate the authority to detail counsel to the following cases:

(1) Capital cases.

(2) National security cases.

(3) Special victim cases as defined in paragraph 1201.8.

(4) Cases where the accused is an E-8, E-9, CWO-3, CWO-4, CWO-5, or O-3 and above.

c. For geographically separated LSSTs, the LSST OIC normally further delegates detailing authority to the STC.

d. STCs are prohibited from further delegating detailing authority.

e. Detailing authority may only be delegated to an officer selected to or in the grade of O-4/Major or higher.

f. Detailing authority also includes the authority to remove a TC from a case.

g. Detailing authority may be rescinded at any time.

h. Each detailing authority will maintain a copy of all detailing or rescission of detailing letters for all cases that he or she has detailed.

i. In addition to those limitations listed above, the delegations of detailing authority may be further limited as the LSSS OIC, RTC, or LSST OIC deem appropriate.

2. Detailing Counsel to Courts-Martial

a. Timeline. A TC shall be detailed in writing to a case as soon as practicable, but not later than any one of the following:

(1) Ten days after notification that an accused has been placed in pretrial confinement.

(2) Ten days after the TSO accepts a RLS.

(3) As otherwise required by law or regulation.

b. Detailing Criteria

(1) General Criteria. Prior to detailing a TC to a particular case, the detailing authority will consider the following factors: geographic location of the TC and the court-martial; the TC's caseload, experience, qualifications, and other traditional officer duties; case complexity; and, the expected rotation date of the counsel.

(2) Special Criteria. In order to be detailed to a general court-martial, a TC must be qualified as a GCMTTC. In order to be detailed to a special victim case, as defined in paragraph 1201.8, a TC must be qualified as a SVTC. An ATC can be detailed to a general court-martial or special victim case without meeting the criteria in this subparagraph.

3. In all cases that involve allegations of violations of the Articles listed in paragraph 1201.8, the detailed SVTC is required to provide an initial case assessment to and seek advice from the regional HQE as soon as possible, but no later than ten days after being detailed to the case. If a regional HQE is unavailable, the SVTC must provide the initial case assessment to and seek advice from the RTC, who will provide assistance and facilitate coordination with either TCAP or a HQE from another region.

4. Upon preferral, the detailing authority shall provide a copy of the detailing letter to the convening authority, the cognizant SJA, and the DSO branch office.

5. TC are normally detailed to cases that are being processed by the TC's LSST. However, a TC may be detailed to a case that is not normally supported by the TC's LSST on a case-by-case basis. If such detailing decisions will result in non-local travel costs as defined by the Joint Federal Travel Regulation (JFTR) beyond those implicit in the RLS, then prior to detailing the TC to the case, the detailing authority shall obtain approval from the convening authority via his/her SJA for travel costs associated with that detailing decision. Denials of detailing requests must be made by the convening authority and may not be delegated.

1205. TOUR LENGTH. Judge advocates assigned as a TC or in a supervisory TC billet will generally serve in that billet for a period of at least 18 months.

1206. REASSIGNMENT

1. The reassignment of TC requires careful planning and coordination between the responsible LSSS OIC, LSST OIC, RTC, and STC.

2. Once TC are slated for reassignment, the RTC, LSST OIC, and STC must ensure that the TC are not detailed to cases anticipated to extend beyond the targeted reassignment date, absent the consent of the LSSS OIC.

3. RTC, STC, or TC may not serve concurrently as a defense counsel, SJA, victim witness liaison officer, victims' legal counsel, or a victim witness assistance coordinator.

1207. TRIAL COUNSEL SUPPORT PROGRAMS

1. Trial Counsel Assistance Program (TCAP). TCAP supports TC throughout the Marine Corps by providing training, advice, and litigation support resources. Specific TCAP duties include, but are not limited to:

a. Develop, publish, organize, and provide annual training as required by statutes, acts of Congress, instructions, and orders, for TC throughout the Marine Corps;

b. Develop standardized procedures for the provision of trial services throughout the Marine Corps.

c. Maintain a website for trial counsel to share lessons learned, legal research, motions, case disposition reports, and a forum for questions;

d. Provide litigation advice for individual trial counsel on specific issues on a real-time basis.

e. Coordinate with other service TCAPs to ensure best practices are shared throughout the services.

f. Coordinate with DoD providers of forensic testing and expert assistance to ensure trial support and training for TC throughout the Marine Corps.

g. Provide assessments on the impact upon trial counsel of proposed legislation, orders, directives, and instructions.

h. Maintain a close, cooperative relationship with the RTCs and HQEs/GS-15 advisors throughout the LSSSs.

2. 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) of the Reserve Legal Support (RLS). Normally, these IMA judge advocates serve as instructors at TC training, provide assistance on particular cases, and in extraordinary situations, may be detailed as the TC at a court-martial.

CHAPTER 1

MILITARY JUSTICE

SECTION 3: POST-TRIAL REVIEW

1300. PURPOSE. This section provides guidance for the provision of post-trial review services within the Marine Corps. This section describes the organization, roles, and responsibilities of the Post-Trial Review Office (PTRO) and the judge advocates and enlisted Marines assigned thereto, as provided by relevant law, regulations, and rules of professional conduct. The PTRO encompasses both the Regional Review Section and the Court Reporter Section.

1301. GENERAL

1. Subchapter IX of chapter 47 of Title 10 (Articles 59-76, UCMJ) provides for post-trial review of courts-martial. R.C.M. 1101-1210 and 1305-1306 provide the procedures for post-trial review. JAGMAN sections 0149-0167 provide further guidance and regulation of the provision of post-trial review services within the Department of the Navy.

2. Marine Corps post-trial services are managed by one of four Regional Review Officers (RRO), under the supervision of the LSSS OIC. Post-trial services are performed by enlisted Marines in the 44XX community; by commissioned officers who are licensed attorneys, certified as trial or defense counsel under Article 27(b), UCMJ, and sworn under Article 42(a), UCMJ; and by civilians practicing under the supervision of the SJA to CMC.

3. The PTRO provides post-trial services in support of commanders and their SJA. Command legal advice is an inherent function of the SJA. The PTRO shall not provide command legal advice to convening authorities, except when authorized by the command's SJA to provide advice to a summary court-martial convening authority (SCMCA). PTROs will maintain a close working relationship with supported SJAs.

4. The PTRO provides court reporting services for all three phases of the military justice court-martial 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 the utilization of speech recognition technology, known as voice writing. The post-trial process produces the record of trial (ROT) necessary for the convening authority's action (CAA) and subsequent review, including appellate review, if required.

5. Marines and civilians providing post-trial services must comply with the Rules of Professional Conduct contained in JAGINST 5803.1_ series and all other laws and regulations governing the professional conduct of judge advocates providing legal services.

6. Only the LSSS OIC may make judge advocates serving in the PTRO available for detailing to courts-martial or administrative separation boards, or assignment to other billets requiring the formation of an attorney-client relationship.

1302. POST-TRIAL REVIEW PERSONNEL AND ORGANIZATION

1. There are four PTROs within the Marine Corps, with one PTRO located within each of LSSS. The PTRO provides post-trial services across the LSSA and is comprised of two sections: the Regional Review Section and the Court Reporter Section.

a. The regional review section is responsible for providing post-trial review services throughout the LSSA. This includes the preparation of post-trial documents and the management, filing, and mailing of all ROTs.

b. The court reporter section is responsible for providing court reporting services throughout the LSSA. This includes the recording, capturing, and transcribing of courts-martial, as well as assembling the ROT for authentication. Additionally, the court reporter section provides transcription services outside the court-martial process, including nonjudicial punishments, administrative separation boards, and boards or courts of inquiry.

2. Regional Review Officer (RRO). The RRO is responsible to the LSSS OIC for the overall supervision and management of the regional post-trial review process and the day-to-day operations of the PTRO. The RRO is a judge advocate, normally between the grade of O-3/Captain and O-4/Major, with appropriate military justice experience. The RRO's RS is the LSSS OIC, and his or her RO is the regional Marine Corps Installation Commander. The RRO is responsible for the following within their LSSA:

a. All Marines and civilians assigned to both the regional review and court reporter sections of the PTRO.

b. In coordination with the cognizant SJA, the complete and timely delivery of post-trial services, including court reporting functions and post-trial processing of all special and general courts-martial from adjournment of the court-martial to receipt of the authenticated ROT at the Navy Marine Corps Appellate Review Activity (NAMARA).

c. The detailing of court reporters to courts-martial and other legal proceedings or administrative hearings.

d. The timely production of the ROT, to include distributing transcription requirements among all regional LSSTs.

e. The redaction and service of the ROT and CAA upon the victim of a sexual assault in accordance with Article 54(e), UCMJ.

f. Article 64, UCMJ, judge advocate review of all summary courts-martial and all special courts-martial that are not reviewed under Article 66, UCMJ.

g. The review of nonjudicial punishment appeals upon request from the cognizant SJA.

h. Appellate leave requests.

i. Post-trial inquiries from NAMARA, the Office of the Judge Advocate General of the Navy (OJAG), the Navy-Marine Corps Appellate Leave Activity (NAMALA), and the Naval Clemency and Parole Board (NC&PB).

j. The maintenance/updating of the Case Management System (CMS) for all cases in the LSSS during the court reporter and post-trial review process.

k. Transcription services outside the court-martial process, including nonjudicial punishments, administrative separation boards, and boards or courts of inquiry, as approved under the procedures established by the OIC, LSSS.

l. The qualifications of all court reporters assigned to the LSSS, including the development, implementation, and evaluation of the court reporter training plan and skills progression.

m. The continued upgrading of transcription software and speech recognition technology.

2. Assistant Regional Review Officer. All judge advocates assigned to the PTRO, except the RRO, are designated as an Assistant Regional Review Officer. If designated by the RRO, an Assistant Regional Review Officer may serve as the RRO in the RRO's absence. The Assistant RRO's RS is the RRO, and his or her RO is the LSSS OIC.

3. Court Reporter Section. The court reporter section consists of all legal services specialists assigned to court reporter billets across the LSSA. This includes the court reporters co-located at the LSSS and the court reporters assigned to subordinate LSSTs. Those court reporters co-located at the LSSS work under the direct supervision of the RRO. Those court reporters located at the subordinate LSSTs work under the direct supervision of the Administrative Law Officer (ALO). Successful completion of the court reporter mission requires a close, collaborative relationship between the RRO, the LSST OIC, and the ALO.

a. Regional Court Reporter Chief

(1) The Regional Court Reporter Chief, normally in the rank of E-7/Gunnery Sergeant, is responsible to the RRO for the day-to-day operations of the court reporter section throughout the LSSA. The Regional Court Reporter Chief's RS is the RRO, and his or her RO is the LSSS OIC.

(2) The Regional Court Reporter Chief is directly responsible to the RRO for the following:

(a) Ensuring that the certification and qualifications of all court reporters assigned to the LSSS are current.

(b) Developing, implementing, and evaluating the court reporter training program within the LSSA to ensure court reporter skills progression.

(c) When delegated, detailing court reporters to courts-martial and other legal proceedings or administrative hearings.

(d) Supervising the timely production of ROTs within the LSSA.

(e) Providing transcription services outside the court-martial process, including nonjudicial punishments, administrative separation boards, and boards or courts of inquiry.

(f) Supervising the maintenance/updating of the case entries in CMS for all cases in the LSST in the court reporting process.

b. LSST Administrative Law Officer (ALO)

(1) The LSST ALO, normally in between the ranks of Chief Warrant Officer 2 and Chief Warrant Officer 3, is responsible to the RRO and the LSST OIC for the daily operations and supervision of the LSST Court Reporter Section. The ALO's RS is the LSST OIC and his or her RO is the LSST OIC.

(2) The LSST ALO is directly responsible for the following:

(a) Supervising all court reporters assigned to the LSST.

(b) When delegated, detailing court reporters assigned to the LSST to courts-martial and other legal proceedings or administrative hearings.

(c) Ensuring the timely production of a ROT for those cases supported by the LSST.

(d) Supervising the maintenance/updating of the case entries in CMS for all cases at the LSST in the court reporting process.

(e) In coordination with the RRO and the Regional Court Reporter Chief, ensuring that the qualifications of all court reporters assigned to the LSST are current, including the development, implementation, and evaluation of the court reporter training plan and skills progression.

(f) In coordination with the RRO and the Regional Court Reporter Chief, ensuring the continued upgrading of transcription software and speech recognition technology.

c. LSST Court Reporter Chief

(1) The LSST Court Reporter Chief, normally in the rank of E-6/Staff Sergeant, is responsible to the LSST ALO and the RRO for the day-to-day operations of the court reporter section. The LSST Court Reporter Chief's RS is the LSST ALO, and his or her RO is the RRO.

(2) The LSST Court Reporter Chief is directly responsible to the LSST ALO for the following:

(a) Ensuring that the qualifications of all court reporters assigned to the LSST are current.

(b) Developing, implementing, and evaluating the court reporter training program within the LSST to ensure court reporter skills progression.

(c) When delegated, detailing court reporters assigned to the LSST to courts-martial and other legal proceedings or administrative hearings.

(d) Supervising the timely production of ROTs within the LSST.

(e) Supervising the maintenance/updating of the case entries in CMS for all cases in the LSST in the court reporting process.

d. Court Reporter. A court reporter, normally between the rank of E-4/Corporal and E-9/Master Gunnery Sergeant, is responsible to the LSST ALO and RRO for the accurate and timely production of ROTs. When geographically separated from the LSSS, the court reporter's RS is the LSST ALO and his or her RO is the RRO. When co-located with the LSSS, the court reporter's RS is the RRO and his or her RO is the LSSS OIC.

(1) Requirements

(a) Detailing. The detailing of court reporters is addressed below in paragraph 1303.

(b) Oath. Court reporters are required to be sworn in accordance with Article 42(a), UCMJ, and R.C.M. 807(b).

(c) Security Clearance. All court reporters must be eligible for a Secret security clearance.

(d) Length of Duty. Due to the unique technical skill set and lengthy training period, the recommended section assignment for court reporters is 24 months. This length of time allows an appropriate period of managed on-the-job training (MOJT) and a maximum efficiency output for the production of ROTs of between six to twenty-four months. Additionally, due to the need for career progression, it is not recommended that a court reporter exceed assignment of 24 months or be re-assigned to a Court Reporter Section upon PCS, unless the court reporter has advanced from NCOIC to SNCOIC of the section. This ensures appropriate experience and quality control measures for those Marines assigned to the Regional Court Reporter Chief or LSST Court Reporter Chief.

(2) Employment. The court reporter has four main stages of employment: record, capture, transcribe, and authenticate. As officers of the court, court reporters ensure a digital recording is created and archived to preserve the record of proceedings. Simultaneously, the court reporter captures the spoken word of the proceedings through the utilization of a stenomask. The real-time dictation or capture is translated by speech recognition software and sent to a word processing document, which allows for minor editing during courts-martial proceedings. The court reporter edits the output from the real-time dictation or capture stage during transcription of the record of proceedings. Upon completion of the transcription, editing, proofing, and assembly of the ROT or proceeding, the court reporter forwards the record for certification and/or authentication in accordance with R.C.M. 1104, if applicable.

4. Regional Review Section. The regional review section is co-located with each LSSS and provides post-trial support to SJAs throughout the LSSA.

a. Regional Review Chief. The Regional Review Chief, normally in the grade of E-7/Gunnery Sergeant, is responsible to the RRO for the day-to-day operations of the Regional Review Section. The Regional Review Chief assists the Regional Review Officer in all tasks and is specifically responsible for the preparation of draft post-trial documents; management and filing of all ROTs; and, the training, education, and mentorship of all enlisted personnel assigned to the regional review section. The Regional Review Chief's RS is the RRO, and his or her RO is the LSSS OIC.

b. Support Staff. Each PTRO may be staffed with support, both enlisted and civilian, to assist in the execution of assigned tasks within the PTRO. These billets may be filled by a civilian Paralegal Specialist or an enlisted Marine with the primary MOS of 4421. Specific civilian duties shall be defined by that civilian's position description.

1303. COURT REPORTER SUPERVISION AND DETAILING

1. Supervision. A critical component to successful court reporter management is supervision. Establishment and supervision of an inexperienced court reporter's MOJT is required for further development and efficiency of every court reporter section. Analysis of a court reporter's developmental progress in maintenance of the three phases of speech recognition ensures the court reporter achieves total mastery of the NMOS 4422 skill set and satisfies ROT production timelines.

2. Detailing. The detailing of court reporters to courts-martial is done under the authority of Article 28, UCMJ, and R.C.M. 502(e). The LSSS OIC is the detailing authority for all court reporters within the LSSS. The LSSS OIC normally delegates this detailing authority to the RRO.

a. The RRO can delegate detailing authority to the Regional Court Reporter Chief for those court reporters co-located at the LSSS. No further sub-delegation is permitted.

b. The RRO can delegate detailing authority to the LSST ALO for those court reporters under the supervision of that ALO. The LSST ALO can further delegate that detailing authority to the LSST Court Reporter Chief. No further sub-delegation is permitted.

c. All delegations of detailing authority must be in writing.

d. Detailing authority may only be delegated to Marines selected to or in the grade of E-6/Staff Sergeant or higher.

e. Detailing authority also includes the authority to remove a court reporter from a case.

f. Detailing authority may be rescinded at any time.

g. In addition to those limitations listed above, the delegations of detailing authority may be further limited as the LSSS OIC, RRO, or LSST ALO deem appropriate.

1304. COURT REPORTER TRAINING AND EQUIPMENT

1. Formal and Managed On-the Job Training (MOJT). Marines must attend formal training at Naval Justice School and successfully complete the Legal Services Court Reporter Course to be awarded NMOS 4422. Formal training provides the basic foundation for voice writing to effectively and accurately produce a verbatim ROT in a timely manner. The first six months after formal training is a critical time period for court reporters. Voice writing is a technical and perishable skill that requires continued MOJT after initial formal training. Court reporters must continue developing voice writing skills in order to accurately capture the spoken word. The three key components to successful voice writing includes continued focus on the

basics, evaluation of transcription ratios, and the prevention of the atrophy of voice writing capabilities through skills progression.

a. Basics. Speech recognition software has three phases that require continued development and maintenance to ensure the capture and efficient transcription of any proceeding. The three phases are dictation style, vocabulary/profile management (VPM), and grammatical model management (GMM).

(1) Dictation Style. The Court Reporter must ensure that he or she speaks clearly and accurately for the speech recognition software to provide accurate transcription results.

(2) VPM. VPM encompasses training mistranslated text to ensure fewer mistranslations in the future and creating backups of the Court Reporter's speech recognition software profile at least once a month.

(3) GMM. GMM should be refined by using a document analysis function within the speech recognition software. Document analysis identifies grammatical and word patterns within analyzed documents, improving the accuracy and translation speed of real-time dictation or capture. Due to the repetitive formatting and specific terminology used in military justice, document analysis is a key component to the accurate and timely production of a ROT.

b. Transcription Ratio. The transcription ratio is a comparison of the duration of the proceeding to the length of time required to produce a transcript of the proceeding. For example, ratio 1:6 means the proceedings lasted one hour on the record and the time required for the court reporter to produce a verbatim record of the hour-long proceeding was six hours. The duration of the proceeding and complexity of terminology affects the court reporter transcription ratio. Therefore, court reporters are expected to have an average transcription ratio of 1:3 for guilty plea judge alone forums due to the repetitive nature of this court-martial format. Formal NMOS 4422 training prepares a court reporter to produce a verbatim ROT with a transcription ratio of 1:6 or less. The LSSS OIC, RRO, and LSST ALO will ensure court reporters maintain a transcription ratio between 1:2 and 1:6 in order to produce a verbatim ROT in a timely manner.

2. Training Plan. The LSSS OIC, RRO, and LSST ALO are responsible for the development, implementation, and evaluation of the court reporter training plan, which is normally delegated to the Regional Court Reporter Chief. The LSST Court Reporter Chiefs will assist in the implementation of the training plan. The training plan should focus on the capability of a court reporter to produce a verbatim ROT within a timely manner while preventing the degradation of voice writing skills. The LSSS OIC, RRO, and LSST ALO will implement the required court reporter training plan as published by the Deputy Director, JAD, CDSP.

3. Equipment. In order to effectively employ a court reporter and to meet the legal requirements for an accurate and timely production of a verbatim ROT, court reporters require equipment with specific hardware and software components. Without the appropriate equipment, court reporters' skills degrade, which subsequently negatively affects the accurate and timely production of ROT. Additionally, due to the requirements for court reporters to utilize computer equipment that is not connected to an enterprise system, virus protection software must be updated and maintained at the local level.

The required equipment list and virus protection information for each court reporter will be published annually, or as updates require, via a MARADMIN.

1305. POST-TRIAL PROCESSING STANDARDS AND PROCEDURES

1. Together, the RRO, under the supervision of the LSSS OIC, and the cognizant SJA are responsible for the complete and timely post-trial processing of courts-martial. SJAs and RROs shall maintain a close working relationship to ensure the timely completion of all post-trial actions.

2. To ensure uniformity of post-trial services among the regional LSSSs, each PTRO is required to use the standardized forms and practices published by the Deputy Director, JAD, CDSP. SJAs are required to use the standardized SJA recommendation (SJAR) and CAA published by the Deputy Director, JAD, CDSP. The mandatory use of standardized forms by SJAs is not meant to interfere with an SJA's statutory authority to provide independent legal advice to commanders. All standardized forms and letters referenced in this section are available through the "FORMS" tab on the JAD public website.

3. All SJAs and PTROs will use the Case Management System (CMS) to track and report cases throughout the post-trial process. SJAs and PTROs are responsible for the timely and accurate entry of data into CMS. JAD will monitor CMS weekly and take appropriate action on all cases where over 90 days have passed since the adjournment of the court-martial and the CAA has not taken place, or where over 14 days have passed since the CAA and the case has not been docketed at the Navy-Marine Corps Court of Criminal Appeals (NMCCA).

4. Timelines. Every step in the post-trial process must be properly documented, with justifications for any delay that occurs.

a. When the convening authority fails to take action within 120 days of adjournment of the court-martial, the convening authority shall report this fact and the reasons why the action was not taken in a letter signed personally by the convening authority. A copy of the letter shall be appended to the ROT and forwarded to JAD.

b. The PTRO must make every effort to ensure that the ROT arrives at NAMARA in sufficient time for the NMCCA to docket the case before thirty days have passed since the convening authority's action. The use of regular U.S.P.S. mail service is not authorized for forwarding records of trial to NAMARA.

c. The failure to comply with the timelines in this paragraph must be reported immediately as a CIR in accordance with paragraph 1104.

5. Remands. If NMCCA or higher court ruling requires or permits additional post-trial action (e.g., corrected SJAR or CAA; retrial or rehearing, or a *Dubay* hearing), the cognizant SJA and PTRO will ensure the tracking and reporting in CMS of subsequent actions in the case. The duty of SJAs and PTROs for timely post-trial processing of courts-martial continues for remanded cases.

1306. REVIEW OF A COURT-MARTIAL CONDUCTED BY A DIFFERENT LSSS. If the trial portion of a court-martial is performed by a LSSS different from the supported command's LSSS, the LSSS that provided the trial services will also provide the entire post-trial review services for that case, including

transcription, assembling the ROT, serving defense counsel as appropriate, preparing the SJAR and CAA, mailing to ROT, and providing any other post-trial services if the case is remanded. The LSSS performing the trial service should coordinate directly with the supported command's SJA to complete any post-trial SJA and CA actions.

1307. REVIEW OF SUMMARY COURTS-MARTIAL (SCM)

1. The LSSS OIC, through the PTRO, oversees the proper administration of summary courts-martial (SCM) conducted by supported commands, including the training of SCM officers.

2. The PTRO provides the Article 64, UCMJ, judge advocate review of all summary courts-martial. The RRO is responsible for ensuring SCM ROTs are completed in compliance with JAGMAN section 0150, R.C.M. 1112, and Article 64, UCMJ. The RRO will review and distribute the judge advocate review to the command and the Installation Personnel Administration Center (IPAC), and then file the SCM ROT in accordance with records management requirements.

3. A SCM may be initiated in three ways:

- a. The command initiates and completes the SCM.
- b. There is a RLS to the LSSS for a SCM.
- c. There is a RLS to the LSSS for a SPCM/GCM, and the result is a SCM.

In all three manners of SCM initiation, the SCM ROT is delivered to the PTRO after the command completes the convening authority's action. In all instances, the PTRO is responsible for entering the SCM data in CMS.

4. The PTRO will ensure that the judge advocate review has been completed before a record of conviction by court-martial (NAVMC 118(13)) is completed and included in a Service member's record.

LEGADMINMAN

CHAPTER 2

THE MARINE CORPS DEFENSE SERVICES ORGANIZATION

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CHAPTER 2

THE MARINE CORPS DEFENSE SERVICES ORGANIZATION

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

2001. GENERAL

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

2. Marine Corps defense counsel services are performed by commissioned officers who are licensed attorneys, certified as judge advocates under Article 27(b), UCMJ, and assigned to defense counsel billets in 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 operational control and supervision of and responsible and accountable to the CDC and the responsible Regional Defense Counsel (RDC) for the delivery of defense counsel services at their respective locations.

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

4. Attorney-Client Relationships

a. 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.

b. 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.

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

5. Guiding Principles

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

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

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

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

e. To ensure that a Marine defense counsel's workload is not 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. A Marine defense counsel's ability, training, and experience should match the complexity of the case. Supervisory attorneys will only assign counsel who are properly qualified to handle a particular case.

2002. PERSONNEL

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

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

a. The CDC shall be an experienced judge advocate serving in or selected to the grade of 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:

(1) Designation with the Necessary Military Occupational Specialty (NMOS) of 4409 (criminal law).

(2) 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).

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

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

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

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

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

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

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

(2) Conducting, at a minimum, one site inspection at each Legal Services Support Section (LSSS) and subordinate LSST annually.

(3) 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.

(4) Assessing the adequacy of facilities and assets provided to defense counsel.

(5) Monitoring the experience level of judge advocates assigned as defense counsel relative to judge advocates assigned as trial counsel.

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

(7) Detailing Marine defense counsel and auxiliary defense counsel to cases consistent with paragraph 2006 of this Order and JAGMAN section 0130.

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

(9) Ensure the selection of subordinate leaders within the DSO who are the best and fully-qualified to serve in leadership billets.

(10) Ensure that the internal organization structure of the DSO best facilitates the accomplishment of the DSO mission.

(11) Ensure proper mentorship and training for all DSO members.

3. Officer-in-Charge, Defense Counsel Assistance Program (DCAP). DCAP is directly responsible to the CDC for the training and support of the DSO Marines.

a. DCAP is a Marine judge advocate, preferably serving in or selected to the grade of O-4/Major with the NMOS of 4409 (criminal law) who serves as head of DCAP.

b. DCAP is administratively assigned to HQSVC Bn, HQMC and receives administrative support from HQMC.

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

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

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

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

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

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

4. Regional Defense Counsel (RDC). An RDC is administratively attached to the LSSS but is directly responsible to the CDC for the delivery of defense counsel services within a region. A legal services specialist non-commissioned officer with prior military justice or defense experience is assigned to each RDC office.

a. 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 NMOS of 4409 (criminal law).

b. RDCs serve as the supervisory attorney for the SDCs and DCs assigned to their LSSS and their subordinate LSSTs.

c. RDCs select personnel to serve as Senior Defense Counsel and approve the assignment of judge advocates to serve as Defense Counsel.

d. Subject to the approval of the CDC, RDCs organize defense leadership billets in their region to ensure efficient and effective DSO mission accomplishment.

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

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

(2) Conducting, at a minimum, semi-annual site visits to 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 2006 of this Chapter.

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

f. 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.

5. 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 their LSST or an element thereof.

a. SDCs are Marine judge advocates, preferably serving in or selected to the grade of O-4/Major, normally with the NMOS of 4409 (criminal law), who serve as head of the defense section for the LSST. SDCs will be appointed in writing by the RDC.

b. SDCs are administratively attached to the LSST, but are responsible and accountable to their RDC and the CDC for the delivery of defense services by their LSST.

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

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

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

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

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

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

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

6. 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 the 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. 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.

7. Auxiliary Defense Counsel

a. 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. Staff judge advocates, deputy staff judge advocates, trial counsel, victim legal counsel, or review officers may not serve as auxiliary defense counsel.

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

8. Student Judge Advocates. Student judge advocates (MOS 4401) may be assigned by LSST OIC to support the LSST defense branch in a manner similar to that provided to support the military justice section. While assigned to the defense section, student judge advocates are under the supervision of and responsible and accountable to the DSO. 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.

9. Enlisted Support Personnel

a. 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.

b. Defense legal services support specialists are administratively assigned to the 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.

c. The Office of the Chief Defense Counsel of the Marine Corps should be supported by a legal services support specialist with formal paralegal training and in the rank of at least a staff sergeant/E-6. Also, the Offices of the Regional Defense Counsel should be supported by a legal services support specialist with formal paralegal training and in the rank of at least an E-6/Staff Sergeant.

10. Judge Advocate Reserve Defense Services Branch (JRD)

a. 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.

b. 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.

c. The Reserve DSO members are administratively attached to the Reserve Legal Support (RLS) Branch at the Judge Advocate Division, Headquarters, Marine Corps. However, these judge advocates are under the operational control and supervision of and responsible and accountable to the CDC.

2003. TOUR LENGTH

1. 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 billets and 12 months for defense 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.

2. 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.

3. 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.

4. 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.

5. 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.

2004. REASSIGNMENT

1. The reassignment of a Marine defense counsel requires careful planning and coordination between the RDC and the LSST OIC.

2. 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.

3. 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.

4. 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 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 would create a conflict of interest with concurrent service as a defense counsel.

2005. COLLATERAL DUTIES

1. 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.

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

2006. DETAILING

1. The CDC is the detailing authority for the judge advocates assigned to the DSO. Detailing authority includes the authority to remove a counsel from a case for good cause. The CDC may further delegate detailing authority for Marine defense counsel to subordinates within the DSO, subject to the restrictions set forth below. Further delegation of detailing authority will be published via CDC Policy Memorandum.

2. Prior to detailing a defense counsel to a particular case, the detailing authority will consider such factors as: the geographic locations of the accused and counsel, the 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.

3. When detailing a defense counsel to a particular case, the detailing authority shall ensure that: 1) standard detailing criteria are used; 2) the needs of the local commands are taken into consideration; 3) every accused receives zealous representation by a fully qualified counsel; and 4) every accused is detailed counsel in a timely manner.

4. The responsible detailing authority shall detail a defense counsel in writing to a particular case as soon as practicable and in no case later than:

a. Ten days of being notified via e-mail, fax, or other written means by corrections personnel, command representatives, the military justice section, or some other government official that an accused has been placed in pretrial confinement or arrest under R.C.M. 305.

b. Five days of being served notice of preferred charges.

c. Five days of being served 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.

5. 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.

6. With the consent of the SJA to CMC, the CDC may detail himself or herself to a case.

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

8. 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.

9. 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, 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 Staff Judge Advocate (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.

2007. 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.

2008. REQUESTS FOR INDIVIDUAL MILITARY COUNSEL (IMC)

1. Article 38, UCMJ, provides that an accused has the right to be represented by a military counsel of his own selection, if that counsel is reasonably available. JAGMAN section 0131 sets forth standards for determining the availability of a requested IMC.

2. Determining Authority for IMC requests

a. As the OIC of the DSO, the CDC is the determining authority under JAGMAN section 0131b(2) for all IMC requests for Marine defense counsel assigned to the DSO, except 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 the DCAP OIC. For IMC availability purposes, an RDC's organization encompasses the Legal Services Support Area (LSSA) 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 the SDCs and defense counsel assigned to their LSSTs and subordinate LSSTs. For IMC availability purposes, an SDC or defense counsel's organization is the 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).

3. 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.

4. Administrative Review and Appeal of IMC Request Denials

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

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

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

(4) 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.

2009. PROFESSIONAL RESPONSIBILITY COMPLAINTS. The SJA to CMC is the Rules Counsel for all Marine judge advocates, including Marine defense counsel. Informal professional responsibility complaints regarding Marine 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 (JAR) for resolution in accordance with any applicable CDC policy memos in effect.

2010. MISCONDUCT ALLEGATIONS. Allegations of misconduct (other than professional responsibility complaints) concerning members of the DSO will be resolved through the administrative chain of command.

2011. 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.

2012. BUDGETING AND FUNDING GUIDANCE

1. 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, as available.

2. All case-related expenses shall be provided by the convening authority, as required by JAGMAN section 0145.

2013. APPLICABILITY. This Chapter is applicable to: Marine judge advocates assigned duty as Marine defense counsel; 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 Chapter does not apply to judge advocates or legal services specialists attached to commands external to the Marine Corps.

LEGADMINMAN

CHAPTER 3

ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND
PREPARATION OF THE UNIT PUNISHMENT BOOK

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CHAPTER 3

ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND
PREPARATION OF THE UNIT PUNISHMENT BOOK

3000. PURPOSE. This Chapter provides information and instruction on enlisted nonjudicial punishment matters and the preparation of the Unit Punishment Book (UPB).

3001. GENERAL. Nonjudicial punishment (NJP) provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in Service members without the stigma of a court-martial conviction.

3002. AUTHORITY TO IMPOSE NONJUDICIAL PUNISHMENT (NJP)

1. Commanding Officers. All commanding officers may impose punishment under Article 15, UCMJ, upon military personnel of their command. For purposes of this paragraph, "commanding officer" is defined as one who is properly appointed to command an organization, or who, under applicable provisions of law, regulations, or orders, succeeds to such command due to transfer, incapacity, death, or absence of the previous commander. For this Chapter, "absence" means separation 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 keeping tabs on 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 5800.7 series, Manual of the Judge Advocate General (JAGMAN), section 0106c), the authority to impose NJP cannot be delegated unless by specific authorization of the Secretary of the Navy. Pursuant to 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, may impose the following punishments:

a. If imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days.

b. Correctional custody for not more than 30 consecutive days.

c. Forfeiture of not more than one-half of one month's pay per month for two months.

d. Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but enlisted members in pay grades above E-4 may not be reduced more than one pay grade, except that during time of war or national emergency this category of persons may be reduced two grades if the Secretary concerned determines that circumstances require the removal of this limitation.

e. Extra duties, including fatigue or other duties, for not more than 45 consecutive days.

f. Restriction to specified limits, with or without suspension from duty, for not more than 60 consecutive days.

2. Officers in Charge. Officers in charge of units designated by departmental orders, tables of organization, manpower authorizations, and 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 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.

3003. JURISDICTION OVER ACCUSED

1. 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, Manual for Courts-Martial (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).

2. 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)).

3. Except as provided in paragraph 3003.2, 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 (see Chapter 4 of this Manual).

4. Jurisdiction Over Reservists

a. Members of the Reserve component on active duty or inactive duty training are subject to the UCMJ. Such members are not, by virtue of termination of a period of active duty or inactive duty training, relieved from amenability to jurisdiction of the UCMJ for offenses committed during such periods of active duty or inactive duty training and may be ordered to active duty for the sole purpose of disciplinary proceedings (see JAGMAN sections 0107b, 0123d, 0123e, and 0123f).

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

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

3004. ADVICE TO ACCUSED BEFORE IMPOSITION OF NJP

1. An accused Marine may have NJP imposed without first being accorded 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 accorded 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).

2. Pursuant to Article 43, UCMJ, NJP may not be imposed for an offense committed more than two years before the imposition of punishment. However, the statute of limitations at court-martial is, with a few exceptions, 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.

3005. QUANTUM OF PUNISHMENTS-COMBINATION. Paragraph 5d of Part V, MCM contains instructions concerning combination of nonjudicial punishments.

3006. FORFEITURE IMPOSED AS NONJUDICIAL PUNISHMENT

1. 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).

2. The maximum permissible forfeiture is determined by rounding down to whole dollar amounts.

3. 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.

4. 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).

3007. SUSPENSION, REMISSION, MITIGATION, SETTING ASIDE

1. 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.

2. In addition to the officer who imposed the punishment, the following officers may also take remedial action: a successor in command to the imposing officer; the commander of any command to which the Marine is subsequently transferred; and, any other officer authorized to act on the punishment imposed.

3. There are certain restrictions on remedial action concerning punishment:

a. The power to set aside punishments and to restore some or all rights, privileges, and property affected by the executed portions of a punishment should ordinarily be exercised only when the authority considering the case believes that, under all circumstances of the case, the punishment has resulted in a clear injustice.

b. The power to set aside an executed punishment or to mitigate an executed or unexecuted reduction in grade to a forfeiture of pay should be exercised within 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 section 0118, may set aside or remove or direct the set aside or removal of the punitive letter. Removal or set aside occurs by issuing a second letter to the officer or enlisted member concerned announcing the cancellation of the punitive letter and setting forth in detail the reason for cancellation.

(2) If a punitive letter is removed or set aside by a superior authority before a copy of the original of such letter is forwarded to the 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 MMSB via encrypted email to smb.manpower.mmsb-20@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 inadvertently or by mistake of fact, such document may be removed only by Navy Personnel Command or the Commandant of the Marine Corps, as appropriate. In other cases, only the Secretary of the Navy acting through the Board for Correction of Naval Records may order removal of punitive letters and other documents in official records.

3008. UNIT PUNISHMENT BOOK (UPB)

1. A Unit Punishment Book (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 Chapter 4 of this Manual.

2. 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.

3. 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 ESR. The copy UPB form does not require original signatures or initials. Authorized abbreviations are encouraged (see MCO P1070.12 series, 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 SSN or EDIPI, as appropriate.

4. The use of correction tape and/or fluid is not authorized. Changes and corrections will be made by drawing a thin-inked line (using black or blue-black ink) through the character(s)/numeral(s)/word(s) to be changed or corrected. The 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 18, as applicable. See paragraphs 3006.4.f. and 3006.4.g. for corrective action requirements specific to blocks 6 and 7 of the UPB.

5. 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 3008.4 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 par. 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 portions of the punishment are suspended, enter the word "None." When suspending all or portions of the punishment, the specific punishment, the length of the suspension, and the terms for automatic remission will be reflected. Example: 2 Jun 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 3008.4 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 Users Manual (MCTFSPRIUM).

r. Items 18-21. Items 18-21 are self-explanatory.

6. The officer imposing NJP will prepare, or cause to be prepared, a summary transcript of the proceedings. This may be accomplished by using the form prescribed in 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.

7. 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.

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

9. 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.

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

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

b. A new UPB binder shall be opened at the beginning of each calendar year. UPB binders 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 MMSB via encrypted email to smb.manpower.mmsb-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 3008.3 above. However, copies forwarded to a higher level in the chain of command for disposition will not be maintained in the UPB binder.

3009. VACATION OF SUSPENSION

1. 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.

2. The commander will also ensure a copy of the summary transcript is provided to the IPAC/Administrative section. The IPAC/Administrative section will ensure the vacation is annotated in block 16 on the original UPB noting the diary number and date. The IPAC/Administrative section will ensure that the vacation proceeding is reported in Item 16 on the UPB form pursuant to paragraph 3008.5.p.(3) above. The IPAC/Administrative section will also ensure the updated UPB is filed in the Marine's OMPF and ESR.

3010. NJP APPEALS

1. Legal review of an NJP appeal is a function of the SJA of the command to which the Marine who received NJP belongs.

2. 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.

3. Upon request by the cognizant SJA, the Regional Review Office (RRO) will coordinate all requested legal reviews of NJP appeals.

4. Upon completion of the requested legal review, the RRO will return the NJP paperwork and review/recommendations to the requesting SJA.

3011. JUDGE ADVOCATE REVIEW

1. Before acting on an NJP appeal that includes any of the NJP punishments contained in subparagraph 3011.2 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.

2. NJP cases that are being appealed and include any of the following NJP punishments, require a judge advocate review prior to an NJP Appeal Authority's action on the NJP Appeal:

- a. Arrest in quarter 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.
- e. Extra duties for more than 14 days.
- f. Restriction for more than 14 days.
- g. Forfeiture of more than 14 days pay.

LEGADMINMAN

CHAPTER 4

OFFICER MISCONDUCT AND SUBSTANDARD PERFORMANCE OF DUTY

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CHAPTER 4

OFFICER MISCONDUCT AND SUBSTANDARD PERFORMANCE OF DUTY

4000. PURPOSE. This Chapter promulgates uniform policies, standards, and procedures for the reporting, disposition, and administrative processing of officers for possible separation as a consequence of alleged misconduct or substandard performance in the Marine Corps. This Chapter addresses two broad categories of the administration of officer misconduct: the Officer Disciplinary Notebook (ODN) and Boards of Inquiry (BOI)/Administrative Separation of Officers.

4001. GENERAL

1. Charge to Our Leaders. Marine Corps officers are a breed apart, entrusted with the leadership of the finest fighting organization in the world. When an officer violates the special trust and confidence placed in him or her or fails to adhere to the standards required of all Marine officers, immediate corrective action is required. Commanders are required to report all allegations of officer misconduct and then expeditiously process the matter in accordance with this Chapter. If this does not occur, we risk creating the appearance of or actually causing inequity and inconsistency in the treatment of officers and enlisted personnel who commit misconduct or whose performance of duty is substandard.

2. References. Secretary of the Navy Instruction (SECNAVINST) 1920.6_ series, Administrative Separation of Officers, is the authoritative source for the policies, standards, and procedures governing the administrative separation of officers in the Naval Service. Marine Corps Order (MCO) 1900.16_ series, Marine Corps Separation and Retirement Manual (MARCORSEPMAN), supplements the policies, standards, and procedures set forth in SECNAVINST 1920.6_ series and this Chapter. Any inconsistencies are resolved in favor of SECNAVINST 1920.6_ series.

3. Figures and Forms. All standardized figures and forms referenced in this chapter are available through the "FORMS" tab on the JAD public website.

4. Show Cause Authority. Paragraph 13d of SECNAVINST 1920.6_ series 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 are hereby delegated Show Cause Authority and are hereinafter referred to as Alternate Show Cause Authorities.

5. Expeditious Processing

a. SECNAVINST 1920.6_ series and this Chapter establish time processing goals for officer misconduct and substandard performance cases. However, unless there is a concurrent court-martial, there is no specific "speedy trial" rule. Commanders, staff judge advocates (SJAs), and legal services providers must therefore generate an internal sense of urgency in officer misconduct and substandard performance cases. There is no substitute for command attention in officer cases. Time processing goals set forth in this Manual do not provide a procedural 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 most

important that commanders dispose of cases consistently, equitably, and in a fair and just manner that best promotes good order and discipline. The disposition decisions of commanders relative to officer misconduct cases is 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 boundaries and few exceptions established by the MCM and SECNAVINST 1920.6 series, 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 a deliberate speed in handling officer discipline cases in the most appropriate manner.

c. The fair, just, and expeditious processing of officer cases benefits the parties involved and the command while minimizing the disruptive effects that officer cases have on other administrative areas such as promotions, permanent change of station (PCS)/permanent change of assignment (PCA) moves, retirements, and command/school slating.

d. 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 SJA, use the Officer Disciplinary Notebook Management System (ODNMS) to report and track all officer misconduct and substandard performance cases.

(2) Review all the cases reported on the ODNMS at least monthly.

(3) Regularly meet with the SJAs 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. We are a naval expeditionary force capable of administering discipline at any time and "in any clime and place." Commands shall coordinate with CMC (JAM) prior to deploying an officer with an active misconduct or substandard performance case.

(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.

4002. SPECIAL CONSIDERATIONS. This section identifies additional processing requirements and/or considerations in certain cases that historically have caused delays in the processing of officer misconduct and substandard performance cases.

1. Substance-Related Offenses

a. General

(1) 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. Accordingly, alcohol and drug offenses must and will be dealt with swiftly and effectively.

(2) In all substance-abuse incidents, the officer is assessed by the unit substance abuse control officer (SACO), counseled by the unit commander, disciplined (if warranted), and referred to the nearest substance abuse counseling center (SACC), or other service equivalent for screening in a timely manner.

(3) Regardless of the type of discharge, all commanders will ensure that no officer requiring treatment is separated until the treatment process is completed. This does not include aftercare or treatment failures. For example, the commander will not delay the discharge of an officer who is drug dependent 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.

(4) Officers who have been retained will be ordered into a treatment program recommended by the SACC and comply with aftercare program requirements.

(5) The policies and procedures in this section supplement the policies and procedures set forth in SECNAVINST 5300.28_ series, Military Substance Abuse Prevention and Control, and MCO 5300.17_ series, Marine Corps Substance Abuse Program. Commanders must ensure that the policies and procedures set forth in SECNAVINST 5300.28_ series and MCO 5300.17_ series are followed for all officers involved in a substance-related offense. Additionally, commanders must consult MCO P1610.7_ series, Performance Evaluation System (PES), for substance-abuse reporting requirements.

b. Alcohol-Related Incidents

(1) Definition. Pursuant to SECNAVINST 5300.28_ series, an alcohol-related incident occurs when a Marine commits an offense punishable under the UCMJ or by civilian authorities for which, in the judgment of the Marine's commanding officer (CO), the consumption of alcohol was a contributing factor.

(2) Formal Counseling. In accordance with MCO 5300.17_ series, all alcohol-related incidents will be the subject of formal command counseling (page 11 counseling) with the officer involved. The officer's blood alcohol concentration, if known, will be included in the counseling entry. Such counseling will be included in the officer's Official Military Personnel File (OMPF) in accordance with MCO P1070.12_ series, Individual Records Administration Manual (IRAM). Accordingly, the officer must be given the opportunity to make a statement in rebuttal. Such counseling is in addition to any directed comments set forth in the PES.

(3) Counseling and/or Treatment Referral. As leaders, we are charged with ensuring that every Marine receives treatment for any alcohol-related deficiencies. These deficiencies must be discovered as soon as possible to ensure timely treatment. Timely alcohol screening is a vital tool in determining proper administrative actions as well as follow-on promotion determinations. Accordingly, in any case involving an alcohol-related incident, commanders shall ensure the immediate alcohol screening by appropriate military or civilian medical agencies is completed to determine the likelihood of alcohol dependence or abuse.

