

**Interim Army Regulation
27-10**

Legal Services

Military Justice

**Headquarters
Department of the Army
Washington, DC
1 January 2019**

UNCLASSIFIED

SUMMARY of CHANGE

INTERIM AR 27–10
Military Justice

This interim regulation, dated 1 January 2019—

- o Removes all references to special courts-martial without a military judge (throughout).
- o Replaces references to convening authority action, where appropriate, with entry of judgment (throughout).
- o Updates Rules for Courts-Martial references to conform with changes (throughout).
- o Makes minor edits for clarity (throughout).
- o Expands policy of encouraging grants of immunity to alleged victims who are suspected of having committed minor collateral misconduct to all witnesses who may have committed minor collateral misconduct (para 2–4*b*(2)).
- o Clarifies reporting requirements for cases involving discovery or disclosure of classified information (para 2–7).
- o Clarifies filing requirement for punitive or administrative actions involving sex-related offenses (para 3–3*b*(3)).
- o Provides additional guidance on processing actions involving sex-related offenses (para 3–6*b*).
- o Clarifies continuity of imposing commander (para 3–7*a*(2))
- o Clarifies that commander may complete imposition of nonjudicial punishment started by a temporary (acting) commander (para 3–8*b*)
- o Clarifies requirement for and limitations of a preliminary inquiry into charges or suspected offenses pursuant to RCM 303 (para 3–14).
- o Adds requirement to notify Soldier of potential right to object to a SPCM convened pursuant to Art. 16(c)(2)(A) (para 3–16*b* and 3–18*d*)
- o Establishes guidelines on existing attorney-client relationship between an accused and an RC JA, when the relationship is based on the JA’s civilian practice of law (para 3–18*d*)
- o Removes reference to confinement on bread and water as a valid punishment in accordance with amended Article 15 (para 3–19*b*(2)).
- o Clarifies filing procedure of Art 15 imposed during TDY (para 3–37)
- o Removes references to transfers of punishments wholly set aside or changes of status before 1 September 1979 (para 3–42*c*).
- o Clarifies process for taking UCMJ action against a Soldier subject to civilian prosecution (para 4–3)
- o Clarifies jurisdiction over reserve component Soldiers and members of the Army National Guard of the United States when in Federal service (para 5–4*b*).
- o Requires the detailing of court reporters for all SPCM and GCM (para 5–5)

- o Changes authority to enter into arrangements with other services for defense counsel from “SJAs” to “Chief, USATDS” and requires notification to Office of the Judge Advocate, Criminal Law Division (OTJAG–CLD). (para 5–7))
- o Revises individual military counsel request procedures and standards; adds a standard of review for denials of individual military counsel requests; and specifies funding responsibilities for reserve component judge advocates not on active duty who are determined to be reasonably available for purposes of individual military counsel requests (para 5–9).
- o Clarifies that when state bar rules and military rules of professional responsibility conflict, the Army rule controls. (para 5–10*c*).
- o Removes reference to convening authorities rating military judges in recognition of fully independent judiciary (para 5–11*b*).
- o Clarifies that performance of duties as a court-martial member does not prohibit the member from receiving briefings or courses on military justice generally as specified in chapter 18 (para 5–12).
- o Consolidates offense reporting requirements, including timing and content, in one paragraph (para 5–14).
- o Establishes rules requiring law enforcement organizations to continue working on cases referred to a general court-martial, consistent with their regulations (para 5–15).
- o Sets forth guidance on issuance of investigative subpoenas; prohibits their use in administrative investigations; provides guidance on U.S. Army Trial Defense Service (USATDS) requests for subpoenas; and allows General Court-Martial Convening Authorities (GCMCA) to delegate authority to approve to Staff Judge Advocates (para. 5–16).
- o Sets forth procedures and policies for obtaining and serving warrants and court orders under the Stored Communications Act (para 5–17)
- o Establishes rules for new Article 30a proceedings (para 5–18).
- o Establishes rules for requests for relief from subpoenas and other process (para 5–19).
- o Clarifies that receipt of charges by the accused’s commander functions as an automatic flag, suspending all favorable personnel actions, and that filing of DA Form 268 is still required (para 5–22*b*).
- o References mandatory use of Military Justice Online (MJO) throughout the court-martial process, and the requirement to keep DD Form 458(Charge Sheet) current in MJO until record of trial is forwarded for appellate review (para 5–23).
- o Establishes procedures and policies for the production and funding of witnesses at Art. 32 preliminary hearings (5–25)
- o Updates procedures for submitting and processing a resignation for the good of the service (RFGOS) to reflect changes in convening authority’s ability to act on such a resignation (para 5–26).
- o Provides guidance on use of plea agreements based on new Article 53a and significant changes to RCM 705; authorizes agreements for specific sentences; defines complete sentencing proceeding (para 5–27).
- o Clarifies Army policy on superior review of non-referrals of sex-related offense in cases with multiple victims; adds a reference to the Nonbinding Disposition Guidance in Appendix 2.1 of the Manual for Courts-Martial; designates Chief, Trial Counsel Assistance Program, as Chief Prosecutor for purposes of review of cases where a GCMCA has declined to refer a sex-related offense to trial by court-martial (para 5–28).

- o Reorganizes rules on referrals to special courts-martial in new paragraph; creates rules for referral to new special court-martial with military judge alone, and creates rules for accused's objection to new court-martial forum (para 5–29).
- o Adds policy on witness fees and allowances overseas (para 5–32)
- o Authorizes use of a spokesperson to aid an accused with preparation for a summary court-martial, and prohibits Government counsel at a summary court-martial unless accused is represented and staff judge advocate consents (para 5–33).
- o Requires consultation with the Government Appellate Division prior to entering into a conditional plea agreement (para 5–34)
- o Expands provision on protection of personally identifiable information, requiring court-martial documents to be treated as presumptively public documents (para 5–35a).
- o Clarifies Army policy on automatic reduction in light of changes to Article 58a in the National Defense Authorization Act for Fiscal Year 2017 and in rules promulgated by the President (para 5–37).
- o Creates new paragraph on hard labor without confinement; notes that a sentence to hard labor without confinement is effective upon entry of judgment (para 5–39).
- o Replaces Report of Results of Trial with Statement of Trial Results for special and general courts-martial referred on or after 1 January 2019 and establishes process for completion and distribution (para 5–40).
- o Establishes rules for providing any crime victim and the accused with access to the court-martial record, and provides time period for Government compliance with request for court-martial record (para 5–41).
- o Sets forth rules on staff judge advocate's consultation with convening authority on exercise of clemency powers; authorizes use of appropriate standard form for providing the staff judge advocate's clemency advice (para 5–44).
- o Revises procedures related to convening authority's action, in light of new Articles 60a and 60b, and; outlines different clemency powers based on date of earliest offense of which accused was found guilty (para 5–45).
- o Establishes timelines and requirements relating to post-trial UCMJ, Article 39(a) sessions (para 5–46).
- o Sets forth rules for completion of entry of judgment, and sets timeline for completion and for service on accused (para 5–47).
- o Establishes rules for suspending sentences based on substantial assistance of accused in another investigation or case, and provides limitations on suspension when based on recommendation of military judge (para 5–49).
- o Replaces references to promulgating order, for special and general courts-martial, with entry of judgment as appropriate (throughout chapter 5).
- o Updates time to file a petition for new trial pursuant to UCMJ, Article 73 (para 5–52).
- o Provides definitions for post-trial terms; sets forth procedures for preparing the record of trial; requires written transcript in all SPCM and GCM cases with a finding of guilt (para 5–53).
- o Delegates authority to the Chief Judge, Army Court of Criminal Appeals, for the promulgation of local rules regarding the formatting and readability of records of trial (para 5–54).
- o Establishes procedures for court reporter certification and military judge authentication of the record of trial and any associated transcript; establishes rules for redaction of records of trial (para 5–56).

- o Provides guidance on notification of the right to receive copies of the record of trial and policy on distributing records of trial; requires service of redacted transcript or recording in full acquittals at SPCMs and GCMs (para 5–57).
- o Adds instructions on the preparation and forwarding of electronic records of trial (para 5–58).
- o Creates a requirement for the Clerk of Court for the Army Court of Criminal Appeals to certify completion of the appellate process; establishes procedures for distributing the certificate of completion (para 5–62).
- o Clarifies United States Army Trial Defense Service (USATDS) organization and Reserve Component (RC) integration (para 6–1).
- o Revises descriptions of the organization and responsibilities of USATDS, including organization and responsibilities of RC elements of USATDS (para 6–3).
- o Requires Chief, USATDS, to establish policies regarding additional support required by defense counsel; provides for a minimum 1-year stabilization period for legal personnel supporting a USATDS office (para 6–4b).
- o Establishes process for defense request’s for funding and appeals for denial of funds by GCMCA; clarifies funding responsibilities for Reserve and Army National Guard TDS (para 6–5)
- o Establishes process for USATDS to ensure services to installations without TDS assets; establishes procedure for states without Army National Guard TDS counsel to request TDS support (para 6–7).
- o Provides that Army National Guard TDS counsel are detailed according to procedures established by Chief, Army National Guard TDS (para 6–9b).
- o Establishes procedures for USATDS personnel to obtain business cards (para 6–10c).
- o Expands definition of military judge to include military magistrates performing judicial duties; requires military judge to be detailed to all special and general courts-martial (para 7–1).
- o Designates the Chief Trial Judge and the Commander, 150th Legal Operations Detachment as designees for responsibility and assignment of military judges (para 7–2c).
- o Allows Chief Trial Judge to authorize issuance of circuit court rules of court (para 7–5g).
- o Adds UCMJ, Article 30a proceedings to the detailing authority of the Chief Trial Judge (para 7–6b).
- o Establishes responsibilities for ensuring adequate security measures for courtrooms; describes adequate security measures (para 7–7d(1)).
- o Clarifies contempt powers of the military judge (para 7–10).
- o Limits the duties of UCMJ, Article 26a military magistrates to those specifically authorized by TJAG (para 8–1).
- o Assigns responsibilities relating to the certification, nomination, designation, training, and supervision of military magistrates (para 8-2).
- o Certifies all JAs certified under 27(b) as qualified to exercise limited military magistrate powers; establishes process for nomination and designations of military magistrates; authorizes chief circuit judges to designate military magistrates; certifies and designates current part-time military magistrates as 26a military magistrates (para 8–3).
- o Authorizes the assignment of military magistrates that have not been authorized to perform duties under UCMJ, Article 19 or 30a to perform other duties of a nonjudicial nature (para 8–4).

- o Removes references to part-time military magistrates (throughout).
- o Expands definition of persons who have a direct interest in the subject of a court of inquiry (para 9–5*b*).
- o Establishes procedure for determining challenges of members of courts of inquiry (para 9–8*d*).
- o Revises oath administration procedures for court-martial personnel (paras 10–3 through 10–7).
- o Reorganizes the chapter on court-martial orders and judgments to capture changes in Military Justice Act of 2016 (MJA 16).
- o Provides that where a court-martial convening order is silent on the use of alternate members that alternate members are not authorized (para 11–1*a*(2)(*c*)).
- o Removes references to promulgating orders for general and special courts-martial (throughout).
- o Establishes procedure for referring a case to a special court-martial with military judge alone pursuant to UCMJ, Article 16(c)(2)(A) (para 11–2*b*).
- o Adds requirement for special victim counsel to coordinate with supervisory attorneys before filing a petition for extraordinary relief with an appeals court (para 12–2).
- o Creates time and certification requirements for trial counsel’s notice of UCMJ, Article 62 appeal to the military judge; establishes procedures for Government appeal of a sentence pursuant to UCMJ, Article 56(d); designates Chief, Government Appellate Division to process government’s requests to appeal in accordance with RCM 1117; and creates provision for an accused to appeal the grant of the Government’s request to appeal (para 12–3).
- o Provides for review pursuant to UCMJ, Article 65 when an accused fails to file a timely appeal pursuant to UCMJ, Article 66 within 90 days of having been served with a copy of the certified record of trial and all required attachments (para 12–5*c*).
- o Clarifies reassignment of Soldiers on involuntary excess leave pending appellate review (para 12–13).
- o Streamlines the procedures for application of relief pursuant to UCMJ, Article 69 (para 13–2).
- o Makes the use of MJO mandatory throughout the court-martial process (para 14–1).
- o Expands chapter on the military justice report to include other reports from Military Justice Online (MJO) (para 14–2).
- o Establishes responsibilities and procedures for withholding a military judge’s detailing authority and suspending military trial and appellate judges (para 15–11*b*).
- o Requires coordination with Office of the Judge Advocate General, National Security Law Directorate before transferring or removing U.S. Army personnel charged with offenses in foreign courts from the jurisdiction of such courts (para 16–2*b*).
- o Adds fostering the full cooperation of victims and witnesses in the Federal justice system where the Army has an interest as an objective pursuant to the regulation (para 17–4*b*).
- o Removes inspector general from the oversight and review of the management of the Victim/Witness Assistance Program during staff assistance visits and inspections (para 17–6*d*).
- o Designates Victim/Witness Liaison as victim advocate for the purposes of UCMJ, Article 6b(f), UCMJ (para 17–7*a*).

- o Requires use of appropriate form from MJO to memorialize a victim's jurisdictional preferences (para 17–10*d*).
- o Adds a requirement to provide and document military justice training for commanders and convening authorities (para 18–6).
- o Removes requirement for judge advocates to be certified by TJAG as qualified to conduct military justice training (para 18–8*c*).
- o Reorganizes guidance on procedures for processing complaints pursuant to UCMJ, Article 138.
- o Adds definitions of complainant and respondent (para 19–2).
- o Adds requirement to refer allegations against certain senior official to the Army Inspector General before taking action (para 19–6)
- o Clarifies authority responsible for acting on a complaint pursuant to UCMJ, Article 138 (para 19–8*a*).
- o Updates procedures for determining the sufficiency of a complaint (para 19–10).
- o Clarifies that a claim is not per se inappropriate if Soldier is in confinement or if redress can also be sought from the Army Discharge Review Board or the Army Board for Correction of Military Records (para 19–11)
- o Clarifies jurisdiction over members of the RC pursuant to UCMJ, Article 2(a)(3); clarifies funding responsibilities associated with ordering a member of the RC to active duty for the purpose of disciplining the RC Soldier (para 20–2).
- o Revises procedures and authorities for approving or ratifying a request for an involuntary order to active duty for RC Soldiers (para 20–3).
- o Adds a reference to the Non-binding Disposition Guidance in the Manual for Courts-Martial (MCM) Appendix 2.1 as a resource commanders should consider before requesting an involuntary recall to active duty for an RC member (para 20–3*f*).
- o Clarifies withholding of authority to convene special courts-martial from U.S. Army Reserve commanders (para 20–8).
- o Establishes procedures for determining which Regular Army GCMCA supports an RC command with a widely dispersed subordinate command structure (para 20–11).
- o Removes reference to Continental United States Army (para 20–11*d*).
- o Designates the Chief, Trial Counsel Assistance Program, as the Chief Prosecutor for the United States Army (para 21–3).
- o Revises training requirements (para 21–4).
- o Removes reference to internal operation of Defense Counsel Assistance Program (DCAP) within USATDS (para 22–2).
- o Removes reference to history of DCAP; revises DCAP's statement of training responsibilities (para 22–4).
- o Adds a requirement for DCAP to assist USATDS counsel with responses to orders for affidavits from U.S. Army Court of Criminal Appeals when counsel's conduct at trial has been challenged on appeal (para 22–5*c*).
- o Updates the online location of the U.S. Attorneys Manual (para 23–6).

- o Adds requirement and process for trial counsel to notify Soldiers convicted of sex-related offenses in state or foreign court of the sex offender registration requirements (para 24–3*b*).
- o Revises procedures for processing of documented sex-related offenses (para 24–5).
- o Updates processing of offenses requiring sex offender registration (para 24–6).
- o Adds notification requirement to USATDS upon preferral of charges on a civilian or placement of a civilian in pretrial confinement (para 27–5)
- o Expands the reporting requirements in capital cases (para 28–2).
- o Establishes requirements for detailing capital counsel and procedures for requesting capital counsel (28–4)
- o Establishes process for screening and nominating counsel for TJAG’s determination on qualification as capital counsel (para 28–5).
- o Places responsibility on staff judge advocates to ensure that prosecution teams are resourced in capital cases (para 28–6).
- o Establishes training requirements for capital counsel (para 28–7)
- o Establishes rules requiring funding requests for experts and related purposes to be made to the commander presently exercising general court-martial convening authority over the accused or appellant and clarifies that neither TJAG nor Commander, U.S. Army Legal Services Agency, will consider or approve requests for funds for expert services or related purposes. (para 28–8).
- o Adds definitions relating to the new UCMJ, Article 93a (para 29–2).

APPLICABILITY of INTERIM AR 27-10

- o This interim revision of AR 27-10 (Interim AR 27-10) prescribes policy and implements procedures for the administration of military justice under the Military Justice Act of 2016 (MJA 16). This Interim AR 27-10 also includes updates to policy and procedure applicable to the administration of justice under both current practice and MJA 16 practice after the Act's implementation.
- o In general, Interim AR 27-10 is the controlling policy, starting 1 January 2019, for all aspects of military justice, except for courts-martial referred prior to 1 January 2019, as discussed below.
- o Due to the various effective dates of the Act, portions of the policies and procedures in the current AR 27-10 (11 May 2016) will remain in effect for many cases. Interim AR 27-10 does not wholly supersede the current AR 27-10 in those particular cases.
- o In particular, for courts-martial referred prior to 1 January 2019, the applicable Army policy, through appellate review, is the current AR 27-10, chapters 5, 11, 12, 13, 17, and 28. If not covered by those chapters, follow the other chapters of Interim AR 27-10.
- o In addition to chapter 5 of the current AR 27-10, the following paragraphs of chapter 5 from Interim AR 27-10 are also applicable to cases referred prior to 1 January 2019:
 - 5-17 – Warrants and orders under the Stored Communications Act
 - 5-19 – Requests for relief from a subpoena or other process
 - 5-25 – Authorization for payment of transportation expenses and allowances to civilian witnesses appearing before UCMJ, Article 32 preliminary hearings
 - 5-26 – Submission of resignation for the good of the service in lieu of general court-martial
 - 5-49c – Limitations when suspension is based on recommendation of military judge.
- o Any questions regarding the interaction of or conflicts between the current AR 27-10 and the Interim AR 27-10 should be addressed to OTJAG, Criminal Law Division.

Legal Services
Military Justice

Issued in accordance with Army
Directive 2018-28:



CHARLES N. PEDE
Lieutenant General, US Army
The Judge Advocate General

History. This publication is an interim revision. The portions affected by this interim revision are outlined in the Applicability of Interim AR 27-10 page above.

Summary. This interim revision of AR 27-10 (Interim AR 27-10) prescribes policy and implements procedures for the administration of military justice under the Military Justice Act of 2016 (MJA 16). This Interim AR 27-10 also includes updates to policy and procedure applicable to the administration of justice under both current and MJA 16 practice.

Applicability. This interim revision of AR 27-10 applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. It also applies to Department of the Army Civilians who are involved in any matter that falls under the responsibility and authority of The Judge Advocate General, regardless of whether such person is a member of the Judge Advocate Legal Service. This publication is applicable during mobilization.

Proponent and exception authority. The proponent of this interim revision is The Judge Advocate General of the Army. The proponent has the authority to approve exceptions or waivers to this interim regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include a formal

review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Supplementation. Supplementation of this interim revision and establishment of command and local forms are prohibited without prior approval from the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200.

Distribution. This publication is available in electronic media.

Interim AR 27-10 Contents (Listed by paragraph and page number)

Chapter 1

Introduction, page 1

Purpose • 1-1, page 1

References • 1-2, page 1

Explanation of abbreviations and terms • 1-3, page 1

Responsibilities • 1-4, page 1

Chapter 2

Investigation and Prosecution of Crimes with Concurrent Jurisdiction, page 1

Implementing authority • 2-1, page 1

Local application • 2-2, page 1

Action by convening authority • 2-3, page 1

Grants of immunity • 2-4, page 1

Administrative action • 2-5, page 2

*Interim AR 27-10 supplements and supersedes, in part, AR 27-10, dated 11 May 2016.

Interim AR 27–10 Contents—Continued

Threats against the President • 2–6, *page 3*

Reporting requirements for cases that have national security implications or involve classified information • 2–7, *page 3*

Chapter 3

Nonjudicial Punishment, *page 3*

Section I

Applicable Policies, *page 3*

General • 3–1, *page 3*

Use of nonjudicial punishment • 3–2, *page 3*

Relationship of nonjudicial punishment to nonpunitive measures • 3–3, *page 4*

Personal exercise of discretion • 3–4, *page 4*

Referral to superior • 3–5, *page 4*

Filing determination • 3–6, *page 5*

Section II

Authority, *page 5*

Who may impose nonjudicial punishment • 3–7, *page 5*

Persons on whom nonjudicial punishment may be imposed • 3–8, *page 7*

Minor offenses • 3–9, *page 7*

Double punishment prohibited • 3–10, *page 7*

Limitation on punishment after exercise of jurisdiction by civilian authorities • 3–11, *page 8*

Statute of limitations • 3–12, *page 8*

Section III

Procedure, *page 8*

General • 3–13, *page 8*

Preliminary inquiry • 3–14, *page 8*

Commander's guide for notification and imposition • 3–15, *page 8*

Summarized proceedings • 3–16, *page 8*

Formal proceedings • 3–17, *page 9*

Notification and explanation of rights • 3–18, *page 9*

Section IV

Punishment, *page 12*

Rules and limitations • 3–19, *page 12*

Effect on promotable status • 3–20, *page 15*

Effective date and execution of punishments • 3–21, *page 15*

Announcement of punishment • 3–22, *page 15*

Section V

Suspension, Vacation, Mitigation, Remission, and Setting Aside, *page 15*

Clemency • 3–23, *page 15*

Suspension • 3–24, *page 16*

Vacation of suspension • 3–25, *page 16*

Mitigation • 3–26, *page 17*

Remission • 3–27, *page 17*

Setting aside and restoration • 3–28, *page 17*

Section VI

Appeals, *page 18*

General • 3–29, *page 18*

Who may act on an appeal • 3–30, *page 18*

Procedure for submitting an appeal • 3–31, *page 18*

Action by the imposing commander or the successor-in-command • 3–32, *page 19*

Action by the superior authority • 3–33, *page 19*

Action by a judge advocate • 3–34, *page 19*

Interim AR 27–10 Contents—Continued

Action by superior authority regardless of appeal • 3–35, *page 19*

Section VII

Records of Punishment, DA Form 2627, page 19

Records of punishment • 3–36, *page 19*

Distribution and filing of DA Form 2627 and allied documents • 3–37, *page 20*

Supplementary action • 3–38, *page 21*

Reconciliation log • 3–39, *page 21*

Time for distribution of initial DA Form 2627 • 3–40, *page 22*

Filing of records of punishment imposed prior to 1 November 1982 • 3–41, *page 22*

Transfers of punishments wholly set aside, or changes of status • 3–42, *page 22*

Transfer or removal of records of nonjudicial punishment • 3–43, *page 22*

Use of records • 3–44, *page 24*

Delegation of authority to modify procedures and test new nonjudicial punishment forms • 3–45, *page 24*

Chapter 4

Disciplinary Proceedings Subsequent to Exercise of Jurisdiction by Civilian Authorities, page 24

General • 4–1, *page 24*

Policy • 4–2, *page 24*

Procedure • 4–3, *page 24*

Chapter 5

Procedures for Courts-Martial, page 25

Section I

General, page 25

Scope • 5–1, *page 25*

Secretarial designation of convening authorities • 5–2, *page 25*

Authority to convene summary courts-martial • 5–3, *page 26*

Courts-martial personal jurisdiction • 5–4, *page 26*

Section II

Court-Martial Personnel, page 26

Detailing of counsel and reporters • 5–5, *page 26*

Certification and detail of lawyers who are not judge advocates • 5–6, *page 26*

Qualified counsel from other services at courts-martial • 5–7, *page 27*

Proof of qualification for individual civilian counsel at courts-martial • 5–8, *page 27*

Requests for individual military counsel • 5–9, *page 27*

Professional standards • 5–10, *page 29*

Rating of court members, counsel, and military judges • 5–11, *page 29*

Preparation of members of a special or general court-martial • 5–12, *page 30*

Preparation of summary court-martial officer • 5–13, *page 30*

Section III

Reports, Investigations, and Subpoenas, page 30

Reports of offenses • 5–14, *page 30*

Coordination between trial counsel and law enforcement • 5–15, *page 31*

Investigative subpoenas • 5–16, *page 31*

Warrants and orders under the Stored Communication Act • 5–17, *page 32*

Article 30a proceedings • 5–18, *page 32*

Requests for relief from subpoena or other process • 5–19, *page 33*

Vienna Convention requirements in courts-martial of foreign nationals • 5–20, *page 33*

Section IV

Pretrial, page 33

Pretrial confinement • 5–21, *page 33*

Preparation of charge sheet and effect of preferral of charges • 5–22, *page 34*

Interim AR 27–10 Contents—Continued

Mandatory use of Military Justice Online • 5–23, *page 34*
Forwarding of charges and requests for pretrial delay • 5–24, *page 34*
Authorization for payment of transportation expenses and allowances to civilian witnesses appearing before UMCJ, Article 32 preliminary hearings • 5–25, *page 34*
Submission of resignation for the good of the service in lieu of general court-martial • 5–26, *page 35*
Plea agreements • 5–27, *page 35*
Referral of charges • 5–28, *page 36*
Referrals to special courts-martial • 5–29, *page 38*
Service of accused’s copy of charge sheet • 5–30, *page 38*
Preliminary procedures for courts-martial • 5–31, *page 38*
Witness attendance • 5–32, *page 39*

Section V

Trial, page 39
Procedure for summary courts-martial • 5–33, *page 39*
Conditional pleas of guilty • 5–34, *page 39*
Personally identifiable information • 5–35, *page 40*
Sentencing • 5–36, *page 40*
Automatic reduction pursuant to UCMJ, Article 58a • 5–37, *page 40*
Accused’s rank insignia while in confinement • 5–38, *page 41*
Hard labor without confinement • 5–39, *page 41*

Section VI

Post-trial, page 41
Statement of Trial Results for special and courts-martial referred on or after 1 January 2019 • 5–40, *page 41*
Accused/crime victim access to the court-martial record • 5–41, *page 42*
Reassignment of post-trial Soldiers in confinement or on excess leave • 5–42, *page 42*
Compliance with plea agreements • 5–43, *page 43*
Staff Judge Advocate advice on clemency action • 5–44, *page 43*
Convening authority clemency action • 5–45, *page 43*
Post-trial Article 39(a) sessions • 5–46, *page 44*
Entry of judgment • 5–47, *page 44*
Rehearing in cases in which the accused is absent without leave • 5–48, *page 45*
Suspension of sentence • 5–49, *page 45*
Vacation of suspended sentences • 5–50, *page 45*
Clemency pursuant to UCMJ, Article 74 • 5–51, *page 45*
Petition for new trial pursuant to UCMJ, Article 73 • 5–52, *page 46*

Section VII

Records of Trial, page 46
Preparation of records of trial • 5–53, *page 46*
Readability of contents of records of trial and attachments • 5–54, *page 47*
Retention of trial notes or recordings • 5–55, *page 47*
Review, authentication, and certification of records of trial • 5–56, *page 47*
Copies of the record of trial • 5–57, *page 48*
Forwarding of records of trial • 5–58, *page 49*
Local disposition of summary courts-martial and certain special courts-martial • 5–59, *page 49*
Review of records of trial pursuant to RCM 1201 • 5–60, *page 50*
Distribution of summary court-martial action and record of trial • 5–61, *page 50*
Certification of completion of appellate review or appeal • 5–62, *page 50*
Delegation of authority to modify procedures • 5–63, *page 50*

Section VIII

Other Considerations, page 51
Release of information pertaining to the administration of military justice and accused persons • 5–64, *page 51*
Exculpatory evidence discovered post-trial • 5–65, *page 51*

Interim AR 27–10 Contents—Continued

Chapter 6

United States Army Trial Defense Service, page 52

General • 6–1, page 52

Mission • 6–2, page 52

Organization and personnel • 6–3, page 52

Administrative and logistical support • 6–4, page 53

Funding responsibilities for USATDS personnel • 6–5, page 54

Training • 6–6, page 55

Installations without a USATDS office • 6–7, page 55

Mutual support responsibilities • 6–8, page 56

Detail of defense counsel • 6–9, page 57

Professional standards • 6–10, page 57

Chapter 7

United States Army Trial Judiciary – Military Judge Program, page 57

General • 7–1, page 57

Qualifications of military judges • 7–2, page 58

Judicial circuits • 7–3, page 58

Functions and duties of military judges • 7–4, page 58

Responsibilities of the Chief Circuit Judge • 7–5, page 59

Detailing of military judges • 7–6, page 59

Administrative and logistical support • 7–7, page 60

Rules of court • 7–8, page 61

Requests for military judges as individual military counsel • 7–9, page 61

Contempt • 7–10, page 61

Chapter 8

Military Magistrate Program, page 61

Section I

General, page 61

Military magistrates generally • 8–1, page 61

Responsibilities • 8–2, page 62

Certification and designation of military magistrates • 8–3, page 62

Powers of military magistrates • 8–4, page 62

Section II

Pretrial Confinement, page 63

Review by military magistrate • 8–5, page 63

Section III

Search, Seizure, and Apprehension Authorizations, page 64

Authority of military judges and magistrates to issue authorizations • 8–6, page 64

Issuance • 8–7, page 64

Oaths • 8–8, page 64

Execution and disposition of authorizations and other related papers • 8–9, page 64

Recovery and disposition of property • 8–10, page 64

Reapplication • 8–11, page 65

Legality of searches and seizures • 8–12, page 65

Chapter 9

Courts of Inquiry, page 65

General • 9–1, page 65

Jurisdiction • 9–2, page 65

Composition • 9–3, page 65

Interim AR 27–10 Contents—Continued

Convening order • 9–4, *page 66*
Designation of parties • 9–5, *page 66*
Rights of parties • 9–6, *page 66*
Witnesses • 9–7, *page 67*
Procedure • 9–8, *page 67*
Report • 9–9, *page 68*
Preparation and submission of record • 9–10, *page 69*
Action of convening authority • 9–11, *page 69*
Disposition of record • 9–12, *page 69*

Chapter 10

Oaths, *page 69*

General • 10–1, *page 69*
Court-martial persons required to be sworn • 10–2, *page 69*
Oath administration procedure for military judges • 10–3, *page 70*
Oath administration procedure for counsel • 10–4, *page 70*
Oath administration procedure for court members • 10–5, *page 70*
Oath administration procedure for reporters • 10–6, *page 70*
Oath administration procedure for interpreters • 10–7, *page 70*
Forms of oaths for court-martial personnel • 10–8, *page 70*
Forms of oaths administration procedure for persons providing sworn information in support of requests for authorizations to search and seize and authorizations to apprehend • 10–9, *page 70*
Form of oath for the accused following a plea of guilty • 10–10, *page 71*

Chapter 11

Court-Martial Orders, *page 71*

Convening orders • 11–1, *page 71*
Court-martial order format for summary courts-martial and special courts-martial convened pursuant to UCMJ, Article 16(c)(2)(A) • 11–2, *page 71*
Format for court-martial orders • 11–3, *page 72*
Distribution of court-martial orders • 11–4, *page 73*

Chapter 12

Appellate Review Matters, *page 73*

Scope • 12–1, *page 73*
Petitions for extraordinary relief • 12–2, *page 73*
Appeals pursuant to UCMJ, Article 62 • 12–3, *page 73*
Appellate advice after trial • 12–4, *page 74*
Appeals pursuant to UCMJ, Article 66(b)(1) • 12–5, *page 74*
Waiver or withdrawal of appellate review • 12–6, *page 74*
Identifying companion and other cases • 12–7, *page 74*
Designation of appellate defense counsel • 12–8, *page 75*
Rules of appellate procedure • 12–9, *page 75*
Clerk of Court, U.S. Army Court of Criminal Appeals • 12–10, *page 75*
Serving U.S. Army Court of Criminal Appeals decisions on the accused • 12–11, *page 75*
Cases remanded by the U.S. Army Court of Criminal Appeals or the U.S. Court of Appeals for the Armed Forces • 12–12, *page 76*
Leave or transfer pending appellate review • 12–13, *page 76*
Habeas corpus representation • 12–14, *page 76*
Tenure for military appellate judges • 12–15, *page 76*

Chapter 13

Application for Relief Pursuant to UCMJ, Article 69, *page 77*

General • 13–1, *page 77*
Procedures for making application • 13–2, *page 77*
Submission of application • 13–3, *page 77*

Interim AR 27–10 Contents—Continued

Chapter 14

The Army Military Justice Report, page 77

Mandatory use of Military Justice Online • 14–1, page 77

Frequency and content • 14–2, page 77

Results Statements for Publication • 14–3, page 78

Export of documents to Human Resources Command • 14–4, page 78

Chapter 15

Allegations of Misconduct and Suspension of Counsel and Military Judges, page 78

Section I

General, page 78

Scope • 15–1, page 78

Withdrawal of certification by The Judge Advocate General • 15–2, page 78

Section II

Suspension of Counsel, page 79

General • 15–3, page 79

Grounds for suspension • 15–4, page 79

Action to suspend military counsel • 15–5, page 79

Action to suspend civilian counsel subject to TJAG’s professional responsibility authority pursuant to the provisions of RCM 109 • 15–6, page 80

Modification or revocation of suspension or decertification • 15–7, page 80

Removal of counsel or reassignment of duties • 15–8, page 80

Section III

Suspension of Military Judges, page 80

General • 15–9, page 80

Grounds • 15–10, page 80

Removal of a military judge • 15–11, page 80

Procedure • 15–12, page 81

Modification or revocation of suspension or decertification • 15–13, page 81

Chapter 16

Custody Policies Overseas, page 81

General • 16–1, page 81

Custody policies • 16–2, page 81

Exercise of custody provisions granted under international agreements • 16–3, page 81

Implementation by overseas commands • 16–4, page 82

Chapter 17

Victim and Witness Assistance, page 82

Section I

General Description, page 82

Purpose • 17–1, page 82

Policy • 17–2, page 82

Application • 17–3, page 83

Objectives • 17–4, page 83

Definitions • 17–5, page 83

Section II

Victim/Witness Assistance Program, page 84

General • 17–6, page 84

Victim/witness personnel • 17–7, page 84

Identification of victims and witnesses • 17–8, page 85

Initiation of liaison service • 17–9, page 85

Interim AR 27–10 Contents—Continued

Rights of crime victims • 17–10, *page 85*

Training and publicity • 17–11, *page 86*

Section III

Victim Services, page 87

Medical, financial, legal, and social services • 17–12, *page 87*

Stages and role in military criminal justice process • 17–13, *page 87*

Notification and description of services provided to victims of crime • 17–14, *page 88*

Consultation with victims • 17–15, *page 88*

Property return and restitution • 17–16, *page 88*

Section IV

Witness Services, page 89

Notification and description of services provided to witnesses • 17–17, *page 89*

Limitations • 17–18, *page 90*

Section V

Other Services, page 90

Protection of victims and witnesses • 17–19, *page 90*

Notification to employers and creditors • 17–20, *page 90*

Witness fees and costs • 17–21, *page 91*

Civilian witness travel to proceedings overseas • 17–22, *page 91*

Local services • 17–23, *page 91*

Transitional compensation • 17–24, *page 91*

Uniformed Service Former Spouse Protection Act • 17–25, *page 92*

Requests for investigative reports or other documents • 17–26, *page 92*

Section VI

Confinement Facilities and Central Repository, page 92

Confinement facilities • 17–27, *page 92*

Reporting requirements and responsibilities • 17–28, *page 93*

Evaluation of Victim/Witness Liaison Program services • 17–29, *page 93*

Chapter 18

Military Justice Training, page 93

General • 18–1, *page 93*

Training organization • 18–2, *page 94*

Curriculum courses • 18–3, *page 94*

Required military justice training for enlisted Soldiers • 18–4, *page 94*

Required military justice training for commissioned officers, officer candidates, and cadets • 18–5, *page 94*

Military justice training for commanders and convening authorities • 18–6, *page 95*

Optional military justice training • 18–7, *page 95*

Course development and instruction • 18–8, *page 95*

Chapter 19

Complaints pursuant to UCMJ, Article 138, page 95

Section I

General, page 95

Article 138 complaints generally • 19–1, *page 95*

Definitions • 19–2, *page 95*

Duties and responsibilities • 19–3, *page 96*

Limitations on Article 138 complaints • 19–4, *page 96*

Legal advice • 19–5, *page 96*

Section II

Prerequisites for Filing a Complaint, page 96

Interim AR 27–10 Contents—Continued

Initial request for redress • 19–6, *page 96*

Response by the commanding officer to initial request for redress • 19–7, *page 97*

Section III

Form, Submission, and Transmittal of a Complaint, page 97

Article 138 complaint requirements • 19–8, *page 97*

Submission and transmittal of an Article 138 complaint • 19–9, *page 98*

Section IV

Action on the Complaint, page 98

Determination of sufficiency • 19–10, *page 98*

Determination of appropriate and inappropriate subject matter • 19–11, *page 98*

Examination into the complaint • 19–12, *page 99*

Action on the complaint • 19–13, *page 99*

Forwarding and final disposition of the complaint • 19–14, *page 100*

Chapter 20

Military Justice in the Reserve Components, page 100

Section I

General, page 100

Purpose • 20–1, *page 100*

Policy • 20–2, *page 100*

Section II

Involuntary Active Duty and Extension on Active Duty, page 101

Involuntary active duty • 20–3, *page 101*

Extending reserve component Soldiers on active duty • 20–4, *page 102*

Preservation of jurisdiction and punishment • 20–5, *page 102*

Section III

Nonjudicial Punishment Pursuant to UCMJ, Article 15 and Courts-Martial, page 102

Nonjudicial punishment (Article 15) • 20–6, *page 102*

Summary courts-martial • 20–7, *page 103*

Special and general courts-martial • 20–8, *page 103*

Forfeitures • 20–9, *page 103*

Section IV

Support Personnel and Responsibilities, page 104

Support personnel • 20–10, *page 104*

Support responsibilities for Regular Army general court-martial convening authorities • 20–11, *page 104*

Multiple component units • 20–12, *page 104*

Chapter 21

United States Army Trial Counsel Assistance Program, page 105

General • 21–1, *page 105*

Mission • 21–2, *page 105*

Organization • 21–3, *page 105*

Training • 21–4, *page 105*

Technical assistance • 21–5, *page 105*

Chapter 22

United States Army Defense Counsel Assistance Program, page 106

General • 22–1, *page 106*

Mission • 22–2, *page 106*

Organization • 22–3, *page 106*

Training • 22–4, *page 106*

Interim AR 27–10 Contents—Continued

Technical assistance • 22–5, *page 106*
Policy and strategic initiatives • 22–6, *page 106*

Chapter 23

Prosecution of Criminal Offenses in Federal Courts, *page 106*

Scope • 23–1, *page 106*
Authority • 23–2, *page 107*
Felony prosecution programs • 23–3, *page 107*
Appointment of attorneys as Special Assistant U.S. Attorneys • 23–4, *page 107*
Misdemeanors • 23–5, *page 107*
Witness expenses • 23–6, *page 108*

Chapter 24

Registration of Military Sexual Offenders and Processing of Sex-Related Offenses, *page 108*

General • 24–1, *page 108*
Covered offenses and sexually violent offenses • 24–2, *page 108*
Trial counsel and provost marshal responsibilities • 24–3, *page 108*
Sexual offenders • 24–4, *page 109*
Processing of documented sex-related offenses (ASCO L3) • 24–5, *page 109*
Processing of offenses that require sex offender registration (ASCO L8) • 24–6, *page 110*

Chapter 25

United States Army Court Reporter Program, *page 110*

General • 25–1, *page 110*
Training court reporters • 25–2, *page 111*
Detailing of court reporters and oath requirements • 25–3, *page 111*
Definitions • 25–4, *page 111*
Court reporter performance standards metric • 25–5, *page 111*
Reports • 25–6, *page 112*
Management of court reporters • 25–7, *page 112*
Reserve component court reporters • 25–8, *page 112*
Removing the C5 designation • 25–9, *page 112*
Court reporting equipment • 25–10, *page 112*

Chapter 26

Prosecution of Criminal Offenses Pursuant to the Military Extraterritorial Jurisdiction Act of 2000, *page 113*

Applicability and purpose • 26–1, *page 113*
Qualified military counsel and responsibilities of the U.S. Army Trial Defense Service • 26–2, *page 113*

Chapter 27

Procedures Related to Civilians Subject to UCMJ Jurisdiction pursuant to Article 2(a)(10), *page 114*

Section I

General, page 114
Scope • 27–1, *page 114*
Applicability and purpose • 27–2, *page 114*
Court-martial jurisdiction • 27–3, *page 114*
Panels • 27–4, *page 116*

Section II

Processing the action, page 117
Notification • 27–5, *page 118*
Commander's authority • 27–6, *page 119*
Criminal investigations, commander's inquires, and investigations pursuant to Army Regulation 15–6 • 27–7, *page 119*
Qualified military counsel and responsibilities of the U.S. Army Trial Defense Service • 27–8, *page 119*
Pretrial restraint or confinement • 27–9, *page 119*

Interim AR 27–10 Contents—Continued

Action by convening authority after a response is received • 27–10, *page 120*
Sentencing • 27–11, *page 120*
Post-trial procedure and review of courts-martial • 27–12, *page 120*

Chapter 28

Capital Litigation, *page 120*

Applicability and Purpose • 28–1, *page 120*
Reports in capital cases • 28–2, *page 121*
Referral • 28–3, *page 121*
Required court-martial personnel for capital courts-martial • 28–4, *page 121*
Standards for capital counsel • 28–5, *page 122*
Administrative and logistical support for trial • 28–6, *page 123*
Training for capital counsel • 28–7, *page 123*
Funding responsibilities • 28–8, *page 123*

Chapter 29

Definitions Pertaining to Prohibited Activities with Military Recruits or Trainees, *page 124*

General • 29–1, *page 124*
Terms • 29–2, *page 124*

Appendixes

- A.** References, *page 125*
- B.** Script for Conduct of Nonjudicial Punishment Proceedings, *page 132*
- C.** Attorney-Client Guidelines, *page 136*
- D.** Victim/Witness Checklist, *page 139*
- E.** Military Justice Area Support Responsibilities, *page 142*
- F.** Guidance on DNA, civilians, and jurisdiction during war and contingency operations, *page 148*
- G.** Internal Control Evaluation, *page 149*
- H.** Points of Contact, *page 150*
- I.** Distribution of Court-Martial Orders and Documents, *page 152*
- J.** Preparing and Arranging Certified Records of Trial, *page 153*

Table List

Table 3–1: Maximum punishments for enlisted members and commissioned officers, *page 14*
Table 3–2: Removal of records of nonjudicial punishment from military personnel files, *page 23*
Table 27–1: Civilian and military grade equivalents, *page 117*
Table 27–2: Steps in processing reports of civilian misconduct, *page 117*
Table E–1: Installations and areas of support responsibility, *page 143*

Glossary

Chapter 1

Introduction

1–1. Purpose

This regulation prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial, United States, 2019 (MCM), and the rules for courts-martial (RCMs) contained in the MCM.