(4) Mandatory Processing

(a) Subsequent Alcohol-Related Incident. Any officer who incurs a second alcohol-related incident during their naval career, regardless of whether the officer has entered a prescribed treatment program, shall be disciplined as appropriate and processed for administrative separation (see enclosure (3) of SECNAVINST 5300.28_ series for guidance on what constitutes a substantiated incident of impaired driving - such guidance supersedes the CO's discretion discussed in paragraph 4002.1.b.(1) above).

(b) Subsequent Abuse of Alcohol. An officer who returns to the abuse of alcohol and/or whose standards of conduct and performance declines following the successful completion of a treatment or aftercare program, shall be processed for separation if determined not amenable or qualified for additional treatment.

c. Drug-Related Incidents

(1) Definition. Pursuant to SECNAVINST 5300.28_ series, 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.

(2) Mandatory Processing. Drug-related incidents require mandatory processing as set forth in SECNAVINST 5300.28_ series and the MARCORSEPMAN.

(3) Counseling and/or Treatment Referral. In accordance with the Marine Corps Substance Abuse Program (MCO 5300.17_ series), commanders shall refer officers with a positive drug urinalysis or an admission to illegal drug use for screening by appropriate military or civilian medical agencies.

d. Documenting Substance-Related Incidents

(1) In accordance with MCO 5300.17_ series, the Marine Corps is required to identify, counsel, and treat Marines identified as alcohol or drug abusers or alcohol or drug dependent. Key program elements are timely identification, early intervention, effective treatment, rehabilitation, and appropriate disciplinary or administrative actions, followed by restoration to full duty or separation as appropriate. Accordingly, all substance-related incidents must be properly documented.

(2) 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 (JAM) pursuant to paragraphs 4005.3.c., 4008.1.c., and 4008.3 of this Chapter must include the following information to document that the officer was screened in accordance with MCO 5300.17_ series:

(a) Who conducted the screening (counselor, credentialed provider, etc.) and the name of the appropriate military or civilian medical agency.

(b) What diagnosis/finding was made by the qualified counselor/credentialed provider and what treatment was recommended or mandated, if any.

(c) When the screening was completed.

(d) When the officer completed the recommended or mandated initial treatment, or refused or failed treatment.

(e) Proof of completion of any recommended or mandated initial treatment.

(3) 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 (JAM) being unable to process the case.

(4) Promotion Implications of Alcohol-Related Incidents

(a) Any officer involved in an alcohol-related incident risks removal from the 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 Chapter.

(b) DUI/DWI. Pursuant to SECNAVINST 5300.40 series, the Department of the Navy has zero tolerance for driving while under the influence. All alcohol-related vehicle incidents will be properly reviewed prior to an officer's promotion to determine whether that officer is suitable for advancement to the next higher pay grade. As such, all alcohol screening and treatment documentation must be in the officer's OMPF prior to the convening of the promotion selection board, or the officer's promotion may be withheld.

e. 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 credentialed and privileged physician or psychologist, shall be processed for administrative separation.

2. Medical Qualification for Separation and Medical Evaluations

a. Paragraph 1011 of the MARCORSEPMAN sets forth the requirements for a medical evaluation prior to separation and retirement.

b. Medical Evaluation Requirements. An officer with more than 180 days of active duty service requires a medical evaluation prior to separation. This evaluation must be reviewed and specifically addressed by the chain of command and Alternate Show Cause Authority as to any medical condition affecting (or not affecting) the basis for separation. These medical evaluations shall be completed by appropriately privileged medical providers authorized to perform separation evaluations and shall be sufficient in scope and timing to meet separation medical requirements. The intent of performing these evaluations is to ensure that the Show Cause authorities and separation authority have all pertinent information about any medical condition(s) that may have a material impact on a Marine's behavior, including Post-traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI).

(1) These medical evaluations are standard separation evaluations per chapter 15 of the Manual of the Medical Department. Minimum requirements are: (1) the Marine'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. The CO, GCMCAs in the chain of command, and the Alternate Show Cause Authority shall review this report and any post-deployment health assessments for consideration of any medical issues affecting separation.

(2) Medical providers, the CO, 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. PTSD/TBI Evaluation

(1) When Required. In accordance with 10 USC § 1177, 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 meets any of the following criteria:

(a) Is being recommended for administrative separation with an Other Than Honorable characterization of service.

(b) Was deployed overseas to a contingency operation during the 24 months prior to the initiation of administrative separation proceedings.

(c) Is diagnosed by an appropriately privileged medical provider such as a physician, clinical psychologist, psychiatrist, licensed clinical social worker, or psychiatric advanced practice registered nurse as experiencing PTSD or TBI, or reasonably alleges the influence of PTSD or TBI.

1. In a case involving PTSD, the medical evaluation will be performed by an appropriately privileged medical provider such as a physician, clinical psychologist, psychiatrist, licensed clinical social worker, or psychiatric advanced practice registered nurse.

2. In a case involving TBI, the medical evaluation will be performed by an appropriately privileged medical provider such as a physician, clinical psychologist, psychiatrist, or other health-care professional as appropriate.

(2) Evaluation Requirements. PTSD and TBI evaluations must specifically include comments on the presence or absence of these conditions and, if present, the extent to which they affected the Marine's judgment and may have been a contributing factor in the basis for separation.

(3) GCMCA Report Requirements. For those cases in which PTSD or TBI was determined by an appropriately privileged medical provider such as a physician, clinical psychologist, psychiatrist, licensed clinical social worker, or psychiatric advanced practice registered nurse to be a contributing factor to one or more of the bases for separation, the GCMCA's report/endorsement shall, in light of that identified PTSD or TBI contributing factor, explain the reasons for the recommended separation and characterization of service.

d. CMC (JAM) will not process an officer being recommended for separation without the required medical evaluation.

e. Marines 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.

f. This section does not provide an additional procedural basis of appeal or redress for officers.

g. Exceptions to Medical Evaluation Requirements

(1) While every reasonable attempt will be made to provide a separating Marine officer with a final medical evaluation, it is recognized that there will be rare situations when that will be difficult or impossible to provide. Such situations include, but are not limited to:

(a) 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.

(b) 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.

(c) Unresponsive Reserve Marine officers. A medical evaluation is exempted for the purposes of this Section for Reserve Marine officers who are undergoing administrative separation proceedings and do not respond to notification and other requirements for administrative separation.

(d) Reserve Marine officers not on active duty with no history of combat experience or deployment. A medical evaluation is exempted 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.

(2) Requests for medical evaluations must be in writing and sent via certified mail, if available. If, after a reasonable amount of time (approximately 45 calendar days) elapses 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 impossible to provide the evaluation.

h. Medical Processing/Physical Evaluation Board (PEB). Pursuant to SECNAVINST 1850.4_ series, Department of the Navy Disability Evaluation Manual, disability separation is superseded by disciplinary or administrative discharge proceedings which result in a punitive discharge or administrative discharge for misconduct. Commands should review SECNAVINST 1850.4_ series and consult with CMC (JAM) for additional guidance.

3. Security Clearances. Any officer misconduct or substandard performance reportable under this regulation should be analyzed under SECNAVINST 5510.30_ series, Department of the Navy Personal Security Program Instruction, and MARADMIN 458/04, Clearance Eligibility for Officers, for possible security

clearance issues and any related reporting requirements, to include coordination with unit security managers. MARADMIN 458/04 permits separation processing of an officer who is disqualified for a security clearance. Typically 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. MARADMIN 458/04 is derived from SECNAV M-5510.30, the Department of the Navy Personnel Security Program Manual, which 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.

4. Domestic Violence

a. Lautenberg Amendment. The applicability of the "Lautenberg Amendment" should be considered in any instance of a domestic violence conviction. The Lautenberg Amendment makes it a felony for anyone convicted of a crime of domestic violence 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 and General Counseling Program. Child abuse and domestic abuse occurring in the Marine Corps 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_ series, 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_ series may result in delayed processing of a related officer misconduct case.

c. Domestic Abuse Repeat Offenders. In accordance with the MARCORSEPMAN, an officer who commits a "Substantiated" second domestic abuse offense, as defined and required by MCO 1754.11_ series, shall be processed for administrative separation in accordance with that order. 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 family 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.

4003. REPORTING OFFICER MISCONDUCT IN THE OFFICER DISCIPLINARY NOTEBOOK (ODN)

1. General. CMC's ODN is a database used to track officer misconduct and substandard performance in the Marine Corps. All information submitted to CMC (JAM) pursuant to the following paragraphs will be placed in CMC's ODN and will only be provided to those with a need to know. ODN entries will not be included in an officer's OMPF.

2. Responsibility to Report Officer Misconduct to CMC (JAM). Each GCMCA, or CO/officer-in-charge (OIC) of a Marine unit where the officer is not under the command of a Marine GCMCA, has an independent duty to report officer misconduct to CMC (JAM).

a. Misconduct Committed by Marine Officers. Upon receipt of credible information described in paragraph 4003.3 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 (JAM).

b. Misconduct Committed by Officers of Other Services. Upon receipt of information described in paragraph 4003.3 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 (JAM). In the case of officers of the Navy, the SJA must also coordinate with Navy Personnel Command (PERS 834).

3. Circumstances that Trigger an Initial Report to CMC (JAM)

a. Officer misconduct must be reported to CMC (JAM) 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 (JAM) for administrative discharge proceedings is possible under existing statutes and regulations.

(2) Involved in an incident or alleged, suspected, or reported to have committed misconduct that has generated, or is likely to generate, media interest.

(3) Incarcerated in a civilian, foreign, or military detention facility. An incident of this nature must be reported to CMC (JAM) within 24 hours of the command becoming aware of the incarceration.

(4) Arrested for, or suspected of, drunk driving or "DUI/DWI" by military or civilian law enforcement. While minor traffic offenses need not be reported, all DUI or DWI allegations must be reported.

b. When doubt exists as to whether an initial report is required, contact CMC (JAM) for guidance.

4. When an Initial Report Must be Made

a. Upon receipt of information described in paragraph 4003.3 above, the cognizant SJA must immediately report the allegation to CMC (JAM) following consultation with the GCMCA, unless otherwise coordinated with CMC (JAM). However, consultation with the GCMCA shall not unreasonably delay the notification to CMC (JAM).

b. In determining the timeliness of the report to CMC (JAM), consideration should be given to the gravity of the alleged, suspected, or reported misconduct, the anticipated media interest, and any upcoming administrative actions involving the officer, such as promotions, PCS moves, retirements, and command slating.

5. How Misconduct is Reported to CMC (JAM). All officer misconduct is reported to CMC (JAM) 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 JAM portion of the JAD public website.

a. Initial Reporting Requirements

(1) SJA Responsibilities. Upon receipt of information described above, the cognizant SJA will:

(a) Input the initial report into the ODNMS.

(b) Inform the cognizant Marine Force Commander and Alternate Show Cause Authority; however, this notification shall not delay the immediate notification to CMC (JAM).

(2) Content

(a) The initial report shall contain the information identified in the ODNMS user's guide.

(b) The initial report shall contain a detailed statement of the allegation to include the time, date, and location of the alleged offense.

(c) If the incident included involvement by law enforcement, the initial report must include the name of the city/county/state/federal law enforcement agency.

(d) In the event of a DUI/DWI arrest, the detailed statement must include the officer's BAC level and whether or not there were injuries to any person or if there was any property damage.

(e) While it is understood that 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.

(f) It is understood that 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 allegation.

b. Ongoing Reporting Requirements. To ensure that CMC is apprised of the most current status of open officer misconduct cases, all SJAs must:

(1) Input real-time updates of significant events into 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 potentially alter the amount of public attention that would be normally 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 preferral, referral, withdrawal, or dismissal of charges; acceptance of NJP; the delay or conclusion of a court-martial, BOI, or civilian court proceeding; and a finding that misconduct did not occur. All significant events must be immediately added to the chronology section of the ODNMS.

(2) Update and certify each case pending their review in the ODNMS by the 20th of each month. This requirement is in addition to the real-time update discussed in paragraph 4003.5.b(1) above. The "certify" button is

located at the end of each case in the ODNMS. This certification ensures that all cases are reviewed every month, even when there may not be any new developments in a case. When an SJA "certifies" an entry, he or she is endorsing the current case status on behalf of his/her commander and approving the release of the provided information to CMC.

(3) Track every case under their cognizance in the ODNMS until the case is closed. Although SJAs are only responsible for inputting real-time and monthly updates into the ODNMS when the case is pending action at their commander's level of review, SJAs must monitor all cases under their cognizance to ensure the timely, efficient, and accurate processing of officer misconduct cases through the chain of command.

4004. DISPOSITION OF ALLEGATIONS OF MISCONDUCT

1. General. Allegations of misconduct will result in the GCMCA either finding that the officer did commit the alleged misconduct or that the officer did not commit the alleged misconduct. When the GCMCA finds that misconduct occurred, the GCMCA must decide on an appropriate disposition and forward the case to the Alternate Show Cause Authority with a show cause recommendation. This section details options that are available to the GCMCA. In every case, a Report must be submitted to CMC (JAM) in accordance with paragraph 4005.

2. Disposition Options. If the GCMCA finds that misconduct occurred, the GCMCA must choose one of the following options:

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).

(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. Such a counseling entry shall state that the counseling is pursuant to paragraph 3005 of the IRAM, not paragraph 6105 of the MARCORSEPMAN, which only applies to enlisted Marines. The use of the MARCORSEPMAN 6105 counselings will not be used in officer cases. The officer will acknowledge the adverse counseling and be provided with an opportunity to submit a rebuttal. Such administrative counselings shall be included as an enclosure to a Report of Misconduct. CMC (JAM) will forward the adverse matters for inclusion in the officer's OMPF.

(2) Informal Counseling and NPLOC. These administrative actions do not become part of the officer's OMPF. Such actions 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) Procedures

(a) 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 4-1 or 4-2, as appropriate.

(b) 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 5800.7_ series (JAGMAN) and in paragraph 4, Part V, MCM.

(c) If NJP is imposed, the officer must be advised of the right to appeal as specified in JAGMAN section 0116 (must use Figure 4-3).

(d) 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 4-4).

(e) Because UPBs are not used in officer NJPs, if forfeitures or fines are awarded at an officer NJP, a copy of the Report of NJP (discussed in paragraph 4005.3.c.(3) 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 and/or fine (must use Figure 4-5).

(2) Relationship with Civilian Court Proceedings. Pursuant to the parameters of 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 after receiving the permission of the GCMCA.

(3) Appeals

(a) 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).

(b) No report of officer NJP shall be made to CMC (JAM) 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 (JAM) must be notified when charges are preferred, referred, withdrawn, or dismissed against an officer, and when a court-martial is delayed or concluded. Such notification shall be made through the ODNMS (see paragraph 4003.5).

(2) Relationship with Civilian Court Proceedings. 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 after receiving the permission of the GCMCA.

(3) Upon completion of a court-martial and action by the convening authority pursuant to R.C.M. 1107, MCM, the cognizant commander will cause the following actions to be taken, as appropriate (at the discretion of the commander, some of these actions may be taken prior to completion of the convening authority's action; e.g. forwarding a Report of Misconduct or Report of Court-Martial Conviction to the Alternate Show Cause Authority with

a recommendation that the officer be required to show cause for retention at a BOI):

(a) 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 4005. The GCMCA has the following options:

1. Find that the officer did not commit the alleged misconduct and forward a Report of No Misconduct in accordance with paragraph 4005.

2. Find that the officer committed the alleged misconduct and forward a Report of Misconduct in accordance with paragraph 4005. 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_ series, enclosure (8), paragraph 11).

(b) 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 4005.

(c) 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 (JAM) and the case will be closed in the ODNMS.

(4) Commanders shall not discharge a dismissed officer outside CONUS, except under special circumstances and upon request to SECNAV.

4005. REPORTING DISPOSITIONS OF MISCONDUCT

1. 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 administratively separated via notification procedures for probationary officers. All allegations of misconduct must be formally closed with a report of disposition.

2. Reporting Unsubstantiated Allegations of Misconduct. In all cases where the GCMCA finds that the misconduct did not occur, the GCMCA will generate a Report of No Misconduct (must use Figure 4-6). 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 (JAM). 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 (JAM) will close the case in the ODNMS. This Report will not be placed in the officer's OMPF.

3. Reporting Dispositions of Substantiated Misconduct. A report must be generated in all cases where the GCMCA finds that misconduct occurred.

a. Purpose. This report serves two purposes. First, it will provide 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 will provide a complete record of the misconduct and its disposition for inclusion in the officer's OMPF.

b. Routing

(1) 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 SECNAV; Assistant SECNAV, Manpower and Reserve Affairs (ASN M&RA); or DC M&RA, the Show Cause Authority, may close the case if an officer is found 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 ASN M&RA, via DC M&RA, for final disposition. ASN M&RA remains the sole separation authority for officer separations resulting from adverse administrative processing.

(2) Nothing in this Chapter should be interpreted to preclude an Alternate Show Cause Authority from directing an officer to show cause.

c. Format and Content. The format and content of the report varies based on the disposition of the misconduct. Reporting formats include the Report of Misconduct, Report of NJP, Report of Civilian Conviction, and Report of Court-Martial Conviction.

(1) General Requirements

(a) 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.

(b) Matters in Aggravation and Extenuation and Mitigation. All reports shall include a concise explanation of the circumstances surrounding the offense(s), including significant matters in aggravation and extenuation and mitigation.

(c) Recommendation. A recommendation as to whether the officer should show cause or be administratively separated via notification procedures (for probationary officers) under SECNAVINST 1920.6_ series, including the basis for such recommended course of action.

(d) Investigation. All reports must include the investigation upon which 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.

(e) Evidence. All reports must include a legible copy of all of the evidence considered, or photographic representations, or descriptions through affidavit of any evidence that is not easily includable.

(f) SACC 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 DC M&RA until this information/documentation is provided to CMC (JAM) (see paragraph 4002.1.d.).

(g) Medical Evaluation. If separation is recommended, the report must include documentation showing that the officer is qualified for separation as set forth in paragraph 4002.2. Additionally, the report must include documentation of the completion of a PTSD/TBI screen if required and with comments on the presence or absence of such conditions.

(h) Advanced Education Assistance

1. All reports must contain an acknowledgment from the officer that, if separated prior to 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 4-7).

2. If the officer received advanced education assistance, all reports must state 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).

(i) OMPF Acknowledgement. All reports must contain a statement that the officer acknowledges that adverse material concerning the incident 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 in writing (must use Figure 4-8).

(j) 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 raises legal errors, the GCMCA must address each legal error in the endorsement.

(2) Report of Misconduct

(a) A Report of Misconduct is required in all cases of misconduct in which a Report of NJP, Report of Court-Martial Conviction, or Report of Civilian Conviction is not appropriate and where the first GCMCA in the chain of command finds that the misconduct occurred. A sample Report of Misconduct is contained in Figure 4-9.

(b) Even when minor misconduct is found, a Report of Misconduct must be produced and forwarded for a show cause decision.

(c) In all cases where the command addresses the misconduct administratively, a copy of the formal counseling or adverse fitness report (if any) will be included as an enclosure to the Report of Misconduct. As discussed in paragraph 4004.2.a., if the officer receives an informal

counseling or a NPLOC, the Report shall state "SNO's misconduct was addressed via administrative measures" (see JAGMAN section 0105).

(3) Report of NJP

(a) A Report of NJP is required in all cases in which NJP is imposed. A sample Report of NJP is contained in Figure 4-5.

(b) In addition to the general requirements set forth above, the Report of NJP will include:

1. All correspondence incident to the imposition of NJP.
2. All matters relating to an appeal.
3. A verbatim transcript of the record of the NJP hearing.

(4) Report of Civilian Conviction

(a) 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 4-10.

(b) A Report of Civilian Conviction is still required in cases where the allegations are pleaded down to a lesser offense or when the officer participates in a court sanctioned diversionary program that permits the subsequent dismissal of the charge. Depending on the circumstances of the case, the Report may be more appropriately characterized as a Report of Misconduct vice a Report of Civilian Conviction.

(c) In addition to the general requirements set forth above, the Report of Civilian Conviction will include:

1. Civilian court documents reflecting the findings of the court with respect to all charges and the sentence imposed.
2. Documents reflecting the satisfaction of any sentence imposed.

(5) Report of Court-Martial Conviction

(a) 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 4-11.

(b) 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.

d. Coordination When an Officer is Pending Civilian Adjudication

(1) Civilian Adjudication/Sentencing Delayed. 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 (JAM) will not take action on a case while civilian adjudication is still pending. However, in certain cases, proceeding with a report of misconduct prior to civilian adjudication may be appropriate. Commanders may request, in writing and with appropriate justification, that a case be forwarded prior to the conclusion of civilian adjudication. Such requests shall be forwarded via the chain of command to CMC (JAM) 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 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 the civilian charges, a Recommendation for Administrative Separation may be routed to SECNAV (ASN M&RA) via the Alternate Show Cause Authority and the Show Cause Authority if the command believes that there is a sufficient basis to separate the officer for cause.

(2) NJP/Administrative Action Concurrent with Civilian Adjudication. If NJP or other administrative action is taken around the same time as the civilian adjudication, the incident and conviction may be documented in one report, e.g. Report of NJP and Civilian Conviction.

e. Timing

(1) Reports shall be forwarded to CMC (JAM) as detailed below.

(a) 30 calendar days from the imposition of NJP if no appeal is submitted.

(b) 30 calendar days from final action on the NJP appeal.

(c) 30 calendar days from the signing of the convening authority's action following court-martial.

(d) 30 calendar days from the date of civilian conviction.

(2) Each intermediate endorser before the Alternate Show Cause Authority shall have 20 calendar days to forward a report. 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 or recommended or mandated initial treatment or the medical evaluation, notify CMC (JAM) of the reason for the delay and the anticipated completion date.

f. 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 be provided with 10 calendar days to submit a rebuttal. The first GCMCA in the chain of command may grant an extension upon written request with supporting reasons for the delay, and by written grant of a specific period of 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 (refer to paragraph 4008.3 below).

g. ODNMS Actions. The SJA/DSJA or authorized support staff shall upload all reports and endorsements to the ODNMS and make appropriate entries to the

chronology section. CMC (JAM) will update and certify all cases pending review and/or endorsement by CMC (JAM), the SJA to CMC, DC M&RA, or ASN M&RA.

4. Action by Show Cause Authorities

a. 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_ series and this Chapter, 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 DC M&RA via CMC (JAM) for processing. Only DC 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.

b. Show Cause Authority. Upon receipt of one of the reports identified above from the Alternate Show Cause Authority, the Show Cause Authority may direct an officer to show cause at a BOI in accordance with SECNAVINST 1920.6_ series, initiate separation via notification procedures (if applicable), forward the matter to SECNAV for action, close the case, or take other appropriate action.

4006. REPORTING AND PROCESSING ALLEGATIONS OF SUBSTANDARD PERFORMANCE OF DUTY

1. 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_ series and this Chapter. 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.

2. Reporting Substandard Performance of Duty in the ODN. In addition to officer misconduct, substandard performance of duty cases are reported in the ODN.

a. Responsibility to Report Officer Substandard Performance of Duty to CMC (JAM). The same individuals identified in paragraph 4003.2 are responsible for reporting officer substandard performance of duty to CMC (JAM).

b. Circumstances that Trigger an Initial Report to CMC (JAM). Officer substandard performance of duty must be reported to CMC (JAM) 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, including but not limited to:

(1) A probationary officer is notified or will be notified of the commander's recommendation for administrative separation based on substandard performance of duty as set forth in SECNAVINST 1920.6_ series.

(2) An officer receives an adverse fitness report for a basis of separation identified in SECNAVINST 1920.6_ series.

(3) An officer's promotion is delayed due to substandard performance of duty.

c. When an Initial Report Must be Made. The same procedures identified in paragraph 4003.4 are applicable to reporting officer substandard performance of duty to CMC (JAM).

d. How Substandard Performance of Duty is Reported to CMC (JAM). All substandard performance of duty is reported to CMC (JAM) using the ODNMS. An ODNMS user's guide is available on CMC (JAM)'s SharePoint site. The same procedures identified in paragraph 4003.5 are applicable to reporting and tracking substandard performance of duty cases.

3. 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 decide on an appropriate disposition and forward the case to the Alternate Show Cause Authority with a show cause recommendation. In any case, a Report must be submitted to CMC (JAM) in accordance with paragraph 4006.3.c. and Figures 4-12 and 4-13 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 identified in paragraph 4004.2.a. 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 make a recommendation as to 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.

(1) 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 4-12). 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 (JAM). 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 (JAM) will close the case in the ODNMS. This Report will not be placed in the officer's OMPF.

(2) 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. An example Report is contained in Figure 4-13. The routing, format, and content requirements set forth in paragraphs 4005.3.b. and 4005.3.c.i. of this Chapter apply to Reports of Substandard Performance of Duty. Additionally, the service requirements and ODNMS actions set forth in paragraphs 4005.3.f. and 4005.3.g. apply to Reports of Substandard Performance of Duty.

d. Action by Show Cause Authorities. The same procedures identified in paragraph 4005.4 are applicable to Show Cause Authority and Alternate Show Cause Authority action on a Report of Substandard Performance of Duty.

4007. BOARDS OF INQUIRY

1. General. The purpose of a BOI and the policies and procedures for the conduct of a BOI are contained in SECNAVINST 1920.6_ series. The information in this section supplements the policies and procedures set forth in SECNAVINST 1920.6_ series.

2. Convening a BOI

a. 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_ series and this Chapter (see Figures 4-14 and 4-15). The SJA for the Alternate Show Cause Authority (or CMC (JAM) for DC M&RA) will forward, via the chain of command, 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.

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. Example Notifications of BOI are contained in Figures 4-16 and 4-17.

(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.

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_ series. Any delay in the commencement of the BOI beyond the specified time 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 set forth in SECNAVINST 1920.6_ series. A sample convening order is contained in Figure 4-18.

e. Minimum Qualifications for BOI Recorder and Legal Advisor

(1) 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.

(2) 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.

(a) The legal advisor cannot be the SJA or Deputy SJA to the GCMCA in the respondent's chain of command.

(b) 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.

(c) The legal advisor shall not participate in closed sessions of the Board.

(3) Waiver of Minimum Qualifications. If the minimum qualifications for the BOI recorder or legal advisor cannot be met, the SJA for the GCMCA may request a waiver of the minimum requirements from CMC (JAM) (see Figure 4-19). This paragraph is intended to ensure that adequately qualified personnel are detailed as BOI recorders and legal advisors, and is not intended to, and does not, create any rights, entitlements, or defenses arising out of the failure to comply with this paragraph.

f. Conduct of the BOI

(1) The Board shall follow the script contained in Figure 4-20.

(2) The Findings Worksheet (see Figure 4-21) shall be completed and signed by all voting members of the Board and counsel for the respondent directly upon conclusion of the Board.

g. Transcript of Hearing

(1) Substantiated Finding. In all cases where misconduct and/or substandard performance of duty is substantiated, a verbatim 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. Any delay in the preparation of the transcript shall be explained in the GCMCA's endorsement to the Report of the BOI.

(2) Unsubstantiated Finding. In cases where no misconduct or substandard performance of duty is substantiated, 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. Any delay in the preparation of the transcript shall be explained in the GCMCA's endorsement to the Report of the BOI.

h. Report of the Board of Inquiry. The Report of the BOI is prepared in accordance with SECNAVINST 1920.6_ series. 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 4-22 and 4-23) 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 nonconcurring member. Within 10 calendar days of receipt, the nonconcurring member will sign the Report of the BOI. The non-concurring member must also concurrently submit a minority report which includes the extent of non-concurrence as to each finding and recommendation and the reasons therefore (see Figure 4-24).

(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 4-25).

(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 submit an extension request to the Alternate Show Cause Authority or Show Cause Authority who directed the BOI. Such requests for extension shall not exceed 20 calendar days.

(5) If the BOI substantiates substandard performance of duty, misconduct, or moral or professional dereliction, even if the Respondent's counsel receives a copy of the Report of the BOI, 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. The officer shall be given 10 calendar days in which to prepare a rebuttal. The officer may waive the right to submit a rebuttal in writing. (Must use Figure 4-8).

(6) Upon completion of review by the respondent's counsel (or respondent, if no counsel was elected), the entire package with the respondent's comments shall be provided to the GCMCA for endorsement. If the respondent or respondent's counsel raises legal errors, the GCMCA must address each legal error in the endorsement. The GCMCA must also explain any delay in the preparation or processing of the Report of the BOI.

i. Endorsements and Recommendations. The first GCMCA in the chain of command must forward the Report of the BOI to SECNAV via the chain of command, the Alternate Show Cause Authority, and Show Cause Authority (must use Figure 4-26). 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_ series, the endorsements to the Report of the BOI must include/address the following:

(1) A recommendation as to whether the findings and recommendations of the BOI should be approved or denied.

(2) If separation is recommended and the officer is not retirement eligible, a recommendation as to characterization of service, and in the case of a respondent who is retirement eligible, a recommendation for retirement grade.

(3) Medical Evaluation. If separation is recommended, a medical evaluation in accordance with paragraph 4002.2 of this Chapter, if not already included in the package, including the PTSD/TBI screen if required and comments on the presence or absence of such conditions.

(4) SACC Screen. 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 4002.1.d. of this Chapter , if not already included in the package.

(5) Advanced Education Assistance Recoupment. 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.

j. Involuntary Leave. According to 10 U.S.C. §1182 and SECNAVINST 1920.6_ series, if a BOI recommends that an officer should be separated, that officer may be required to take involuntary leave, with such leave to begin 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 P1050.3_ series, Regulations for Leave, Liberty, and Administrative Absence, Enclosure (1), paragraph 26 implements the Marine Corps policy on leave awaiting administrative separation and excess leave.

4008. ADMINISTRATIVE SEPARATION OF OFFICERS

1. Administrative Separation of Probationary Officers

a. General

(1) In accordance with SECNAVINST 1920.6_ series, a commander, an Alternate Show Cause Authority, or the Show Cause Authority may recommend to SECNAV that a probationary officer be administratively separated via notification procedures due to either misconduct or substandard performance of duty. This procedure does not afford the officer a hearing, and serves as an expeditious means to separate the officer at the discretion of SECNAV.

(2) The least favorable characterization of service that an officer may receive when separated in accordance with the notification procedure for misconduct is General (Under Honorable Conditions). The only characterization of service that an officer may receive when separated in accordance with the notification procedure for substandard performance of duty is Honorable. If the Show Cause Authority or an Alternate Show Cause Authority believes that an Other Than Honorable characterization of service is appropriate for a probationary officer, he or she may direct a BOI.

b. Who May Be Separated Via Notification Procedures

(1) 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 for promotion to the grade of WO. Reserve WOs are in a probationary status for six years from the date upon which they receive their warrant for promotion to the grade of WO.

(2) Officers who have exceeded the probationary threshold are non-probationary. Accordingly, they cannot be processed for separation without first being afforded the opportunity to show cause for retention at a BOI.

c. Procedures for Processing an Officer for Separation via Notification Procedures

(1) Notification. The officer shall be notified of the rights contained in SECNAVINST 1920.6_ series.

(a) 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 (JAM).

(b) 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 4-27).

(2) 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 signature of the notification. Service of the notification constitutes the respondent's official notification that the officer is being processed for administrative separation.

(3) Respondent's Right to Submit Matters

(a) The respondent shall be afforded the opportunity to submit matters in response to the separation recommendation (see Figure 4-28).

(b) 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 grant an extension upon written request with supporting reasons for the delay, and by written grant of a specific period of delay.

(4) Submission to SECNAV

(a) 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 4-29. 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. Medical evaluation in accordance with paragraph 4002.2 of this Chapter , if not already included in the package, including the PTSD/TBI screen if required, with comments on the presence or absence of such conditions.
 5. SACC Screen. 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 4002.1.d. of this Chapter, if not already included in the package.
 6. Advanced Education Assistance Recoupment. 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 SECNAV 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 denied.
 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.
2. Administrative Separation of Non-Probationary Officers. Officers who have exceeded the probationary threshold cannot be processed for separation without first being afforded the opportunity to show cause for retention at a BOI. BOI procedures are discussed above in paragraph 4007.
3. 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).

a. Types

(1) Retirement Request in Lieu of Further Administrative Processing

(a) A request for retirement in lieu of further administrative processing shall contain the information contained in SECNAVINST 1920.6_ series. A sample is contained in Figure 4-30.

(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.

(2) Resignation Request in Lieu of Further Administrative Processing. When tendering a resignation, the requesting officer must include the following:

(a) 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.

(b) A statement that the officer understands that the request is voluntary and may only be withdrawn with the permission of SECNAV.

(c) Whether 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 contained in enclosure (1) to SECNAVINST 1920.6_ series.

(d) 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.

(e) The officer's requested characterization of service.

(f) A statement that the officer has consulted with counsel, including counsel's name, grade, and branch of service for military counsel and 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.) providing the basis (i.e., the nature and circumstances) of the conduct 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) 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) A sample resignation request in lieu of further administrative processing is contained in Figure 4-31.

(3) Resignation in Lieu of Trial (RILT)

(a) A RILT shall contain the information contained in enclosure (3) of SECNAVINST 1920.6_ series and paragraph 4104.4 of the MARCORSEPMAN.

(b) A sample RILT is contained in Figure 4-32.

b. Separation/Retirement Date. Separation and retirement dates are effective upon approval by SECNAV and subsequent issuance of the discharge message from CMC (MMSR). Consequently, an officer need not, and normally should not, request a specific separation date.

c. Endorsements and Routing. Requests for resignation/retirement shall be addressed to SECNAV via the chain of command, the Alternate Show Cause Authority, and DC M&RA. DC M&RA is the denial authority for all resignation and retirement requests. The endorsements shall contain:

(1) A recommendation as to whether the resignation/retirement request should be approved or denied.

(2) If approval is recommended, the recommended characterization of service (for resignations and retirements), and for retirements, a recommended retirement grade for retirements.

(3) Medical Evaluation. If approval is recommended, a medical evaluation in accordance with paragraph 4002.2 of this Chapter, if not already included in the package, including the PTSD/TBI screen if required and comments on the presence or absence of such conditions.

(4) SACC Screen. 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 4002.1.d. of this Chapter, if not already included in the package.

(5) Advanced Education Assistance Recoupment. If approval 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, 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.

4. Voluntary BOI 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 (must use Figure 4-33 for nonretirement eligible officers and Figure 4-34 for retirement eligible officers):

(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) 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 paygrade than currently held and the retirement grade will be the highest grade in which the officer served satisfactorily, as determined by SECNAV.

(4) If the officer is not retirement eligible, the officer's requested characterization of service and if retirement eligible, the officer's requested retirement grade.

(5) A statement that the officer has consulted with counsel, including counsel's name, grade, and branch of service for military counsel and counsel's name and address if civilian counsel is retained.

(6) If the officer is retirement eligible, a statement that the officer admits that his or her performance of duty was substandard, and if the retirement-eligible 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. If the officer is not retirement eligible, a statement explaining the basis (i.e., the nature and circumstances) for the BOI waiver.

(7) The investigation and any other documentation (e.g., NJP, civilian conviction, court-martial, etc.) providing the basis of the conduct as well as a summary of the relevant evidence.

(8) 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.

(9) 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.

(10) 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.

b. Endorsements and Routing. BOI waivers shall be addressed to SECNAV via the chain of command, the Alternate Show Cause Authority, and 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, and the a recommended retirement grade for retirement-eligible officers.

(3) Medical Evaluation. If approval is recommended, a medical evaluation in accordance with paragraph 4002.2 of this Chapter, if not already included in the package, including the PTSD/TBI screen if required and comments on the presence or absence of such conditions.

(4) SACC Screen. 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 4002.1.d. of this Chapter, if not already included in the package.

(5) Advanced Education Assistance Recoupment. If approval 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, 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.

4009. RELATED PERSONNEL ACTIONS

1. Personnel/Administrative Hold

a. Upon receipt of the required notification of officer misconduct or substandard performance of duty as required in paragraphs 4003 and 4006 of this Chapter, the Director, Manpower Management (Dir, MM), in conjunction with local administrative centers, will hold in abeyance all personnel actions (such as promotion, retirement, separation, transfer to the Reserve component, PCS/PCA orders, or PEBs) relevant to reported officers. Such a Personnel/Administrative Hold carries with it no punitive stigma, but rather is implemented to maintain the *status quo* until these matters are resolved by the cognizant commanders and/or civilian authorities.

b. In limited circumstances, i.e. instances of extraordinary delay in the adjudication of a civilian case or mission requirements, commanders may request, in writing and with appropriate justification, execution of PCS orders or transfer to the Reserve component prior to resolution of the allegation(s). Such requests shall be forwarded via the chain of command to CMC (JAM) for review and will be considered on a case-by-case basis.

2. Service Obligation. As provided in paragraph 1.a of enclosure (2) of SECNAVINST 1920.6_ series, officers serve at the pleasure of the President and no terminal dates are established for their commissions. In addition, as provided in paragraph 6 of SECNAVINST 1920.6_ series, neither retirement nor release from active duty affects 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 USC §

1181 and the provisions of SECNAVINST 1920.6_ series, SECNAV has been delegated the authority to administer the separation of officers for voluntary and involuntary reasons.

3. Mandated Separation Dates. SECNAVINST 1920.6_ series 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, separation is mandated by statute, and can only be deferred in the case of trial by court-martial. Administrative processing for cause is not a valid reason to retain an officer on active duty under these circumstances.

4010. PROMOTIONS

1. General. The Services have an obligation to select those officers that are best and fully qualified for promotion to meet the needs of the Services. Accordingly, it is important that selection boards have all relevant information available when making a recommendation on 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.

2. Procedure. Adverse information is not always available to promotion selection boards. This most often 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 (JAM) 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 (JAM) is responsible for screening each monthly promotion MARADMIN prior to its release as an additional safeguard against recent misconduct.

a. 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 the two is largely based upon timing.

(1) 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 (JAM) and Officer Promotions (MMPR-1).

(2) 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.

b. Delays of promotion will be handled in accordance with applicable directives and are not automatic (see paragraph 5010.3 below).

3. Reporting. Each monthly promotion MARADMIN contains a paragraph charging 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.

a. Officers selected for promotion but not listed in the monthly MARADMIN may not be delayed until the officer's name appears in the monthly promotion MARADMIN for promotion the following month.

b. 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 (JAM) and Officer Promotions (MMPR-1) immediately to ensure appropriate notifications are made to the officer and in the MCTFS.

c. 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 (JAM) for assistance in drafting the written notice. Figure 4-54 provides a command promotion delay template that may be used in the event that consultation with CMC (JAM) is not possible prior to the effective date of promotion.

4. 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 and the officer has not been ordered separated from the Service, CMC (JAM) will provide a Notice and Comment letter notifying the officer that he may submit matters in support of his promotion.

a. The Notice and Comment letter will be sent by CMC (JAM) directly to the officer via electronic mail. CMC (JAM) will send a courtesy copy to the appropriate staff judge advocates within the officer's chain of command.

b. 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 and approval by his or her CO. If no matters are received within this period, and an extension has not been requested and approved, this will constitute a waiver of the officer's right to submit matters and his or her promotion delay/withhold will be processed accordingly. The officer shall submit extension requests to his or her CO via the SJA.

c. Promotion matters shall be addressed to CMC 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 (JAM) for routing to CMC. Commanders are encouraged to clearly address the nature of the officer's misconduct or substandard performance of duty and the commander's reasoning for the recommendation regarding promotion.

d. If the officer declines to submit matters, he or she shall notify the chain of command in writing using the acknowledgement letter that CMC (JAM) provides as an enclosure to the Notice and Comment letter. The declination shall then be forwarded to CMC via the chain of command using the process described in paragraph 5010.4.c.

5. Adverse Material Advisory Board (AMAB)

a. Promotion packages are reviewed by the AMAB. The AMAB consists of the SJA to CMC; Dir, MM; and DC M&RA. After AMAB review, the Staff Director,

Headquarters Marine Corps and the Assistant CMC will also review promotion packages. Each general officer in this process personally reviews the promotion package and makes a recommendation to CMC. CMC will personally review every promotion package and make a final decision or recommendation.

b. The routing of a promotion package after the AMAB has reviewed it varies depending on the rank of the officer and whether his or her promotion has been delayed or withheld (see MCO P1400.31_ series, Marine Corps Promotion Manual, Volume 1, Officer Promotions; SECNAVINST 1420.1_ series, Promotion, Special Selection, Selective Early Retirement, and Selective Early Removal Boards for Commissioned Officers of the Navy and Marine Corps; SECNAVINST 1412.6_ series, 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_ series, 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.

6. Promotion Recommendations. As stated in paragraph 4010.4.c. above, command endorsements should contain a recommendation regarding promotion and, if applicable, appropriate date of rank. An officer's promotion delay/withhold will ultimately have one of three outcomes: promotion with original date of rank, promotion with an adjusted date of rank, or removal from the promotion list.

a. Promotion with original date of rank is generally appropriate if allegations against an officer have been unsubstantiated.

b. If promotion is authorized, SECNAV may adjust an officer's date of rank for any part of delay in which he or she determines that an officer was unqualified for promotion. SECNAV has delegated this authority to 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.

c. If an officer is removed from the promotion list, he or she will be considered to have failed selection.

LEGADMINMAN

CHAPTER 5

ABSENTEES, DESERTERS, IN HANDS OF CIVILIAN AUTHORITIES (IHCA),
AND IN HANDS OF FOREIGN AUTHORITIES (IHFA)

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CHAPTER 5

ABSENTEES, DESERTERS, IN HANDS OF CIVILIAN AUTHORITIES (IHCA), AND IN HANDS OF FOREIGN AUTHORITIES (IHFA)

5000. PURPOSE. This Chapter sets forth the procedures and responsibilities for processing Marine Corps absentees and deserters, absentees from other branches of the armed forces who are being held by the Marine Corps pending return to that branch of the armed forces, and for Marines detained pending disposition of civilian charges.

5001. GENERAL. The provisions of this Chapter cover all Marine Corps personnel serving on, or ordered to report to, active duty in the armed forces of the United States and members of the reserve components serving on active duty (see UCMJ, Article 2 and MCO 1001R.1_, Marine Corps Reserve Administrative Management Manual (MCRAMM)).

1. If there is evidence at the time of absence which indicates that the individual is not an unauthorized absentee, or if such evidence subsequently develops, the unit commander will initiate an inquiry to determine if action is required under MCO 3040.4_ series, Marine Corps Casualty Procedures Manual (MARCORCASPROCMA).

2. Caution shall be exercised to ensure that Marines who ultimately could be classified as "missing" are not initially reported as "unauthorized absentees" or "deserters." A Marine who, in a combat zone or deployed to a contingency operation, is unaccounted for shall be listed initially as Duty Status, Whereabouts Unknown (DUSTWUN) rather than as Unauthorized Absence (UA) or deserter status. The MARCORCASPROCMA provides guidance for making missing status determinations.

3. The Deserter Information Point (DIP), Headquarters, U.S. Marine Corps, is required, under normal conditions, to enter every declared deserter in the Federal Bureau of Investigation's National Crime Information Center (NCIC) Wanted Persons File upon receipt of the DD Form 553 (Absentee Wanted by the Armed Forces). Expeditious reporting of unit diary entries and subsequent preparation and submission to the DIP of the DD Form 553 is required by all reporting units. Complete descriptive information must be provided on the DD Form 553 before entries can be made in the NCIC. The DIP is a 24-hour operation that can be contacted at (703) 604-3667/0395 or FAX (703) 604-6666, DSN 664.

4. Forms and documents

a. All referenced DD Forms can be found at:
<http://www.dtic.mil/whs/directives/infomgt/forms/index.htm>.

b. All applicable NAVMC documents are available at:
<https://navalforms.documentservices.dla.mil/web/public/forms>.

c. All other memorandums and letters referenced in this chapter are available through the "FORMS" tab on the JAD public website.

5002. DUTY STATUS, WHEREABOUTS UNKNOWN (DUSTWUN)

1. If a Marine in a combat zone or deployed to a contingency operation:

- a. Is absent from the parent command without authorized leave or orders.
- b. Missed movement.
- c. Is otherwise unaccounted for.

2. Then take the following actions:

a. Make DUSTWUN unit diary entries per Marine Corps Total Force System Personnel Reporting Instruction Users Manual (MCTFSPRIUM).

b. Make appropriate DUSTWUN entries in the Electronic Service Record (ESR).

c. Immediately contact HQMC Casualty Section, DSN 278-9512 and complete a Personal Casualty Report (PCR) classifying the Marine as a DUSTWUN in regards to Casualty Status. The HQMC Casualty Section will assign a Casualty Assistance Calls Officer (CACO) to the Primary Next of Kin (PNOK) and Secondary Next of Kin (SNOK).

d. Immediately initiate an investigation to determine the Marine's proper duty/casualty status.

e. Once the investigation is complete, submit a supplementary PCR in accordance with the MARCORCASPROCMAN, classifying the Marine's status as Returned to Military Control (RMC), deceased, unauthorized absence (UA) or deserter and make the appropriate unit diary and enlisted service recordbook (ESR) entries.

f. Under paragraph 8104 of the MARCORCASPROCMAN, if the investigation supports a declaration of missing, submit the investigative report, its opinions, and a recommendation that the Marine be declared missing to CMC (MRC) within 10 days of the disappearance.

g. Coordinate with the HQMC Casualty Section to have the Marine's PNOK and SNOK notified of any change in status.

5003. UNAUTHORIZED ABSENCE STATUS

1. If a Marine:

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

2. Then take following actions:

- a. Make unit diary entries per MCTFSPRIUM.

- b. Make appropriate entries in the ESR.
- 3. The parent command will inventory and store all government property and personal effects as prescribed by MCO 4050.38_ series, Personal Effects and Baggage Manual.
- 4. After 48 hours. Continental United States (CONUS) commanders will notify the PNOK telephonically of the absentee's status and request assistance in returning the absentee to military control. All other commanders will do the same when their absentee's dependents are residing in the local area.
- 5. Prior to the 10th day of unauthorized absence, the parent command will prepare and mail a letter advising the PNOK of the Marine's status, requesting assistance in returning the Marine to the command. A suggested format that may be adapted to local needs will be published on the Judge Advocate Division website. A copy of the letter will be filed in the ESR until return of the Marine and completion of administrative/disciplinary action.

5004. DESERTION STATUS

1. If a Marine:

- a. Is absent from the parent command without authority over 30 days.
- b. Is believed to have gone to or is remaining in a foreign country, and to have applied for or accepted any type of asylum or residency permit from such country, or any governmental agency thereof.
- c. Is an escaped prisoner (see paragraph 5012 below for detailed instructions).
- d. Is reported as being in an UA status who has had access to Top Secret information during the last 12 months.
- e. Whose location is known, Commanders may publish a DD Form 553 to ensure the Marine is apprehended with dispatch.

2. Then take the following actions:

- a. Inventory and store all government property and personal effects as prescribed by MCO 4050.38_ series, Personal Effects and Baggage Manual, if not previously accomplished.
- b. Make required unit diary entries per MCTFSPRIUM.
- c. Make required entries in the deserter's ESR.
- d. Prepare and distribute the DD Form 553.

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

(2) If the Marine is dropped to desertion status prior to the 31st day of absence per paragraphs 5004.1.b. through 5004.1.e., the reason for an expedited DD Form 553 issuance will be included in the remarks section of the DD Form 553.

(3) Cautionary statements will be placed in the remarks section of the DD Form 553 in CAPITAL LETTERS when any of the following situations apply to the Marine: the Marine is considered an escape risk or dangerous to self or others; is pending charges or under investigation for violations of the UCMJ other than UA or desertion; is a violator of previous stragglers orders; or is drug/alcohol addicted.

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

(5) Block by block instructions for completing the DD Form 553 will be published on the Judge Advocate Division website.

(6) Distribute the DD Form 553 as specified in the form instructions.

(7) **Immediately upon completion of the Signature Time/Date Block (entry (18f)), the DD Form 553 must be submitted electronically or by facsimile to CMC (PSL) in order to comply with NCIC Operating Standards for "Warrants For Wanted Persons." Due to guidelines set forth in the FBI, NCIC 2000 Operating Manual 1.1, a DD Form 553 must be entered into the NCIC terminal immediately or within a 5 hour time period from the date of signature.**

(8) On the 31st day of absence, conduct a thorough audit of the paper SRB/OQR (for new accessions that have not had their SRB/OQR uploaded into the ESR system) or ESR as appropriate. If the Marine deserted and had the paper SRB/OQR in his/her possession, the parent command will notify CMC (PSL) by message that the original paper SRB/OQR is not held. CMC (PSL) and the parent command will use the existing Official Military Personnel File (OMPF) documents in place of the paper SRB/OQR. Publication and submission of the DD Form 553 will not be delayed. The parent command will ensure a copy of the DD Form 553 is provided as update material to the Marine's OMPF.

(9) Retain the HEALTH/DENTAL RECORDS and the paper SRB/OQR (for new accessions that have not had their SRB/OQR uploaded into the ESR system) until the date on which the period of absence exceeds the period during which a deserter would be returned to that command upon return to military control per Table 5-1. If the member remains in a deserter status beyond the timeframe described in Table 5-1, forward the HEALTH/DENTAL RECORDS to CMC (PSL), 3000 Marine Corps Pentagon, Washington, DC 20380-1775. If applicable, scan the paper SRB/OQR in the Marine's OMPF (Contact MMSB-20 for questions regarding scanning of paper SRB/OQR into the Marine's OMPF).

(10) Notify NCIS or the cognizant investigative agency, when a DD Form 553 has been issued for the return of a Marine who has had access to Top Secret information during the last 12 months or whose absence is deemed by the command to be contrary to national security.

5005. OFFICER ABSENTEES. The administrative processing for officer absentees is the same as for enlisted Marines, except that on the 7th day of absence a message report will be submitted to CMC (PSL) and CMC (JA) (Report

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

5006. MARINES WITH FAMILY MEMBERS

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

2. The dependents of certain Marines may be entitled to payment of Basic Allowance for Housing (BAH) after the absence commences. Refer to JFTR chapter 10, and MCO P1751.3_ series concerning entitlement eligibility and specific instructions.

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

5007. DETERMINATION OF UNAUTHORIZED ABSENCE

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

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

c. In situations where the Marine is serving in a combat zone or while deployed to a contingency operation, follow the requirements articulated in paragraph 5002 (DUSTWUN).

5008. ABSENTEES/DESERTERS HOSPITALIZED. The nearest Marine Corps activity receiving information that an absentee or deserter is hospitalized in a Veterans' Administration, military, or civilian institution will notify CMC (PSL, MRC, and MMEA-86A) for disposition by the most expeditious means, followed by a naval message. The naval message will include, at a minimum, the Marine's name, social security number/EDIPI, nature of injury or illness, name and location of hospital, and point of contact at the hospital. Pending disposition instructions, the Marine will not be joined to the rolls of any unit or command.

5009. APPREHENSION OF ABSENTEES AND DESERTERS

1. Absentees may be apprehended by:

- a. Members of the armed forces authorized under Rule for Courts-Martial (R.C.M.) 302, Manual for Courts-Martial (MCM).
- b. Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth or Possession, or the District of Columbia.
- c. U.S. authorities in foreign countries, but only when authorized by an international agreement with the country concerned or by an agreement with the appropriate local authorities when such an agreement is within the purview of an existing international agreement. In such cases:
 - (1) Careful consideration must be given to possible international implications and adverse foreign reaction.
 - (2) Where apprehension cannot be accomplished or where doubt exists as to apprehension authority, a priority message report of the facts will be forwarded to CMC (PSL) and CMC (JA) requesting guidance.
- d. Any officer or noncommissioned officer is authorized to apprehend or to cause the apprehension of any Marine absentee.

2. In the event that the DD Form 553 is not held by local civil, or military law enforcement agencies, commanding officers, officers in charge, and noncommissioned officers in charge are authorized to prepare a DD Form 553 to cause the immediate apprehension of any absentee, regardless of the length of absence. Prior to issuing the DD Form 553, verification of the Marines absence will be made with the parent command or with CMC (PSL). Once verified and properly prepared, send the DD Form 553 to CMC (PSL) via facsimile at the following fax number: (703) 604-6666. Distribution of the DD Form 553 will be limited to CMC (PSL), and parent command if applicable. All DD Form 553's will be retained in the Marine's ESR. The unit diary entry dropping the Marine to desertion status will not be made until the Marine meets the criteria for desertion status, as per paragraph 5004.1.

5010. JAIL BILLS. Reimbursement to civil authorities for expenses pertaining to confinement of Marine Corps absentees/deserters will be processed as follows:

1. Escort team, upon absentee/deserter pick up, will leave a "REIMBURSEMENT PROCESS FOR THE HOUSING OF MARINE CORPS CONFINED" form which details specific instructions for completion/submittal of a Jail Bill by local authorities.
2. Upon receipt of a completed Jail Bill Invoice by Headquarters PSL Corrections, the Jail Bill NCO will verify that the confinement information is correct and prepare an SF 1034, October 1987 (Public Voucher for Purchases And Services Other Than Personal) for submission to Defense Finance and Accounting Service (DFAS).

5011. RETURN TO MILITARY CONTROL (RMC)

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

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

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

2. Absentees and deserters shall be received at any military installation that is manned by active duty personnel. See paragraph 5013.

3. Assignment of Marines Returning to Military Control (RMC)

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

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

c. Deserters who are RMC after an absence of less than 180 days will be returned to the major command from which absent. Deserters absent greater than 180 days, with the exception of those pending administrative or disciplinary action at the command from which absent, will be reassigned to the non-operating force major command nearest the point of apprehension or surrender, and based upon their location (i.e. East/West of Mississippi) as depicted in Note 2 of Table 5-1.

d. Marines who are scheduled to be reassigned in accordance with Table 5-1 will be returned to the major command or unit from which absent, if that major command or unit has any pending administrative or disciplinary action, other than the present unauthorized absence. This information must be specified on the DD Form 553.

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

5. Stragglers Orders

a. Stragglers orders will be issued to absentees directing their assignment as set forth in paragraph 5011.3. A suggested guide to

facilitate the processing of stragglers orders will be published on the Judge Advocate Division website. Contact CMC (PSL) at the following commercial phone number (703) 604-3667/0395 or Defense Switch Network (DSN) (664-3667/0395) prior to issuing stragglers orders. CMC (PSL) will make the final determination in questionable cases. Marines who meet any of the following criteria will not be issued stragglers orders:

- (1) They are in violation of a previously issued set of stragglers orders.
- (2) They are escaped prisoners.
- (3) They indicate that they will not comply with stragglers orders.
- (4) A law enforcement agent requests that they be returned under guard.
- (5) The Marine Corps representative assuming physical custody determines that they will not comply with the stragglers orders.
- (6) They have previously been apprehended by civil or military authorities for unauthorized absence.
- (7) They have serious military charges pending at their parent command.
- (8) They have been classified by competent authority as dangerous or escape risks.

b. Stragglers orders travel for absentees is to be charged to appropriation AA 17X1105.2760 021 51691 0 000027 2D 000000 000000074147 SDN: M00027XXM0006A0 (add last digit of current FY where "X" appears). Stragglers orders appropriations will be prepared in accordance with MCO 7300.21 series, Marine Corps Financial Management Standing Operating Procedure Manual. Marines in transit on permanent change of station orders (PCSO) will be issued stragglers orders by endorsement to their original orders using appropriation data from the PCSO if the UA is less than 31 days.

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

d. Distribution of stragglers orders:

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

(2) Forward a certified true copy of the stragglers orders, signed by the Marine, to CMC (PSL) via facsimile number (703) 604-6666.

(3) If a Government Travel Request (GTR) is issued, forward out the original and two copies of DD Form 139 (Pay Adjustment Authorization) with a copy of the travel orders and transportation endorsement promptly to Defense Finance Accounting Service, 1500 E. Bannister Rd., Kansas City, MO 64197-0001. An acknowledged copy of the DD Form 139, GTR/meal ticket, travel

orders and transportation endorsement will also be forwarded to CG (Code 470), Marine Corps Logistics Base, 814 Radford Blvd., Albany, GA 31704-5001.

(4) Give the signed original to the Marine.

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

e. Absentees apprehended by civil authorities will be transported under guard. Only under exigent circumstances will these absentees be issued stragglers orders as determined by CMC (PSL).

f. Failure to Comply with Stragglers Orders. The commander to whom the Marine has been directed to report will join the Marine by unit diary as of the date/time reported as returned to military control on the stragglers orders; drop the Marine to desertion as of 0001 the day following the reporting date; and publish a new DD Form 553. NOTE: In the remarks section of the DD Form 553 write "CAUTION: Subject violated stragglers orders. Request guards; do not release on own recognizance."

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

(1) "Dangerous" behavior includes, but is not limited to: current violent behavior or a history of violent crime; verbal or written threats; suicidal, irrational or erratic behavior; and unlawful controlled substance use, manufacture, distribution, or sale.

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

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

h. Stragglers Orders - Weekly Reports. On a weekly basis, commands issuing stragglers orders will prepare a message report of stragglers orders issued (Report Symbol MC-5800-04, available on the Judge Advocate Division website). Distribution will be: CMC (PSL), joining commands, and former commands for absentees reassigned. Joining commands will prepare and distribute a DD Form 616 for each absentee who complied with the stragglers orders for whom a DD Form 553 had previously been prepared and distributed.

This action will not be delayed pending receipt of the Stragglers Orders Weekly Report. For absentees who failed to comply, the joining command will take action as outlined in paragraph 5011.5.f.

6. Return of Absentee to the Command. Upon transport of the absentee/deserter by cross country escorts, CMC (PSL) will release a transport under guard message to the appropriate unit or major command. That unit/command will join the individual from absentee/deserter status, and will immediately prepare and distribute DD Form 616.

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

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

(2) Make appropriate entries in the Marine's ESR.

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

(4) If a DD Form 553 has been published, distribute a DD Form 616 to the addressees of the DD Form 553. The signed original of the DD Form 616 will be forwarded to CMC (PSL). Ensure that a DD Form 616 reports both the date and time of return to military control or death. Instructions on completing the DD Form 616 are available on the Judge Advocate Division website.

b. Pre-Trial Confinement of Absentees Returned Under Guard. Absentees returned under guard may be placed in pre-trial confinement at the discretion of the local commander. Refer to R.C.M. 304-305, MCM, and Bureau of Naval Personnel Instruction (BUPERSINST) 1640.22, DON Corrections Manual for additional guidance.

5012. ESCAPED PRISONERS

1. An escape by a prisoner is a deliberate absence from the place of arrest, from the place of confinement, or from a guard.

2. As soon as it is known that a prisoner has escaped, the commander of the correctional facility or unit commander will:

a. Activate the local escape bill as required by paragraph 505 of BUPERSINST 1640.22, Naval Corrections Manual.

b. Notify the escapee's immediate commanding officer.

c. Immediately notify the DIP via telephone with a message to follow the next working day.

d. Publish a DD Form 553 and immediately forward the signed original by the most expeditious means to the DIP (Report Symbol MC-5800-02). A facsimile copy of the DD Form 553 is acceptable for the DIP to enter the Marine into the NCIC. The circumstances of the escape will be documented in the remarks section of the DD Form 553.

3. The immediate commanding officer of an escapee will:

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

b. Make appropriate entries on the unit diary per MCTFSPRIUM, and appropriate entries on the prisoner's ESR.

4. In cases of convicted prisoners being transferred, the commander of the transferring activity will be considered the prisoner's commander until the prisoner has been delivered to the destination or until otherwise notified by higher authority. When a prisoner escapes while en route to another activity, the guard will immediately notify the prisoner's commander by telephone or message giving the necessary information so that the commander may proceed as prescribed in paragraphs 5012.2.

5013. PROCEDURE WHEN ABSENTEES AND DESERTERS OF OTHER SERVICES COME INTO THE CUSTODY OF THE MARINE CORPS

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

a. Unauthorized absentees.

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

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

a. Contact the appropriate service Deserter Information Point (DIP). A confirmation of the individual's status and a disposition may be needed in these cases. The Service DIPs are:

(1) US Army: United States Army, Deserter Information Point (ATZK-PMF-D), Bldg. 298, Room 331, 481 Gold Vault Road, Fort Knox, KY 40121, (502) 626-3711.

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

(3) US Air Force: Headquarters AF Personnel Center (DPWCM), 550 C Street West, Suite 14, Randolph AFB, TX 78150-4716, (210) 565-3752.

(4) US Coast Guard: Coast Guard Command Center, 2100 2nd Street SW, Washington, DC 20593-0001, (202) 372-2100.

5014. REMOVAL OF THE MARK OF DESERTION

1. Commanding officers and officers in charge shall cause the removal, as erroneous, the mark of desertion in the Marine Corps Total Force System (MCTFS), of any Marine who was declared a deserter but who subsequently has been:

a. Punished by nonjudicial punishment (NJP) for UA only.

b. Referred to trial for the offense of UA only.

c. Tried and convicted of UA only.

d. Tried and acquitted.

e. Determined, pursuant to R.C.M. 706, MCM, or as a result of approved medical disability proceedings, to have been mentally incompetent at the time of the absence.

f. Determined by CMC (MRC), as designated by SECNAV pursuant to the MARCORCASPROCMAN, to be declared missing as defined in the Missing Persons Act, 37 U.S.C. 551-558.

g. Determined to have been dropped to desertion because of an administrative error.

2. When the mark of desertion is removed for reasons outlined in paragraph 5014.1.d., 5014.1.f., or 5014.1.g., and a DD Form 553 has been published, the command will so inform all addressees listed on the DD Form 553 and request that the DD Form 553 be returned or destroyed. Delete as erroneous the entries on MCTFS and the UPB (pg 12) in the ESR. Refer to MCO P1070.12 series, Individual Records Administration Manual (IRAM), concerning removal of the conduct mark of "0" resulting from the declaration of desertion. In addition, generate a DD Form 616 to cancel DD Form 553 and remove DD Form 553 from the FBI's wanted persons file.

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

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

5. Instructions for removal of the mark of desertion are contained in the IRAM and in the MCTFSPRIUM. The IRAM contains instructions for removal of

the conduct mark of "0" and other conduct and duty proficiency markings reported as a result of the declaration of desertion.

5015. DELIVERY OF MARINES TO CIVIL AUTHORITIES AND MARINES WITH PENDING CIVILIAN CHARGES

1. The Manual of the Judge Advocate General, JAGINST 5800.7_ series (JAGMAN), chapter VI, prescribes the procedure for delivery or refusal of delivery of Marines to civil authorities. Refer to JAGMAN section 0610 for reporting requirements relating to refusal of delivery to civil authorities.

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

3. If civilian charges are pending, CMC (PSL) will forward message traffic to the Marine Corps activity nearest the place of detention directing establishment of liaison with civil authorities per the provisions of paragraph 5016.

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

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

6. When Marine absentees and deserters are released on bond, on their personal recognizance, or on a work release program, and they are not restricted to the court's jurisdiction, action will be taken in accordance with paragraph 5015.3. Marines who are not absentees or deserters will be issued orders to return to their parent command, unless classified as dangerous under paragraph 5011.5.g. In cases where the conditions are that the Marine remain in the State or County under the court's jurisdiction, CMC (PSL and MMEA-86A) will be notified to coordinate assignment of the Marine to the nearest appropriate Marine Corps activity for accountability while under such restrictions.

7. The nearest Marine Corps activity receiving information that civilian charges have been brought against a Marine absentee or deserter will file a military detainer using the format available on the Judge Advocate Division website. Forward a naval message to the Marine's parent command and CMC (PSL) that includes the date, time, and place of arrest; place of confinement; charges pending; prospective date of trial; and status of the court proceedings, e.g., pending grand jury hearing, etc. (See sample available on the Judge Advocate Division website.) In the event civil authorities bring charges against the Marine after custody has been accepted, paragraph 5015.1 applies.

8. Marine absentees against whom civilian charges are pending who have surrendered to or have been apprehended by civil authorities, and who have not been released from custody, will remain on the rolls of their parent organization. Deserters will be assigned by CMC (PSL) per paragraph 5011.3 and Table 5-1. Marines on orders to or members of OCONUS commands will be reassigned to a CONUS command per paragraph 5011.4 and Table 5-1 pending resolution of the civilian charges.

9. When Marines are confined by foreign authorities in connection with criminal charges, the Marine's command will promptly notify CMC (PSL) by message, with a copy to the Judge Advocate General of the Navy (Code 10), Room 4D640, 2000 Navy Pentagon, Washington, DC 20350-2000. (See sample available on the Judge Advocate Division website.) Periodic message updates will be submitted by the Marine's command when there is any change in the status of the case, such as rescheduled court dates, changes in the place of confinement, completion of trial (report the findings and sentence of the court) (see sample available on the Judge Advocate Division website). In addition to this reporting requirement, unit commanders must also comply with any/all other local reporting requirements, including under applicable Status of Forces Agreement or U.S. Forces/Marine Corps regulations.

5016. ADMINISTRATION OF MARINES DETAINED BY CIVIL AUTHORITIES (DOMESTIC OR FOREIGN)

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

a. Establish liaison with civilian authorities. File a military detainer using the format available on the Judge Advocate Division website. Send a message to the Marine's parent command and CMC (PSL) providing the information contained in paragraph 5015.7.

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

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

(a) Any change in the date of trial or continuance.

(b) Any change in the allegations or charges.

(c) Any action by a grand jury.

(d) Any other change of status including movement to another confinement facility, release on bond, or release on own recognizance.

(e) Completion of sentence.

(2) In the event the Marine is released on bond or on own recognizance, the local Marine Corps activity having cognizance will advise the civil authorities that regulations do not provide for retention by such activity pending further civil determination and that the Marine will be returned to the parent organization. The local activity will further advise civil authorities that the Marine will be given the opportunity to return, at own expense, to stand trial, providing the exigencies of the service so allow.

(3) Upon release of the Marine on bond or on own recognizance, without restriction to the court's jurisdiction, the activity having cognizance will issue the Marine stragglers orders or transport by cross country escorts, as appropriate per paragraph 5011.

c. Upon conclusion of the civilian court action, the Marine's command will:

(1) Report the results by message to CMC (PSL) and the Marine's parent command in the event a Marine is:

(a) Convicted by civil authorities (foreign or domestic); action is taken which is equivalent to a finding of guilt to an offense for which a punitive discharge would be authorized for the same or a closely related offense under the UCMJ; sentenced by civil authorities to confinement for six months or more without regard to suspension or probation; or convicted by civil authorities of an offense which involves moral turpitude (If the offense is not listed in Part IV, MCM, or is not closely related to an offense listed therein, the maximum punishment authorized by the U.S. Code applies).

(b) Adjudged a juvenile delinquent, wayward minor, or youthful offender or is placed on probation or receives punishment in any way as the result of an offense involving moral turpitude.

(2) Upload into the Marine's Official Military Personnel File (OMPF), a copy of the court order or order of commitment, or the certificate of the judge, or the clerk of the court, listing the charge(s) of which the Marine was convicted, the sentence adjudged and the disposition of the appeal, if one is made, or a certification that no appeal was made. Where available, the Marine's command will forward a copy of the arresting officer's report and/or a copy of the pre-sentence report of the probation officer. The command will take extreme care to ensure that the particular offense(s) of which the Marine was convicted by civil authorities and the circumstances of their commission are clearly and specifically identified and described so that the maximum permissible penalty under the UCMJ (or U.S. Code) can be determined. In making this determination, neither the name nor label attached to an offense, or the characterization of the nature of the crime (e.g., a crime involving moral turpitude, a felony or misdemeanor), by civil authorities is controlling.

(3) As used in paragraph 5016.1.c.(1)(a), the term "convicted (or a conviction) by civil authorities" includes not only final convictions by civilian courts of record, but all final determinations of criminality on the part of the Marine by civil authorities (including those made by a magistrate, a justice of the peace, a municipal court, or other inferior courts) and those cases in which civil authorities have adjudged a Marine a juvenile delinquent, a youthful offender or a wayward minor. It is immaterial whether probation is imposed, a sentence is executed, execution of sentence is deferred, delayed or suspended, or, by local law, custom, or procedure, charges are dismissed or expunged from civilian courts' records after payment of a fine, completion of a term in jail or penitentiary, or completion of a period of probation. These situations do not change the initial characterization of the conviction.

(4) If the Marine is confined as a result of sentencing by a civilian court for such crimes, the Marine's command will immediately have

the Marine complete a request for or waiver of rights (see MCO 1900.16 series (MARCORSEPMAN)), and a physical examination. The commander will forward the request or waiver, physical examination, and court documents to the Marine's parent command for appropriate action. It is imperative that this action be taken by the local commander as soon as possible after the court enters the conviction. The command should not wait for a request from the Marine's parent command.

2. Commanders must ensure that discharge action contemplated for convicted Marines is completed as soon as possible after the conviction (see MARCORSEPMAN paragraphs 6210.6 and 6210.7).

a. In the event a Marine is confined as a result of sentencing by civil court, and the parent command does not receive both the request for or waiver of rights and a copy of the physical examination within 14 days of such judgment, the commander will, by message, immediately request the local unit assuming cognizance of the Marine's case to take action in accordance with paragraph 5016.1.c.

b. In cases where the discharge action is not completed within 30 days of conviction, the commander will advise CMC (PSL) on a monthly basis of the status of the discharge proceedings or the reason discharge proceedings will not be initiated.

c. Upon discharging a Marine serving sentence in a civilian confinement facility, the commander will send a message to the confinement facility, the commander who assumed cognizance of the case on the local level, and CMC (PSL), reporting the unit diary number and date of discharge and requesting that the military detainer be canceled.

d. For Marines detained by civil authorities on civil charges whose prior service reflects a pattern of misconduct, see the MARCORSEPMAN to determine if processing under paragraph 6210.3 is appropriate.

5017. WORK RELEASE PROGRAM. No commander will lift a military detainer to allow a Marine to participate in a work release program. If local or state laws permit the release of a prisoner to a work release program, although the detainer remains in effect, the Marine Corps will interpose no objection to the Marine being so released, provided the Marine remains under the jurisdiction of the correctional institution. In such cases, the Marine will be considered to remain in the hands of civilian authorities serving sentence the same as if the Marine remained incarcerated.

5018. RESERVISTS ORDERED TO INVOLUNTARY ACTIVE DUTY WHO DO NOT REPORT

1. Per the MCTFSPRIUM, Reservists who fail to report for assignment to involuntary active duty must be:

a. Reassessed into MCTFS.

b. Joined and dropped to desertion in the ESR and MCTFS by the inspector-instructor/4th MAW site commander, as appropriate.

c. On the 31st day of absence publish a DD Form 553, and send via fax to CMC (PSL) at fax number (703) 604-6666.

2. When an individual is no longer in a deserter status, provide CMC (PSL) with a copy of the DD Form 616 per paragraph 5011.6.
3. For additional information regarding processing Reservists to involuntary active duty status, refer to MCO 1001R.1_ series, MCRAMM.

LEGADMINMAN

CHAPTER 6

THE MARINE CORPS VICTIMS' LEGAL COUNSEL ORGANIZATION

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CHAPTER 6

THE MARINE CORPS VICTIMS' LEGAL COUNSEL ORGANIZATION

6000. PURPOSE. The purpose of this Chapter 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.

6001. GENERAL

1. Victims' legal counsel services are provided under the statutory authority of 10 U.S.C. § 1044, which allows the Services to "provide legal assistance in connection with the[] personal civil legal affairs" of eligible individuals, and of 10 U.S.C. § 1565b, which allows the Services to provide legal assistance to Service members or dependents who are victims of sexual assault. These statutes allow the Services to provide legal assistance to all eligible victims of crime, as well as representation in courts-martial to those victims. This Chapter, which implements these statutes as they relate to victims of crime, provides Service policy regarding the delivery of victims' legal counsel 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).

2. Marine Corps victims' legal counsel services are performed under the supervision of the OIC, VLCO by commissioned officers who are licensed attorneys, certified as under Article 27(b), UCMJ, sworn under Article 42(a), UCMJ, and assigned to VLC billets in the VLCO. 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 operational control and supervision of, and responsible and accountable to, the OIC, VLCO and the responsible Regional Victims' Legal Counsel (RVLC) for the delivery of victims' legal counsel services within their respective regions.

3. 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 5803.1_ series).

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

5. Guiding Principles

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

b. Funding for training, resources, and facilities shall be consistently provided across the Marine Corps legal community, and there shall be equitable distribution, commensurate with mission requirements, between the

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

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

d. Marine 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, courtrooms, and all other places where clients and counsel must confer in confidence.

e. 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. 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.

6002. ORGANIZATION AND PERSONNEL

1. Marine Corps Victims' Legal Counsel Organization (VLCO). The Marine Corps VLCO encompasses all VLCs 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 counsel services throughout the Marine Corps. For purposes of this Chapter, "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.

2. 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 counsel services throughout the Marine Corps.

a. 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) Designation with the Necessary Military Occupational Specialty (NMOS) of 4409 (criminal law).

(2) Prior military justice experience, particularly litigation experience as either a trial or defense counsel, or as a military judge.

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

d. The OIC, VLCO is supported by a Deputy OIC and a senior legal services specialist of appropriate experience and temperament selected in coordination with the Legal Services Chief of the Marine Corps.

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

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

(1) Establishing standing operating procedures for the delivery of victims' legal counsel 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 VLCs.

(5) Supervising the training of VLC.

(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 counsel services within the Marine Corps.

(8) Detailing VLC and auxiliary VLC to cases consistent with paragraph 6006 of this Order.

(9) Ensuring that the internal organization structure of the VLCO best facilitates the accomplishment of the VLCO mission.

3. 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 counsel services throughout the Marine Corps.

a. The Deputy OIC, VLCO shall be a judge advocate serving in or selected to the grade of O-4/Major with prior military justice experience, preferably with the NMOS of 4409 (criminal law).

b. 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 suggested modifications to VLCO policies and standing operating procedures.

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

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

(6) Coordinating with external agencies as necessary to accomplish the mission of the VLCO.

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

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

(9) Providing legal advice and representation to clients, including practice before the Navy-Marine Court of Criminal Appeals, when detailed by the OIC, VLCO.

4. Regional Victims' Legal Counsel (RVLC). A RVLC is directly responsible to the OIC, VLCO for the delivery of victims' legal counsel services within a region. There will be one RVLC assigned to each LSSS whose region corresponds to the LSSS Legal Services Support Area (LSSA). A legal services specialist with prior criminal law experience is assigned to each RVLC office.

a. RVLC are Marine judge advocates serving in or selected to the grade of O-4/Major, with expertise in military justice matters, to include experience in at least one contested complex case, and with the NMOS of 4409 (criminal law).

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

c. RVLCs serve as the supervisory attorney for the VLCs assigned to their region.

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

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

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

(1) Coordinating with local agencies and individuals, including the sexual assault response coordinator (SARC) and victim advocates (VA), to ensure the efficient and effective delivery of victims' legal counsel services.

(2) Coordinating with local commands to ensure that VLC and support personnel receive appropriate training.

(3) Conducting, at a minimum, semi-annual site visits to each subordinate VLC office.

(4) Monitoring VLC performance through personal observation, reading records of trial and briefs, and meeting and corresponding with senior judge advocates, military judges, SARCs, and Vas.

(5) Assessing and reporting to the OIC, VLCO on the adequacy of support, assets, and facilities provided to VLC offices within the region.

(6) Detailing VLC assigned to their respective region, provided that authority has been delegated by the OIC, VLCO consistent with paragraph 6006 of this Chapter.

(7) Providing legal counsel and representation to assigned victim clients.

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

a. VLCs are Marine judge advocates, serving in or selected to the grade of O-3/Captain, preferably with the NMOS of 4409. VLC must have at least six months of military justice experience, unless waived by the OIC, VLCO.

b. 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 counsel services by their LSST.

c. 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.

6. Auxiliary Victims' Legal Counsel (AVLC)

a. The OIC of each LSSS and LSST shall identify a judge advocate available to serve as an AVLC. The AVLC may be detailed as needed to meet high caseloads or to serve when there is a conflict of interest.

b. AVLCs must possess at least six months military justice experience, unless waived by the OIC, VLCO. Staff judge advocates, deputy staff judge advocates, trial counsel, defense counsel, or review officers may not serve as AVLC.

c. AVLCs 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 counsel matters.

d. AVLC concurrently performing VLC and non-VLC duties should ordinarily receive simultaneous fitness reports, as provided in paragraph 2010.3 of MCO P1610.7 series, Performance Evaluation System (PES). 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.

7. Support Personnel

a. A VLCO legal services specialist's primary duties are to assist RVLCs and VLC in their performance of their duties. Support personnel must ensure strict confidentiality of all VLCO matters.

b. VLCO legal services specialists are administratively assigned to the LSST, but once assigned to a VLCO billet, they are under the supervision of and responsible and accountable to his or her VLC, RVLC, and the OIC, VLCO.

c. One senior legal services specialist shall be assigned to assist the OIC, VLCO. This billet may be filled by a GS-11 civilian paralegal specialist or enlisted Marine E-6/Staff Sergeant with the primary MOS of 4421.

d. One legal services specialist in the rank of sergeant or a GS-9 paralegal specialist should be assigned at each RVLC office, and one legal services specialist in the rank of corporal or a GS-9 paralegal specialist should be assigned to each VLC office.

6003. ELIGIBILITY

1. Victims' legal counsel services are primarily intended for active duty military members and reservists on active duty who are victims of sexual assault; however, eligible victims of other crimes may seek assistance from a VLC as permitted by 10 U.S.C. § 1044 and the Manual of the Judge Advocate General, JAGINST 5800.7 series (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.

2. 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.

3. Notification

a. Sexual Assault Victims. A victim of sexual assault shall be informed of and given the opportunity to consult with a VLC as soon as the victim receives assistance from a SARC, SAPR or FAP VA, military criminal investigator, victim-witness liaison or coordinator, or trial counsel.

b. Other Eligible Victims. Eligible victims of other crimes shall be informed of the availability of a VLC as soon as the victim receives assistance from a SARC, SAPR or FAP VA, military criminal investigator, victim-witness liaison or coordinator, or trial counsel.

6004. SCOPE OF SERVICES

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

a. 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 the legal assistance attorney.

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

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

d. The ability of the government to compel testimony.

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

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

g. 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.

h. Other additional rights or benefits provided to victims under law or regulation, to include future legislation, Department of Defense Directives or Instructions, Secretary of the Navy Instructions, Marine Corps Orders, and any subsequent regulations.

2. 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 6006 of this Chapter. When requested, VLC may be detailed to:

a. All eligible victims of sexual assault.

b. 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.

4. 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.

5. 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, leases, taxes, consumer affairs, estate planning, and powers of attorney.

6005. ATTORNEY-CLIENT RELATIONSHIP

1. 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.

2. A Marine VLC shall continue to represent a victim post-trial until the convening authority takes action on the case. Further representation of a victim after the convening authority takes action will be determined on a case-by-case basis by the OIC, VLCO.

3. Once established, the attorney-client relationship may only be severed under the provisions of the Rules of Professional Conduct and with the permission of the OIC, VLCO. Approval authority may be delegated and exercised in accordance with policy and procedures published by OIC, VLCO. The following guidance applies:

a. 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 6008.3.

b. 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 an additional VLC at his or her new duty station, subject to approval by the detailing authority.

c. 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.

6006. DETAILING

1. The OIC, VLCO is the detailing authority for the VLCO, permitting VLC to represent victims as provided in paragraph 6004.2 of this Chapter. 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. Further delegation of detailing authority will be published by the OIC, VLCO.

2. 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.

3. 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.

4. 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.

5. The detailing authority will provide a copy of the detailing memorandum to the appropriate representative of the client's command, law enforcement agencies, the cognizant prosecution and defense sections, and the military judge, as necessary.

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

7. 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, RVLCs 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.

8. 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; 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, then prior to detailing a VLC to the case, the convening authority must agree to incur the costs. If 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. If the OIC, VLCO cannot resolve the funding issue, it will be forwarded to the SJA to CMC for final decision.

6007. TOUR LENGTH

1. 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 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.

2. 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.

3. 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.

4. 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.

5. A VLC's tour is not considered to be complete until the convening authority acts in all cases to which the VLC remains detailed.

6008. REASSIGNMENT

1. The reassignment of a VLC requires careful planning and coordination between the RVLC, OIC, VLCO and the OIC of the LSSS and LSST.
2. 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 the consent of the OIC of the 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.
3. 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. Arranged for the client to consult with a 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.
4. 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 the LSSS or LSST the VLC is assigned to.
 - d. Other billets which would create a conflict of interest with concurrent service as a VLC.

6009. REQUEST FOR INDIVIDUAL MILITARY COUNSEL (IMC). Article 38, UCMJ, provides that military service members accused of crimes have the right to be represented by a military counsel of their own selection, if that counsel is reasonably available. JAGMAN section 0131 sets forth standards for determining the availability of a requested IMC. The OIC, VLCO is the determining authority on IMC requests for all military counsel assigned to VLCO. Requests for a VLC to serve as IMC must be forwarded to the OIC, VLCO for consideration and approval. For all IMC requests denied by the OIC,

VLCO, the SJA to CMC is the immediate superior in command for administrative review and appeal.

6010. COLLATERAL DUTIES. VLCO personnel shall perform routine non-VLCO duties, such as unit PT, training, and standing duty, so long as those collateral duties do not conflict with their statutory, regulatory, and ethical obligations to their clients.

6011. PROFESSIONAL RESPONSIBILITY

1. Judge advocates assigned to the VLCO shall act in full compliance with JAGINST 5803.1_ series, 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.

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

6012. 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.

6013. BUDGETING AND FUNDING GUIDANCE

1. 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.

2. 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.

6014. APPLICABILITY. This Chapter is applicable to Marine Corps judge advocates and supporting personnel.

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CHAPTER 7

ADMINISTRATIVE PROCEDURES FOR PAROLEES

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CHAPTER 7

ADMINISTRATIVE PROCEDURES FOR PAROLEES

7000. SCOPE. This chapter sets forth procedures and administrative instructions relating to the processing of Marine Corps prisoners sent on parole. Detailed instructions concerning the legal procedures of parole are contained in SECNAVINST 5815.3H, Department of the Navy Clemency and Parole Systems.

7001. PAROLE AUTHORIZATION. Authority to place a prisoner on parole will be given by the President, Naval Clemency and Parole Board prior to a member going on parole. A prisoner should be processed to a parole status in a timely and accurate manner upon receipt of the parole authorization.

7002. CONDITIONS OF PAROLE. Parole is considered a supervised form of confinement; not appellate leave. Prisoners on parole must continue serving their sentence except that they will serve their sentence in a civilian community, through the guidance and supervision of an officer of the Federal Probation Service. The Naval Clemency and Parole Board will determine an individual's parole conditions. However, all pre-release conditions of parole must be accomplished prior to releasing an individual on parole.

7003. PROCEDURES

1. Upon receipt of the parole authorization, the prisoner must understand the conditions of the parole agreement. The prisoner's signature must be witnessed and verified when signing the receiving endorsement on the parole agreement.
2. Commanders will ensure that all administrative procedures pertaining to the prisoner have been accomplished prior to parole. The commander will transfer the prisoner via unit diary in accordance with MCO P1080.40A (MCTFSPRIM). All records (service, health, dental, and pay) and a copy of the parole agreement must be forwarded to CMC (POS-40) in accordance with MCO P1070.12J (IRAM).
3. In the event a prisoner's discharge is approved and ordered executed before parole, the unit must report the discharge of a prisoner as prescribed in MCO P1080.40A (MCTFSPRIM). All records will be forwarded as above and will include all copies of discharge related documents.

7004. RELEASE FROM PAROLE

1. When a prisoner is released from parole, CMC (POS-40) will place the prisoner on appellate leave until discharge authority is received from the Court of Military Review.
2. If a prisoner was discharged prior to completion of parole, CMC (POS-40) will forward the records of the former prisoner per MCO P1070.12J (IRAM).

7005. PAROLE REVOCATION

1. Upon notification of parole revocation, the parolee is ordered to report to the brig from which released for re-confinement within 24 hours. The receiving brig must ensure that CMC (POS-40) is notified immediately via naval message if the parolee fails to report.
2. A parolee at large, whose parole has been terminated pursuant to SECNAVINST 5815.3H, or whose parole has been suspended or revoked (except those suspended without prejudice), will be considered the same as an escaped military prisoner whose return to military control is desired. Regulations pertaining to apprehension and return to military control of escaped military prisoners will apply. Flash wanted notices will be filed by the Federal Bureau of Investigation (FBI Form I-12).

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CHAPTER 8

MANAGEMENT OF INVESTIGATIONS

8000. SCOPE. The provisions of this chapter provide guidance for managing investigations conducted by Marine Corps commands.

8001. TYPES OF INVESTIGATIONS. When an incident or mishap occurs, there may be several reasons, and separate requirements, to conduct an investigation. Among the reasons for conducting an investigation are to prevent similar incidents in the future and to obtain and preserve available evidence for use in litigation, claims, disciplinary, or adverse administrative actions. The following types of investigations may be required.

1. JAGMAN Investigations. Chapter II of the JAGMAN contains comprehensive guidance for conducting administrative investigations and provides content and sample documentation requirements for specific types of incidents. Section 0202 of the JAGMAN identifies other types of investigations, agencies responsible for conducting these investigations, their relationship to administrative investigations under Chapter II of the JAGMAN, and applicable references. The JAGMAN also provides guidance on the three types of JAGMAN investigations: command investigations, litigation-report investigations, and courts/boards of inquiry.

2. UCMJ Investigations. R.C.M. 303, MCM, 2002, requires immediate commanders to make or cause to be made a preliminary inquiry into allegations that a member of the command has committed an offense or offenses triable by court-martial. Commanders may conduct such inquiry personally, task a subordinate to conduct the inquiry, or seek assistance from law enforcement personnel (e.g., the Provost Marshal's Office, Criminal Investigative Division, or Naval Criminal Investigative Service). If the only basis for an investigation is disciplinary action, a separate JAGMAN investigation should not be conducted.

3. NCIS Investigations. SECNAVINST 5520.3 mandates that, within the DON, the Naval Criminal Investigative Service is primarily responsible for investigating suspected or alleged major criminal offenses, defined as those offenses punishable under the UCMJ (or similarly framed Federal, State, local, or foreign laws or regulations) by confinement for a term greater than 1 year. SJAs and command investigating officers must determine if NCIS is investigating the same incident and, if so, coordinate their efforts with NCIS to ensure their efforts do not compromise or otherwise impede the NCIS investigation.

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4. Investigations into Alleged Security Violations. Pursuant to SECNAVINST 5520.3_, when classified information has been, or is suspected of being, lost, compromised, or subjected to compromise, NCIS will be notified immediately. The command will conduct a preliminary inquiry in accordance with SECNAVINST 5510.36_ unless otherwise directed by NCIS. If NCIS declines investigative action, the command may still request investigative assistance in completing the required inquiry. The preliminary inquiry will often be followed by an in-depth JAGMAN investigation. Therefore, the command must be knowledgeable of both the SECNAVINST 5510.36_ and JAGMAN requirements before commencing the inquiry and investigation.

5. Inspector General Investigations. SECNAVINST 5430.57_ sets forth the mission and functions of the Naval Inspector General (NAVINSGEN) and the Deputy Naval Inspector General for Marine Corps Matters (DNIGMC). The NAVINSGEN is designated the senior investigative official in the DON and shall initiate and conduct, or direct the conduct of, such inquiries as the NAVINSGEN deems appropriate, with particular emphasis on matters relating to DON integrity, ethics, efficiency, discipline, or readiness. The NAVINSGEN, however, will ordinarily refrain from conducting investigations that focus on individual criminal activity (normally within the authority of NCIS). SECNAVINST 5430.57_ is to be construed so as to avoid interfering with other independently authorized investigations, such as UCMJ inquiries/investigations, JAGMAN investigations, and NCIS criminal investigations. Commanding officers, however, are required to extend full cooperation to the NAVINSGEN. Commanding officers should consult with their local SJA to determine whether a matter falls within the authority of the NAVINSGEN.

6. Aircraft Mishap Investigations. Pursuant to DOD Instruction 6055.7_, OPNAVINST 3750.6_, MCO 3750.1_, and the JAGMAN, more than one investigation may be required into aircraft accidents (and for other exceptional incidents described in paragraph 8001.8a). Safety mishap investigations are normally required for all aircraft mishaps, and they are conducted independently and separately from other types of investigations, to include JAGMAN investigations. If evidence of a criminal act is discovered, then no mishap investigation shall be conducted (in-progress mishap investigations shall be terminated) and NCIS should be notified if the matter falls within their investigative jurisdiction.

a. Mishap Investigation Report Requirements are set forth in OPNAVINST 3750.6_ and MCO 3750.1_. Paragraph 0241 of the JAGMAN details the relationship between military mishap and JAGMAN investigations and sets forth limitations on the integration of these investigations, sharing of evidence obtained, and use/disclosure of the separate investigative reports.

b. Privileged Information in Mishap Investigations. Certain

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information contained in mishap investigations is designated as privileged in order to encourage individuals to provide complete information regarding a mishap and aid the discovery of vital safety information. Witness statements, portions of the mishap investigation, and the opinions of mishap investigators normally may not be released for purposes outside of the safety investigation. Exceptions to the privilege and additional details are available in chapter 6 of OPNAVINST 3750.6_ and paragraph 0241 of the JAGMAN.

7. Death Investigations. Paragraph 0220(b) of the JAGMAN implementing Public Law 107-107, the National Defense Authorization Act of Fiscal Year 2002, requires a line of duty determination whenever an active duty service member of the naval service dies. The purpose of the line of duty determination is to enable expedient decisions about eligibility and annuity calculations under the Uniformed Services Survivor Benefit Program. For guidance on death investigations see paragraph 0236 of the JAGMAN.

8. Ground Mishap Investigations. MCO P5102.1_ provides clarification on the types and requirements of ground mishap investigations in the Marine Corps. That Order requires that legal mishap (i.e., JAGMAN) investigations be conducted independently and apart from safety mishap investigations.

a. Limited Use Safety Mishap Investigation Reports are privileged, internal communications of DoD and their sole purpose is prevention of similar mishaps. Aircraft mishap investigations (discussed in paragraph 8001.6) are a type of limited use safety mishap investigation. These investigations are also authorized for ground mishaps involving complex weapons systems or unique military items such as laser devices, remotely piloted vehicles, armored vehicles, etc., when the determination of causal factors is vital to the national defense.

b. General Use Safety Mishap Investigation Reports are used to record data concerning all mishaps not covered by "limited use" investigations discussed in paragraph 8001.8a. Their purpose is to identify the cause(s) of mishaps and resulting damage or injury so that action(s) may be taken to prevent recurrence. Marine Corps ground mishaps will normally be investigated and the information reported as "general use" mishap investigation reports. In determining whether to conduct a safety investigation, commanders should refer to MCO P5102.1_ and consult with their local Director of Safety and Standardization or Safety Officer.

9. Friendly Fire Investigations. An investigation is required into all incidents of friendly fire, as defined by DOD Instruction 6055.7_. Friendly fire is defined by the Instruction as a circumstance in which members of a U.S. or friendly military force are mistakenly or

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accidentally killed or injured in action by U.S./friendly forces actively engaged with an enemy or who are directing fire at a hostile force or what is thought to be a hostile force. In accordance with the Instruction, the Combatant Commander will convene a legal investigation to determine the facts of all incidents falling within the definition of friendly fire. The Combatant Commander will also guide further actions with regard to the investigation, to include release of the investigation. In consultation with the Combatant Commander, commanders may convene a safety investigation as required.

10. Equal Opportunity Complaint Processing. Chapter 4 of MCO P5354.1_, Marine Corps Equal Opportunity Manual, lists command responsibilities when a report of discriminatory conduct is filed. All reported incidents of discrimination, to include sexual harassment, must be investigated. The nature of the investigation will necessarily depend on the alleged misconduct and could result in referral for a NAVINSGEN/DNIGMC investigation, an NCIS investigation, appointment of a preliminary inquiry officer under R.C.M. 303, MCM, 2002, or a JAGMAN investigation.