1–2. References

See appendix A.

1–3. Explanation of abbreviations and terms

See the glossary.

1–4. Responsibilities

a. The Judge Advocate General (TJAG) is responsible for the overall supervision and administration of military justice within the Army.

b. The Chief Trial Judge, U.S. Army Trial Judiciary, as designee of TJAG, is responsible for the supervision and administration of the U.S. Army Trial Judiciary and the Military Magistrate Program.

c. The Chief, U.S. Army Trial Defense Service (USATDS), as designee of TJAG, is responsible for the detail, supervision, and control of trial defense services within the Army.

Chapter 2

Investigation and Prosecution of Crimes With Concurrent Jurisdiction

2–1. Implementing authority

This chapter implements a memorandum of understanding (MOU) between the Department of Defense (DOD) and the Department of Justice (DOJ), delineating the areas of responsibility for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction. The MOU is available at appendix 3, MCM, 2019, and is implemented by DODI 5525.07.

2–2. Local application

Decisions with respect to the provisions of the MOU will, whenever possible, be made at the local level between the responsible U.S. Attorney's office or DOJ investigative agency and the local military commander (see para D.1. of the MOU). If an agreement is not reached at the local level, the local commander will (if he or she does not exercise general court-martial (GCM) jurisdiction) promptly advise the commander exercising GCM jurisdiction over his or her command. If the commander exercising GCM jurisdiction, acting through his or her staff judge advocate (SJA), is unable to effect an agreement, the matter will be reported by the SJA to the Office of The Judge Advocate General (OTJAG), Criminal Law Division (DAJA-CL), 2200 Army Pentagon, Room 3D548, Washington, DC 20310–2200 (OTJAG–CLD).

2–3. Action by convening authority

Before taking any action with a view toward court-martial, courts-martial convening authorities will ensure that federal civilian authorities are consulted in accordance with the MOU in cases likely to be prosecuted in the U.S. district courts.

2–4. Grants of immunity

a. General. Only general court-martial convening authorities (GCMCAs) may issue grants of immunity pursuant to the Uniform Code of Military Justice (UCMJ), RCM 704, and directives issued by the Secretary of the Army, subject to the guidance set forth in this paragraph.

b. Persons subject to the UCMJ.

(1) The authority of courts-martial convening authorities extends only to grants of immunity from action pursuant to the UCMJ. However, even if it is determined that a witness is subject to the UCMJ, the convening authority should not grant immunity before determining in accordance with the MOU that the DOJ has no interest in the case.

(2) In order to encourage the reporting of serious offenses, GCMCAs should consider issuing grants of immunity to witnesses in cases in which the witness is subject to the UCMJ and is suspected of having committed minor collateral misconduct.

c. Persons not subject to the UCMJ. If a prospective witness is not subject to the UCMJ or if DOJ has an interest in the case, the grant of immunity must be issued pursuant to Sections 6001–6005, Title 18, United States Code (18 USC 6001–6005). In those instances, the following procedures are applicable:

(1) Draft a proposed order to testify for the signature of the GCMCA. Include in the requisite findings that the witness is likely to refuse to testify on Fifth Amendment grounds and that the testimony of the witness is necessary to the public interest. Forward the unsigned draft to OTJAG–CLD, for coordination with the DOD and the DOJ and approval by the U.S. Attorney General.

(2) Include the following information in the request, if available:

(a) Name, citation, or other identifying information of the proceeding in which the order is to be used.

(b) Name and social security number of the individual for whom the immunity is requested.

(c) Name of the employer or company with which the witness is associated.

(d) Date and place of birth of the witness.

(e) Federal Bureau of Investigation number or local police number, if any.

(f) Whether any state or federal charges are pending against the prospective witness, the nature of the charges, and whether the state or federal prosecutor in the case concurs or objects to the proposed grant of immunity.

(g) Whether the witness is currently incarcerated and if so, under what conditions and for what length of time.

(h) Military status and organization.

(i) Whether the witness would be likely to testify under a grant of immunity, thus precluding the use of the testimony against them.

(j) Factual basis supporting the finding that the witness is likely to refuse to testify on Fifth Amendment grounds.

(k) General nature of the charges to be tried in the proceeding at which the witness' testimony is desired.

(l) Offenses, if known, to which the witness' testimony might tend to incriminate the witness.

(m) The anticipated date on which the order will be issued.

(n) A summary of the expected testimony of the witness concerning the particular case in issue.

(3) If the U.S. Attorney General has authorized a grant of immunity, furnish the following information through OTJAG–CLD, to the Department of Justice, Witness Immunity Unit, Criminal Division, 1301 New York Ave., 10th Floor, Washington, DC 20530, after the witness has testified, refused to testify, or the proceedings have been terminated without the witness being called to testify:

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

(b) Date of the examination of the witness.

(c) Name and address of the witness.

(d) Whether the witness invoked the privilege against self-incrimination.

(e) Whether the immunity order was issued.

(f) Whether the witness testified pursuant to the order.

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

d. Cases involving threats to national security. Forward proposed grants of immunity to OTJAG–CLD. After coordination with the Office of the Deputy Chief of Staff, G–2, the proposed grant will be forwarded through the Army's general counsel, to the DOD general counsel, for consultation with the DOJ in cases involving—

(1) Espionage.

(2) Subversion.

(3) Aiding the enemy.

(4) Sabotage.

(5) Spying.

(6) Violation of rules or statutes concerning classified information, or the foreign relations of the United States.

2–5. Administrative action

Prior to initiating an investigation in support of administrative action into a matter that is subject to a pending DOJ criminal investigation or prosecution, the investigative agency will coordinate with and obtain concurrence from the appropriate DOJ prosecutor or investigative agency.

2–6. Threats against the President

In cases involving persons subject to the UCMJ who have allegedly made threats against the President or successors to the Presidency, in violation of 18 USC 871, the U.S. Secret Service has primary investigative responsibility. All investigative agencies will cooperate fully with the Secret Service when called on to do so. After the investigation is completed, the SJA representing the commander who exercises GCM jurisdiction over the military suspect will meet with representatives of the DOJ and the Secret Service to determine whether military authorities or the DOJ will exercise further jurisdiction in the case.

2–7. Reporting requirements for cases that have national security implications or involve classified information

Prior to preferral of charges, SJAs will provide an unclassified executive summary via email to OTJAG–CLD regarding potential court-martial proceedings in cases that have national security implications or involve classified information. This is in addition to the reporting requirements set forth for cases involving a threat to U.S. national security in which a grant of immunity is being proposed in accordance with paragraph 2–4*d*. SJAs will also provide a copy of the unclassified executive summary via email to OTJAG, National Security Law Division (DAJA–NSL), 2200 Army Pentagon, Room 3D548, Washington, DC 20310–2200 (OTJAG–NSLD). These cases involve offenses such as—

- a.* Sedition (UCMJ, Art. 82(b) and 94) in cases involving a threat to national security.
- b.* Aiding the enemy by giving intelligence to the enemy (UCMJ, Art. 103b).
- c.* Spying (UCMJ, Art. 103).
- d.* Espionage (UCMJ, Art. 103a).
- e.* Suspected or actual unauthorized acquisition of military technology, research and development information, or Army acquisition program information by—or on behalf of—a foreign power.
- f.* Violation of rules or statutes concerning classified information, or the foreign relations of the United States.
- g.* Sabotage conducted by or on behalf of a foreign power.
- h.* Subversion, treason, domestic terrorism, and known or suspected unauthorized disclosure of classified information or material.
- i.* Attempts (UCMJ, Art. 80), solicitations (UCMJ, Art. 82), or conspiracies (UCMJ, Art. 81) to commit offenses listed in paragraphs 2–7*a* through *h*.
- j.* Any case that may involve discovery or disclosure of classified information.

Chapter 3 Nonjudicial Punishment

Section I

Applicable Policies

3–1. General

This chapter implements and amplifies UCMJ, Art. 15, and Part V, MCM, 2019. All actions taken pursuant to the authority of UCMJ, Art. 15 must comply with the MCM and this chapter. This chapter prescribes requirements, policies, limitations, and procedures for—

- a.* Commanders at all levels imposing nonjudicial punishment (NJP).
- b.* Members on whom this punishment is to be imposed.
- c.* Other persons who may take some action with respect to the proceedings.

3–2. Use of nonjudicial punishment

A commander should use nonpunitive measures to the fullest extent to further the efficiency of the command before resorting to NJP (see Part V, para 1d(1), MCM, 2019). Use of NJP is proper in all cases involving minor offenses in which nonpunitive measures are considered inadequate or inappropriate. If it is clear that NJP will not be sufficient to meet the interests of good order and discipline, more stringent measures should be taken. Prompt action is essential for NJP to have the proper corrective effect. NJP may be imposed to—

- a.* Correct, educate, and reform offenders who the imposing commander determines cannot benefit from less stringent measures.
- b.* Preserve a Soldier’s record of service from unnecessary stigma by record of court-martial conviction.
- c.* Further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

3–3. Relationship of nonjudicial punishment to nonpunitive measures

a. General. NJP is imposed to correct misconduct in violation of the UCMJ. Such conduct may result from intentional disregard of, or failure to comply with, prescribed standards of military conduct. Misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity, difficulty in adjusting to disciplined military life, and similar deficiencies may warrant NJP in cases where nonpunitive measures are insufficient. Nonpunitive measures are the primary tools for teaching proper standards of conduct and performance and do not constitute punishment, nor are they required as a first step toward NJP. Included among nonpunitive measures are denial of pass or other privileges, counseling, administrative reduction in grade, administrative reprimands and admonitions, extra training (see AR 600–20), bar to continued service, and military occupational specialty (MOS) reclassification. Certain commanders may administratively reduce enlisted personnel for inefficiency and other reasons. This authority exists apart from any authority to punish misconduct pursuant to UCMJ, Art. 15. These two separate and distinct kinds of authority should not be confused, but may be used simultaneously when appropriate.

b. Reprimands and admonitions.

(1) Commanding officers have authority to give admonitions or reprimands either as an administrative measure or as NJP. If imposed as a punitive measure pursuant to UCMJ, Art. 15, the procedures set forth in Part V, paragraph 4, MCM, 2019, and in section III of this chapter must be followed.

(2) A written administrative admonition or reprimand will contain a statement that it has been imposed as an administrative measure and not as punishment pursuant to UCMJ, Art. 15 (see AR 600–37). Admonitions and reprimands imposed as punishment pursuant to UCMJ, Art. 15, whether administered orally or in writing (see Part V, para 5c(1), MCM, 2019), should state clearly that they were imposed as punishment pursuant to that article.

(3) Any punitive or administrative action for a sex-related offense (as defined in para 3–6), to include reprimands, must be filed in the Soldier’s performance disciplinary folder in the Army Military Human Resource Record (AMHRR) (see AR 600–37).

c. Extra training or instruction. One of the most effective nonpunitive measures available to a commander is extra training or instruction (see AR 600–20). It is used when a Soldier’s duty performance has been substandard or deficient. For example, a Soldier who fails to maintain proper attire may be required to attend classes on the wearing of the uniform and stand inspection until the deficiency is corrected. The training or instruction must logically relate directly to the deficiency observed and must be oriented to correct that particular deficiency. Extra training or instruction may be conducted after duty hours. Normally, commanders should not impose NJP for an offense for which a Soldier previously received corrective training or extra military instruction and successfully completed the training or instruction.

3–4. Personal exercise of discretion

a. A commander will personally exercise discretion in the NJP process by—

(1) Evaluating the case to determine whether proceedings pursuant to UCMJ, Art. 15 should be initiated.

(2) Determining whether the Soldier committed the offense(s) where UCMJ, Art. 15 proceedings are initiated and the Soldier does not demand trial by court-martial.

(3) Determining the amount and nature of any punishment, if punishment is appropriate.

b. No superior may direct that a subordinate authority impose punishment pursuant to UCMJ, Art. 15 or issue regulations, orders, or so-called “guides” that either directly or indirectly suggest to subordinate commanders that—

(1) Certain categories of offenders or offenses should be disposed of by punishment pursuant to UCMJ, Art. 15.

(2) Predetermined kinds or amounts of punishment should be imposed for certain categories of offenders or offenses.

c. A superior commander may send or return a case to a subordinate for appropriate disposition if necessary and within the jurisdiction of the subordinate. A superior commander may also reserve personally, or to the superior commander’s delegate, the right to exercise UCMJ, Art. 15 authority over a particular case or over certain categories of offenders or offenses (see para 3–7d).

3–5. Referral to superior

a. See RCM 306(b). NJP should be administered at the lowest level of command commensurate with the needs of discipline, after thoroughly considering—

(1) The nature and circumstances of the offense.

(2) The character and experience of the offender.

b. If a commander determines that the commander’s authority pursuant to UCMJ, Art. 15 is insufficient to impose a proper punishment, the case may be referred to an appropriate superior. The same procedure will be followed if the authority of the commander to exercise UCMJ, Art. 15 powers has been withheld or limited (see paras 3–4 and 3–7d). In transmitting a case for action by a superior, no recommendation of the nature or extent of the punishment to be imposed

will be made. Transmittal should normally be accomplished by written correspondence using DA Form 5109 (Request to Superior to Exercise Art. 15, UCMJ, Jurisdiction).

3–6. Filing determination

a. A commander's decision on whether to file a record of NJP in the performance portion of a Soldier's AMHRR is as important as the decision whether to impose NJP itself. In making a filing determination for a record of NJP which does not include a finding of guilty to a sex-related offense, as set forth in paragraph 3–6*b*, the imposing commander must weigh carefully the interests of the Soldier's career against those of the Army to produce and advance only the most qualified personnel for positions of leadership, trust, and responsibility. In this regard, the imposing commander should consider the Soldier's age, grade, total service (with particular attention to the Soldier's recent performance and past misconduct), and whether the Soldier has more than one record of NJP directed for filing in the restricted portion (see para 3–6*c*). However, the interests of the Army are compelling when the record of NJP reflects unmitigated moral turpitude or lack of integrity, patterns of misconduct, evidence of serious character deficiency, or a substantial breach of military discipline. In such cases, the record should be filed in the performance portion of the Soldier's AMHRR.

b. Any record of NJP that includes a finding of guilty for having committed a sex-related offense will be filed as a sex-related offense in the performance portion of the Soldier's AMHRR. This requirement applies to Soldiers in all components, regardless of grade. Imposing commanders do not have the option to designate these documents be filed locally or in the restricted portion of the Soldier's AMHRR. All guilty findings for sex-related offenses resulting in NJP will receive an assignment consideration code (ASCO) of L3. In accordance with AR 600–37, paragraph 3–4, the servicing judge advocate (JA) is responsible for coordinating with commanders for the processing of actions involving sex-related offenses for eventual filing in the AMHRR with the appropriate assignment consideration code. For the purpose of this subparagraph, sex-related offenses include a violation of the following sections of the UCMJ:

(1) Article 120: Rape and sexual assault. This includes rape, sexual assault, aggravated sexual contact, and abusive sexual contact.

(2) Article 130: Stalking. (If committed prior to 1 January 2019, Article 120a—see appendix 22, MCM, 2019).

(3) Article 120*b*: Rape and sexual assault of a child. This includes rape, sexual assault, and sexual abuse of a child.

(4) Article 120*c*: Other sexual misconduct. This includes indecent viewing, visual recording, or broadcasting.

(5) Article 125: Forcible sodomy; bestiality, if committed prior to 1 January 2019 (see appendixes 21 and 22, MCM, 2019).

(6) Article 80: Attempt (any attempt to commit these offenses).

c. If a record of NJP has been designated for filing in a Soldier's restricted portion, the Soldier's AMHRR will be reviewed to determine if the restricted portion contains a previous record of NJP. In those cases in which a previous DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), that has not been wholly set aside has been filed in the restricted portion and in which prior to that punishment, the Soldier was in the grade of sergeant (SGT) or higher, the present DA Form 2627 will be filed in the performance portion. The filing will be recorded on the DA Form 2627 in block 11. The Soldier concerned and the imposing commander will be informed of the filing of the DA Form 2627 in the performance portion.

d. The filing of a record of NJP imposed upon a member of another armed Service will be done in a manner consistent with the governing regulations of that member's parent Service.

Section II

Authority

3–7. Who may impose nonjudicial punishment

a. Commanders. Unless otherwise specified in this regulation or if authority to impose NJP has been limited or withheld by a superior commander (see para 3–7*d*), any commander is authorized to exercise the disciplinary powers conferred by UCMJ, Art. 15. The management of installations by Installation Management Command (IMCOM) will not affect the exclusive authority of commanders, as defined by this regulation, to impose NJP.

(1) The term commander, as used in this chapter, means a commissioned officer who, by virtue of that officer's grade and assignment, exercises primary command authority over a military organization or prescribed territorial area, that under pertinent official directives is recognized as a command.

(2) The term "imposing commander" refers to the commander or other officer who actually imposes the NJP. Imposition of NJP begins with the imposing commander signing DA Form 2627 or DA Form 2627–1 and ends when the punishment is announced or proceedings are terminated. Except as authorized pursuant to paragraph 3–8*b*, the imposing commander must be the same person throughout this process.

(3) Commands include the following:

(a) Companies, troops, and batteries.

(b) Numbered units and detachments.

(c) Missions.

(d) Army elements of unified commands, subordinate unified commands (subunified), and joint task forces.

(e) Service schools.

(f) Area commands.

(4) Commands also include, in general, any other organization of the kind mentioned in 3–7a(1), (for example, a provisional unit designated pursuant to AR 220–5), the commander of which is the one looked to by superior authority as the individual chiefly responsible for maintaining discipline in that organization. Thus, an infantry company, whether or not separate or detached (RCM 504(b)(2)), is considered to be a command. However, an infantry platoon that is part of a company and is not separate or detached is not considered to be a command. Although a commissioned officer exercising command is usually designated as the commander, this position may be designated by various other titles having the same official connotation—for example, commandant, chief of mission, or superintendent. Whether an officer is a commander is determined by the duties he or she performs, not necessarily by the title of the position occupied.

b. Joint commanders and officers in charge. A joint commander or officer in charge, to whose command the members of the Army are assigned or attached, may impose NJP upon such Soldiers. A joint commander or officer in charge, alternatively, may designate one or more Army units and will, for each such Army unit, designate an Army commissioned officer as commanding officer for the administration of discipline pursuant to the UCMJ, Art. 15. A copy of such designation will be furnished to OTJAG–CLD. A joint commander or officer in charge, when imposing NJP upon a Soldier of their command, will apply the provisions of this regulation (see para 3–8c).

c. Delegation. The authority given to a commander pursuant to UCMJ, Art. 15 is an attribute of command and, except as provided in this paragraph, may not be delegated. Pursuant to the authority vested in the Secretary of the Army pursuant to the provisions of UCMJ, Art. 15(a), the following rules with respect to delegation of powers are declared:

(1) Any commander authorized to exercise GCM jurisdiction, or any commanding general, may delegate that commander's or commanding general's powers, pursuant to UCMJ, Art. 15, to one commissioned officer actually exercising the function of deputy or assistant commander. A commander may, instead of delegating powers pursuant to UCMJ, Art. 15 to a deputy or assistant commander, delegate such powers to the chief of staff of the command, provided the chief of staff is a general officer, or frocked to a general officer grade. An officer in command who is frocked to the grade of brigadier general is not a general officer in command as defined in Part V, paragraph 2c, MCM, 2019, and lacks the authority to impose some punishments, including forfeitures and arrest upon commissioned officers (see Part V, para 5(b)(1)(B), MCM, 2019, table 3–1 of this regulation, and AR 600–8–29 for limitations on frocked officers).

(2) Authority delegated pursuant to paragraph 3–7c(1) may be exercised only when the delegate is senior in grade to the person punished. A delegate need not, when acting as a superior authority on an appeal, be senior in grade to the imposing commander.

(3) Delegations of authority to exercise UCMJ, Art. 15 powers will be made in writing; for example, a memorandum. It will designate the officer on whom the powers are conferred by name and position. Unless limited by the terms of such delegation or by 3–7c(2), an officer to whom this authority is granted may exercise any power that is possessed by the officer who delegated the authority. Unless otherwise specified in the written authorization, a delegation of UCMJ, Art. 15 authority will remain effective until—

(a) The officer who delegated the officer's powers ceases to occupy that position, other than because of temporary absence;

(b) The officer to whom these powers have been delegated ceases to occupy the position wherein the officer was delegated such powers, other than because of temporary absence; or

(c) Notification that the delegation has been terminated is made in writing. A delegation does not divest the delegating officer of the right to personally exercise the delegating officer's UCMJ, Art. 15 powers in any case in which the delegating officer desires to act. Although an appeal from punishment imposed pursuant to a delegation of UCMJ, Art. 15 powers will be acted on by the authority next superior to the delegating officer (see para 3–30), the latter may take the action described in paragraph 3–32 (see Part V, paras 6 and 7, MCM, 2019, and para 3–38 of this regulation).

d. Limitation of exercise of disciplinary authority by subordinates. Any commander having authority pursuant to UCMJ, Art. 15 may limit or withhold the exercise of such authority by subordinate commanders. For example, the powers of subordinate commanders to exercise UCMJ, Art. 15 authority over certain categories of military personnel, offenses, or individual cases may be reserved by a superior commander. A superior authority may limit or withhold any power that a subordinate might otherwise have pursuant to this paragraph.

3–8. Persons on whom nonjudicial punishment may be imposed

a. Military personnel of a commander's command. Unless such authority is limited or withheld by superior competent authority, a commander may impose punishment pursuant to UCMJ, Art. 15 on commissioned officers and other military personnel of a commander's command, except cadets of the United States Military Academy (USMA).

(1) For the purpose of UCMJ, Art. 15, military personnel are considered to be “of the command” of a commander if they are—

(a) Assigned to an organization commanded by that commander.

(b) Affiliated with the command (by attachment, detail, or otherwise) pursuant to conditions, either expressed or implied, that indicate that the commander of the unit to which affiliated and the commander of the unit to which they are assigned are to exercise administrative or disciplinary authority over them.

(2) Under similar circumstances, a commander may be assigned territorial command responsibility so that all or certain military personnel in the area will be considered to be of the command for the purpose of UCMJ, Art. 15.

(3) To determine if an individual is of the command of a particular commanding officer, refer first to those written or oral orders or directives that affect the status of the individual. If orders or directives do not expressly confer authority to administer NJP to the commander of the unit with which the Soldier is affiliated or present (as when, for example, they contain no provision attaching the Soldier “for disciplinary purposes”), consider all attendant circumstances, such as—

(a) The phraseology used in the orders.

(b) When and where the Soldier slept, ate, performed duty, or received services or entitlements.

(c) The duration of the status and other similar factors.

(4) If orders or directives include such terms as “attached for administration of military justice,” or simply “attached for administration,” the individual so attached will be considered to be of the command, of the commander, of the unit of attachment for the purpose of UCMJ, Art. 15.

b. Termination of status. NJP will not be imposed on an individual by a commander after the individual ceases to be of the commander's command, because of transfer or otherwise. However, if UCMJ, Art. 15 proceedings have been instituted and punishment has not been imposed prior to the time of the change of assignment, the commander who instituted the proceedings may forward the record of proceedings to the gaining commander for appropriate disposition. This does not apply when the change of commander is temporary (such as when an acting commander initiated the Article 15 proceedings).

c. Personnel of other armed services. An Army commander is not prohibited from imposing NJP on a military member of his or her command solely because the member is a member of another armed service. Other provisions of this regulation notwithstanding, an Army commander may impose punishment upon a member of another Service only under the circumstances, and according to the procedures, prescribed by the member's parent Service.

d. Persons serving with or accompanying an armed force in the field in time of declared war or contingency operation. Authority to impose punishment pursuant to UCMJ, Art. 15 on persons subject to jurisdiction pursuant to UCMJ, Art. 2(a)(10) is limited to those commanders described in chapter 27 of this regulation and as described in guidance provided in a Secretary of Defense Memorandum (SECDEF Memo) dated March 10, 2008, Subject: UCMJ Jurisdiction over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations.

3–9. Minor offenses

Whether an offense is “minor” is a matter within the discretion of the commander imposing NJP. NJP for an offense other than a minor offense (even when thought by the commander to be minor) is not a bar to subsequent trial by court-martial for the same offense (see RCM 907(b)(2)(D)(iii)). However, the accused may show at trial that NJP was imposed, and if the accused does so, this fact must be considered in determining an appropriate sentence (see UCMJ, Art. 15(f) and RCM 1001(d)(1)(B)).

3–10. Double punishment prohibited

When NJP has been imposed for an offense, punishment may not again be imposed for the same offense pursuant to UCMJ, Art. 15. Once NJP has been imposed, it may not be increased, upon appeal or otherwise. When a commander determines that NJP is appropriate for a particular Servicemember, all known offenses determined to be appropriate for disposition by NJP and ready to be considered at that time, including all offenses arising from a single incident or course of conduct, will ordinarily be considered together and not made the basis for multiple punishments. This provision does not restrict the commander's right to prefer court-martial charges for a non-minor offense previously punished pursuant to the provisions of UCMJ, Art. 15.

3–11. Limitation on punishment after exercise of jurisdiction by civilian authorities

Commanders will, when contemplating NJP in cases where a civilian authority has exercised jurisdiction, comply with the provisions of chapter 4.

3–12. Statute of limitations

NJP may not be imposed for offenses that were committed more than two years before the date of imposition. Computation of this two-year limitation is in accordance with the UCMJ, Art. 43. The statute of limitations does not run when the Soldier concerned is absent without authority; fleeing from justice; outside the territory where the United States has authority to apprehend; in the custody of civil authorities; or in the hands of the enemy.

Section III

Procedure

3–13. General

Commanders must impose NJP in an absolutely fair and judicious manner (see Part V, para 1d, MCM, 2019).

3–14. Preliminary inquiry

a. Inquiry. Upon receipt of information that a Servicemember has committed an offense triable by court-martial, the Servicemember's immediate commander will, pursuant to RCM 303, cause or conduct a preliminary inquiry sufficient to make an appropriate initial disposition. The requirements of AR 15–6 do not apply to preliminary inquiries conducted for the purpose of making an initial disposition. Interviews of suspected Servicemembers by the command are generally discouraged at this stage, and all such interviews must comply with the requirements of UCMJ, Art. 32 and AR 15–6. A preliminary inquiry for disposition will be conducted expeditiously and may be accomplished through formal or informal witness interviews and a cursory review of available evidence, including police reports and other documents. Such a preliminary inquiry shall, at a minimum, determine—

- (1) Whether it is likely that an offense was committed.
- (2) Whether it is likely that the Servicemember was involved.
- (3) The character and military record of the Servicemember.
- (4) Whether referral to an appropriate investigative agency is required.

b. Disposition. Upon completion of the preliminary inquiry, the commander shall make an initial disposition of the matter. Commanders are encouraged to consult their legal advisor prior to disposing of any case. Possible dispositions include—

- (1) Closing the case without action.
- (2) Referring the case to an appropriate investigative agency.
- (3) Ordering further investigation pursuant to AR 15–6.
- (4) Referring the case to a superior commander.
- (5) Taking appropriate punitive or administrative action.

3–15. Commander's guide for notification and imposition

In all cases, other than summarized proceedings, commanders should use appendix B of this regulation as a guide in conducting the proceedings.

3–16. Summarized proceedings

a. Preliminary inquiry.

(1) A commander, after a preliminary inquiry into an alleged offense by an enlisted Soldier, may use summarized proceedings if it is determined that, should punishment be found to be appropriate, it should not exceed—

- (a) Extra duties for 14 days.
- (b) Restriction for 14 days.
- (c) Oral reprimand or admonition.
- (d) Any combination of the above.

(2) The DA Form 2627–1 (Summarized Record of Proceedings Under Article 15, UCMJ) will be used to record the proceedings. The rules and limitations concerning punishments in section IV and provisions regarding clemency in section V are applicable.

b. Notification and explanation of rights. If an imposing commander determines that summarized proceedings are appropriate, the designated subordinate officer or noncommissioned officer (NCO) (see para 3–18) or the commander personally will notify the Soldier of the following:

- (1) The imposing commander's intention to initiate proceedings pursuant to UCMJ, Art. 15.
- (2) The fact that the imposing commander intends to use summarized proceedings and the maximum punishments that can be imposed pursuant to these proceedings.
- (3) The right to remain silent.
- (4) Offenses that the Soldier allegedly has committed and the articles of the UCMJ allegedly violated.
- (5) The right to demand trial (see Part V, para 4a(5), MCM, 2019). Soldiers attached to or embarked in a vessel may not demand trial by court-martial in lieu of NJP. Any other Soldier will be advised that the Soldier has a right to demand trial and that the demand for trial must be made at the start of the hearing prior to any consideration, examination, or presentation of evidence. The Soldier's decision not to demand trial is irrevocable. The Soldier will be told that such trial could be by SCM, special court-martial (SPCM), or GCM. The Soldier will also be told that the Soldier may object to trial by SCM or, in certain situations, SPCM convened pursuant to UCMJ, Art. 16(c)(2)(A). The Soldier will also be informed that at SPCM or GCM the Soldier would be entitled to be represented by qualified military counsel, or by civilian counsel obtained at no expense to the Government.
- (6) The right to confront witnesses, examine the evidence, and submit matters in defense, extenuation, and/or mitigation.
- (7) The right to appeal.

c. Decision period. The Soldier will be given the opportunity to—

- (1) Accept the UCMJ, Art. 15 NJP.
- (2) Request a reasonable time, normally 24 hours, to decide whether to demand trial by court-martial and to gather matters in defense, extenuation, and/or mitigation. Because of the limited nature of the possible punishment, the Soldier has no right to consult with legally qualified counsel.

d. Hearing. Unless the Soldier demands trial by court-martial within the decision period, the imposing commander may proceed with the hearing (see para 3–18g(1)). The hearing will consist of the following:

- (1) Consideration of evidence, written or oral, against the Soldier.
- (2) Examination of available evidence by the Soldier.
- (3) Presentation by the Soldier of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation.
- (4) Determination of guilt or innocence by the imposing commander. Before finding a Soldier guilty, the commander must be convinced beyond a reasonable doubt that the Soldier committed the offense(s).
- (5) Imposition of punishment or termination of the proceedings.
- (6) Explanation of right to appeal, if found guilty of any offense(s).

e. Appeal. The decision to appeal will be recorded in block 4, DA Form 2627–1. This will be done according to the procedures set forth in paragraph 3–32. The Soldier will be given a reasonable time (normally no more than 5 calendar days) within which to submit an appeal (see para 3–29). The Soldier may, pending submission and decision on the appeal, be required to undergo the punishment imposed, but once submitted, such appeal will be promptly decided. If the appeal is not decided within 3 calendar days, excluding the day of submission, and if the Soldier so requests, further performance of any punishments involving deprivation of liberty will be delayed pending the decision on the appeal.

f. Recording and filing of DA Form 2627–1. The proceedings will be summarized on DA Form 2627–1. These forms will be maintained locally in NJP files. They will be destroyed at the end of two years from the date of imposition of punishment or on the Soldier's transfer from the unit, whichever occurs first. A copy will be provided to the Soldier if a request is submitted during the filing period.

3–17. Formal proceedings

A commander who, after a preliminary inquiry or appropriate investigation determines—

- a.* That the Soldier alleged to have committed an offense is an officer, or
- b.* That punishment, if it should prove to be appropriate, might exceed extra duties for 14 days, restriction for 14 days, oral reprimand or admonition, or any combination thereof, will proceed as set forth below. All entries will be recorded on DA Form 2627.

3–18. Notification and explanation of rights

a. General. The imposing commander will ensure that the Soldier is notified of the commander's intention to dispose of the matter pursuant to the provisions of UCMJ, Art. 15. The Soldier will also be notified of the maximum punishment that the commander could impose pursuant to UCMJ, Art. 15. The Soldier will be provided a copy of DA Form 2627 with items 1 and 2 completed, including the date and signature of the imposing commander. The imposing commander may

authorize a commissioned officer or NCO (sergeant first class or above), provided such person is senior to the Soldier being notified, to deliver (but not sign) the DA Form 2627 and inform the Soldier of the Soldier's rights. The NCO performing the notification should ordinarily be the unit first sergeant or the senior NCO of the command concerned. If it is not possible or practical for an officer or NCO senior to the Soldier to deliver the DA Form 2627 and inform the Soldier of his or her rights, any JA may complete the notification process. In such cases, the notifier should follow the steps in appendix B. The Soldier will be provided with a copy of DA Form 2627 and supporting documents and statements for use during the proceedings. The Soldier will return the copy to the commander for annotation. It will be given to the Soldier for retention when all proceedings are completed.

b. Right to remain silent. The Soldier will be informed that—

(1) The Soldier is not required to make any statement regarding the offense(s) the Soldier is alleged to have committed, and

(2) Any statement made may be used against the Soldier in the UCMJ, Art. 15 proceedings or in any other proceedings, including a trial by court-martial.

c. Right to counsel. The Soldier will be informed of the right to consult with counsel and the location of counsel. For the purpose of this chapter, counsel means the following: a JA, a Department of Army (DA) Civilian attorney, or an officer who is a member of the bar of a federal court or of the highest court of a state, provided that counsel within the last two categories are acting under the supervision of either USATDS or a staff or command judge advocate.

d. Right to demand trial. Soldiers attached to or embarked in a vessel may not demand trial by court-martial instead of NJP. Any other Soldier will be advised that the Soldier has a right to demand trial. The demand for trial may be made at any time prior to any consideration, examination, or presentation of evidence. The Soldier will be told that if the Soldier demands trial, trial could be by SCM, SPCM, or GCM. The Soldier will also be told that the Soldier may object to trial by SCM or, in certain situations, SPCM convened pursuant to Art. 16(c)(2)(A). The Soldier will also be informed that at SPCM or GCM the Soldier would be entitled to be represented by qualified military counsel, or by civilian counsel obtained at no Government expense.

e. Other rights. The Soldier will be informed of the right to—

(1) Fully present the Soldier's case in the presence, except in rare circumstances, of the imposing commander (see para 3-18g).

(2) Call witnesses (see Part V, para 4c(1)(F), MCM, 2019).

(3) Present evidence.

(4) Request that the Soldier be accompanied by a spokesperson (see para 3-18h).

(5) Request an open hearing (see para 3-18g).

(6) Examine available evidence.

f. Decision period.

(1) If the Soldier requests a decision period, the Soldier will be given a reasonable time to consult with counsel, including time off from duty, if necessary, to decide whether or not to demand trial. The decision period will not begin until the Soldier has received actual notice and explanation of rights pursuant to UCMJ, Art. 15 and has been provided a copy of DA Form 2627 with items 1 and 2 completed as well as the supporting evidence (see para 3-18a). The Soldier will be advised that if the Soldier demands a trial, block 3a of DA Form 2627 must be initialed and item 3 must be signed and dated within the decision period; otherwise, the commander will proceed pursuant to UCMJ, Art. 15. The decision period should be determined after considering factors such as the complexity of the case and the availability of counsel. Normally, 48 hours is a reasonable decision period. If the Soldier does not request a delay, the commander may continue with the proceedings immediately. If the Soldier requests a delay, the Soldier may, but only for good reason, be allowed an additional period, to be determined by the imposing commander, to decide whether to demand trial. If a new imposing commander takes command after a Soldier has been notified of the original imposing commander's intent to impose punishment, the Soldier will be notified of the change. The Soldier will again be given a reasonable decision period in which to consult with counsel. In either case, item 11 of DA Form 2627, will contain the following: "Para 3-18f(1), AR 27-10 complied with."

(2) Prior to deciding whether to demand trial, the Soldier is not entitled to be informed of the type or amount of punishment the Soldier will receive if NJP ultimately is imposed. The Soldier will be informed of the maximum punishment that may be imposed pursuant to UCMJ, Art. 15 and, on the Soldier's request, of the maximum punishment that can be adjudged by court-martial on conviction of the offense(s) involved.

(3) If the Soldier demands trial by court-martial on any offense, no further action will be taken to impose NJP for that offense, unless the Soldier's demand is voluntarily withdrawn. Whether court-martial charges will be preferred against the Soldier for the remaining offense(s) and the level of court-martial selected will be resolved by the appropriate commander. A Soldier's demand for trial by court-martial will not bar disposition of minor offenses by nonpunitive measures by the appropriate commander.

(4) If the Soldier does not demand trial by court-martial prior to expiration of the decision period, including any extension of time, the imposing commander may continue the proceedings. The imposing commander also may continue the proceedings if the Soldier, even though demanding trial, refuses to complete or sign item 3, DA Form 2627, within the prescribed time. In such instances, the Soldier will be informed that failure to complete and sign item 3 may be treated as a voluntary withdrawal of any oral demand for trial. If the Soldier persists in the Soldier's refusal, and punishment is imposed, in addition to recording the punishment, the following entry will be made on DA Form 2627: "Advised of (his) (her) rights, the Soldier (did not demand trial during the decision period) (refused to (complete) (sign) item 3)."

g. Hearing.

(1) The Soldier will be allowed to personally present matters in defense, extenuation, or mitigation in the presence of the imposing commander, except when appearance is prevented by the unavailability of the commander or by extraordinary circumstances (for example, the Soldier is stationed at a geographic location remote from that of the imposing commander and cannot be readily brought before the commander). When personal appearance is requested, but is not granted, the imposing commander will appoint a commissioned officer to conduct the hearing and make a written summary and recommendations. The Soldier will be entitled to appear before the officer designated to conduct the hearing (see Part V, para 4c(1), MCM, 2019). Within the limitations of AR 27–26, JAs may attend Art. 15 proceedings and provide advice to clients. Advice should be provided during a recess in the proceedings. When defense counsel, military or civilian, act as spokespersons, they speak on behalf of the accused and do not serve in a representative capacity.

(2) Ordinarily, hearings are open. The UCMJ, Art. 15 proceedings are not adversarial in nature. However, a Soldier may request an open or closed hearing. In all cases, the imposing commander will, after considering all the facts and circumstances, determine whether the hearing will be open or closed (see Part V, para 4c(1)(G), MCM, 2019). An open hearing is a hearing open to the public but does not require the commander to hold the proceeding in a location different from that in which the commander conducts normal business—that is, the commander's office. A closed hearing is one in which the commander decides that members of the public will not attend. The fact that a Soldier requests and is granted a closed hearing does not preclude announcement of punishment as provided in paragraph 3–22. The fact that a closed hearing has been granted does not preclude appearance of witnesses. The commander may grant a request for a closed hearing, yet allow the attendance of certain members of the chain of command or others deemed appropriate to the conduct of the proceedings.

(3) SJAs or their representatives who attend UCMJ, Art. 15 proceedings in their official capacity will strictly comply with AR 27–26.

h. Spokesperson. The person who may accompany the Soldier to the Art. 15 proceeding and who speaks on the Soldier's behalf need not be a lawyer. An offender has no right to legal counsel at the nonjudicial proceedings. The Soldier may retain civilian counsel to act as the Soldier's spokesperson at no cost to the Government. However, the commander need not grant a delay for the appearance of any spokesperson, to include civilian counsel so retained. No travel fees or any other costs may be incurred at Government expense for the presence of the spokesperson. The spokesperson's presence is voluntary. Because the proceedings are not adversarial in nature, neither the Soldier nor spokesperson (including any attorney present on behalf of the Soldier) may examine or cross-examine witnesses, unless permitted by the imposing commander. The Soldier or spokesperson may, however, indicate to the imposing commander relevant issues or questions they wish to explore or ask.

i. Witnesses. The Soldier's request for witnesses in defense, extenuation, or mitigation will be restricted to those witnesses reasonably available, as determined by the imposing commander. To determine whether a witness is reasonably available, the imposing commander will consider the fact that neither witness nor transportation fees are authorized. Reasonably available witnesses will ordinarily include only personnel at the installation concerned and others whose attendance will not unnecessarily delay the proceedings.

j. Evidence. The imposing commander is not bound by the formal rules of evidence before courts-martial and may consider any matter, including unsworn statements, the commander reasonably believes to be relevant to the offense.

k. Action terminating proceedings. If, after evaluation of all pertinent matters, the imposing commander determines that NJP is not warranted, the Soldier will be notified that the proceedings have been terminated and all copies of DA Form 2627 will be destroyed.

l. Imposition of punishment. Punishment will not be imposed unless the commander is convinced beyond a reasonable doubt that the Soldier committed the offense(s). If the imposing commander decides to impose punishment, ordinarily the commander will announce the punishment to the Soldier. The commander may, if the commander desires to do so, explain to the Soldier why a particular punishment was imposed.

m. Right to appeal. The appellate rights and procedures that are available to the Soldier will be explained.

Section IV Punishment

3–19. Rules and limitations

a. Whether to impose punishment and the nature of the punishment are the sole decisions of the imposing commander. However, commanders are encouraged to consult their NCOs on the appropriate type, duration, and limits of punishment to be imposed. Additionally, as NCOs are often in the best position to observe a Soldier undergoing punishment and evaluate daily performance and attitude, their views on clemency should be given careful consideration.

b. Pursuant to the authority of the Secretary of the Army, as set forth in Part V, paragraph 5a, MCM, 2019, the following additional rules and limitations concerning the kinds and amounts of punishment authorized pursuant to the UCMJ, Art. 15 apply (see also table 3–1 of this regulation):

(1) *Correctional custody.* Correctional custody may be imposed by any commander unless the authority to impose has been withheld or limited by a superior authority. Before imposing correctional custody, the commander will ensure that adequate facilities, as described in AR 190–47, exist to carry out the punishment. The responsibilities, policies, and procedures concerning the operation of correctional custody facilities are contained in AR 190–47. Soldiers in the rank of specialist (SPC) or corporal (CPL) or above may not be placed in correctional custody. However, if an unsuspended reduction to the rank of private first class (PFC) or below is imposed pursuant to the UCMJ, Art. 15, correctional custody may also be imposed. Time spent in correctional custody does not constitute lost time (10 USC 972).

(2) *Restriction.* Restriction may be imposed with or without suspension from duties. Normally, the limits of the restriction should be announced at the time punishment is imposed. However, the imposing commander, a successor-in-command, and any superior authority may change the specified limits of restriction; for example, if a Soldier is transferred or assigned duties at another location after imposition and before the term of restriction is completed. The limits of restriction, as changed, will be generally no more restrictive (unless required by military exigencies) than the limits originally imposed.

(3) *Arrest in quarters.* A commissioned officer undergoing this punishment may be required to perform any military duty not involving the exercise of command. During field exercises, an officer's quarters are those normally occupied by officers of a similar grade and duty position. If a commissioned officer in arrest in quarters is placed on duty involving the exercise of command by an authority having knowledge of the status of arrest in quarters, that status is thereby terminated.

(4) *Extra duties.* Extra duties may be required to be performed at any time and, within the duration of the punishment, for any length of time. No extra duty may be imposed that—

(a) Constitutes cruel or unusual punishment or a punishment not sanctioned by the customs of the Service; for example, using the offender as a personal servant.

(b) Is a duty normally intended as an honor, such as assignment to a guard of honor.

(c) Is required to be performed in a ridiculous or unnecessarily degrading manner; for example, an order to clean a barracks floor with a toothbrush.

(d) Constitutes a safety or health hazard to the offender.

(e) Would demean the Soldier's position as a NCO or SPC (AR 600–20).

(5) *Reduction in grade.*

(a) *Promotion authority.* The grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of UCMJ, Art. 15(b) if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade (see AR 600–8–19).

(b) *Date of rank.* When a person is reduced in grade as a result of an unsuspended reduction, the date of rank in the grade to which reduced is the date the punishment of reduction was imposed. If the reduction is suspended either on or after the punishment was imposed, or is set aside or mitigated to forfeiture, the offender's date of rank in the grade held before the punishment was imposed remains unchanged. If a suspension of the reduction is vacated, the offender's date of rank in the grade to which reduced as a result of the vacation action is the date the punishment was originally imposed, regardless of the date the punishment was suspended or vacated.

(c) *Entitlement to pay.* When a Soldier is restored to a higher pay grade because of a suspension or when a reduction is mitigated to a forfeiture, entitlement to pay at the higher grade is effective on the date of the suspension or mitigation. This is true even though an earlier date of rank is assigned. If, however, a reduction is set aside and all rights, privileges, and property are restored, the Soldier concerned will be entitled to pay as though the reduction had never been imposed.

(d) *Void reduction.* Any portion of a reduction pursuant to UCMJ, Art. 15 beyond the imposing commander's authority to reduce is void and must be set aside. Where a commander reduces a Soldier below a grade to which the commander is

authorized to reduce and if the circumstances of the case indicate that the commander was authorized and intended to reduce the Soldier at least one grade, a one-grade reduction may be executed. All rights, privileges, and property, including pay and allowances, of which a Soldier was deprived by a reduction that has been set aside must be restored.

(e) *Removal from standing promotion lists.* See AR 600–8–19.

(6) *Forfeiture of pay.*

(a) *Limitations.* The amount of forfeiture of pay will be rounded to the next lower whole dollar. Forfeitures imposed by a company grade commander may not be applied for more than 1 month, while those imposed by a field grade commander may not be applied for more than 2 months. For example, a company grade commander may impose a forfeiture of 7 days' pay for 1 month but may not impose a forfeiture of 3 days' pay per month for 2 months (see table 3–1). If a forfeiture of pay has been imposed in addition to a suspended or unsuspended reduction in grade, the amount forfeited will be limited to the amount authorized for the reduced grade. The maximum forfeiture of pay to which a Soldier is subject during a given month, because of one or more actions pursuant to UCMJ, Art. 15, is one-half of the Soldier's pay per month. The UCMJ, Art. 15 forfeitures will not (in conjunction with partial forfeitures adjudged by court-martial) deprive a Soldier of more than two-thirds of the Soldier's pay per month (see DOD 7000.14–R).

(b) *Retired Soldiers.* Forfeitures imposed pursuant to UCMJ, Art. 15 may be applied against a Soldier's retirement pay.

(7) *Combination and apportionment.* With the following exception, punishment authorized pursuant to UCMJ, Art. 15(b) may be combined: No two or more punishments involving deprivation of liberty may be combined, in the same NJP proceedings, to run either consecutively or concurrently, except that restriction and extra duty may be combined in any manner to run for a period not exceeding the maximum duration that can be imposed for extra duty, by the imposing commander. Once commenced, deprivation of liberty punishments will run continuously, except where temporarily interrupted due to the fault of the Soldier, or the Soldier is physically incapacitated, or an appeal is not acted on as prescribed in paragraph 3–21b (see para 3–21c regarding the circumstances when deprivation of liberty punishments, imposed in separate NJP proceedings may run consecutively.)

(8) *Format for punishments.* The formats shown below should be used when entering punishments in item 6 of DA Form 2627. When more than one punishment is imposed during any single UCMJ, Art. 15 proceeding, punishments should be listed in the following order, as appropriate, reduction, forfeiture of pay, deprivation of liberty, and admonition/ reprimand.

(a) *Reduction.* Reduction should be entered on DA Form 2627 as follows: Reduction to (rank) (pay grade), for example, "Reduction to Specialist (E–4)."

(b) *Forfeitures.* Forfeiture of pay should be entered on DA Form 2627 per the following examples (see Part V, para 5c(8), MCM, 2019):

1. Example A, when the forfeiture is to be applied for not more than 1 month: "Forfeiture of \$."

2. Example B, when the forfeiture is to be applied for more than 1 month: "Forfeiture of \$ per month for 2 months."

(c) *Deprivation of liberty.* Specific duties to be performed during extra duty are not normally specified on either DA Form 2627 or DA Form 2627–1. Limits on restriction may be listed on either DA Form 2627 or DA Form 2627–1 but are not required. Examples follow:

1. Example 1, "Extra duty for (number) days, restriction for (number) days."

2. Example 2, "Extra duty for (number) days, restriction to the limits of _____ for (number) days."

(d) *Admonition and reprimand.* Admonitions or reprimands imposed on commissioned officers must be in writing (see Part V, para 5(c)(1), MCM, 2019). Admonitions or reprimands imposed on enlisted Soldiers pursuant to formal proceedings may be administered orally or in writing. Written admonitions and reprimands imposed as a punitive measure pursuant to UCMJ, Art. 15 will be in memorandum format, per AR 25–50, and will be listed as an attachment in item 10, DA Form 2627. Oral admonitions and reprimands will be identified as such in either item 6 on DA Form 2627, or item 2 on DA Form 2627–1.

**Table 3-1
Maximum punishments for enlisted members and commissioned officers**

Maximum punishment	Imposed by company grade officers	Imposed by field grade officers and general officers (not in command)	Imposed by general officers in command or GCMCAs	
For enlisted members²⁻⁻				
Admonition/reprimand	Yes		Yes	
AND Extra Duties	14 days		45 days	
AND Restriction	14 days		60 days	
OR Correctional custody ³ (E-1 through E-3)	7 days		30 days	
AND Reduction (E-1 through E-4) Reduction (E-5 through E-6) ⁴	one grade		one or more grades one grade in peace time ⁵	
AND Forfeiture	7 days' pay		1/2 month's pay for 2 months	
For commissioned officers—				
Admonition/reprimand ⁶	Yes	Yes	Yes	
AND Arrest in quarters	No	No	30 days	
OR Restriction	30 days	30 days	60 days	
AND Forfeiture	No	No	1/2 month's pay for 2 months	
Computing monthly authorized forfeitures of pay pursuant to UCMJ, Art 15				
For forfeiture on enlisted persons—	When forfeiture is imposed by an O-4 or above--	Use the formula--	(Monthly basic pay ^{7,8}) divided by 2 = the maximum forfeiture per month.	The amount will be rounded to the next lower whole dollar.
	When forfeiture is imposed by an O-3 or below--	Use the formula--	(Monthly basic pay ^{7,8}) x 7 divided by 30 = the maximum forfeiture per month.	The amount will be rounded to the next lower whole dollar.
For forfeiture on commissioned officers—	When forfeiture is imposed by an officer with general court-martial jurisdiction, or by a general officer in command--	Use the formula--	(Monthly basic pay) divided by 2 = the maximum forfeiture per month.	The amount will be rounded to the next lower whole dollar.

Notes:

¹ Commanding generals and GCMCAs may delegate Article 15 authority to a commissioned officer actually exercising the function of deputy or assistant commander. A commander may instead delegate powers pursuant to UCMJ, Article 15 to the chief of staff of the command provided the chief of staff is a general officer.

² The maximum punishment that can be imposed by any commander pursuant to summarized procedures will not exceed extra duty for 14 days, restriction for 14 days, oral reprimand or any combination thereof. Combinations of extra duty and restriction cannot exceed the maximum allowed for extra duty.

³ Subject to limitation imposed by superior authority and presence of adequate facilities pursuant to AR 190-47. If punishment includes reduction to E-3 or below, reduction must be unsuspended.

⁴ Not applicable to RC Soldiers. See AR 600-8-19.

⁵ Only if imposed by a field grade commander of a unit authorized a commander in the grade of O-5 or higher. In the RC, reduction is only authorized from grade E-4. For RC Soldiers of grade E-6 and higher, reduction is only authorized if the grade from which the Soldier is reduced is within the promotion authority of the officer imposing the reduction.

⁶ In the case of commissioned officers and warrant officers, admonitions and reprimands given as NJP must be administered in writing Part V, paragraph 5c(1), MCM, 2019.

⁷ Amount of forfeiture is computed at the reduced grade, even if suspended, if reduction is part of the punishment imposed. For RC Soldiers, use monthly basic pay for the grade and time in service of an AC Soldier (see para 20-9).

⁸ At the time punishment is imposed.

3–20. Effect on promotable status

See AR 600–8–19 and AR 600–8–2.

3–21. Effective date and execution of punishments

a. General. The date of imposition of NJP is the date in items 4 and 5 on DA Form 2627, or items 1 through 3 on DA Form 2627–1, as appropriate, are signed by the imposing commander. This action normally will be accomplished on the day punishment is imposed.

b. Unsuspended punishments. Unsuspended punishments of reduction and forfeiture of pay take effect on the date imposed. Other unsuspended punishments take effect on the date they are imposed, unless the imposing commander prescribes otherwise. In those cases where the execution of the punishment legitimately must be delayed (for example, the Soldier is hospitalized, placed on quarters, authorized emergency leave, while on a brief period of temporary duty (TDY) or a brief field problem, or in the case of Army Reserve Soldiers any periods that may intervene from times when they are in a Title 10 duty status), the execution of the punishment should begin immediately thereafter. Except as provided in paragraph 3–21*c*, the delay in executed punishment should not exceed 30 days, or in the case of Army Reserve Soldiers, should not exceed the period that would include the next 30 days (however interrupted) in which that Army Reserve Soldier is in a Title 10 duty status. Once the Soldier has submitted an appeal, including all pertinent allied documents, the appeal normally should be decided within 5 calendar days (3 days for summarized proceedings), or in the case of Army Reserve Soldiers that period which will encompass the next 5 days of Title 10 duty status for the appellate commander concerned, excluding the submission date. If the appeal is not decided within this period and if the Soldier so requests, the performance of those punishments involving deprivation of liberty will be interrupted pending decision on the appeal. Punishments involving deprivation of liberty include restriction, extra duty, arrest in quarters, and correctional custody. Pursuant to the provisions of AR 190–47, correctional custody may be imposed only when a suitable correctional facility is available.

c. Additional punishment. If a Soldier to be punished is currently undergoing punishment or deprivation of liberty pursuant to a prior UCMJ, Art. 15 or court-martial, an imposing commander may prescribe additional punishment involving deprivation of liberty to begin after completion of the earlier punishment.

d. Vacated suspended reduction. A suspended reduction, later vacated, is effective on the date the vacation is directed (see para 3–19*b*(5)(*b*) for determination of date of rank).

e. Execution of punishment. Any commanding officer of the person to be punished may, subject to paragraph 3–19, and any other limitations imposed by a superior authority, order the punishment to be executed in such a manner and pursuant to such supervision as the commander may direct.

3–22. Announcement of punishment

The imposition of NJP may be announced at the next unit formation after punishment is imposed or, if appealed, after the decision on the appeal. Commanders may also elect to post NJP results on the unit bulletin board. In every case, the social security number of the punished Soldier, as well as all other personally identifying information (PII) about any individual, will be deleted before NJP results are announced or posted. Commanders are not required to withhold the name of Soldier receiving NJP when announcing or posting punishment. The purpose of announcing the results of punishments is to preclude perceptions of unfairness of punishment and to deter similar misconduct by other Soldiers. An inconsistent or arbitrary policy should be avoided regarding the announcement of punishments that might result in the appearance of vindictiveness or favoritism. In deciding whether to announce punishment of Soldiers in the grade of SGT or above, the following should be considered:

- a.* The nature of the offense.
- b.* The individual's military record and duty position.
- c.* The deterrent effect.
- d.* The impact on unit morale or mission.
- e.* The impact on the victim.
- f.* The impact on the leadership effectiveness of the individual concerned.

Section V

Suspension, Vacation, Mitigation, Remission, and Setting Aside

3–23. Clemency

a. General. The imposing commander, a successor-in-command, or the next superior authority may, within the time prescribed in the MCM—

- (1) Remit or mitigate any part or amount of the unexecuted portion of the punishment imposed.

- (2) Mitigate reduction in grade, whether executed or unexecuted, to forfeiture of pay.
- (3) At any time, suspend probationally any part or amount of the unexecuted portion of the punishment imposed.
- (4) Suspend probationally a reduction in grade or forfeiture, whether or not executed. An uncollected forfeiture of pay will be considered unexecuted.

b. Meaning of "successor-in-command." As used in Part V, paragraph 6a, MCM, 2019, a successor-in-command is the officer who has authority to impose the same kind and amount of punishment on a Soldier concerned that was initially imposed or was the result of a modification and who—

- (1) commands the unit to which the punished Soldier is currently assigned or attached (see para 3–8);
- (2) is the commander succeeding to the command occupied by the imposing commander, provided the Soldier still is of that command; or
- (3) is the successor to the delegate who imposed the punishment, provided the same authority has been delegated pursuant to paragraph 3–7c, to that successor and the Soldier is still of that command.

c. IMCOM garrison units. Clemency for Soldiers assigned to IMCOM garrison units will be processed through the installation senior commander's Army Command (ACOM), Army service component command (ASCC), or direct reporting unit (DRU) chains of command, as necessary and appropriate.

d. Recording of action. Any action of suspension, mitigation, remission, or setting aside (see para 3–28) taken by an authority will be recorded in item 8 on DA Form 2627, and in item 5 on DA Form 2627–1 or DA Form 2627–2 (Record of Supplementary Action Under Art. 15, UCMJ), (see para 3–38b).

3–24. Suspension

Ordinarily, punishment is suspended to grant a period during which a Soldier may show that the Soldier deserves a remission of the remaining suspended punishment. An executed punishment of reduction or forfeiture may be suspended only within a period of 4 months after the date imposed. Suspension of punishment may not be for a period longer than 6 months from the suspension date. In the case of summarized proceeding pursuant to paragraph 3–16, suspensions of punishment may not be for a period longer than 3 months from the date of suspension. Further misconduct by the Soldier, within the period of the suspension, may be grounds for vacation of the suspended portion of the punishment (see para 3–25). Unless otherwise stated, an action suspending a punishment automatically includes a condition that the Soldier not violate any punitive article of the UCMJ.

3–25. Vacation of suspension

a. Vacation is the act of removing a punishment's suspension, allowing the previously-suspended punishment to go into effect. A commander may vacate any suspension (see Part V, para 6a(54), MCM, 2019), provided the suspended punishment is of the type and amount the commander could impose and where the commander has determined that the Soldier has committed misconduct (amounting to an offense under the UCMJ) during the suspension period. The commander is not bound by the formal rules of evidence before courts-martial and may consider any matter, including unsworn statements, the commander reasonably believes to be relevant to the misconduct. There is no appeal from a decision to vacate a suspension. Unless the vacation is prior to the expiration of the stated period of suspension, the suspended punishment is remitted automatically without further action. The death, discharge, or separation from service of the Soldier punished prior to the expiration of the suspension automatically remits the suspension. Misconduct resulting in vacation of a punishment's suspension punishment may also form the basis for the imposition of separate NJP.

b. Commanders will observe the following procedures in determining whether to vacate a punishment's suspension:

(1) If the suspended punishment is of the kind set forth in UCMJ, Arts. 15(e)(1) through (7), the Soldier should, unless impracticable, be given an opportunity to appear before the officer authorized to vacate the suspension to rebut the information on which the proposed vacation is based. If appearance is impracticable, the Soldier should nevertheless ordinarily be given notice of the proposed vacation and an opportunity to respond.

(2) In cases involving punishments not set forth in UCMJ, Arts. 15(e)(1) through (7), the Soldier will be informed of the basis of the proposed vacation and should be given an opportunity to respond, either orally or in writing.

(3) If the Soldier is absent without leave at the time the commander proposes vacation and remains so, the commander, after 14 days from the date the Soldier departed absent without leave or on the last day of the suspension period, whichever is earlier, may, at the commander's discretion, vacate the suspension without providing notice or any opportunity to respond.

(4) The following will be recorded on DA Form 2627–1 or DA Form 2627–2 (see para 3–38b):

(a) Action vacating a suspension, to include the basis for vacation.

(b) Whether or not the Soldier appeared or was otherwise provided an opportunity to respond.

(c) An explanation, if the Soldier did not appear, in a case involving vacation of a punishment's suspension listed in UCMJ, Arts. 15(e)(1) through (7) or in other cases, if the Soldier was not provided an opportunity to respond.

(d) Failure to provide notification and an opportunity to appear or to otherwise respond to the basis of a proposed vacation may result in the record of punishment being inadmissible in a subsequent court-martial, but will not, by itself, render a vacation action void.

3–26. Mitigation

a. General.

(1) Mitigation is a reduction in either the quantity or quality of a punishment. For example, a punishment of correctional custody for 20 days could be reduced to correctional custody of 10 days or to restriction for 20 days. The general nature of the punishment remains the same. The first action lessens the quantity and the second lessens the quality, with both mitigated punishments remaining of the same general nature as correctional custody, that is, deprivation of liberty. However, a mitigation of 10 days of correctional custody to 14 days of restriction would not be permitted, because the quantity of punishment is increased.

(2) A forfeiture of pay may be mitigated to a lesser forfeiture of pay. A reduction may be mitigated to forfeiture of pay (but see para 3–19b(6)(a)). When mitigating reduction to forfeiture of pay, the amount of the forfeiture imposed may not be greater than the amount that could have been imposed initially, based on the restored grade, by the officer who imposed the mitigated punishment.

b. Appropriateness. Mitigation is appropriate when—

- (1) The recipient has, by the recipient's subsequent good conduct, merited a reduction in the severity of the punishment.
- (2) The punishment imposed was disproportionate to the offense or the offender.

c. Limitation on mitigation.

(1) With the exception of reduction in grade, the power to mitigate exists only with respect to a punishment or portion thereof that is unexecuted. A reduction in grade may be mitigated to forfeiture of pay even though it has been executed. When correctional custody or other punishments (in the nature of deprivation of liberty) are mitigated to lesser punishments of this kind, the lesser punishment may not run for a period greater than the remainder of the period for which the punishment mitigated was initially imposed. For example, when a person is given 15 days of correctional custody and has served 5 days of this punishment and it is decided to mitigate the correctional custody to extra duties or restriction, or both, the mitigated punishment may not exceed a period of 10 days.

(2) Although a suspended punishment may be mitigated to a punishment of a lesser quantity or quality (which is also suspended for a period not greater than the remainder of the period for which the punishment mitigated was suspended), it may not, unless the suspension is vacated, be mitigated to an unsuspended punishment (see para 3–26a(2) for the time period within which reduction ordinarily may be mitigated, if appropriate, to a forfeiture of pay).

3–27. Remission

Remission is an action whereby any portion of the unexecuted punishment is canceled. Remission is appropriate under the same circumstances as mitigation. An unsuspended reduction is executed on imposition and thus cannot be remitted, but may be mitigated (see para 3–26) or set aside (see para 3–28). The death, discharge, or separation from the Service of the Soldier punished remits any unexecuted punishment. A Soldier punished pursuant to UCMJ, Art. 15 will not be held beyond the Soldier's expiration of term of service (ETS) to complete any unexecuted punishment.

3–28. Setting aside and restoration

a. Setting aside and restoration is an action whereby the punishment or any part or amount, whether executed or unexecuted, is set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored. NJP is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual pursuant to UCMJ, Art. 15. In addition, the imposing commander or successor in command may set aside some or all of the findings in a particular case. If all findings are set aside, then the UCMJ, Art. 15 itself is set aside and removed from the Soldier's records. The basis for any set-aside action is a determination that, under all the circumstances of the case, the imposition of the UCMJ, Art. 15 or punishment has resulted in a clear injustice. "Clear injustice" means that there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. An example of clear injustice would be the discovery of new evidence unquestionably exculpating the Soldier. Clear injustice does not include the fact that the Soldier's performance of service has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the Soldier.

b. Normally, the Soldier's uncorroborated sworn statement will not constitute a basis to support the setting aside of punishment.

c. In cases where administrative error results in incorrect entries on DA Form 2627 or DA Form 2627–1 the appropriate remedy generally is an administrative correction of the form and not a setting aside of the punishment.

d. The power to set aside an executed punishment and to mitigate a reduction in grade to a forfeiture of pay, absent unusual circumstances, will be exercised only within 4 months after the punishment has been executed. When a commander sets aside any portion of the punishment, the commander will record the basis for this action on DA Form 2627–2 (see para 3–38*b*). When a commander sets aside any portion of the punishment after 4 months from the date punishment has been executed, a detailed addendum of the unusual circumstances found to exist will be attached to the form containing the set-aside action.

Section VI

Appeals

3–29. General

a. Only one appeal is permissible pursuant to UCMJ, Art. 15 proceedings. Provisions for other administrative relief measures are contained in paragraph 3–43. An appeal not made within a reasonable time may be rejected as untimely by the superior authority. A reasonable time will vary according to the situation; however, an appeal (including all documentary matters) submitted more than 5 calendar days after the punishment is imposed will be presumed to be untimely, unless the superior commander, in the superior commander’s sound discretion for good cause shown, determines it to be timely.

b. If, at the time of imposition of punishment, the Soldier indicates a desire not to appeal, the superior authority may reject a subsequent election to appeal, even though it is made within the 5-day period. Although a suspended punishment may be appealed, no appeal is authorized from the vacation of suspended punishment.

3–30. Who may act on an appeal

a. The next superior authority to the commanding officer who imposed NJP will act on an appeal if the Soldier punished is still of the command of that officer at the time of appeal. If the commander acted pursuant to a delegation of authority, the appeal will be acted on by the authority next superior to the delegating officer. If, at the time of appeal, the Soldier is no longer of the imposing commander’s command, the authority next superior to the commander of the imposing command (who can impose the same kind and amount of punishment as that imposed or resulting from subsequent modifications) will act on the appeal.

b. The authority “next superior” to an imposing commander is normally the next superior in the chain of command, or such other authority as may be designated by competent authority as being next superior for the purposes of UCMJ, Art. 15. Appeals pursued by Soldiers from punishments imposed by commanders on installations managed by IMCOM will be processed through ACOM, ASCC, or DRU chains of command as necessary and appropriate. A superior authority who exercises GCM jurisdiction, or is a general officer in command, may delegate those powers the superior authority has as superior authority pursuant to UCMJ, Art. 15(e), to a commissioned officer of the superior authority’s command subject to the limitations in paragraph 3–7*c*. Regardless of the grade of the imposing commander, TJAG is delegated the authority next superior for acting on appeals when no intermediate superior authority is reasonably available. Such appeals will be forwarded to OTJAG–CLD.

c. When forwarding a UCMJ, Art. 15 record of punishment to TJAG for action on appeal, the imposing commander or successor in command will review the appeal to determine if action pursuant to paragraph 3–32, is warranted. If the imposing commander determines that no additional action is appropriate, the record of punishment will be forwarded directly. Included with the UCMJ, Art. 15 report should be any evidence considered by the imposing commander. If the appeal raises any new matters, they should be addressed by the commander in the forwarding documentation.

d. When an Army commander imposes NJP on a member of another Service, the authority next superior will be the authority prescribed by the member’s parent Service. Other provisions of this regulation notwithstanding, an appeal by such member will be processed according to procedures contained in the governing regulation of the member’s parent Service.

e. When a commander of another Service imposes NJP upon a Soldier, the authority’s next superior need not be an Army officer. However, the next superior commander for purposes of appeals processed pursuant to this regulation must have an Army JA assigned to the commander’s staff or the staff of the commander’s supporting headquarters. When acting on the Soldier’s appeal, the Army JA will advise the commander on the appellate procedures prescribed by this regulation and will advise the other than Army commander to ensure compliance with paragraph 3–34.

3–31. Procedure for submitting an appeal

All appeal notifications will be made on DA Form 2627 or DA Form 2627–1 and forwarded through the imposing commander or successor-in-command, when applicable, to the superior authority. The superior authority will act on the appeal unless otherwise directed by competent authority. The Soldier may attach documents to the appeal for consideration. A

Soldier is not required to state reasons for the Soldier's appeal; however, the Soldier may do so. For example, the person may state the following in the appeal:

- a. Based on the evidence the Soldier does not believe the Soldier is guilty.
- b. The punishment imposed is excessive, or that a certain punishment should be mitigated or suspended.

3–32. Action by the imposing commander or the successor-in-command

The imposing commander or the successor-in-command may take any action on the appeal with respect to the punishment that the superior authority could take (see Part V, para 6, MCM, 2019, and see para 3–33 of this regulation). If the imposing commander or a successor-in-command suspends, mitigates, remits, or sets aside any part of the punishment, this action will be recorded on item 8 of DA Form 2627, or item 5 of DA Form 2627–1. The appellant will be advised and asked to state whether, in view of this action, the appellant wishes to withdraw the appeal. Unless the appeal is voluntarily withdrawn, the appeal will be forwarded to the appropriate superior authority. An officer forwarding the appeal may attach any matter in rebuttal of assertions made by the Soldier. When the Soldier desires to appeal, the imposing commander, or the successor-in-command, will make available to the Soldier reasonable assistance in preparing the appeal and will promptly forward the appeal to the appropriate superior authority.

3–33. Action by the superior authority

Action by the superior authority on appeal will be entered in item 8 on DA Form 2627, or item 5 on DA Form 2627–1. A superior authority will act on the appeal expeditiously. Once the Soldier has submitted an appeal, including all pertinent allied documents, the appeal normally should be decided within 5 calendar days (3 days for summarized proceedings). The superior authority may conduct an independent inquiry into the case. The superior authority may refer an appeal in any case to a JA for consideration and advice before taking action; however, the superior authority must refer an appeal from certain punishments to a JA, whether or not suspended. In acting on an appeal, the superior authority may exercise the same powers as may be exercised by the imposing commander or the imposing commander's successor-in-command. A timely appeal does not terminate merely because a Soldier is discharged from the Service. It will be processed to completion by the superior authority.

3–34. Action by a judge advocate

- a. When an appeal is referred to a JA, the superior authority will be advised either orally or in writing of the JA's opinion on—
 - (1) The appropriateness of the punishment.
 - (2) Whether the proceedings were conducted pursuant to law and regulations.
- b. If the advice is given orally, that fact and the name of the JA who rendered the advice will be recorded in item 7 of DA Form 2627.
- c. The JA is not limited to an examination of written matters of the record of proceedings and may make any necessary inquiries.
- d. The JA rendering the advice should be the JA providing legal advice to the officer taking action on the appeal.

3–35. Action by superior authority regardless of appeal

Any superior authority may exercise the same powers as may be exercised by the imposing commander, or the imposing commander's successor-in-command, whether or not an appeal has been made from the punishment (see Part V, para 7f(1), MCM, 2019). "Any superior authority" has the same meaning as that given to the term "authority next superior" in paragraph 3–30, except that it also includes any authority superior to that authority. A Soldier has no right to petition for relief pursuant to this paragraph and any petition so made may be summarily denied by the superior authority to whom it is addressed.

Section VII

Records of Punishment, DA Form 2627

3–36. Records of punishment

All actions taken pursuant to UCMJ, Art. 15, including notification, acknowledgement, imposition, filing determinations, appeal, action on appeal, or any other action taken prior to action being taken on an appeal, except summarized proceedings, will be recorded on DA Form 2627. The DA Form 2627 is a record of completed actions and either the DA Form 2627 or a duplicate as defined in Military Rule of Evidence (MRE) 1001(4) may be considered for use at courts-martial or

administrative proceedings independently of any written statements or other documentary evidence considered by an imposing commander, a successor, or a superior authority.

3-37. Distribution and filing of DA Form 2627 and allied documents

a. General. The original DA Form 2627 will include as allied documents all written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal (see para 3-37g). Copies of the DA Form 2627 will be transmitted by the servicing legal office to the Soldier's military personnel division (MPD) or the unit personnel office and to the servicing Defense Military Pay Office (DMPO). The DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) will be submitted per AR 600-8-2. Standard instructions for distribution and filing of forms for commissioned officers and enlisted Soldiers serving on active duty (AD) are set out below.

b. Original of DA Form 2627.

(1) *Place of filing.* For Soldiers who are at the rank of SPC or CPL and below (prior to punishment) the original will be filed locally in unit NJP or unit personnel files unless the Soldier has been found guilty of a sex-related offense as set forth in paragraph 3-6, in which case, the document must be filed in the performance portion in the Soldier's AMHRR. Locally filed originals will be destroyed at the end of 2 years from the date of imposition of punishment or on the Soldier's transfer to another GCMCA, whichever occurs first. For these Soldiers, the imposing commander should annotate item 4b of DA Form 2627 as "not applicable (N/A)." When the transfer of a Soldier to a new GCM jurisdiction is for the purpose of receiving medical treatment, or TDY or deployment, the Art. 15, UCMJ form will accompany the Soldier to the new GCM jurisdiction, and back to the imposing GCM jurisdiction if the Soldier returns to that imposing GCM jurisdiction following the medical treatment, TDY, or deployment. When a Soldier is TDY or temporarily away from the Soldier's home GCM jurisdiction and receives NJP from the temporary command, the original will accompany the Soldier when the Soldier returns to their home GCM jurisdiction. The temporary jurisdiction will maintain a copy of the Art. 15, UCMJ form. The 2-year rule will apply in these situations.

(a) For all other Soldiers, the original will be sent to the appropriate custodian listed in paragraph 3-37b(2) for filing in the AMHRR. The decision to file the original DA Form 2627 in the performance portion or the restricted portion in the AMHRR will be made by the imposing commander at the time punishment is imposed. The filing decision of the imposing commander is subject to review by any superior authority. However, the superior authority cannot direct that a UCMJ, Art. 15 report be filed in the performance portion that the imposing commander directed to be filed in the restricted portion. The imposing commander's filing decision will be indicated in item 4b of DA Form 2627. A change in the filing decision should be recorded in block 8 of DA Form 2627. When a commander or any superior authority makes a decision regarding the filing, the commander should consider the following:

1. Any record of NJP which includes a finding of guilty for having committed a sex-related offense will be filed as a sex-related offense in the performance portion of the Soldier's AMHRR. This requirement applies to all Soldiers in all components, regardless of grade. Commanders do not have the option to designate these documents be filed locally or in the restricted portion of the Soldier's AMHRR. Documents will be archived on the iPERMS (see para 3-6).

2. The performance portion is that portion of the AMHRR that is routinely used by career managers and selection boards for the purpose of assignment, promotion, and schooling selection.

3. The restricted portion is that portion of the AMHRR that contains information not normally viewed by career managers or selection boards except as provided in AR 600-8-104 or specified in the Secretary of the Army's written instructions to the selection board.

(b) Records directed for filing in the restricted portion will be redirected to the performance portion if the Soldier has other records of NJP reflecting misconduct in the grade of SGT or higher that have not been wholly set aside and recorded in the restricted portion (see para 3-6).

(2) *Method of filing.* The servicing legal office will transmit the original DA Form 2627 via Military Justice Online (MJO) to Human Resources Command (HRC). If that option is not available, the original DA Form 2627 will be transmitted by the MPD or unit personnel office to one of the following:

(a) For Regular Army (RA) commissioned officers: U.S. Army Human Resources Command (AHRC: PDR-R), 1600 Spearhead Division Avenue, Dept. 420, Fort Knox, KY 40122-5420. Packets of less than 100 pages may be uploaded via the web in lieu of mailing; and must include the words "adverse action" in the comment field.

(b) For U.S. Army Reserve (USAR) commissioned officers: U.S. Army Human Resources Command (AHRC-PDR-R), 1600 Spearhead Division Ave, Dept. 420, Fort Knox, KY 40122-5420.

(c) For Army National Guard (ARNG) commissioned officers: ARNG Bureau, ARNG Personnel Division (ARNG-HRP-R), ATTN: IPERMS, 111 South George Mason Drive, Arlington, VA 22204-1382.

(d) For RA enlisted Soldiers: U.S. Army Human Resources Command (AHRC-EFS), 1600 Spearhead Division Avenue, Dept. 420, Fort Knox, KY 40122.

(e) For USAR enlisted Soldiers: U.S. Army Human Resources Command (AHRC–PDR–R), 1600 Spearhead Division Ave, Dept. 420, Fort Knox, KY 40122-5420.

(f) For ARNG enlisted Soldiers, choose the State Adjutant General of: the Soldier's state, the Commonwealth of Puerto Rico, the Virgin Islands, or the District of Columbia.

c. *Unit copy.*

(1) For those UCMJ, Art. 15 forms directed for filing in the performance portion of the AMHRR, file a copy of the completed DA Form 2627 in the unit NJP files. This copy will be maintained permanently in the unit NJP file and will be forwarded to the gaining unit upon the Soldier's transfer to another GCMCA unless the original Art. 15 is transferred from the performance to the restricted portion of the AMHRR. In this case, this copy will be withdrawn from the unit NJP files and destroyed.

(2) For those UCMJ, Art. 15 reports directed for filing in the restricted portion of the AMHRR, a copy will be filed in the unit NJP files and destroyed at the expiration of 2 years from the date of punishment or on the Soldier's transfer, whichever occurs first.

d. *Finance copy.* A copy of the completed DA Form 2627 will be forwarded to the Soldier's servicing DMPO if the punishment includes an unsuspended reduction and/or forfeiture of pay.

e. *Personnel service copy.* If the punishment includes a reduction, a copy will be forwarded to the Soldier's MPD or unit personnel office.

f. *Soldier's copy.* Give a copy of the completed action with allied documents to the Soldier who was punished.

g. *Allied documents.* Allied documents will be transmitted for administrative convenience with the original DA Form 2627 for filing in the restricted portion of the AMHRR (see para 3–44). The servicing legal office shall redact the personally identifiable information (PII) of all parties, except the Soldier being punished and any co-conspirator(s), from all allied documents transmitted for filing in a Soldier's AMHRR and uploaded into the MJO enterprise case management system (see paragraph 5–56h for redaction requirements).

h. *Unit paralegal specialist copy.* The paralegal specialist will maintain a copy of the completed DA Form 2627 with all allied documents in MJO for a period of 2 years.

3–38. Supplementary action

a. *Supplementary action.* Any action taken by an appropriate authority to suspend, vacate, mitigate, remit, or set aside a punishment (except punishment imposed pursuant to summarized proceedings, para 3–16) after action has been taken on an appeal or DA Form 2627 has been distributed according to para 3–37 of this regulation.

b. *Recording.* Supplementary action will be recorded on DA Form 2627–2.

c. *Distribution and filing.*

(1) *Original.* If the DA 2627 that initially imposed punishment was forwarded to the appropriate custodian of the AMHRR, then the original of the supplementary action will also be forwarded to the appropriate custodian of the AMHRR (see para 3–37b(2)). This copy will be filed in the same AMHRR section location as the DA Form 2627 that initially imposed the punishment. The imposing commander's filing determination on the initial DA Form 2627 will be annotated on the DA Form 2627–2.

(2) *Unit copy.* A copy will be filed in the unit NJP files when the imposing commander directs filing on the performance section of the AMHRR. This copy will be destroyed in accordance with paragraph 3–37c(1), along with a copy of the initial DA Form 2627 if the original DA Form is transferred from the performance to the restricted section. In cases of filing on the restricted section of the AMHRR, a copy will be filed in the unit NJP files per paragraph 3–37c(2).

(3) *The personnel and finance copies.* If the action affects a reduction, a copy of the supplementary action and a copy of the initial DA Form 2627, if maintained by the unit (see para 3–37c) will be forwarded to the MPD or unit personnel office. If the action affects a forfeiture, a copy will be forwarded to the servicing DMPO.

(4) *Unit paralegal specialist's copy.* The paralegal specialist who prepared the DA Form 2627–2 will maintain a copy for a period of 2 years.

(5) *Soldier's copy.* Give a copy of the completed action with allied documents to the Soldier who is being punished.

3–39. Reconciliation log

Imposing commanders, assisted by their supporting paralegal specialist, will ensure that punishments imposed pursuant to the provisions of UCMJ, Art. 15 are executed. Execution of punishments of reduction and forfeiture of pay will be verified and documented by the mandatory use of the Reconciliation Log, DA Form 5110, showing the punishment, dates verified, and initials of verifying paralegal specialist. To properly use DA Form 5110, all UCMJ, Art. 15 records (DA Form 2627) made by the unit paralegal specialist must be sequentially numbered and the required data entered in the DA Form 5110. Unit paralegal specialists will use the unit commander's financial report, the Soldier's leave and earnings statement, or the daily record of financial transactions to verify execution of forfeitures and reductions. For RA Soldiers, the chief paralegal

NCO for the GCMCA or a designee will inspect, at least annually, the execution of UCMJ, Art. 15 forfeitures and reductions by review of DA Form 5110, including random verification using finance records. For RC Soldiers, the chief paralegal NCO of the regional readiness commands or other major subordinate commands (MSC) reporting to the U.S. Army Reserve Command (USARC) is required to conduct this inspection at least every 2 years. The chief legal NCO or designee at the GCM level, on a quarterly basis, will transmit to the custodian of the AMHRR the name, social security number, and the date the NJP was imposed. For Army reserve Soldiers, the chief paralegal NCO of regional readiness commands or MSCs reporting to USARC will transmit this information to the custodian of the AMHRR twice yearly. The AMHRR custodian will transmit verification of the AMHRR filing of NJP records to the chief legal NCO or designee. After information is verified on the DA Form 5110, supporting finance documentation showing execution of the reduction or forfeitures, as well as the verification of AMHRR filings by the AMHRR custodian will be retained for 2 years after the date the punishment was imposed.

3–40. Time for distribution of initial DA Form 2627

Distribution will be made, according to paragraph 3–37, after the recipient indicates in item 5 that the recipient does not appeal. If the recipient appeals, the DA Form 2627 will be forwarded to the superior authority and copied after completion of item 9. Completion of this item shows that the recipient acknowledges notification of action on the recipient's appeal. If item 9 cannot be completed because the recipient is not reasonably available or due to military exigencies, a statement signed by the imposing commander stating that the recipient was informed in writing of the disposition of the appeal and why it was not possible to have item 9 completed will be placed in item 10 before copies are distributed. If the recipient fails to complete or sign item 5, an explanation of the failure will be provided by the imposing commander in item 10 and distribution of the copies will be made according to paragraph 3–37 or this paragraph, whichever is applicable (a recipient's refusal to indicate whether or not the recipient desires to appeal may be presumed to indicate an intention not to appeal).

3–41. Filing of records of punishment imposed prior to 1 November 1982

Records of NJP presently filed in either the performance or restricted section of the AMHRR will remain so filed, subject to other applicable regulations. Records of NJP imposed prior to 1 November 1982 and forwarded on or after 20 May 1980 for inclusion in the AMHRR will be filed on the performance section.

3–42. Transfers of punishments wholly set aside, or changes of status

a. Change in status. On approval of a change in status from enlisted to commissioned officer, DA Forms 2627—recording NJP received while in an enlisted status and filed in the AMHRR—will be transferred to the restricted section of the AMHRR. Copies of such records in the career management individual file (CMIF) and unit NJP or personnel files will be destroyed.

b. Wholly set aside. All DA Forms 2627 of commissioned officers and enlisted Soldiers filed in the AMHRR reflecting that punishments have been wholly set aside (see para 3–28), will be removed from the Soldier's record. The DA Form 2627 reflecting the original imposition of punishment, if filed in the military personnel records jacket, CMIF, or unit NJP or unit personnel files will be destroyed.

3–43. Transfer or removal of records of nonjudicial punishment

a. General. This paragraph covers policies and procedures for enlisted Soldiers (SGT and above) and commissioned officers to petition the DA Suitability Evaluation Board (DASEB) for transfer of records of NJP from the performance to the restricted portion of the AMHRR (see table 3–2).

**Table 3-2
Removal of records of nonjudicial punishment from military personnel files**

Rule	If the—	on the basis that—	then the record of nonjudicial punishment (DA Form 2627) file in—
1	Commander who imposed the punishment, successor in command, or superior authority wholly sets aside the punishment.	Evidence exists which demonstrates that the punishment resulted in a “clear injustice ” (see para 3-28).	Removed from the Soldier’s record.
2	Member in the grade of E-5 or above applies to the DASEB for transfer.	The record of nonjudicial punishment has served its purpose, has served its purpose, and that removal is in the best interest of the Army.	The performance portion of the AMHRR will, on approval of the member’s application, be transferred to the restricted portion of the AMHRR and the copy in the unit nonjudicial punishment file removed.
3	Member applies to ABCMR for transfer of records of nonjudicial punishment from the performance portion of the AMHRR.	Evidence exists which demonstrates error or injustice to a degree justifying removal.	The performance portion of the AMHRR will, on approval of the member’s application, be processed in accordance with the instructions of the ABCMR. Providing that, if the member is in the grade of E-5 or above and applies for the reasons described in paragraph 3-43b(1), the member has already applied to DASEB, and the request was denied.

b. Policies.

(1) Enlisted Soldiers (SGT and above), and commissioned officers may request the transfer of a record of NJP from the performance section of their AMHRR to the restricted section pursuant to the provisions of this regulation. To support the request, the person must submit substantive evidence that the intended purpose of UCMJ, Art. 15 has been served and that transfer of the record is in the best interest of the Army.

(2) Requests normally will not be considered until a minimum of 1 year has elapsed and at least one nonacademic evaluation report has been received since imposition of the punishment.

(3) The request must be in writing and should include the Soldier’s current unit mailing address and duty telephone number. Requests by enlisted Soldiers (SGT and above) should also include a true copy of their Enlisted Record Brief (ERB) or Soldier Record Brief (SRB), certified by the custodian of the record. No person is authorized to appear in person before the DASEB.

(4) The officer who directed the filing of the record in the AMHRR (of enlisted Soldiers, SGT and above, and commissioned officers) may provide a statement to the Soldier in support of a request for transfer of the record from the performance to the restricted section. Other evidence submitted in support of a request should not include copies of documents already recorded in the Soldier’s AMHRR.

(5) The DASEB will review and evaluate the evidence submitted and obtained and will take final action where this authority has not been specifically withheld to the Deputy Chief of Staff (DCS), G-1 or the DCS, G-1’s delegate. Requesters will be notified in writing of the determination. Letters of denial will be placed upon the performance section of the Soldier concerned. Other related documentation and evidence will be placed upon the restricted section.

(6) The DASEB has access to unfavorable information that might be recorded on DOD investigative records. If such information is used, in part or in whole, as the basis for denying a request, the Soldier will be notified of this by correspondence (which will not be filed in the AMHRR) and given an opportunity to review and explain the unfavorable information in a subsequent petition.

(7) The determination of the DASEB to transfer such records will not alone be a basis for review by a special selection board or its equivalent. The DCS, G-1 or the G-1’s delegate, has the final authority in cases where circumstances exist that warrant referral to one of the above boards.

(8) The DASEB will consider subsequent requests only upon presentation of substantive evidence not previously considered.

c. Processing requests.

(1) *Regular Army personnel.* Requests in military letter format should be prepared and sent directly to the DA Suitability Evaluation Board (DAPE-MPC-E).