11. Supply Investigations. Marine Corps policy is that all missing, destroyed, or damaged Government property will be investigated in accordance with the JAGMAN if either the cause is unknown or to relieve or assign individual responsibility. Chapter 6 of MCO P4400.150_ contains additional requirements concerning the appointment and duties of an investigating officer.

12. BUMED Medical Quality Assurance Program. Guidance regarding medical quality assurance investigations is contained in paragraph 0251 of the JAGMAN and OPNAVINST 6320.7_. Section 1102 of title 10, U.S. Code, requires that documents created by or for DoD as part of a medical quality assurance program are privileged and confidential.

8002. ROLE OF THE SJA. The staff judge advocate (SJA) is responsible for advising the commander on all investigations involving the command. The SJA identifies incidents that require investigation, recommends the appropriate type of investigation to be conducted (command investigations are preferred over litigation-report investigations as they are more responsive to stakeholders; courts/boards of inquiry are rarely conducted), supervises investigations conducted by the command, and provides legal advice to investigating officers or ensures that such advice is otherwise available by assigning a legal advisor to the investigation. The SJA requests investigative assistance from outside agencies, maintains liaison with those agencies, and monitors all investigations involving the command conducted by those agencies. The SJA should be notified whenever an outside agency initiates an investigation involving the command. The SJA resolves conflicts when two or more types of investigations are being conducted involving the same incident and

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maintains liaison with higher headquarters regarding the status of investigations.

8003. SCOPING THE INVESTIGATION. Critical decisions must often be made before a convening or appointing order is drafted and the investigation begins. At the outset, the SJA should determine the purpose of the investigation and the type of investigation(s) necessary to fulfill this purpose. Significant considerations in "scoping" an investigation include:

1. The extent of property damage, injury, and/or death;
2. The impact on civilians, civilian structures, and the environment;
3. Suspected intentional and/or negligent misconduct on the part of servicemembers;
4. The potential for initiating or defending a legal action;
5. The type of expertise needed for conducting a thorough investigation;
6. The experience, grade, education, knowledge, objectivity, and temperament required for an effective investigating officer (IO).
Appearances may also play a role in determining who to assign as an IO. The IO's impartiality should not be reasonably subject to question by any of the stakeholders in an investigation. In some cases, appointment of an IO from outside the command will be required;
7. The identity of those with an interest or stake in the outcome of the investigation (e.g., other commands, victims, parents of interested parties, servicemembers, foreign governments, foreign nationals, State governments, Congress, HQMC, Navy JAG, the media, etc.). This consideration is critical. Failure to identify all the stakeholders "up-front" virtually assures relevant questions will not be addressed and that some stakeholders will be disappointed in the investigatory effort. When stakeholders are disappointed in an investigation, complaints to the command and Congress and charges of "cover-up" may ensue; and
8. The possibility of public inquiries concerning the incident and the need for mobilizing Public Affairs assets.

8004. CONVENING INVESTIGATIONS; CONFLICTS; MULTIPLE COMMANDS

1. If the investigation includes allegations of wrongdoing or negligence on the part of the convening authority (CA) (or even the

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appearance thereof), then the SJA should recommend that the CA consult with the next senior commander (and SJA) in the chain of command to determine if the senior commander should take responsibility for the conduct of the investigation. For example, if a Marine is killed in a training accident and the regimental commander and staff had a role in designing the training, disseminating SOPs and safety information, or controlling the training, then the division commander should select the IO and convene the investigation.

2. If the investigation involves two or more commands, then the SJA should recommend that the CA consult with the common senior commander (and SJA) for all affected commands to determine if the senior commander should take responsibility for the conduct of the investigation or assign the investigation to a single command for responsibility in conducting the investigation.

8005. THE INVESTIGATING OFFICER; EXPERTS; OTHER ADVISORS

1. When practicable, a CA should appoint an IO who is senior to all individuals whose conduct is subject to inquiry.

2. In some cases, consideration should be given to appointing an IO possessing special knowledge or skills in order to conduct a thorough investigation.

3. Experts may be necessary to assist the IO in resolving complex scientific or technical issues requiring specialized knowledge, skill, experience, training, or education (e.g., NCIS/CID agents, other forensic experts, engineers, maintenance officers, etc.). CAs are encouraged to detail experts in the appointing letter to assist the IO, and the IO should affirmatively seek expert assistance when needed.

4. If criminal or civil litigation may result from the matter giving rise to the investigation, consideration should be given to appointing a legal advisor to ensure evidence is legally obtained, preserved, and available for use at a later time.

8006. THE APPOINTING LETTER

1. If there are specific questions that must be resolved by the investigation, the CA should reference them in the appointing letter.

2. In death cases, CAs should direct IOs to exercise discretion when enclosing graphic photographs (e.g., autopsy photos) to the investigative report. In these cases, the appointing order should direct the IOs attention to section 0240b of the JAGMAN.

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8007. NEED FOR CONVENING AN ADMINISTRATIVE OR OTHER TYPE OF INVESTIGATION; NATURE OF INVESTIGATION

1. The conduct of a single investigation may satisfy the requirements for other types of investigations. Commands should strive to combine as many investigative requirements as possible into one investigation, however, safety and mishap investigations normally cannot be combined with JAGMAN investigations.

2. In some instances, it may be appropriate for the CA to appoint a preliminary inquiry officer under section 0204 of the JAGMAN. The CA shall dictate the format and requirements of the preliminary inquiry and may choose to have the preliminary inquiry officer simply gather and document facts for communication to the CA (without providing opinions and recommendations as required by some administrative and other investigations).

8008. ENSURING THAT THE PURPOSE FOR CONDUCTING THE INVESTIGATION IS SATISFIED

1. The SJA must ensure that the CA considers how corrective action, both recommended and concurred with, is initiated, completed, and documented for future reference.

2. In some instances, the IO should be directed to provide interim recommendations to the CA when necessary to avoid further potential injury, destruction, or death. Ensure coordination and follow-up with responsible staff (e.g., S-3/S-4) officers.

3. Regardless of when corrective recommendations are provided, the CA should be advised on the best means for ensuring the recommendations are completed, monitored and, if necessary, modified to ensure that lessons learned are applied for positive results.

8009. CONSIDERATIONS FOR DEATH INVESTIGATIONS.

1. Each active duty death, including combat related deaths, shall be subject to, at a minimum, a preliminary inquiry in accordance with the JAGMAN. The preliminary inquiry shall be conducted by the command to which the deceased member was attached (or the gaining command for service members who die in transit). The command conducting the preliminary inquiry, or higher authority, shall decide whether the preliminary inquiry is sufficient to base a line of duty determination or whether there is need for an investigation. In many cases, a basic letter report attached to a medical record entry, accident report, or

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Personnel Casualty Report (PCR) will meet the requirement for a preliminary inquiry and will be sufficient information upon which to base a line of duty determination..

a. If the command completing the preliminary inquiry or investigation is not a general court-martial convening authority (GCMCA) with an assigned staff judge advocate (SJA), the command will forward the inquiry/investigation to the first GCMCA in its chain of command with an assigned SJA. The command will include a written recommendation concerning the line of duty determination. The GCMCA with an assigned SJA is the cognizant official for making the formal line of duty determination, subject to a limited review process described in paragraph (d) below. The GCMCA shall make the line of duty determination in accordance with the guidance in sections 0222-0227 of the JAGMAN.

b. Before making an adverse determination, the GCMCA or his or her SJA shall afford a known potential Survivor Benefit Plan (SBP) beneficiary the opportunity to review the report of investigation and provide relevant information to the GCMCA. A "known potential SBP beneficiary" is the person who would otherwise be the recognized qualified survivor if a favorable determination were made. The Marine Corps Casualty section will provide assistance for Marine Corps commands in identifying potential SBP beneficiaries. Ordinarily, the known potential SBP beneficiary shall be provided 30 calendar days from receipt of the report of investigation to provide information to the GCMCA. In an adverse determination case in which there is no known potential SBP beneficiary, the GCMCA shall make the line of duty determination following a review of the investigation by the SJA.

c. The line of duty determination shall be made in writing by the GCMCA and forwarded to HQMC (MMSR-6), J. W. Marsh Building, 3280 Russell Road, Quantico, Virginia, 22134. For more information contact MMSR-6 at (703) 784-9310, 9304/9305, 1-800-336-4649, (DSN 278), or (703) 784-9834 (fax).

d. For adverse determination cases, the GCMCA shall forward a complete copy of the investigation to MMSR-6, where it will be reviewed by DC (M&RA). DC (M&RA) shall review the line of duty determination and underlying investigation. The determination of the GCMCA shall be sustained unless DC(M&RA) determines that a substantial error occurred that could materially affect the determination. In such cases, DC(M&RA) can make a different determination or return the case to the GCMCA for further investigation. The review and determination of the DC(M&RA) shall be administratively final.

2. Notification of Next of Kin. A major concern in death cases is forwarding timely, relevant, and factual information to the next of kin (NOK). In many cases, the NOK exhibit frustration with the

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conduct of death investigations and a perceived lack of information from the Marine Corps. On occasion, these frustrations are exhibited through allegations of investigative ineptitude and cover-up. Early and frequent communication from the command to the NOK will aid in preventing the development of adversary relations between the NOK and the command, and will add to the credibility that the NOK give to the death investigation. Guidelines for notifying and communicating with the NOK of a deceased Marine are provided below. More detailed requirements are published in MCO P3040.4_ (MARCORCASPROCMA) and paragraph 0233 of the JAGMAN.

a. An investigation into the death of a Marine should seek to answer all legitimate questions surrounding the death that , the NOK may have. Using the utmost discretion, IOs should contact NOK to obtain relevant background information about the deceased Marine or Sailor and discover the issues of concern to the NOK.

b. In any case in which the cause(s) or circumstance(s) surrounding a Marine's death are under investigation, the Marine's unit commander will send the NOK a letter notifying them that an investigation has been initiated. The letter will be sent within 14 days after the initial notification of death was provided to the NOK. At a minimum, the letter will include the following: (1) names of DoD agencies conducting the investigation, (2) existence of any reports by such agencies that have been or will be used as a result of the investigation(s), and (3) if NCIS is conducting a death investigation, the name and telephone number of the case agent and NCIS family liaison representative (800-479-9685) at NCIS Headquarters, Washington, D.C.

c. Release of administrative investigation reports outside the DON is governed by SECNAVINST 5720.4_ (FOIA), SECNAVINST 5211.5_ (Privacy Act), and the JAGMAN. As a general rule, no investigative report, evidence, or documents compiled by investigating officials may be released until the report is final. See paragraph 0219 of the JAGMAN. However, special exceptions exist regarding the release of death investigations to the NOK. Within 30 days after the initial notification of death was provided to the NOK and provided that the first general officer in the chain of command has reviewed the investigation, the reviewer will normally provide requesting NOK with copy(ies) of any completed investigative and fatality report(s) unless: the release would violate applicable law (e.g., investigation classified); the endorser can articulate how release would harm the command's mission, would interfere with an ongoing criminal investigation, or why release should not be made for good cause; or the investigation involves a friendly fire incident as described in paragraph 8001.9 and DOD Instruction 6055.7_, and the release has not been authorized by the appropriate Combatant Commander. Review JAGMAN, 0233 for requirements and exceptions. If the investigation is

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not completed within 30 days of the initial notification, then the unit commander is required to notify requesting NOK, in writing, on the status of the investigation. Section 0233d of the JAGMAN also requires, when practicable, hand-delivery of releasable investigations to the NOK by a knowledgeable officer who can discuss the contents with the family.

d. In cases where the Marine's death may have been self-inflicted, it is essential that only accurate facts and not opinions are provided to the NOK.

e. Section 0240b of the JAGMAN requires that graphic photographs enclosed with command investigations be placed in a separate envelope marked: "CAUTION: THIS ENVELOPE CONTAINS GRAPHIC PHOTOGRAPHS. VIEWER DISCRETION WARRANTED." The MARCORCASPROC MAN requires a similar warning if the NOK elect to receive copies of investigative reports containing sensitive or gruesome materials. Said materials must be separated from the investigation and placed in a sealed envelope marked: "CAUTION: THIS ENVELOPE CONTAINS GRAPHIC MATERIALS (INCLUDING PHOTOGRAPHS). VIEWER DISCRETION WARRANTED."

f. Prior to the release of any death investigation to anyone other than NOK, the release authority will coordinate with MRPC, Casualty Branch, (703) 784-9512, to confirm that NOK have been notified of the completed investigation and that they have had the opportunity to request/review a copy of the redacted investigation. Releasing authority will also ensure that NOK are advised that the investigation may soon be released pursuant to a press event, media inquiry or FOIA request. In no circumstance shall a death investigation be released before NOK have an opportunity to review the investigation and NOK are advised that it may soon be released. Before releasing any investigation to the media, the releasing authority, working with MRPC, Casualty Branch, must coordinate with their local public affairs office. For any investigation that may result in local, regional or national media coverage, the releasing authority will ensure that proper coordination has been made with CMC (JAD), (703) 614-2510 CMC (PAM), (703) 614-4309/8010, CMC (OLA), (703) 614-1686/1687, the HQMC FOIA office (ARSF), (703) 614-4008, and any other relevant HQMC department before authorizing release. For any JAGMAN investigation involving an aviation incident, the releasing authority will coordinate with DC, Aviation, (APP), (703) 614-2261/2189/1794, and any other pertinent HQMC department before authorizing release. Releasing authorities are reminded to staff these issues within their respective commands and through the proper chain to ensure all echelons of command are fully informed.

g. Mishap/safety investigation reports. The Commander, Naval Safety Center is the sole release authority for any ground or aviation mishap/safety investigation. Any request for a mishap/safety

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investigation shall be referred to the Naval Safety Center with a copy of the request provided to HQMC, Safety Division, (703) 614-1202/1077/2147, who shall ensure that the appropriate staff offices within HQMC are aware of the request.

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CHAPTER 9

COORDINATION OF CIVIL LITIGATION

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CHAPTER 9

COORDINATION OF CIVIL LITIGATION

9000. SCOPE

1. Purpose. This chapter provides step-by-step procedures for the reporting, notification, and monitoring of Federal civil litigation involving the United States as a party, and for complying with litigation requests or subpoenas for DON information, documents, or witnesses in Federal or State civil litigation where the United States is not a party.

2. Marine Corps or United States a Party. When the Marine Corps or the United States is a party, CMC is the decision-making authority for the Marine Corps. 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 Office of the Judge Advocate General of the Navy (OJAG), General Litigation Division.

3. Applicability. This chapter applies whenever a civil action seeking injunctive relief is brought against a Marine Corps command or against an individual Marine for actions taken in his/her official capacity, or whenever a subpoena or request for DON information, documents or witnesses is received.

4. Nonapplicability. This chapter does not apply to requests or subpoenas from Federal agencies, nor from State agencies, except in the case where a State has brought suit against the United States.

5. References. Additional guidance is contained in JAGMAN, chapters V and VI, and SECNAVINST 5820.8_.

9001. INJUNCTIVE RELIEF REQUESTED

1. Procedures. If delivery, service, or attempted service of a summons and complaint seeking injunctive relief (habeas corpus, temporary restraining order, or preliminary injunction) 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 command staff judge advocate (SJA).

2. Litigation Action Attorney. The command SJA will immediately appoint a litigation action attorney. The litigation action attorney will be the focal point for any questions or actions regarding the

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litigation and will comply with the following procedures:

a. Immediately contact the OJAG, General Litigation Division, DSN 221-9870 [(703) 325-9870], and then CMC (JAR) DSN 224-2510 [(703) 614-2510];

b. Forward a copy of the complaint, summons, and all pleadings to the OJAG, General Litigation Division and CMC (JAR) via express mail or facsimile machine. (OJAG General Litigation FAX - DSN 221-6615, (703) 325-6615; CMC (JAR) FAX - DSN 224-5078, (703) 614-5078.)

c. Submit recurring FAX, telephone or message reports (daily if necessary) of significant developments in the case to the OJAG, General Litigation Division, and CMC (JAR);

d. Keep the local Marine Corps command informed of the status of the case.

9002. SUBPOENAS FOR DOCUMENTS AND WITNESSES

1. Procedure

a. DON Documents or Witnesses. 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 CFR 725.7 (which publishes SECNAVINST 5820.8_); and advise the attorney that the General Counsel of the Navy (OGC) is the sole DON agent for service of process at the following address: Department of the Navy, Office of General Counsel, The Pentagon, Room 4E516, Washington, DC 20350-1000.

b. Department of Defense Pay Records

(1) Active Duty and Reserves. To obtain pay records of Marines, active duty or Reserves, a separate subpoena must be served on the Defense Finance and Accounting Service - Kansas City Center. The address for service by mail is: Defense Finance and Accounting Service - Kansas City Center, Office of General Counsel, Kansas City, MO 64197-0001. The telephone number is (816) 926-7103.

(2) Retired or FMCR Marines. To obtain pay records of retired or FMCR Marines, a separate subpoena must be served on the Defense Finance and Accounting Service - Cleveland Center. For Garnishment matters, the address for service by mail is: Defense Finance and Accounting Service - Cleveland Center (MUI), 1240 East 9th Street, Cleveland, OH 44199-2055. The telephone number is (216) 522-5118.

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For all other pay record matters, the address for service by mail is:
-General Counsel's Office, Defense Finance and Accounting Service -
Cleveland Center (MUI), 1240 East 9th Street, Cleveland, OH 44199-2055
The telephone number is (216) 522-5396.

2. 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 MCO P5211.2, and 5 U.S.C. § 552a(b)(11)). Subpoenas signed by clerks of court should not be honored and referred under 32 CFR section 725.7.

9003. REQUESTS FOR DOCUMENTS, DEPOSITIONS, WITNESSES OR SITE INSPECTIONS

1. 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:

a. OGC Matters. If subject matter involved is a matter assigned to OGC (see SECNAVINST 5430.25) 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. OJAG Matters. For all other matters (pursuant to SECNAVINST 5430.27):

- (1) Forward the request to the OJAG, Claims and Tort Litigation Division, or OJAG, General Litigation Division, as appropriate;
- (2) Send a copy to CMC (JAR);
- (3) Send a letter to the requesting counsel advising of the referral.

2. 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:

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a. OGC Matters. If the subject matter is an OGC matter (pursuant to SECNAVINST 5430.25_):

(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. OJAG Matters. 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 via CMC (JAR); and

(2) Send a letter to the requesting counsel advising of the referral.

c. Other Matters. For any other matters, the Marine Corps "determining authorities" (i.e., general courts-martial convening authorities listed in SECNAVINST 5820.8_) will respond as follows:

(1) Improper Requests. If the determining authority finds the request does not meet the requirements of SECNAVINST 5820.8_, then it is an improper request. The determining authorities will return improper requests to the requesting counsels and refer them to 32 CFR 725.7 .

(2) Proper Requests. 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. In addition to specific direction from the OJAG, General Litigation Division or JAD (JAR), the determining authority will take the following actions:

(a) Respond directly to the requester (copy to CMC (JAR));

(b) 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

(c) Coordinate the request with CMC (JAR). This is appropriate in cases where a response from several different commands/determining authorities is necessary (for example, a request to depose a number of Marines, now located at several different commands or geographic areas) or where a requested witness is no longer a member of the Marine Corps.

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CHAPTER 10

COMPLIANCE WITH COURT ORDERS BY MARINES, DEPENDENTS,
AND CIVILIAN EMPLOYEES SERVING OVERSEAS

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CHAPTER 10

COMPLIANCE WITH COURT ORDERS BY MARINES, DEPENDENTS,
AND CIVILIAN EMPLOYEES SERVING OVERSEAS

10000. SCOPE

1. This chapter designates responsible Marine Corps officials for acting on a request or order from a court or from Federal, State or local authorities concerning a court order for the return to the United States of servicemembers and their family members or civilian employees and their family members serving overseas.
2. Detailed procedural and policy guidance regarding the processing of requests or orders for the return of servicemembers, civilian employees, and their family members is set forth in SECNAVINST 5820.9 and DoD Directive 5525.9.

10001. POLICY

1. The Marine Corps will cooperate with requests for return pursuant to a court order when such action is consistent with mission requirements (including operational readiness), the provisions of applicable international agreements, and ongoing Department of Defense investigations or courts-martial.
2. Every reasonable effort will be made to resolve the matter without returning servicemembers to the United States or by taking other action authorized by SECNAVINST 5820.9 against civilian employees or the family members of servicemembers and civilian employees.
3. In appropriate circumstances, servicemembers may be returned involuntarily to the United States. The involuntary return of civilian employees and family members of both servicemembers and civilian employees is not authorized.
4. In appropriate circumstances, adverse action, to include removal from Federal service, may be taken in the case of civilian employees and the command sponsorship of family members of both servicemembers and civilian employees may be withdrawn.

10002. RESPONSIBLE OFFICIALS

1. CMC (MM) is the responsible official for acting on all requests involving servicemembers and their family members who are not employees.

2. Commanding officers who receive a request for the return of a servicemember or family members of a servicemember belonging to the command will comply with procedures set forth in SECNAVINST 5820.9, and forward the request to CMC (MM) for action.

3. 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 5820.9.

4. CMC (JA) will provide legal review and advice on requests under the cognizance of CMC (MM). CMC (JAR) is the point of contact for authorities issuing requests for return or other action.

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CHAPTER 11

ETHICS PROGRAM

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FIGURE

11-1 ETHICS PROGRAM CALENDAR.

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CHAPTER 11

ETHICS PROGRAM

11000. SCOPE. This chapter sets forth administrative instructions for the Marine Corps ethics program. Figure 11-1 is an annual calendar of filing and reporting dates under the program.

11001. JOINT ETHICS REGULATION. Department of Defense Directive 5500.7-R of 30 August 1993, the Joint Ethics Regulation (JER), is the single source for standards of ethical conduct and ethics guidance, including direction in the areas of financial disclosure, post-government employment rules, enforcement, and training for the Department of Defense.

11002. 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)), who are the designated agency ethics officials (DAEOs) for the Marine Corps. CMC (JA) and CMC (CL) provide ethics advice and training, and monitor financial disclosure reporting in their areas of responsibility as set forth below. Staff judge advocates and local CL attorneys serve as ethics counselors and supervise the ethics programs within their commands or areas of responsibility.

1. CMC (JA)

a. The Research and Civil Law Branch (JAR) administers the ethics program for CMC (JA).

b. JAR provides timely, individual, written notification, including an SF-278 Public Financial Disclosure Report, to all Marine Corps general officers whenever they are required to submit a new entrant, annual, or termination report, and monitors submissions to ensure that all reports are timely filed. JAR also maintains on file the SF-278 reports of all Marine Corps general officers.

c. CMC (JA) is responsible for the final review of the SF-278 reports of all Marine Corps general officers, except for those assigned to joint billets and those general officers at HQMC who fall under the cognizance of CMC (CL). CMC (JA) conducts the initial review of the SF-278 reports of the Counsel for the Commandant and the Deputy Counsel, and forwards the reports to the DON Office of General Counsel (Navy OGC) for final review; and conducts the final review of the SF-278 reports of the following general officers:

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- (1) Assistant Commandant of the Marine Corps
 - (2) Director, Marine Corps Staff
 - (3) Deputy Commandant for Manpower and Reserve Affairs
 - (4) Deputy Commandant for Plans, Policies, and Operations
 - (5) Deputy Inspector General/Inspector General for Marine Corps
 - (6) Commanding General, Marine Corps Recruiting Command
 - (7) Director, Public Affairs
 - (8) Director, Legislative Affairs
- d. CMC (JA) conducts the legal review of the Office of Government Ethics (OGE) Form 450, Confidential Financial Disclosure Report, for all personnel who report to the general officers identified in paragraph 11002.1c, and maintains those reports on file.

e. JAR compiles and submits for the Marine Corps all reports required by the ethics program.

2. CMC (CL)

a. CMC (CL) provides timely, individual, written notification, including an SF-278 Public Financial Disclosure Report, to all Marine Corps Senior Executive Service (SES) personnel whenever they are required to submit a new entrant, annual, or termination report, and monitors submissions to ensure that all reports are timely filed.

b. CMC (CL) conducts the initial review of the SF-278 reports of all Marine Corps SES personnel (except CMC (CL)) and forwards them to the Navy OGC for final review. CMC (CL) is responsible for the final review of the SF-278 reports of the following general officers at HQMC:

- (1) Commandant of the Marine Corps
- (2) Deputy Commandant for Aviation
- (3) Deputy Commandant for Installations and Logistics
- (4) Deputy Commandant for Programs and Resources
- (5) Deputy Commandant for Command, Control, Communications, and Computers

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(6) Director of Intelligence

(7) Staff Judge Advocate to the Commandant

c. CMC (CL) conducts the legal review of the OGE Form 450, Confidential Financial Disclosure Report, of personnel who report to the general officers identified in paragraph 11002.2b, and maintains those reports on file.

3. Ethics Counselors

a. Ethics counselors are responsible for supervising the ethics program for their organization, review and compliance with financial disclosure reporting, and providing ethics advice, to include post-government employment opinions, to commanders, individual Marines, and civilian personnel. CMC (CL) is responsible for the coordination and consistency of ethics opinions within the Marine Corps.

b. As DAEO for the Department of the Navy, the Navy OGC has designated the following ethics counselors within the Marine Corps:

(1) Head, and Deputy Head, Research and Civil Law Branch, Judge Advocate Division, HQMC;

(2) Director, Joint Law Center, MCAS Yuma, AZ;

(3) Director, Joint Law Center, MCAS New River, NC;

(4) Director, Joint Law Center, MCAS Beaufort, SC;

(5) Station Judge Advocate, MCAS Iwakuni, Japan;

(6) Staff and force judge advocates for all staffs and commands having GCM convening authority; and

(7) CMC (CL) designated ethics counselors.

c. Pursuant to JER paragraph 1-401, ethics counselors must be designated in writing by the DAEO. Submit requests for additional designations to CMC (JA) or CMC (CL), as appropriate.

11003. FINANCIAL DISCLOSURE. The purpose of financial disclosure reports is to assist Federal agencies in identifying potential conflicts of interests between the official duties of employees and their private financial interests and affiliations. The Office of Government Ethics establishes rules and regulations for both the public and confidential financial disclosure systems.

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1. Public Financial Disclosure Report (SF-278) (Report Control Symbol DN-5370-01)

a. Individuals Required to File. Regular and Reserve military officers whose pay grade is O-7 or above, and civilian employees in an SES position.

b. Time of Filing

(1) New Entrant Reports. Within 30 days of assuming a covered position, a reporting individual shall submit an SF-278.

(2) Annual Reports. Any time after 1 January, but not later than 15 May, a reporting individual who served in a covered position for more than 60 days during the preceding calendar year shall file an annual SF-278.

(3) Termination Reports. Not later than 30 days after termination from a covered position, a reporting individual shall submit a SF-278. Filers may post-date their reports for convenience, in particular before departing on terminal leave. Ethics counselors must ensure that no changes occur between signing and the effective date.

(4) Combined Annual/Termination Report. Reporting individuals who anticipate terminating their DoD employment before 30 June may request an extension of up to 45 days in order to file one consolidated report. Combined annual/termination reports must be filed within 30 days after termination of employment but not later than 15 July.

(5) Late Filing Fee. Any reporting individual who is required to file an SF-278 and does so more than 30 days after the required filing date shall be subject to a \$200.00 late filing fee. Note that combat zone and other administrative extensions are available as circumstances justify.

2. Confidential Financial Disclosure Report (OGE Form 450) (Report Control Symbol DN-5370-02)

a. Individuals required to file

(1) Commanding officers, executive officers, heads, and deputy heads of:

(a) Navy shore installations with 500 or more military and civilian DoD employees; and

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(b) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(2) DoD employees when their 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 shall submit an OGE Form 450 with information current as of the filing date for the preceding 12 months, through the supervisor to the 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 Form 450 to the ethics counselor by 30 November of each year covering the preceding 12 months. Individuals who have previously filed an OGE Form 450 may be eligible to file the OGE Optional Form 450-A (short form). Refer to the JER for further guidance.

11004. TRAINING

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

a. Within 90 days of entering on duty, all new DoD employees who have not previously received ethics training shall receive an IEO.

b. The DAEO shall ensure that new, active duty enlisted members of the armed services receive, within 180 days of entering on active duty, initial ethics training.

c. An IEO shall be a minimum of 1 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.

2. Annual Ethics Training. All DoD employees who file an SF-278 or OGE Form 450 shall receive 1 hour of ethics training annually to be completed by 31 December.

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3. Training Materials. JAR will distribute annual ethics training materials prepared by OGE and the DoD Standards of Conduct Office to all commands.

11005. REPORTING GIFTS OF TRAVEL AND FOREIGN GIFTS. Figure 11-1 lists required reporting dates. Refer to chapter 12 for reporting formats and guidance on processing these gifts.

1 January: CMC (JAR) mails annual SF-278 notifications to all general officers.

15 January: Ethics counselors send responses to OGE annual questionnaire to CMC (JAR).

15 January: Ethics counselors report foreign gifts of more than minimal value received during previous calendar year to CMC (JAR).

30 January: CMC (JAR) reports foreign gifts of more than minimal value received by the Marine Corps during previous calendar year to Navy OGC.

30 April: Ethic counselors report gifts of travel/travel related expenses in excess of \$250.00 accepted under 31 U.S.C. § 1353 to CMC (JAR).

15 May: CMC (JAR) makes semiannual report of gifts of travel/travel related expenses to Navy OGC.

15 May: Annual SF-278s required to be filed with ethics counselors.

15 October: CMC (JAR) notifies HQMC personnel of requirement to file an annual OGE Form 450 on or before 30 November.

31 October: Ethic counselors report gifts of travel/travel related expenses in excess of \$250.00 accepted under 31 U.S.C. § 1353 to CMC (JAR).

15 November: CMC (JAR) makes semiannual report of gifts of travel/travel related expenses to Navy OGC.

30 November: All annual OGE Form 450s due. Report due to CMC (JAR) that all reports filed.

1 December: CMC (JAR) mails OGE annual ethics questionnaire to ethics counselors.

15 December: Ethics counselors report to CMC (JAR) on status of OGE Form 450 filings.

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15 December: CMC (JAR) reports gifts to foreign governments and individuals to Navy OGC.

31 December: Ethics counselors report to CMC (JAR) on completion of annual ethics training.

Figure 11-1.--Ethics Program Calendar.

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CHAPTER 12

GIFTS

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FIGURE

FOREIGN GIFT OF MORE THAN MINIMAL VALUE

SAMPLE GIFT OFFER FORWARDING LETTER

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CHAPTER 12

GIFTS TO THE MARINE CORPS

12000. SCOPE. This chapter implements policy and procedures for accepting gifts to the Marine Corps pursuant to SECNAVINST 4001.2_ and SECNAVINST 1650.1_. It covers:

1. Gifts under 10 U.S.C. § 2601. Acceptance of gifts for the establishment, operation, or maintenance of a school, hospital, library, museum, cemetery, or any other organization under the jurisdiction of the Marine Corps authorized by 10 U.S.C. § 2601;
2. Gifts from foreign governments;
3. Gifts to the Commandant's House;
4. Gifts to a Marine Corps special service recreation fund;
5. Gifts given to MWR activities;
6. Gifts of Travel under 10 U.S.C. § 1353. Acceptance of payment from a non-Federal source for travel expenses authorized under 31 U.S.C. § 1353 (implemented by 41 C.F.R. § 301-1.2 and Chapter 304 as well as Chapter 4 of the JER); and
7. Gift acceptance authority and delegations.

12001. DEFINITIONS

1. Gift, unless otherwise qualified, means a gift, devise, bequest, or loan (other than of money) of real or personal property without consideration.
2. Money means cash, checks, or other forms of negotiable instruments.
3. Personal property includes clothing, jewelry, household furnishings, money, vehicles, stocks, bonds, and all property not defined as real or intellectual property.
4. Real property includes land and any buildings, improvements, or fixtures on that land.
5. Intellectual property includes any patent, trademark, copyright, or other intangible property interest of a similar nature.

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6. Organization includes any activity under the jurisdiction of the Marine Corps including, but not limited to, any defined organizational unit or activity, nonappropriated fund activity, research and development facility, school, hospital, library, museum, or cemetery.

7. Acceptance authority is the DON official or officer who, on behalf of the Secretary of the Navy, may accept gifts that satisfy the criteria found in this chapter. The acceptance authorities for particular categories of gifts are listed below.

8. Foreign government includes any unit of foreign governmental authority (including any foreign national, state, local, or municipal government or armed force), any international or multinational organization whose membership is comprised of any of the units of foreign governments described above, and any agent or representative of any such unit or organization while acting as such.

9. Prohibited source means any person who (1) is seeking official action by the Marine Corps or the DON; (2) does business or seeks to do business with the Marine Corps or the DON; (3) conducts activities regulated by the Marine Corps or the DON; (4) has interests that may be substantially affected by the performance or nonperformance of official duties by Marine Corps or DON personnel; or (5) is an organization a majority of whose members are described in (1) through (4) above. No person or organization shall be deemed a prohibited source for the purposes of this chapter solely because of the offer of a gift or because the stated purpose of the organization includes the provision of financial support to DON, its components, or DON personnel.

10. For the purposes of this chapter, Marine Corps personnel include:

a. All members of the Marine Corps, regular or Reserve, on active duty, active duty for training, and periods of inactive duty training, such as drills or other appropriate duty;

b. All Navy military personnel, regular or Reserve, on active duty, serving with the Marine Corps; and

c. All civilian employees of the DoD serving with the Marine Corps, including personnel of nonappropriated fund instrumentalities.

12002. POLICY. Any gift, regardless of value, will be refused by the Marine Corps if 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

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of a relationship in which favors are granted, or if it might result in unwarranted publicity for the donor at the expense of the Government.

1. Conditional Gifts. An offer of a gift to the Marine Corps with specified conditions, other than the use to which the gift shall be put, will normally not be accepted. Such gifts might include loans of property, property donated with unduly burdensome conditions or conditions that improperly discriminate among beneficiaries, or gifts requiring expenditures of funds or administrative effort that outweigh the value of the gift.

2. Solicitation of Gifts. Unless specifically authorized by the Secretary of the Navy, Marine Corps personnel shall not solicit gifts for the Marine Corps or its personnel and no gift that is the result of an unauthorized solicitation shall be accepted. Further, as provided in DoD 5500.7-R, Joint Ethics Regulation (JER), the solicitation of gifts from prohibited sources by Marine Corps personnel for themselves, their spouses, minor children, or members of their household is prohibited and may result in disciplinary action.

3. Selective Endorsement. DoD and DON policies proscribe giving preferential treatment to any organization or person. No gift from a commercial enterprise, non-profit organization, or individual shall be accepted if such acceptance would reasonably create the appearance of selectively endorsing the donor, its products, or its services.

4. Future Gifts. A gift may not be accepted until actually offered. An offer by a donor to raise funds for future donation to the Marine Corps, for example, shall be treated as a pledge for a future gift. If the ultimate gift is acceptable under this chapter, the acceptance authority should so advise the donor that the gift cannot be finally accepted until fund-raising is completed and the funds, or the property purchased with the funds, offered to the Marine Corps.

5. Gifts from Foundations and Similar Entities. Foundations and other non-profit organizations may provide valuable support to the Marine Corps; however, such organizations should not be used as a conduit for such sources to make gifts indirectly that would not be permitted under the gift acceptance policies if they were offered directly to the Marine Corps. Acceptance authorities must exercise caution before accepting a gift from a foundation (or similar entity) that solicits funds or other property for future donation to the Marine Corps, its organizations or personnel to ensure that the donation is not an attempt to circumvent the policies contained in this chapter.

6. Fund-Raising by Marine Corps Personnel. Participation by Marine

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Corps personnel in activities to raise funds for future presentation to the Marine Corps, or for the purchase of real or personal property to be presented to the Marine Corps in the future, is governed by DoD policy which prohibits DoD personnel from participating in their official military capacity in fund-raising activities which are not recognized for on-the-job solicitation with the Federal service. This prohibition applies to official participation during duty and non-duty hours, but does not preclude participation in fund-raising activities as a private citizen during non-duty hours. Refer to the JER for specific guidance.

7. Gifts from Prohibited Sources. Acceptance of gifts from prohibited sources requires heightened sensitivity because acceptance may create embarrassment to the Marine Corps or the DON, or the appearance of influencing official decision-making or actions of the Marine Corps or the DON. Consequently, before accepting a gift of more than \$5,000.00 from a prohibited source, the acceptance authority shall inform the Staff Judge Advocate to the Commandant (CMC (JA)) of the offer. CMC (JA) shall then consult with and request a determination from the Office of General Counsel for the Navy (Attn: Assistant General Counsel (Ethics)) whether the donor is involved in any claims, procurement actions, litigation, or other matters involving the DON, and will provide this information to the gift acceptance authority. Additionally, gift acceptance authorities shall provide a copy of each gift acceptance decision involving a gift from a prohibited source to CMC (JA), who will provide a copy to the Office of General Counsel for the Navy.

8. Gifts From Foreign Governments

a. Gifts of Minimal Value. Table favors, mementos, or other remembrances bestowed at official functions, and other gifts of minimal value (i.e., \$305.00 or less) received as souvenirs or marks of courtesy from a foreign government may be accepted and retained by the recipient.

b. Gifts of More than Minimal Value. When a gift of more than minimal value (i.e., more than \$305.00) is tendered, the donor should be advised that statutory provisions and DoD policy prohibit Marine Corps personnel from accepting such gifts. If it appears that refusal of a gift would be likely to cause embarrassment to the donor or could adversely affect the foreign relations of the United States, it may be accepted as a gift to the Marine Corps and becomes Marine Corps property. The gift may be retained for official use by the command or forwarded to CMC (JAR) as excess property for disposal by the General Services Administration (DoD Directive 1005.13 and SECNAVINST 1650.1 provide additional guidance). If forwarded for

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disposal, include a cover letter with all information specified in subparagraphs 12002.8c(1) through (5).

c. Reporting Requirement. Each command shall maintain records of gifts of more than minimal value received by their employees from foreign governments. A report of all such gifts received during the preceding calendar year (Report Control Symbol EXEMPT) shall be forwarded annually to CMC (JAR) no later than 15 January (negative reports not required). The report (figure 12-1) shall include the following information:

- (1) Name and title of recipient
- (2) Brief description of the gift, date of acceptance, estimated value, and current disposition or location
- (3) Identity of foreign donor and government
- (4) Circumstances justifying acceptance
- (5) Whether recipient desires to participate in sale of gift if sold by GSA.

9. Acceptance of Travel From a Non-Federal Source

a. Gifts of Travel. 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. Implementing regulations are found at 41 C.F.R. § 301-1.2 and Chapter 304 as well as Chapter 4 of the JER.

b. Acceptance Procedures. 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) Acceptance of the payment under the circumstances would not cause a reasonable person with knowledge of all the relevant facts to question the integrity of Department of the Navy programs or

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operations. The travel approving authority must be guided by all relevant considerations, including but not limited to the:

- (a) Identity of the non-Federal source;
- (b) Purpose of the meeting;
- (c) Identity of other expected participants;
- (d) Nature and sensitivity of any matter pending within the Department of the Navy which may affect the interest of the non-Federal source;
- (e) Significance of the employee's role in any such matter; and
- (f) Monetary value and character of the travel benefits offered by the non-Federal source.

(Note: The travel approving authority may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the Department of the Navy to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the event or limiting the type or character of benefits that may be accepted.)

(4) The travel is primarily for the benefit of the Government, not the organization.

c. Reporting Requirement. Each travel approving authority shall report gifts of travel of more than \$250.00 to CMC (JAR) semiannually on 30 April and 30 October using SF 326 (negative reports not required).

d. The offer of payment shall be accounted for and processed per the Joint Federal Travel Regulations (uniformed members) or the Joint Travel Regulations (civilian personnel).

12003. PROCESSING OF GIFTS OF PERSONAL PROPERTY TO THE MARINE CORPS

1. Procedures. The following procedures shall be employed in processing gifts of personal property to the Marine Corps:

a. When any Marine Corps organization is offered a gift, the recipient shall acknowledge the offer and advise the prospective donor

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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. The forwarding correspondence should contain the information provided in the sample at Figure 12-2.

c. If tangible property of any kind other than money is received, the receiving organization shall temporarily assume custody of the property. The property shall not be taken up on the property account records of the organization concerned, however, until after final acceptance by the appropriate acceptance authority.

d. When money is offered as a gift, it shall be forwarded to the appropriate acceptance authority as an attachment to correspondence that conforms to Figure 12-2. (Gifts of money tendered in the form of negotiable instruments must be made payable to the Department of the Navy.) The funds shall then be forwarded to CMC (RFO) for submission to the Assistant for Administration, Deputy Under Secretary of the Navy (AAUSN). Once the gift has been properly accepted, the funds will be deposited and, in most cases, returned to the receiving activity.

e. Gifts offered to Morale, Welfare and Recreation (MWR) organizations should be processed in accordance with MCO P1700.27__.

f. Birthday Balls. If a gift is to an MCCA activity, gift acceptance rests with MCCA. If a private organization has been set up to plan and coordinate the social portion of the Marine Corps birthday ball, the private organization, rather than the Marine Corps or unit, may accept gifts designated for, or to defray the costs of, the social portion of the ball. (Chapters 2 and 3 of the JER govern official and personal capacity involvement with such private organizations.) Finally, gifts may be accepted as gifts to the Marine Corps, in which case, the procedures of paragraph 12003 apply.

g. Any gift offered by a foreign government must be processed under the procedures in Chapter 2 of the JER and paragraph 12002.8. Offers of gifts of travel may be accepted under paragraph 12002.9.

h. In exceptional circumstances where a limited time offer must be expeditiously accepted, such as an offer of tickets to a near-term event or a gift of travel taking place in a short time, the offer may be forwarded to the acceptance authority in message format or by facsimile, copying the chain of command.

i. Any offer of a gift of real property, regardless of value, made for the benefit of, or in connection with the establishment,
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operation, or maintenance of any Marine Corps organization, shall promptly be referred to the cognizant general officer in command or district director who shall forward the offer with comments and a recommendation regarding acceptance to the engineering field division of the Naval Facilities Engineering Command serving the area where the offered property is located for further handling per SECNAVINST 4001.2_. The general officer in command or district director shall forward a copy of such correspondence to CMC (CL). The engineering field division concerned shall staff through CMC any offer of a gift of real property to a Marine Corps organization. Under SECNAVINST 4001.2_, only the Secretary of the Navy can accept gifts of real property.

j. Any offer of a patent, trademark, copyright or other gift of intellectual property for the benefit of, or in connection with the establishment, operation, or maintenance of any Marine Corps organization shall be promptly referred to CMC (CL).

k. Any offer of a gift to the Marine Corps made through the religious offerings fund will be processed per MCO 7010.17_. This includes funds collected during church services. However, offers of gifts designated for a use other than that for which a church service offering is made shall be processed under this chapter rather than MCO 7010.17_ (money donated for the purchase of a stained glass window for a base chapel is an example of such a gift).

l. Where money is offered as a gift and the donor has not specified a use for the money, the receiving organization shall recommend a use to the acceptance authority.

m. Acceptance authorities may accept gifts of personal property to the Marine Corps consistent with the policy stated in this chapter and within the value limitations specified in paragraph 12003.2. Acceptance authorities shall maintain records of gifts per paragraph 12006. Acceptance authorities shall direct the recipient of the gift to acknowledge the generosity of the donor in appropriate correspondence.

n. Acceptance authorities that approve gifts having significant public affairs implications shall notify the appropriate public affairs officer.

o. Gifts of an artistic or historic nature will be reviewed by the Director, Marine Corps History and Museums (CMC (HD)) if of a value exceeding \$5,000.00 to ensure suitability prior to their acceptance by any Marine Corps acceptance authority or, in the case of gifts valued at \$50,000.00 or more, prior to forwarding the gift to

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the Secretary of the Navy's acceptance authority per SECNAVINST 4001.2_.

2. Acceptance Authorities. The following officials are authorized to accept gifts within 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 chapter. 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 redelegated.

b. Officers exercising special court-martial jurisdiction are authorized to accept gifts of personal property to the Marine Corps of a value not exceeding \$1,500.00. This authority may not be redelegated.

c. The Director, Marine Corps History and Museums may accept gifts to the Marine Corps of personal property having historical significance or artistic work of museum quality of a value not exceeding \$10,000.00. This authority may not be redelegated.

d. General officers in command and district directors may accept gifts of personal property offered to the Marine Corps of a value not exceeding \$10,000.00. This authority may not be redelegated.

e. The Staff Judge Advocate to the Commandant and the Counsel for the Commandant may accept gifts of personal property to the Marine Corps of a value not exceeding \$10,000.00. This authority may not be redelegated.

f. The Commandant of the Marine Corps may accept gifts of personal property to the Marine Corps of a value not exceeding \$50,000.00. The authority to accept such gifts of a value exceeding \$10,000.00 may not be redelegated except with approval of the Secretary of the Navy. Gifts which may be accepted only by the CMC shall be forwarded to CMC (JAR) for processing.

g. The Director of an MWR activity may accept gifts of a value not exceeding \$3,000.00. The Director, Personnel and Family Readiness Division will be the acceptance authority for gifts to MWR activities in excess of \$3,000.00.

3. Gifts of Personal Property Valued at More Than \$50,000.00. Gifts
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of personal property of a value of more than \$50,000.00 shall be forwarded to CMC (JAR) for submission to the appropriate acceptance authority per SECNAVINST 4001.2_.

4. Costs of Gift Transfer from Donor to Recipient. The Secretary of the Navy may pay all expenses in connection with the conveyance or transfer of accepted gifts. Under SECNAVINST 4001.2_, authority to pay such expenses is delegated to the activity head whose appropriations are properly chargeable in connection with the particular organization to be benefited.

12004. LEGAL QUESTIONS. Any questions of law which may arise in connection with this chapter should be referred to the staff judge advocate of the cognizant acceptance authority, or CMC (JAR) or CMC (CL), as appropriate.