(2) *Reserve component personnel.*

(a) Requests submitted by USAR officer and enlisted Soldiers not on AD are normally processed through the Commander, U.S. Army Human Resources Command (AHRC-PDR-R), 1600 Spearhead Division Ave, Dept. 420, Fort Knox, KY 40122-5420. The DASEB will then take action on the request.

(b) Requests submitted by ARNG officers and enlisted Soldiers not on AD will be processed through the proper state adjutant general and the Chief, National Guard Bureau to the DCS, G-1 (DAPE-MPC-E) for proper action.

d. *Amendment rights.* These procedures do not limit or restrict the right of Soldiers to request amendments of their records pursuant to the Privacy Act and AR 25-22. Neither do they limit or restrict the authority of the DASEB to act as the denial authority pursuant to AR 25-22.

e. *Correction of military records.* The AR 15-185 contains policy and procedures for applying to the Army Board for Correction of Military Records (ABCMR) and for the correction of military records by the Secretary of the Army. Requests should be sent to the ABCMR to correct an error or remove an injustice only after other available means of administrative appeal have been exhausted. This includes requests pursuant to this paragraph.

3-44. Use of records

a. Records of proceedings and supplementary action pursuant to UCMJ, Art. 15 recorded on DA Forms 2627 and 2627-2, previously or hereafter administered, may be used as directed by competent authority. Allied documentation transmitted with the original or copies of DA Forms 2627 and 2627-2, where filed with any of these forms, will be considered to be maintained separately for the purpose of determining the admissibility of the original or copies of DA Forms 2627 or 2627-2 at courts-martial or administrative proceedings.

b. A record of NJP or a duplicate as defined in MRE 1001(e), not otherwise inadmissible, may be admitted at courts-martial or administrative proceedings from any file in which it is properly maintained by regulation. A record of NJP, otherwise properly filed, will not be inadmissible merely because the wrong copy was maintained in a file.

3-45. Delegation of authority to modify procedures and test new nonjudicial punishment forms

Notwithstanding any other provision in this regulation, TJAG has the authority to issue directions by policy memoranda, technical instructions, or other means to change the procedures for preparing, copying, serving, certifying, or distributing records of NJP. Such direction may be promulgated by issuance of policy memoranda, technical instructions, or through other means deemed appropriate by TJAG.

Chapter 4

Disciplinary Proceedings Subsequent to Exercise of Jurisdiction by Civilian Authorities

4-1. General

This chapter covers policies on disciplinary proceedings pursuant to the UCMJ in cases where a civilian authority has exercised, or is in the process of exercising, criminal jurisdiction over the same offense or matter. Civilian authorities include any court deriving its authority from a state of the United States or a foreign country. No UCMJ action will be taken for the same criminal offense where criminal jurisdiction has been exercised by a federal court of the United States.

4-2. Policy

The exercise of criminal jurisdiction by state or foreign civilian authorities does not preclude UCMJ action for the same matter. However, a person subject to the UCMJ who has been tried in a civilian court may, but ordinarily will not, be tried by court-martial or punished pursuant to UCMJ, Art. 15, for the same act over which the civilian court has exercised jurisdiction. Any UCMJ action against a Servicemember who has been tried by a civilian court or is facing criminal prosecution by a civilian authority, will follow with the procedures of this chapter.

4-3. Procedure

a. *General.* Upon learning that a member of the command is facing prosecution by civilian authority or has been tried in a civilian court, the immediate commander will notify the SJA. A GCMCA may authorize disposition of a case pursuant to the UCMJ, and any applicable international agreements on U.S. forces stationed in foreign countries, despite the exercise of civilian authority. No UCMJ action in such cases will be initiated without GCMCA approval. Such a case shall be processed as follows:

b. *Nonjudicial punishment.*

(1) When an officer with UCMJ jurisdiction over the offender believes that imposing NJP pursuant to UCMJ, Art. 15 is appropriate, in a case where civilian authorities exercised or plan to exercise criminal jurisdiction over the same matter, that officer will cause a full written report to be forwarded to the GCMCA.

(2) The GCMCA, after consulting with the supporting SJA, must personally determine that any normally-authorized administrative action alone is inadequate, and the imposition of NJP is essential to maintain discipline in the command.

(3) Upon making such a determination, the GCMCA may dispose of the matter directly or may authorize proceedings pursuant to UCMJ, Art. 15 by a subordinate commander.

c. Court-martial.

(1) When the officer exercising SCM jurisdiction over the offender believes that trial by court-martial is appropriate, in a case where civilian authorities exercised or plan to exercise criminal jurisdiction over the same matter, that officer will cause a full written report, complete with draft charges prepared by the supporting trial counsel, to be forwarded to the GCMCA. In cases where civilian criminal prosecution is pending, the supporting trial counsel will contact the civilian prosecutor's office and will attach to the report an analysis of the expected civilian case and any military-specific offenses that may arise from the (alleged) misconduct at issue.

(2) The GCMCA, after consulting with the supporting SJA, may, at the GCMCA's discretion, dispose of such charges or, by endorsement, authorize a subordinate to take such action.

Chapter 5 Procedures for Courts-Martial

Section I

General

5–1. Scope

This chapter implements certain provisions of the RCM and the UCMJ and provides other procedures related to courts-martial. For procedures related to courts-martial of foreign nationals subject to the UCMJ, see AR 27–52.

5–2. Secretarial designation of convening authorities

a. In general. This paragraph discusses the Secretary of the Army's authority to designate convening authorities. The statutory authority to convene courts-martial is stated in Article 22 (general courts-martial), Article 23 (special courts-martial) and Article 24 (summary courts-martial), of the UCMJ.

b. Procedures to request secretarial designation as convening authority

(1) Commanders desiring authority to convene courts-martial pursuant to UCMJ, Arts. 22(a)(8), 23(a)(7), and 24(a)(4), will forward a request, through the SJA of the ACOM, to OTJAG–CLD.

(a) Requests for designation as a court-martial convening authority solely for purposes of taking administrative actions associated with a particular level of convening authority will not be approved.

(b) Requests for designation as a convening authority must include the unit's official name and unit identification code, as established by the U.S. Army Center for Military History and must include the SJA paragraph(s) of the table of organization and equipment or the table of distribution and allowances as appropriate, that has been approved by the Office of the Deputy Chief of Staff, G–3.

(2) In deciding whether to grant a request, the Secretary of the Army will consider the following factors: grade of commander to exercise convening authority; size of the command; mission of the command; chain of command and organizational structure of requesting command; and location of requesting command with respect to other commands having convening authority.

(3) The convening authority will send a copy of the designation directive or orders to the Clerk of Court, U.S. Army Court of Criminal Appeals (USACCA), JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060 – 5546.

c. Withdrawal or expiration of secretarial designation. Secretarial designation as a convening authority continues until the Secretary of the Army withdraws the designation or the command ceases to exist. A unit may cease to exist because of actions that “consolidate,” “disband,” “discontinue,” or “inactivate” the unit (see AR 220–5). “Reorganization” or “redesignation” of units does not cancel secretarial designation.

d. Contingency commands. Commanders exercising GCM authority may establish deployment contingency plans that, when ordered into execution, designate provisional units pursuant to AR 220–5.

5–3. Authority to convene summary courts-martial

Unless otherwise withheld by a superior competent authority, a field grade officer in command of a battalion or squadron may convene summary courts-martial (SCM) pursuant to UCMJ, Art. 24(a)(4).

5–4. Courts-martial personal jurisdiction

a. Attachment. When appropriate, Army units, activities, or personnel may be attached to a unit, installation, or activity for courts-martial and the general administration of military justice. This includes related administrative actions and NJP. The GCMCA of the parent unit as well as the unit to which attached should concur in the attachment, except that the parent unit need not concur when military necessity renders it impractical to obtain a concurrence from the parent unit. The commander who will exercise jurisdiction is authorized to publish necessary orders announcing attachment to the commander's command. While attachment orders assist in resolving the appropriate chain of command through which charges may best be processed pursuant to RCM 401, they are neither determinative of, nor a prerequisite to, court-martial jurisdiction.

b. Members of reserve components. Members of reserve components (RCs) must be on AD, in a Title 10 duty status, prior to arraignment (see chapter 20 for procedures to involuntarily activate RC Soldiers for courts-martial). RC Soldiers are subject to court-martial jurisdiction while on AD, and during periods of travel to and from inactive duty training (IDT), intervals between consecutive periods of IDT on the same day and on consecutive days (see UCMJ, Art. 2).

c. Retirees. Retired members of a regular component of the Armed Forces who are entitled to pay are subject to the provisions of the UCMJ (see UCMJ, Art. 2(a)(4)). Retirees are subject to the UCMJ and may be tried by court-martial for violations of the UCMJ that occurred while they were on AD or while in a retired status. Retired Soldiers subject to the UCMJ will not be tried for any offense by any courts-martial unless extraordinary circumstances are present. Prior to referral of courts-martial charges against retired Soldiers, approval will be obtained from OTJAG–CLD. If necessary to facilitate courts-martial action, retired Soldiers may be ordered to AD. Requests for orders to AD will be forwarded by electronic message through OTJAG–CLD, to the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) for approval.

d. Civilians. Although UCMJ, Art. 2(a)(10) extends jurisdiction to individuals accompanying or serving with an armed force in the field during times of declared war or contingency operations, DOD policy limits exercise of this jurisdiction. All actions involving civilians accused of misconduct will comply with chapter 27 of this regulation, and no charge shall be preferred against any civilian without prior approval from the Chief, OTJAG–CLD.

Section II

Court-Martial Personnel

5–5. Detailing of counsel and reporters

a. Detail of trial counsel.

(1) The SJA will, in accordance with UCMJ, Art. 27, select certified persons to serve as trial counsel and will detail trial counsel to each SPCM and GCM. The detail of trial counsel is a ministerial function and may be delegated.

(2) The SJA will notify the Chief, Trial Counsel Assistance Program (TCAP) of all officers performing trial counsel functions within their jurisdiction in order to facilitate future training and OTJAG tracking of individuals performing trial counsel duties.

(3) The trial counsel will state on the record who has detailed the trial counsel to the court-martial. If not announced orally, the announcement will be submitted to the court in writing.

(4) Pursuant to RCM 503(c)(3), TJAG delegates to SJAs the authority to make counsel available to serve in a court-martial in a different armed force.

b. Detail of defense counsel. The Chief, USATDS, or that officer's delegate, will detail USATDS officers as defense counsel or assistant or associate defense counsel (see para 6–9).

c. Detail of reporters. Court reporters will be detailed as follows:

(1) Reporters will be detailed to all SPCMs and GCMs.

(2) Reporters will not be detailed to SCMs. A convening authority will, when necessary, furnish clerical personnel to assist SCMs to maintain and prepare a record of the proceedings.

5–6. Certification and detail of lawyers who are not judge advocates

a. Certification by TJAG. Commissioned officers who are not members of the Army Judge Advocate General's Corps (JAGC), but who possess legal qualifications stated in UCMJ, Art. 27(b)(1) may be certified for duty as counsel by TJAG. The certified officer's commander must concur with the detail of the non-JAGC certified counsel. The SJAs of GCM

jurisdictions will submit the following to the Personnel, Plans and Training Office (DAJA-PT), 2200 Army Pentagon, Room 2B517, Washington, DC 20310-2200 (OTJAG-PPTO):

- (1) Résumés of legal qualifications of officers recommended by them for certification.
- (2) An affidavit or certificate attesting to admission to practice to the same standard as required by UCMJ, Art. 27(b) and experience.

b. Detailing. The detail of certified non-JAGC officers as trial and assistant trial counsel is a ministerial function performed by the SJA for the GCM jurisdiction where counsel are assigned or attached.

5-7. Qualified counsel from other services at courts-martial

In all SPCMs and GCMs, the accused must be afforded the opportunity to be represented by counsel qualified pursuant to UCMJ, Art. 27(b). When needed, the Chief, USATDS may enter into arrangements with Navy, Marine, or Air Force counterparts for certified, qualified counsel. The Chief, USATDS will notify the Chief, OTJAG-CLD of any such arrangements.

5-8. Proof of qualifications for individual civilian counsel at courts-martial

When a civilian counsel is to represent an accused at any court-martial, evidence may be requested that the civilian counsel is a member in good standing of the bar (of which he or she claims to be a member) by—

- a.* The military judge; or
- b.* The SJA.

5-9. Requests for individual military counsel

a. General. This paragraph explains the procedures and applicable definitions for addressing an accused's request for individual military counsel (IMC). The accused has the right to be represented in his or her defense before a SPCM or GCM or at a preliminary hearing pursuant to UCMJ, Art. 32 by military counsel of the accused's own selection, if reasonably available, and approved in accordance with paragraph 5-9f. (See RCM 405(d)(3) and 506(b).)

b. "Reasonably available counsel" defined. All JAs certified pursuant to UCMJ, Art. 27(b) are considered reasonably available to act as IMC unless excluded by UCMJ, Art. 38b; RCM 506(b); or this regulation.

c. Persons not reasonably available. RCM 506(b)(1) designates persons who are not reasonably available to serve as IMC because of the nature of their duties or positions. Pursuant to the authority set forth in UCMJ, Art. 38, and in RCM 506(b)(1), the following persons are also deemed not reasonably available to serve as IMC because of the nature or responsibilities of their assignments:

(1) "Trial counsel" as used in RCM 506(b)(1)(C) includes those JAs whose primary duties involve the law enforcement and prosecuting functions (for example, chiefs of military justice, persons assigned to a criminal law section, persons assigned to TCAP, and equivalent positions).

(2) USATDS counsel assigned to and with duty at the Office of the Chief, USATDS, including Defense Counsel Assistance Program (DCAP) personnel, and Chief and Deputy, ARNG TDS, are unavailable to serve as IMC. Nothing in this provision limits the authority of the Chief, USATDS, to detail attorneys assigned to USATDS and DCAP.

(3) Special Victims' Counsel (SVC), as set forth in AR 27-3.

(4) RC JAs, not on AD, unless:

(*a*) the command making the JA's availability determination (see para 5-9d) commits or coordinates for funding of all costs associated with activation; or

(*b*) the convening authority commits or coordinates for funding of all costs associated with activation.

d. Reasonable availability determinations. In determining the availability of counsel not governed by the provisions of paragraph 5-9c, the responsible authority pursuant to RCM 506(b)(2) may consider all relevant factors, including, but not limited to, the following:

- (1) The requested counsel's duty position, responsibilities, and workload.
- (2) Any ethical considerations that might prohibit or limit the participation of the requested counsel.
- (3) Time and distance factors, that is, travel to and from the sites, the anticipated date, and length of the trial or hearing.
- (4) The effect of the requested counsel's absence on the proper representation of the requested counsel's other clients.
- (5) The number of counsel assigned as trial or assistant trial counsel to the UCMJ, Art. 32 preliminary hearing or trial.
- (6) The nature and complexity of the charges and legal issues involved in the case.
- (7) The experience level, duties, and caseload of the detailed military defense counsel.
- (8) Overall impact of the requested counsel's absence on the ability of the requested counsel's office to perform its required mission; for example, personnel strength, scheduled departures or leaves, and unit training and mission requirements.

e. Existing attorney-client relationship. Notwithstanding the provisions of 5–9c and *d*, if an attorney-client relationship exists between the accused and the requested counsel, regarding matters that relate to the charges in question, the requested counsel will ordinarily be considered available to act as IMC. The Chief, USATDS will review all claims asserting the existence of a prior attorney-client relationship, however, the forgoing exception will not apply in cases where the existing attorney-client relationship:

- (1) arose solely because the counsel represented the accused on appeal or review pursuant to UCMJ, Art. 70; or
- (2) existed with a civilian counsel who is also an attorney in the Army Reserve.

f. Procedure.

(1) *Form of request.* Requests for IMC will be processed pursuant to the provisions of RCM 506(b)(2) and this regulation. Requests will contain, at a minimum, the following information:

- (a) Name, grade, and station of the requested counsel.
- (b) Name, grade, and station of the accused and the accused’s detailed defense counsel.
- (c) The UCMJ article(s) alleged to have been violated and a summary of the alleged offense(s).
- (d) Date charges were preferred and status of case, for example, referred for preliminary hearing pursuant to UCMJ, Art. 32, or referred to SPCM or GCM.
- (e) Date and nature of pretrial restraint, if any.
- (f) Anticipated date and length of trial or hearing.
- (g) Existence of an attorney-client relationship between the requested counsel and the accused, in this or any prior case.
- (h) Special circumstances or other factors relevant to determine availability.

(2) *Routing of Request.* Request for an IMC should be made by the accused or the detailed defense counsel and forwarded as follows:

(a) *Requests for counsel currently assigned to the Trial Defense Service.*

1. *Regular and reserve components.* Request for USATDS counsel to serve as IMC will be processed through the trial counsel to the convening authority. The request will contain the same information as required by paragraph 5–9f. The convening authority will forward the request directly to the Chief, USATDS, via email, for a determination of availability. The USATDS field office at which the requested counsel is stationed will be included as an information addressee. An adverse determination pursuant to this subparagraph may be reviewed upon request of the accused through the Chief, USATDS to the Commanding General, The Judge Advocate General’s Legal Center and School (TJAGLCS) or other designated higher commander or level of supervision. However, no administrative review may be made that requires action at the Department of the Army or higher level. In circumstances when the accused and a requested IMC assigned or detailed to USATDS are located within the same USATDS geographical region, the Chief, USATDS may delegate the authority to determine eligibility of IMC to the regional defense counsel (RDC). In such delegation cases, the Chief, USATDS will act on appeals from adverse determinations made by the RDC.

2. *Army National Guard.* Requests for IMC when the accused or the requested counsel are in a Title 32 status will be routed through both Chief, USATDS and Chief, ARNG TDS, ARNG-TDS, 111 South George Mason Drive, Arlington, VA 22204.

(b) *Requests for counsel involving a claim of an existing attorney-client relationship.* Requests for counsel involving a claim of an existing attorney-client relationship, and where the requested counsel is no longer assigned to the USATDS, USAR TDS, or ARNG TDS, will be submitted through the trial counsel to the convening authority. The convening authority will forward the request to both the Chief, USATDS in the case of regular and USAR counsel or the Chief, ARNG TDS in the case of ARNG counsel, and the commander or head of the organization, activity, or agency to which the requested counsel is currently assigned.

1. The Chief, USATDS or the Chief, ARNG TDS will make an administrative determination as to whether an attorney-client relationship in fact exists. If it is determined that such a relationship exists there will be a presumption that the requested person is reasonably available.

2. The commander or head of the organization, activity, or agency to which the requested counsel is assigned, however, will make the final determination as to whether the requested counsel is reasonably available in accordance with this regulation. This determination is a matter within the sole discretion of this authority.

3. An adverse determination pursuant to paragraph 5–9f(2)(b)1 may be reviewed upon request of the accused through the Chief, USATDS to the Commanding General, TJAGLCS.

4. An adverse determination pursuant to paragraph 5–9f(2)(b)2 may be reviewed upon request of the accused through the commander or head of the organization, activity, or agency to which the requested counsel is assigned, to that commander’s higher commander or level of supervision. However, no administrative review may be made that requires action at the Department of the Army or higher level.

(c) *All other requests.* A request for IMC that does not involve a claim of a pre-existing attorney-client relationship and is not a request for counsel currently assigned to USATDS, USAR TDS, or ARNG TDS will be submitted through the trial counsel to the convening authority.

1. If the requested counsel is among those not reasonably available pursuant to RCM 506(b)(1) or pursuant to this regulation, the convening authority will deny the request and notify the accused, unless the accused asserts that the person requested will not, at the time of the trial or preliminary hearing for which requested, be among those so listed as not reasonably available.

2. In all other cases the convening authority will forward the request to the commander or head of the organization, activity, or agency to which the requested counsel is assigned. That authority will make the administrative determination as to whether the requested counsel is reasonably available in accordance with the procedure prescribed by RCM 506(b) and this regulation. The availability determination is a matter within the sole discretion of this authority.

3. An adverse determination pursuant to paragraph 5–9f(2)(c)2 may be reviewed upon request of the accused through that authority to the next higher commander or level of supervision, but no administrative review may be made that requires action at the Department of the Army or higher level.

(d) *Requests involving military judges.* Requests for military judges to serve as IMC will be submitted in accordance with this paragraph and as follows:

1. Requests for military judges to serve as IMC will be submitted to the Chief Trial Judge. The Chief Trial Judge will make an administrative determination whether the requested judge is reasonably available (see RCM 506(b)(1)(B)). This determination is a matter within the sole discretion of the Chief Trial Judge. An adverse determination may be reviewed upon the request of the accused to the Chief Judge, USACCA, but no further review is authorized.

2. Requests for appellate military judges to act as IMC will be submitted to the Chief Judge, USACCA. The Chief Judge will make an administrative determination whether the requested judge is reasonably available (see RCM 506(b)(1)(B)). This determination is a matter within the sole discretion of the Chief Judge, USACCA. An adverse determination is not reviewable.

(3) *Standard of review for denials of IMC requests.* In cases where an adverse determination of a request for IMC is reviewable, and the accused requests that an adverse determination be reviewed, the reviewing authority will use an abuse of discretion standard to review the request and notify the accused of the results of the review as soon as the review is complete.

g. *Control and support of IMC.*

(1) Control and support of all USATDS counsel are governed by chapter 6 of this regulation.

(2) The Chief, USATDS, will exercise operational control over non-USATDS IMC when counsel are to perform required defense duties. The USATDS will provide non-USATDS IMC all support normally given to USATDS counsel. The USATDS will also provide letters of input to the counsel's rater when appropriate.

(3) On appointment as IMC, non-USATDS counsel will notify the RDC for the area in which the court-martial proceedings are to take place.

5–10. Professional standards

a. The Army "Rules of Professional Conduct for Lawyers" (see AR 27–26) are applicable to lawyers involved in court-martial proceedings in the Army.

b. The "Code of Judicial Conduct for Army Trial and Appellate Judges," dated 16 May 2008 (available on the Judge Advocate General's Corps Network (JAGCNet)), is applicable to all trial and appellate military judges and military magistrates.

c. Personnel involved in court-martial proceedings are encouraged to look as well to other recognized sources (for example, decisions issued by state and federal courts or ethics opinions issued by the American Bar Association (ABA) and the states) for guidance in interpreting these standards and resolving issues of professional responsibility. Where an attorney's state bar rules and the Army's Rules of Professional Conduct for Lawyers contain different standards on the same issue, the individual should follow the more restrictive rule. Where Army and state rules are (1) in direct conflict, and (2) both mandatory, AR 27–26, Rule 8.5 directs that Army personnel follow the Army rule in the performance of their official duties. Counsel, with the assistance of their SJA, should first seek to recuse themselves to avoid conflicts in ethical obligation.

5–11. Rating of court members, counsel, and military judges

a. *Court members.* An individual's performance of duty as a member of a court-martial may not be considered or referenced, other than to note selection for duty as a court member, in the preparation of any effectiveness, fitness, or evaluation reports on that individual (see UCMJ, Art. 37(a) and RCM 104 regarding prohibition of unlawful command influence (UCI)).

b. Counsel. A less favorable rating or evaluation of any individual assigned as counsel will not be given because of the zeal with which such member, as counsel, represented any accused or victim. Counsel assigned to the USATDS will be rated as provided by the Chief, USATDS.

b. Military judges. All active and reserve members of the U.S. Army Trial Judiciary will be rated within judicial channels in accordance with rating schemes promulgated by the Chief Trial Judge. All active and reserve appellate judges will be rated in accordance with rating schemes promulgated by the Chief Judge, USACCA.

5–12. Preparation of members of a special or general court-martial

Court members detailed to a SPCM or GCM may never be oriented or instructed on their immediate responsibilities in court-martial proceedings except by the military judge. However, detailing as a court member does not prohibit the member from receiving the general instructional or informational courses in military justice specified in chapter 18. Such instruction is permitted pursuant to UCMJ, Art. 37(a) and RCM 104(a)(3)(A). No other instruction related to the performance of court-martial duties is authorized.

5–13. Preparation of summary court-martial officer

To be properly prepared for duty as an SCM officer, persons so detailed must read and understand publications about their duties. Before the trial of the first case by a SCM officer, the SJA will ensure, through counsel who are not involved with the prosecution, that the SCM officer is familiar with DA Pam 27–7.

Section III

Reports, Investigations, and Subpoenas

5–14. Reports of offenses

a. Reports of serious offenses to trial counsel. Any military authority, including a military law enforcement agency, that receives a report of a serious offense will advise the trial counsel at the initiation of, and critical stages in, the investigation. The commanding general, U.S. Army Criminal Investigation Command (CID) may approve exceptions to this requirement on a case-by-case basis. A serious offense under this paragraph is an offense that is punishable by more than one year in prison or a punitive discharge.

b. Reports of serious offenses involving an Army Reserve Soldier. Any military authority, including a military law enforcement agency, that receives a report of a serious offense involving an Army Reserve Soldier will notify the Chief, Military Law Division, U.S. Army Reserve Command. The commanding general, CID may approve exceptions to this requirement on a case-by-case basis. This notification is to ensure that the Army Reserve is aware of any serious allegations of misconduct involving Army Reserve personnel. A serious offense under this subparagraph is an offense that is punishable by more than one year in prison or a punitive discharge.

c. Reports by SJAs to OTJAG–CLD and Executive Officer to TJAG.

(1) *In general.* SJAs must be sensitive to reporting requirements in this chapter, and make complete and timely reports. Such reports are designed to improve situational awareness and communication within the DOD, while at the same time protecting the accused's right to a fair trial, free from UCI. None of the reporting requirements are intended to preclude a commander's complete evaluation of a case and the exercise of independent discretion before deciding what action to take, if any. Information forwarded under this paragraph does not constitute protected attorney work-product.

(2) *Types of reports.* SJAs must report to the Chief, OTJAG–CLD and the Executive Officer to TJAG, via email or telephone, in the following circumstances:

(a) all allegations of offenses committed by JAGC personnel assigned within their GCMCA;

(b) all significant alleged misconduct by Soldiers assigned to their respective GCMCAs that their CG is reporting to the Chief of Staff of the Army. Significant misconduct under this subparagraph includes:

1. Any offense punishable by death pursuant to the UCMJ and that at least one of the aggravating factors listed in RCM 1004(c) is present.

2. Any offense in violation of UCMJ, Art. 118.

3. Any offense involving significant potential or actual media coverage and/or high visibility interest to Army leadership or to the DOD.

4. Any grave breaches of, or serious crimes under, the law of armed conflict.

(3) *Timing of initial and subsequent reports.* Reports of significant alleged misconduct will be submitted within 48 hours of discovery or notification of the offense when there is a credible allegation that a Soldier has committed a serious offense.

(4) *Contents of report.* Contents of the initial report (this information is exempt pursuant to AR 335–15 from management information control). Initial reports will include that information normally contained in a Serious Incident Report

(SIR) as described in AR 190–45. The initial report will also contain the investigating agency, counsel (if known), and confinement status of the subject. If available, the SRB of the subject(s) should accompany the initial report. Updates will provide the date of all significant events and a brief description of the outcome of that event. Copies of the preferred charges, referred charges, and result of trial will be provided within 24 hours of their completion.

(5) *Offenses punishable by death.* SJAs should review the reporting requirements in chapter 28 for all offenses for which death is an authorized punishment.

5–15. Coordination between trial counsel and law enforcement

a. Trial counsel. Trial counsel will confer regularly about all developing cases with the local CID and military police (MP) personnel. Trial counsel will work closely with and provide legal advice to investigative entities throughout the investigative process. Trial counsel will assist military law enforcement in obtaining search and seizure authorizations, subpoenas, orders, and warrants pursuant to the UCMJ.

b. Law enforcement. Military law enforcement will work closely with trial counsel in investigating a case. Requests for investigative subpoenas pursuant to RCM 703(g)(C)(3) and warrants pursuant to RCM 703A will be submitted through the trial counsel. When a case that was investigated by CID or MP personnel is referred to a SPCM or GCM, law enforcement personnel will continue to assist investigating the case consistent with their regulations.

5–16. Investigative subpoenas

a. In general. Pursuant to UCMJ, Art. 46(d)(1)(C) and RCM 703(g)(3)(D)(v), the parties specified below in this rule may issue an investigative subpoena *duces tecum* at any time from the inception of a military criminal investigation until the case is referred. DD Form 453 will be used for this purpose. A military criminal investigation is any investigation of an alleged violation of the UCMJ conducted by military police investigators or investigators or agents from CID, Department of the Army Civilian detectives or investigators, or any counterpart from the investigative agency of another military Service.

b. When permitted. An investigative subpoena may be issued pursuant to UCMJ, Art. 46 and RCM 703 to obtain matter for a military criminal investigation. Preferral of charges or the identification of a suspect is not required. The issuance of subpoenas for non-criminal investigations is not permitted by this chapter, but may be permitted by other authorities. A subpoena may not be unreasonable or oppressive.

c. Who may issue. Subpoenas may be issued by either a military judge or a trial counsel. If charges have not been referred to trial, the trial counsel may only issue a subpoena after obtaining authorization from the GCMCA. A GCMCA may authorize a trial counsel to issue an individual subpoena, or may authorize the issuance of subpoenas in the course of a specific criminal investigation. The GCMCA may delegate the authority to approve subpoenas pursuant to this rule to the SJA.

d. Defense requests for subpoenas. Any defense request for a subpoena will be prepared such that it is ready for signature by the issuing authority. The defense is not required to explain the basis of the request for a subpoena. After referral, trial counsel must issue a properly presented defense request for subpoena. There are two types of defense requests for a subpoena:

(1) *UCMJ, Art. 32 preliminary hearings.* A defense request for a subpoena in relation to a preliminary hearing pursuant to UCMJ, Art. 32 will be processed in accordance with RCM 405(h).

(2) *Other requests.* All other defense requests for a subpoena will be submitted to the trial counsel. If a defense subpoena request is received before the referral of charges to a court-martial, the trial counsel may defer considering the request until after a referral decision has been made. If the request involves a subpoena for perishable matter (that is, matter for which there is reason to believe may be destroyed in the event of delay), the defense request shall clearly so state, to include the basis of such a belief. When presented with a properly formatted lawful subpoena after referral, the trial counsel will issue the subpoena on behalf of the defense. Upon receipt of matter pursuant to a defense-requested subpoena, the trial counsel will allow the defense to inspect the matter as soon as practicable.

e. Procedure for issuance by military judge. When seeking a subpoena from a military judge, the trial counsel will submit to the military judge a completed subpoena ready for signature. Submission may be made personally or electronically to the military judge with docketing responsibility over the unit to which the trial counsel is assigned, at the military judge's discretion. The trial counsel will provide the military judge such information regarding the nature of the investigation as the military judge may require.

f. Issuance by trial counsel.

(1) *Prior to referral.* Unless authority to approve subpoenas pursuant to this rule is delegated to the SJA, each SJA will identify local procedures for routing investigative subpoena requests to the GCMCA. The assigned trial counsel will coordinate with the supporting law enforcement agency to complete the subpoena request, supporting affidavit if any, and all other matter supporting the request.

(2) *After referral.* A subpoena issued by the trial counsel after referral of charges will comply with RCM 703.

g. Subpoenas for confidential or personal information about a victim. After referral, the trial counsel will provide a victim notice of intent to issue a subpoena for confidential or personal information about that victim prior to issuance (see RCM 703(g)(3)(C)(ii)). The trial counsel will maintain a record of such written notice to the victim in the case file.

5–17. Warrants and orders under the Stored Communications Act

a. In general. This rule establishes Army-specific requirements for obtaining warrants or orders for electronic information. Warrants or orders for electronic information will only be requested from a military judge in cases with a view toward court-martial. This rule is in addition to the requirements contained in UCMJ, Art. 46, RCM 703A, and RCM 309.

b. Responsibilities. Federal law enforcement officers (as defined in RCM 703A(g)) requesting either a warrant to obtain electronic communications from an Electronic Communication Service (ECS) or Remote Computing Service (RCS), or requesting a court order to obtain records or other information pertaining to a subscriber or customer of such service, shall process all such requests through the servicing trial counsel.

c. Requirement for warrant. A trial counsel or federal law enforcement officer seeking to compel the contents (as defined in 18 USC 2510(8)) of electronic communications (as defined in 18 USC 2510(12)) from an ECS or RCS provider will secure a warrant, not a court order.

d. Procedure for requesting a warrant or order. When seeking a warrant or court order from a military judge to compel the production of content or non-content evidence from an ECS or RCS, the trial counsel will submit to the military judge a completed warrant or court order ready for signature. Submission may be made personally or electronically to the military judge with docketing responsibility over the unit to which the trial counsel is assigned. The trial counsel will provide the military judge such information regarding the nature of the investigation as the military judge may require, including a written affidavit and/or presentation of additional evidence supporting the requested process. The trial counsel and federal law enforcement officer will use the forms, court order templates, and affidavit templates provided in MJO or on a publicly available JAGCNet webpage to prepare the submission. The application for warrant and the warrant are DD forms (form numbers pending). Once issued, these forms will be used when requesting a warrant.

e. Executing the warrant or court order. A federal law enforcement officer (as defined in RCM 703A(g)) will serve an approved warrant or court order on the recipient. The warrant or order must contain contact information for questions about the warrant or order including how to request relief. Reference to a public JAGCNet webpage with this information satisfies this requirement. The following attachments must be included with the warrant or court order when served:

(1) *18 USC 2703(d) court order.* Include Attachment A, which lists the specific records and information to be disclosed.

(2) *Warrant.* Include the following attachments with a warrant:

(a) *Attachment A.* Lists the specific property (such as an email account) authorized to be searched by the warrant; and

(b) *Attachment B.* Lists the particular things the warrant recipient must disclose and identifies the information to be seized by the government.

f. Documenting warrant compliance. After receipt of relevant information based on service of the warrant the trial counsel will provide the military judge an inventory of items received without describing specific content.

5–18. Article 30a proceedings

a. In general. See RCM 309 for guidance on the conduct of pre-referral judicial proceedings. The Chief Trial Judge shall establish and publish procedures for the conduct of pre-referral proceedings.

b. Preparing, maintaining, and distributing copies of proceedings.

(1) *Court reporter.* If a hearing is held as a part of the proceeding, the court reporter will maintain a copy of the recording for the later of two years from the date of the proceeding or until final disposition of the charges related to the proceeding. Records of UCMJ, Art. 30a proceedings are not required to be transcribed before referral. After referral of charges such record will be transcribed to the same extent as required for post-referral proceedings. If charges related to the pre-referral proceeding are referred to trial, the court reporter will ensure that the record of the pre-referral proceeding is included in the record of trial. If the record of any pre-referral proceeding or part of any such proceeding is ordered sealed by the military judge, the court reporter is responsible for complying with the order pursuant to RCM 1113.

(2) *Trial counsel.* The trial counsel shall ensure that the record of the proceeding is forwarded to the convening authority or commander with authority to dispose of the charges or offenses in the case (see RCM 309). The trial counsel will maintain a copy of the record of a pre-referral proceeding, if any, as part of the case file for eventual filing in the record of trial.

5–19. Requests for relief from a subpoena or other process

a. In general. All compulsory process issued under the authority of the UCMJ will contain contact information for questions related to the compulsory process, including how to comply and how to request relief. Reference on the compulsory process document to a JAGCNet public webpage with this information satisfies this requirement.

b. Procedures for requesting relief. The Chief Trial Judge will establish procedures and guidelines for the format, response, and filing of motions under this paragraph.

c. Appeals. Relief may be sought from an adverse ruling by petitioning USACCA in accordance with the rules of that court, which are available at <https://www.jagcnet.army.mil/Sites/ACCA.nsf/home.xsp#>.

d. Failure to comply. Failure to comply with a military judge's order may subject the offender to a warrant of attachment or contempt proceedings.

5–20. Vienna Convention requirements in courts-martial of foreign nationals

This paragraph provides the notification requirements of the Vienna Convention on Consular Relations and bilateral agreements between the United States and other nations regarding consular notification applicable to foreign nationals serving in the U.S. Army who are apprehended or detained to face court-martial within the territory of the United States (see AR 27-56).

a. The SJA must determine whether an agreement exists between the United States and the foreign national's country that requires mandatory notification of the foreign country's nearest embassy or consulate when its national is arrested or detained by the United States. A list of mandatory notification countries and jurisdictions is available at the State Department's webpage: <https://travel.state.gov/content/travel/en/consularnotification/QuarantinedForeignNationals/countries-and-jurisdictions-with-mandatory-notifications.html>. For assistance with determining the existence of applicable agreements, contact OTJAG–NSLD.

b. If a mandatory notification agreement exists:

(1) Notify that country's nearest embassy or consulate, without delay, of the arrest or detention of its national (embassy and consulate contact information is available at <http://www.travel.state.gov>).

(2) Without delay, inform the foreign national that notification is being made to his or her embassy or consulate and that he or she may communicate with his or her consular officers.

(3) Forward any communication from the foreign national to his or her consular officers without delay.

c. If there is no mandatory notification agreement:

(1) Inform the foreign national, without delay, that he or she may have his or her consular officers notified of his or her apprehension or detention and that he or she may communicate with them.

(2) If the foreign national requests consular notification, notify the nearest embassy or consulate without delay (embassy and consulate contact information is available at <http://www.travel.state.gov>.)

(3) Forward any communication from the foreign national to his or her consular officers without delay.

d. A copy of any notice to the foreign embassy or consular's office will be incorporated as part of the allied papers of the court-martial record of trial, if any.

Section IV

Pretrial

5–21. Pretrial confinement

a. General. An accused pending charges should ordinarily continue the performance of normal duties within the accused's organization while awaiting trial. In any case of pretrial confinement, the SJA concerned, or that officer's designee, will be notified prior to the accused's entry into confinement or as soon as practicable afterwards.

b. Appointment of counsel. The SJA concerned will request, from the senior defense counsel (SDC) of the supporting USATDS field office, an appointed counsel to consult with a Soldier placed in pretrial confinement. The request will include a copy of the pretrial confinement checklist and commander's report. If USATDS counsel is not available to consult with the accused prior to or within 72 hours from the time the accused enters pretrial confinement, the SJA will appoint other legally qualified counsel. In such cases, that counsel will ensure that the accused understands that he or she will not ordinarily represent the accused at any later proceeding or court-martial. When practicable, consultation between the accused and counsel preferably will be accomplished before the accused's entry into confinement. If the accused does not consult with counsel prior to confinement, every effort will be made to ensure that the accused consults with counsel within 72 hours of entry into pretrial confinement.

c. Entry into pretrial confinement. An accused who is to be confined will be placed under guard and taken to the confinement facility. The authority ordering confinement will, whenever possible, ensure that a properly completed confinement order accompanies the accused. Prior to review of confinement by a military magistrate, the commander of the person confined will provide a written statement pursuant to paragraph 8–5b(2) to the military magistrate (see RCM 305(h)(2)(c)).

d. Review by military magistrate. See chapter 8 of this regulation for requirements concerning review of pretrial confinement by military magistrates.

5–22. Preparation of charge sheet and effect of preferral of charges

a. Preparation. RCM 307 and DD Form 458 (Charge Sheet), provide instructions in the preparation of charges and specifications. Available data as to service, social security number, and similar items required to complete the first page of the charge sheet will be included. The original will be forwarded (see para 5–24) and signed. If several accused are charged on one charge sheet with the commission of a joint offense (see RCM 307(c)(5)), the complete personal data for each accused will appear on the first page of the charge sheet or on an attached copy. An extra signed copy of the charge sheet will be prepared for each additional accused.

b. Effect of preferral on favorable actions and discharges. After any charge is preferred, DD Form 458 will automatically act to suspend all favorable personnel actions, including discharge, promotion, and reenlistment and will automatically serve as a basis for extending a Soldier's term of service, if required. Filing of a DA Form 268 (Report to Suspend Favorable Personnel Action), and other related personnel actions are still required. Failure to file DA Form 268 does not affect the suspension accomplished by the DD Form 458, or give rise to any rights to the Soldier (see AR 600–8–2). After preferral of a charge, regardless of any action purporting to discharge or separate a Soldier, any issuance of a discharge certificate is void and the Soldier's term of service will be extended, if required, until final disposition of the charge(s), including completion of appellate review. Moreover, if a court-martial has adjudged an unsuspended punitive discharge, any issuance of a nonpunitive discharge certificate is void unless the GCMCA or an appellate court has disapproved the adjudged punitive discharge. The Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary's delegate, or the officer exercising GCMCA over the Soldier at the time of the Soldier's request for exception may approve an exception to this subparagraph.

5–23. Mandatory use of Military Justice Online

The use of MJO throughout the court-martial process is mandatory. Paralegals and attorneys will prepare charge sheets using MJO. Charge sheets will be kept current in MJO as changes are made to the charges and specifications during the course of the military justice process, including at referral, through preparation of the record of trial, until the record of trial is forwarded for appellate review.

5–24. Forwarding of charges and requests for pretrial delay

a. Transmittal by SCMCA. When trial by a SPCM or GCM is appropriate, and the officer exercising SCM jurisdiction is not empowered to convene such a court (pursuant to RCM 504(b)), the officer exercising SCM jurisdiction will personally decide whether to forward the charges and allied papers (see RCMs 401 through 403).

b. Routing. Charges and allied papers ordinarily will be forwarded through the chain of command to the appropriate court-martial convening authority. The charges will be forwarded by endorsement or memorandum of transmittal signed by the SCM authority or authenticated with that officer's command line recommending disposition of the charges (see RCM 401(c)(2)(A), Discussion).

c. Requests for pretrial delay. Before referral, all requests for pretrial delay, together with supporting reasons, will be submitted to the convening authority before whom the charge(s) is/are pending for resolution. Pretrial delay should not be granted *ex parte*; when practicable, the decision granting delay, together with supporting reasons and the dates covering the delay, should be reduced to writing. Before referral, the convening authority who has the charges may delegate the authority to grant delays to a UCMJ, Art. 32 preliminary hearing officer. This delegation should be made in writing. After referral, all requests for pretrial delay will be submitted to the military judge for resolution.

5–25. Authorization for payment of transportation expenses and allowances to civilian witnesses appearing before UCMJ, Article 32 preliminary hearings

a. A civilian witness, whose testimony is determined to be relevant, not cumulative, and necessary pursuant to RCM 405(h) will be invited by counsel for the government to provide testimony before a UCMJ, Art. 32 preliminary hearing. If the individual agrees, counsel for the government will make arrangements for that witness' testimony. If expense to the government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, shall determine whether the witness testifies in person, by video teleconference, by telephone, or by similar means of remote testimony.

b. If the convening authority, or the convening authority's delegate, determines that in-person testimony is appropriate, the civilian witness is authorized transportation expenses and allowances.