12005. GIFT TAXATION. For the purposes of Federal income, estate, and gift taxes, gifts of property to the Marine Corps or its organizations shall be considered gifts to the United States. Donors not eligible for legal assistance should be advised to consult private tax experts for specific advice concerning permissible deductions.

12006. RECORDS, REPORTS AND FILES RELATING TO GIFTS MADE TO THE MARINE CORPS. Such records shall be maintained by the designated acceptance authority for the following periods:

1. Records relating to accepted gifts shall be retained for 3 years.
2. Records relating to gifts not accepted shall be retained for 1 year. Depending upon the nature of a gift and/or the circumstances surrounding its offer, the above retention periods may be extended at the discretion of the acceptance authority.

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From: Commanding Officer
To: Commandant of the Marine Corps (JA)
Via: Chain of Command

Subj: FOREIGN GIFT OF MORE THAN MINIMAL VALUE (REPORT CONTROL
SYMBOL EXEMPT)

Ref: (a) SECNAVINST 1650.1_
(b) LEGADMINMAN

1. A foreign gift of more than minimal value was received during
(insert calendar year). The following information is submitted per
the references:

- a. Name, grade, social security number, and position of
recipient.
- b. Description of gift (composition, size, brand, etc.).
- c. Estimated retail value of the gift in the United States at the
time of acceptance (a specific dollar amount is required).
- d. Name and position of donor and identity of foreign government.
- e. Date and place gift accepted by recipient.
- f. Circumstances justifying acceptance.
- g. Whether recipient desires to participate in sale of gift if
sold by GSA.

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From: Commanding Officer (receiving organization)
To: (Acceptance Authority)
Via: (Chain of Command)

Subj: OFFER OF GIFT

Ref: (a) LEGADMINMAN

Encl: (1) Check or Money Order

1. _____, the donor, a (private individual) (corporation) (charitable organization), (doing) (not doing) (seeking) business with the U.S. Government, has offered the following gift to (the U.S. Marine Corps) (organization). The offer is forwarded for action per the reference.

2. The gift is a (check) (money order) in the amount of \$ _____, made payable to the Department of the Navy, and is forwarded as an enclosure.

OR

2. The gift is a _____ of a value of \$ _____. I have taken temporary custody of this gift pending action of the acceptance authority. Administrative, maintenance, security, and storage costs are estimated to be (minimal) (about \$ _____ per year.)

3. This gift (was) (was not) solicited. It (does) (does not) have conditions other than to be used to _____. (If the gift is conditional, state those conditions.)

4. This gift (does) (does not) have the potential to embarrass the Marine Corps or to raise questions as to the integrity of the decision-making process within the Marine Corps. (If potential for embarrassment exists, explain.)

5. I believe this gift (will) (will not) be useful to the Marine Corps. I (do) (do not) believe that acceptance will result in embarrassment to the Marine Corps 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 by resulting in unwarranted publicity for the donor. I recommend that this gift be (accepted) (declined).

6. If the gift is accepted, I will send an appropriate letter thanking the donor (and take up the gift on the property account of this command.)

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Figure 12-2.--Sample Gift Offer Forwarding Letter.

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CHAPTER 13

CLAIMS

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FIGURE

13-1 NLSO CLAIMS JURISDICTION FOR U.S. & TERRITORIES

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CHAPTER 13

CLAIMS

13000. SCOPE

1. This chapter sets forth procedures and responsibilities for processing claims against the Marine Corps for injuries or property damage arising in the United States and its territories.
2. This chapter does not address claims arising in foreign countries or claims brought by military personnel or Federal Government employees. For detailed guidance on processing these claims, refer to JAGINST 5890.1 or contact the command staff judge advocate (SJA). Commands without an assigned SJA should refer to chapter 22 of this Manual to determine the SJA responsible for providing this advice.

13001. RESPONSIBILITIES

1. Commanding officers are responsible for the expeditious processing of all claims received by their commands and for the expeditious investigation of claims arising from the activities of their commands.
2. SJAs are responsible for advising commands on processing claims and the conduct of claims investigations.
3. The Judge Advocate General of the Navy is responsible for adjudicating and paying all claims made against Marine Corps commands. Within the United States, claims are adjudicated at one of three regional Naval Legal Service Offices (NLSOs) based on the geographic location of the incident giving rise to the claim. Figure 13-1 depicts the geographic jurisdictions of the three NLSOs and provides their addresses and telephone numbers.

13002. PROCEDURES

1. Claims against the Government are required to be filed on a Standard Form 95 (SF-95). Commands should provide this form to individuals who indicate a desire to file a claim or who submit a claim by some other means.
2. Upon receipt of an SF-95 arising from the activities of the command receiving the claim, the command shall:

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a. Stamp or mark the date and time of receipt and forward the original SF-95 within 2 business days to the responsible NLSO listed in Figure 13-1;

b. Send a letter to the claimant advising that the SF-95 was received and forwarded to the NLSO, with the NLSO's address and telephone number; and

c. Complete and forward an investigation of the claim via the chain of command to the responsible NLSO within 14 business days of receipt of the SF-95.

(1) Commands should contact their SJA for guidance before initiating the investigation and should delay completing investigations only upon the advice of the SJA.

(2) For additional guidance, procedures, and checklists for conducting investigations of specific types of incidents, refer to the JAG Manual and Chapter 8 of this instruction. Investigations of routine incidents like traffic accidents involving minor property damage will usually only require that the investigator obtain a copy of the police report, interview the military personnel and witnesses involved, and make a determination whether the military personnel were acting within the scope of their official duties at the time of the incident.

3. If the claim arose from the activities of another Marine Corps or Navy command, the command receiving the SF-95 shall:

a. Stamp or mark the date and time of receipt and forward the original SF-95 within 2 business days to the responsible NLSO listed in Figure 13-1;

b. Forward a copy of the SF-95 to the responsible command via the chain of command; and

c. Send a letter to the claimant advising that the SF-95 was received and forwarded to the responsible NLSO and command with their addresses and telephone numbers.

4. If the claim arose from the activities of another branch of the armed forces, the command receiving the SF-95 shall:

a. Forward the original SF-95 to the responsible command via the chain of command; and

b. Send a letter to the claimant advising that the SF-95 was

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forwarded to the responsible command with that command's address and telephone number.

NAVAL LEGAL SERVICE OFFICE CLAIMS JURISDICTION
FOR UNITED STATES AND TERRITORIES

Naval Legal Service Office, Mid-Atlantic
Claims Department
9620 Maryland Ave, Suite 100
Norfolk, VA 23511-2989
Telephone: (757) 444-1993/2251, DSN 564
Fax: (757) 444-1771

Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Washington DC, West Virginia, Vermont, Virginia, and Virgin Islands.

Naval Legal Service Office, Central
Claims Department
206 South Avenue, Suite B
Pensacola, FL 32508-5100
Telephone: (904) 452-3736, DSN 922
Fax: (904) 452-4576

Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Texas, and Wisconsin.

Naval Legal Service Office, Southwest
Claims Department
2585 Callagan Highway
San Diego, CA 92136-5090
Telephone: (619) 556-7261, DSN 526
Fax: (619) 556-7772

Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Oklahoma, Oregon, Nevada, New Mexico, Utah, Washington, and Wyoming.

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CHAPTER 14

LEGAL ASSISTANCE PROGRAM

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CHAPTER 14

LEGAL ASSISTANCE PROGRAM

14000. SCOPE. To promulgate policy, prescribe procedures, and assign responsibilities for the Marine Corps Legal Assistance Program. This chapter provides supplemental guidance to the Department of the Navy policy contained in JAGINST 5800.7C, Manual of the Judge Advocate General (JAGMAN), and JAGINST 5801.2, Navy-Marine Corps Legal Assistance Program. Activities and personnel providing services under this program shall comply with these directives. The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) is responsible for the overall supervision and administration of the Marine Corps Legal Assistance Program. The activity responsible for this chapter is the Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps (JAL) (703) 614-1266 / DSN 224-1266.

14001. BACKGROUND AND POLICY STATEMENT

1. Legal assistance has been provided to Marines, members of the armed forces, and their families, since 1943. Congress officially recognized the military services' legal assistance programs in 1984 by enacting 10 U.S.C. § 1044, which authorizes provision of legal assistance to eligible clients, and mandates, *inter alia*, that the Service Secretaries supervise their respective legal assistance programs. Paragraph 0702(a) of the JAGMAN directs the Commandant of the Marine Corps to supervise and control the Marine Corps Legal Assistance Program. Worldwide and deployable legal assistance is now regarded as a significant benefit of military service and a major quality of life program that enhances duty performance and retention of personnel. The specialized expertise gained by Marine Corps judge advocates in legal assistance billets constitutes a core capability that must be retained by the Marine Corps judge advocate community to fulfill its mission.

2. The focus of the legal assistance program is to assist those eligible for legal assistance with their personal legal affairs in a timely and professional manner by providing clients legal counsel, support, and representation to the maximum extent

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possible.

14002. LEGAL ASSISTANCE BRANCH (JAL)

1. Mission. The mission of JAL is to implement and supervise the Marine Corps Legal Assistance Program, to provide continuous supervision and guidance to Marine Corps legal assistance attorneys (LAAs) and staff in the field, to disseminate legal assistance policies and procedures, to foster communication and inspect the effectiveness of legal assistance programs, and to assist and advise the SJA to CMC on all legal assistance policies, procedures, and related matters.

2. Functions. JAL will accomplish its mission by performing the following tasks:

a. Provide advice regarding legal assistance policies, issues, and procedures;

b. Standardize legal assistance software programs and their related equipment (in conjunction with CMC (JAI));

c. Recommend and implement both mandatory and discretionary legal assistance and preventive law policies, programs, and procedures;

d. Communicate with legal assistance offices on developments, changes and trends in the law via site visits, video teleconferences, continuing legal education seminars, newsletters, e-mail, the legal assistance web page, and other available communication resources;

e. Support legal assistance providers with resources to enhance their practices;

f. Coordinate the Marine Corps Legal Assistance Program with the Legal Assistance programs of the other uniformed services to achieve maximum standardization and compatibility of programs, policies and resources;

g. Coordinate with the other uniformed services to identify the best ways to deliver legal services to clients and to identify trends and potential problems requiring preventive measures;

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h. Coordinate with the Armed Forces Tax Council, Department of Defense working groups, and various other entities (e.g., Internal Revenue Service, Immigration and Naturalization Service, Federal Trade Commission, Defense Finance and Accounting Service, The Judge Advocate General's School of the Army, and Naval Justice School) to obtain the most current legal information of value to legal assistance practitioners;

i. Coordinate with the American Bar Association's (ABA) Standing Committee on Legal Assistance for Military Personnel (LAMP) to ensure ABA recognition and support for current issues of military importance, as well as to obtain LAMP recognition of outstanding Marine Corps LAAs and offices;

j. Coordinate and oversee the Regional Legal Assistance Councils (RLACs) and their programs and policies; and

k. Annually visit and evaluate Marine Corps legal assistance programs and providers to ensure quality and compliance with binding policy guidance.

14003. REGIONAL LEGAL ASSISTANCE COUNCILS

1. The delivery of quality legal assistance services is enhanced when all LAAs, active and reserve, communicate with one another regarding trends and developments in law and procedure. This can best be accomplished in a periodic series of meetings that bring together active duty attorneys and Reserve judge advocates that specialize in areas of the law relevant to the delivery of legal assistance.

2. In furtherance of this concept, two Regional Legal Assistance Councils (RLACs) are established and will function as set forth in the following paragraphs.

3. The RLAC, East, shall consist of all LAAs from the legal assistance offices located east of the Mississippi River and shall be chaired by the senior active duty LAA in the region.

4. The RLAC, WestPac, shall consist of all LAAs from the legal assistance offices located west of the Mississippi River and shall be chaired by the senior active duty LAA in the region.

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5. Marine Corps Reserve LAAs within the region may participate in activities of the RLAC.

6. Each RLAC shall be co-chaired by a reserve liaison. Each reserve liaison shall:

a. Present seminars at RLAC meetings, as requested by the RLAC.

b. Assist in the development of program improvements.

c. Arrange and schedule regular CLE for legal assistance attorneys located in CONUS.

d. Visit each legal assistance office annually with the Head of JAL, and review the manner in which each office delivers legal assistance to its clients, including:

(1) The nature, extent and types of legal assistance provided;

(2) The condition and adequacy of building and office facilities;

(3) Computer hardware and software;

(4) Library and automated research programs;

(5) Referrals to civilian attorneys;

(6) Difficulties the legal assistance office has in providing quality legal assistance, if any;

(7) Requests or suggestions the legal assistance office has for improving the quality of legal assistance it provides; and

(8) Any other matters or issues the LAAs or the visiting Reservists want to discuss or address, with a view toward improving the delivery of legal assistance to clients.

e. Mentor active duty and Reserve LAAs.

7. The RLACs shall function as follows:

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a. The RLACs shall meet, in person if possible, at least every 6 months, to address, at minimum, the following:

(1) Recent trends, developments and problem areas in legal assistance;

(2) Current and planned preventive law programs with recommendations, if any, for action to be taken; and

(3) Recently concluded (and planned) continuing legal education (CLE) programs attended by LAAs, including an objective evaluation of each course attended. Any LAA who has attended a special CLE or training program will brief the other LAAs on the course, summarize its content, and provide copies of pertinent materials. Copies of the summary and materials should be forwarded to JAL.

b. The RLAC chairman shall submit a semi-annual report to JAL, no later than the 30th day after the conclusion of the RLAC meeting.

c. Each RLAC will invite representatives from legal assistance offices from other uniformed services in the region to participate in the RLAC's activities.

14004. ACCEPTANCE AND USE OF VOLUNTARY SERVICES

1. Legal Assistance Offices may recruit and accept services from volunteers. The acceptance and use of such voluntary services must be in accordance with DoD Directive 1100.21, "Voluntary Services in the Department of Defense", March 11, 2002, and any other implementing regulations and procedures established by the Secretary of the Navy.

2. All volunteers shall sign the appropriate part of DD Form 2793, "Volunteer Agreement for Appropriate Activities or Nonappropriated Fund Instrumentalities." The acceptance of volunteer services shall be acknowledged on this document before an individual is allowed to provide volunteer services. A copy of the signed volunteer agreement should be given to the volunteer prior to commencing volunteer services. Part IV shall be completed at the end of the volunteer's service in order to document the dates of the volunteer service. A copy of the completed volunteer agreement shall be given to the volunteer

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upon termination of service. Volunteer records shall be retained for 3 years following the termination of volunteer service.

14005. FACILITIES AND RESOURCES

1. LAAs should be provided with individual private offices with full floor-to-ceiling walls to safeguard confidentiality of consultations with clients.
2. Adequate measures and procedures will be established to ensure the security of clients, confidential records, and office personnel and equipment.
3. Client records shall be maintained for the period of time set forth in JAGINST 5801.2.
4. All Marine Corps legal assistance offices shall be provided software from JAL in such areas as estate planning, time and document management, and legal document creation. Upon receipt, legal assistance offices shall fully employ said software.

14006. SERVICES. Marine Corps legal assistance offices will provide, subject to ethical considerations, the services set forth in Section 708 of the JAGMAN, and JAGINST 5801.2, and will abide by the following:

a. Estate Planning

(1) Paralegals and support staff may assist LAAs in the drafting of wills and related instruments; however, absent unusual circumstance, no will should be executed until it is reviewed by the LAA with the client.

(2) Marine Corps legal assistance attorneys are strongly encouraged to draft wills using the Military Testamentary Instruments (MTI) provisions specified in Department of Defense Directive 1350.4 ("Legal Assistance Matters"), whenever possible. Legal Assistance Attorneys should use the SOP in Figure 14-3 when executing wills.

(3) Every effort should be made to advise primary next of kin (PNOK) on probating wills and settling estates of service

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members who die while in an active duty status.

(4) In order to minimize hasty preparation and mass will executions, commanders should direct servicemembers to the local legal assistance office during the check-in process to assess their estate planning needs. Mass will executions are discouraged.

(5) Although members of a command may be required to attend estate-planning briefs, and be given the opportunity to obtain a will, commanders should not require personnel to draft or execute a will.

b. Domestic Relations and Family Law

(1) Paralegals and support staff may assist LAAs in the drafting of court pleadings, separation agreements, and related instruments; however, no separation agreement may be executed until it is reviewed by the LAA with the client.

(2) LAAs may "ghost write" *pro se* pleadings if such practices are permissible under local law and applicable ethical rules. If professional rules prevent an LAA from providing specific *pro se* assistance, the LAA may do any of the following: (1) refer the client to an Expanded Legal Assistance Program (ELAP) attorney; (2) seek *pro hac vice* admission into the appropriate court; (3) refer the matter to a locally-licensed LAA or Reserve judge advocate; or (4) contact JAL for further guidance and assistance.

(3) Under no circumstances will a Marine Corps legal assistance office conduct divorce-counseling classes in which clients are grouped together, unless the individual is first advised that the same preliminary information regarding the divorce process may be provided through an alternate private and confidential method, such as include video tapes, CD ROMs, written publications, and other methods.

(4) Separation agreement worksheets that require a client's signature or initials shall not be used.

c. Taxes

(1) Legal assistance offices will staff and manage a local program that provides seasonal tax preparation and

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electronic filing services to eligible clients. Advice will be provided on income, real and personal property tax issues and LAAs will assist with the preparation of Federal and State income tax returns. Advice may be provided on estate, inheritance and gift tax matters, and on appealing tax rulings and other findings based on availability of expertise and resources. Legal assistance offices may refer to the Navy ELF Manual for guidance concerning the establishing and maintaining of electronic filing programs.

(2) LAAs with special tax expertise may be authorized to assist clients with tax audits and filing of petitions with the U.S. Tax Court. The LAA must submit a request, endorsed by the Staff Judge Advocate, to JAL, explaining his/her special expertise and the actions which the LAA seeks to perform. Supplemental requests must be submitted for authorization to perform additional representational acts.

(3) Each legal assistance office will submit a final tax report not later than 1 July in a format prescribed by JAL.

d. Economic and Consumer Affairs. Each legal assistance office will designate a point of contact (POC) to the Federal Trade Commission (FTC). Each POC will forward a completed Application for Access to the Consumer/Military Sentinel Website to JAL, which will forward the application to the FTC. After receiving permission from the FTC, the POC will review this database on a regular basis and disseminate information on current consumer fraud activities to other LAAs and judge advocate personnel. The POC will add to the database any information on consumer fraud activities that occur on or around the local installation.

2. Citizenship and Immigration Services. LAAs shall provide counsel and assistance to Marines in matters regarding applications for naturalization based upon qualifying military service, as set out in 8 U.S.C. §§ 1439-1440, and the U.S. Marine Corps Legal Assistance Guide to Naturalization Applications Based on Qualifying Military Service. The guide is provided at Figure 14-1.

14007. EXTENDED LEGAL ASSISTANCE PROGRAM (ELAP). Supervisory attorneys may start or continue ELAP within their command areas. Supervisory attorneys can restrict ELAP by types of cases or

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limit assistance to personnel of specific grades; status or other criteria. Permission to initiate or continue ELAP programs must be requested from CMC (JAL) per the provisions of JAGINST 5801.2, paragraph 8-1.

14008. LEGAL ASSISTANCE OUTREACH SERVICES

1. Independent duty Marines, such as recruiters and those serving on embassy guard duty, often serve at locations without access to legal assistance offices. Because their service is often performed at places far from Marine Corps installations, the need to maintain their morale is of great significance. Every effort will be made to provide these Marines and their dependents quality and timely assistance.
2. When an independent duty Marine or that Marine's dependent requests legal assistance, the LAA will verify eligibility by obtaining the requester's duty assignment, social security number and date of birth. The LAA may presume the independent duty Marine is authorized assistance. If there is a question of eligibility, the LAA may ask for a facsimile copy of the military or dependent identification card or call the Marine's parent command.
3. Typically, legal assistance is not provided over the telephone. However, the special circumstances and conditions of independent duty Marines require a different approach. LAAs may provide legal assistance to independent duty Marines by telephone and, resources permitting, will make use of facsimile, electronic mail and video teleconferencing to expedite the provision of legal services.
4. SJAs at the Marine Corps Recruit Depots should be proactive in making legal assistance available to independent duty Marines by:
 - a. Providing regular TAD visits to the Recruiting Stations; and
 - b. Providing classes and written material to recruiters at Recruiting School.

14009. ALTERNATIVE DISPUTE RESOLUTION. Alternative dispute

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resolution (including mediation, arbitration, and other alternative dispute resolution services) is a method of settling disputes outside a court setting by using a neutral third party to act as a link between the parties. A neutral third party, by definition, can never have advised or represented either party to the dispute on any matter. Based on the availability of expertise and resources, a SJA may authorize alternative dispute resolution services as part of the command's legal assistance program. Attorneys and other individuals who serve as mediators, arbitrators, or in similar roles, will comply with the ethical standards of the Marine Corps and will use the American Arbitration Association rules as a guideline for arbitration matters.

14010. QUARTERLY REPORTS.

1. Statistical Report: Legal assistance offices shall provide JAL with quarterly reports in the format provided in Figure 14-2. Such reports are due the 15th day after the conclusion of the quarter being reported.

2. Quarterly Briefing Memo: Each legal assistance office should make quarterly report to JAL, due on the date of the Legal Assistance quarterly statistical report. Such reports will be in memorandum format and will summarize legal assistance office challenges, notable legal assistance office successes, and local developments that relate to legal assistance matters and effect service members. Also include copies of articles published in local and national publications, and recommended changes of law.

3. Legal assistance offices will provide prompt written notification to JAL of any of the following:

- A detailed description of substantiated violations by any individual or organization of any applicable law or regulation regarding commercial solicitations aboard Marine Corps installations;

- The basis for and terms of withdrawal of solicitation privileges by installation commanders against any individual or organization for violating such laws or regulations;

- A summary of any matters referred to the regional Armed Forces Disciplinary Control Board, and action taken thereon;

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14011. THE COMMANDANT'S AWARD FOR EXCELLENCE IN LEGAL ASSISTANCE (CAELA)

1. The delivery of quality legal assistance services is an essential element of readiness and morale. The purpose of the CAELA is to promote the delivery of quality legal assistance services by recognizing outstanding achievement, effort and innovation in legal assistance. It will serve as the basis for nominations to the ABA LAMP Committee for the Legal Assistance Distinguished Service Award.

2. Award criteria are as follows:

a. A superior legal assistance program worthy of emulation by other legal assistance offices;

b. Exceptional service in the provision of legal assistance services; and

c. Major legal assistance innovation.

3. Nominations for the CAELA shall be submitted no later than 1 December of each year in a format prescribed by JAL.

4. The selection committee chaired by the Deputy SJA to CMC will evaluate each office on the basis of the information contained in the nomination form, the results of site visits, the quality and timeliness of required reports and other submissions, and other relevant information. The report of the selection committee will be forwarded to the SJA to CMC for final approval. Those offices selected to receive the CAELA will be notified not later than 15 February.

5. The nomination forms from the highest-ranking Marine Corps legal assistance offices will be forwarded to the ABA LAMP Committee as the Marine Corps candidates for the Legal Assistance Distinguished Service Award.

14012. Standardized Judge Advocate Resources. Each legal assistance office should forward to JAL a list of internet website addresses useful to legal assistance offices, as well as

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resources that will be useful for inclusion in the Legal Assistance Toolkit. JAL compiles, updates and distributes the following resources to Marine Corps Judge Advocate at least once yearly:

1. JAL Bookmarks: Law internet browser bookmarks, including links to Federal, State, and military laws and regulations;
2. USMC Legal Assistance Toolkit: an electronic compilation of files, primers, presentations, templates, forms, and other documents indispensable and helpful for legal assistance and legal awareness judge advocates. Among areas of law that should be included are consumer, family, immigration, tax, pre-deployment, and property law.

14013. LEGAL AWARENESS PROGRAM. Each legal assistance office shall create and maintain an installation "Legal Awareness Program", headed by a designated "Preventive Law Officer", that offers timely, concise, and educational information to the military community regarding consumer and legal issues relevant to the local active duty community. Topics should include identity theft, unfair and deceptive trade practices, life insurance designations, and other significant legal issues unique to military life.

1. Mission. Each Legal Awareness Program shall be designed to educate the local Marine Corps community on methods of avoiding legal problems. The eligible clientele and covered topics of a program shall correspond to that of a legal assistance program, per JAGINST 5801.2 and this Chapter.

2. Legal Awareness Program Functions.

a. Outreach. Legal Awareness Programs shall distribute to as many eligible legal assistance clients as possible information about legal rights and issues. Legal Awareness Programs shall take steps to promote the existence and location of legal assistance offices and the scope of free legal assistance services. Legal Awareness Programs should also accomplish the following:

- i. Legal Advisories: Post advisories on widely available media regarding important legal issues that affect eligible legal assistance clients. Examples of appropriate topics include family,

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consumer, estate planning, and insurance law. JAL Advisories shall be widely and immediately publicized to eligible legal assistance clients.

- ii. Website: Maintain legal assistance and/or Legal Awareness websites publicly available to eligible legal assistance clients and containing up-to-date and useful legal information.

- iii. Education:

- 1. Law Day: Advance the Legal Awareness Program on "Law Day" which is normally recognized on the first day of May each year. Law Day was established in Public Law 87-20 on April 7, 1961. Program representatives should organize appropriate activities and events for Marines and their families. Other government and private organizations should be sought to participate in events.
 - 2. Command Representatives: Ensure unit commanders, legal officers and Sergeants Major maintain awareness of available legal assistance and Legal Awareness Program services and the current status of such services. Advise commanders of judge advocate availability to present educational/informational briefs to commanders and Sergeants Major meetings, staff meetings, welcome aboard briefs, and other occasions. Ensure unit commanders understand DoD policy under DoDD 1350.4, *Legal Assistance Matters*, that commanders should urge military personnel to seek legal counsel regarding wills, living wills, advance medical directives, and powers of attorney well before mobilization, deployment, or similar activities.
- iv. Pre-Deployment Program: Legal assistance offices shall establish comprehensive programs that prepare eligible legal assistance clients to deploy or mobilize.

- 1. Pre-Deployment programs should educate on,

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among other topics:

- a. Servicemembers Civil Relief Act (SCRA);
- b. Uniformed Services Employment and Reemployment Rights Act (USERRA);
- c. Life insurance (including SGLI) designations;
- d. Child and dependent support (including modification prior to deployment);
- e. Estate planning;
- f. Consumer Law.

v. Articles: Legal Awareness Programs should publish writings on important legal issues on a broad variety of topics, and in a variety of publications. Organizations that normally welcome articles include reserve, retired, family associations or organizations. The following themes should be stressed in every article:

- 1. The existence of legal issues that affect eligible legal assistance clients;
- 2. The existence of additional rights or benefits for eligible legal assistance clients;
- 3. The importance of advance planning of legal matters, particularly with regard to deployment or PCS;
- 4. The importance of seeking legal advice prior to signing documents or executing waivers;
- 5. Location, telephone numbers, free services, and office hours of local legal assistance offices.

b. Liaison: Legal assistance offices shall maintain points of contact within their AOR and liaise with, the following organizations in order to further the legal

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assistance and Legal Awareness Program's mission:

- i. Public Affairs;
 - ii. Financial Management offices;
 - iii. Family Services offices;
 - iv. Armed Forces Disciplinary Control Boards;
 - v. Base or unit officials responsible for monitoring businesses or services, including insurance agents;
 - vi. Base and unit commanders;
 - vii. Military housing/housing referral offices;
 - viii. Voting Officers;
 - ix. Federal Trade Commission (at minimum the Division for Planning and Information and the Consumer Sentinel/Military Sentinel);
 - x. American Bar Association, local, and state bar associations, including the ABA's Legal Assistance for Military Personnel (LAMP) Committee, military law committees and discussion groups;
 - xi. State Attorneys General;
 - xii. The National Association of Attorneys General;
 - xiii. Local courts and administrative hearing departments;
 - xiv. United States Citizenship and Immigration Services (USCIS) (regional and lower offices only; the Marine Corps Preventive Law Officer maintains the national liaison);
 - xv. Internal Revenue Service (IRS).
- c. Changes of Law. Legal assistance offices shall study the current state of Federal, military, state, and local laws and regulations, shall seek input from legal assistance attorneys in their AOR, and shall identify changes of law

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that may benefit eligible legal assistance clients consistent with the provisions of JAGINST 5801.2 and this Chapter.

- d. Continuing Legal Education. Preventive Law Officers shall encourage office activities promoting currency of all legal assistance Office judge advocates in recent legal developments pertaining to legal assistance matters.

3. Legal Awareness Program Resources:

- a. Legal Assistance Toolkit CD (available through JAL);
- b. JAL Advisories (<http://www.usmc.mil>);
- c. TJAGSA CLAMO CD (available through TJAGSA);
- d. FTC's Military Sentinel;
(<http://www.consumer.gov/military>)
- e. FTC's Consumer Sentinel;
<http://www.consumer.gov/sentinel>)

4. Legal Awareness Program Forms:

- a. CMCJAL 1000 SCRA Real Property Lease Termination;
- b. CMCJAL 1001 SCRA Power of Attorney;
- c. CMCJAL 1003 SCRA Auto Lease Termination;
- d. CMCJAL 3001 Legal Readiness Checklist: Deployment and Mobilization.

U.S. MARINE CORPS LEGAL ASSISTANCE

Guide to Military Citizenship Applications Based upon Qualifying Military Service and Posthumous Citizenship Applications

I. Introduction. This Guide outlines the Marine Corps procedures for processing naturalization applications for active duty Marines who submit applications for naturalization based upon qualifying military service, and is intended to supplement the Citizenship and Immigration Service's (CIS) "A Guide to Naturalization" (Form M-476). This document also provides information regarding the Posthumous Citizenship application process. Information and certain forms regarding the citizenship process may be obtained from the CIS website at <http://uscis.gov>. This Guide does not apply to applications for naturalization that are not based upon qualifying military service.

1. The local Marine Corps Legal Assistance Office (LAO) is the primary source of assistance for Marines who intend to submit citizenship (also known as "naturalization") applications. Accordingly, the LAO should provide Marines with counsel regarding naturalization law and the application process. In addition, the LAO shall provide the applicant with CIS forms, and access to other appropriate resources necessary to complete the application process. With the aid of the CONAD/ADMIN offices, and the Naval Criminal Investigative Service (NCIS), the applicant will complete the application for naturalization and the LAO will forward it to CIS for processing.

2. Comments regarding this Guide should be directed to the Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JAL), 3000 Marine Corps Pentagon, Washington, DC 20350-3000. DSN 224-1266, commercial (703) 614-1266.

II. Military Citizenship Application Overview. There are a number of categories of persons who are eligible to apply for United States citizenship. However, the matters discussed this section only apply to the following two categories of applicants:

1. Service in the Armed Forces for 1 year (8 U.S.C. §1439) (section 328 of the INA). This category permits naturalization for persons who have served honorably in the Armed Forces of the United States for 1 year. Such applicants may be naturalized without having to fulfill the continuous residency requirements that apply to other application categories, provided that such applications are filed while the applicant is still in the military service or within six months after termination of such service. The applicant must also be a lawful permanent resident of the United States at the time of the examination, of good moral character, and attached to the principles of the Constitution of the United States. (See 8 U.S.C. § 1439(a) et seq.)

2. Service in the Armed Forces during military hostilities (8 U.S.C. §1440) (section 329 of the INA). This category authorizes naturalization of persons who have honorably served in an active duty status in the Armed Forces of the United States during periods of military hostilities (including any period as may be designated by the President in an Executive Order pursuant to 8 CFR 329(a) (1994)). In such cases, the applicant must satisfy the permanent residence requirement by either: (1) lawful admission to the United States after enlistment or induction into the Armed Forces of the United States; or (2) at the time of enlistment or reenlistment, the applicant was physically present in the geographical territory of the United States, or other areas as set forth in the statute. (See 8 U.S.C. § 1440(a) et seq.)

3. In both instances, the applicant must submit a completed "Application for Naturalization" (Form N-400), two photographs, a completed "Request for Certification of Military or Naval Service" (Form N-426), and a completed "Biographic Information" (Form G-325B). Once the application and allied documents are mailed and processed, the applicant must have fingerprints taken by CIS, submit to an interview, and pass an English and civics test. Afterwards, if the application for naturalization is granted, the applicant will be scheduled to take the Oath of Allegiance to the United States, and will be given a Certificate of Naturalization.

A. Obtaining the Forms. The LAO should provide the applicant with all of the forms necessary to complete the application process. These forms include Form M-476, which provides information helpful to the applicant in understanding the process. The primary application form is the "Application for Naturalization" (Form N-400). The applicant will also need the "Request for Certification of Military or Naval Service" (Form N-426), and the "Biographic Information" (Form G-325B). These forms should be stocked at the LAO and are available by calling the CIS Forms Line (1-800-870-3676) and requesting the "Military Naturalization Packet". Several forms are available at the CIS website at <http://uscis.gov>.

B. Completing the Forms. It is vital that all forms be thoroughly completed before submission. Incomplete forms are returned by the CIS, causing substantial delays in the application process.

1. "Application for Naturalization" (Form N-400). Check box "c" in Part 2 of the Form N-400, indicating that the application is on the basis of qualifying military service. Adjacent to box c, the applicant should indicate whether the application is based upon section 328 or 329 of the INA. Note that the answers provided on this application will be reviewed during the applicant's interview.

2. "Request for Certification of Military or Naval Service" (Form N-426). Notwithstanding the notice at the top of the N-426, the applicant must complete page 1 of the N-426 and then must submit the Form N-426 to their S-1 office for completion. Once submitted, the S-1 office will complete page 2 and certify the form. It is essential that page 2 be completed in its entirety. **Note that block 5 of page 2 MUST indicate whether the applicant's service has been under honorable conditions.** The S-1 office will complete and certify the form with a raised seal. The certifying official will be identified as "Personnel Officer." When completed, the form will be

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delivered to a LAO representative who will verify the document's authenticity with the Personnel Officer, and will include the document in the application package.

3. **"Biographic Information" (Form G-325B).** Active duty Marines will complete page 1 of the G-325B, and then submit the form to their Legal Assistance support staff, who will contact the local NCIS office to obtain the background report (DCII report). The DCII report will be attached to the Form G-325B, and returned to the responsible Legal Assistance Attorney. The LAO will obtain any military records referenced in the DCII report, and attach them to the G-325B. In the event the LAO is unable to obtain a background report from the local NCIS office, the completed G-325B will be sent for processing to HQMC (Code JAL). Note, when obtaining the DCII report, you must first run the report under the applicant's name, and then again under the applicant's SSN. Attach both DCII reports to the G-325B.

C. Obtain Two Photographs. Every applicant is required to furnish two identical color photographs of him or herself. The photos must fully comply with the CIS specifications set forth in CIS Form M-378.

D. Collect Necessary Documents. The applicant will need to include copies of several documents with the application. Use the "Document Checklist" (Form M-477), which is contained in Form M-476, to ensure the correct documents are included. Send an English translation with any document that is not already in English. The translation must include a notarized statement from the translator that he or she is competent to translate and that the translation is correct. In the event that the applicant is divorced, a copy of the final divorce decree should also be included in the application package.

E. Fingerprinting. The LAO will schedule the applicant to have fingerprints completed at an Application Support Center (ASC). To do this, the LAO will refer to the CIS website at <http://www.ins.usdoj.gov/> [http://uscis.gov.](http://uscis.gov/) (under "forms, fees and fingerprints") for the complete list of ASCs and their hours of operation. The LAO is not required to call the ASC to schedule the appointment. However, the LAO should review the hours of operation listed on the spreadsheet and may schedule the member accordingly. The LAO will then complete the fingerprint notification form located at Enclosure (1) of this Guide. Once completed with the member's correct address, ASC location, and date/time of the appointment, the form will be delivered to the applicant. Note that a copy of the form must be included in the application package to indicate that the applicant was scheduled for fingerprinting. The applicant will take the fingerprint notification form, Permanent Resident Card, and another form of identification (drivers license, passport, state identification card) to the fingerprinting appointment. The second form of identification shall have the applicant's photograph on it.

1. If the applicant is stationed overseas, the military police may take the applicant's fingerprints. Send a completed Fingerprint Card (Form FD-258) with the initial application package to the CIS Lincoln Service Center at the address provided below. Note that the Nebraska Service Center can only accept the FD-258 form. The FD-258 and the cover letter should indicate where the prints were taken abroad. Note that only fingerprints that are taken at a U.S. Embassy,

military installation or Naval Vessel that is underway, will be accepted. CIS recommends that two sets of prints be submitted with the application. The masthead of the FD-258 form must be completed with:

- a. All biographical data of the individual;
- b. Address data of both the person being printed and the person taking the prints;
- c. The A Number of the applicant in the "OCA" and "Miscellaneous MNU" blocks;
- d. Signatures of the applicant and the person taking the fingerprints; and
- e. "N-400 Military" in the "Reason Printed" block.

F. Mailing the Application Package. The LAO shall review the entire package with the applicant prior to mailing. The applicant should retain a copy of the entire completed package. The application package must also be accompanied by a cover letter from the applicant's Legal Assistance Attorney, indicating the CIS service center at which the applicant would like to be interviewed, and any periods of unavailability. (Note that applicants stationed overseas may have their interviews conducted at various overseas locations supported by CIS. The Department of Defense is preparing regulations that will grant a high priority for leave and transportation aboard DoD aircraft, for naturalization applicants. Check the Marine Corps legal assistance website for up-to-date information on overseas CIS support and new DoD regulations.) The letter will also authenticate the Forms N-426 and G-325B, and shall be personally signed by a representative from the legal assistance office. A sample cover letter is provided at Enclosure (2). **Note that applications that are mailed without the cover letter will not be expedited by CIS.** Regardless of the residence of the applicant, the original application package should be mailed by certified mail, return receipt requested, to:

U.S. Department of Homeland Security
Citizenship and Immigration Services
Nebraska Service Office
P.O. Box 87426
Lincoln, NE 68501-7426

1. If there are problems with any of the documents, CIS will contact the Legal Assistance Policy Branch (JAL), Headquarters, U.S. Marine Corps, to resolve any issues. Once the application is accepted and processed, CIS will send the applicant a letter scheduling the interview.

G. The Interview. CIS will schedule the applicant for an interview. Note that beginning in October 2004, CIS will conduct interviews, oaths and ceremonies at certain overseas locations, to include certain military installations, United States Embassies, and consulates. Information regarding overseas CIS support will be available on the CIS website. Note also that DODD 1327.5 (Leave and Liberty Regulations) allows for the granting of emergency leave, and priority on government transportation for persons applying for citizenship. CIS will send the applicant an interview notice that will tell the date, time, and place of the interview. Applicants will not receive a second notice. If the interview must be rescheduled, applicants should directly contact

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the office where the interview is scheduled, by mail, as soon as possible. The letter should explain the circumstances of the request, and ask to reschedule the interview, noting any periods of unavailability. When a new date is set, CIS will send the applicant a new interview notice. Rescheduling an interview may add several months to the naturalization process.

1. To make sure applicants receive the interview notice, CIS must be advised of any address changes. Mail Form AR-11, "Alien's Change of Address Card" to the Nebraska Service Office at the address provided above for this purpose.
2. Applicants should appear at the office where they are to be interviewed in advance of their interview. If applicants fail to appear at their interview without contacting CIS, their cases will be "administratively closed." If this happens and the applicant does not contact CIS within 1 year to reopen the case, the application will be denied.
3. In some cases, CIS may ask the applicant to bring additional documents to the interview. These documents will be listed on the applicant's appointment letter. If the applicant fails to bring the necessary documents, the case may be delayed or denied.
4. During the interview, the applicant's ability to read, write, and speak English will be tested. The applicant will also be given a civics test to test his knowledge and understanding of United States History and Government.
5. At the interview, an CIS officer will place the applicant under oath and then ask about:
 - a. The applicant's background;
 - b. Evidence supporting the applicant's case;
 - c. The applicant's place and length of residence;
 - d. The applicant's character;
 - e. The applicant's attachment to the Constitution; and
 - f. The applicant's willingness to take an Oath of Allegiance to the United States.
6. A representative may accompany the applicant to his interview if a "Notice of Entry of Appearance as Attorney or Representative" (Form G-28) has been mailed to CIS. Also, if the applicant is exempt from the English requirements, he may bring an interpreter to the interview. If the applicant has any disabilities, he may bring a family member or legal guardian with him at the discretion of the CIS officer.

H. Receive a Decision. After the interview, the application for citizenship will be granted, denied, or continued.

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1. Granted. At the end of the interview, CIS may advise the applicant that citizenship will be granted. In some cases, the applicant may be able to complete the oath ceremony the same day as his interview (where available). Otherwise, the applicant will receive a notice advising him of the time and location of the ceremony.

2. Continued. The CIS officer may also “continue” the case. The most common reasons for continuation are: (1) failing the English and civics tests; or (2) failing to provide CIS with required documents. When a case is continued, the applicant will be asked to: (1) come to a second interview, usually within 60-90 days of the first interview; and/or (2) provide additional documents.

3. Denied. If CIS denies the application, the applicant will receive a written notice explaining the reasons therefor. There is an administrative review process for applicants who receive denials. The applicant may request a hearing with an CIS officer if he feels he has been unfairly denied naturalization. The denial letter will explain how to request a hearing and will include the necessary form. The form for filing an appeal is the “Request for Hearing Proceedings Under Section 336 of the Act” (Form N-336).

I. Taking the Oath. If CIS approves the application for naturalization, the applicant must attend a ceremony and take the Oath of Allegiance to the United States. The following are the steps in this process:

1. Establish a ceremony date. CIS will notify the applicant by mail of the time and date of the ceremony. The notice CIS sends is called the “Notice of Naturalization Oath Ceremony” (Form N-445). In some cases, CIS may give the applicant the option to take the Oath on the same day as the interview. If the applicant decides to take a “same day” oath, CIS will ask the applicant to come back to the office later that day. At this time, the applicant will take the Oath and receive a Certificate of Naturalization.

2. Check in at the ceremony. When the applicant arrives at the ceremony, he will be asked to check in with CIS. If the applicant cannot attend the ceremony on the day he is scheduled, he should return the CIS notice (Form N-445) to his local CIS office. The applicant should include a letter explaining why he cannot be at the ceremony and asking CIS to reschedule the ceremony. If more than a day has passed between the applicant’s interview and the ceremony, he will need to answer questions regarding his conduct since the interview. These questions will be located on the back of the notice CIS sends the applicant (Form N-445). Some of the questions include “Have you traveled outside the United States?” and “Have you claimed exemption from military service?” The applicant should read the questions carefully and mark his answers before he arrives at the ceremony.

3. Return the applicant’s Permanent Resident Card. Applicants are required to return their Permanent Resident Cards to CIS when they check in for their oath ceremony. Applicants will receive their Certificate of Naturalization at the ceremony.

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4. Take the Oath. The applicant is not a citizen until he has taken the Oath of Allegiance. The applicant will take the Oath during the ceremony. An official will read each part of the Oath slowly and ask the applicant to repeat his/her words. The Oath can be found in the section titled "Eligibility Requirements" in the Form M-476 "A Guide to Naturalization."

5. Receive Certificate of Naturalization. Once the applicant has taken the Oath, he will receive his Certificate of Naturalization. The applicant may use this document as proof that he is a United States citizen.

6. Applicants should take steps to obtain a United States passport soon after their naturalization ceremony. A passport serves as evidence of citizenship and is easier to use than a Certificate of Naturalization. Applicants may obtain an application for a passport at their oath ceremony or at most post offices.

III. Posthumous citizenship applications.

1. CIS is the agency responsible for the processing of posthumous citizenship (PHC) applications for certain servicemembers. The current requirements for posthumous citizenship applications are set forth in 8 USC 1440, *et seq.*, (Section 329A of the INA), and generally provide that such applications may be approved for servicemembers who died of service-related activities, while on active duty during a period of hostilities. The request for citizenship may be made by the next of kin of the decedent, or by the Secretary of Defense, with the consent of the next of kin. Formerly, the conferral of citizenship through this process was honorary only, however, Public Law 108-136, the Military Citizenship Act of 2003, now certain allows non-citizen relatives to receive preferential treatment in adjustment and other immigration and naturalization applications.

2. CIS Form N-644 is used to apply for citizenship on behalf of a deceased servicemember. Although the form calls for the payment of an \$80.00 application fee, CIS has permanently waived the fee, without formal request for such a waiver. In addition, all PHC applications must be mailed to the CIS office in Laguna Niguel, California. The application mailing address is:

Citizenship and Immigration Services
California Service Center
P.O. Box 10360
Laguna Niguel, CA 92607-1036

3. Note that section 1703(f) of PL 108-136 now extends the eligibility for naturalization under Section 319(d) to surviving spouses of aliens granted posthumous citizenship under Section 329A. In addition, the law now treats surviving spouses, children and parents of aliens granted posthumous citizenship like immediate relatives and / or adjustment applicants based on such classification. With the exception of benefits explicitly provided by Section 1703, such aliens must satisfy all of the other requirements for immediate relative adjustment of status

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applications. There is nothing in Section 1703 that exempts aliens who are applying for immigration benefits under section 1703 from any required background check or other procedural requirements.

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U.S. Department of Justice
Immigration and Naturalization Service
801 I Street, NW
Suite 900
Washington, DC 20536

Vinnell Corporation
INS Project Office
12900 Federal Systems Park Drive
Mailstop: FPI / 5133
Fairfax, VA 22033-4411

ASC Communication FY:00-0013

DEC 10 1999

To: INS Regional Directors
INS District Directors
INS Officers in Charge
INS ASC Managers

To: Vinnell Regional Managers
Vinnell Site Supervisors


From: Kathy A. Redman
Acting Associate Commissioner
HQISD

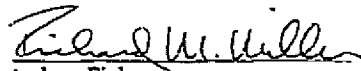
From: Andrew Finlayson
Vinnell ASC Program
Manager

Subject: Fingerprint Processing of Military Personnel for Naturalization

Special fingerprinting procedures have been developed to ensure processing of applications for naturalization filed by certain military personnel. Under these procedures, the applicant for naturalization because of military service will be given an appointment notice by the Department of Defense. The appointment notice will contain a specific date and time to appear at a designated ASC or Colo, with photo identification and/or the person's Alien Registration Receipt Card. No advance notice is given to the ASC or Colo. A copy of the Department of Defense Referral Fingerprint Notification to be used for this purpose is attached.