5–26. Submission of resignation for the good of the service in lieu of general court-martial

a. *In general.* When submitted, a resignation for the good of the service in lieu of court-martial (RFGOS) pursuant to AR 600–8–24 will be processed simultaneously with any court-martial proceedings. The submission of a RFGOS will not, ordinarily, be cause for delaying a court-martial. If a RFGOS is approved before findings are announced, the approved RFGOS will act to end the court-martial. If a RFGOS is approved after findings are announced, the approved RFGOS will be considered as an exercise of the Secretary's UCMJ, Art. 74 clemency authority. Nothing in this paragraph will be interpreted as requiring the Secretary or the Secretary's designee to act on a RFGOS in a certain manner.

b. *Submission of RFGOS.* An accused who has made a decision to submit a RFGOS should submit the RFGOS as soon as practicable to allow the Secretary sufficient time to consider and act on the RFGOS. An accused may include in the RFGOS submission any docketing information about the court-martial. Failure to submit a RFGOS in time for it to be acted on before the findings are announced will result in the findings being entered by the military judge. The convening authority (pursuant to UCMJ, Art. 60a & Art. 60b), and the Secretary (pursuant to UCMJ, Art. 74) have limited or no authority to set aside the findings of a court-martial. For a RFGOS that is not approved until after the findings and sentence have been announced, the finding of guilty cannot be modified (except in the small number of cases not described by RCM 1109(a)), and only the unexecuted portion of the sentence to confinement can be set aside (see para 5–26e).

c. *Transmittal.* The command in receipt of a RFGOS will expeditiously process the RFGOS to Commander, U.S. Army HRC and not hold the RFGOS in abeyance for any reason (see AR 600–8–24).

d. *Action by convening authority when RFGOS approved before the announcement of findings.* Upon notification that the Secretary has approved an accused's RFGOS, if findings have not been announced, the convening authority will—

- (1) withdraw and dismiss the charges and specifications; and
- (2) if applicable, immediately order the release of the accused from pretrial confinement.

e. *Action by military judge if RFGOS approved after the announcement of findings.* The approval of a RFGOS after findings have been announced will be treated as an exercise of the Secretary's UCMJ, Art. 74 clemency authority and the military judge will cause the entry of judgment to reflect the Secretary's decision.

(1) If the military judge receives notice that the Secretary has approved an accused's RFGOS after findings have been announced but before judgment has been entered into the record, the military judge will—

- (a) order the release of the accused from confinement, if applicable;
- (b) enter into judgment the findings of the court-martial;
- (c) except as provided in paragraph 5–26e(1)(d), enter into judgment a sentence of no punishment; and
- (d) if the sentence includes a punishment of life without the possibility of parole, enter into judgment only that part of the sentence that includes confinement for life without the possibility of parole.

(2) If the Secretary has approved an accused's RFGOS after judgment has been entered into the record, the approved RFGOS and a copy of the entry of judgment will be forwarded to USACCA for action consistent with the approved RFGOS.

5–27. Plea agreements

a. *Restitution.* Prior to signing any plea agreement or pretrial agreement, in any case in which a person has suffered personal injury or property loss or damage as a result of an offense, the convening authority will consider the appropriateness of requiring victim restitution as a term of the plea agreement.

b. *Agreements for a specific sentence.* A plea agreement pursuant to RCM 705(d)(2) may include an agreement for a specific sentence provided that the agreement complies with para 5–27c.

c. *Complete presentencing proceedings.* A plea agreement cannot deprive an accused of complete presentencing proceedings. Agreements to deprive the court of relevant information stand on different ground than agreements to admit evidence that otherwise would have been prohibited. (See *United States v. Mezzanatto*, 513 U.S. 196 (1995).)

(1) *Restrictions on information are prohibited.* In compliance with RCM 705, no term of a plea agreement will prohibit an accused from introducing admissible evidence pursuant to RCM 1001(d) to the court-martial during presentencing.

(2) *Restrictions on the manner information is presented are permitted.* By agreement of the parties, a plea agreement may limit the manner or form in which presentencing evidence will be admitted to the court-martial, including:

(a) an agreement that witness testimony will be introduced by affidavit, by stipulation, or by means other than in-person testimony; and/or

(b) an agreement to waive objections to the admissibility of evidence pursuant to the MREs. Such an agreement does not include the waiver of a privilege unless the privilege holder is a signatory to the agreement and the agreement specifically addresses the waiver of the privilege.

d. Cases straddling the effective date of Military Justice Act of 2016.

(1) In a case where at least one charged offense occurred before 1 January 2019 and at least one charged offense occurred on or after 1 January 2019, to ensure that any sentence limitation contained in the agreement will be in compliance with RCM 705, the plea agreement will contain a term stating whether or not the accused agrees to elect to have the Military Justice Act of 2016 (MJA 16) sentencing rules apply. Compare RCM 705(d)(2) with RCM 705, MCM (2016); see also RCM 902A.

(2) Defense counsel and SJAs should be aware that in a case in which a plea agreement is agreed upon based on the convening authority's power pursuant to UCMJ, Art. 60, such authority depends on the date of offense of the accused's earliest conviction.

e. Interpretation of this paragraph. The provisions contained in paras 5–27*b* and *c* are intended to provide prophylactic guidance on any ambiguity contained in RCM 705. Accordingly, the restrictions contained in paras 5–27*b* and *c* will not apply if:

(1) The President amends RCM 705 in a manner that makes this paragraph inconsistent with RCM 705; or

(2) The restrictions imposed by paras 5–27*b* and *c* are subsequently determined to be greater than that required by RCM 705.

5–28. Referral of charges

a. Personal determination of the convening authority. The convening authority will personally determine whether to refer the charges to trial by court-martial and the level of court-martial to which the charges will be referred. This function may not be delegated. The endorsement or other directive referring the charges to a court-martial for trial will be signed by the convening authority or will be authenticated with the convening authority's command line. A warrant or noncommissioned officer may not act in a capacity as an adjutant or assistant adjutant to authenticate a command line (see AR 614–100) without prior signature authority pursuant to AR 25–50. Use of the command line verifies that the commander has personally acted (see RCM 601(e)).

b. Capital referrals. SJAs will submit reports of a capital referral in accordance with paragraph 28–2.

c. Review of decisions not to refer charges of certain sex-related offenses to trial by court-martial.

(1) *General.* This paragraph implements Section 1744, NDAA FY 2014 and Section 541, NDAA FY 2015 regarding the requirement for superior competent authority review of GCMCA decisions not to refer a sex-related offense, as defined in para 5–28*c*(2), to trial by court-martial.

(2) *“Sex-related offense” defined.* For purposes of this paragraph, the term “sex-related offense” means any of the following:

(a) Rape or sexual assault under subsection (a) or (b) of UCMJ, Art. 120 (as in effect at the time of the offense).

(b) Forcible sodomy under UCMJ, Art. 125, if committed prior to 1 January 2019. (See appendixes 21 and 22, MCM 2019).

(c) An attempt to commit an offense specified in paragraph 5–28*c*(2)(a) or (b) as punishable pursuant to UCMJ, Art. 80.

(3) *Pretrial advice.* To advise the convening authority and to facilitate further review, in cases that may be subject to this rule, the pretrial advice of the SJA may include an assessment as to whether or not the available evidence at the time of referral is sufficient to prove the offense beyond a reasonable doubt (see appendix 2.1, MCM, 2019).

(4) *Non-referral decisions requiring review.* A superior competent authority will review GCMCA decisions not to refer charges to trial by court-martial in cases involving sex-related offenses alleged by a victim as set forth in paragraphs 5–28*c*(5) and (6). In any case in which the accused is charged with committing multiple sex-related offenses against one or more victims and the GCMCA refers at least one sex-related offense to trial by court-martial, superior competent authority review is not required. If the GCMCA does not refer any sex-related offenses, review by the appropriate superior competent authority is required (see paras 5–28*c*(5) and (6)).

(5) *Non-referral decisions requiring review by the Secretary of the Army.*

(a) In any case where a GCMCA decides not to refer any sex-related offense to trial by court-martial after receiving SJA Article 34 pretrial advice recommending that a sex-related offense be referred to trial by court-martial, the GCMCA must forward the case to the Secretary of the Army for review.

(b) *Specific review requirements.* As part of the review, the Secretary of the Army will consider the following:

1. The case file (as defined in para 5–28*c*(5)(c)); and

2. Whether the GCMCA forwarding the case file for review considered the victim's statement(s) and views concerning disposition of the alleged sex-related offense(s) in making the referral decision.

(c) *Elements of a case file.* A case file forwarded to a superior competent authority for review pursuant to this paragraph shall include all of the following:

1. All preferred charges and specifications;

2. All reports of investigations of such charges, including the military criminal investigation organization report and the UCMJ, Art. 32 preliminary hearing report or waiver;

3. Certification that the victim(s) of the alleged sex-related offense(s) was notified of the opportunity to express views on the victim's preferred disposition of the alleged offense(s) for consideration by the GCMCA;

4. All statements of the victim(s) provided to the military criminal investigative organization and to the victim's chain of command relating to the alleged sex-related offense and any statement provided by the victim(s) to the GCMCA expressing the victim's view on preferred disposition of the alleged offense(s);

5. The SJA's written Article 34 pretrial advice to the GCMCA;

6. A written statement explaining the reason(s) the GCMCA decided not to refer the sex related offense(s) to trial by court-martial; and

7. Certification that the victim(s) of the alleged sex-related offense(s) was informed of the GCMCA's decision to forward the case to higher authority for review.

(d) Procedure for forwarding case file to the Secretary of the Army. Case files forwarded to the Secretary of the Army pursuant to this paragraph will be submitted to OTJAG-CLD.

1. Files should be forwarded within 7 days of the GCMCA's determination not to refer charges to trial by court-martial.

2. The servicing Office of the Staff Judge Advocate (OSJA) must email a scanned copy of the file, along with mailing a hard copy file, containing the originals of the charge sheet, transmittal documents, and each of the documents and certifications set forth in paragraph 5-28c(5)(c).

3. The Chief, OTJAG-CLD will forward the file to The Deputy Judge Advocate General, who will prepare the case file for review by the Secretary of the Army. Nothing in this paragraph should be construed to provide an enforceable right of review beyond the Secretary of the Army.

(e) Review by Chief Prosecutor. In any case where a GCMCA declines to refer a sex-related offense to trial by court-martial, the Secretary of the Army must review the decision related to that charge or charges as the superior competent authority if the Chief Prosecutor, in response to a request by the detailed government counsel, requests review of the decision by the Secretary of the Army.

1. *Submission of requests.* Requests for review made to the chief prosecutor will be submitted to OTJAG-CLD, who will forward the request to the Chief Prosecutor.

2. *Enclosures.* The servicing OSJA must email a scanned copy of the government counsel's request and a scanned copy of the file, along with delivering or mailing a hard copy file containing the originals of the charge sheet, transmittal documents, and each of the documents and certifications set forth in paragraph 5-28c(5)(b).

3. *Designation of a chief prosecutor.* The Chief, TCAP shall serve as Chief Prosecutor, unless TJAG designates an alternate chief prosecutor, to review the request.

4. *Review by Secretary of the Army.* If the Chief Prosecutor requests review by the Secretary of the Army, the elements of the case file will be forwarded to the Secretary of the Army within 7 days of this request in accordance with paragraph 5-28c(5)(d).

(6) Non-referral decisions requiring review by the next superior commander authorized to exercise GCMCA. In any case where the GCMCA decides not to refer any sex-related offense to trial after receiving the SJA's UCMJ, Art. 34 pretrial advice recommending the sex-related offense not be referred to trial by court-martial, the GCMCA will forward the case file for review to the next superior commander authorized to exercise GCMCA.

(a) Specific review requirements. As part of the review conducted by the next superior GCMCA, consideration will be given to the requirements set forth in paragraph 5-28c(5)(b).

(b) Elements of case file. A case file forwarded to the next superior GCMCA for review must include each of the elements set forth in paragraph 5-28c(5)(c).

(c) Next superior GCMCA review. After reviewing a case file, the next superior GCMCA will either refer the charges of a sex-related offense to trial by court-martial or uphold the decision of the subordinate GCMCA not to refer the case. Nothing in this paragraph shall be construed to provide an enforceable right of review beyond that which has already been provided for in this regulation or other applicable laws or regulations.

1. *Decision to refer to trial by court-martial.* If the next superior GCMCA decides to refer charges of a sex-related offense to trial by court-martial, he or she will personally refer the charges to his or her court-martial panel and not direct the subordinate GCMCA to refer them. The next superior GCMCA will use the trial team and special victim capability personnel at his or her disposal, if available, and will pay for all trial-related expenses for the court-martial to include witness fees, TDY, expert witness expenses, and any other necessary expenses. If the next superior GCMCA does not have a court-martial panel, trial team or special victim capability personnel, he or she will coordinate with the subordinate GCMCA to provide such services for the court-martial proceedings.

2. *Decision not to refer case to trial by court-martial.* If the next superior GCMCA agrees with the subordinate GCMCA's decision not to refer the charges of a sex-related offense to trial by court-martial, he or she must provide written justification for the decision and immediately notify the victim(s) as set forth in paragraph 5–28c(7).

(7) *Victim to be informed of review decision.* The victim(s) of the alleged sex-related offense(s) must be notified of the results of any review conducted pursuant to paragraphs 5–28c(5) or (6). Notification to the victim(s) must be conducted in a manner consistent with paragraph 17–15.

5–29. Referrals to special courts-martial

a. In general

(1) The following personnel will be detailed to all SPCM:

(a) Military judge;

(b) Government counsel qualified pursuant to UCMJ, Art. 27(b);

(c) Defense counsel qualified pursuant to UCMJ, Art. 27(b); and

(d) Court reporter capable of producing a verbatim record of the proceedings.

(2) Prior to referring any charge to a SPCM, the convening authority will consult with a JA pursuant to RCM 406A. The court-martial convening authority or any higher convening authority may, in an individual case or class of cases, require the servicing SJA to prepare the pretrial advice.

(3) Unless the convening authority causes restrictive language to be added to the “instructions” portion of block 14, DD Form 458, all SPCM referrals that meet the requirements in paragraphs 5–29a(1) and (2) are empowered to adjudge a bad-conduct discharge. There is no requirement to annotate on block 14 of DD Form 458 that the court is empowered to adjudge a bad-conduct discharge.

b. Special court-martial with military judge alone convened pursuant to UCMJ, Art. 16 (c)(2)(A).

(1) A convening authority may refer a case to a SPCM with military judge alone pursuant to UCMJ Art. 16(c)(2)(A) by annotating on the charge sheet as a special instruction that the case will be tried by a military judge alone.

(2) SPCM convened pursuant to UCMJ, Art. 16(c)(2)(A) are only authorized for cases in which all charged misconduct occurred on after 1 January 2019.

(3) An accused may object to trial by SPCM consisting of a military judge alone under UCMJ, Art. 16(c)(2)(A) pursuant to RCM 201(f)(2)(E) prior to arraignment. The objection may be made at any time after referral and there is no requirement to wait until arraignment. When the objection is made prior to the first UCMJ, Art. 39(a) session, the military judge may sustain the objection without calling the court to order. If a military judge sustains an objection, the trial counsel shall inform the convening authority. The convening authority will withdraw the charges and may dispose of the charges, at his or her discretion, pursuant to RCM 404 or 407, as applicable.

c. Special court-martial convening authority. Special courts-martial convening authorities (SPCMCAs) are encouraged to take advantage of the full range of authorized means of disposing of charges. A GCMCA may withhold authority to convene SPCMs in any individual case or class of cases.

5–30. Service of accused's copy of charge sheet

a. Summary courts-martial. At the opening session of the trial, before arraignment, the SCM officer will give the accused a copy of the charge sheet, as received and corrected by the officer.

b. Special and general courts-martial. Immediately on receipt of charges referred for trial, the trial counsel of a SPCM or GCM will—

(1) Serve (or cause to be served) on the accused a copy of the charge sheet, as received and corrected by the counsel.

(2) Inform the defense counsel that this copy has been served (see RCM 602(a), Discussion).

5–31. Preliminary procedures for courts-martial

a. Docketing and calendar management. The Chief Trial Judge will establish procedures for docketing and calendar management and publish them in the *United States Army Trial Judiciary Rules of Practice Before Army Courts-Martial* (Rules of Court) (available on JAGCNet).

b. Article 39(a) sessions.

(1) Sessions pursuant to UCMJ, Art. 39(a), will be called on order of the military judge, or on request of either the trial counsel or defense counsel. In requesting a UCMJ, Art. 39(a), session, counsel should give opposing counsel adequate opportunity to prepare. If the military judge has issued a pretrial order setting forth specific dates for submission of motions and responses thereto, such matters will be submitted in accordance with the order(s). If the military judge has not issued such an order or orders, counsel will comply with the notice and service provisions of the Rules of Court. The notice will inform opposing counsel and the judge whether submission will be on brief only, by oral argument, or both and whether evidence will be presented. The notice will include—

- (a) A statement of the substance of the matter, and
- (b) The points and authorities on which counsel will rely.

(2) Counsel will comply with orders of the military judge regarding submission of briefs on pretrial motions. In the absence of an order, counsel are encouraged to submit briefs to the military judge and opposing counsel before UCMJ, Art. 39(a) sessions and in accordance with any applicable rules of court.

(3) Motion sessions will be scheduled and conducted so that interlocutory matters will be promptly decided and dilatory or piece-meal presentations will be precluded. (See RCMs 905 through 907, as to waiver of issues by failure to present timely motions for relief.)

(4) The use of audiovisual technology (such as video teleconferencing technology) to establish the presence of the accused, military judge, trial counsel, and defense counsel is authorized, provided that the requirements of UCMJ, Art. 39 and the MCM, are satisfied.

5–32. Witness attendance

a. Subpoenas. A subpoena may be served informally by certified first class mail, return receipt requested. Personal delivery must be used for formal service of subpoenas (see RCM 703(g)(3)(E) and Discussion).

b. Warrants of attachment. When it is necessary to issue a warrant of attachment, the military judge, or the convening authority if a military judge has not been detailed pursuant to UCMJ, Art. 30a or Art. 26, will use DD Form 454 (Warrant of Attachment). A warrant of attachment may be executed by a U.S. Marshal or other proper authority, as described in RCM 703(g)(3)(H) and Discussion.

c. Arrangements for travel overseas. See paragraph 17–22 for arrangements for travel of civilian witnesses to proceedings overseas.

d. Audiovisual and teleconferencing technology. Witnesses may testify via the use of audiovisual and teleconferencing technology, consistent with the MCM, applicable statutory provisions and case law, and the United States Constitution.

e. Witness fees and allowances overseas. When there is a court-martial or UCMJ, Art. investigation in a foreign country outside the jurisdiction of the civil courts of the United States, the affected major overseas commander or designee prescribes the fees and allowances for witnesses who are not employed by the U.S. government. Unless otherwise provided for in international agreements, such fees and allowances shall not exceed the maximum rate permitted to such witness when attending the courts of the United States or the courts of the foreign country, whichever is higher. If a fee schedule governs the compensation of local expert witnesses in the host nation, the major overseas commander or designee may prescribe the use of the host nation fee schedule to pay the local expert witness.

Section V

Trial

5–33. Procedure for summary courts-martial

a. In general. DA Pam 27–7 and appendix 9, MCM 2019, will serve as guides for SCM procedure, but nothing contained therein will give an accused any greater protection than that required by military due process.

b. No representation at summary courts-martial. Counsel will not represent the government at SCM unless the accused is represented by counsel and the SJA approves the representation.

c. Accused consultation with counsel. Except when military exigencies require otherwise, the SCM officer will grant the accused an opportunity to consult with qualified defense counsel before the trial date for advice concerning the accused's rights and options and the consequences of waivers of such rights in voluntarily consenting to trial by SCM. Whenever the SCM officer denies the accused an opportunity to consult with counsel before trial, the circumstances will be fully documented by the SCM officer in a certificate attached to the record of trial. Failure to provide the accused with the opportunity to consult with counsel may make the record of the SCM inadmissible at a subsequent court-martial.

d. Notification and waiver. The DA Form 5111 (Summary Court-Martial Rights Notification/Waiver Statement), will be completed and attached to each copy of the charge sheet.

e. Spokesperson. Convening authorities are authorized, but not required, to provide the accused the assistance of an assigned spokesperson to assist in gathering evidence to be used either in findings or sentencing, building a presentation for the SCM officer, and speaking on behalf of the accused. The authorization or use of a spokesperson will not delay the court-martial proceedings. The OSJA will provide any spokesperson with a copy of DA Pam 27–7.

5–34. Conditional pleas of guilty

Because conditional guilty pleas subject the government to substantial risks of appellate reversal and the expense of retrial, SJAs will consult with the Chief, Government Appellate Division (GAD) prior to the government's consent regarding an

accused entering a conditional guilty plea at court-martial. Once this coordination is complete, the trial counsel may consent, on behalf of the government, to the entering of the conditional guilty plea by the accused in accordance with RCM 910(a)(2).

5–35. Personally identifiable information

a. In general. Unless sealed, the record of trial and documents introduced at a court-martial should be treated as presumptively public documents. Social security numbers, bank account numbers, and other sensitive information should not be introduced into evidence unless relevant to some issue in contention. When it is necessary to include such information in the record of trial, counsel should submit the matter under seal. Counsel will not presume that some other person will remove PII from the records at a later time. (See also para 5–56*h*).

b. Identification of witnesses. After a witness is sworn, the witness should be identified for the record (full name, rank, and unit, if military, or full name and work address, if civilian (see RCM 913(c)(2), Discussion). Neither a social security number nor a home address will be used to verify witness identity.

5–36. Sentencing

a. Evidence of the accused's prior service. For purposes of RCM 1001(b)(2) and (d), trial counsel may, at the trial counsel's discretion, introduce to the court-martial copies of any personnel records that reflect the past conduct and performance of the accused, made or maintained according to departmental regulations. Examples of personnel records that may be presented include—

- (1) The ERB, Officer Record Brief (ORB) or SRB (or comparable document).
- (2) Promotion, assignment, and qualification orders, if material.
- (3) Award orders and other citations and commendations.
- (4) Records of NJP, except for summarized records of proceedings (DA Form 2627–1), from any file in which the record is properly maintained by regulation.
- (5) Written reprimands or admonitions required by regulation to be maintained in the AMHRR of the accused.
- (6) Reductions for inefficiency or misconduct.
- (7) Bars to continued service.
- (8) Evidence of civilian convictions entered in official military files.
- (9) Officer and enlisted evaluation reports.
- (10) The DA Form 3180 (Personnel Screening and Evaluation Record).
- (11) Records relating to discipline and adjustment boards and other disciplinary records filed in corrections files in accordance with AR 190–47.
- (12) Personnel records contained in the AMHRR or located elsewhere, including but not limited to the correctional file, unless prohibited by law or other regulation. (See AR 600–8–104, which discusses personnel files, and AR 190–47, which discusses corrections files.)

b. Use of original documents. Copies may be substituted for original documents or evidence, with permission, in the record (see MRE 901, for authentication of original copies).

c. Authenticating government files. SJAs may designate personnel within the OSJA to act as authorizing officials for Soldiers' AMHRRs. Designation must be in writing and specify the period of time in which the designation will be valid. Once designated, these authorizing officials may access and download Soldiers' AMHRRs from government databases for use at courts-martial or nonjudicial and administrative proceedings.

5–37. Automatic reduction pursuant to UCMJ, Article 58a

a. In general. Automatic reduction to the lowest enlisted pay grade by operation of UCMJ, Art. 58a will be effected in the Army in accordance with this paragraph. In all cases, the court-martial may adjudge a reduction to the grade of private E–1 or any intermediate grade or no reduction at all.

b. Any alleged offense committed before 1 January 2019. In cases where any charge or specification alleges conduct that was committed prior to 1 January 2019 reduction to the lowest enlisted pay grade will be automatic only in a case in which the approved sentence includes, whether or not suspended, either—

- (1) A dishonorable or bad-conduct discharge, or
- (2) Confinement in excess of 180 days (if the sentence is awarded in days) or in excess of 6 months (if the sentence is awarded in months).

c. All alleged offenses committed on or after 1 January 2019. In cases where all charges and specifications allege conduct that was committed on or after 1 January 2019, reduction to the lowest enlisted pay grade will be automatic only if at least one of the offenses for which the accused is sentenced occurred after the President had delegated to the Secretary the authority to establish the conditions for automatic reductions, and the sentence included:

- (1) a dishonorable or bad-conduct discharge; or
- (2) confinement in excess of 180 days (if the sentence is awarded in days) or in excess of 6 months (if the sentence is awarded in months).

5–38. Accused’s rank insignia while in confinement

Confinement facilities will determine the insignia of rank, if any, that Soldiers will wear in confinement; this determination will not affect entitlement to pay and allowances. Restoration of rank or suspension of a reduction will not affect the insignia of rank worn by a Soldier within a confinement facility.

5–39. Hard labor without confinement

Hard labor without confinement is an authorized court-martial sentence for enlisted members (see RCMs 1003 and 1301). Hard labor without confinement (like the punishment of restriction) is effective upon entry of judgment at a SPCM or GCM, or at a SCM, when ordered executed in the convening authority’s action in accordance with UCMJ, Art. 57(a)(6).

a. Hard labor without confinement will—

- (1) Be performed in a manner directed by the Soldier’s immediate commander. Such duties will normally be performed in public view and may not include duties that constitute a safety or health hazard to the convicted Soldier;
 - (2) Focus on punishment and may include duty to induce fatigue;
 - (3) Not excuse the Soldier from his or her regular duties. The immediate commander will determine the number of hours of hard labor the Soldier will perform in addition to his or her regular duties;
 - (4) Not include duties associated with maintaining good order and discipline, such as charge of quarters and guard duties;
 - (5) Run consecutively once ordered executed and served in its entirety unless the executed portions are remitted by the convening authority; and
 - (6) Not impinge upon the Soldier’s opportunity to consume three meals daily, though meals may be provided by meals ready to eat, or similar substitutes, nor impinge upon the opportunity for a minimum of four uninterrupted hours of sleep per night.
- b.* Upon completion of the duties specified as the daily assignment of hard labor without confinement the Soldier should be permitted to take leave or liberty to which entitled.

Section VI

Post-trial

5–40. Statement of Trial Results for special and general courts-martial referred on or after 1 January 2019

a. Preparation. A Statement of Trial Results (STR) will be prepared in all cases in which an accused has been arraigned, regardless of the eventual disposition of the accused’s case. The STR replaces the Report of Result of Trial for all purposes, including confinement, pay, and any other personnel action associated with the result of a trial of the accused. Unless otherwise directed by the military judge, the trial counsel will ensure that a STR, in accordance with RCM 1101 and paragraph 5–40*b*, is prepared in MJO so that it will be ready for review and signature by the military judge as soon as possible after sentence is announced. Before signing the STR, the military judge will review the STR for accuracy with trial counsel and counsel for the accused.

b. Contents. In addition to the contents required pursuant to RCM 1101(a), the STR will include the following:

- (1) The Social Security Number and DOD identification number of the accused;
- (2) An indication whether deoxyribonucleic acid (DNA) processing is required in accordance with 10 USC 1565;
- (3) An indication whether sex offender registration is required in accordance with 34 USC 20901 et seq., or DODI 1325.07;
- (4) An indication whether the accused has been convicted of a crime punishable by imprisonment for a term exceeding one year (see 10 USC 922(g)(1));
- (5) An indication whether any offense for which the accused was convicted is a misdemeanor crime of domestic violence (see 18 USC 922(g)(9));
- (6) The date of any board of inquiry pursuant to RCM 706; and
- (7) An indication whether the accused was convicted of a qualifying sex-related offense that requires an assignment consideration code (ASCO) of L3 or L8 (see chapter 24).

c. Distribution.

(1) Trial counsel will ensure that the STR is distributed in accordance with RCM 1101(d) and included in the record of trial in accordance with RCM 1112(b)(7). For purposes of RCM 1101(d), the convening authority's designee is the SJA or legal advisor who provides the convening authority with clemency advice.

(2) Trial counsel will provide a copy of the STR to the servicing Defense Military Pay Office (DMPO) in any case involving a reduction in rank, a forfeiture of pay, or a fine.

(3) Escorts for post-trial prisoners transferred to the U.S. Disciplinary Barracks (USDB) or other military corrections system facilities must carry a copy of the signed STR for delivery to the USDB with the prisoner.

(4) Trial counsel will provide a copy of the STR to the military law enforcement agency that investigated the case, either the servicing Provost Marshal's Office for MPI investigations; or HQ, CID, CIOP-ZC, 27130 Telegraph Road, Quantico, VA 22134 for CID investigations.

(5) A signed STR indicating that an L3 or L8 ASCO is required based on the accused's conviction of a qualifying sex-related offense constitutes a complete request for such code. The STR may be transmitted to HRC without additional documentation to support an L3 or L8 ASCO request, in accordance with procedures established by HRC.

5-41. Accused/crime victim access to the court-martial record

a. In general. Upon receiving a valid request pursuant to either RCM 1106, 1106A, or both, the trial counsel will provide the court-martial record to the counsel for the accused, and to counsel for any crime victim, as required. The trial counsel is not required to honor a request for a court-martial record made pursuant to this paragraph after the convening authority has taken action on the case.

b. Court-martial record. For the purpose of compliance with RCM 1106 and 1106A, and this paragraph, the court-martial record consists of:

(1) a copy of the audio recording of all open sessions of the court-martial (if providing an audio recording is impracticable, a substantially verbatim written transcript of all open sessions of the court-martial satisfies this requirement);

(2) unless sealed, copies of, or access to, the evidence admitted at the court-martial; and

(3) unless sealed, copies of, or access to, the appellate exhibits.

c. No redaction required. The redaction requirements in paragraph 5-56h do not apply to audio court-martial records provided to an accused or a victim pursuant to RCM 1106 and RCM 1106A.

d. Timing. Unless otherwise impracticable, within five duty days after receiving a proper request for access to the court-martial record, the trial counsel will ensure compliance with paragraph 5-41a. The 10-day time period for submission of accused and victim matters to the convening authority pursuant to RCM 1106 and 1106A is not dependent upon receipt of a court-martial record. However, failure by the trial counsel to comply with the time requirement under this paragraph will constitute good cause for allowing up to 20 additional days pursuant to RCM 1106 and 1106A.

e. Format of court-martial records. The format of audio court-martial records provided under this section will be MP3 or similar format. Requesters in paragraph 5-41a may state, in writing, that they require a different format that can be produced by the Army's official court-martial recording system at the time the request is made, and the reasons that this different format is required. The SJA or his or her designee is the final decision authority for such requests.

5-42. Reassignment of post-trial Soldiers in confinement or on excess leave

a. Place of confinement. The place of confinement will be determined in accordance with AR 190-47.

b. Reassignment of confined accused. Personnel accountability for post-trial Soldiers in confinement will be administratively reassigned immediately after trial from their unit of assignment at the time of their conviction to the appropriate personnel control facility (PCF) of the designated military confinement facility (MCF), except those Soldiers who receive a sentence of 120 days (4 months) or less of confinement, without a discharge, who will remain assigned to their parent unit.

c. Reassignment of accused on excess leave. Personnel accountability for post-trial Soldiers on excess leave will be administratively reassigned from their unit to the Fort Sill PCF immediately upon action placing them in excess leave status. Such administrative reassignment of personnel accountability will not affect the authority of the convening authority who referred the case to trial to grant clemency pursuant to UCMJ, Art. 60a and 60b.

d. Service on Clerk of Court, USACCA. The GCMCA will ensure that the Clerk of Court, USACCA, is expeditiously furnished copies of all reassignment orders and excess leave orders or a copy of DA Form 31 (Request and Authority for Leave) when an accused has been reassigned from his or her jurisdiction or placed on excess leave. All documents reflecting a change in the Soldier's duty status or unit of assignment, including voluntary or involuntary excess leave documents, will be included with the allied papers in the record of trial. If the record of trial has been previously forwarded for appellate review, any new documents reflecting a change in duty status or unit of assignment including voluntary and involuntary excess leave documents will be mailed promptly to the Clerk of Court, USACCA.

5–43. Compliance with plea agreements

If a Soldier is transferred to a PCF and there was a plea agreement in the court-martial that resulted in the post-trial confinement, the convening authority of the gaining unit will, on behalf of the convening authority who entered into the plea agreement, comply with all the terms and conditions in the plea agreement.

5–44. Staff Judge Advocate advice on clemency action

a. In general. Except as provided in paragraph 5–44*f*, the SJA will advise the convening authority in writing prior to the convening authority’s exercise of clemency power. The advice will include the clemency powers that apply in a particular case based on the date of the earliest offense for which the accused was found guilty. Use of an appropriate standard template, such as the SJA Clemency Advice template in MJO, satisfies the requirements of this paragraph.

b. Advice on findings. The SJA will advise the convening authority if the convening authority is authorized to set aside any finding of guilty pursuant to RCM 1110. If the convening authority has no authority to set aside a finding, the advice shall so state.

c. Advice on sentence. The SJA will advise the convening authority if the convening authority is authorized to set aside or suspend any part of the sentence pursuant to RCM 1109 or RCM 1110. If the convening authority has no power to set aside or suspend any part of the sentence, the advice shall so state.

d. Recommendation. When the convening authority may exercise clemency under paragraphs 5–44*b* and *c*, the SJA may make a recommendation as to whether the convening authority should exercise that power. A written recommendation is not required.

e. Other matters. The SJA clemency advice will indicate whether the accused made any request for deferment or waiver of forfeitures, including whether the accused submitted the necessary information for transferring forfeitures for the benefit of dependents. The advice will indicate whether the accused or any victim submitted matters for the convening authority’s review, and whether any of those matters are prohibited pursuant to RCM 1109(d)(3)(C). The SJA clemency advice to the convening authority will also indicate whether the military judge made a suspension recommendation and, if so, the limits of the convening authority’s suspension authority based on the military judge’s recommendation.

f. Exception. The requirement for written advice does not apply to any case in which the sentence does not include a punitive discharge, dismissal, or confinement in excess of 180 days (if the sentence is awarded in days) or in excess of 6 months (if the sentence is awarded in months).

g. Notice. When the convening authority’s clemency action is served on the accused or crime victim, the written advice to the convening authority required pursuant to this rule, if any, will be included (see paragraph 5–45).

5–45. Convening authority clemency action

a. In general. This paragraph explains the convening authority’s post-trial responsibilities and authorities. Depending on when an offense was committed, and when the case was referred to trial, there are differences in the procedures (for example, whether a SJA recommendation is required) and convening authority clemency powers applicable in a case.

b. Procedures. If a case was referred to trial on or after 1 January 2019, the post-trial procedures contained in this paragraph and UCMJ, Arts. 60a and 60b, as well as RCMs 1109 and 1110 will be used. In a case that was referred to trial before 1 January 2019, this paragraph is not applicable, and the post-trial procedures (to include the requirement for SJA recommendations) contained in RCM 1107, MCM 2016 will be used.

c. Convening authority clemency power. The convening authority’s power to grant clemency is based on the date of the earliest offense of which the accused was found guilty. The SJA Clemency Advice template in MJO provides a summary of the convening authority’s clemency powers based on the date of the earliest offense for which the accused was found guilty.

(1) In a case in which the accused was found guilty of an offense that occurred before 24 June 2014, apply the clemency authority described in RCM 1107, MCM 2012.

(2) In a case in which the earliest offense of which the accused was found guilty was before 1 January 2019, but on or after 24 June 2014, apply the clemency authority described in RCM 1107, MCM 2012 or 2016 as appropriate.

(3) In a case in which all offenses of which the accused was found guilty occurred on or after 1 January 2019 see RCMs 1109 and 1110, MCM 2019.

d. Suspension authority upon recommendation by a military judge. Provided that the case was referred to trial on or after 1 January 2019, after receiving a suspension recommendation from the military judge, the convening authority may suspend a sentence in accordance with RCM 1109(f) regardless of when the offense was committed. The authority to suspend a sentence pursuant to RCM 1109(f) is in addition to any other suspension power the convening authority may have (see RCM 1109(c)(5); RCM 1110(c)).

e. Memorializing convening authority action. Regardless of which version of clemency authority applies, and even if the convening authority decides to take no action, the SJA will ensure that the convening authority complies with the

requirements of RCM 1109(g). The use of the Convening Authority Action template in MJO satisfies this requirement. The action (or memorialization of no action) by the convening authority will be promptly forwarded to the military judge and incorporated in the entry of judgment and as an attachment to the record of trial. A decision by the convening authority to take action or no action on a case must be signed by the convening authority. The action will indicate if either adjudged or automatic forfeitures were deferred. If waiver of automatic forfeitures is approved and included in the action, the waiver must state the person to whom the forfeitures are to be awarded.

f. Convening authority not able to take action. If it is impracticable for the convening authority to take action, that person will cause the court-martial record to be forwarded to an officer exercising GCM jurisdiction over the command. The memorandum or message that causes the record to be so forwarded will contain a statement of the reasons why the convening authority who referred the charges could not act on the record, and any other matters deemed appropriate by the forwarding officer. A copy of the memorandum or message will be included as an attachment to the record of trial.

g. Service of convening authority action.

(1) If the convening authority takes any action on the findings or sentence, a copy of such action will be served on the accused, crime victim, or their respective counsel. If the action is served on counsel, counsel will, by expeditious means, provide the accused or crime victim with a copy. If the judgment is entered within 10 duty days of the convening authority's action, service of the entry of judgment will satisfy this requirement.

(2) If the convening authority elects to take no action on the findings and sentence, the accused and any crime victim will be notified. Notification may occur by any reasonable means and notice may be served on their respective counsel.

5-46. Post-trial Article 39(a) sessions

a. Timing of motions. Post-trial motions will be filed no later than fourteen days after the defense counsel, or the accused when unrepresented, receives the STR, unless the time to file is extended by the military judge, subject to the exceptions in 5-46a(1) and (2).

(1) Motions to correct an error in the convening authority's action will be filed no later than five days after the party receives the convening authority's action.

(2) Motions to correct a clerical or computational error in a judgment entered by the military judge shall be made within five days after a party receives a copy of the Entry of Judgment.

b. Required matter. Post-trial Article 39(a) sessions will be used to resolve any matter that substantially affects the legal sufficiency of any finding or the sentence that is capable of being resolved at the trial level (see RCM 1104). By court rule or by court order, the military judge may require counsel to file all such motions, including:

- (1) any claim of error in the acceptance of a guilty plea;
- (2) any motion to set aside one or more findings of guilty because the evidence is legally insufficient;
- (3) a material error in the Statement of Trial Results;
- (4) any error in the post-trial processing of the court-martial;
- (5) any error in the convening authority's action pursuant to RCM 1109 or 1110.

5-47. Entry of judgment

a. In general. In all cases where an STR was prepared, an entry of judgment will also be prepared. While the military judge is responsible for entering the judgment of the court-martial into the record of trial, the SJA is responsible for the creation of the record of trial and the orderly administration of post-trial process. The entry of judgment will be created electronically using one of the JAGCNet military justice applications designed for this purpose.

b. Timing when there is a guilty finding. In a SPCM or GCM with a finding of guilty the military judge will enter the judgment of the court-martial, within five duty days of the later of:

- (1) receipt of the convening authority's action referred to in paragraph 5-45; or
- (2) the resolution of any post-trial motions filed pursuant to paragraph 5-46.

c. Timing when no finding of guilty. When a court-martial results in a full acquittal or when a court-martial terminates before findings, the judgment shall be entered as soon as practicable. When a court-martial results in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, the judgment shall be entered as soon as practicable after a hearing is conducted pursuant to RCM 1105.

d. Service of judgment on accused. Within 24 hours of entry of judgment, in cases in which the accused is in confinement, the SJA serving the convening authority will notify the confinement facility in which the accused is or will be confined, and the DMPO providing service to that confinement facility, of the entry of judgment. The SJA may use any form of communication that meets the 24-hour requirement, including electronic message, facsimile, and the Defense Joint Military Pay System (DJMS). If DJMS is used, the SJA will coordinate with the appropriate DMPO for use of DJMS, providing that the 24-hour requirement can be met. At a minimum, notification will include—

- (1) The name, rank, social security number, and unit of the accused.

- (2) The date sentence was adjudged.
- (3) The exact sentence adjudged by the court.
- (4) A copy of the Entry of Judgment with attachments.
- e. Copies of the judgment.* Copies of entries of judgment will be forwarded pursuant to appendix I of this regulation.

5–48. Rehearing in cases in which the accused is absent without leave

The following procedures will be followed in pending rehearing cases when the accused is absent without leave:

a. Action by convening authority. The convening authority having jurisdiction over the accused will make the final decision on the practicability of holding a rehearing. If the convening authority decides to defer the final decision, the convening authority will cause a notation to be placed in the accused's unit personnel file. The notation will state that the accused is in an absent without leave status and that a decision regarding rehearing on other charges is pending at a certain jurisdiction. In such cases, the SJA will return the original and all copies of the record for safekeeping to the Clerk of Court, USACCA.

b. Action by the Clerk of Court, USACCA. The Clerk of Court, USACCA will establish procedures for determining the status of the accused and reviewing cases returned pursuant to paragraph 5–48*a*. When the review indicates that the practicability of conducting the rehearing should be reconsidered, the record together with any pertinent information acquired will be transmitted to the appropriate convening authority for determination.

5–49. Suspension of sentence

a. In general. The authority to suspend the execution of parts of a sentence is set forth in RCM 1107(b).

b. Limitations when suspension is based on substantial assistance. In cases pursuant to RCM 1109(e) where a convening authority suspends a sentence based on the recommendation of trial counsel who prosecuted the accused, on the substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, no part of a sentence may be suspended beyond a reasonable period. A reasonable period of suspension will be calculated from the date of the entry of judgment incorporating the convening authority's action to suspend the sentence.

c. Limitations when suspension is based on recommendation of military judge. In cases where the convening authority suspends a sentence on the basis of a military judge's recommendation in the Statement of Trial Results pursuant to RCM 1109(f), the portion of the sentence that is to be suspended may not exceed the portion of the sentence that the military judge recommended be suspended, and the duration of the suspension may not be less than that recommended by the military judge.

5–50. Vacation of suspended sentences

a. In general. For sentences adjudged by GCM or by SPCM including a BCD, see RCM 1108(d). DD Form 455 (Report of Proceedings to Vacate Suspension of a General Court-Martial or of a Special Court-Martial Sentence Including a Bad-Conduct Discharge Under UCMJ, Art. 72, and RCM 1108) with appropriate modifications, may be used as a guide for the hearing and for recording the evidence relied on and the reason(s) for vacating the suspension. The original and two copies of any proceedings vacating a suspension will be sent to the office of the Clerk of Court, USACCA.

b. Cases involving the suspension of a dismissal. In a case of a suspended dismissal, the officer exercising GCM jurisdiction over the accused, following a vacation hearing pursuant to RCM 1109(d), will forward the record of the hearing and all recommendations and a proposed action to vacate the suspension, if the GCMCA recommends vacation, to the Clerk of Court, USACCA.

5–51. Clemency pursuant to UCMJ, Article 74

a. Article 74 authority. The Secretary of the Army, or the Secretary's designee, is empowered by UCMJ, Art. 74(a) to remit or suspend any part or amount of the unexecuted part of any court-martial sentence, other than a sentence approved by the President; and by UCMJ, Art. 74(b) for good cause, to substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial. However, in a case of a sentence of confinement for life without eligibility for parole, after the sentence is ordered executed, the authority of the Secretary concerned under the proceeding sentence may not be delegated and may be exercised only after the service of a period of confinement of no fewer than 20 years.

b. Delegation to Assistant Secretary. The Secretary of the Army's UCMJ, Art. 74 clemency powers, have been assigned to the Assistant Secretary of the Army (Manpower and Reserve Affairs).

c. Delegation to TJAG. Except as noted below, TJAG may mitigate, remit, or suspend, in whole or in part, any unexecuted portion of a court-martial sentence prior to completion of appellate review. TJAG may not mitigate, remit, or suspend a sentence affecting a general officer, a sentence to confinement for life without eligibility for parole, or a sentence imposing death or dismissal. The unexecuted portion of a court-martial sentence includes discharges or dismissals not yet ordered

into execution; unserved confinement, hard labor without confinement, or restriction; and uncollected fines and forfeitures (see UCMJ, Art. 57(c) for what constitutes completion of appellate review).

d. Forwarding of requests. All other requests for clemency petitions to the Secretary of the Army pursuant to UCMJ, Art. 74, should be addressed to the Army Review Boards Agency (ARBA), Clemency and Parole Board, 251 18th Street South, Suite 378, 4th floor, Arlington, VA 22202, and must be submitted by the convicted Soldier or an attorney or recognized veterans organization acting on the Soldier's behalf. If the Soldier is in confinement, the petition will be forwarded through the confinement facility commander. The confinement facility commander will forward the petition along with copies of relevant documents reflecting the Soldier's record in confinement. If the Soldier has reached his or her maximum release date, the Clemency and Parole Board no longer has authority to act on a clemency request. At that point, Soldiers should direct their requests to either the ABCMR or the Army Discharge Review Board (ADRB). The ADRB does not have authority over punitive discharges adjudged by a GCM.

e. Reference. For guidance on the power of the Army Clemency and Parole Board to review cases for clemency and parole, see AR 15-130.

5-52. Petition for new trial pursuant to UCMJ, Article 73

a. In general. RCM 1210 and UCMJ, Art. 73 prescribe procedures for petitioning TJAG for a new trial on the grounds of newly discovered evidence or fraud on the court.

b. Where filed. When direct review of petitioner's case is before either the USACCA or the U.S. Court of Appeals for the Armed Forces (USCAAF), the petition for new trial will be filed with the Clerk of Court, USACCA. For all other cases, the petition will be filed with the Chief, OTJAG-CLD. In either event, the petition must be filed within 3 years after the date of entry of judgment pursuant to UCMJ, Art. 60c.

Section VII

Records of Trial

5-53. Preparation of records of trial

a. In general. Records of trial will be prepared as prescribed in RCMs 1112 and 1305.

b. Important terms.

(1) *Court-martial record.* The court-martial record is defined in RCM 1106(c) and paragraph 5-41b. The court-martial record consists of a copy of the recording of all open sessions of the court-martial, and copies of, or access to, the evidence admitted at the court-martial and the appellate exhibits. The court-martial record will not include sealed or classified material or recordings unless authorized by a military judge upon a showing of good cause. A military judge will issue appropriate protective orders when authorizing such access. The term court-martial record is relevant only for purposes of RCMs 1106 and 1106A. It is prepared and made available, upon request, shortly after the announcement of the sentence.

(2) *Certified record of trial.* The record of trial is the official record of the proceedings of a court-martial. The record of trial consists of the nine items listed in RCM 1112(b). Principal among these contents is the substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting, including any UCMJ, Art. 30a sessions conducted in accordance with RCM 309(e). The court reporter certifies that the record of trial contains all the items required by RCM 1112(b) as soon as practicable after the judgment has been entered into the record.

(3) *Copies of record of trial for distribution.* No copy of the record of trial provided to the accused or a victim, or made public pursuant to Art 140a, UCMJ, will contain classified information, information under seal, or recordings of closed sessions of the court-martial (see RCM 1112).

(4) *Written transcript.* A written transcript of a court-martial proceeding is included with the other attachments to the record of trial when a record of trial is forwarded for appellate review (see RCM 1112(f)). The written transcript is prepared, when required by RCM 1114, and in any SPCM or GCM with a finding of guilty, contemporaneously with the rest of the post-trial process described in this regulation. This requirement for a written transcript in all SPCM or GCM with a finding of guilty is for the purposes of enabling timely compliance with redaction requirements, and to provide a written transcript in every case in which the record of a SPCM or GCM will be reviewed.

c. Other attachments to the record of trial. Materials regarding pretrial confinement will be attached to the record of trial. This includes, but is not limited to, a copy of the commander's checklist for pretrial confinement, DA Form 7568 (Checklist for Pretrial Confinement), and a copy of the magistrate's memorandum approving or disapproving pretrial confinement. Also, see paragraph 12-7 for identification of companion cases on the covers of original records of trial. In all cases in which the accused is sentenced to confinement for 6 months or more, whether or not all or part of the confinement is suspended, an additional copy of the record of trial will be prepared for the Army Clemency and Parole Board for

clemency review purposes and distributed under paragraph 5–46. The cover of this additional copy will be marked prominently with the phrase “Clemency Copy.”

d. Verbatim transcript. A certified verbatim transcript of the record of trial will be prepared in all cases that include a finding of guilty (see paragraph 5–56*d through h*). Do not include a hardcopy of the certified verbatim transcript in the record of trial forwarded to ACCA in cases where the sentence does not include confinement for more than six months or a punitive separation (see para 5–58*e*). In such cases, forward only electronic versions of the written transcript.

e. Record of acquittals. If the proceedings result in an acquittal of all charges and specifications or in termination before or after findings, the record of trial will be prepared pursuant to RCM 1112. In addition, the record will include a summary of the trial proceedings up to the disposition of the case and all documentary exhibits and allied papers. No transcript of the proceedings is required. The DD Form 490 may be modified and used as a binder for the record of trial.

f. Records for summary courts-martial. In SCM cases, preparation of DD Form 2329 (Record of Trial by Summary Court-Martial) (see appendix 9, MCM, 2019) will include the following:

(1) In the left-hand column of item 8, insert each article of the UCMJ alleged to have been violated and include a summary of each specification in the format outlined in appendix 9, MCM, 2019.

(2) In the lower right-hand corner of item 8, and only after the written review required by RCM 1307 has been completed and has determined the record of trial to be legally sufficient, enter the following phrase in block form: “This record of trial has been reviewed pursuant to UCMJ, Art. 64(a) and RCM 1307 and is legally sufficient.”

(3) In those cases where review is completed pursuant to RCM 1307(f) and review pursuant to RCM 1201(j) is required, item 13 will be annotated with the result of the completed action by the convening authority, and indicate that additional review is required pursuant to RCM 1201(j). The original charge sheet (DD Form 458) and all allied papers, documentary evidence, and descriptions or photographs of physical evidence will be attached to the original record of trial. This record of trial will be forwarded to the Clerk of Court, USACCA. After initial action, this file will be forwarded for JA review pursuant to paragraph 5–60*b* before review pursuant to RCM 1201(j), followed by disposition pursuant to paragraph 5–59*b* of this regulation.

g. When accused tried in absentia. In the event a Soldier is tried *in absentia*, the SJA will ensure that the documents used to notify the Deserter Control Point are included among the allied papers submitted with the record of trial.

5–54. Readability of contents of records of trial and attachments

The Chief Judge, USACCA is delegated the authority to promulgate local rules regarding the formatting and readability of records of trial and any transcript of a record of trial. Except as the Chief Judge may otherwise provide, the original and all copies of records of trial forwarded for appellate review, including examination pursuant to UCMJ, Art. 69, must meet the standards set forth below:

a. Any transcript of a court-martial audio record attached to a record of trial must appear double-spaced on one side of 8 1/2- by 11-inch letter-sized white paper of sufficient weight (for example, 20-lb.) that the print on each succeeding page does not show through the page above.

b. The type font will be *Times New Roman 12*, *Arial 10* or a similar typeface or as promulgated by the Chief Judge, USACCA in the USACCA local rules of court.

c. The printer used must produce a clear, solid, black imprint.

d. The top margin of each page must be sufficient (for example, 2 inches) so that no line of text is obscured by the document fasteners used to attach the pages.

e. All accompanying papers, to include stipulations, motions, briefs, appellate exhibits and copies, should, to the maximum extent practicable, be prepared in accordance with the standards noted above.

5–55. Retention of trial notes or recordings

The court reporter’s notes and recordings of the original proceedings of all SPCMs and GCMs will be maintained by the military justice section of the servicing OSJA for five years after entry of judgment or until completion of appellate review, whichever is later.

5–56. Review, authentication, and certification of records of trial

a. In general. The certification of a ROT and its attachments is a multi-step process. The outcome of this process is the production of a complete record of trial, and a true, accurate, and complete written transcript, that will be forwarded to ACCA for completion of any required appellate review. Those performing any review, authentication, or certification of a SPCM or GCM under this paragraph will use DD Form 490 and the instructions in appendix J for this purpose.

b. Supervision. The military judge, with the court reporter’s supervisor, is responsible for supervising the quality of the certification of the record of trial and any transcript accompanying the record of trial.

c. Motions to correct non-minor errors in the transcript. In the case of a non-minor error in the record of trial, any party may make a motion to correct the transcript to conform with the audio recording. Motions to correct non-minor errors prior to entry of judgment shall be made to the military judge. Errors identified after entry of judgment shall be listed in a submission or motion to the reviewing or appellate authority.

d. Pre-certification preparation of the ROT and attachments. The court reporter who recorded the court-martial proceedings in a particular case will organize the ROT for that case as required by RCMs 1112(b), 1112(f), and 1116, appendix J of this regulation, and DD Form 490. Upon completion of these requirements, including the preparation of a substantially verbatim written transcript, the court reporter will forward the record of trial and attachments for a pre-certification review pursuant to 5–56e. If the court reporter who recorded the proceedings is not available for this purpose, the SJA or his or her designee will designate another court reporter to prepare and certify the ROT and attachments.

e. Pre-certification review of the ROT and attachments. The court reporter referred to in paragraph 5–56d will notify the lead trial counsel on the case (or other person designated by the SJA) that the record of trial is ready for a pre-certification review. The person conducting the pre-certification review will confirm compliance with paragraph 5–56d. This review includes ensuring that the written transcript is a substantially verbatim copy of the court-martial proceedings. A substantially verbatim written transcript is one that contains all of the court-martial proceedings as recorded by audio or video, contains no substantive errors in the transcription of a military judge's ruling, the testimony of a witness, a plea, a finding, or a sentence, but has not necessarily been corrected for grammar, spelling, punctuation, and other transcription errors. When the pre-certification review is complete to the satisfaction of the SJA or his or her designee, the SJA or designee will notify the military judge that the ROT with attachments is ready for authentication. During the review and authentication in paragraphs 5–56e and f, the court reporter will continue the transcription of the court-martial proceedings in order to be ready to certify the transcript in accordance with paragraph 5–56g.

f. Military judge authentication of the ROT and attachments. Authentication consists of verifying compliance with the requirements in paragraph 5–56d, and listing any necessary corrections in the transcription of a military judge's ruling, the testimony of a witness, a plea, a finding, or a sentence. The Rules of Court may specify additional requirements for authentication of a ROT. Necessary corrections do not include errors in grammar, spelling, or punctuation, unless the military judge determines the error is legally significant. The military judge may review the audio record of the court-martial proceedings as necessary to comply with the requirements of this paragraph, but such review is not required. The military judge will return the ROT and attachments to the SJA or his or her designee along with the signed authentication and a list of any missing items in the ROT and any necessary corrections in the transcript. After authentication by the military judge, the ROT and attachments may be certified by the court reporter.

g. Court reporter certification of ROT and written transcript. After correcting any deficiencies noted by the military judge, the court reporter shall certify the ROT and transcript. Pursuant to RCM 1112(c), if the court reporter cannot certify the ROT, the military judge who presided over the proceedings shall certify the ROT.

h. Redaction. To speed the eventual transfer of court-martial documents and audio recordings to a system of records, and to protect PII, trial counsel and counsel for the accused, in conjunction with the court reporter and others as designated by the SJA, shall ensure that PII and any protected health information (PHI) is only included in the record of trial when necessary. The following information shall be redacted from the record of trial prior to releasing it, including any transcript made pursuant to RCM 1114 and attached to the record of trial, unless the information establishes an element of an offense, or is otherwise required:

- (1) Any recordings of closed sessions, any transcripts of closed sessions, and any sealed exhibits;
- (2) Names of minor victims, and names of minor witnesses; if an identifier is used, use only the initials;
- (3) Social Security Numbers. If an individual's social security number is relevant, use only the last four digits;
- (4) Financial account information. If financial account numbers are relevant, use only the last four digits;
- (5) Home addresses. If a home address is relevant, use only the city and state;
- (6) Telephone numbers. If a telephone number is relevant, use only the last four digits;
- (7) Personal email addresses. If a personal email address is relevant, use only the first two characters and domain separated by three asterisks (for example, a2***@msn.com);
- (8) Dates of birth. If a named individual's date of birth is relevant, use only the year, unless birth month is relevant to the charged offense; and
- (9) Any other information held in a database that could be used to identify a specific person other than the accused.

5–57. Copies of the record of trial

a. Accused and crime victim notice to receive record of trial.

(1) The defense counsel must notify the accused of his or her right to receive a copy of the record of trial. The defense counsel will notify the court reporter, in writing, whether the accused elects to receive a copy of the record of trial or elects

to have the record given to the defense counsel. Notice to the court reporter must include an address for delivery of the record of trial.

(2) The trial counsel or, in a case with a SVC, the SVC, must notify each crime victim of their right to receive a copy of the record of trial. If a crime victim elects to receive a copy of the record of trial, such counsel will notify the court reporter. Notice to the court reporter must include an address for delivery of the record of trial.

(3) Notice of the right to receive a copy of the record of trial under this paragraph may be made at any time prior to entry of judgment.

b. Service of record of trial.

(1) *Applicable rules.* Court reporters will serve records of trial in accordance with RCMs 1112(e) and 1305(d).

(2) *Documentation required.* Court reporters will use a Receipt for Copy of Court-Martial Document or Certificate of Service (see DD Form 490), as applicable, when distributing a record of trial under this paragraph.

(3) *Audio recording substituted for service on accused or victim.* For purposes of serving the record of trial on the accused and victim under this paragraph, the certified verbatim transcript prepared under RCM 1114 will constitute the substantially verbatim recording of the court-martial proceedings under RCM 1112(b)(1). In cases of complete acquittals, either a redacted substantially verbatim transcript of the court-martial proceedings or a redacted substantially verbatim audio recording of the court-martial proceedings will be provided to the victim and the accused.

c. Redaction of records of trial. Records of trial will be redacted in accordance with paragraph 5–56h before serving the record of trial on the accused and any victim and before adding the record of trial to any system of records.

5–58. Forwarding of records of trial

a. General and special courts-martial. In all SPCMs and GCMs in which the judgment includes a finding of guilty, the certified record of trial and attachments required pursuant to RCM 1112(f) shall be forwarded to the Clerk of Court, USACCA (see para 12–7 for identification of companion cases). In cases in which an additional record of trial is prepared for the Army Clemency and Parole Board, the record will be sent directly to ARBA, Clemency and Parole Board, 251 18th Street South, Suite 378, 4th floor, Arlington, VA 22202. For SPCMs in which there were no findings of guilty entered, the record will be disposed of in accordance with paragraph 5–59.

b. Sealed exhibits and closed hearings. When a record contains sealed matter, the sealed matter will be kept separate from that part of the record that took place in open court. In a case with sealed exhibits or closed hearings, each exhibit and each recording of the closed hearing (and any transcript of any closed hearing) will be placed in its own envelope and a military judge-initiated sealing order explaining the nature of the material contained therein and the reason it was sealed will be affixed to each envelope. When necessary, more than one record volume may be used. The following safeguards will be observed:

(1) The audio record of open sessions of the court-martial will not be placed on the same media (for example, a DVD) that is used for closed hearings; and

(2) For additional guidance on organizing open and closed hearings in a record of trial, see appendix J of this regulation.

c. Capital cases. In cases in which the death penalty has been adjudged, there are special reporting requirements before the record of trial is forwarded (see paragraph 28–2).

d. Means of delivery. Delivery by electronic means should be used to transmit records of trial to recipients for any official purpose that permit the delivery of certified electronic copies of records of trial. Otherwise, certified first class mail with return receipt requested or delivery by commercial means with return receipt requested should be used to transmit records of trial for any official purpose.

e. Number of copies. In addition to the original certified record of trial, the electronic certified record of trial (e-ROT) or two non-electronic copies of the certified record of trial (copy 1 and 2) are required for all SPCMs and GCMs in which the judgment includes a finding of guilty. In cases in which the sentence does not include confinement for more than 6 months or a punitive separation, a hardcopy of the written transcript will not be attached to any mailed record of trial. In such cases, only electronic versions of the written transcript will be forwarded. If non-electronic copies are forwarded and the trial involved more than one accused (a joint or common trial), forward to USACCA an additional copy for each additional accused.

f. Electronic records of trial. e-ROTs will be uploaded to the respective installation e-ROT library, located on the USACCA webpage at www.jagcnet.army.mil/ACCA. Audio recordings or digital media, sealed exhibits, closed sessions, or classified matters will not be included in the e-ROT. The certified verbatim transcript of all open sessions of court will be included.

5–59. Local disposition of summary courts-martial and certain special courts-martial

a. Special courts-martial without a finding of guilty. In the case of a SPCM in which the accused was not found guilty of any offense, the record of trial will be filed in accordance with AR 25–400–2.

b. Summary courts-martial. On completion of review pursuant to RCM 1307 and any required supplemental action, records of trial for SCMs will be filed in the office of the servicing SJA by the name of the accused and destroyed after three years.

5–60. Review of records of trial pursuant to RCM 1201 and RCM 1307

a. *RCM 1201 reviews.* Review of cases pursuant to RCM 1201 will be conducted by an attorney, designated by TJAG to conduct such review, in one of the following duty positions: Attorney in OTJAG–CLD; Attorney in the Office of the Clerk of Court, USACCA; Appellate Military Judge, USACCA.

b. *RCM 1307 reviews.* Review of cases pursuant to RCM 1307 is ordinarily done either by a JA in the OSJA of the convening command or by a JA otherwise under the technical supervision of the SJA, if available. In the event no JA is available, the SJA may request that his or her higher technical chain appoint a JA to conduct this review.

5–61. Distribution of summary court-martial action and record of trial

a. *Distribution of convening authority's action in a summary court-martial.* The convening authority will provide a copy of the initial action by the convening authority in a SCM to:

- (1) The accused's immediate commander (company-level commander) and next-higher commander;
- (2) The SJA of the GCMCA;
- (3) One copy to the MPD or PSC maintaining the personal records of the accused, addressed to the Record Section, in compliance with AR 600–8–104. The MPD or PSC will transmit the order to the Finance and Accounting Office that maintains the pay account of the accused, for purposes of filing and use as a substantiating document according to AR 37–104–4;
- (4) If the accused is a member of the Army Reserve;
 - (a) one copy to U.S. Army Human Resources Command (AHRC–CIS–P), 1 Reserve Way, St. Louis, MO 63132–5200;
 - (b) one copy to Commander, USARC, Office of the Staff Judge Advocate, Chief Military Law Division, 4710 Knox St. Fort Bragg, NC 28310.
- (5) The military law enforcement agency that investigated the case, as applicable:
 - (a) The Provost Marshal's Office; or
 - (b) HQ, CID, CIOP–ZC, 27130 Telegraph Road, Quantico, VA 22134.
- (6) Army Corrections Command (DAPM–ACC), 150 Army Pentagon, Washington, DC 20310–0150

b. *Distribution of record after action.* On completion of the convening authority's action, the SCM record of trial (DD Form 2329) will be distributed as follows:

- (1) One copy to the accused.
- (2) One copy will be retained by the SCM authority.
- (3) If the accused is confined, one copy to the commander of the confinement facility in which the accused is or will be confined.

c. *Distribution after summary court-martial review.* On completion of review pursuant to RCM 1307 or RCM 1201, the completed review will be distributed as follows:

- (1) One copy to the accused.
- (2) One copy will be retained by the SCM authority.
- (3) Additional copies will be distributed as provided in paragraph 5–61a.

d. *Forwarding the original record of trial.* The original record of trial of a SCM will be maintained by the SJA of the commander exercising GCM authority over the SCMCA.

5–62. Certification of completion of appellate review or appeal

In all SPCMs and GCMs being reviewed pursuant to UCMJ, Arts. 65, 66, 67, and 67a, upon the completion of appellate review pursuant to RCM 1209, the Clerk of Court, USACCA shall certify that the appellate process is complete. A copy of the certification shall be attached to the record of trial and a copy will be forwarded to the original GCMCA. In a case where the sentence after review includes a bad-conduct discharge or dishonorable discharge, the certification and a copy of the judgment will be forwarded to the appropriate PCF where the discharge will be executed. In a case where the sentence after review includes a sentence of dismissal, the certification will be forwarded to the Assistant Secretary of the Army (Manpower and Reserve Affairs). In a case where the sentence after review includes death, the certification will be attached to the record of trial prior to the record being forwarded to the President.

5–63. Delegation of authority to modify procedures

Notwithstanding any other provision in this regulation and to the extent permitted by UCMJ, Art. 54 and the MCM, TJAG has the authority to issue directions through technical channels, changing the procedures for preparing, copying, serving,

certifying, authenticating, or distributing records of trial, including allied papers and orders. Such direction may be promulgated by issuance of policy memorandums, technical instructions, or through other means deemed appropriate by The Judge Advocate General.

Section VIII

Other Considerations

5–64. Release of information pertaining to the administration of military justice and accused persons

a. General. Public information about and access to military judicial proceedings promote public awareness and confidence in the military justice system. Those responsible for administering military justice and those providing information to the public and the media must exercise sound judgment to strike a fair balance among the following: protection of individuals accused of offenses, the presumption of innocence until guilt is proven, public understanding and transparency of the military justice system, and the state of discipline in the military. No statements or other information will be furnished to the news media or any other source for the purpose of prejudicing the outcome of an accused's trial, or which could reasonably be expected to have such an effect (see AR 27–26).

b. Release and dissemination of information. The release and dissemination of information pertaining to military justice matters, including accused persons, shall be accomplished in consultation with the convening authority's public affairs officer. Requests for information received from representatives of news media shall be referred to the appropriate public affairs officer for action. Care should be taken to indicate that the accused is alleged to have committed an offense, as distinguished from stating or implying that the accused has actually committed an offense. As a general rule, the charge sheet should not be released before arraignment unless the public interest significantly outweighs the privacy interest of the accused and the charge sheet has been appropriately redacted. The following factors should be considered when releasing charge sheets:

(1) *After preferral.* Generally, the grade of the accused and the general nature of the offenses may be released but the charge sheet should not be released because specifications can easily be amended.

(2) *Cases pending UCMJ, Art. 32 preliminary hearing.* Generally, the name and grade of the accused and the general nature of the offenses may be released, but the charge sheet should not be released because specifications can easily be amended.

(3) *After referral.* Generally, the name, grade, age, unit, duty station, and gender of the accused and the general nature of the charges may be released. A copy of the charge sheet generally will not be released.

(4) *After arraignment.* Because arraignment signifies greater finality of the charges (see RCM 601), an appropriately redacted copy of the charge sheet may be released. Any release of the charge sheet should be accompanied by a statement that charges are merely accusations and that the accused is presumed innocent until proven guilty.

(5) *Prohibited information.* Subjective opinions, observations, or comments concerning the accused or any witness' character, demeanor, credibility, or expected testimony will not be released. Nor will any other information be released, when there is a reasonable likelihood that the dissemination of such information will affect the deliberations of an investigative body or the findings or sentence of a court-martial, or otherwise prejudice the due administration of military justice before, during, or after trial. Except for individuals listed in paragraph 5–64c, no interviews or responses to the news media will be conducted without prior coordination with OTJAG–CLD.

c. Defense counsel. Personnel assigned to USATDS and the Defense Appellate Division (DAD), U.S. Army Legal Services Agency (USALSA), will handle media inquiries in accordance with the policies of the Chief, USATDS and Chief, DAD, respectively.

5–65. Exculpatory evidence discovered post-trial

a. General. Any member of the Judge Advocate Legal Service (JALS) who learns of new, credible, and material evidence or information creating a reasonable likelihood that an accused did not commit an offense of which the accused has been convicted at court-martial must process that evidence as provided below.

b. After adjournment but before entry of judgment.

(1) Any trial counsel who learns of such evidence or information must promptly disclose that evidence to the accused through counsel and make reasonable efforts to cause an investigation to determine whether the evidence substantially affects any finding of guilty or the sentence.

(2) Any other member of JALS who learns of such evidence or information must promptly disclose that evidence or information to the SJA of the convening authority who referred the case to trial. The SJA will then ensure such evidence is processed in accordance with paragraph 5–65b(1).

c. After entry of judgment but before completion of appellate review. Any member of JALS who learns of such evidence or information must promptly notify the Clerk of Court, USACCA. If the case is pending review pursuant to UCMJ, Art. 66, the Clerk must promptly forward the notice to the appellate defense counsel of record or, if none has been assigned, the Chief, DAD. If the case is pending review pursuant to UCMJ, Art. 69, UCMJ, the Clerk must forward the notice to OTJAG-CLD.

d. After completion of appellate review. Any member of JALS who learns of such evidence or information must promptly notify OTJAG-CLD. The Criminal Law Division must promptly forward the notice to the last known address of the accused.

Chapter 6

United States Army Trial Defense Service

6-1. General

This chapter governs the operations of the USATDS and sets forth information, policies, and procedures applicable to the provision of all defense counsel services throughout the Army. USATDS comprises all USATDS elements in the RA, Army Reserve, and the National Guard. Any individual performing defense counsel functions, or support thereto, will comply fully with the provisions of this chapter and the USATDS SOP, regardless of whether that individual is assigned to USATDS when defense counsel functions are performed.

6-2. Mission

The mission of USATDS is to provide specified defense counsel services for Army personnel, whenever required by law or regulation and authorized by TJAG or TJAG's designee. The USATDS will also develop programs and policies to promote the effective and efficient use of defense counsel resources and enhance the professional qualifications of all personnel providing defense services.

6-3. Organization and personnel

a. Responsibilities.

(1) *Regular Army.* The USALSA, a field operating agency of OTJAG, provides manpower, budgetary, and administrative support to the USATDS. Whether assigned to USALSA with duty at a particular installation, or assigned to another organization, USATDS counsel are supervised, managed, and rated solely by their respective USATDS supervisory chain.

(2) *U.S. Army Reserve.* The Legal Command (LC) provides manpower, budgetary, and administrative support to the USAR component of USATDS (USAR TDS). The USAR TDS may also receive manpower support from theater sustainment commands. Whether assigned to the LC with duty at a particular installation or armory, or assigned to another organization, USAR TDS counsel are supervised, managed, and rated solely by their respective USAR TDS supervisory chain.

(3) *Army National Guard.* The National Guard Bureau (NGB), and the States, Territories, and the District of Columbia provide manpower, budgetary, and administrative support to the ARNG component of USATDS (ARNG TDS). For those States participating in the ARNG TDS program, whether assigned to NGB, or the States, Territories, or District of Columbia with duty at a particular installation or armory, or assigned to another organization, ARNG TDS counsel are supervised, managed, and rated solely by their respective ARNG TDS supervisory chain.

(4) *Commander, TJAGLCS, LC, and USALSA.* The Commander, TJAGLCS, provides professional control and supervision of USATDS and its counsel and UCMJ authority over the RA USATDS counsel. The Commander, LC, has UCMJ authority over USAR TDS counsel. The Commanders, USALSA and TJAGLCS, exercise other command functions for RA and USAR TDS members.

(5) *Chief, U.S. Army Trial Defense Service.* The Chief, USATDS, is a JA, designated by TJAG, who exercises supervision, control, and direction of defense counsel services in the RA and RC. The Chief, USATDS:

(a) Holds the authority to detail defense counsel representation and shall ensure the timely detail of defense counsel in courts-martial, UCMJ, Art. 32 preliminary hearings, and in other judicial and adverse administrative proceedings requiring such representation. This authority may be delegated.

(b) Sets operating policies and procedures for all USATDS operations and all defense counsel functions. These policies apply equally to IMC and to non-USATDS JAs detailed to perform defense counsel functions.

(c) Manages assignments for USATDS personnel, including by-name identification of individual deployers;

(d) Sets leave policies for all USATDS personnel, including locally-attached support personnel.

(6) *Commander, Legal Operations Detachment – Trial Defense, Army Reserve.* Commanders, Legal Operations Detachment (LOD) LOD-TD, USAR, are JAs, designated by TJAG, who, as directed by the Chief, USATDS, exercise supervision, control, and direction of defense counsel services in the Army Reserve.

(7) *Chief, Army National Guard Trial Defense Service.* The Chief, ARNG TDS, is a JA, nominated by the Chief Counsel of the National Guard Bureau, designated by TJAG, who, as directed by the Chief, USATDS, exercises supervision, control, and direction of defense counsel services in the ARNG. In the ARNG, state Adjutants General exercise disciplinary and other command functions for ARNG TDS members. For any misconduct allegations against ARNG TDS members, the respective SJA will coordinate with the Chief, ARNG TDS to determine the appropriate course of action and whether minor disciplinary infractions will be processed through USATDS technical channels or if the member will be transferred out of USATDS in order for the Adjutant General to address more serious misconduct allegations.

b. Organization and personnel.

(1) *Region.* The region is the major subordinate supervisory and control element of USATDS. It encompasses a geographical area designated by TJAG.

(2) *Regional defense counsel.* A JA designated by TJAG and certified pursuant to UCMJ, Art. 27(b), an RDC is responsible for the performance of the USATDS mission within a region. Each RDC will—

(a) Supervise, evaluate, and rate all SDC within the region.

(b) Ensure policies and procedures set by the Chief, USATDS are followed by all USATDS personnel in the region.

(c) Provide and manage defense-related training as directed by the Chief, USATDS.

(d) Maintain continuing liaison with SJAs, military judges, commanders, and convening authorities.

(e) Make periodic visits to all field and branch offices within the region.

(f) Detail, as authorized by the Chief, USATDS, defense counsel pursuant to paragraph 6–9.

(g) Provide professional supervision of IMC operating in the region.

(h) Recommend replacements for departing USATDS counsel.

(3) *RC deputy regional defense counsel.* A deputy regional defense counsel is a JA in the USAR or ARNG designated by the TJAG or his or her designee, and certified pursuant to UCMJ, Art. 27(b), who is responsible for assisting the USAR or ARNG RDC in the performance of the USATDS mission.

(4) *TDS field office.* The USATDS field office is the primary point of service for USATDS support and is the subordinate operating element of a region. Each USATDS field office is supervised by an SDC. Each USATDS field office provides defense counsel services for specified organizations or geographical areas determined by the Chief, USATDS or in the ARNG, the state in which it is located.

(5) *Branch office.* The branch office is the smallest USATDS operational element, subordinate to a field office and supervised by the SDC at that or a geographically separated field office. It normally consists of one trial defense counsel who provides defense services to specified organizations, or in the ARNG, the state in which it is located.

(6) *Senior defense counsel.* An SDC is a JA, certified pursuant to UCMJ, Art. 27(b), who is responsible for the performance of the USATDS mission within the area serviced by a field office. The SDC is the direct supervisor of all trial defense counsel within a field office, as well as those serving in subordinate branch offices. Each SDC will—

(a) Detail, as authorized by the Chief, USATDS, defense counsel pursuant to paragraph 6–9.

(b) Ensure policies and procedures set by the Chief, USATDS and the RDC are followed by all supervised personnel.

(c) Provide technical advice and training to supervised personnel.

(d) Act as the primary USATDS liaison with SJAs, commanders, and convening authorities of organizations served by the field office.

(e) Represents Soldiers in courts-martial, administrative boards, and other proceedings.

(f) Act as consulting counsel as prescribed by the Chief, USATDS.

(7) *Trial defense counsel.* A trial defense counsel is a JA, certified pursuant to UCMJ, Art. 27(b), and currently assigned, attached, or detailed to USALSA and USATDS, a LOD-TD, USAR, or a state. The primary duties of a trial defense counsel are to represent Soldiers in courts-martial, administrative boards, and other proceedings, and to serve as consulting counsel as required by law or regulations. Other defense-related duties may be performed by the trial defense counsel as prescribed by the Chief, USATDS.

(8) *Defense paralegals.* A defense paralegal is an experienced MOS qualified 27D, or civilian equivalent, serving in a USATDS field or branch office. The primary duty of a defense paralegal is to assist defense counsel in the representation of Soldiers in courts-martial, administrative boards, and other adverse proceedings as designated by the SDC (see para 6–4b).

6–4. Administrative and logistical support

a. Local Support of USATDS. Commanders of installations or organizations and their respective SJAs or the supporting legal office selected as duty stations for USATDS counsel, or in the ARNG, state Adjutants General and their respective

SJAs, will provide administrative and logistical support for USATDS personnel. Additionally, the respective SJA is also responsible for administrative and logistical support of local defense counsel regardless of the lack of command relationship. Support requirements for USATDS offices, personnel, and activities will be identified by the Chief, USATDS. SDC will, through coordination with the host installation, unit, or OSJA, ensure defense counsel have resources necessary to complete their mission. TJAG takes special interest in inspecting the adequacy of support provided by host installations when making statutory visits pursuant to UCMJ, Art. 6. Local support to USATDS includes, but is not limited to—

(1) Providing permanent quarters for USATDS personnel and Families to the same degree as provided regularly assigned officers of similar grade and responsibility.

(2) Facilitating/processing of financial records, preparation of pay vouchers, and payment of all USATDS personnel.

(3) Facilitating/processing of military personnel records, officer record briefs, officer qualification records, leave records, and similar personnel requirements. The Chief, USATDS sets leave policies and approval authority for personnel assigned or attached to USATDS.

(4) Providing Army transportation, to include the use of government-owned vehicles when available, needed to perform the defense mission to the same degree as is provided to regularly assigned officers of similar grade and responsibility; and

(5) Private office space, office furniture, equipment, supplies, communication technology, information technology, and support for maintenance of all of the above, to the same degree as is provided to JAGC personnel assigned to the supported organization, or greater if required (see AR 27-1) to complete the full range of USATDS functions. The Chief, USATDS sets forth policies and standards for facilities and resources required for USATDS branch, field, and regional defense offices.

b. Paralegal support. Each USATDS office will be provided paralegal support to accomplish its mission.

(1) *Assignment of USATDS paralegals.* Where practicable, USATDS support personnel will be 27D paralegal Soldiers with military justice experience. Civilian paralegal support may be used in circumstances where provision of 27D personnel is impracticable. Enlisted defense paralegals will be assigned to USATDS support duty for a period of not less than 1 year. Early removal of 27D personnel from USATDS support duty will be for good cause only and will be coordinated through the supervising RDC. Support personnel assigned to a USATDS office will perform duties under the direct supervision of the SDC. Defense paralegals and support personnel will not be assigned legal duties within the local legal office without coordination with the SDC.

(2) *Duties.* The primary duty of defense paralegals is USATDS support, regardless of the manpower source from which they are derived (such as USALSA, defense legal services organizations, and the OSJA) or the manner in which they are provided (assigned, attached, or operationally controlled). Accordingly, in the absence of coordination with the SDC and approval of the chief paralegal NCO and/or paralegal sergeant major assigned to the servicing GCMCA, defense paralegals will not perform duties incompatible with their primary duty. Soldiers performing duty as defense paralegals and support personnel will wear the USATDS shoulder sleeve insignia. USATDS support duty includes attendance at USATDS-related training events.

(3) *Supervision and rating of support personnel.* Defense paralegals will perform duties under the direct supervision of the SDC. Non-defense legal duties will not be assigned to defense paralegals without prior coordination with the SDC. Defense paralegals will be rated and/or senior rated by USATDS personnel whenever practicable. When preparing evaluation reports for defense paralegals and support personnel, the senior paralegal NCO for the servicing OSJA will be consulted to ensure proper procedures and techniques are followed. Civilian defense paralegals will be rated by the SDC.

(4) *Support.* Defense paralegals will be supported as follows:

(a) *USALSA.* The USATDS headquarters (HQ) staff will be responsible for processing of travel and TDY orders and Noncommissioned Officer Evaluation Reports (NCOERs) for defense paralegal NCOs. RC NCOERs will be processed through their respective chief and to HQ, USATDS.

(b) *Local.* All other logistical and administrative support for defense paralegals will be provided by the local installation in accordance with paragraph 6-4a. In addition, the servicing OSJA will provide administrative assistance for travel related issues, to include government travel card matters, when necessary.

c. Administrative support provided by USATDS. The HQ, USATDS staff will be responsible for:

(1) TDY orders of defense counsel and its support personnel; and

(2) Officer Evaluation Reports (OERs) and NCOERs will be processed through HQ, USATDS. For members of the RC, officer and enlisted evaluation reports will be processed through their respective chief and to HQ, USATDS.

6-5. Funding responsibilities for USATDS personnel

a. Costs funded by USATDS and USALSA. Except as provided in paragraph 6-5b, the Commander, USALSA, provides funding for the travel and per diem costs of USATDS counsel and support personnel when travel away from the individual's place of duty or employment is ordered by the Chief, USATDS. Such travel includes trips to interview the accused

or any witnesses; take depositions requested by the defense; investigate the case; and to attend GCM, SPCM, UCMJ Art. 32 hearings, pretrial confinement hearings, or other pretrial hearings. Travel funded by USATDS and USALSA is limited to the following:

- (1) Travel to obtain professional and continuing legal education training for USATDS counsel and support personnel;
- (2) Travel to provide representation to any Servicemember facing court-martial charges; or
- (3) Travel to provide representation in any other matter, when authorized by the Chief, USATDS.

b. Court-martial costs funded by the convening authority. Convening authorities, or in the case of the ARNG, the appropriate state requesting support, will fund all other authorized costs related to judicial and administrative proceedings.

(1) *Authorized costs.*

(a) Travel and per diem costs for USATDS counsel and support personnel when such travel is necessitated by a permanent change of location of the accused or a change in the location of the proceedings after preferral of charges;

(b) Travel by USATDS personnel caused by the temporary movement of the accused from the accused's duty station, to include when, after the preferral of charges, the accused is placed in pretrial confinement, to a place other than his or her duty location;

(c) Travel and per diem costs for USATDS counsel and support personnel to attend depositions requested by the government or ordered by a military judge;

(d) The costs associated with the appearance of IMC not currently assigned to USATDS; and

(e) As provided by RCM 703, the costs associated with the production, travel, and employment, as may be the case, of defense witnesses, expert witnesses, and expert consultants and other persons appointed to the defense team.

(2) *Requests and review.*

(a) Any defense requests for funding that are required to effect the support under paragraph 6-5b(1) will be made in writing to the GCMCA with jurisdiction over the accused. The GCMCA will carefully consider all such requests and respond in a timely fashion, in writing.

(b) Any denial of such request will be accompanied by a summary of the options considered by the GCMCA to satisfy the request, and a reason for the denial. Denial of defense requests for funding associated with judicial and administrative proceedings may be submitted for review to the court-martial or appellate court with jurisdiction over the accused.

c. Travel not associated with military justice. Commanders will fund all USATDS counsel and support personnel travel in support of operational or training exercise deployments and all USATDS counsel and support personnel travel required for matters that are nonjudicial or administrative in nature. This includes separation boards, pre-deployment training, and medical travel.

d. Additional funding responsibilities in the ARNG.

(1) States are responsible for the cost of attendance at professional military education and non-USATDS-hosted continuing legal education courses.

(2) The Office of the Chief, ARNG TDS is responsible for the cost of the following:

(a) Attendance at regional training events and annual USATDS leadership training.

(b) Leader visits to supervised field and branch offices, and visits to supported Adjutants General, SJAs, military judges, and commanders.

(c) Attendance at civilian continuing legal education courses with approval by the Chief, ARNG TDS.

6-6. Training

As required by paragraph 6-2, the Chief, USATDS, in coordination with DCAP, develops programs and policies designed to enhance the professional qualifications of defense counsel and USATDS paralegal personnel. This will be accomplished primarily through the use of internally developed programs of instruction and attendance by USATDS counsel and USATDS paralegal personnel at continuing legal education courses offered by TJAGLCS. These programs may be supplemented at the discretion of the Chief, USATDS by criminal law, ethics, and related courses sponsored either by military agencies or civilian organizations.

6-7. Installations without a USATDS office

a. General. Any installation without a local USATDS field office will coordinate with USATDS to ensure USATDS support to that installation. The post, organization, or activity JA will coordinate, through the RDC, with USATDS to arrange to ensure all appropriate USATDS services and associated support requirements.

b. Determination of support requirements. The post, organization, or activity JA and RDC will assess what USATDS support is needed for that installation and will jointly develop an appropriate support plan. The proposed USATDS support plan will be forwarded to the Chief, USATDS, for approval. The RDC and coordinating JA will then periodically liaise to monitor the defense function at the installation. The provision of USATDS support to these installations remains subject to the priority and availability of services as determined by USATDS.

c. Support. Support needs and solutions will vary, based on the particulars of the installation without a USATDS field office. The coordinating JA will ensure that all logistical and administrative resources necessary to facilitate appropriate USATDS support is provided by that installation. Potential solutions include, but are not limited to—

(1) Routine shuttle service for personnel needing USATDS services to a nearby installation with local USATDS field office;

(2) Office space on the installation for visiting USATDS personnel to conduct interviews, client counseling, and other USATDS-related functions;

(3) Appropriate technology, including desktop video teleconferencing and other communications solutions, to facilitate the remote provision of defense services;

(4) Travel, funded by the installation, for periodic visits by USATDS personnel to conduct defense counsel functions on the installation.

d. ARNG. States without ARNG TDS counsel may request support from the Office of the Chief, ARNG TDS. Support is contingent on availability of counsel. All costs associated with the delivery of services will be paid by the requesting state.

6–8. Mutual support responsibilities

a. General. SJAs and SDC will develop administrative policies and procedures to meet local requirements and support the basic mission of the command being served. They should meet often to discuss matters of mutual concern. Provision of counsel in cases involving such administrative matters as financial liability for loss of property rebuttals, evaluation report rebuttals or appeals, traffic violations, or administrative letters of counseling or reprimand is an SJA responsibility. SDC and SJAs should discuss and agree on the extent to which USATDS will share that responsibility.

b. Compliance with local policies. The USATDS counsel will comply with host installation command, personnel, and administrative policies, such as duty hours, physical fitness, appearance, weapons qualification, uniform and equipment standards, and similar requirements, to the extent practicable and commensurate with the mission of USATDS. SDC are encouraged to coordinate memoranda of understanding with local supporting units or organizations to reflect USATDS independence and responsibility to ensure necessary Army and local standards are met. Approval authority for such MOUs rests with the RDC.

(1) *Exceptions notwithstanding any MOU.* USATDS counsel will not perform duty as installation or command staff duty officers or wear the shoulder patch or distinctive insignia of the local organization or command. All USATDS uniformed personnel, including paralegals support staff, will wear the USATDS shoulder patch.