When the person appears and presents his or her appointment notice, the ASC or Colo will take his or her fingerprints and forward them in the usual manner. Thus, the sole aspect of this process that is unusual is the ability of the applicant to appear for fingerprinting without advance notice to the ASC or Colo.


Kathy A. Redman
Acting Associate Commissioner
Immigration Services Division
Field Services Operations


for Andrew Finlayson
Vinnell Program Manager
INS Application Support Center
Project

Attachment

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141008

Fingerprint Notification		NOTICE DATE
CASE TYPE N400 Application for Naturalization		US AM
APPLICATION NUMBER Department of Defense Referral	RECEIVED DATE	PRIORITY DATE
APPLICANT NAME AND MAILING ADDRESS		PAGE 1 of 1

To process your application, INS must take your fingerprints and have them cleared by the FBI. **PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED.** If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. **RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SPECIFIED BELOW OR REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.**

APPLICATION SUPPORT CENTER	DATE AND TIME OF APPOINTMENT
----------------------------	------------------------------

PLEASE DISREGARD THIS NOTICE IF:

1. YOU HAVE BEEN FINGERPRINTED WITHIN THE LAST 90 DAYS,
2. YOUR APPLICATION HAS ALREADY BEEN GRANTED, OR
3. YOU WERE UNDER 14 YEARS OF AGE OR OVER 79 (75 FOR NATURALIZATION APPLICANTS) AT THE TIME YOUR APPLICATION WAS FILED.

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:

1. THIS APPOINTMENT NOTICE and
2. **PHOTO IDENTIFICATION.** Naturalization applicants must bring their Alien Registration card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.

WARNING!

Specific appointment time requests will not be guaranteed. Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.

REQUEST FOR RESCHEDULING

I am unable to appear because: _____

Please reschedule my appointment for the next available: ☐ Wednesday afternoon.
☐ Saturday afternoon.

INS cannot guarantee the day preferred, but will do so to the extent possible.
If you have any questions regarding this notice, please call 1-888-557-5398.

APPLICATION NUMBER

Department of Defense Referral

Figure 14-1.--Guide to Naturalization Applications

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UNITED STATES MARINE CORPS
Office of the Staff Judge Advocate
Legal Assistance Office
John Quick Road; Building 3025
Marine Corps Base, Quantico, VA 22134

5811
LAO
January 1, 2004

Immigration and Naturalization Service
Nebraska Service Office
P.O. Box 87426
Lincoln, NE 68501-7426

Dear Sir or Madam:

SUBJECT: FACILITATED MILITARY APPLICATION FOR NATURALIZATION FOR SERGEANT
JOHN DOE, USMC, (A# 123 45 678)

I write as counsel for Sergeant John Doe, and hereby submit his completed application for naturalization with attachments. Sergeant Smith resides at 100 Main Street, Quantico, Virginia, 22134. His residential phone number is (555) 233-4567, and his e-mail address is doej@emailservice.net. Sergeant Doe prefers to have his interview conducted at the Alexandria CIS office. Please be advised that Sergeant Doe will not be available for this interview between the dates of January 15, 2004 and February 15, 2004.

I certify that the enclosed N-426 and G-325B Forms and any attachments thereto, are accurate and authentic records prepared in the regular course of business, by Department of Defense employees with knowledge or from information compiled by a person with knowledge of the matters set forth therein.

Sincerely,

A. FREHLEY
Captain, U.S. Marine Corps
Legal Assistance Attorney

Enclosures: 1. Completed N-400 form
 2. Completed N-426 form
 3. Completed G-325B form
 4. Two color photographs of Sgt. Smith
 5. Completed Fingerprint Notification Form
 6. Intentionally omitted
 7. Photocopy of (or affidavit of lost) Resident Alien Card
 8. (Any other documents required under Form M-477)

*A legal assistance attorney represents the interests of individual clients,
and not those of the United States Government*

LEGAL ASSISTANCE QUARTERLY REPORT					
Field Office:	1st QTR OCT-DEC	2nd QTR JAN-MAR	3rd QTR APR-JUN	4th QTR JUL-SEP	TOTAL
SERVICES¹					
Adoption/Name Change					0
Consumer Protection Law ²					0
Domestic Relations ³					0
Immigration ⁴					0
Military Rights and Benefits ⁵					0
Notarizations					0
Property/Landlord-Tenant					0
Tax ⁶ (Do not include VITA/ELF)					0
Wills/Estate Planning					0
Other Services ⁷					0
TOTAL # OF SERVICES	0	0	0	0	0
NEW CLIENTS⁸					
Active Duty					0
Family Members					0
Retirees					0
Reservist					0
DOD Civilians (Overseas Only)					0
TOTAL # OF NEW CLIENTS	0	0	0	0	0
REPEAT CLIENT VISITS⁹					
Active Duty					0
Family Members					0
Retirees					0
Reservist					0
DOD Civilians (Overseas Only)					0
TOTAL # OF REPEAT CLIENT VISITS	0	0	0	0	0
ELAP CLIENTS					
# of ELAP Clients					0
DOCUMENTS PREPARED¹⁰					
# of Wills ¹¹					0
# of Powers of Attorney ⁵					0
# of Separation Agreements					0
# of INS Forms N-400 Sent to Lincoln NE					0
# of Other Documents					0
TOTAL # OF DOCUMENTS PREPARED	0	0	0	0	0
PREVENTATIVE LAW					
# of Preventative Law Briefs ¹²					0
# of Personnel Briefed					0
# of Preventative Law Publications ¹³					0

Figure 14-2.-Legal Assistance Quarterly Report

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LEGAL ASSISTANCE QUARTERLY REPORT INSTRUCTIONS

- 1 Referrals are not services, although they may be the logical conclusion to a consultation. Do not count a referral separately from the appointment. Services can be performed by an attorney or non-attorney. Non-attorney assistance such as performing notarizations, or answering basic legal questions under the supervision of an attorney will be counted under the appropriate service category. Scheduling appointments, taking messages, handing out tax forms and other clerical assistance will not be counted. Telephone calls do not count as services unless they are approved incidents of telephonic legal assistance to remote clients.
- 2 Consumer protection law includes assistance with respect to a broad range of matters, such as personal contracts, debtor-creditor matters, bankruptcy, automobile repairs, and other consumer protection/law matters.
- 3 Domestic relations includes divorce, separation, child custody, nonsupport, marital advice, and paternity matters.
- 4 Immigration includes naturalization and citizenship matters, residency permits, visas, employment eligibility, and other immigration-related matters.
- 5 Military rights and benefits includes issues not falling under personal representation such as SSCRA and USERRA.
- 6 Powers of Attorney includes generals, specials, and durable health care.
- 7 Tax includes tax advice, attorney preparation of tax returns outside of the VITA/ELF program and assistance with other tax matters, such as state tax residency disputes. Do not include VITA/ELF that are reported through the normal Legal Assistance Tax Program Report.
- 8 "Other services" include all legal assistance which does not fit into one of the delineated categories.
- 9 A service member/family member/retiree is listed only once as a "new client" per fiscal year by a particular legal assistance office. Once an individual is seen by a legal assistance office that fiscal year, when that individual returns for future services they will be listed as a "repeat client visit". "Repeat Client Visits" are only clients that come in for a scheduled appointment or to receive a listed service. The "service" category captures services provided to "new clients" and "repeat client visits". Remember, when a client comes back for a repeat visit and receives 3 services during that appointment they are only counted as one "repeat client visit" and their services are counted in accordance with the "services" section criteria. Each category of service provided to a client is counted separately. Thus if a client comes in for a POA, a will and divorce advice, count three services. However, for each client visit only one service may be counted in each "service category". Thus a visit for a living will and a will counts as only one service with 2 documents prepared.
- 10 "Documents Prepared" are final, smooth documents. Do not count drafts (of wills, POAs, etc.), copies, or internal documents (dual rep letters) as "documents prepared". Do not count tax returns done as part of the ELF/VITA program.
- 11 For each will prepared, there will be either one or two services counted. The first to encompass the entire process of the preparation of the will (intake to smooth will). The second service would be counted, if the legal assistance office executes the will. On the rare occasion when a will is prepared and executed by the LA Office on the same day, count one of the services in "wills/estate planning" and the execution service in "other service".
- 12 Preventative Law Briefs include general information presentations to educate personnel on personal legal affairs such as squadron or ship visits, predeployment briefs, etc.
- 13 Preventative Law Pubs include articles and newsletters.

Figure 14-2.—Legal Assistance Quarterly Report

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STANDARD OPERATING PROCEDURE FOR EXECUTING WILLS

1. The Testator/Testatrix should read the will and all related documents in their entirety prior to execution. The legal assistance attorney should discuss the will with the Testator/Testatrix, prior to execution, and ensure understanding by the Testator/Testatrix of the effect of each clause of the will. The following steps should be taken, in order, at the execution ceremony:
2. Ensure the presence of the following persons:
 - a. Presiding Attorney: the presence of a legal assistance attorney for the entire duration of the will execution is required under 10 U.S.C. §1044d for military testamentary instruments;
 - b. Testator/Testatrix;
 - c. 2 witnesses:
 - i. The witnesses should have no interest, whether vested or contingent, in any property disposed of in the will; they should not be related to the Testator/Testatrix, nor otherwise have any interest in the estate in the event of intestacy.
 - ii. The presiding attorney may not act as witness when using a Military Testamentary Document, which accounts for the majority of Legal Assistance wills. 10 U.S.C. §1044d(c)(3);
 - iii. Witnesses must be positioned to observe the Testator/Testatrix and his or her actions and signatures;
 - d. Notary:
 - i. May not be a witness to the will;
 - ii. Either a military or civilian notary may be used;
 - iii. Will notarize the witness' and Testator/Testatrix' signatures;
 - iv. Entries must be made by both Testator/Testatrix and witnesses in the military or civilian notary's notary logbook per the requirements of JAGMAN 0909;
3. The presiding attorney or notary should have the Testator/Testatrix and witnesses produce adequate identification cards for the execution and notarization;
4. The presiding attorney or notary should ask the Testator/Testatrix the questions below entitled "Will Execution Questions";
5. If appropriate responses are received to the questions, the Testator/Testatrix initials and dates all pages of the will in a consistent location on each page.
6. The presiding attorney or notary should ask the witnesses the appropriate questions below entitled "Will Execution Questions";
7. If appropriate responses are received to the questions, the witnesses then initial and date all pages of the will in a consistent location on each page;
8. The witnesses should read and declare aloud that the attestation clause is a true and correct statement;
9. The Testator/Testatrix and witnesses should all read and sign, under oath, the self-proving affidavit, notarized by the presiding attorney or notary. Ensure the witnesses print their name, rank, and duty address next to or below their signatures;
10. Will pages should have previously been numbered consecutively, and after signature all pages should be securely stapled along the top of the document. Once the document is signed and stapled, do not remove the staples.

Figure 14-3.—Will Execution SOP.

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WILL EXECUTION QUESTIONS

The presiding attorney should follow the below procedure. When asking the Testator/Testatrix and witnesses questions, the presiding attorney should ensure all responses are audible and verbal, if possible.

1. Ensure the Testator/Testatrix and all witnesses are present, in the same room, during the entire will execution.
2. Administer the oath to the Testator/Testatrix and all witnesses.
3. Ask the Testator/Testatrix:
 - a. Are you 18 years of age or older?
 - b. Are you of sound and disposing mind and memory?
 - c. Do you publish and declare this document to be your last will and testament?
 - d. Have you read this will in its entirety, and do you understand its terms?
 - e. Do you have any additions or corrections to make to this will?
 - f. Does this will dispose of and distribute your property according to your intentions, in the event of your death?
 - g. Are you under any coercion, duress, or undue influence in either the preparation or signing of this will?
 - h. Are you executing this will voluntarily and of your own free will?
 - i. Do you wish these witnesses (state witness names) to witness your signature and execution of this will?
4. Ask the witnesses:
 - a. To the best of your knowledge, is the Testator/Testatrix 18 years of age or older?
 - b. To the best of your knowledge, is the Testator/Testatrix of sound and disposing mind and memory?
 - c. Does the Testator/Testatrix appear to understand the nature of his/her actions?
 - d. Does the Testator/Testatrix appear to be acting under duress, coercion, or undue influence?
 - e. At the Testator/Testatrix's request, did you in the Testator/Testatrix's presence subscribe your names to this will as attesting witnesses on the date of the will?

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> CHAPTER 15

FINANCIAL SUPPORT OF FAMILY MEMBERS

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CHAPTER 15

FINANCIAL SUPPORT OF FAMILY MEMBERS

15000. SCOPE This chapter establishes Marine Corps policy regarding the treatment of family members of Marines in need of financial support. This chapter is punitive in nature, and violations of this order are punishable under the UCMJ, and may subject the violator to adverse administrative action. The activity responsible for this chapter is the Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps (JAL) (703) 614-1266 / DSN 224-1266.

15001. POLICY

1. The Marine Corps will not serve as a haven for personnel who fail to provide adequate and continuous support to their family members. Marines shall comply fully with the provisions of separation agreements and court orders addressing the support of family members. Absent such agreements or court orders, and conditioned upon a complaint of nonsupport to a commanding officer, the support standards set forth in this chapter shall be enforced. For purposes of this chapter, the phrase "court orders" shall include administrative child support orders and their functional equivalents. For purposes of this chapter, the phrase "commanding officer" means a Special Court Martial Convening Authority or higher.

2. Preferably, the amount of support to be provided to family members should be established by a written agreement between the parties, or be adjudicated in the civilian courts. Nevertheless, because family support issues are closely aligned with readiness, morale, discipline, and the reputation of the service, mandatory interim financial support standards are needed. Assistance in obtaining written support agreements and court orders in these matters is available from local legal assistance offices.

3. Final divorce decrees and written agreements in which spousal support is not awarded or mentioned, or is affirmatively waived, eliminates the obligation to support spouses under this chapter.

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4. The obligation to support a biological or adopted minor child under this chapter is not eliminated by a final court order, such as a decree of divorce, or a written agreement, unless the documents specifically negate the obligation to pay child support. The fact that a divorce decree is silent relative to support of a minor child does not effect the obligation of the Marine to provide support for the child under this chapter.

5. The support standards set forth in this chapter apply only to a Marine's spouse, minor biological children and minor adopted children. For purposes of this chapter, "minor" means less than 18 years of age. In addition, all children born in wedlock are presumed to be the biological children of the Marine and the Marine's spouse. The standards set forth herein do not extend to stepchildren or other DoD-recognized dependents of the Marine. There is no duty of support as between active duty military spouses without children. In addition, the application of these standards shall commence only after the commanding officer has received a complaint of nonsupport, and the commanding officer has issued a support order in substantial compliance with the form attached hereto at Figure 15-2.

15002. PUNITIVE PROVISIONS

1. Marines will not violate any of the following:

a. The financial dependent support provisions of a court order.

b. The financial support provisions of a written agreement addressing the issue of dependent support. (Note: a marital settlement agreement worksheet which is used to prepare an agreement does not constitute a written financial support agreement for purposes of this chapter) or

c. If neither a court order nor a written agreement exists, the interim financial support standards of Paragraph 15004, and orders issued thereunder by a commanding officer.

2. This paragraph is punitive in nature. Marines who fail to comply with this paragraph are subject to punishment under the UCMJ, as well as to adverse administrative action.

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15003. COMPLAINTS OF INADEQUATE SUPPORT

1. All complaints alleging inadequate support of family members shall be directed to the commanding officer of the Marine concerned. All Marines who receive complaints of inadequate support shall immediately forward the complaint to the commanding officer, and advise the party making the complaint that the commanding officer is the appropriate authority to take action in the matter. In the absence of extraordinary circumstances, the commanding officer will meet with the Marine and take appropriate action under this chapter within 10 working days of 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 will forward it to the commanding officer having authority to take action, and will inform the complaining party of the action taken as soon as possible. If the commanding officer is unable to initiate action within 10 working days, the commanding officer shall so advise the party seeking support.

2. When a complaint alleging inadequate support of family members is received, the commanding officer will 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 the opportunity to consult with counsel, the commanding officer will then meet with the Marine, and determine the content of an order or warning, if any, to be given to the Marine to foster compliance with this chapter.

3. In instances where a request for support is made for a child born out of wedlock, the Marine shall provide support under this chapter only 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 directed 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.

15004. INTERIM FINANCIAL SUPPORT STANDARDS

1. In cases where the amount of support has not been fixed by

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court order or written agreement, and upon a complaint of nonsupport to a commanding officer by or on behalf of a family member entitled to support (as set forth in Paragraph 15001.5), interim support per supported family member shall be the greater of the fixed amount of support reflected in the center column of the chart below, or the pro-rated share of whatever BAH or OHA (Overseas Housing Allowance) to which the Marine is currently entitled, as shown in the chart below, per month. Note that BAH that is credited to the Marine for government housing, but is not actually paid in cash, is not counted for purposes of this chapter. Under no circumstances shall the total amount of support required exceed 1/3 of the Marine's gross military pay, per month. For purposes of this order, gross military pay is defined as the total of all military pay and allowances before taxes or any other deductions. The amount calculated under the chart below is presumed to be the correct amount of support to be paid to a family member. A Support Calculation Worksheet is provided at Figure 15-1.

Total Number of Family Members Entitled to Support	Minimum Amount Of Monthly Support per Requesting Family Member	Share of Monthly BAH/OHA per Requesting Family Member
1	\$350	1/2
2	\$286	1/3
3	\$233	1/4
4	\$200	1/5
5	\$174	1/6
6 or more	\$152	1/7 or etc.

2. In calculating the total number of family members entitled to support, the commanding officer shall count the complaining family member(s) and all other family members as defined in Paragraph 15001.5 that: a) the Marine is supporting under court order, written agreement, or order under this chapter (not party to the complaint of nonsupport); and b) minor biological or adopted children that reside with the Marine whom the Marine is supporting. For example, if the Marine is paying support for a child from a previous marriage, and the current spouse requests support under this chapter, there are two family members in need of support, and the Marine should be ordered to pay the spouse \$286.00 or 1/3 of his BAH, per month, whichever is greater (up to 1/3 of his gross military pay).

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3. The Marine may request the commanding officer to deviate from the amount of spousal support required under Paragraph 15004.1. If the facts of the particular case are consistent with one of the reasons for modification as set forth in Paragraph 15005.4, the commanding officer may decrease or terminate spousal support to be paid, only after consulting with the appropriate staff judge advocate. However, except for situations described under Paragraph 15005.4d, support for a minor child shall not be decreased from the amount required in Paragraph 15004.1. Financial support established by a commanding officer under this chapter shall continue until such time as a written agreement is reached, a court order is obtained, or the commanding officer modifies or terminates the support order. This scale is not intended for use outside the Marine Corps or as part of any civilian judicial proceeding. Deviation from the amounts provided in Paragraph 15004.1 is not authorized except as provided in Paragraph 15005.4.

15005. MODIFICATION OF INTERIM FINANCIAL SUPPORT REQUIREMENTS

1. 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 15005.4, only after consulting with the appropriate staff judge advocate. A commanding officer has no authority to reduce or eliminate the interim financial support standards in any situation not listed in Paragraph 15005.4. Note that while a commanding officer may reduce or in certain cases, completely eliminate a support requirement under this chapter, reduction of support below "BAH diff" may render the Marine ineligible for BAH under applicable regulations. See Department of Defense Financial Management Regulation (DoDFMR), Volume 7A, Paragraph 260406.B for guidance on BAH entitlement.

2. A commanding officer must be satisfied by a preponderance of the evidence that the underlying intent of this chapter, to provide adequate and continuous support to 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 may attempt to contact the family member requesting support for whatever additional information may be necessary to make an informed decision on the matter.

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3. 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.

4. 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.

b. Interim financial support has been provided to the spouse for a continuous and uninterrupted period of 12 months. A commanding officer may reduce or eliminate the interim financial support requirements to support a spouse if: i) the parties have been separated for 12 months or longer; and ii) the Marine has made the financial support required in Paragraph 15004 for the entire 12 months (including instances where the Marine has voluntarily complied with this Chapter in the absence of a complaint for support to a commanding officer); and iii) the Marine has not acted in any manner to avoid service of process or otherwise to prevent a court from ruling on the issue of support. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children.

c. The Marine has been the victim of a substantiated instance of abuse by a spouse seeking support. A commanding officer may reduce or eliminate the interim financial support requirements to support a spouse if an instance of abuse committed by the complaining spouse against the Marine has been substantiated by either a family advocacy case management team at Level II or higher, or a court as evidenced by a judgment amounting to a conviction, or by issuance of a permanent restraining order (or similar order) against the complaining spouse. This does not relieve the Marine from the requirement to provide financial support for his or her adopted or biological minor children.

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d. The Marine is paying regular and recurring obligations (such as rent or consumer debts) of the family members requesting support 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, they 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 chapter.

15006. FORM AND TIMING OF FINANCIAL SUPPORT PAYMENTS

1. Unless otherwise required by court order or by written financial support agreement, a financial support payment will be made directly to the family member in one of the following ways:

- a. Cash with receipts.
- b. Check.
- c. Money order.
- d. Electronic transfer.
- e. Voluntary allotment.

2. Unless otherwise required by a court order or by a written financial support agreement, a financial support payment shall be due on the first day of the month in which the financial support payment pertains.

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Support Calculation Worksheet in the case of

_____, USMC

1. Enter the date the complaint was received: _____
(Refer the Marine to Legal Assistance)

2. Enter the total number of family members entitled to support (2a-d): _____

INCLUDE ALL OF THE FOLLOWING:

- a. Non-military spouse requesting support: _____
- b. Biological or adopted minor children on whose behalf financial support is requested: _____
- c. Family members that reside with the Marine that the Marine supports (i.e., spouse and biological or adopted minor children): _____
- d. Family members that do not reside with the Marine that the Marine supports (i.e., spouse and biological or adopted minor children), that the Marine already supports under prior order or written agreement: _____

3. Enter the number of persons requesting support from Lines 2a and 2b above: _____

Figure 15-1.—Support Calculation Worksheet

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4. Locate the number from **Step 2** of this Worksheet on the left column of the USMC Support Table. Highlight the other two columns to the right of this number on the same line. Use this line for all support calculations in this case.

USMC SUPPORT TABLE

Total Number of Family Members Entitled to Support	Minimum Amount Of Monthly Support per Requesting Family Member	Share of Monthly BAH/OHA per Requesting Family Member
1	\$350	1/2
2	\$286	1/3
3	\$233	1/4
4	\$200	1/5
5	\$174	1/6
6 or more	\$152	1/7 or etc.

5. Multiply the number in **Step 3** of this Worksheet times the dollar figure in the center column of the USMC Support Table from the line that was selected in Step 4. Enter the amount:

\$ _____

6. If the Marine receives BAH, multiply the number in **Step 3** of this Worksheet times the fraction in the right column of the USMC Support Table from the line that was selected in Step 4. Multiply the adjusted fraction times the BAH received. Enter the share of BAH for the requesting family members:

\$ _____

Figure 15-1.—Support Calculation Worksheet

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7. Select the larger dollar amounts from Steps 5 and 6. This is the amount of support presumed to be correct under the MCO. The total amount of support for all persons in Step 2 may not exceed 1/3 of the Marine's gross military pay.

\$ _____

8. The Marine may request reduction of the amount of support calculated under Step 7 only under limited circumstances. Reduction of support is entirely discretionary on the part of the commanding officer. See Paragraph 15005.4d for details.

9. After consulting with the appropriate staff judge advocate, should the commanding officer choose to deviate from the required amount pursuant to Paragraph 15005.4d for a reduction of support, enter the new amount of support due:

\$ _____

Figure 15-1.—Support Calculation Worksheet

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From: Commanding Officer,
To:

Subj: ORDER OF SUPPORT

Ref: (a) MCO P5800.16C (LEGADMINMAN), Chapter 15

1. On _____, this Command received a complaint from _____, alleging that since that time you did not provide an amount of support sufficient for the needs of your family.
2. On _____, you were counseled regarding this matter, and your obligations under the reference. At that time, you were afforded the opportunity to request that the support requirements of the reference be modified, and to provide reasons therefor.
3. Since there is no support agreement or order regarding this matter, you are ordered, per the reference, to pay _____ the sum of \$ _____ per month, on the first of each month, as support. Support payments will be made by _____. This order will remain in full force and effect until such a support agreement or judicial order is obtained, or unless sooner modified by this Command.

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CHAPTER 16

INDEBTEDNESS

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CHAPTER 16

INDEBTEDNESS

16000. SCOPE. This chapter includes policy and responsibilities governing complaints of indebtedness and provides guidance for processing involuntary allotments. Excluded from its provisions are claims for alimony or child support and claims by Federal, State, or Municipal Governments.

16001. POLICY ON INDEBTEDNESS

1. Marines are expected to pay their just financial obligations in a proper and timely manner. A Marine's failure to pay a just financial obligation may result in disciplinary action under the UCMJ or a claim pursuant to UCMJ Article 139. Except as provided in this chapter, 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.

2. Legal process instituted in civil courts to enforce judgments against Marines for the payment of spousal or child support and for division of marital property (including related attorney fees) is discussed in chapter 15 of this Manual.

16002. COMPLAINTS OF INDEBTEDNESS

1. Whenever possible, indebtedness disputes should be resolved through amicable means. This paragraph provides policies for processing complaints of indebtedness (not involuntary allotments).

2. The processing of complaints of indebtedness will not be extended to those who have not made a bona fide effort to collect the debt directly from the Marine, or to those whose claims are patently false and misleading.

3. Most States have enacted laws that prohibit creditors from contacting a debtor's employer with regard to alleged indebtedness and from communicating facts concerning indebtedness to the employer, unless certain conditions are met. The conditions that must be met to remove this prohibition generally include reduction of a debt to judgment or obtaining written permission of the debtor. In States having such laws, the processing of complaints of indebtedness will not be extended to those creditors who are in violation of State law. Commanders may advise creditors that this policy has been established because it is the general policy of the military services to comply

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with State law, when that law does not infringe upon significant military interests. This policy will govern even though a creditor is not licensed to do business in the State where the debtor is located. A similar practice will be initiated in any State enacting a similar practice with respect to debt collection.

4. "The Fair Debt Collection Practices Act" (15 U.S.C. § 1692 et seq.) regulates certain activities of those who regularly collect debts for others (debt collectors) as distinguished from creditors who collect their own debts. This law prohibits debt collectors from using any means of interstate commerce, such as the mail, to contact a debtor's employer (except for the purpose of confirming or correcting information concerning the debtor's location) unless the debt collector is acting with the debtor's consent or is in possession of a valid court order or judgment. Unless the debtor has given permission, such contacts may not contain any language to indicate that the inquiry is from a debt collection agency or that the purpose of the inquiry relates to collection of a debt. The processing of claims of indebtedness will not be extended to those debt collectors who are in violation of this Federal law.

5. The "Truth in Lending Act" (15 U.S.C. § 1601 et seq.) prescribes the general disclosure requirements which must be met by those offering or extending consumer credit, and Regulation Z (12 C.F.R. § 226 et seq.) prescribes the specific disclosure requirements for both open-end and installment credit transactions. In place of Federal requirements, State regulations apply to credit transactions when the Federal Reserve Board has determined that the State regulations impose substantially similar requirements and provide adequate enforcement measures. Commanders should consult with the staff judge advocate to determine whether Federal or State laws and regulations apply.

6. Paragraph 16002.3 shall not apply to credit unions serving DON personnel as set forth in SECNAVINST 5381.5, or to those similarly serving other DoD personnel. Commanders will provide debt processing assistance to such credit unions to the extent permitted under the Privacy Act of 1974 (5 U.S.C. § 552a). Credit unions may bring delinquent loans or dishonored checks to the attention of a commander, or designee, for such assistance (32 C.F.R. § 230).

7. Commanders are urged to contact the local staff judge advocate for assistance with regard to any correspondence about which there is any uncertainty.

8. Courtesy. CMC has specifically directed that replies to inquiries, verbal or written, must be temperate and courteous in tone.

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16003. PROCESSING COMPLAINTS OF INDEBTEDNESS

1. It is incumbent on those submitting complaints of indebtedness to show that the disclosure requirements of Section 125 of the "Truth in Lending Act" and Regulation Z have been met and to show compliance with the standards of fairness (Figure 16-1).

2. Creditors subject to Regulation Z, and assignees claiming there under, shall submit with their request for debt processing assistance an executed copy of the Certificate of Compliance (Figure 16-2), or other evidence of compliance, and a true copy of the general and specific disclosures provided the military member as required by the "Truth in Lending Act." Requests that do not meet these requirements will be returned to the claimant without action.

3. A creditor not subject to Regulation Z, such as a public utility company, shall submit with the request a certification that no interest, finance charge, or other fee is in excess of that permitted by law of the State in which the obligation was incurred.

4. A foreign-owned company having debt complaints shall submit with its request a true copy of the terms of the debt (English translation) and shall certify that it has subscribed to the standards of fairness.

5. Commanders will process complaints of indebtedness that meet the requirements of this chapter. "Processed" means that the command will:

a. Review all available facts surrounding the transaction forming the basis of the complaint, including the Marine's legal rights and obligations, and any defenses or counterclaims the Marine may have.

b. Advise the Marine that just financial obligations are expected to be paid in a proper and timely manner; what the Marine should do to comply with that policy; that financial and legal counseling services are available to assist in resolving indebtedness; and that failure to pay a just debt may result in the creditor obtaining a judgment from a court that could form the basis for collection of pay from the Marine pursuant to an involuntary allotment. A "just financial obligation" is defined as a legal debt acknowledged by the military member in which there is no reasonable dispute as to the facts or the law; or one reduced to judgment that conforms to the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), as amended (50 U.S.C. § appendix sections 501-591).

c. If a Marine acknowledges a debt as the result of creditor contact with the command, advise the Marine that assistance and counseling are available from the on-base military banking office, the

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credit union serving the military field membership, and the local legal assistance office.

d. Advise the creditor of those aspects of Marine Corps policy contained in paragraph 16001 which are pertinent to the claim in question, and that the Marine concerned has been counseled concerning the obligations with respect to the claim. The commander's response will not undertake to arbitrate any disputed debt, or to admit or deny the validity of the claim. Under no circumstances will the response indicate whether any action has been taken against the Marine as a result of the complaint. (See figure 16-3)

6. Indebtedness complaints that fail to meet the requirements of this chapter shall be returned to the creditor, using figure 16-4 as a format, with an explanation of why the complaint was not processed.

7. When a creditor, having been notified of the requirements of this chapter, refuses or repeatedly fails to comply with them or, regardless of the merits of the claim, clearly has shown that an attempt is being made to make unreasonable use of the processing privilege, commanders are authorized to deny the creditor any processing of the claim. In such a case, a letter following the format contained in figure 16-5 should be used. Commanders should consult with the staff judge advocate when this action is contemplated.

8. If a complaint is received alleging indebtedness of a Marine no longer a member of the command, it 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 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. (See figure 16-6)

16004. INVOLUNTARY ALLOTMENT OF PAY FOR COMMERCIAL DEBTS

1. The pay of active duty Marines is subject to involuntary allotment to satisfy a judgment for a commercial debt (5 U.S.C. § 5520a(k) (1994)). Detailed guidance is found in DoD Directive 1344.9_ and DoD Instruction 1344.12_.

2. Generally, creditors may collect the lesser of 25 percent of a debtor's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable State law. For further procedures, see DoD Financial Management Regulation, Volume 7A, section 5003.

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3. Creditors must comply with the SSCRA and apply to the Defense Finance and Accounting Service (DFAS) to initiate action to obtain an involuntary allotment. DFAS will forward pertinent information to the debtor and his/her commanding officer, giving them advance notice and an opportunity to respond. For further guidance see DoD Instruction 1344.12_.

4. All applications from creditors seeking to enforce a court-ordered judgment must be sent to:

Defense Finance and Accounting Service
Cleveland Center, Code L
P.O. Box 998002
Cleveland, OH 44199-8002

16005. INVOLUNTARY ALLOTMENT OF PAY FOR DELINQUENT TRAVEL CHARGE CARD DEBT

1. Under the provisions of the "Travel and Transportation Reform Act of 1998" (P.L. 105-264, 5 U.S.C. section 5701 note) heads of agencies may, upon written request of a federal contractor, collect by involuntary allotment any undisputed amount of funds the employee owes to the travel charge card contractor that are delinquent.

2. The due process procedures applicable to military members are exactly the same as for civilian employees of the Department. Therefore, salary offset for a military member's undisputed delinquent travel charge card debt shall follow the procedures contained in Volume 8, Chapter 8, subparagraph 080602 of the DoD Financial Management Regulation. Pay and allotment procedures are as provided in Volume 7A, Chapter 43 of the DoD Financial Management Regulation.

3. The amount deducted in connection with respect to a pay period may not exceed fifteen (15) percent of the disposable pay for that pay period, except that a greater percentage may be deducted upon the written consent of the employee.

4. After undisputed debts become 90 days delinquent, the travel charge card contractor shall send a 90-day demand letter to the debtor which shall include all due process requirements for initiating salary offset. At a minimum, the letter will include:

- a. The debtor's name and travel charge card account number;
- b. The amount of debt, itemized by purchase, representing undisputed amounts owed on the travel charge card, including any late

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fees. No interest will accrue on amounts presented for collection, although late fees may accrue;

c. Copies of monthly statements showing the amount was properly billed to the employee; and

d. A contact at the travel charge card contractor with information to allow the employee an opportunity to make a written agreement to repay the debt.

5. If the debt is not disputed, paid, or arrangements made for an installment agreement within the 30-day period following the final debt letter, the travel charge card contractor may request initiation of the salary offset process. The travel charge card contractor shall forward delinquent debts to the Salary Offset Project Office (Defense Finance and Accounting Service-AHADC/CL).

6. Any inquiries or disputes regarding the debt and the 90-day demand notice, which are received by the travel charge card contractor prior to forwarding the debt to DFAS for collection, shall be handled and resolved by the travel charge card contractor. If the debtor wants to negotiate an installment agreement prior to the referral of the debt for salary offset, any such agreement shall be made with the travel charge card contractor.

7. If the debtor is not satisfied with the travel charge card contractor's disposition of the dispute, he or she may submit a petition for a debt hearing. Petitions to (1) contest the validity of a debt, (2) contest the amount of a debt, or (3) contest the government's proposed offset schedule, shall be forwarded to the DFAS Debt and Claims Management Directorate (ATTN: Defense Finance and Accounting Service-POCC/DE). Upon receipt of a petition for hearing, the Defense Finance and Accounting Service Debt and Claims Management Directorate immediately shall direct the travel charge card contractor and/or the Salary Offset Project Office to suspend the debt until a hearing is completed.

16006. INDOCTRINATION AND COUNSELING

1. The responsibility to indoctrinate and counsel Marines is a basic precept of military leadership. It is the nondelegable responsibility of command, at every echelon, to ensure that Marines are indoctrinated and counseled concerning indebtedness and to ensure that prompt, effective, corrective action is taken to reduce, insofar as possible, the number of complaints of indebtedness concerning Marines.

2. Such indoctrination and counseling should include: the pitfalls of installment buying; incurring debts beyond the capacity to pay; the

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necessity for liquidating debts in a timely manner; information regarding the need for a full disclosure of the terms of the agreement; how finance and interest rates are quoted and computed; the standards of fairness which should be observed; the forms available for this purpose; and the availability of offices for advice and assistance.

3. Commanders will take appropriate punitive, nonpunitive, and/or administrative action against Marines who fail to meet their just financial obligations in a proper and timely manner. Additionally, commanders are reminded that these matters should be appropriately reflected in evaluating the conduct and performance of Marines of all grades.

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STANDARDS OF FAIRNESS

1. In the United States, no finance charge contracted for, made, or received under any contract shall be in excess of the charge that could be made for such contract under the law of the place in which the contract is signed by the military member.

a. In the event a contract is signed with a U.S. company in a foreign country, the lowest interest rate of the State or States in which the company is chartered or does business shall apply.

b. The Department of Defense will establish interest rates and service charges applicable to overseas military banking facilities.

2. No contract or loan agreement shall provide for an attorney's fee in the event of default, unless suit is filed. In that event, the fee provided in the contract shall not exceed 20 percent of the obligation found due. No attorney fee shall be authorized if the attorney is a salaried employee of the holder of the obligation.

3. In loan transactions, defenses which the debtor may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation, provided that the holder had actual knowledge of the defense, or under conditions where reasonable inquiry would have apprised the holder of this fact.

4. The military member shall have the right to remove any security for the obligation beyond State or national boundaries if the military member or family moves beyond such boundaries under military orders, and if the military member notifies the creditor, in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.

5. No late charge shall be made in excess of five percent of the late payment, or \$5, whichever is the lesser amount, or as provided by law or applicable regulatory agency determination. Only one late charge may be made for any tardy installment. Late charges will not be levied where an allotment has been timely filed but payment of the allotment has been delayed. Overseas banking facilities are a matter of contract with the Department of Defense.

6. The obligation may be paid in full at any time, or through accelerated payments of any amount. There shall be no penalty for

Figure 16-1.--Standards of Fairness.

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prepayment and, in the event of prepayment, that portion of the finance charges which have inured to the benefit of the seller or creditor shall be prorated on the basis of the charges which would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the terms of the contract, and only the prorated amount to the date of prepayment shall be due. As an alternative, the sum of the digits method (called the Rule of "78's") may be used. Under this formula for crediting unearned interest, multiply the number of months in advance of the due date that the payment is made by the amount of interest that would be made on a payment one month in advance of the due date. Interest on a payment one month in advance of the due date is $1/78$ of the total annual interest. For example, a payment made five months in advance of the due date would be credited with five times the interest of a payment one month in advance of the due date ($5/78$'s of the total interest due).

7. If a charge is made for loan insurance protection, it must be evidenced by delivery of a policy or certificate of insurance to the military member within 30 days.

8. If the loan or contract agreement provides for payments in installments, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.

9. If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the laws of the State in which the security is repossessed will govern the repossession and resale.

10. A contract for personal goods and services may be terminated at any time before delivery of the goods or services, without charge to the purchaser. However, if goods made to the special order of the purchaser result in pre-production costs, or require preparation for delivery, such additional costs will be listed in the order form or contract.

a. No termination charge will be made in excess of this amount. Contracts for delivery at future intervals may be terminated as the undelivered portion.

b. The purchaser shall be chargeable only for that proportion of the total cost which the goods or services delivered bear to the total goods called for by the contract. (This is in addition to the right to rescind certain credit transactions involving a security interest in real estate provided by the Truth in Lending Act (Public Law 90-321) and Federal Reserve Board Regulation Z.)

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CERTIFICATE OF COMPLIANCE

I certify that the _____, upon
(name of creditor)
extending credit to _____ on _____,
(name of obligor) (date)
complied with the full disclosure requirements of the Truth in Lending
Act and Regulation Z, and with the Fair Debt Collection Practices Act
(or the laws and regulations of the State of _____), and that the
attached statement is a true copy of the general and specific
disclosures provided the obligor as required by law.

I further certify that the standards of fairness have been applied to
the consumer credit transaction to which this form refers. (If the
unpaid balance has been adjusted as a consequence, the specific
adjustments in the finance charge and the annual percentage rate
should be set forth below.)

ADJUSTMENTS:

(Date of certification)

(Signature of creditor or
authorized representative)

(Street)

(City, State and ZIP Code)

Figure 16-2.--Certificate of Compliance.

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HEADING

(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Gentlemen:

Receipt of your letter alleging indebtedness of _____ is acknowledged. The matter has been brought to his/her attention and s/he has been advised to communicate with you setting forth his/her intentions in the matter.

The Marine Corps expects its members to meet their just financial obligations. The Marine Corps, however, has no authority to compel any payment, except in the case of State court garnishment proceedings. Such payments are the individual responsibility of _____, and any action to enforce payment would be a matter for civil court.

Section 5520a of title 5, United States Code, provides that a servicemember's pay is subject to legal process initiated to enforce satisfaction of a legal debt. Such action, however, requires final judgment of a court of competent jurisdiction directing the Marine Corps to withhold an amount from the pay of _____ and make payment to _____.

Unless this matter can be resolved satisfactorily by direct correspondence with _____, the appropriate forum for settlement is a civil court. Any action to enforce a valid court-ordered judgment must be sent to:

Defense Finance and Accounting Service
Cleveland Center, Code L
P.O. Box 998002
Cleveland, OH 44199-8002

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Figure 16-3.--Standard Form for Commander's Reply to Complainant
Alleging Indebtedness of a Member of the Command.

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HEADING

(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Gentlemen:

Your letter alleging indebtedness of Sergeant J. Marine Leatherneck, Jr., U.S. Marine Corps, is returned. Your letter does not indicate that the requirements prescribed by the Secretary of Defense and promulgated in 44 Federal Register 31014 and 32 Code of Federal Regulations 43A, have been complied with, in that

I have enclosed an excerpt of the cited directive.

If you will provide me, at the above address, the necessary information and certification, I shall proceed with those measures that are authorized by the Secretary of Defense.

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Encl:

- (1) Your letter
- (2) Standards of Fairness, Full Disclosure and Certificate of Compliance

NOTES:

1. In the first paragraph, briefly set out the deficiencies and the method by which they may be corrected.
2. Enclosure (2) need not be furnished to large commercial users on a recurring basis.

Figure 16-4.--Standard Form For Commander's Reply to
Complainant Not Complying with Current
Regulations.

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HEADING

(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Gentlemen:

Receipt of your letter alleging indebtedness of Sergeant J. Marine Leatherneck, Jr., U.S. Marine Corps, is acknowledged.

(As this individual has been separated from the U.S. Marine Corps, your letter is returned without action) (_____ has been reassigned to _____. Your letter has been forwarded to his new commanding officer. Any further correspondence should be addressed to that organization.)

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Encl:

(1) Your letter (if appropriate)

Figure 16-5.--Standard Form for Commander's Reply to
Complainant Alleging Indebtedness of a Person
not a Member of the Command.

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HEADING

(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Re: Sergeant J. Marine Leatherneck Jr., U.S. Marine Corps

Gentlemen:

Your claim will not be processed because of your (repeated failure) (refusal) to comply with the provisions of regulations published regarding the processing of a claim.

or

Your claim will not be processed because it is my opinion that you are attempting to make an unreasonable use of the debt processing privilege.

All further correspondence regarding this matter will be returned without action.

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Note: Prior to sending this type of reply, consult with the staff judge advocate.

Figure 16-6.--Standard Form for Commander's Reply to
Complainant Denying Processing of Claim for
Abuse of Processing Privilege.

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CHAPTER 17

LAW LIBRARIES

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CHAPTER 17

LAW LIBRARIES

17000. Purpose. To set standards for Marine Corps law libraries.

17001. Background. Judge advocates must have access to adequate research facilities to provide competent counsel. To ensure that each judge advocate has the required research materials, the Staff Judge Advocate to the Commandant (CMC (JA)) created minimum standards for all Marine Corps law libraries. A core law library is maintained and funded for each Marine legal office by CMC (JA). Requests for materials not described in this chapter may be submitted to CMC (JAI) or purchased locally.

17002. Application. These standards apply to all law libraries used by judge advocates under the control of the United States Marine Corps.

17003. Action. The standard list identifies the minimum requirements for each Marine Corps field law library. This list will be reviewed and updated periodically by CMC (JAI). Field offices should submit recommendations to add or delete items on the standard list to CMC (JAI).

17004. Law Library Manager Responsibilities. Each office should designate a library manager. The library manager is responsible for receipt and control of law library materials, cataloging and shelving of books and updates, tracking loans, and ensuring the library is in good order. Each manager is responsible for updating the library database at <http://sja.hqmc.usmc.mil> as the research materials are received. Requests for additional materials should also be made via the on-line library database. The manager is also responsible for notifying the on-line research representative of personnel changes for issuing or deactivating passwords and tracking the on-line research usage by that office's personnel via the on-line database at http://sja.hqmc.usmc.mil/JAI/database/lexis_lookup.asp. The library manager will conduct an annual inventory of the library during August and submit to CMC (JAI) by 1 September to assist in making the following years' purchases.

17005. Standard Lists For USMC Law Libraries

1. On-line research providers or similar works by alternate publishers may be substituted if they are adequate as reference materials.

2. All works shall be maintained in the most current version available.

17006. TRIAL AND DEFENSE COUNSEL. Judge advocates appearing in courts-martial shall be furnished the following research materials:

Manual for Courts-Martial
Navy-Marine Corps Trial Judiciary Trial Guides
Military Judges Bench Book
Military Rules of Evidence Manual
Evidentiary Foundations

17007. DEPLOYABLE LAW LIBRARY STANDARD. Each deployable law library will contain the items listed below and in paragraph 17006 as well as provide each judge advocate access to on-line research materials:

U.S. Navy Regulations
Title 10, U.S.C.
Soldiers' and Sailors' Civil Relief Act
AOR SOFAs
Selected Problems in Law of War, Army Training Circular 27-10-1
Operational Law Handbook
FM 19-40, EPWS, Civilian Interns & Detained Personnel
FM 27-2, Your Conduct in Combat
FM 27-10, Law of Land Warfare
FM 41-10, Civil Affairs Operations
FM 41-5, Joint Manual for Civil Affairs
Country Studies
AFP 110-20
NWP 1-14M Commanders Handbook on the Law of Naval Operations
JAGINST 5800.7C (JAGMAN)
MCO P5800.16A (LEGADMINMAN)
MCO 1070.12J (IRAM)
MCO P1900.16E (MARCORSEPMAN)
NAVPERS 15560C (MILPERSMAN)
DoDDir 5515.8 (Single Service Claims Responsibility)
MCO P4400.150E (Consumer Level Supply Manual)
SECNAVINST 1920.6B (Administrative Separation of Officers)
CompGen Vol V (Paying Agent)
JAGINST 5890.1 (Administrative Processing and Consideration of Claims)

17008. Station or Base Library Standards. Station and base libraries will maintain all items listed in paragraphs 17006 and 17007 as well as the following:

1. Federal and Criminal Materials

Military Justice Reporter
Military Justice Digest
U.S. Code
Code of Federal Regulations
Service Law Reviews
Federal Register
Military Criminal Justice Practice & Procedure
Court-Martial Procedure
Prosecution and Defense of Sex Cases
Federal Criminal Code and Rules

2. Legal Assistance

State Statutes
Federal Tax Materials
Consumer Credit Law Handbook
Immigration Law and Procedure Handbook
Wills Handbook
Veterans' Benefits Guide
Adoption Law Handbook
Family Law Guide (TJAGSA)
Soldiers and Sailors Civil Relief Guide (TJAGSA)
Uniformed Services Former Spouses Protection Act Guide (TJAGSA)
Wills Guide (TJAGSA)
Income Tax Assistance Guide (TJAGSA)

3. General Materials

Department of Justice FOIA Handbook
JA Deskbook 234 Environmental Handbook (TJAGSA)
JA Deskbook 210 Law of Federal Employment (TJAGSA)
Uniform Guide to Citations (Bluebook)
Law Dictionary
DSM-IV

17009. Information Technology

All judge advocates must have access to information technology assets capable of accessing on-line legal research databases.