(2) *Other exceptions.* In all other cases, the RDC will coordinate proposed exceptions with the Chief, USATDS.

c. Assistance to SJAs. In cases where an RDC determines that USATDS personnel on an installation are not fully employed in performing the defense mission, that RDC will, after ensuring that all other defense mission needs are met for that region, direct the servicing SDC to examine how underutilized USATDS personnel might assist the local OSJA in performing other legal services on that installation. Such duties will be performed under the supervision of the SDC and SJA and may involve any aspect of the legal services mission not inconsistent with the defense function. Nondefense duties for military justice will be limited to those involving training or instruction. The USATDS counsel will not be assigned duties as on-call officer for the SJA. SDC will, however, ensure that defense services are available and accessible during nonduty periods.

d. Assistance to the U.S. Army Trial Defense Service. If the defense workload at an installation temporarily exceeds the capability of the USATDS office to perform its mission, the SJA will, within the SJA's capability, provide non-USATDS counsel to assist in providing defense services. Non-USATDS counsel will not be detailed to a USATDS office by an SJA without the approval of the Chief, USATDS, and when detailed, will perform defense duties under the supervision of the SDC. Normally, such duties will not involve representation at courts-martial or UCMJ, Art. 32 preliminary hearings. Non-USATDS counsel should not assist Soldiers with matters related to the subject of an attorney-client relationship that the Soldier already enjoys with a USATDS counsel.

e. Nondefense duties. Except as outlined in paragraphs 6–8a, b, and c, only the Chief, USATDS, may direct the performance of nondefense duties by USATDS counsel. The USATDS counsel may only be ordered to depart on or return from TDY by the Chief, USATDS. This latter authority may be delegated to an RDC or SDC.

f. Tactical unit support. If a USATDS office is in support of a command whose mission includes field deployment for operational or training purposes, the Chief, USATDS, will designate one or more USATDS counsel, by name, for deployment. The HQ, USATDS staff will develop and maintain plans for USATDS' support of units with deployment missions. Deployment of USATDS counsel will be coordinated with, and approved by, the Chief, USATDS. The SJAs will coordinate with the SDC when USATDS tactical unit support is required.

g. Situations requiring immediate action. It is the intent of this regulation to ensure that an accused or suspect is promptly provided with legal consultation or representation, whenever required by law or regulation. If a situation arises requiring

the immediate services of defense counsel, and USATDS counsel are not available, the SJA will designate non-USATDS counsel to perform this service. The RDC will be advised of the circumstances. The USATDS counsel will thereafter be designated or detailed to represent the accused or suspect at further proceedings.

6–9. Detail of defense counsel

a. In the RA and the Army Reserve, the Chief, USATDS details trial defense counsel for SPCMs and GCMs. This authority may be delegated to the SDC in all non-capital cases. Detail of counsel will be reduced to writing and included in the record of trial or announced orally on the record at courts-martial. The writing or announcement will indicate by whom the counsel was detailed.

b. In the ARNG, counsel are detailed according to procedures set forth by the Chief, ARNG TDS.

c. The authority to detail counsel does not alter an accused's right to be represented by civilian counsel provided at no expense to the government or by military counsel of the accused's own selection (whether or not assigned to USATDS), if reasonably available. The act of detailing is an administrative designation by the detailing authority. It does not confer any status or rights nor does it alter any status or rights that may exist at the time of detailing. To meet requirements, the Chief, USATDS may authorize SJAs to recommend the detail of non-USATDS counsel. The Chief, USATDS or that officer's designee will detail non-USATDS counsel. The establishment of USATDS does not affect the basic legal qualifications of any JA, certified pursuant to UCMJ, Art. 27(b), to perform defense counsel duties, when such are properly assigned.

6–10. Professional standards

a. General. The professional standards referred to in paragraph 5–8 apply to USATDS counsel.

b. Exercise of independent professional judgment.

(1) Nothing in this chapter limits a USATDS counsel's duty to exercise independent professional judgment on behalf of a client. The Chief, USATDS is granted authority to promulgate rules and requirements governing—

(a) The establishment of attorney-client relationships.

(b) Allocation of personnel resources.

(c) The setting of priorities within the various categories of services rendered by USATDS counsel.

(d) Trial Defense Service standard operating procedures and other policies.

(2) The USATDS counsel will strictly comply with these directives. However, once an attorney-client relationship is formed pursuant to these rules and requirements, defense counsel have a positive duty to exercise independent judgment in control of the case. This duty is limited only by law, regulation, and the Army "Rules of Professional Conduct for Lawyers" (AR 27–26). Complaints involving the professional conduct or performance of USATDS counsel should be forwarded through the SDC and RDC to the Chief, USATDS, for action according to chapter 15 of this regulation.

c. Business cards. Because business cards are necessary to perform their official duties and facilitate the performance of the USATDS mission, USATDS personnel, to include trial defense counsel and defense paralegals, may print business cards at government expense in accordance with the provisions of AR 25–30, para. 7–11. For commercially procured business cards, see AR 25-30.

Chapter 7

United States Army Trial Judiciary Military Judge Program

7–1. General

a. Military Judge Program. The Military Judge Program is a system in which military judges are designated and detailed as judges of GCM, SPCM and proceedings conducted before referral pursuant to UCMJ, Art. 30a. This chapter sets forth procedures for the Army-wide operation of the Military Judge Program. This regulation implements UCMJ, Art. 26.

b. Organization. The U.S. Army Trial Judiciary is an element of the USALSA, a field operating agency of OTJAG.

c. Military judge. The term "military judge" includes military magistrates specifically certified and authorized by TJAG to perform judicial duties pursuant to UCMJ, Arts. 19 and 30a when performing those duties (see chapter 8 of this regulation and RCM 103(15)). A military judge will be detailed to all SPCMs and GCMs. The primary duty of a military judge is to preside over SPCMs and GCMs to which the judge is detailed. AD military judges (or mobilized USAR military judges) are assigned to the U.S. Army Trial Judiciary. Non-mobilized USAR military judges are assigned to the 150th LOD, U.S. Army Reserve Legal Command. All military judges, AD or USAR, are under the professional supervision of the U.S. Army Trial Judiciary.

d. Chief Trial Judge. The chief trial judge is a military trial judge who is designated by TJAG (see para 1–4b) as the chief of military trial judges.

e. Tenure for military judges. JAs are certified as military judges by TJAG and assigned to the Trial Judiciary for a minimum of three years. This three-year minimum tenure can be served at more than one duty location, if necessary to meet the needs of the Trial Judiciary. An exception to the three-year minimum tenure can be made if:

- (1) The military judge voluntarily requests to be reassigned to other duties, and TJAG approves such assignment;
- (2) The military judge retires or otherwise separates from military service;
- (3) The military judge is reassigned to other duties by TJAG based on the needs of the Service in a time of war or national emergency; or
- (4) The officer's certification as a military judge is withdrawn by TJAG for good cause (see chap 15 for more on suspension of military judges).

7-2. Qualifications of military judges

a. A military judge is a commissioned officer who is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military judge by TJAG.

b. Before performing duties as a military judge of a GCM, a commissioned officer must be—

- (1) Certified to be qualified for duty as a military judge of a GCM by TJAG;
- (2) Designated for detail as a military judge by TJAG or his or her designee; and
- (3) Assigned and directly responsible to TJAG or his or her designee.

c. All military judges assigned or attached to the U.S. Army Trial Judiciary and the 150th LOD are assigned and directly responsible to TJAG or his or her designee. Consistent with UCMJ, Art. 26(c)(3) and RCM 502(c)(1), both the Chief Trial Judge, U.S. Army Trial Judiciary, and Commander, 150th LOD, are TJAG's designees for this purpose.

d. All military judges who meet the requirements for presiding over a GCM may also preside over a SPCM.

e. Appropriate records will be maintained by the Chief Trial Judge as follows:

- (1) Current lists of military judges assigned or attached to the U.S. Army Trial Judiciary and to the 150th LOD.
- (2) A list of supporting documents showing that the qualifications of each military judge have been met.

7-3. Judicial circuits

A judicial circuit is one or more GCM jurisdictions, or the geographical area where the headquarters of such jurisdictions are situated, as designated by TJAG or TJAG's designee, the Chief Trial Judge. Judicial circuits will be established, but may be altered and dissolved by TJAG, or TJAG's designee as required, at which time all convening authorities concerned will be notified. TJAG or TJAG's designee also will designate one or more duty stations within each judicial circuit at which military judges assigned to the U.S. Army Trial Judiciary will be located.

7-4. Functions and duties of military judges

a. General. Military judges may perform all judicial duties imposed or authorized by the UCMJ, MCM, and applicable regulations.

b. Mandatory duties. A military judge will be detailed to all GCM, SPCM, and proceedings conducted pursuant to UCMJ, Art 30a.

c. Additional duties. Military judges may—

- (1) Perform magisterial duties according to chapters 8 and 16 of this regulation.
- (2) Issue authorizations on probable cause pursuant to chapter 8 of this regulation.
- (3) Issue orders based on a probable cause standard, pursuant to 10 USC 1565a, requiring DOD repositories to make available specific DNA samples in accordance with the military judge's order.
- (4) Receive applications for nonconsensual wire and oral communication intercept authorization orders and determine whether to issue such orders, according to AR 190-53.
- (5) Conduct hearings pursuant to AR 190-47 to determine whether an inmate at the USDB suffers from a mental disease or defect that requires inpatient psychiatric care or treatment beyond that available at the USDB.
- (6) Conduct training sessions for trial and defense counsel.
- (7) Serve as fact finders in debarment and suspension proceedings involving government contracts.
- (8) Conduct investigations, hearings, or similar proceedings when detailed, appointed, or made available for appointment, by the Chief Trial Judge.
- (9) Be detailed to a SCM if made available by the Chief Trial Judge.

d. Administrative responsibilities. Each military judge is responsible for—

- (1) Maintaining an orderly trial calendar that will make efficient use of available time and provide to the maximum extent possible for scheduling of trials as requested by convening authorities.
- (2) Submitting required reports as directed by the Chief Trial Judge.

(3) Cooperating closely with SJAs and military judges in the circuit. The military judge must exercise every legitimate and appropriate effort to assist convening authorities in the expeditious handling of court-martial cases, while taking care to avoid any act that may be a usurpation of the powers, duties, or prerogatives of a convening authority or the convening authority's staff.

(4) Seeking necessary assistance through the judicial administrative channels specified in paragraph 7-6c in conflict cases, in other situations when another military judge may be required, or whenever he or she determines that additional military judge support is required for disposing of courts-martial referred to trial in his or her jurisdiction. In such cases, the military judge with primary responsibility for a GCM jurisdiction will obtain additional judicial support by conferring with the Chief Circuit Judge as provided in paragraph 7-6c.

d. Other courts-martial. Military judges will be detailed to all SPCM and GCM convened for the trial of persons protected by the Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949.

7-5. Responsibilities of the Chief Circuit Judge

The Chief Circuit Judge is the senior military judge in a judicial circuit or other judge designated by the Chief Trial Judge. The Chief Circuit Judge's responsibilities include:

- a.* General administration of the Military Judge Program within the judicial circuit.
- b.* Making recommendations to the Chief Trial Judge relating to the operation of the program within the circuit.
- c.* In coordination with the Chief Trial Judge, determining which military judge within the circuit will be primarily responsible for each GCM jurisdiction within the circuit.
- d.* In coordination with the Chief Trial Judge, determining the rater, intermediate rater, and senior rater as required for OERs concerning military judges and, where appropriate, for magistrates within the circuit.
- e.* Designating supervising military judges for military magistrates (see chap 8).
- f.* Ensuring adequate training for USAR military judges.
- g.* If authorized by the Chief Trial Judge, issuing circuit rules of court in accordance with paragraph 7-8. Such rules of court shall not conflict with rules of court established by the chief trial judge.

7-6. Detailing of military judges

a. Authority to detail military judges. The Chief Trial Judge is authorized to detail military judges for all purposes for which military judges may be detailed (see RCMs 309(a) and 503(b)). This authority may be delegated to individual military judges.

b. Capital courts-martial. Military judges for capital courts-martial shall be detailed by the Chief Trial Judge. In case of a conflict, the most senior Chief Circuit Judge will act as detailing authority.

c. Detail of military judges within general court-martial jurisdictions.

(1) The military judge who is designated as primarily responsible for a GCM jurisdiction (see para 7-5c) will—

(a) Normally detail himself or herself to preside over the courts-martial convened in that jurisdiction.

(b) Notify the Chief Circuit Judge when he or she requires a replacement judge to be detailed to preside over a particular court-martial for any reason or determines that additional military judge support is required for disposing of courts-martial referred to trial in his or her jurisdiction.

(2) When a military judge requests the detailing of a replacement judge or requests additional military judge support, the Chief Circuit Judge will, if practicable, detail a replacement from the military judges within the circuit or will request a replacement judge or additional military judge support from the Chief Trial Judge.

d. Processing requests for replacement judges. Requests and responses to requests for replacement judges or additional military judge support will be expeditiously processed through judicial administrative channels.

e. Docketing. At installations with two or more military judges, one will be designated as the primary docketing judge to oversee docketing and calendar management within that installation. At all other installations, the GCM military judge designated as primarily responsible for a GCM jurisdiction pursuant to paragraph 7-5c, will oversee docketing and calendar management within that jurisdiction.

f. Cross-service detailing.

(1) Nothing in this regulation precludes the detailing of a military judge from another armed service who has been made available for detail to either a SPCM or GCM, provided that such military judge has been certified by TJAG of the military judge's armed service. The approval of the Chief Trial Judge will be obtained before the judge is detailed.

(2) Army military judges may preside at courts-martial of other Services, pursuant to RCM 503(b)(3). The approval of the Chief Trial Judge will be obtained before the judge is detailed.

7-7. Administrative and logistical support

a. Duty station. Military judges are assigned to U.S. Army Trial Judiciary with duty at a specified location. Judges will not be further attached or assigned to any other unit without the written permission of the Commander, USALSA. The installation trial judiciary office is a tenant unit on the installation and thus entitled to all support required by AR 5-9. This support includes, but is not limited to—

(1) Permanent or temporary quarters for each military judge and the judge's Family members to the same degree as are provided regularly assigned officers of like grade and similar responsibility. Military judges will not share quarters.

(2) Assistance and maintenance of military personnel records, finance records, officer qualification records, and all other personnel requirements.

(3) Private office space appropriate for the grade and position.

(4) Office furniture to include an appropriate desk, chairs, carpeting, equipment, and supplies.

(5) Access to legal research publications and facilities and commercial automated legal research capability wherever possible.

(6) Private long-distance telephone line, facsimile machine, digital scanner, wireless email service, and email accessibility.

(7) A Soldier or civilian employee who will provide stenographic, clerical, and administrative assistance as required for the expeditious performance of duties to the military judge(s) assigned for duty at that installation.

(8) Modern computer hardware (to include a high quality desktop computer, laptop computer, and laser printer), software, networking, and telecommunications equipment (to include a high quality smartphone, and a computer wireless internet aircard) that meets standards established for JAGCNet, and connection with a local area network that will permit access to email and the internet.

(9) Army transportation resources, including aircraft, as far as is necessary.

b. Sites of trials. At locations where military judges preside over court-martial proceedings, the command will provide administrative and logistical support, to include—

(1) A suitable and functional courtroom facility.

(2) Private office space and appropriate furnishings, to include automation and networking capability, adjacent to the courtroom for the exclusive use of the military judge while court is in session or when the judge is engaged in other judicial business.

(3) Class A telephone service in the military judge's office.

(4) Convenient access to legal research publications, online legal research (JAGCNet), and facilities.

(5) Stenographic, clerical, and administrative assistance as required for the performance of judicial duties.

(6) Army transportation.

(7) On-post billeting facilities appropriate for the judge's grade and position. Except under deployment conditions, military judges should not ordinarily be billeted in facilities also used to billet witnesses, court members, or other trial participants.

c. Courtrooms. The courtroom is the most visible symbol of military justice on an installation. A distinctive facility that provides for the proper atmosphere and decorum is essential to emphasize the Army's commitment to a fair and impartial application of military law. It is thus vital that the courtroom convey a sense of dignity and respect for the people who interact with it. Therefore, courtrooms will be designed, constructed, funded and maintained by the installation in accordance with applicable Army courtroom facilities guidelines. Exceptions to these guidelines will be requested through the Chief, OTJAG-CLD, and can only be granted by the Army Facilities Standardization Committee. Priority of use of these facilities will be for courts-martial, and other uses will not interfere with court-martial proceedings.

d. Courtroom security.

(1) The installation SJA, in coordination with the military judge and the provost marshal, will ensure adequate security measures for the courtroom.

(2) Adequate security measures include, but are not limited to, the following:

(a) Periodic inspection of courtrooms and courtroom facilities to assess appropriate security measures for the protection of court-martial procedures, spectators, and property.

(b) The detailing of one or more armed security personnel or military law enforcement officer to provide security during court-martial proceedings. Detailed security personnel will take general direction from the military judge and trial counsel. Detailed security personnel will not act as bailiffs or escorts. Security personnel will not be anticipated witnesses for the proceeding. The military judge may determine that armed security personnel are unnecessary for court-martial proceedings on a case-by-case basis.

7–8. Rules of court

TJAG authorizes the Chief Trial Judge, pursuant to RCM 108, to promulgate local or general rules of court. This authority may be delegated by the Chief Trial Judge to Chief Circuit Judges. A copy of any local rules of court will be forwarded to the Chief Trial Judge.

7–9. Requests for military judges as individual military counsel

Requests for military judges to serve as IMC will be processed in accordance with paragraph 5–9f(2)(d). The Chief Trial Judge will make an administrative determination whether the requested judge is reasonably available. This determination is a matter within the sole discretion of the Chief Trial Judge. An adverse determination may be reviewed upon the request of the accused to the Chief Judge, USACCA, but no further review is authorized.

7–10 Contempt

A military judge may, pursuant to UCMJ, Art. 48, and RCM 809, punish acts of contempt committed in any proceeding by any person or entity, including those not subject to the UCMJ, by a fine of up to \$1,000.00, confinement of up to 30 days, or any combination thereof. The authority to pursue and impose such contempt of court action may be limited by status of forces or other international agreement.

a. Fine. Sentences for contempt involving a fine will be treated in the same manner as an approved sentence to a fine adjudged by court-martial.

b. Confinement. Individuals serving sentences to confinement for contempt are distinct from the categories of prisoners defined in paragraph 3–1 of AR 190–47. The timing and location of execution of a sentence to confinement for contempt is determined by the military judge and is not governed by paragraphs 3–2 or 3–3 of AR 190–47. Individuals sentenced to confinement for contempt will normally be held in the same facility used by the local GCMCA for pretrial confinement. For sentences to contempt of 12 hours or less, the military judge may designate a local detention cell as the location for confinement. Upon application by the person sentenced to confinement for contempt, the military judge may designate an alternate location or means of confinement, such as house arrest or other form of restraint.

c. Contracted confinement facilities. At installations that utilize contracted space in civilian confinement facilities for the detention of pretrial confinees, the GCMCA will ensure that the contract terms provide for confinement of individuals sentenced to confinement for contempt.

d. Reporting. The supporting SJA will report within 48 hours the holding in contempt of any person by a military judge to Chief, OTJAG–CLD and the Clerk of Court, USACCA.

e. Appeal.

(1) *Notice of appeal.* Any person found in contempt by a military judge may appeal the punishment by filing a notice of appeal with the Clerk of Court, USACCA, within 20 days of being found in contempt. The notice of appeal must comply with the ACCA Rules of Practice and Procedure (ACCA Rules), available at <https://www.jagcnet.army.mil/ACCA#>. (2) Action by the government upon notice of appeal. Within 20 days of receiving or filing a notice of appeal, the trial counsel shall forward a record of the contempt proceedings to USACCA, for further distribution in accordance with ACCA Rules.

(3) *Briefing.* A contempt-appellant must file any brief in support of his or her appeal within 30 days of being served with a copy of the record specified in paragraph 7-10e(2). Opposing counsel may respond within 20 days of receiving the contempt-appellant's brief. If the United States elects not to respond or is the contempt-appellant, USACCA may direct that counsel be detailed to defend the finding of contempt and punishment.

(4) *Resolution of appeal.* Other procedures for resolution of an appeal from a contempt finding will be specified in rules prescribed by USACCA.

Chapter 8 Military Magistrates

Section I

General

8–1. Military magistrates generally

a. In general. This chapter implements specific procedures for the certification and designation of military magistrates pursuant to UCMJ, Art. 26a.

b. Magistrate defined. This chapter modifies the definition of military magistrate in RCM 103. A military magistrate is an RA JA who is certified by TJAG to be qualified for duty as a magistrate and is designated to perform such duty in accordance with this chapter.

c. Limitations. The authority of military magistrates is limited to those specifically authorized in paragraph 8–4.

d. Federal magistrate system distinguished. There is no relationship between a military magistrate under this chapter and Department of the Army’s implementation of the Federal Magistrate System to dispose judicially of uniform violation notices and minor offenses committed on military installations (see AR 190–45).

8–2. Responsibilities

a. TJAG will certify all military magistrates and will specify which magistrate powers each military magistrate may exercise.

b. SJAs will—

(1) Nominate JAs for duty as military magistrates pursuant to paragraph 8–3*b*.

(2) Notify the designated military magistrate’s supervising judge if the military magistrate can no longer perform military magistrate duties.

c. The Chief Trial Judge will promulgate standard operating procedures and other guidance for military magistrates.

d. Chief circuit judges will—

(1) Designate military magistrates pursuant to paragraph 8–3*b*.

(2) Establish and supervise training requirements for military magistrates.

(3) Review complaints made against any military magistrate involving allegations related to magistrate duties.

(4) Revoke designation when the designated military magistrate is reassigned to law enforcement or prosecution duties or is otherwise unable to continue performing magistrate duties.

(5) Detail a military judge to supervise each designated military magistrate in the performance of magistrate duties.

(6) Ensure that designated military magistrates receive training and support needed to accomplish their magistrate duties.

e. Supervising military judges will—

(1) Directly supervise the designated military magistrate’s performance of magistrate duties.

(2) Conduct training of military magistrates.

(3) Ensure that designation as a military magistrate is revoked when the designated military magistrate is reassigned to law enforcement, prosecution, or other duties inconsistent with the magistrate role, or is otherwise unable to continue performing magistrate duties.

8–3. Certification and designation of military magistrates

a. Certification. All JAs who have successfully completed the Judge Advocate Officer Basic Course and have been certified under UCMJ, Art. 27(b) are certified as qualified by TJAG, as required by UCMJ, Art. 26a, to perform the duties of a military magistrate and exercise the powers described in paragraphs 8–4*a* through *c*. The exercise of any magistrate power is subject to designation pursuant to this chapter. Certification of qualification to perform judicial duties pursuant to UCMJ, Arts. 19 and 30a requires a separate action by TJAG.

b. Designation. No JA will perform the duties of a military magistrate unless properly designated. Military magistrates will be designated as follows:

(1) *Nomination and review.* Each SJA may nominate one or more JAs from their office for service as military magistrates. Nominees will be competent and impartial JAs, not engaged in criminal investigation or prosecution functions, who possess the requisite training, experience, and maturity to perform magistrate duties. SJAs will submit nominations, along with other documents required by the standard operating procedures established by the Chief Trial Judge, to the appropriate chief circuit judge.

(2) *Designation.* Upon designating the nominee to perform military magistrate duties, the appropriate chief circuit judge will issue a memorandum to each designated military magistrate prescribing the duties for which they have been certified.

c. Appointed part-time military magistrates. All part-time military magistrates who are authorized to perform magisterial duties pursuant to chapter 8, AR 27–10 (11 May 2016) on 31 December 2018 are certified and designated as UCMJ, Art. 26a military magistrates and are authorized to exercise the powers described in paragraphs 8–4*a* through *c*.

8–4. Powers of military magistrates

a. Review of confinement. All certified and designated military magistrates are authorized to conduct reviews of pretrial confinement. No military magistrate is authorized to review the detention of an enemy belligerent under the law of armed conflict (LOAC).

b. Issuance of search, seizure, and apprehension authorizations. All certified and designated military magistrates are authorized to issue search and seizure authorizations and apprehension authorizations on probable cause pursuant to section III of this chapter.

c. Review of confinement pending outcome of foreign criminal charges. All certified and designated military magistrates are authorized to review the confinement of Soldiers in U.S. facilities pending final disposition, including appeals, of

foreign criminal charges (see chap 16). Final disposition of foreign criminal charges incorporates all stages of the host country's criminal proceedings, including appeals, up to commencement of any sentence to confinement resulting from conviction on the foreign criminal charges.

d. Articles 19 and 30a authorities. No military magistrate is authorized to perform judicial duties pursuant to UCMJ Arts. 19 and 30a, unless explicitly certified and designated by TJAG to do so.

e. Other duties. Unless certified and designated by TJAG to perform duties pursuant to UCMJ, Art. 19 and/or Art. 30a, or otherwise restricted by TJAG, a military magistrate may be assigned to perform other duties of a nonjudicial nature (for example, service as an administrative law attorney).

Section II

Pretrial Confinement

8–5. Review by military magistrate

a. General.

(1) Military magistrates are empowered to order the release from pretrial confinement of anyone ordered into pretrial confinement pursuant to RCM 305 and any confinee in any U.S. Army confinement facility on determination (following review of the case) that continued pretrial confinement does not satisfy legal requirements. The military magistrate will consider all relevant facts and circumstances surrounding each case of pretrial confinement in arriving at this decision. Military magistrates will review each case of pretrial confinement according to the procedures and criteria contained in RCM 305(i) and this paragraph.

(2) Whoever initially authorizes pretrial confinement in a facility not administered by the Army will immediately notify the officer exercising GCM jurisdiction over the person confined, or that officer's SJA. This officer will immediately cause the responsible military magistrate to be notified of the case.

(3) Unless an Army magistrate has conducted a pretrial confinement review pursuant to paragraph 8–5*b*, below, the review of pretrial confinement of a Soldier of the U.S. Army will be governed by the military magistrate regulations of the military Service that has jurisdiction over the place of confinement. Soldiers ordered into pretrial confinement will be confined in Army confinement facilities whenever practicable.

(4) Servicemembers of other Services ordered into pretrial confinement in Army confinement facilities will be subject to the provisions of this section, unless specific exceptions to these provisions, consistent with RCM 305, are requested in writing by an officer of the other Service.

b. Procedures.

(1) The military magistrate will review pretrial confinement in accordance with RCM 305(i). The military magistrate's decision to approve pretrial confinement is subject to a request for reconsideration (see RCM 305(i)(2)(E) pertaining to reconsideration of a decision to approve confinement) pursuant to the provisions of this paragraph. Once charges for which the accused has been confined are referred, the accused may seek review of the propriety of pretrial confinement in accordance with RCM 305(j). During any review of pretrial confinement, the military magistrate must ensure that the victim's rights and concerns are addressed through his or her SVC or, if none, directly from the victim. Nothing in this paragraph will preclude an accused from seeking extraordinary relief. A copy of the military magistrate's memorandum to approve or disapprove pretrial confinement, required by RCM 305(i)(2)(D), will be served on the SJA or the SJA's designee and to the accused or the accused's defense counsel. Upon order of the military magistrate, an accused will be released immediately from pretrial confinement.

(2) The commander of the person confined, on ordering confinement or receiving notification of confinement, will provide the military magistrate with a completed DA Form 5112 no later than 36 hours after imposition of confinement. The commander will include (in the appropriate area of the pretrial confinement block of DA Form 5112) or attach to the DA Form 5112 a statement of the basis for the decision to confine (RCM 305(h)(2)(C)). The commander of the person confined shall direct the release of the person confined if a decision has been made not to prefer charges. Except in extraordinary cases, a decision to prefer charges will be made within 7 days of confinement. The 7-day timeline does not create a right on behalf of the accused.

(3) The unit commander concerned may impose any authorized pretrial restraint deemed necessary on a person who has been released from confinement by a magistrate. However, the unit commander may not order the return of that person to pretrial confinement except pursuant to the provisions of RCM 305(l). The military magistrate who ordered release will be immediately notified of any person returned to pretrial confinement and the reasons therefore.

(4) Circumstances of Soldiers who, after release by a military magistrate, are returned to confinement, will be reviewed by the military magistrate. The determination of whether continued pretrial confinement is warranted will be made on the same legal basis as the review and determination for initial pretrial confinement.

(5) The military magistrate will communicate the decision in each case to the Soldier confined or the Soldier's defense counsel. This may be accomplished by means of a copy of the written record of decision. In addition, a record of the military magistrate's decision(s) will be filed in that Soldier's correctional treatment file (see AR 190-47).

(6) Copies of the DA Form 5112 as completed by the commander and the military magistrate's memorandum approving or disapproving pretrial confinement will be included in the record of trial.

Section III

Search, Seizure, and Apprehension Authorizations

8-6. Authority of military judges and military magistrates to issue authorizations

The following individuals are authorized to issue search and seizure and search and apprehension authorizations on probable cause (see MRE 315(d)(2)) with respect to persons and property specified in MRE 315(c):

- a. Military judges assigned or attached to, or USAR military judges assigned to or under technical supervision of, the U.S. Army Trial Judiciary.
- b. Military magistrates certified and designated pursuant to paragraph 8-3.

8-7. Issuance

a. *In general.* The procedures for issuing search and seizure and search and apprehension authorizations are contained in MREs 315 and 316.

b. *Form of request.* Authorizations to search and seize or search and apprehend may be issued on the basis of a written or oral statement, electronic message, or other appropriate means of communication. Information provided in support of the request for authorization may be sworn or unsworn. The fact that sworn information is generally more credible and often entitled to greater weight than information not given under oath should be considered.

c. *Other matter.* In addition to information presented to the authorizing official pursuant to a request for authorization to search and seize or apprehend, the authorizing official may consider any information he or she has, provided such information would not preclude him or her from acting in an impartial manner.

d. *Form of approval.* DA Form 3744, Affidavit Supporting Request for Authorization to Search and Seize or Apprehend, may be used if the supporting information is to be sworn. Authorizations to search and seize or search and apprehend may be issued orally or in writing. DA Form 3745 (Search and Seizure Authorization) or DA Form 3745-1 (Apprehension Authorization), may be used if an authorization is issued in writing.

8-8. Oaths

See chapter 10 of this regulation for the authority, procedures, and forms for administering oaths to persons providing information to commanders and other military personnel empowered to issue authorizations to search and seize.

8-9. Execution and disposition of authorizations and other related papers

a. *Timing of execution.* The authorization to search or seize should be executed within 10 days after the date of issue.

b. *Inventory.* An inventory of the property seized will be made at the time of the seizure or as soon as practicable. A copy of the inventory will be delivered to the person from whose possession or premises the property was taken. The DA Form 4137 (Evidence/Property Custody Document) may be used.

c. *Disposition of authorization and other papers.* After the authorization has been executed, the authorization and a copy of the inventory will be returned to the issuing authority. Thereafter, all documents and papers relative to the search or seizure will be transmitted to the appropriate law enforcement office. They will be filed for use in any future litigation or proceeding on the results of such a search.

8-10. Recovery and disposition of property

a. *Evidence retained for courts-martial.* Evidence retained for courts-martial will be disposed of according to applicable regulations. SJAs will make every effort to return property, when appropriate, as expeditiously as possible by substituting photographic or written descriptions when such measures will not jeopardize pending prosecutions.

b. *Property seized by CID.* The provisions of AR 195-5 govern the recovery and disposition of property seized pursuant to an authorization to search and seize conducted by U.S. Army criminal investigators.

c. *Property seized by other authorized persons.* The provisions of AR 190-30 govern the recovery and disposition of property seized pursuant to a search or seizure by other authorized persons.

8–11. Reapplication

Any person requesting authorization to search and seize must disclose to the issuing authority any knowledge that person has of denial of any previous request for a search or seizure authorization involving the same individual or the same property.

8–12. Legality of searches and seizures

The requirements set forth in this chapter are administrative only and the failure to comply does not, in and of itself, render the search or seizure unlawful within the meaning of MRE 311. The “privatization” of on-post housing and other facilities does not diminish the authority of military judges, military magistrates, garrison commanders or installation commanders to authorize searches of on-post housing or facilities, whether “privatized” or not.

Chapter 9

Courts of Inquiry

9–1. General

This chapter applies only to courts of inquiry.

9–2. Jurisdiction

a. Statutory provisions. Courts of inquiry to investigate any matter may be convened by any person authorized to convene a GCM. They may also be convened by any other person designated by the Secretary of the Army for that purpose, whether or not the persons involved have requested such an inquiry.

b. Policy. A court of inquiry is a formal, fact-finding tribunal. A court of inquiry will not be convened to investigate a particular matter to ascertain the facts if there are other satisfactory means (prescribed by law or regulation or authorized by the customs of the Service). Under this policy, it is proper to convene a court of inquiry only when—

(1) The matter to be investigated is one of grave importance to the military Service or to an individual; or

(2) The testimony is expected to be so diverse, complicated, conflicting, or difficult to obtain that a court of inquiry can best—

(a) Procure the pertinent evidence.

(b) Ascertain the facts.

(c) Assist the convening or superior authority in determining what action should be taken.

c. Persons whose conduct may be subject to inquiry. As a court of inquiry may be convened to investigate any matter (pursuant to UCMJ, Art. 135(a)), it may also lawfully investigate the conduct of any person. As a matter of policy, a court of inquiry will not, without prior approval of the Secretary of the Army, be convened to investigate the conduct of a person who is not a member of the Army unless the convening authority exercises GCM jurisdiction over that person.

d. Effect of application for court of inquiry. Any person subject to the UCMJ, who believes he or she has been wronged by any accusation or imputation against his or her person and who cannot secure adequate redress by any other means (prescribed by law, regulation, or authorized by the customs of the Service) may submit an application for a court of inquiry. The application will be sent through the person’s immediate commander to the officer exercising GCM jurisdiction over the command for convening a court of inquiry to investigate and report the alleged accusation or imputation. The officer exercising GCM jurisdiction may, according to the policy in paragraph 9–2b, convene a court of inquiry to investigate the matter or may take other appropriate action. The applicant will be advised if the GCM authority refuses to convene such a court and will have the right to appeal to superior authority.

9–3. Composition

a. Number of members. A court of inquiry will consist of three or more members. The senior member will be the president.

b. Qualifications of members.

(1) Any commissioned officer on AD will be eligible to serve on a court of inquiry. No member will be junior in grade to, nor lower on the promotion list than, any officer who is initially designated as a party to the inquiry, unless exigencies of the Service so require. The decision by the convening authority, in this regard, as indicated by the order appointing the court, is final.

(2) The convening authority will appoint as members of a court of inquiry persons who are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. One or more members having experience or training in the subject of the inquiry, should, when possible, be appointed if that special experience or training will benefit the inquiry. When a female officer or enlisted Soldier is initially designated a party to the inquiry,

a female officer or enlisted Soldier, as appropriate, senior to and of the same branch as that party, will, if possible, be appointed as a member of the court. Neither a party to the inquiry, nor his or her counsel, nor a witness against that party will be eligible to serve as a member of the court.

c. Counsel. For each court of inquiry the convening authority will appoint by letter of appointment a commissioned officer as counsel for the court and assistant counsel as the convening authority deems appropriate. If practicable, the counsel appointed for the court will be an officer who is certified by TJAG to be qualified as counsel of a GCM pursuant to the provisions of UCMJ, Art. 27(b). Neither a party to the inquiry, nor such a person's counsel, nor a witness against that party will be eligible to serve as counsel for the court.

d. Reporters and interpreters. For each court of inquiry the convening authority will provide a qualified court reporter who will record the proceedings and testimony taken before that court. When necessary, the convening authority will provide an interpreter who will interpret for the court.

9-4. Convening order

a. Format. The format of the order convening a court of inquiry will be similar to that for a court-martial (see appendix 11, MCM, 2019).

b. Content. In addition to naming the members and setting the time and place of assembly of the court, the initial convening order will clearly specify the matter to be investigated and the scope of the findings required. The order will also prescribe the number of copies of the record to be prepared. If it is desired that the court express opinions or make recommendations, the order must specifically so state. When appropriate, the convening order will designate the party whose conduct is subject to inquiry.

9-5. Designation of parties

a. Person "whose conduct is subject to inquiry." Any person subject to the UCMJ whose conduct is subject to inquiry will be designated as a party. The conduct of a person is "subject to inquiry" when the court of inquiry is directed in the convening order to inquire into any past transactions or any accusation or imputation against that person.

b. Person who has "a direct interest in the subject of inquiry."

(1) Any person who is subject to the UCMJ, employed by the DOD, or with respect to the Coast Guard, employed by the Department of Homeland Security, or employed by the DOD who has a direct interest in the inquiry, will have the right to be named as a party on request to the court.

(2) A person has a direct interest in the subject of inquiry when the findings, opinions, or recommendations of the court may, in view of the person's relation to the incident or circumstances being inquired into—

(a) Reflect questionable or unsatisfactory conduct, efficiency, fitness, or performance of duty, or

(b) Affect the person's pecuniary responsibility.

(3) The question of whether a person has a direct interest in the subject of the inquiry rests in the discretion of the court. Any doubts should be resolved in favor of the person claiming such an interest.

c. Designation of parties by court. When it appears to the court during the course of an inquiry that a person subject to the UCMJ or employed by the DOD has a "direct interest in the subject of inquiry" (as that term is defined in paragraph 9-4b) the court, before completing its inquiry, will inform the person concerned, orally or in writing, of—

(1) The precise nature of the person's interest in the case.

(2) The right to be designated as a party to the inquiry. The fact that the person was notified and the person's desires with respect to being designated as a party will be made a part of the record.

d. Procedure on designation of party by court.

(1) When the court designates a person as a party, it will take appropriate action to ensure that the person—

(a) Understands the person's rights as such.

(b) Is fully informed of the evidence pertaining to the person that was received by the court.

(2) Any reasonable request by the party for recall of previous witnesses for the purpose of cross-examination will be granted by the court if practicable. If the witness cannot be recalled, cross-examination may be accomplished by written interrogatories. Any testimony already given by such a party remains in the record but, after the party's designation as a party, these rights as a witness are governed by paragraph 9-7b.

9-6. Rights of parties

A party to the inquiry, whether designated initially or during the course of the inquiry, has the following rights:

a. To be given due notice of such designation.

b. After a party's designation, to be present and to have counsel present during all proceedings in open court.

c. To be represented by civilian counsel if provided by the party at no expense to the government, by appointed military counsel, or by military counsel of the party's own selection, if reasonably available.

- d. To challenge members, but only for cause stated to the court.
- e. To cross-examine witnesses.
- f. To introduce evidence and to examine and object to the introduction of evidence.
- g. To testify as a witness under the rules set forth in paragraph 9–7b.
- h. To make a voluntary statement in any form, personally or through counsel.
- i. To make an argument at the conclusion of presentation of the evidence.
- j. To submit a written brief at the conclusion of the inquiry, after examination of the record of proceedings.

9–7. Witnesses

a. *General.* Witnesses may be subpoenaed to appear, testify, and be examined before courts of inquiry. A court of inquiry and counsel for such court have the same powers with respect to obtaining the attendance of witnesses as a court-martial and the trial counsel of a court-martial (see RCM 703).

b. *Party to the inquiry.* In all proceedings in courts of inquiry the person charged will, at the person’s own request, be a competent witness. The party’s failure to make such a request will not create a presumption against the party (18 USC 3481). Any party to the inquiry who is charged with or suspected of an offense that is then the subject of inquiry by the court is deemed to be “charged” within the meaning of the above act and is, on request, a competent witness. A party to the inquiry who is not charged with or suspected of an offense may be called as a witness and required to testify under oath on any matter on which the party might be a material witness, subject to the limitations imposed by UCMJ, Art. 31.

c. *Examination.*

- (1) The examination of a witness may be conducted, at the discretion of the court, by members and counsel for the court.
- (2) Any person designated as a party to the inquiry and the person’s counsel will have the right to examine and cross-examine witnesses.
- (3) MREs 301, 305, 502, and 503, pertaining to the right against self-incrimination and to privileged communications, are applicable to the examination of witnesses before a court of inquiry.

9–8. Procedure

a. *General.* Except as otherwise provided by this regulation, the procedure before courts of inquiry will be governed by the provisions of AR 15–6 for formal boards of officers.

b. *Duties of counsel for court.* The counsel for a court of inquiry will perform substantially the same duties as are prescribed by AR 15–6 for the recorder of a board of officers. Counsel will be present during all proceedings in open court and may be present when the court is closed. An assistant counsel for the court is competent to perform any duty of counsel for the court. The counsel will perform such duties in connection with the inquiry as counsel for the court may designate.

c. *Quorum.* Three members of the court will constitute a quorum and must be present at all its sessions. An exception is that a member who was previously absent from or newly appointed to a court may participate in the proceedings if the substance of all proceedings and the evidence introduced previously have been made known to the member.

d. *Challenges.* Members of a court of inquiry may be challenged by a party, but only for cause stated to the court in the presence of the members. The procedure for determining challenges is as follows:

- (1) any challenge for cause shall be decided by a majority vote of the members upon secret written ballot in closed session;
- (2) the challenged member shall not be present at the closed session at which the challenge is decided;
- (3) a tie vote on a challenge disqualifies the member challenged;
- (4) before closing, the president shall give such instructions as may be necessary to resolve the challenge;
- (5) each challenge shall be decided separately, and all unexcused members except the challenged member shall participate;
- (6) when only three members are present and one is challenged, the remaining two may decide the challenge;
- (7) when the president is challenged, the next senior member shall act as president for purposes of deciding the challenge.

e. *Oaths.*

(1) Before a court commences the inquiry directed by the convening order, the counsel for the court will administer to the members the following oath or affirmation: Do you, (names), (swear or affirm) that you will faithfully perform all the duties incumbent upon you as members of this court of inquiry and that you will examine and inquire, according to the evidence, into the matter now before you without partiality (so help you god)?

(2) When the oath or affirmation has been administered to the members of the court, the president of the court will administer to the counsel (and assistant counsel, if any) the following oath or affirmation: Do you, (name), (swear or affirm) that you will faithfully perform the duties of counsel for this court (so help you God)?

(3) Every reporter and interpreter will, before performing duties, make an oath or affirmation, administered by the counsel for the court, in the following form: Do you, (name), (swear or affirm) that you will faithfully perform the duties of reporter (interpreter) to this court (so help you god)?

(4) All persons who testify before a court of inquiry will be examined on oath or affirmation, administered by the counsel for the court, in the following form: Do you, (name), (swear or affirm) that the evidence you will give in the case now in hearing will be the truth, the whole truth, and nothing but the truth(so help you God)?

(5) The counsel for the court will administer the following oath to a challenged member who is to be examined under oath as to his or her competency: Do you, (name), (swear or affirm) that you will answer truthfully to the questions touching your competency as a member of the court in this case (so help you God)?

f. Presence of party. Although a party to the inquiry has the right to be present during all proceedings in open court, his or her presence is not essential and the absence does not affect the authority of the court to proceed with the inquiry. An absent party may be represented by counsel. If a party is absent because of sickness or other good reason and was not represented by counsel during the absence, the court will, if practicable, adjourn the inquiry until the party or counsel can be present. Otherwise the court will, upon request of the absent party—

(1) Make known to the party the evidence pertaining to the party that was received during the party's absence.

(2) Give the party a reasonable opportunity to cross-examine available witnesses and to present evidence on the party's own behalf.

g. Rules of evidence.