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CHAPTER 18

STENOTYPE PROGRAM

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CHAPTER 18

STENOTYPE PROGRAM

18000. Scope. To set forth information, guidance, and instructions for administering the Marine Corps Stenotype Court-Martial Reporter Program.

18001. Background

1. Enlisted members of the Marine Corps, while continuing to draw full pay and allowances may, upon application and selection, be ordered as students to selected civilian schools located in the United States for training in machine shorthand (stenotype) at Government expense.
2. Satisfactory completion of the stenotype course leads to designation Legal Services Reporter (Stenotype) (MOS 4429).

18002. Selection. A Marine Corps bulletin in the 1510 series announcing the stenotype program and soliciting applications from volunteers from all enlisted occupational fields will be published annually. Upon receipt of all applications, a selection board will be convened by CMC (JA) to consider the applications and to select those for participation in the program.

18003. Qualifications. An applicant for the program must possess the following basic qualifications:

1. Be a citizen of the United States;
2. Be a high school graduate;
3. Be a corporal or sergeant at the time of application;
4. Be able to type a minimum of 60 words per minute on a 5-minute typing test;
5. Possess minimum Clerical (CL) and General Technical (GT) scores of 110 each;
6. Have served on continuous active duty for not less than 36 months; and
7. Have sufficient time to complete a 4-year obligated service requirement, following course completion, prior to reaching service limits.

8. Have a minimum of 1 year at a current CONUS duty station at the time of application submission deadline, except for a first term Marine reenlisting less than 90 days prior to the expiration of service. Marines in Western Pacific commands or on deployment who are selected will be ordered to report for schooling after their normal rotation.

18004. Applications. Figure 18-1 provides detailed instructions for completing applications for the program.

18005. Obligation upon Acceptance

1. A minimum 6-year active service obligation is required for enrollment in this program. Prior to acceptance of orders and prior to actual transfer for enrollment in the stenotype course, selectees must reenlist for a sufficient period of time to meet this minimum obligated service requirement. Such reenlistment must be in the Marine's current MOS, and the Marine is not eligible for any bonus in MOS 4429, or other MOS, under this extension or reenlistment.
2. Termination from stenotype school, for any reason, at any time prior to normal completion of the scheduled course will not negate the aforementioned 6-year active service obligation.

18006. Duration of the Stenotype Course. This course normally takes eight academic quarters (24 months) to complete. Participants are, however, authorized to remain in a student status for up to 27 months while undergoing training. Student status begins on the date classes start during the year for which selected.

18007. General Instructions

1. Upon acceptance into this program, and within a reasonable time before classes are to begin, selectees will be transferred by permanent change of station orders to Company A, Headquarters Battalion, HQMC. At the same time, selectees' primary MOS will be changed to Basic Legal Services Marine (MOS 4400) and the former primary MOS will be assigned as the first additional MOS. At all times while enrolled in stenotype school, students are under command of the Commanding Officer, Company A. Daily operational control of the Marine stenotype students vests with CMC (JA-3).

- a. During the entire course of instruction, the Marine's primary duty is that of a stenotype student.
- b. The Commanding Officer, Company A and CMC (AR) shall not require the stenotype student's participation in command functions;

e.g., Bachelor Enlisted Quarters/HQMC Duty NCO/Assistant Duty NCO, physical fitness test (PFT) monitors, parades, ceremonies, color guards, etc., with the exception of performing the semiannual PFT and the annual Battle Skills Training/Essential Subjects Performance Test.

c. While in this program, enlisted Marine stenotype students are representatives of the Marine Corps. Their conduct, personal appearance, demeanor, life style, and activities as students and citizens reflect not only upon themselves but upon the Marine Corps as well. Each Marine must project an image in both the civilian and military communities which is in keeping with the highest traditions of the Marine Corps. Although civilian clothing may be worn while attending school, Marine Corps grooming standards shall be adhered to at all times. Failure to adhere to these standards may result in removal from the program, in addition to other appropriate administrative or disciplinary actions.

2. A Marine's eligibility for assignment to Government quarters in the Washington, DC area and entitlement to use of exchanges, commissaries, medical, and dental facilities are not affected by participation in this program.

18008. TERMINATION FROM THE STENOTYPE PROGRAM

1. Prior to normal completion of the scheduled stenotype course, a Marine may be terminated from the program by CMC (JA) for deficiency in academic performance, machine shorthand writing skills, conduct, weight control assignment, or for other good cause.

a. Deficiency in academic performance shall include, but is not limited to, receipt of one or more failing grades in required academic subjects.

b. Deficiency in machine shorthand writing skills shall include, but is not limited to, lack of satisfactory progress in attaining the various writing speed levels, and/or inability to complete the course of instruction within the regularly scheduled time.

c. Deficiency in conduct shall include, but is not limited to, conviction by court-martial or civilian court, nonjudicial punishment, or other behavior customarily recognized by the Marine Corps as inconsistent with the high standards of conduct and performance of enlisted Marines and/or the professional standards expected of enlisted legal services personnel.

2. Before a Marine may be terminated from the program, the Marine will be notified in writing of the grounds for termination, and shall be afforded an opportunity to make a written reply within 5 working days of receipt of the notice. Such reply, if made, shall be considered by CMC (JA) in determining whether the Marine shall be

dropped from the program. The grounds for the final decision shall be set forth in writing and a copy thereof provided to the Marine concerned.

3. Marines terminated early from this program will normally be reassigned their former primary MOS, and be assigned to a duty station and billet consistent with the needs of the Marine Corps.

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APPLICATION INSTRUCTIONS

1. Form and Content. Applications shall be submitted on the Administrative Action Form, NAVMC 10274, via the chain of command, to CMC (JA-3). See figure 18-2. Applications must contain the following:

a. Personal information regarding the basic qualifications listed in paragraph 18003. Waivers of any of the basic qualifications may be requested, and will be considered on a case-by-case basis.

b. As enclosures:

(1) Written results of an interview by a stenotype reporter (MOS 4429), if available at the command. A Legal Services Chief (MOS 4421) or a Legal Administrative Officer (MOS 4430) may conduct this interview if a stenotype reporter is not available. The interview must address matters concerning the applicant's self-motivation, maturity, potential for successful completion of the course, and the applicant's full understanding of all aspects of the program.

(2) An official photograph as prescribed by MCO P1070.12J (IRAM).

(3) A signed and witnessed agreement as contained in figure 18-2. These forms may be locally reproduced.

c. Current PFT score to include height, weight and date of PFT.

d. DSN/commercial telephone number where applicant can be reached during normal working hours.

e. Information concerning any musical instrument background to include length and type of formal training.

f. Information concerning receipt of a selective reenlistment bonus for the current enlistment.

g. If stationed overseas, rotation tour date.

2. Command Endorsement. The forwarding endorsement shall certify that the commander has screened applicants to ensure that they:

a. Are financially secure;

b. Are physically and mentally capable of completing this course of instruction, in a civilian environment, without the normal Marine Corps supervision;

Figure 18-1.--Instructions for Submitting Applications for the Stenotype Program.

- c. Are within Marine Corps weight/body fat standards; and
- d. Have completed all required military training prior to transfer.

3. General Information

a. All applications must be received at HQMC on or before the deadline for submission as set forth in the annual Marine Corps bulletin in the 1510 series announcing the program. Applications received after this deadline will not be considered.

b. Letters of recommendation are unnecessary and are not desired.

c. Upon receipt of each application and initial screening for eligibility, a battery of tests to be administered to applicants will be forwarded to designated testing officers. These tests consist of typing, grammar, vocabulary, punctuation, spelling, effective expression, vowel recognition, reading rate and reading comprehension. The scores achieved on these tests will assist in the selection of those applicants best qualified.

Figure 18-1.--Instructions for Submitting Applications for the
Stenotype Program--Continued.

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AGREEMENT FOR STENOTYPE PROGRAM

1. I, the undersigned, certify that I have read and understand chapter 18 of MCO P5800.16A (LEGADMINMAN) which governs the administration of the Marine Corps Stenotype Program, and am fully aware of all provisions of that chapter and their effect upon me if accepted for the program.

2. In consideration of being allowed to attend stenotype school at Government expense and qualify for designation as a Legal Services Reporter (Stenotype) (MOS 4429), I agree to the following:

FIRST: To comply with all requirements of LEGADMINMAN, chapter 18, while a stenotype student.

SECOND: If selected to attend stenotype school, upon acceptance of orders and prior to actual transfer for enrollment in the school, to reenlist for a sufficient period of time to meet the minimum 6-year active service obligation requirement. Such reenlistment is to be in my current MOS and I am not eligible for any bonus in MOS 4429, or other MOS, under this extension or reenlistment.

THIRD: By accepting orders into this program, during the initial 6-year period of obligated service, I am, for a period of 4 years following graduation from stenotype school, not eligible to apply for any other Marine Corps programs or "B" type billets; e.g., warrant officer, enlisted commissioning, degree completion, drill instructor duty, recruiting duty, etc., that would be inconsistent with performance of duties as a stenotype court reporter.

FOURTH: If in receipt of a selective reenlistment bonus for the current enlistment, I voluntarily agree to recoupment of that percentage of the bonus that represents the unexpired portion of the obligated service for which the bonus was paid.

FIFTH: That my assignment to stenotype school at Government expense may be terminated by CMC (JA) if I am unable or fail to maintain satisfactory grades, am unable or fail to make satisfactory progress in attaining required machine shorthand writing speed levels, or fail to maintain required standards of conduct or performance.

SIXTH: That my assignment to stenotype school at Government expense may be terminated by CMC (JA) for failure to comply with this agreement or when the best interests of the Marine Corps would be served by my termination. Such termination will not occur until I have received written notification and have been given 5 working days to make a statement concerning such termination.

Figure 18-2.--Format for Stenotype Program Agreement.

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Signed this ____ day of _____, ____ in the presence of the below witness.

(Signature of Applicant)
Typed Name of Applicant
Typed Grade, SSN, MOS

(Signature of Witness)
Typed Name of Witness
Typed Grade, SSN

Figure 18-2.--Format for Stenotype Program Agreement--Continued.

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CHAPTER 19

LAW EDUCATION PROGRAMS

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CHAPTER 19

LAW EDUCATION PROGRAMS

19000. BACKGROUND

1. Funded Law Education Program (FLEP). Pursuant to 10 U.S.C. 2004, as implemented by DoD Directive 1322.12 and SECNAVINST 1520.7_, commissioned officers of the Marine Corps, while continuing to draw full pay and allowances, may be ordered as students at Government expense to American Bar Association (ABA) accredited law schools located in the United States for education leading to the degree of Juris Doctor or Bachelor of Law.

2. Excess Leave Program (Law) (ELP(L)). Pursuant to 37 U.S.C. 502(b), commissioned officers of the Marine Corps may be permitted leave without pay and allowances in excess of that authorized by 10 U.S.C. 701(b), to attend ABA accredited law schools located in the United States at no expense to the Government for education leading to the degree of Juris Doctor or Bachelor of Law.

3. Satisfactory completion of either FLEP or ELP(L), coupled with successful completion of the Basic Lawyer Course and the Basic Operational Law Training Course, leads to designation as a Marine Corps judge advocate (MOS 4402).

4. Special Education Program (Law) (SEP(LAW)) and Advanced Degree Program (ADP). The Marine Corps has identified and validated several billets which are required to be staffed by officers who possess postgraduate level education. SEP(LAW) and ADP were established as a means of providing the Marine Corps with a sufficient number of qualified officers to fill these billets. Officers selected for participation in SEP(LAW) and ADP must complete all degree requirements within 1 calendar year. Failure to do so will result in separation from the program and may be treated as an academic failure. Attainment of a Masters of Law (LL.M.) degree in the specific area of law identified in the officer's orders is essential to the law expertise required by the Judge Advocate Division. Refer to MCO 1520.9_ (SEP(LAW)) and MCO 1560.19_ (ADP) for more information on these programs.

19001. SELECTION. A selection board will be convened by CMC annually to consider applications from commissioned officers and will recommend officers for participation in FLEP, ELP(L), SEP(LAW), and ADP.

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19002. QUALIFICATIONS

1. General. An applicant for FLEP/ELP(L) must possess the following qualifications:

a. Have graduated from an accredited college or university with a baccalaureate degree;

b. Have taken the Law School Admission Test (LSAT), prepared and administered by the Law School Admission Council, Box 2000, Newtown, PA 18940-0998, lsac@org. Such test shall be arranged for and taken by each applicant without expense to the Government;

c. Have satisfactory evidence of acceptance or conditional acceptance or admission to an ABA accredited law school located within the United States. Officers who have earned law school credits must submit a transcript of law school work completed; and

d. Be an unrestricted officer in the Marine Corps. Marine Corps Reserve officers must be offered augmentation, and must indicate an intent to accept a regular commission prior to being considered by the FLEP/ELP(L) selection board

2. Special FLEP Qualifications. An applicant must:

a. Be a citizen of the United States;

b. Be in the grade of captain or below;

c. Have a minimum of 2 years but not more than 6 years total active duty (commissioned and enlisted service combined) when law education begins; and

d. Be able to complete 20 years active service as a commissioned officer before the 55th birthday.

Note: Because these are statutory qualifications, they cannot be waived.

3. Special ELP(L) Qualifications. An applicant must have a minimum of 2 years of commissioned service, with no more than 8 years of total active duty when law education begins.

4. Special SEP(LAW)/ADP Qualifications

a. Unrestricted commissioned officers in the Marine Corps on active duty are eligible for the programs. Eligibility for the programs is limited to judge advocates in the grades of first lieutenant through major.

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b. Officers who have previously participated in the SEP, ADP, Voluntary Graduate Education Program, Secretary of the Navy Scholarship Program, International Affairs Officer Program (IAOP, formerly the Foreign Area Officer/Regional Area Officer Program), Olmsted Scholarship Program, or other full time post baccalaureate Marine Corps funded programs are not eligible.

c. Officers who have previously participated in the College Degree Program, Naval Enlisted Scientific Education Program, Marine Corps Enlisted Commissioning Education Program, FLEP, or ELP(L), are eligible after they have completed the obligation of service incurred as a result of participation in the subject programs.

d. Although officers will normally complete the prescribed tour length (see MCO P1300.8_) at their present duty station prior to being assigned to school, the SEP(LAW)/ADP selection board will have the authority to recommend a waiver. The board can also recommend a deferral of school commencement for 1 year to allow for an intervening overseas unaccompanied tour, or because of operational commitments which require the presence of the applying officer.

e. Officers that have orders to, or that have indicated an intent to accept orders to, Intermediate Level School (Command and Staff or The Judge Advocate General's Legal Center and School) are not eligible for the SEP (LAW) or ADP programs.

19003. APPLICATIONS. Figures 19-1 through 19-3 provide detailed instructions for completing applications for FLEP and ELP(L). SEP(LAW)/ADP applications will be prepared per MCO 1520.9_ and 1560. 19_.

19004. OBLIGATIONS UPON ACCEPTANCE

1. Participants in FLEP/ELP(L) will incur obligated active service, in addition to preexisting obligated service incurred prior to entering the program, in accordance with the following:

a. FLEP. Upon successful completion of FLEP, two years (24 months) for each year, or any part thereof, spent in the program;

b. ELP(L). Upon successful completion of ELP(L), one year (12 months) for each year, or any part thereof, spent in the program. In no case will the total period of obligated service under ELP(L) be less than 2 years.

c. Early Termination. One year (12 months) for each year, or any part thereof, spent in the program, not to exceed 3 years;

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d. For purposes of determining the foregoing obligated service, participation in FLEP/ELP(L) begins when the officer reports for duty under instruction with the organization to which assigned while attending law school and ends on the earliest of the following dates:

(1) Conferral of a law degree;

(2) Detachment from duty under instruction; or

(3) Admission to the practice of law before a Federal court of the United States or the highest court of a State, the District of Columbia, a U. S. Territory, or the Commonwealth of Puerto Rico.

e. For FLEP officers, temporary additional duty periods (summer assignments to legal offices, other such duty, hospitalization, etc.) or leave periods count against preexisting obligated service on a day-for-day basis. For ELP(L) students, all periods in a pay status similarly count. No other periods of participation in FLEP/ELP(L) may be counted against preexisting obligated service.

2. ELP(L) students are not required to utilize their accrued leave prior to being placed in an excess leave status.

3. SEP(LAW)/ADP. Officers applying for SEP(LAW) and ADP must agree not to tender a resignation, or request separation or retirement, while participating in the program. Officers must further agree to remain on active duty after completion of training, or upon separation from SEP(LAW) or ADP for any other reason, for a period of 3 years. This obligated service is in addition to any preexisting obligation and must be served consecutively. The crediting of service against any preexisting service obligation will be suspended during the time assigned to SEP(LAW) or ADP.

19005. DURATION OF FLEP/ELP(L). Participants are authorized to remain in a student/excess leave status for up to 36 months while pursuing a basic law degree and admission to the bar. Student/excess leave status begins on the date of reporting to the unit to which assigned while attending law school.

19006. GENERAL INSTRUCTIONS

1. Upon acceptance into FLEP/ELP(L), and within a reasonable time before classes are to begin, officers will be transferred by permanent change of station orders to a Marine Corps activity convenient to the law school the officer will attend. At all times while in the program, they are under the command of the commanders/officers in charge of their respective permanent duty stations.

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a. During the academic year from the start of classes until the completion of the bar examination, a FLEP/ELP(L) officer's primary duty is as a law student.

b. Officers in FLEP/ELP(L) are ordinarily not required to report to their commands except in cases of necessary administrative processing, e.g., pay related matters, annual leave authorization, receipt of summer TAD orders, annual fitness reports, PFTs, etc. Officers are encouraged to maintain periodic contact with their commands, however, to ensure compliance with this chapter.

c. Commanders/officers in charge shall not require participation in the command; e.g., flag details, casualty calls, phone watch, inspections, recruiting, etc., except for an ELP(L) student performing duty in a pay status.

d. Commanders/officers in charge shall maintain appropriate liaison directly with the Director, Judge Advocate Division and shall forward to CMC (JAS) information that might affect the officer's ability to complete the course of study successfully or the desirability of continuing the officer in FLEP/ELP(L).

2. While in FLEP/ELP(L), officers are representatives of the Marine Corps. Their conduct, personal appearance, demeanor, life-style, and activities as law students and citizens reflect not only upon themselves but upon the Marine Corps as well. Each officer must project an image in both the civilian and legal communities which is in keeping with the highest traditions of the Marine Corps. Although civilian clothing may be worn while attending school, Marine Corps grooming standards shall be adhered to at all times.

3. Law School Attendance

a. A FLEP/ELP(L) officer's appointed place of duty during the academic year is the law school being attended. In particular, such officers shall attend all classroom periods of instruction in which enrolled (whether required by the law school or not) and all other activities, assemblies, sessions or the like required by the law school unless excused by competent authority.

b. In addition to taking those courses required by the law school, FLEP/ELP(L) officers shall elect courses that will be of most benefit to the Marine Corps, such as labor law, environmental law, trial advocacy, administrative law, etc. Additionally, if offered, students shall take trial advocacy clinics/internships ("hands on" training). Unless required for the state bar examination, students should avoid electing courses such as securities, corporation law, commercial paper, etc., that are not related to those areas of practice in which

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judge advocates normally engage.

c. To ensure that elective course selection is consistent with military law practice, CMC (JAS) will approve each student's proposed elective course selections prior to final registration for courses each semester.

(1) Each student will ensure that CMC (JAS) is provided a current course catalog from the law school being attended.

(2) Additionally, each student shall provide to CMC (JAS) a written or electronic list of proposed electives in advance of final course registration to allow for review and written approval or disapproval.

d. Scholarships, fellowships, grants or cash awards shall not be accepted by FLEP/ELP(L) students without prior approval of CMC (JAS)

e. Students are encouraged to participate in extracurricular activities of their law school or related to the law to the greatest extent that is not detrimental to their academic standing. Some activities which tend to enhance potential as a future Marine Corps judge advocate are law review, moot court, student bar associations, dean's committees, legal aid clinics, trial advocacy clinics, law fraternities, and law school publications.

4. Summer Vacation

a. All FLEP/ELP(L) officers must perform military duties during the law school summer vacation unless excused by CMC (JAS). Such duty normally will be served at a major Marine Corps command in an office involved in the practice of law. This duty is considered an integral part of the training included in FLEP/ELP(L).

b. Officers shall advise CMC (JAS) of the inclusive dates of the law school summer vacation not later than 60 days prior to the end of the academic year.

c. Assignments to summer duty will be made by CMC (JAS). Travel, transportation, allowances, and per diem will be authorized for TAD performed at a command other than the permanent duty station. Funding is included in the operating budget held by HQMC and appropriation data will be provided to commanding officers.

d. Annual leave is authorized during the summer law school vacation. However, leave requests should be reasonable and should be made for periods prior to and/or following summer TAD. Students shall advise CMC (JAS) of requested summer leave periods so that TAD dates can be adjusted.

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5. Summer School. In unusual cases, students may be authorized to attend summer school at no additional expense to the Government. Requests for summer school attendance should be addressed to CMC (JAS). If authorized, summer school attendance will be in lieu of part or all of summer duty at a major Marine Corps command.

6. The Director, Judge Advocate Division oversees FLEP/ELP(L). Therefore, students are authorized to communicate directly with that officer concerning any matter affecting their status, progress, or activities in the program. They are also encouraged to make frequent reports of their activities in the program by letter or e-mail to CMC (JAS).

19007. PAY STATUS ASSIGNMENT (PSA) FOR ELP(L) STUDENTS

1. At the request of an ELP(L) student, the commander of the unit to which the ELP(L) student is attached shall order the student into a pay status, except under the following conditions:

a. The student will not be ordered into a pay status on any day on which the student has a class or exam scheduled.

b. The student will not be ordered into a pay status if doing so will interfere with the student's academic study or the student is unavailable to perform duty. Actual performance of duty is not necessary (e.g., on weekends and holidays when the unit is normally on liberty). The commander may, however, assign appropriate duties during such periods. Students may be assigned any duties deemed appropriate by the commander, e.g., CACO, staff duty officer, participation in military training, inspections, etc.

2. Commanders are authorized to issue "continuing orders to PSA."

a. Continuing orders to PSA may be used for weekends, holidays, and weekdays on which the student does not have classes scheduled (e.g., Thanksgiving, Christmas, and post-examination semester breaks).

b. When on PSA, the student is entitled to pay and allowances at the daily rate of one-thirtieth of a month's pay and allowances. The 31st day of a calendar month shall not be excluded from such computation.

c. Specific PSA dates will be listed in the continuing orders, and this paragraph will be referenced as authority.

d. A consecutively numbered reporting endorsement will be prepared for each individual pay status period, below which the ELP(L) student will

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certify that no class or examination was scheduled on any of the dates on which the student was ordered into a pay status. Sample orders are shown in figure 19-4.

e. If properly excused from summer TAD, in accordance with paragraph 19006.4, an ELP(L) student may perform PSA duties locally.

19008. TERMINATION FROM FLEP/ELP(L)

1. Prior to graduation from law school, an officer may be terminated from FLEP/ELP(L) by CMC for deficiency in academic performance or conduct, abandonment of the study of law, or for other good cause.

a. Deficiency in academic performance shall include, but is not limited to, receipt of one or more failing grades, or failure to maintain a satisfactory minimum grade point average as determined by the law school.

b. Deficiency in conduct shall include, but is not limited to, conviction by court-martial or civilian court, nonjudicial punishment, or other behavior recognized by the Marine Corps as inconsistent with (1) the high standards of conduct and performance of the officer corps and/or (2) the ethical standards of the legal profession.

c. Abandonment of the study of law shall include, but is not limited to, voluntary disenrollment from law school.

2. Before an officer may be terminated from the program, the officer shall be notified in writing of the grounds for termination and shall be afforded an opportunity to make a written reply within a reasonable period of time. Such reply, if made, shall be considered by CMC in determining whether the officer shall be dropped from the program. The grounds for the final decision shall be set forth in writing and a copy thereof provided to the officer concerned.

19009. FITNESS REPORTS

1. Reports Concerning Academic Performance. The Branch Head or Deputy Branch Head, Judge Advocate Support Branch will serve as the reporting senior for FLEP participants. The commander of the organization to which assigned is the reporting senior for ELP(L) participants.

a. Student's Responsibility. Each student will submit directly to the reporting senior, as soon as practicable after the end of each academic year, the following documents and information:

(1) A transcript of grades for each course taken showing, if available, class standing.

(2) A narrative statement describing in detail all academic and

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extracurricular activities.

(3) Copies of any law review or other extracurricular writings.

(4) Statement or evidence of any honors or awards received.

(5) Upon graduation from law school, a consolidated transcript of all law school grades showing the date of graduation and degree conferred and, if available, final class standing.

b. Content of Reports. Reports pertaining to the student's performance during the academic year will be based upon transcripts, narratives, information provided by the student, and other relevant information available to the reporting senior.

c. Special Instructions for Completing Section A

(1) Item 1g. Enter "4401."

(2) Item 2a. Enter "K51" for FLEP students, "K17" for ELP(L) students "H99" for SEP students, and "K47" for ADP students.

(3) Item 2b. Enter the RUC of the student's parent organization.

(4) Item 2c. Enter the descriptive title of the student's parent organization.

(5) Item 4. Enter "Student Judge Advocate" or other appropriate title.

d. Guidance for the Reporting Senior. Due to the demands of law education on the time of the student and the geographical location of the student in relation to the reporting senior, the opportunities for observation may be infrequent or nonexistent. In such cases, a "not observed" report may be appropriate, with a narrative description of the student's academic performance and activities in section C.

2. Summer TAD Reports

a. During periods of summer TAD, the reporting senior is as defined in MCO P1610.7_, paragraph 2003.

b. Special Instructions for Completing Section A

(1) Item 1g; Enter "4401."

(2) Item 2a through 2c. Enter the MCC, RUC, and descriptive title of the student's TAD organization.

(3) Item 4. Enter "Student Judge Advocate" or other title

appropriate to the duties performed.

19010. FLEP/ELP(L) COMPLETION

1. Completion of Law School. The date of the last course examination at the end of the third year of law school shall be provided to CMC (JAS) as soon as the final examination schedule is available. In addition, not less than 60 days prior to completion of law school, each student shall provide CMC (JAS) with the following information:

a. Date of law school graduation.

b. Name, location, and dates of the bar review course(s) the student plans to take.

c. Jurisdiction and dates of the bar examination the student plans to take. This must be the first scheduled bar examination following graduation from law school, either in the State in which the student's law school is located or in the student's domiciliary. Other jurisdictions must be approved by CMC (JAS).

2. Status While Awaiting the Bar Examination

a. During the period between graduation and the bar examination, the student's primary duty is to prepare for the examination.

b. FLEP. FLEP graduates will normally remain in a "duty under instruction" status until the bar examination is completed.

c. ELP(L). ELP(L) graduates will normally be retained at the parent/administrative command until the bar examination is completed. The excess leave status of an officer assigned to ELP(L) shall be terminated as of the day following the student's last examination at the end of the third year of law school. The ELP(L) student is then in a full pay status and is on duty at the permanent duty station. The ELP(L) officer is subject to assignment to any appropriate duties. However, commanders may not assign any duties which may interfere with the full and proper preparation for the bar examination, including taking a bar review course.

3. Bar Review/Examination

a. FLEP/ELP(L) students are authorized an administrative absence in accordance with chapter 5 of MCO P1050.3_ and, if travel is necessary, permissive TAD orders at no expense to the Government for the purposes of taking a bar review course, the bar examination, and a swearing-in ceremony.

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b. Fees for one bar review course, one multi-state bar review course, and mandatory bar examination fees will be paid by the Marine Corps for all FLEP/ELP(L) students.

c. Upon completion of the bar examination, FLEP/ELP(L) students will be retained at their commands until such time as they are ordered to the Naval Justice School. They may be assigned any and all duties commensurate with their grade and experience.

4. Certification and Designation. FLEP/ELP(L) graduates will provide directly to CMC (JAS) an official final transcript of their law school record showing receipt of a law degree, and a certified copy of certification of admission to the bar. When these documents have been received and the officer has graduated from the prescribed course at the Naval Justice School, the Director, Judge Advocate Division will request the Judge Advocate General of the Navy to certify the FLEP/ELP(L) graduate under UCMJ, Article 27b, and to designate the officer a judge advocate of the Marine Corps. Upon designation, the officer will be assigned primary MOS 4402, Judge Advocate.

19011. EDUCATIONAL EXPENSES

1. Tuition and Fees

- a. FLEP. The Marine Corps will fund mandatory tuition and fees.
- b. ELP(L). Except as indicated in paragraph 19010.3, the Marine Corps will not fund tuition or fees.
- c. SEP(LAW). The Marine Corps will fund mandatory tuition and fees.
- d. ADP. The Marine Corps will not fund tuition or fees.

2. Book Allowance

- a. FLEP. Students are eligible for a book allowance to provide for essential books in connection with law school attendance. The book allowance will not exceed \$150.00 annually.
- b. ELP(L). No book allowance is authorized.
- c. SEP(LAW). A reimbursable allowance of up to \$100.00 per academic quarter is available for the purchase of required textbooks. Individuals are also entitled to a maximum of \$200.00 for the costs incurred in the typing of a required thesis.
- d. ADP. No book allowance is authorized.

3. Reimbursement/Payment. Request for reimbursement/payment of mandatory tuition and fees (FLEP and SEP(LAW) students only), book

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expenses (FLEP and SEP(LAW) students only) and bar review/examination fees (FLEP and ELP(L) students) should be forwarded to the Commanding General, Training and Education Command, Financial Management Branch

C464, 3300 Russell Road, Quantico, Virginia 22134-5001. Requests should be submitted on an Administrative Action Form in the format shown in figures 19-5, 19-6, and 19-7. Requests for reimbursement of book expenses should include the required book list and receipts of payment.

19012. VETERAN'S EDUCATION BENEFITS

1. FLEP. In accordance with 38 CFR 21.7144, officers assigned to FLEP are not eligible for any Veterans Administration (VA) education benefits.

2. ELP(L). If otherwise eligible, officers assigned to ELP(L) are eligible for VA education benefits.

19013. TUITION ASSISTANCE. In accordance with DoD Directive 1322.25, FLEP/ELP(L) students are not eligible for tuition assistance provided by the armed forces.

19014. OUTSIDE EMPLOYMENT. FLEP/ELP(L) students shall not engage in outside employment unless specifically authorized by CMC(JAS). Requests from ELP(L) students will normally be approved if such employment, in accordance with 10 U.S.C. 973, does not interfere with the performance of military duties and the study of law.

19015. GOVERNMENT QUARTERS

1. FLEP. Officers in the FLEP program are eligible for assignment of Government quarters at or near their permanent duty station.

2. ELP(L)

a. Eligibility. In accordance with MCO P11000.22, officers in the ELP(L) program are eligible for Marine Corps family housing; however, officers will be charged a rental fee equal to the Basic Allowance for Housing and applicable Variable Housing Allowance rate of active duty personnel of comparable rank. When the officers are in an active duty status, any housing allowances forfeited while in that pay status will be deducted from the rental charge. Eligibility for housing aboard Navy, Army, and Air Force installations will be determined by the rules and regulations of those services.

19016. EXCHANGE, COMMISSARY, MEDICAL, AND DENTAL. Entitlement to these benefits is not affected by participation in FLEP/ELP(L).

19017. ALLOTMENTS AND INSURANCE FOR ELP(L) STUDENTS

LEGADMINMAN

1. General. Because ELP(L) students are not entitled to pay and allowances while in an excess leave status, all allotments in effect at the time of transfer into ELP(L) shall be terminated and no new allotments will be authorized. If ELP(L) students desire to continue Government (except SGLI) or commercial insurance, loan repayments, or saving bonds, they must make arrangements for direct remittance.

2. SGLI. ELP(L) students will continue to be covered by SGLI, unless they have elected not to be insured. Premiums in arrears for SGLI shall be deducted from the first regular pay following return to a pay status.

19018. MEDICAL DISABILITY. In accordance with 10 U.S.C. 1201, entitlement to medical disability pay is not affected by participation in FLEP/ELP(L).

19019. RETIREMENT CREDIT. Time spent in an excess leave status is counted in computing active service and total commissioned service.

19020. FLIGHT STATUS. An aeronautically designated officer is not considered to be performing aviation service on a career basis while in FLEP/ELP(L). Officers must agree to voluntarily terminate this status on the day training in FLEP/ELP(L) begins. Entitlement to Aviation Career Incentive Pay (ACIP) also ends on that date. Officers who are terminated from FLEP/ELP(L) may request reinstatement of their flight status and reinstate their entitlement to ACIP prospectively.

19021. SPECIAL AND HAZARDOUS DUTY INCENTIVE PAYS. Any special incentive pay an officer may be receiving by virtue of special qualifications or prior duty assignment will be terminated on the day training in FLEP/ELP(L) begins.

LEGADMINMAN

APPLICATION FOR LAW EDUCATION PROGRAMS

1. Form and Content. Applications shall be submitted to CMC (MMOA-5) on the Administrative Action Form (NAVMC 10274) via the chain of command. See figure 19-2. All applications must be received at Headquarters Marine Corps prior to the deadline established in the MARADMIN announcing the convening of the board. Applications must contain the following:

a. Names of all colleges and universities attended and dates the baccalaureate and any other degrees were received. State class standing, if available.

b. Active duty base date (ADBD), overseas control date (OSCD) and rotation tour date (RTD) if overseas.

c. Statement that the applicant either holds, or has been offered and indicated an intent to accept, a regular commission.

d. Statement of legal education completed and any legal training or experience gained in civilian and military life.

e. The names of law schools accredited by the American Bar Association to which the applicant has been accepted, in priority order.

f. The resident and non-resident tuition rate for each law school, if applicable. Officers must indicate whether they are eligible for the resident tuition rate, and whether they are eligible for any scholarships. If eligible for a scholarship, include the amount and duration of the scholarship.

g. The date that the LSAT was taken.

h. Dates that anticipated law study will begin (i.e., the date law school classes begin) and be completed, including the anticipated date of the bar examination.

i. A statement of where the applicant intends to reside while attending law school and a statement of whether the applicant prefers to be assigned to a Marine Corps activity nearest the law school or nearest the applicant's anticipated residence while attending law school. CMC (MMOA-1) will determine the Marine Corps activity to which selectees will be assigned.

j. DSN/commercial telephone number during working hours.

Figure 19-1--Instructions for Submitting Applications for Law Education Programs.

LEGADMINMAN

k. As enclosures:

(1) Copies of all college level and graduate level transcripts. An explanation of the grading system used at the institutions attended shall be included.

(2) Letters of acceptance or conditional acceptance from the law schools listed in the AA Form.

(3) A certified true copy of the LSAT score report form.

(4) A brief statement (500 words or less) indicating steps the applicant has taken to learn about a career as a Marine Corps judge advocate, and a statement of the reason for seeking such a career. This statement should refer to an interview with a senior judge advocate (see paragraph 2b of this figure).

(5) A signed and witnessed agreement as contained in figure 19-3 (select FLEP, ELP(L), or both). These forms may be reproduced locally.

(6) Official photograph as prescribed by MCO P1070.12_ (IRAM).

1. Except as required by paragraph 2b of this figure, letters of recommendation are not desired and, if received, will not be placed before the selection board.

2. Endorsement

a. The applicant's commanding officer shall include in the forwarding endorsement a specific recommendation concerning the applicant's future value to the Marine Corps as a judge advocate.

b. Where practicable, all applicants shall be interviewed by the staff judge advocate to the general court-martial command of which the applicant is a member. The staff judge advocate's comments and recommendations concerning the applicant shall be made an enclosure to the forwarding endorsement. Where not practicable, a senior judge advocate of any Armed Force who is available in the area shall be requested to conduct the interview and prepare this statement. The staff judge advocate should address the probability of the applicant's success in the study of law, the applicant's motivation to become a Marine Corps judge advocate, and the applicant's full understanding of all aspects of the program applied for.

3. Combined Application. Officers who intend to apply for acceptance into both the FLEP and the ELP(L) should submit one combined application which satisfies the requirement of both programs.

Figure 19-1.--Instructions for Submitting Applications for Law Education Programs--Continued.

ADMINISTRATIVE ACTION (5216)**NAVMC 10274 (REV. 3-93) (EF)**

Previous editions will be used

SN: 0109-LF-063-3200 U/I: PADS OF 100

1. ACTION NO. ADMIN	2. SSIC/FILE NO. 1560
3. DATE 20040301	

4. FROM (Grade, Name, SSN, MOS, or CO, Pers. O., etc.)
Captain Justin B. Advocate
123 45 6789/0302

5. ORGANIZATION AND STATION (Complete address)

1st Bn, 5th Mar, 1st MarDiv
MCB Camp Pendleton, CA 92055

6. VIA (As required)

- (1) CO, 5th Mar
- (2) CG, 1st MarDiv

7.

TO:

Commandant of the Marine Corps
Manpower and Reserve Affairs
Graduate Education MMOA-5
3280 Russell Road
Quantico, VA 22134-5103

8. NATURE OF ACTION/SUBJECT

Application for the Funded Law Education
Program/Excess Leave Program (Law)

9. COPY TO (As required)

CMC (JAS)

10. REFERENCE OR AUTHORITY (if applicable)

LEGADMINMAN, Chapter 19

11. ENCLOSURES (if any)

- (1) College Transcript
- (2) Law School Acceptance Letters and Tuition Rates
- (3) LSAT Score Report
- (4) Statement of Applicant
- (5) FLEP/ELP (L) Agreement
- (6) Official Photo

12. SUPPLEMENTAL INFORMATION (Reduce to minimum wording - type name of originator and sign 3 lines below text)

1. Colleges attended: University of New Orleans, BA 930520. Class Standing 12 of 223.

2. ADBD - 930801; OSCD - N/A; RTD (if overseas) - 040801

3. I hold a regular commission. or I have been offered and have indicated an intent to accept augmentation.

4. I have no prior legal experience or education.

5. Louisiana State University - Eligible for the resident tuition rate of \$11,403 per year.

University of Southern California - Tuition rate of \$35,394 per year.

University of Oklahoma - Eligible for the non-resident tuition rate of \$18,895 per year.

6. LSAT taken December 2003.

7. Anticipated law study will commence September 2004 and will be completed by May 2008. Anticipated bar examination will be in California in July 2008.

8. I intend to reside near the law school and prefer to be assigned to the Marine Corps activity nearest the law school.

9. DSN phone number: 224-3412; Commercial phone number: (703) 614-3412.

JUSTIN B. ADVOCATE

13. PROCESSING ACTION. (Complete processing action in item 12 or on reverse. Endorse by rubber stamp where practicable.)

Designed using FormFlow 2.15, HQMC/ARAE May 98

Figure 19-2.-Sample Application for FLEP/ELP(L)

LEGADMINMAN

AGREEMENT FOR FUNDED LAW EDUCATION PROGRAM

1. I, the undersigned, a commissioned officer of the United States Marine Corps (Reserve) presently serving on active duty, certify that I have read and understand chapter 19 of MCO P5800.8_ (LEGADMINMAN) which governs the administration of the Funded Law Education Program, hereinafter referred to as FLEP, and am fully cognizant of all provisions of that chapter and their effect upon my status as an officer if accepted for FLEP.

2. In consideration of being allowed to pursue the full-time study of law at Government expense and qualify for admission to the bar and designation as a judge advocate of the Marine Corps (MOS 4402), I agree to the following:

FIRST: To comply with all requirements of LEGADMINMAN, chapter 19, as a FLEP student.

SECOND: That my assignment to law school at Government expense may be terminated by CMC if I am unable or fail to maintain satisfactory grades in law school, or abandon the study of law for any reason.

THIRD: That my assignment to law school at Government expense may be terminated by CMC for failure to comply with this agreement or when the best interests of the Marine Corps would be served by my termination. Such termination will not occur until after written notification is received by me and a 30-day period is provided for me to make a statement concerning such termination.

FOURTH: To make due and timely application to take the bar examination and to apply for admission to practice law before the highest court of a State or a district court of the United States as soon as practicable after graduation from law school.

FIFTH: To accept designation as a judge advocate of the Marine Corps and assignment of MOS 4402, Judge Advocate.

SIXTH: To serve on active duty, if I graduate from law school, for a period of 2 years for each academic year or portion of a year spent in FLEP in addition to any preexisting service obligation, computed from the earliest of the following dates:

(1) admittance to practice law before a Federal court or the highest court of a State or the District of Columbia;

(2) detachment from duty under instruction as a FLEP student; or

Figure 19-3.--Format for FLEP/ELP(L) Agreements.

LEGADMINMAN

(3) conferral of a law degree.

SEVENTH: To serve on active duty, if my assignment to law school at Government expense is terminated for any reason prior to graduation from law school, for a period of 1 year, commencing from the date of my termination, for each academic year or portion thereof (not to exceed 3 years) spent in FLEP in addition to any preexisting service obligation; in the case of such early termination my MOS of 4401, Student Judge Advocate, will be voided and my former primary MOS will be reassigned.

EIGHTH: That the crediting of service against any preexisting service obligation I may have will be suspended during the time I am assigned to this program, except that (1) periods of time spent at assigned duty stations during summer vacation (when not attending law school) and (2) the time between my completion of law school and designation as a Marine judge advocate/certification under Article 27b, UCMJ, will count toward satisfaction of any period of obligated service other than that incurred as a result of assignment to the law school under this program.

3. It is now requested that, upon my so qualifying, I be designated a Marine Corps judge advocate and that I be assigned primary MOS 4402 Judge Advocate.

Signed this ____ day of _____, 200__ in the presence of the below witness.

(Signature of Applicant)

Typed Name of Applicant
Typed Grade, SSN, MOS

(Signature of Witness)

Typed Name of Witness
Typed Grade, SSN

Figure 19-3.--Format for FLEP/ELP(L) Agreements--Continued.

LEGADMINMAN

EDUCATION PROGRAM AGREEMENT FOR EXCESS LEAVE PROGRAM (LAW)

1. I, the undersigned, a commissioned officer of the United States Marine Corps (Reserve), certify that I have read and understand chapter 19 of MCO P5800.8_ (LEGADMINMAN) which governs the administration of the Excess Leave Program (Law), hereinafter referred to as ELP(L), and am fully cognizant of all provisions of that chapter and their effect upon my status as an officer if accepted for ELP(L).

2. In consideration of being allowed to pursue the full-time study of law and qualify for admission to the bar and designation as a Marine Corps judge advocate, I agree to the following:

FIRST: To comply with all requirements of LEGADMINMAN, chapter 19, as an ELP(L) student.

SECOND: That my participation in the ELP(L) shall be terminated by CMC if I am unable or fail to maintain satisfactory grades in law school or abandon the study of law for any reason.

THIRD: That my participation in ELP(L) may be terminated by CMC without prior notice to me, in the best interests of the Marine Corps.

FOURTH: To make due and timely application to take the bar examination and to apply for admission to practice law before the highest court of a State or a Federal court as soon as practicable after graduation from law school.

FIFTH: To accept designation as a Marine Corps judge advocate and assignment of MOS 4402, Judge Advocate.

SIXTH: To serve on active duty, regardless of whether I graduate from law school or am admitted to practice law and regardless of whether I complete the requirements of ELP(L) or am earlier terminated or withdraw from ELP(L), for a period of 1 year for each year or portion of a year spent in ELP(L), but not less than 2 years. Active duty creditable towards my obligation will begin the day after the earlier of the following dates: (1) my admittance to practice before the highest court of a State or the District of Columbia or a district court of the United States; (2) my detachment from duty under instruction in ELP(L); or (B) my receipt of a law degree. This obligated active service is in addition to any period of obligated service I may have acquired other than as result of my participation in ELP(L), but in no case will my total cumulative active duty obligation, including the obligation resulting from participation in ELP(L) and my preexisting obligation, be less than 2 years nor more

Figure 19-3.--Format for FLEP/ELP(L) Agreements--Continued.

LEGADMINMAN

than 5 years after the date my ELP(L) obligation begins or the date of my early termination from ELP(L).

3. It is now requested that, upon my so qualifying, I be designated a Marine Corps judge advocate and that I be assigned primary MOS 4402, Judge Advocate.

Signed this ____ day of _____, 200__ in the presence of the below witness.

(Signature of Applicant)

Typed Name of Applicant
Typed Grade, SSN, MOS

(Signature of Witness)

Typed Name of Witness)
Typed Grade, SSN

Figure 19-3.--Format for FLEP/ELP(L) Agreements--Continued.

LEGADMINMAN

UNITED STATES MARINE CORPS
Inspector-Instructor Staff
Company I, 3d Battalion, 24th Marines
160 White Bridge Road
Nashville, TN 37209

1300
ADMIN
1 Aug 04

From: Inspector-Instructor
To: Captain Justin B. Advocate 123 45 6789/4401 USMC
1313 South Mockingbird Lane, Nashville, TN 37205
Subj: CONTINUING ORDERS TO PAY STATUS ASSIGNMENTS WHILE
PARTICIPATING IN THE EXCESS LEAVE PROGRAM (LAW) (ELP(L))
Ref: (a) LEGADMINMAN, par. 19007

1. As authorized in the reference, you are assigned to a pay status with this unit during the following periods:

- a. During Sep 2005: 5-6, 12-13, 19-20, 26-27.
- b. During Oct 2005: 3-4, 10-11, 17-18, 24-25, 31.
- c. During Nov 2005: 1, 7-8, 14-15, 21-22, 28-29.
- d. During Dec 2005: 5-6, 12-13, 19-20, 26-27.
- e. During Jan 2006: 2-3, 9-10, 16-17, 23-24.
- f. During Feb 2006: 6-7, 13-14, 20-21, 27-28.
- g. During Mar 2006: 6-7, 13-14, 20-21, 27-28.
- h. During Apr 2006: 3-4, 10-11, 17-18, 24-25.
- i. During May 2006: 19-3, 8-9, 15-16, 22-23, 29-30.

2. You will return to an excess leave status as of 0001 of the day following the final date of each pay status period and resume participation in ELP(L).

3. You may be excused from performing duty in a pay status on any of the above dates upon oral or written request to the Inspector-

Figure 19-4.--Sample Orders for Pay Status Assignments for ELP(L)
Students.

LEGADMINMAN

Subj: CONTINUING ORDERS TO PAY STATUS ASSIGNMENTS WHILE
PARTICIPATING IN THE EXCESS LEAVE PROGRAM (LAW) (ELP(L))

Instructor. Upon approval of any such request, you will remain in an excess leave status on that date.

4. Should the law school you are attending under ELP(L) schedule a class or examination for you on any of the above dates, this order is revoked as it applies to that date. You are cautioned that you may not perform duty in a pay status on any date on which your law school schedules a class or examination that you are required to attend.

5. This order will be revoked as to any date that there is a likelihood that such assignment to pay status may adversely affect your academic standing in law school.

6. No travel, proceed or per diem is involved in the execution of these orders and none is authorized.

H. CAMPER

Copy to:
Disb0

Figure 19-4.--Sample Orders for Pay Status Assignments for ELP(L)
Students--Continued.

LEGADMINMAN
UNITED STATES MARINE CORPS
Inspector-Instructor Staff
Company I, 3d Battalion, 24th Marines
160 White Bridge Road
Nashville, TN 37209

1300
ADMIN
1 Aug 04

From: Inspector-Instructor
To: Captain Justin B. Advocate 123 45 6789/4401 USMC
1313 South Mockingbird Lane, Nashville, TN 37205
Subj: CONTINUING ORDERS TO PAY STATUS ASSIGNMENTS WHILE
PARTICIPATING IN THE EXCESS LEAVE PROGRAM (LAW) (ELP(L))

Ref: (a) My ltr 1300 ADMIN of 11 Aug 98

1. As directed by the reference, you reported to duty in a pay status with this unit at 0800, 1 September 1998.
2. As of 0001 of the day following this date your pay status is terminated and you will return to an excess leave status and resume your participation in ELP(L).

H. CAMPER

C E R T I F I C A T I O N

I certify that no class or examination was scheduled for me by the law school in which I am enrolled as a participant in the Excess Leave Program (Law) on any of the above dates during which I performed duty in a pay status.

JUSTIN B. ADVOCATE

Copy to:
Disb0

Figure 19-4.--Sample Orders for Pay Status Assignments for ELP(L)
Students--Continued.

ADMINISTRATIVE ACTION (5216)**NAVMC 10274 (REV. 3-93) (EF)**

Previous editions will be used

SN: 0109-LF-063-3200 U/I: PADS OF 100

1. ACTION NO.

ADMIN

2. SSIC/FILE NO.

7431

3. DATE

20040801

4. FROM (Grade, Name, SSN, MOS, or CO, Pers. O., etc.)

Captain Justin B. Advocate

123 45 6789/4401

5. ORGANIZATION AND STATION (Complete address)

Inspector-Instructor

CO I, 3d Bn, 24th Mar

160 White Bridge Road

Nashville, TN 37209

6. VIA (As required)

7.

TO:

Commandant of the Marine Corps
Training and Education Command
Financial Management Branch C464
3300 Russell Road
Quantico, VA 22134-5103

8. NATURE OF ACTION/SUBJECT

Tuition Payments in Connection with the
Funded Law Education Program

9. COPY TO (As required)

10. REFERENCE OR AUTHORITY (if applicable)

LEGADMINMAN, Chapter 19

11. ENCLOSURES (if any)

(1) Statement of Tuition and Fees

12. SUPPLEMENTAL INFORMATION (Reduce to minimum wording - type name of originator and sign 3 lines below text)

1. Per the reference, the enclosure is forwarded for your action.

JUSTIN B. ADVOCATE

13. PROCESSING ACTION. (Complete processing action in item 12 or on reverse. Endorse by rubber stamp where practicable.)

Designed using FormFlow 2.15, HQMC/ARAE May 98

Figure 19-5.--Sample For Tuition Payments for FLEP Students

ADMINISTRATIVE ACTION (5216)**NAVMC 10274 (REV. 3-93) (EF)**

Previous editions will be used

SN: 0109-LF-063-3200 U/I: PADS OF 100

1. ACTION NO. ADMIN	2. SSIC/FILE NO. 7431
3. DATE 20040801	

4. FROM (Grade, Name, SSN, MOS, or CO, Pers. O., etc.)
Captain Justin B. Advocate
123 45 6789/4401

6. VIA (As required)

5. ORGANIZATION AND STATION (Complete address)

Inspector-Instructor
CO I, 3d Bn, 24th Mar
160 White Bridge Road
Nashville, TN 37209

7.

TO:

Commandant of the Marine Corps
Training and Education Command
Financial Management Branch C464
3300 Russell Road
Quantico, VA 22134-5103

8. NATURE OF ACTION/SUBJECT

Reimbursement in Connection with the
Funded Law Education Program

9. COPY TO (As required)

10. REFERENCE OR AUTHORITY (if applicable)

LEGADMINMAN, Chapter 19

11. ENCLOSURES (if any)

- (1) Required Book List
- (2) Book Payment Receipts

12. SUPPLEMENTAL INFORMATION (Reduce to minimum wording - type name of originator and sign 3 lines below text)

1. Per the reference, I request reimbursement for book payments for the 2004 Fall semester in the amount of \$96.35.
2. Upon reimbursement of the required amount, the balance reimbursable for the 2004-2005 school year will be \$53.65.
3. Enclosure (1) verifies the necessity of payments shown in enclosure (2).

JUSTIN B. ADVOCATE

13. PROCESSING ACTION. (Complete processing action in item 12 or on reverse. Endorse by rubber stamp where practicable.)

ADMINISTRATIVE ACTION (5216)**NAVMC 10274 (REV. 3-93) (EF)**

Previous editions will be used

SN: 0109-LF-063-3200 U/I: PADS OF 100

1. ACTION NO.

ADMIN

2. SSIC/FILE NO.

7431

3. DATE

20040801

4. FROM (Grade, Name, SSN, MOS, or CO, Pers. O., etc.)

Captain Justin B. Advocate

123 45 6789/4401

5. ORGANIZATION AND STATION (Complete address)

Inspector-Instructor

CO 1, 3d Bn, 24th Mar

160 White Bridge Road

Nashville, TN 37209

6. VIA (As required)

7.

TO:

Commandant of the Marine Corps
Training and Education Command
Financial Management Branch C464
3300 Russell Road
Quantico, VA 22134-5103

8. NATURE OF ACTION/SUBJECT

Payment and/or Reimbursement for Bar
Review and Examination Fees

9. COPY TO (As required)

10. REFERENCE OR AUTHORITY (if applicable)

LEGADMINMAN, Chapter 19

11. ENCLOSURES (if any)

(1) Bar Review Invoice

(2) Bar Examination Invoice

12. SUPPLEMENTAL INFORMATION (Reduce to minimum wording - type name of originator and sign 3 lines below text)

1. Per the reference, the enclosures are forwarded for your action.

JUSTIN B. ADVOCATE

13. PROCESSING ACTION. (Complete processing action in item 12 or on reverse. Endorse by rubber stamp where practicable.)

Designed using FormFlow 2.15, HQMC/ARAE May 98

Figure 19-7.—Sample for Bar Review/Examination Fees for FLEP/ELP(L)
Students

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CHAPTER 20

CERTIFICATION AND DESIGNATION OF JUDGE ADVOCATES; EVIDENCE OF GOOD
STANDING

	PARAGRAPH PAGE
CERTIFICATION OF OFFICERS UNDER UCMJ, ARTICLES 26 AND 27	20000
DESIGNATION OF MARINE CORPS OFFICERS AS JUDGE ADVOCATES.	20001
EVIDENCE OF GOOD STANDING WITH LICENSING AUTHORITY	20002

LEGADMINMAN

CHAPTER 20

CERTIFICATION AND DESIGNATION OF JUDGE ADVOCATES; EVIDENCE OF GOOD STANDING

20000. CERTIFICATION OF OFFICERS UNDER UCMJ, ARTICLES 26 AND 27. For instructions concerning certification of officers under the UCMJ, Articles 26 and 27, see SECNAVINST 1120.9_.

20001. DESIGNATION OF MARINE CORPS OFFICERS AS JUDGE ADVOCATES. For instructions concerning designation of officers as judge advocates of the Marine Corps, and for policy concerning granting of service credit, thereto, see SECNAVINST 1120.9_.

20002. EVIDENCE OF GOOD STANDING WITH LICENSING AUTHORITY

1. Judge advocates have a duty to maintain a status with the licensing authority admitting that officer to the practice of law before the highest court of at least one State, Territory, Commonwealth, or the District of Columbia, such that the individual officer is considered to be in good standing with that licensing authority at all times. At a minimum, good standing means the individual: (1) is subject to the jurisdiction's disciplinary review process; (2) has not been suspended or disbarred from the practice of law within the jurisdiction; (3) is up-to-date on the payment of all required fees; (4) has met applicable continuing legal education requirements which the jurisdiction has imposed (or the cognizant authority has waived); and (5) has met any other requirements the cognizant authority set for eligibility to practice law. So long as these conditions are met, a judge advocate may be "inactive" as to the practice of law within a particular jurisdiction and still be in good standing.

2. Pursuant to JAGINST 5803.2_, every two years, all Marine Corps judge advocates are required to provide proof of good standing with their licensing authority to the Marine Corps Rules Counsel, Director, JA Division, HQMC. The next required reporting period of good standing is 15 January to 1 April 2006.

3. A judge advocate shall immediately report to the Marine Corps Rules Counsel, Director, JA Division, HQMC, if any jurisdiction in which the judge advocate is or has been a member in good standing commences disciplinary investigation or action against him or her or if the judge advocate is disciplined, suspended, or disbarred from the practice of law in any jurisdiction. Failure of a judge advocate to

LEGADMINMAN

comply with these requirements may result in professional disciplinary action under JAGINST 5803.1_, loss of certification under Articles 26 and/or 27(b), UCMJ, adverse entries in military service records, processing for administrative separation, or court-martial.

4. Student judge advocates (MOS 4401) are required to submit either an original letter of good standing or original certificate of admission from their licensing authority to the CMC (JAS). The deadline for submission for PLC and OCC (Law) student judge advocates is prior to TBS graduation. The deadline for FLEP and ELP student judge advocates is within 2 weeks of receiving their notification of admission to the practice of law from their licensing authority.

5. Supervisory judge advocates may require any officer over whom they exercise authority to establish that s/he continues to be in good standing with that officer's licensing authority.

LEGADMINMAN

CHAPTER 21

JUDGE ADVOCATE SUPPORT AND PERSONNEL

	<u>PARAGRAPH</u>	<u>PAGE</u>
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OCCUPATIONAL FIELD SPONSOR.	21001	21-3
CONTINUING LEGAL EDUCATION.	21002	21-4

CHAPTER 21

JUDGE ADVOCATE SUPPORT AND PERSONNEL

21000. SCOPE

1. This chapter clarifies the relationship between individual judge advocates, the occupational field sponsor, and the Personnel Management Division (MM), Headquarters, U.S. Marine Corps.
2. Additionally, this chapter details the Marine Corps program for continuing legal education courses.

21001. OCCUPATIONAL FIELD SPONSOR

1. The 4400 occupational field sponsor is the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC). As such, the SJA to CMC is responsible for representing the interests of the judge advocate community. This includes recommendations to the monitors at MM regarding the number of lawyers, legal administrators and legal clerks at each command, as well as who, specifically, should fill each billet. In order to fulfill this responsibility effectively, the SJA to CMC has designated MOS specialists.
2. The Judge Advocate Support (JAS) Branch Head is the occupational field manager and is responsible for coordination of the personnel management efforts of the entire community, as well as the MOS specialist for the field grade 4402s. The Deputy Branch Head, JAS, handles all company grade judge advocates. The Law Office Manager/Senior Legal Administrative Officer (JA-2) is the warrant officer and chief warrant officer MOS specialist. The Legal Services Chief (JA-3) is the MOS specialist for the 4400 enlisted community.
3. The MOS specialists provide expert advice to the monitors at MM on optimum staffing levels at the various commands and law offices around the Marine Corps. Moreover, the MOS specialists work closely with the monitors, making specific recommendations concerning personnel to fill each billet.
4. Marines are strongly encouraged to contact their MOS specialist to discuss career options both in the short and long terms. MOS specialists need all relevant information concerning a Marine's interests, family situation, and experience levels to effectively advise the monitors regarding PCS moves.
5. In addition to manning, the MOS specialists have responsibility for structure. In conjunction with Total Force Structure Division, Marine Corps Combat Development Command, MOS specialists optimize the table of organization of Marine Corps legal offices.

21002. CONTINUING LEGAL EDUCATION

1. JAS is responsible for the Marine Corps continuing legal education efforts. JAS works with the Training and Education Division (T&E), Marine Corps Combat Development Command, to validate courses for inclusion on the Training Input Plan (TIP). Courses at the Naval Justice School, the Army Judge Advocate General's School, the Air Force Judge Advocate General's School and various civilian institutions are included in the TIP, and become officially sanctioned training classes.
2. T&E provides funding for a specific number of quotas for selected courses. However, not all courses on the TIP have funded quotas. JAS works closely with T&E to obtain quotas for courses, and to see that an efficient distribution of quotas is made over the selected courses.
3. Each of the schoolhouses has a different reservation system for seats in its courses. JAS is the Marine Corps point of contact for each schoolhouse. All Marines must go through JAS to make reservations in the various courses on the TIP. This is imperative in order to maintain the validation of the courses with T&E. The accounting data for T&E-funded quotas is obtained from T&E and then distributed to the field by JAS. A T&E-funded quota is not necessary to attend a course. Indeed, many courses on the TIP do not have T&E-funded quotas allocated. An individual command must fund the attendance of a Marine at a school for which no T&E-funded quota is available. In any case, JAS will make the reservations with the schoolhouse, upon request by the field.
4. T&E will fund attendance by Marines stationed overseas, if two conditions are met. First, the course must be more than 14 calendar days in length, including any weekends or holidays. Second, the Marine attending must have more than 1 year left on station overseas. For purposes of this paragraph, Hawaii duty stations are not considered overseas.
5. Suggestions for new courses to be added to the TIP should be forwarded to JAS not later than 1 February each year.

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CHAPTER 22

ORGANIZATION OF LEGAL SERVICES IN THE DEPARTMENT OF THE NAVY

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2000. SCOPE. This chapter identifies the organizations responsible for providing legal support within the Department of the Navy (DON) and summarizes their areas of responsibility.

22001. GENERAL COUNSEL OF THE NAVY. The General Counsel (GC) is a Civilian Executive Assistant appointed by and directly responsible to the Secretary of the Navy (SecNav) and is in the statutory line of succession for SecNav. The GC is the principal legal advisor to SecNav and is the Designated Agency Ethics Official (DAEO) for the DON. The GC provides legal advice, counsel, and guidance to SecNav and DON civilian executive assistants and their staffs, and provides services in the areas of business law, acquisitions, environmental law, civilian personnel law, real, personal, and intellectual property law, and litigation involving these issues. In appropriate cases, the GC shares responsibility with the Judge Advocate General of the Navy for liaison with the Attorney General and Department of Justice. There is a considerable overlap of responsibilities at both the headquarters level and in the field. Specific duties of the GC are set forth below as established by SECNAVINST 5430.25D and U.S. Navy Regulations, 1990, article 0327.

1. Business and Commercial Law. The GC provides legal services throughout the DON for business and commercial law including the following:

- a. The acquisition, custody, management, transportation, taxation, and disposition of real and personal property;
- b. The procurement of services, including the fiscal, budgetary and accounting aspects thereof (except tort and admiralty claims arising independently of contract);
- c. Operations of the Military Sealift Command, the Office of the Comptroller of the Navy, and the Naval Data Automation Command;
- d. All matters in the field of patents, inventions, trademarks, copyrights, royalty payments and related matters; and
- e. Procurement aspects of foreign military sales, issues related to research and development, NATO standardization agreements, and Arms Export Control Act issues.

2. Civilian Personnel Law. The GC provides legal services in the field of civilian personnel law, including labor-management relations and equal employment opportunity matters at Headquarters, DON, and in coordination with the Navy JAG, throughout the remainder of the Navy.

3. Contract Claims and Litigation. The GC provides guidance to DON procuring activities in the proper method of evaluating, processing and documenting contract claims asserted by or against the DON.

4. Litigation. The GC is responsible for:

a. All DON litigation before the Armed Services Board of Contract Appeals.

b. With the concurrence of the Attorney General, the conduct of all other Navy litigation arising out of business, patent, or civil personnel matters.

22002. Judge Advocate General of the Navy. The JAG provides services in the areas of military justice, operational and international law, administrative law, military personnel law, special programs, claims, legal assistance, admiralty, health care and litigation involving such issues. The JAG oversees the professional ethics of all Navy and Marine Corps judge advocates including civilian attorneys who practice under JAG supervision. The JAG may decertify a judge advocate if s/he determines that the judge advocate is not competent to act as an attorney on behalf of the Navy. The Deputy Judge Advocate General (DJAG) assists the JAG in his/her duties and commands the Naval Legal Service Command which provides military justice, claims and legal assistance services to the Fleet. The DJAG is also designated as a Deputy DAEO for the Navy. Specific duties of the JAG are set forth below as established by SECNAVINST 5430.27A and U.S. Navy Regulations, 1990, article 0331.

1. Litigation. The JAG keeps the GC informed of the status of all litigation under the JAG's cognizance, including all proposed Navy appeal recommendations to the Department of Justice. In cases designated "of major and continuing concern to the Secretary," the GC and JAG share the responsibility for liaison with the Attorney General and Department of Justice.

2. Supervision of Legal Services. In consultation with the JAG, DJAG sets the policy governing the structure, maintenance and performance of duties of the Navy Legal Service Command.

22003. Office of the Counsel for the Commandant of the Marine Corps. The Counsel for the Commandant (CL) advises, provides legal services, and renders legal decisions to CMC, HQMC staff agencies, and field commands regarding business and commercial law, including all matters within the cognizance of the GC for DON, of which the office is a part. The CL's duties as a Deputy DAEO for the Marine Corps are set forth in chapter 11. Other duties of CL are set forth below.

1. Acquisition. CL plans and develops comprehensive legal programs to support the Marine Corps relating to the acquisition of services, supplies, facilities, and other property for the Marine Corps.

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2. Business and Commercial Law. CL provides legal advice and services to the CMC, HQMC staff agencies, and field activities in business and commercial law, standards of conduct and conflicts of interest. CL represents the Marine Corps in relations with other departments and activities of the Government, professional associations, industry associations, contractors and other business concerns relating to:

a. The acquisition, custody, management, transportation, taxation, and disposition of real and personal property, and the procurement of services including the fiscal, budgetary, and accounting aspects thereof (except tort claims that arise independently of contract);

b. Procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments and similar matters;

c. All aspects of environmental law, civilian personnel law, and industrial security; and

d. Serves as a legal consultant and advisor to CMC and other Marine Corps officials on policy proposals and program operations relating to the commercial interests of the Marine Corps.

22004. Staff Judge Advocate to the Commandant of the Marine Corps. The SJA to CMC acts as legal advisor to CMC on military justice matters, administrative law, operational law and legal assistance matters. The SJA to CMC is also the Director of the Judge Advocate Division (JA). The SJA to CMC provides supervision and management of the Military Law, Operational Law, Research and Civil Law, Legal Assistance, Judge Advocate Support, and Information, Plans and Programs branches of JA, and of the Chief Defense Counsel of the Marine Corps. The duties of the SJA to CMC as a Deputy DAEO for the Marine Corps are set forth in chapter 11. Pursuant to JAGINST 5803.1, the SJA to CMC also acts as "Rules Counsel" in legal professional ethics and complaints against Marine judge advocates. Also per agreement with JAG and CMC, the SJA to CMC conducts UCMJ, Article 6 visits to Marine Corps commands on behalf of the JAG.

1. Military Law Branch (JAM). JAM provides legal advice and assistance to HQMC staff agencies and the field on military law and related matters, to include military justice, administrative law matters related to military justice, promotions and reductions, appeals of competency review boards and complaints of wrongs or redress of wrongs submitted pursuant to Article 138, UCMJ, or Article 1106, U.S. Navy Regulations, 1990. JAM provides a working and voting group member to the Joint Service Committee, which conducts the annual review of the Manual for Courts-Martial and reviews legislative and regulatory proposals affecting military justice. JAM also reviews and provides comment on appeals of nonjudicial punishment and matters

forwarded by the Board for Correction of Naval Records and Naval Discharge Review Board.

2. Operational Law Branch (JAO). JAO provides legal advice and assistance on operational law and related matters, to include international law/relations and the legal aspects of military plans, operations and training; law of war; rules of engagement; combined, joint, multiservice and service doctrine; security assistance technology transfer; personnel exchange program; host nation support of U.S. forces; foreign tax issues; environmental matters related to operations and operating forces; support to other governments; international agreements; noncombatant evacuation operations; base rights overseas; pre-deployment training and preparation; and mobilization.

3. Research and Civil Law Branch (JAR). JAR provides legal advice and assistance to HQMC staff agencies and to the field on administrative law matters, to include personnel law, environmental law, Reserve establishment, physical disability, standards of conduct and Government ethics, Privacy Act, Freedom of Information Act, retired and veterans' affairs, decedent and casualty affairs, legislation, claims, off-duty employment, gifts, trademark, dependency determinations, and related matters.

4. Legal Assistance Policy Branch (JAL). The mission of JAL is to (1) to assist and advise the SJA to CMC on all legal assistance policies, procedures and related matters, implement and supervise the Marine Corps Legal Assistance and Tax Programs, provide guidance to legal assistance attorneys and staff in the field, formulate and disseminate legal assistance and tax policies and procedures, inspect the effectiveness of legal assistance programs, coordinate and oversee the Regional Legal Assistance Councils, prepare legal assistance legislative initiatives, and act as the Marine Corps and JA representative on the Armed Forces Tax Council, the Marine Corps Quality of Life Working Group, the American Bar Association Standing Committee on Legal Assistance for Military Personnel and other legal assistance related agencies; and (2) supervise the operation of the Henderson Hall Legal Assistance Office and the Individual Mobilization Augmentee (IMA) Reserve Detachment assigned to JAL.

5. Information, Plans and Programs Branch (JAI). JAI provides legal office management to the Marine Corps legal community in the field by incorporating business practices through proper structuring and employment of personnel, improved implementation of information technology, improved management of information systems, development and implementation of programs to increase the quality and efficiency of legal services. JAI also maintains and operates the legal reference library.

6. Law Office Manager (JA-2)/Legal Management Branch (JAA). JA-2 provides advice and assistance to HQMC staff agencies and the field on

enlisted administrative separations; reviews non-criminal investigations received from the field; and advises the field on publications and the Performance Evaluation System. JAA provides daily office management for JA through correspondence tracking; budget preparation and execution; internal information systems coordination and support; appointment scheduling; and processing of personnel matters for those working within the division.

7. Judge Advocate Support Branch (JAS). JAS coordinates personnel support of active duty and Reserve judge advocates by providing advice and assistance on matters such as judge advocate certification, recruitment, training, assignments, and personnel administration; legal review of Marine Corps policies, directives, procedures, and practices concerning judge advocate support matters; coordination and supervision of programs for Reserve judge advocates not on active duty; and advice on adequacy of judge advocate billets within tables of organization.

8. Chief Defense Counsel of the Marine Corps. Exercises general supervision over the professional development of Marine Corps judge advocates and support personnel engaged in performing defense functions. Maintains liaison with Headquarters staff agencies and with field commands on matters pertaining to personnel administration of defense counsel to include their assignment, training, and career planning.

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CHAPTER 23

INTERNATIONAL AND OPERATIONAL LAW

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CHAPTER 23

INTERNATIONAL AND OPERATIONAL LAW

23000. SCOPE. Due to the broad range of International and Operational Law issues and availability of other resources, this chapter provides only limited guidance on a select number of common International and Operational Law issues. Reference is made to more detailed guidance, where available - many of these resources are available online. Most importantly, units should always consult their assigned Staff Judge Advocate for International and Operational legal advice. Some of the best overall International and Operational Law resources include:

1. Operational Law Handbook (published annually by The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS)), available online at <http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset> under "Other Publications", and on the HQMC Judge Advocate Division (JAO) website (url below).
2. Deployed Judge Advocate Resource Library CD (published annually by the Center for Law and Military Operations (CLAMO)).
3. Deployed MAGTF JA Handbook (published by CLAMO).
4. Domestic Operational Law (DOPLAW) Handbook for Judge Advocates (published by CLAMO).
5. Websites:
 - a. CLAMO (access requires registration through the website)
unclassified / classified: www.jagcnet.army.mil / www.usarmy.smil.mil.
 - b. HQMC Judge Advocate Division (JAO) unclassified / classified: sja.hqmc.usmc.mil / www.hqmc.usmc.smil.mil/JA/JA_Home.htm.
 - c. Joint Electronic Library (DOD/CJCS directives, joint and other publications): www.dtic.mil/doctrine/index.htm.
 - d. TJAGLCS "Other Publications" at <http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset> has online, downloadable publications in numerous areas of military law, including International and Operational Law.
 - e. Naval Justice School, Newport, Rhode Island (NJS) publications are available at <http://www.jag.navy.mil/html/njsnpthome.htm> (requires logon and password for access - request through the site).

23001. OPERATIONAL LAW - GENERAL.

1. Operational Chain of Command. Upon deployment, units must be cognizant of the operational chain of command. With few exceptions, deployed Marine units fall under the operational command of the Marine component of the combatant command in whose theater they are deployed. For example, Marine units in the U.S. Central Command (USCENTCOM) Area of Responsibility (AOR) fall under Marine Forces Central Command (MARCENT). Most combatant commands have their own regulations, policies, and guidance on numerous issues, such as release authority on Freedom of Information Act (FOIA) requests, Law of War violation reporting and investigations, and media inquiries. In addition, the combatant command SJA usually issues legal guidance on a variety of topics. A legal annex is normally found in Annex E, and Rules of Engagement in Annex C, of the Combatant Command's Operation Orders (OpOrds). Combatant commands, their Marine components, cognizant SJAs, and websites are listed in Table 23-1. Most of the classified websites have links to the combatant command SJA sites, which have useful resources.

Combatant Command	Marine Component	Cognizant SJA	Combatant Command Website Unclassified / Classified
Regional Commands			
CENTCOM	MARCENT	MARCENT SJA	www.centcom.mil / www.centcom.smil.mil
EUCOM	MARFOREUR	MARFOREUR SJA	www.eucom.mil / www.eucom.smil.mil
NORTHCOM	MARFORNORTH	MARFORRES SJA (dual-hatted)	www.northcom.mil / www.northcom.smil.mil
PACOM	MARFORPAC	MARFORPAC SJA	www.pacom.mil / www.pacom.smil.mil
SOUTHCOM	MARFORSOUTH	MARFORSOUTH SJA	www.southcom.mil / www.southcom.smil.mil
Functional Commands			
JFCOM	MARFORLANT	MARFORLANT SJA	www.jfcom.mil / www.jfcom.smil.mil
SOCOM	MCSOCOM DET ONE	TBD	www.socom.mil / www.socom.smil.mil
STRATCOM	MARFORSTRAT	MARFORLANT SJA (pending MCCDC SJA)	www.stratcom.mil / www.stratcom.smil.mil
TRANSCOM	Not applicable		www.transcom.mil / www.transcom.smil.mil

Table 23-1

2. Friendly Fire Investigations. Under DOD Instruction 6055.7, *Accident Investigation, Reporting, and Record Keeping*, the combatant commander convenes a legal investigation on friendly fire incidents (par E4.7). Service or other commanders may still convene a safety investigation into friendly fire incidents, in consultation with the combatant commander. However, the combatant commander is the release authority for information in the legal investigation for media

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queries, Freedom of Information Act requests, and next of kin notifications. Refer to Chapter 8 for further guidance on investigations.

3. Claims. Refer to the following:

a. DOD Directive 5515.3 - Settlement of Claims Under 10 USC 2733 and 2734

b. DOD Directive 5515.6 - Processing Tort, Contract and Compensation Claims Arising out of Operations in Nonappropriated Fund Actions

c. DOD Directive 5515.8 - Single Service Assignment of Responsibility for Processing of Claims

d. DOD Directive 5515.9 - Settlement of Tort Claims

e. JAGINST 5890.1 - Administrative Processing and Consideration of Claims on Behalf of and Against the United States

f. Chapter VIII, JAGMAN - General claims provisions, including foreign claims

g. Chapter X, paragraph 1010g, JAGMAN - Solatia payments

h. Chapter XII, JAGMAN - Admiralty claims

i. Chapter 13 - Claims, LEGADMINMAN

j. Claims Course Deskbook, published by The Judge Advocate General's Legal Center and School, and available online at <http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset> under "Other Publications."

4. Fiscal Law. The complexities of fiscal law continue in a deployed environment. If at all possible, a judge advocate trained in fiscal law should be available to provide legal advice during a deployment. The Operational Law Handbook published by TJAGLCS discusses fiscal law, but more detail is provided in the Fiscal Law Course Deskbook, also published by TJAGLCS, and available online at <http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset> under "Other Publications."

23002. RULES OF ENGAGEMENT AND RULES FOR THE USE OF FORCE.

1. Rules of Engagement. On deployment, the judge advocate, in coordination with the operations and intelligence officers, is usually the primary action officer for developing Supplemental Rules of Engagement requests and for briefing the commander, staff and Marines on Rules of Engagement. Refer to Chairman of the Joint Chiefs of

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Staff Instruction (CJCSI) 3121.01A, *Standing Rules of Engagement for U.S. Forces*. In its entirety, the document is classified SECRET and available at the Judge Advocate Division's classified homepage: www.hqmc.usmc.smil.mil/JA/JA_Home.htm (linked from HQMC's homepage). Enclosure (A) is unclassified and reprinted in the Operational Law Handbook's Rules of Engagement chapter.

2. Rules for the Use of Force (RUF). For the use of deadly force and the carrying of firearms by DOD/DON personnel performing law enforcement, security duties, or personal protection, refer to DOD Directive 5210.56, SECNAVINST 5500.29C, and MCO 5500.6F. For Rules on the Use of Force by DOD Personnel Providing Support to Law Enforcement Agencies Conducting Counterdrug Operations in the United States, see CJCSI 3121.02. For Counterdrug Support Operations, and Domestic Support Operations, refer also to Enclosures H and I of CJCSI 3121.01A, *Standing Rules of Engagement for U.S. Forces*.

23003. DOMESTIC OPERATIONAL LAW. Refer to: (1) the Domestic Operations chapter in the latest Operational Law Handbook, (2) the Domestic Operational Law (DOPLAW) Handbook for Judge Advocates, and (3) Enclosure I - Domestic Support Operations of CJCSI 3121.01A, *Standing Rules of Engagement for U.S. Forces*. Since USNORTHCOM was created, many domestic deployments now require a deployment order approved by the Secretary of Defense when assigned forces are transferred from one combatant command to another, e.g., USJFCOM to USNORTHCOM. In addition, Realistic Urban Training (RUT) in civilian urban settings must comply with the DOD Policy for Realistic Training Off Federal Facilities contained in Secretary Defense Memorandum of 26 April 2000, posted on the JAD (JAO) website.

23004. WOMEN IN COMBAT.

Refs: (a) FY94 NDAA (PL 103-160, sec 541-542)
(b) SECDEF Memo 13 Jan 94 - Direct Ground Combat Rule
(c) SECNAVINST 1300.12B - Assignment of Women
(d) MCO P13008R, Chapter 5 - Women Marines Classification, Assignment, and Deployment Policy

1. Law. The National Defense Authorization Act for Fiscal Year 1994 (ref (a)) repealed the statutory limitation on women in combat, the "combat exclusion law" (formerly in 10 USC 6015). Congress authorized the Secretary of Defense (SECDEF) to change policy to assign women to any combat unit, vessel or platform.

2. Policy. SECDEF established DOD policy, the Direct Ground Combat Rule, in SECDEF Memorandum of 13 Jan 94, entitled "Direct Ground Combat Definition and Assignment Rule" (ref (b)). The Rule is that "Service members are eligible to be assigned to all positions for which they are qualified, except that women shall be excluded from

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assignment to units below the brigade level whose primary mission is to engage in direct combat on the ground...Direct ground combat is engaging an enemy on the ground with individual or crew served weapons, while being exposed to hostile fire and to a high probability of direct physical contact with the hostile force's personnel." Navy and Marine Corps policy is in references (c) and (d).

23005. INTERNATIONAL LAW - GENERAL. International Law is generally the law governing relations between nations, international organizations, and persons. The most common areas of international law in which a judge advocate practices are the Law of War and International Agreements, in particular Status of Forces Agreements, discussed below. See also Chapter X, International Law, of JAGINST 5800.7D (JAGMAN) for a discussion of select International Law topics.

23006. LAW OF WAR.

1. Marine Corps Law of War Program. Refer to MCO 3300.4, and MARADMIN 182/04, for details on the Marine Corps Law of War Program. This Program fulfills training requirements mandated by the Law of War and DOD policy. As a matter of DOD policy, U.S. Armed Forces are to comply with the Law of War during all armed conflicts, however such conflicts are characterized, and to comply with the principles and spirit of the Law of War during all other operations. Judge advocates should ensure that deploying units receive follow-on Law of War training prior to deployment, that key personnel receive specialized training, and that judge advocates receive detailed training in accordance with the Program.

2. Law of War Reporting and Investigation Requirements. The Law of War and DOD policy have a low threshold for mandatory reporting and investigation of reportable incidents. Reportable incidents are defined as possible, suspected, or alleged violations of the Law of War. All reportable incidents should be reported and investigated in accordance with such requirements, and per guidance provided by the operational chain of command. See Enclosure 6 of MCO 3300.4.

3. Property Captured from the Enemy.

a. Individual War Souvenirs. Pursuant to 10 USC 2579, the Deputy SECDEF issued interim guidance on individual war souvenirs that applies to enemy material in Iraq. The memorandum, dated 11 February 2004, is available on the JAD (JAO) website, and remains effective until a DOD Directive is implemented.

b. Unit War Trophies and Historically Significant Trophies. SECDEF and Service Secretary approval is required for importation of unit war trophies and historical artifacts per the Defense Transportation Regulations, DOD Directive 4500.9R, Chapter 503,

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paragraph C(8). Requests for approval should be submitted through the operational chain of command. SECDEF delegated to the Commander, USCENTCOM, authority to approve importation of historical artifacts from Iraq to service component museums (per SECDEF WASH DC message 210145Z FEB 04, posted on JAD (JAO) website).

4. Child Soldiers. Per the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Child Soldier Protocol), the U.S. and other State parties shall take all feasible measures to ensure members of their Armed Forces under 18 years of age do not take a direct part in hostilities. MARADMIN 030/03 is the U.S. Marine Corps policy that implements this requirement. The commander should weigh the mission requirements against the practicability of diverting 17 year-old Marines from combat. Factors to consider may include, but are not limited to: the tactical situation; the manpower needs of the unit; the danger to the service member; the impact on unit cohesion if the service member were to be removed from the unit; the reasonable ability of the unit to exclude the 17 year-old Marine from taking a direct part in hostilities; and any other relevant criterion. Nothing shall be construed to limit the commander's inherent authority and obligation to use all necessary means available and to take all appropriate actions for unit self-defense. Regarding child soldiers of the enemy, the age of an enemy soldier does NOT render him an unlawful target if he can otherwise be lawfully engaged in accordance with the rules of engagement.

5. Law of War References.

- a. MCO 3300.4, *Marine Corps Law of War Program*, of 20 Oct 03.
- b. MARADMIN 182/04, *Marine Corps Law of War Program*, (202020Z Apr 04).
- c. *Treaties Governing Land Warfare*, DA PAM 27-1, 1956.
- d. *The Law of Land Warfare*, FM 27-10, 1956.
- e. *War Crimes Investigations*, MCRP 4-11.8B, 1998.
- f. *Enemy Prisoners of War and Civilian Internees*, MCRP 4-11.8C, 1998.
- g. *Enemy Prisoners of War, Retained Personnel, Civilian Internees, and Other Detainees*, AR 190-8/OPNAVINST3461.6/AFJI 31-304/MCO 3461.1, 1997.
- h. *DOD Law of War Program*, DODD 5100.77, 1998.
- i. *DOD Enemy POW Detainee Program*, DODD 2310.1, 1994.
- j. *Implementation of the DOD Law of War Program*, CJCSI 5810.01B, 25 March 2002.
- k. *Interim Guidance on Individual War Souvenirs*, Deputy Secretary of Defense Memorandum, 11 February 2004.
- l. MARADMIN 030/03, *17 Year Old Marines in Combat*, (231139Z Jan 03).

23007. INTERNATIONAL AGREEMENTS. Prior to deployment to a foreign country, US forces should be aware of and understand the meaning of

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any applicable international agreements, particularly those governing their status and jurisdiction while in the host nation.

1. Websites. International Agreements are posted on CLAMO, JAD, and some Combatant Command websites (urls provided above in Scope and Operational Law paragraphs). The classified websites are the most comprehensive, as many agreements are classified.

2. Status of Forces Agreement. A Status of Forces Agreement (SOFA) is an international agreement that defines the legal position of a visiting military force in a foreign country. A SOFA may be bilateral (between two nations) or multilateral (between many nations, such as the NATO SOFA). SOFAs set forth criminal and civil jurisdiction, claims, taxes, entry and exit, licenses, registration, customs, etc. Types of jurisdiction can vary - in many instances, US forces can be subject to host nation criminal law and process - which is why a SOFA should be understood before deployment. In addition, several NATO countries have supplementary bilateral agreements with the US, in addition to the NATO SOFA. SOFAs and Foreign Criminal Jurisdiction are also discussed in paragraphs 1009 and 1010 of the JAGMAN.

3. International Criminal Court. Most SOFAs do not afford any protection from prosecution by the International Criminal Court (ICC). The ICC purports to exercise jurisdiction over US persons who commit offenses covered by the ICC Treaty, if those offenses are committed in the territory of an ICC Party or in the territory of a non-Party State, if that State consents to ICC jurisdiction. Moreover, ICC Parties are obligated to abide by an ICC request to surrender anyone suspected of an ICC crime. Thus, US service members suspected of a war crime and deployed to a country that is an ICC Party, are at risk of surrender by that country to the ICC. To help overcome this problem, the USG is aggressively pursuing Article 98 Agreements. An Article 98 Agreement precludes a country from turning over a US citizen to the ICC without USG consent. A by-country listing of Article 98 Agreement status is posted on the JAD (JAO) classified website.

4. Acquisition and Cross-Servicing Agreements (ACSA). 10 USC 2342 provides authority for government-to-government acquisitions and cross-servicing agreements for mutual logistics support between US forces and eligible countries' forces. Eligible countries are NATO countries and SECDEF-designated non-NATO countries. Under an ACSA, support, supplies, and services between countries may be reimbursed in kind, by trade of equal value, or by cash. Additionally, ACSAs eliminate the requirement for certain contractual paragraphs that are otherwise required by the Federal Acquisition Regulations. ACSA restrictions include: (1) the total number of liabilities the US may accrue under Title 10 is limited, except during a period of active hostilities; (2) the amount of acquisitions and cross-servicing that a service component may conduct annually is allocated by the cognizant Combatant Commander; (3) ACSAs cannot be used as a substitute for normal sources of supply, or as a substitute for foreign military

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sales procedures; and (4) "Major end items" may not be transferred under an ACSA. DOD Directive 2010.9 applies to ACSAs.

5. Negotiation and Conclusion. DOD personnel shall neither negotiate nor conclude an international agreement, nor request another USG organization to negotiate or conclude an international agreement, without prior written approval by the DOD official who is assigned approval responsibility per DOD Directive 5530.3, *International Agreements*, of 11 Jun 87 (with Ch. 1, dated 17 Aug 91). SECNAVINST 5710.25A, *International Agreements*, of 2 Feb 95, sets forth the authorities that may approve the negotiation and conclusion of international agreements within the DoN. SECNAV has delegated the authority to negotiate and conclude certain international agreements to CMC. CMC has not re-delegated this authority except in the case of the Marine Corps Foreign Personnel Exchange Program. DC PP&O has been delegated the authority to negotiate and conclude these international agreements. CMC retains the authority for all other international agreements for which CMC has authority to negotiate and conclude.

6. Case Act Reporting. Pursuant to the Case-Zablocki Act (Pub. L. 92-403; 1 U.S.C. 112b) (the Case Act), any department or agency of the USG that enters into any international agreement on behalf of the USG shall transmit to the Department of State the text of such international agreement not later than 20 days after the international agreement has been signed. DoS must transmit all international agreements, other than treaties, to Congress no later than 60 days after the international agreement enters into force. SECNAVINST 5710.25A, *International Agreements*, of 2 Feb 95, designates the Navy JAG as the Central Office of Record and the Central Repository for all DoN international agreements, including those CMC has negotiated and concluded. Navy JAG also is tasked with conducting all Case Act notifications. SECNAVINST 5710.25A tasks the SJA to CMC (JAO) to provide required legal support to CMC for all efforts associated with those international agreements CMC is authorized to negotiate and conclude. Therefore, all international agreements concluded by CMC, or pursuant to a CMC grant of authority, should be forwarded to the SJA 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. The Case Act requires all related documents, including all accompanying papers, such as agreed minutes, exchanges of notes, or side letters and background statements. Congress also has requested background statements that include information explaining the agreement, the negotiating history, the effect of the agreement, and a precise citation of legal authority to be submitted.

23008. WEAPONS.

1. Weapons Reviews. Weapons and ammunition must pass a legal review before they can be used in operations. Weapons and ammunition issued through regular military procurement and supply channels undergo legal review. In contrast, there have been instances when units have obtained items without legal reviews, e.g., they bought items "off the

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shelf" or obtained them directly from vendors without going through Marine Corps Systems Command (MCSC). Such items should not be used in operations.

a. Legal Review. DOD Directive 5000.1 and SECNAVINST 5000.2B require the Navy Judge Advocate General (JAG) (Code 10) to conduct legal reviews of all weapons, weapon systems, and ammunition before procurement by the Department of the Navy or Marine Corps. The review ensures that the items are consistent with domestic and international law, particularly the law of war. For Marine Corps items, Marine Corps Systems Command forwards requests for legal reviews to the Navy JAG (Code 10) via SJA to CMC (JAO) for endorsement. The legal review determines whether the item complies with the law of war principles of unnecessary suffering and distinction: (1) the item cannot cause injury or death that is manifestly disproportionate to its intended use, and the military advantage or military effectiveness expected to be gained from its use; and (2) the item must be controlled to ensure it can be applied against lawful military objects, and not indiscriminately affect the civilian population, or civilians not taking an active part in hostilities. The legal review also addresses whether any other rule of law, domestic or international, would preclude or restrict the item's use.

b. Arms Control Treaty Review. DOD Directive 2060.1 and SECNAVINST 5710.23C require that all DOD activities undergo an arms control treaty review, separate and distinct from the Navy JAG legal review. The Naval Treaty Implementation Program (NTIP) conducts this review for DoN activities. If NTIP believes the activity, such as use of a particular weapon or ammunition, reasonably raises an arms control issue, the matter must be brought to an Office of the SECDEF (OSD) Compliance Review Group for approval.

2. US Landmine Policy and Law.

a. On 27 February 2004, the Administration announced (via a DoS White Paper and fact sheet) the new US landmine policy that will eliminate from the US arsenal persistent (dumb) landmines of all types (i.e., anti-personnel (APL) and anti-vehicle). Until 2010, persistent APLs are stockpiled for use only in the Republic of Korea and persistent anti-vehicle landmines may be used outside of Korea only when authorized by the President. After 2010, the US will not employ any type of persistent landmine.

b. The new US mine policy will not impact the following USMC mines: M692/731 Area Denial Anti-personnel Mine (ADAM) (smart APL); M718/741 Remote Anti-armor Munition (RAAM) (smart anti-vehicle); and CBU-78 "Gator" (air delivered, smart mixed). The new US mine policy will impact the following USMC mines: M15/19/21 anti-vehicle mines (neither self-destructing nor self-deactivating); and M16/18 APLs (neither self-destructing nor self-deactivating).

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c. The M18 claymore is still authorized when employed in a manner consistent with a self-destructing, self-deactivating (smart) mine (i.e., command detonated or trip wire mode not exceeding 72 hours while monitored and in proximity of emplacing unit). This use is in accordance with the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or To Have Indiscriminate Effects (CCW of 1980), and its Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices As Amended on 3 May 1996 (Protocol II - Amended 1996; also known as the Amended Mine Protocol). The US is a party to the Amended Mine Protocol (ratified by the President in 1999 with the advice and consent of the Senate). However, the US is neither a party nor signatory to the Ottawa Mine Ban Treaty of 1997, which bans all APLs (including smart), but does not prohibit anti-vehicle mines (smart or dumb).