(1) Although not generally bound by the rules of evidence contained in the MCM (but see para 9–7c(3) for exceptions), courts of inquiry will, as far as practicable, observe those rules to ensure an orderly procedure and a full, fair, and impartial investigation. Thus a court may consider certificates of officers or affidavits of enlisted personnel or civilians if it is impossible or impracticable to secure their personal testimony or depositions.

(2) Similarly, if it is impracticable to produce a witness to authenticate a document, the court may dispense with formal proof of its authenticity. However, the court must be satisfied that the document is what it purports to be. When a deposition is taken under the provisions of UCMJ, Art. 49 and RCM 702, all known parties to the inquiry will be given notice and permitted to submit cross-interrogatories. In determining the materiality of evidence, the court should consider that the scope of the inquiry is limited by the directions contained in the convening order or in subsequent communications of the convening authority.

9–9. Report

a. General. After all the evidence has been presented and briefs, if any, submitted, the court will close to consider the evidence and formulate its findings and, if any are required, its opinions and recommendations. Only the members and counsel for the court (see para 9–3c) may be present during its closed sessions. The findings, opinions, and recommendations of the court will not be divulged to anyone other than the convening authority; nor will the vote or opinion of any member be disclosed unless disclosure is required by these regulations or by a court of justice in due course of law.

b. Findings. After careful consideration of the evidence of record and the instructions contained in the convening order, the court will record its findings. A finding is a clear and concise statement of a fact or a conclusion of the court that may reasonably be inferred from the evidence. On request of the court, the counsel for the court will assist the court in putting the findings in proper form. Each finding must be supported by evidence of record. In arriving at its findings with respect to disputed facts, the members of the court should use their professional knowledge, best judgment, and common sense in weighing the evidence. They will consider the probability or improbability of the disputed facts and should regard as established facts those that are supported by evidence deemed most worthy of belief.

c. Opinions. If the convening order directs the submission of opinions, the court will set forth the opinions that it believes may reasonably be inferred from the facts. The opinions consist of a concise summary of the results of the inquiry consequent from the evidence supported by the facts. They may consider matters in extenuation or mitigation. The court's opinions may include conclusions of law; for example, whether the facts found establish the commission of an offense that is punishable under the UCMJ.

d. Recommendations. If the convening order requires that recommendations be submitted, the court will make such recommendations as are specifically directed and any others that, in its opinion, are appropriate and advisable in view of the nature of the inquiry and the facts found. Recommendations must be appropriate and warranted by the findings and opinions. In general, they should cover the punitive, pecuniary, and corrective phases of the matter under investigation. If any member of the court recommends trial by court-martial, a charge sheet, signed and sworn to by that member, will be prepared and submitted to the convening authority with the record of proceedings. These charges may be signed and sworn to before the counsel for the court.

e. Minority report. The report of the court will be based on the opinion of the majority of the members sitting at the inquiry. If a member does not concur with the findings, opinions, or recommendations of the majority of the court, the

member will prepare a minority report. It will contain an explicit statement of the parts of the majority report with which the member disagrees and the reasons therefore.

9–10. Preparation and submission of record

a. Contents. The record of proceedings of a court of inquiry will include—

- (1) The convening order.
- (2) Any other communication from the convening authority.
- (3) An accurate transcript of the proceedings, including a verbatim report of the testimony.
- (4) The findings of fact.
- (5) The opinions and recommendations, if any were required.
- (6) The exhibits that were received in evidence.

b. Form. The provisions of appendix 14, MCM, 2016 so far as they are applicable, will serve as a general guide for the preparation of the record of the proceedings of a court of inquiry.

c. Copies. The convening authority ordinarily will provide in the convening order for preparation of sufficient copies of the record to permit distribution to agencies directly concerned with the subject of the inquiry. If the convening order fails to prescribe the number of copies, the record will be prepared in duplicate.

d. Authenticating and forwarding. All copies of the record will be authenticated below the findings, opinions, and recommendations of the court, including any minority report, by the signature of the president and counsel for the court. In case the record cannot be authenticated by the president, it will be authenticated by a member in lieu of the president. In case the record cannot be authenticated by the counsel for the court, it will be authenticated by a member instead of counsel. After the record is authenticated, all copies will be forwarded to the convening authority or, in the case of a court convened by the President or the Secretary of the Army, to TJAG.

9–11. Action of convening authority

a. Revision. If not satisfied with the investigation, facts, opinions, or recommendations, the convening authority may return the record to the court with explicit instructions to—

- (1) Have the investigation pursued further, or the facts, opinions, or recommendations stated in greater detail, or in more definite and unequivocal terms.
- (2) Correct some other error or defect or supply some omission.

b. Review and formal action. The convening authority will review the record of proceedings of a court of inquiry and consider the findings, opinions, and recommendations. The convening authority will state at the end of the record over the convening authority's own signature, approval or disapproval in whole or in part, of the findings, opinions, and recommendations. In taking this action, the convening authority is not bound by the findings, opinions, or recommendations of the court.

9–12. Disposition of record

Immediately after taking action on a record of the proceedings of a court of inquiry, the convening authority will forward the original copy of the record, by letter of transmittal, through normal command channels, to TJAG. The letter of transmittal will contain a statement as to what action the convening authority has taken or proposes to take on the matter investigated by the board. Superior commanders may take such action as they deem appropriate on the subject of the inquiry and the action of subordinate commanders thereon. A notation of any action taken by such a superior commander will be included in an endorsement forwarding the record. The original copy of each record of a court of inquiry will be permanently filed by the Clerk of Court, USACCA, in the same manner as records of trial by GCM (see para 5–58).

Chapter 10 Oaths

10–1. General

This chapter implements UCMJ, Arts. 42 and 136, and various rules of the MCM. It authorizes commanders to administer oaths related to military justice. It also authorizes other military personnel who are empowered to authorize searches and seizures (pursuant to MRE 315(d)) to administer oaths for such searches and seizures and for apprehensions.

10–2. Court-martial persons required to be sworn

All court-martial personnel listed in RCM 807(b)(1)(A) will take an oath to perform their duties faithfully, pursuant to UCMJ, Art. 42(a). Oaths to court-martial personnel need not be administered in the presence of the accused.

10-3. Oath administration procedure for military judges

A military judge will take a written oath before an officer qualified to administer oaths by UCMJ, Art. 136(a), to faithfully and impartially perform his or her duties in all cases to which the military judge is detailed (pursuant to UCMJ, Art. 26(b) and RCM 807(b)(1)(A)). An oath need not be taken again when the military judge is detailed to a court-martial. A military judge of another armed force who has taken an oath to perform his or her duties properly in all cases to which he or she is detailed need not take an oath when detailed as a military judge at courts-martial convened in the Army.

10-4. Oath administration procedure for counsel

a. Army Judge Advocates. A counsel certified pursuant to UCMJ, Art. 27(b), who is a member of the JAGC will take the oath on DA Form 3497 (Counsel's Oath) before an officer qualified to administer oaths pursuant to UCMJ, Art. 136(a). The DA Form 3497 will be filed in the AMHRR, in the Soldier's Service Portion. Once executed on DA Form 3497, an oath need not be taken again when previously sworn counsel are individually requested or detailed to that duty. One copy of the DA Form 3497 will be retained by the JA who took the oath and two copies will be forwarded to the OTJAG-PPTO.

b. Counsel from another armed service. Counsel who are members of other armed services (who have taken oaths to perform their duties faithfully in any case to which they are individually requested or detailed as counsel) need not take an oath when they participate as counsel at courts-martial convened in the Army.

c. Other counsel. All other counsel will be administered the appropriate counsel's oath for any case referred to the court to which they have been detailed, or in any case in which they enter an appearance on the record.

10-5. Oath administration procedure for court members

The trial counsel will normally administer the oath to court members in open session. As a matter of policy, such oaths should be administered at every court-martial to impress on the participants the solemnity of the proceedings. When court members are not sworn because they have been administered such an oath previously, this fact will be noted in the record of trial.

10-6. Oath administration procedure for reporters

a. The trial counsel will administer the oath to the reporter at the court-martial. At the discretion of the SJA of the command to which the reporter is assigned (or employed), reporters may execute a written oath to perform their duties faithfully in all cases to which they are detailed (or employed), before an officer qualified to administer oaths (see UCMJ, Art. 136(a)).

b. When a reporter who has been so sworn is used by, reassigned to, or employed by a different GCMCA, a copy of the oath will be given to the SJA of the new convening authority. The SJA authorizing the administration of a written oath will maintain a copy of such oath so that it may readily be determined that the reporter has been previously sworn. When reporters are not sworn because they have been administered such an oath previously, this fact will be noted in the transcript or record of trial.

10-7. Oath administration procedure for interpreters

a. The trial counsel or SCM officer will administer the oath to interpreters at the court-martial. At the discretion of the SJA of the command to which an interpreter is assigned (or employed), interpreters may take a written oath to interpret truly in all cases to which they are detailed or employed. The SJA will maintain records of the written oath so that it may be readily determined that an interpreter has been previously sworn.

b. When an interpreter so sworn is used by, reassigned to, or employed by a different GCMCA, a copy of the oath will be given to the SJA of the new convening authority. When interpreters are not sworn because they have previously been administered a written oath, this fact will be noted in the transcript or record of trial.

10-8. Forms of oaths for court-martial personnel

Oaths in Army courts-martial shall take the form of oaths as described in RCM 807(b)(2), Discussion.

10-9. Forms of oaths and administration procedure for persons providing sworn information in support of requests for authorizations to search and seize and authorizations to apprehend

a. Except as provided in paragraph 10-9b, oaths are not required to be given to persons providing information in support of requests for authorizations to search and seize (see para 8-7). Commanders and other military personnel empowered to authorize searches and seizures, on probable cause, may administer oaths to persons presenting information in support of requests for such authorizations. When an authorizing person is presented with sworn matter and the authorizing person did not personally administer the oath, the matter should include the name and authority of the person who administered the oath and the date and place of administration. When information is presented by telephone or similar device to those

empowered to authorize searches, seizures, and apprehensions. The authorizing official may administer the oath over such devices.

b. A warrant for wire and electronic communication issued pursuant to RCM 703(A)(b) may be used based only on affidavit or sworn testimony.

c. No specific form of oath or affirmation is required as long as it imposes upon the requester a moral or legal responsibility for the correctness of the information. The following oath or affirmation, as appropriate, may be administered to persons providing information supporting requests for authorizations to search and seize or to apprehend: Do you (name) (swear or affirm) that the information you are providing is, to the best of your knowledge, information, and belief, the truth (so help you God)?

10–10. Form of oath for the accused following a plea of guilty

The following oath will be administered to the accused prior to the military judge questioning the accused concerning the accuracy of his or her plea (as described in RCM 910(e)): Do you (swear or affirm) that the statements you are about to make will be the truth, the whole truth, and nothing but the truth (so help you God)?

Chapter 11

Form and Distribution of Court-Martial Orders

11–1. Convening orders

a. *General and special court-martial convening orders.*

(1) The convening authority will issue court-martial convening orders (CMCOs) for each SPCM and GCM as soon as practicable after determining the members of a court-martial.

(2) CMCOs for SPCM and GCM will:

(a) Designate the type of court-martial;

(b) Designate the members, if any as outlined in RCM 504(d);

(c) If the CMCO fails to specifically state that alternate members are authorized under this paragraph, no alternates are authorized. If the convening authority authorizes the use of alternate members, the CMCO will state whether the judge is—

1. authorized to impanel a specified number of alternate members; or

2. authorized to impanel alternate members only if, after the exercise of all challenges, excess members remain.

(3) SJAs should advise convening authorities whether alternate members should be required in a particular case, to include advice that in non-capital GCMs up to two members may be excused after impanelment without depriving the court-martial of a quorum.

b. *CMCOs for special court-martial convened pursuant to UCMJ, Art. 16(c)(2)(A).*

(1) A convening authority may refer a case to SPCM convened pursuant to UCMJ, Art. 16(c)(2)(A) when all offenses are alleged to have been committed on or after 1 January 2019.

(2) Notwithstanding the limitation in paragraph 11–1b(1), a convening authority may, in a case that involves offenses committed prior to 1 January 2019:

(a) refer the case to a SPCM with special instructions that the sentence may not include confinement for more than six months or a bad-conduct discharge;

(b) enter into a pretrial agreement with the accused providing that a court-martial be composed of a military judge alone and providing for any lawful limitation on the sentence.

c. *Summary court-martial convening orders.*

(1) A CMCO is used to announce the detail of an SCM.

(2) The convening authority may issue a CMCO for each SCM at the time of referral by annotating the charge sheet (see RCM 1302(c)).

(3) SCM CMCOs may be amended by an attachment to the charge sheet.

11–2. Court-martial order format for summary courts-martial and special courts-martial convened pursuant to UCMJ, Article 16(c)(2)(A)

a. *Summary court-martial CMCO.* A SCM may be convened at the time of referral by annotating section V of the charge sheet after the words “convened by” as follows: this detail of (insert grade and name) as a summary court-martial on (date). If the convening authority has been empowered pursuant to UCMJ, Art. 24(a)(4), the charge sheet will reference the order granting SCM authority (see RCM 504(d)(2)). Amendments to SCM CMCOs will be made by attachments to the charge sheet. The SCM CMCOs need not be numbered (see para 11–3a(2)).

b. CMCOs for special court-martial convened pursuant to UCMJ, Art. 16(c)(2)(A). A SPCM authorized by UCMJ, Art. 16(c)(2)(A) is convened at the time of referral by annotating section V of the charge sheet as follows: “Referred for trial to the special court-martial convened by (name of convening authority) (date), subject to the following instructions: This case is to be tried as a special court-martial consisting of a military judge alone pursuant to UCMJ, Art. 16(c)(2)(A).”

c. Summary court-martial promulgating order. Initial SCM promulgating orders are not required. Supplemental promulgating orders will be issued using the format in paragraph 11–3 of this regulation and appendix 11, MCM, 2019.

11–3. Format for court-martial orders

a. Heading.

(1) The heading of court-martial orders (CMOs) is the same as that used for other orders, except that the words “court-martial convening order,” “general court-martial order,” “special court-martial order,” or “summary court-martial order,” are substituted for the word “Orders” (see AR 600–8–105).

(2) CMCOs, excepting a SCM or a SPCM convened pursuant to UCMJ, Art. 16(c)(2)(A) will be numbered so that convening authorities and other interested parties are able to track the creation and amendment of CMCOs by calendar year.

(a) CMCOs may be grouped into separate categories, such as general and special courts-martial, with each category having its own numbering sequence and beginning anew each calendar year. Alternatively, a convening authority may wish to group all SPCM and GCM CMCOs together in one series, with each succeeding CMCO numbered sequentially and the whole series beginning anew each calendar year. This latter option may be preferable when a convening authority picks the same panel members to serve as a standing panel for both SPCMs and GCMs.

(b) For all CMOs, the first numbered order in each series issued in any calendar year will bear a notation above the heading of the first page showing the number of the last order issued for that series during the preceding year. For example, “Court-Martial Convening Order Number 37 was the last of the series for 2018.”

(3) The type of order will be written in capital letters beginning at the left margin immediately opposite the date. The word “NUMBER” in capital letters will be placed immediately below the type of order. An Arabic numeral indicating the serial number of the order will be placed so that the last number is immediately below the last letter of the word “ORDER.”

(4) CMCOs will bear the date of their publication.

b. Body.

(1) CMCOs (see RCM 504(d)). Great care should be used to verify that the members actually detailed by the convening authority are present. At a minimum, each member should be asked to verify their name, rank, and unit. After verification, no document that includes the social security numbers of court members should be attached to the record of trial.

(2) Supplementary SCM promulgating orders. The order will be in the format contained in appendix 11, MCM, 2019, and the order will include, if applicable, the following:

(a) The date the sentence was adjudged if the supplementary action in any manner affects a sentence of confinement.

(b) The courts-martial case number (ARMY0000000) inserted in parentheses at the end of the distribution list.

c. Authentication. CMOs are authenticated in the same manner as other orders discussed in AR 600–8–105 with the exception of the authority line. The authority line in CMCOs indicates that the commander has personally acted with respect to the selection of the personnel named in the order. In CMOs, the authority line reads—

(1) “By command of (grade and last name)” when the commander is a general officer.

(2) “By order of (grade and last name)” when the commander is below the grade of brigadier general.

d. Distribution designation.

(1) The word “distribution” is placed beginning at the left margin opposite the signature block. A list of the individuals, organizations, and installations to which copies of the order will be sent and the number of copies to be furnished will be indicated under “distribution.” Distribution includes one copy for the reference set, when needed, and the record set of military publications.

(2) Standard distribution of orders within a command and to agencies requiring full distribution may be designated by letters, for example, distribution A, B, or combinations thereof, to indicate all or part of the distribution made. Agencies included in each letter designation are shown in a distribution list prepared and published by the headquarters or agency concerned (see AR 600–8–105).

e. Corrections. CMOs are corrected in the same manner as other orders discussed in AR 600–8–105, with the following exceptions:

(1) Changed material will be underscored.

(2) Further corrections will be made by additional corrected copies, as necessary, with the figure “2d,” “3d,” and so forth, inserted before the words “corrected copy.” Extreme care should be used in preparing CMOs to avoid the need for corrections.

11–4. Distribution of court-martial orders

Official copies of CMOs and amending orders, if any, issued from the various headquarters will be dispersed in accordance with appendix I of this regulation.

Chapter 12

Appellate Review Matters

12–1. Scope

This chapter discusses appellate review matters pertaining to—

- a. Appeals pursuant to the UCMJ, Arts. 56(d), 62 and 66.
- b. The waiver or withdrawal of an appeal pursuant to UCMJ, Art. 61.
- c. Petitions for *habeas corpus* representation in death penalty cases.
- d. Petitions for extraordinary relief filed by the United States.

12–2. Petitions for extraordinary relief

Prior to filing a petition for extraordinary relief with the USACCA or the USCAAF on behalf of the United States or government officials, in their capacity as government officials, trial counsel, SJAs, or their representatives will coordinate with the Chief, GAD. SVC will coordinate with their supervisory attorneys prior to filing a petition for extraordinary relief with the USACCA or the USCAAF.

12–3. Appeals pursuant to UCMJ, Article 62

a. Interlocutory appeals.

(1) *Prior approval.* A trial counsel will not file a notice of appeal with the Chief, GAD, pursuant to RCM 908 unless authorized to do so by the GCMCA or the SJA. Appeals forwarded pursuant to RCM 908(b)(6) will be sent to the Chief, GAD, JALS–GA, Suite 2000, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

(2) *Timing.* Not later than 72 hours after the military judge’s ruling, the trial counsel will serve a certificate of notice of appeal pursuant to RCM 908(b)(3) on the military judge. The certificate will reflect the date and time of the military judge’s ruling or order from which the appeal is taken, and the time and date of service on the military judge. The notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) *Submission to Chief, GAD.* The matters forwarded pursuant to RCM 908(b)(6), including an original and three copies of the verbatim record of trial (only those portions of the record that relate to the issue to be appealed), together with the certificate of notice of appeal, will be forwarded to the Chief, GAD, within 20 days from the date written notice of appeal is filed with the trial court. If the decision is made not to file the appeal with the USACCA, the Chief, GAD, will return all copies of the record to the trial counsel. The Chief, GAD, will, after coordination with the Assistant Judge Advocate General for Military Law and Operations, decide whether to file the appeal with USACCA and will notify the trial counsel of this decision as soon as it is made.

(4) *Decision by USACCA.* Following a decision, the Clerk of Court, USACCA will notify the military judge and the convening authority, who will ensure the accused is notified promptly as required by RCM 908(c)(3). Whether the accused is notified orally on the record or by other means, the trial counsel’s certificate as to the fact, date, and method of notification will be sent immediately to the Clerk of Court, USACCA.

b. Government appeal of a sentence.

(1) *Delegation.* In any appeal of a sentence pursuant to UCMJ, Art. 56(d), TJAG designates the Chief, GAD, to process the request in accordance with RCM 1117(c)(1)–(4).

(2) *Transmittal.* The Chief, GAD will transmit, through trial counsel, the request to the military judge who presided over the presentencing proceedings, the parties, and any person who is a crime victim.

(3) *Submissions by parties and crime victim(s).* The military judge will invite the parties and any crime victim to make a submission in response to the government’s request and inform them of the deadline to make submissions. The military judge will give the parties and the crime victim no fewer than 7 days to make any submission in favor or opposing the government sentence appeal. A submission is not required. The military judge will forward any submission received from the parties and any crime victim through the Chief Trial Judge, to TJAG, not later than 20 days after having received the notice under paragraph 12–3b(2).

(4) *Action upon TJAG approval.* If TJAG approves the government request for appeal pursuant to UCMJ, Art. 56(d), the approval, the certified record of trial and all documents required pursuant to RCM 1112(f) shall be transmitted to the

Clerk of Court, USACCA. The Clerk of Court, USACCA will notify the accused, or counsel for the accused, that the application for review has been granted by depositing the notice in the U.S. mail for delivery by first class certified mail to the accused at an address provided by the accused or to the latest address listed for the accused in the official service record of the accused. Proof of service shall be attached to the record of trial.

(5) *Appeal to USACCA.* Within 90 days of service upon the appellant as determined by the proof of service in paragraph 12–3b(4), the accused may appeal his or her case to USACCA to conduct a review pursuant to UCMJ, Art. 66(d). The 90-day appeal deadline may be superseded by court rule or order.

12–4. Appellate advice after trial

a. Apart from the advice an accused has received pursuant to RCM 1010, the trial defense counsel will explain to the accused the rights to appellate review that apply to the case. The trial defense counsel will submit for attachment to the record of trial a record of advice given to the accused concerning appellate review and appellate counsel and the accused's election concerning representation by military or civilian counsel before the USACCA.

b. The Chief, USATDS will prescribe policies and procedures to ensure compliance with this paragraph.

c. With regard to appellate advice after a decision by the USACCA, see paragraph 12–9, and DA Form 4917 (Advice as to Appellate Rights), DA Form 4918 (Petition for Grant of Review in the United States Court of Appeals for the Armed Forces (USCAAF)), and DA Form 4919 (Request for Final Action).

12–5. Appeals pursuant to UCMJ, Article 66(b)(1)

a. If a SPCM or GCM is eligible for review pursuant to UCMJ, Art. 66(b)(1), within ten days of receipt of transmittal at USACCA of the certified record of trial and all attachments required pursuant to RCM 1112(f), the Clerk of Court, USACCA shall provide notice to the appellant of the right to file an appeal either by depositing the notice in the U.S. mail for delivery by first class certified mail to the accused at an address provided by the accused or to the latest address listed for the accused in the official service record of the accused. Proof of service shall be attached to the record of trial.

b. Within 90 days of service upon the appellant as determined by the proof of service in paragraph 12–5a, unless the court by rule or order provides a different time for filing, appellant may appeal his or her case to USACCA to conduct a review pursuant to UCMJ, Art. 66(d).

c. If appellant fails to file a timely appeal, the case will be reviewed pursuant to UCMJ, Art. 65(d)(3).

12–6. Waiver or withdrawal of appellate review

a. A waiver of appellate review or withdrawal of an appeal pursuant to UCMJ, Art. 61 and RCM 1115 will be made on DD Form 2330 (Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals) or DD Form 2331 (Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of The Judge Advocate General). The withdrawal of an appeal must be filed with, or immediately forwarded to, the Clerk of Court, USACCA. In cases eligible for direct appeal where the direct appeal is waived, withdrawn, or not filed, a review pursuant to UCMJ, Art. 65(d)(3) and RCM 1116(d) will be completed before the record of trial is forwarded pursuant to paragraph 5–58.

b. The Clerk of Court, USACCA will refer the withdrawal to the court before which the appeal is pending or to OTJAG–CLD and thereafter will return all copies of the record for review pursuant to RCM 1201 and the rules or instructions of the cognizant court or division.

c. An accused may not revoke a waiver or withdrawal of appellate review made in substantial compliance with RCM 1115. When, however, review pursuant to RCM 1307 or RCM 1201 results in a rehearing, the accused is entitled to any applicable appellate rights, unless he or she again waives or withdraws further appellate review.

12–7. Identifying companion and other cases

a. The chief of justice will annotate the cover of each original record of trial forwarded for review pursuant to the UCMJ, Art. 66 to identify each person (grade, name, social security number) tried or expected to be tried separately in a case potentially subject to appellate review pursuant to UCMJ, Art. 66 for involvement in an offense that is the same as or related to one tried in the case being forwarded. These co-accused, co-actors, or co-conspirators, as the case may be, will be identified under the heading “Companion Cases.” The purpose of this is to ease case assignments among the panels of USACCA and to avoid conflicts of interest in assigning appellate defense counsel. If there are no companion cases, the words “no companion cases” will be entered under the above heading.

b. In addition, the chief of justice will annotate the cover of each original record of trial forwarded for review pursuant to UCMJ, Art. 66 to identify any prosecution witness or victim known to have been tried for any offense by court-martial subject to review pursuant to UCMJ, Art. 66 so that potential conflicts of interest in the assignment of appellate defense counsel can be avoided.

12–8. Designation of appellate defense counsel

In all cases where TJAG is required to designate appellate defense counsel or where an accused may request appellate defense counsel, appellate defense counsel will be provided a certified copy of the record of trial and all required attachments. The provided record of trial will not include any sealed materials. DAD counsel will apply to the clerk of court for access to sealed material.

12–9. Rules of appellate procedure

See the *United States Army Court of Criminal Appeals Internal Rules of Practice and Procedure*, together with the *Joint Rules of Practice and Procedure of the Courts of Criminal Appeals* (available on JAGCNet).

12–10. Clerk of Court, U.S. Army Court of Criminal Appeals

a. The Clerk of Court, USACCA receives records of trial, petitions for extraordinary relief, petitions for a new trial in pending cases, withdrawals of appeals, and other appellate matters forwarded to TJAG and acts in a ministerial capacity for TJAG in referring such matters to the USACCA or USCAAF and in designating appellate counsel for the parties.

b. In cases remanded to TJAG, the Clerk of Court, USACCA acts for TJAG under the order of remand and refers records of trial to the USACCA or a convening authority, with necessary instructions, for compliance with the mandate.

c. The Clerk of Court, USACCA keeps the Chief, Trial Judiciary, and TJAG informed of the state of the military appellate process and of the need for any statutory, regulatory, or rule changes.

12–11. Serving U.S. Army Court of Criminal Appeals decisions on the accused

a. To protect the rights of the government and the accused, a copy of each USACCA decision (opinion or order disposing of an appeal or petition) must be served as expeditiously as possible on each accused and counsel for the accused and a record maintained of the date and manner of service.

b. The Clerk of Court, USACCA is responsible for serving decisions on counsel for the accused and has discretionary authority to serve the accused. In cases where all of the accused's appellate counsel are DAD counsel, electronic service of the decision on DAD will constitute service on the accused's appellate counsel of record.

c. Information copies of decisions will be sent via email to the confinement facility in which the accused is confined, the GCM authority exercising jurisdiction over the accused at the time of trial, and the GCM authority with clemency authority over the accused prior to entry of judgment, if one or both of them are different from the GCM authority currently exercising jurisdiction over the accused. The jurisdictional SJA and chief of military justice will receive the information copy on behalf of the GCM authority and are responsible for any related MJO/case management system updates.

d. The USACCA decision will be served on the accused in person, if possible. In addition to the decision, unless the decision sets aside all findings of guilty and the sentence and dismisses the charges or involves a case referred to the USACCA under UCMJ, Art. 69, the accused will be given a completed copy of DA Form 4917, five copies of DA Form 4918 on which the accused's name, grade, DOD ID number, and USACCA docket number will be entered, and a postage paid envelope addressed to USCAAF. The person who served the decision personally on the accused will complete the certificate in section A of DA Form 4916, Certificate of Service/Attempted Service, and ensure that the original and two copies are sent to the Clerk of Court, USACCA.

e. If personal service cannot be made because the accused is absent from his or her unit without proper authority, section B of DA Form 4916 will be used to certify the circumstances. The original and two copies with any available documentary evidence of the absence (for example, DA Form 4187, Personnel Action) will be sent to the Clerk of Court, USACCA.

f. If there is any other reason that appears to preclude personal service, the Clerk of Court, USACCA should be contacted for advice.

g. When personal service cannot be made because of the authorized absence of an accused (such as excess leave), the decision copy will be served by first class certified mail, return receipt requested. The use of special postal service is authorized as an exception to AR 25–51. The decision will be sent to the address provided by the accused at the inception of or subsequent to the absence. If the accused provided no address, the packet will be sent to the most recent home address reflected in the accused's official military personnel records. Except when the decision sets aside all approved findings of guilty and the sentence and orders the charges dismissed, the documents described in paragraph 12–11*d* will be prepared and sent with the decision.

h. As soon as the decision is mailed, the person mailing it must complete item 1 of section C on DA Form 4916. The form is then held for return of service to the Clerk of Court, USACCA when the earliest of the following happens:

(1) The signed certified mail receipt, PS Form 3811 (Domestic Return Receipt), is received (complete item 2a, section C, DA Form 4916).

(2) The packet is returned undeliverable (complete item 2b, section C, DA Form 4916).

(3) Sixty-five days have passed since the decision was mailed and nothing has been returned or received (complete item 2c, section C, DA Form 4916).

i. When section C of DA Form 4916 is used, the return of service to the Clerk of Court, USACCA will include the original and two copies of the completed DA Form 4916, and any material returned by the USPS, such as the signed return receipt (PS Form 3811), the receipt for certified mail, PS Form 3800, Certified Mail Receipt, or the unopened envelope with its contents.

j. If a petition for grant of review by the USCAAF is received by the GCM authority, the date of receipt will be noted and the petition will be forwarded to USCAAF immediately.

12-12. Cases remanded by the U.S. Army Court of Criminal Appeals or the U.S. Court of Appeals for the Armed Forces

a. When a decision of the USACCA or USCAAF directs or authorizes further proceedings, such as a rehearing, a limited hearing, or a new action by the convening authority, the accused must be located and furnished a copy of the decision. Further proceedings in USACCA cases need not be delayed, however, solely to permit an accused to petition USCAAF for a grant of review or otherwise appeal the matter.

b. Any special instructions deemed necessary to carry out the mandate of the court will be transmitted by the clerk of court with the record of trial that was remanded.

(1) The original and any copies of a record of trial that was remanded for further proceedings must remain intact except for documents needed for reintroduction in the further proceedings, such as the original charge sheet and exhibits to be readmitted into evidence. Documents and copies of documents withdrawn should be replaced if not used, or, if used, replaced by a trial counsel memorandum explaining their disposition. In particular, the original copies of a decision of a court, action of a convening authority, post-trial review or recommendation, pretrial advice, and UCMJ, Art. 32 preliminary hearing must not be withdrawn. All copies of the record remanded should be returned with the record of further proceedings except that, if action on the sentence is such that no further review pursuant to UCMJ, Arts. 66 or 67 is required, only the original record need be returned to the Clerk of Court, USACCA. All copies of the record remanded should be returned with the record of further proceedings.

(2) In addition to any new document in the nature of a pretrial advice and referral to a court-martial, the authenticated record of further proceedings must be accompanied by the original of any new action by a convening authority and the same number of copies of an order promulgating the action as required when a record is initially forwarded for review pursuant to UCMJ, Arts. 66 or 69, as the case may be.

(3) In the absence of specific advice to the contrary, the GCM authority should consider that an accused's right to speedy disposition of criminal charges, right to address matters to a convening authority, and right of counsel to comment on an SJA's recommendation to the convening authority apply to the further proceedings.

12-13. Leave or reassignment pending appellate review

a. A Soldier who is under sentence to a dismissal or punitive discharge, and who is not serving a sentence to confinement, may, pursuant to AR 600-8-10, voluntarily or involuntarily be authorized by the officer exercising GCM jurisdiction to take leave, including excess leave, until there is a final judgment in the case. A Soldier who is on excess leave and not previously reassigned, will be reassigned to the Fort Sill PCF immediately upon action placing him or her on excess leave status.

b. The GCM authority will ensure that the Clerk of Court, USACCA is expeditiously furnished copies of all reassignment orders and excess leave orders, or a copy of DA Form 31, when an accused has been reassigned from his or her jurisdiction or is placed on excess leave.

12-14. Habeas corpus representation

Military prisoners sentenced to death by a court-martial, who seek to file in federal civilian courts post-conviction *habeas corpus* petitions, will, upon request to TJAG, be detailed military counsel by TJAG to assist counsel appointed by the district court or individually retained for representation in such proceedings and any appeals therefrom (see UCMJ, Art. 70(e)). This right exists irrespective of any decision by the accused Soldier to hire civilian counsel at his or her own expense for such representation.

12-15. Tenure for military appellate judges

JAs are certified as military judges by TJAG and assigned to the USACCA for a minimum of 3 years, except under any of the following circumstances:

- a.* The military judge voluntarily requests to be reassigned to others duties, and TJAG approves such assignment;
- b.* The military judge retires or otherwise separates from military service;

- c. The military judge is reassigned to other duties by TJAG based on the needs of the Service in a time of war or national emergency;
- d. The officer's certification as a military judge is withdrawn by TJAG for good cause (see chap 15).

Chapter 13

Application for Relief Pursuant to UCMJ, Article 69

13–1. General

- a. This chapter implements UCMJ, Art. 69 and RCM 1201, including the scope of review and application deadlines set forth in the statute and rule.
- b. No provision exists for a hearing or personal appearance before TJAG.

13–2. Procedures for making application

- a. Apply for relief on DA Form 3499 (Application for Relief from Court-Martial Findings and/or Sentence under the Provisions of Title 10, United States Code, Section 869), which may be obtained at <https://armypubs.army.mil/>.
- b. The DA Form 3499 will be prepared and submitted according to the requirements set forth in the instructions contained on the form. The DA Form 3499 must be filed with OTJAG–CLD by the accused, or by a person with authority to act for the accused.
- c. Failure to file within the prescribed time may be excused by TJAG for good cause established by the accused.

13–3. Submission of application

When an application has been submitted to OTJAG, the application will be forwarded by OTJAG to the office of the SJA of that GCM jurisdiction. That office will provide:

- a. The original record of trial.
- b. Copies of all CMOs in the case.
- c. Any matter related to the allegations of the applicant.
- d. Responsive comments on the merits of the applicant's allegations, signed by the SJA of the GCM jurisdiction.
- e. Original review of the case in accordance with RCM 1307.

Chapter 14

Military Justice Online

14–1. Mandatory use of Military Justice Online

- a. MJO is the single tool in the active component for creating, processing, and managing administrative reprimands, administrative separations, NJP, and courts-martial. The MJO application is also the primary tool for generating data and conducting analysis related to the execution of administrative actions and practice of military justice. As such, all data fields applicable in a particular MJO action must be completed in a timely manner. The use of the MJO application must be included in office SOPs and TTPs related to the execution of administrative actions and military justice.
- b. The use of the MJO application is subject to inspection pursuant to UCMJ, Art. 6. Leaders at all levels will enforce the use of these systems and oversee the accuracy, quality, and completeness of the information contained with the MJO application. A GCMCA's MJO database should be regularly reviewed for the timely and accurate input of data and closure of actions. Prompt input of data and completion of actions and regular inspection is the only way to ensure that data and analysis generated from the MJO application is accurate.
- c. Questions regarding the use of the MJO application may be directed to OTJAG–CLD, Operations Branch, or USALSA-ITD.

14–2. Frequency and content

- a. *General.* The SJA of each command having GCM jurisdiction is responsible for the preparation, approval, and submission of the monthly Military Justice Report (MJR) through the MJO application. Authority to certify the MJR may be delegated to the Deputy SJA, but no further. The monthly report must be prepared by every legal office servicing a GCMCA.
- b. *Frequency and content.* The MJR will be prepared and certified by the 5th of each month. Negative reports are required. MJRs will include the following information concerning actions completed during the previous month:
 - (1) Total number of courts-martial that have completed sentencing;
 - (2) Total NJPs (formal and summarized) during the month;

- (3) Total number of enlisted administrative separations as specified by the report;
- (4) Total number of officer administrative separations as specified by the report;
- (5) Total number of administrative reprimands as specified by the report; and
- (6) Total number of any of the aforementioned actions completed outside of the MJO application.

c. Dissolution of GCMCA. If a GCM jurisdiction is dissolved, unless the records are transferred to the office of the SJA of another GCM jurisdiction, the report will include data up to the date of dissolution.

14–3. Results Statements for Publication

a. General. OTJAG–CLD is responsible for publishing each month a report of the courts-martial completed the previous month. This report is first provided to JAGC and Army leadership and then uploaded to the Army FOIA Reading Room for public access. OTJAG–CLD gathers information for this report from the Results Statement for Publication (RSP) generated within the MJO application. The SJA is responsible for certifying and submitting to OTJAG–CLD the RSP for each completed court-martial. Authority to certify and submit the RSP may be delegated to the Deputy SJA, but no further.

b. Frequency and content. The RSP must be certified and submitted no later than the 5th of the month for courts-martial completed during the previous month. The RSP includes the following information—

- (1) The date the court-martial was completed;
- (2) The type of court-martial;
- (3) The location the court-martial was convened;
- (4) The rank and full name of accused, unless the result of the court-martial was an acquittal of all charges in which case only the rank of the accused;
- (5) The forum of the court-martial;
- (6) The plea(s) of the accused;
- (7) The findings on each charge and specification referred to court-martial;
- (8) The sentence, when applicable; and
- (9) The impact of any pretrial agreement on the sentence.

c. Format. The specific format for the RSP is contained within the Post-Trial tab of the MJO court-martial action.

14–4. Export of documents to Human Resources Command

The only method for submitting NJP and reprimands to HRC for permanent filing in the iPERMS is via the HRC-Export function within the MJO application. Leaders will ensure that proper procedures are in place for the timely redaction and submission of documents to HRC. This includes proper oversight of HRC-Exports to ensure rejections by HRC are promptly identified, corrected, and resubmitted to HRC.

Chapter 15

Allegations of Misconduct and Suspension of Counsel and Military Judges

Section I

General

15–1. Scope

This chapter implements and amplifies RCM 109. It sets forth standards and procedures for handling complaints by and against counsel, including civilian counsel, and military judges. Counsel before courts-martial, appellate counsel, and military judges play a vital role in the preservation of military justice and discipline. A consequent obligation of this role is the maintenance of the highest standards of ethical conduct. Fundamental ethical principles are available as guides in maintaining this integrity (see para 5–10).

15–2. Withdrawal of certification by The Judge Advocate General

Nothing contained in this regulation is to be construed as a limitation on the power of TJAG to issue or withdraw—

- a.* Any certification of qualification to act as military judge made pursuant to UCMJ, Art. 26;
- b.* Any certification of competency to act as counsel made pursuant to UCMJ, Art. 27(b); or
- c.* Any certification of qualification to act as a military magistrate made pursuant to UCMJ, Art. 26a and chapter 8 of this regulation.

Section II

Suspension of Counsel

15-3. General

a. Action may be initiated to suspend counsel (pursuant to RCM 109) when a person acting, about to act, or likely to act, as counsel before proceedings governed by the UCMJ or the MCM—

(1) Is, or has been guilty of, professional or personal misconduct of such a serious nature as to show that he or she is lacking in integrity or good demeanor; or

(2) Is otherwise unfit or unqualified to perform the duties of counsel.

b. Action to suspend under this chapter may be taken against a person who—

(1) Is certified as qualified to perform the duties of counsel of GCM pursuant to UCMJ, Art. 27(b);

(2) Has been selected or obtained as counsel by the accused pursuant to UCMJ, Art. 38(b); or

(3) Has appeared as counsel for the accused in proceedings governed by the UCMJ or the MCM, or is likely to represent the accused at such proceedings in the future.

15-4. Grounds for suspension

a. Grounds for suspension include, but are not limited to—

(1) Demonstrated incompetence while acting as counsel during pretrial, post-trial, or appellate stages of the proceedings.

(2) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics.

(3) Fabricating or attempting to fabricate papers, testimony, or evidence.

(4) Tampering or attempting to tamper with a witness.

(5) Abusive conduct toward the members of the court, the military judge, or other counsel.

(6) Conviction of a felony or any offense involving moral turpitude.

(7) Conviction, receipt of NJP, or nonpunitive disciplinary action for a violation of UCMJ, Art. 131f.

(8) Attempting to act as counsel in a case involving a security matter by one who is a security risk.

(9) Disbarment or suspension by a federal, state, or foreign court.

(10) Suspension from practice as counsel before courts-martial by the Judge Advocate General of another armed force or by the USCAAF.

(11) Flagrant or continued violations of any specific rules of conduct prescribed for counsel in paragraph 5-10, or other applicable standards.

(12) Violation of the Army “Rules of Professional Conduct for Lawyers” (see AR 27-26) or other applicable ethical standards, whether such misconduct occurs before a military court or other tribunal, or in a military or civilian status in the course of the lawyer’s activities as a lawyer or otherwise, whether committed within or outside the scope of professional duties that involve the U.S. Army, whether on or off duty.

b. Action to suspend should not be initiated because of—

(1) Personal prejudices or hostility toward counsel, because he or she has presented an aggressive, zealous, or novel defense; or

(2) When the apparent misconduct as counsel stems solely from inexperience or lack of instruction in the performance of legal duties.

15-5. Action to suspend military counsel

a. General. Action to suspend a person from acting as counsel before courts-martial or as appellate counsel may be initiated when other available remedial measures, including punitive action—

(1) Are inappropriate.

(2) Have failed to induce proper behavior.

b. Remedial measures. While not required as a prerequisite to the suspension of counsel, full consideration will be given to the appropriateness and effectiveness of such other available remedial measures, including but not limited to—

(1) Admonition.

(2) Instruction.

(3) Temporary suspension.

(4) Proceedings in contempt.

(5) NJP pursuant to UCMJ, Art. 15.

(6) Relief of the person from duties as appointed counsel, assistant counsel, or appellate counsel.

c. By a court-martial. The trial judge may determine whether a person is qualified to act as counsel before the court-martial in a particular case. If a counsel is guilty of misconduct, the trial judge may admonish him or her. If the misconduct

is contemptuous, the trial judge or court-martial may punish him or her (see UCMJ, Art. 48 and RCM 109). If admonition or punishment is inappropriate or fails to achieve the desired standard of behavior, the court should recess and report the fact to the supervising SJA or command judge advocate or RDC for processing according to AR 27–1.

d. By an appellate court. Action to suspend a person acting as appellate counsel will be referred to the supervising JA for processing according to AR 27–1.

e. Suspension of counsel will be in accordance with the procedures set forth in AR 27–1.

15–6. Action to suspend civilian counsel subject to The Judge Advocate General’s professional responsibility authority pursuant to the provisions of RCM 109

The procedures and actions set forth above for suspending military counsel or civilian counsel within the JALS will also apply, insofar as practicable, against civilian counsel who represent the accused, or are likely to represent the accused, at courts-martial or other proceedings governed by the UCMJ or the MCM and thus are subject to TJAG’s professional responsibility authority pursuant to RCM 109.

15–7. Modification or revocation of suspension or decertification

TJAG may (on his or her own initiative or on petition of a person who has been suspended or decertified as counsel (pursuant to UCMJ, Art. 27(b) or RCM 109), and on good cause shown) modify or revoke a prior order to suspend or decertify. TJAG’s designee may modify or revoke a temporary suspension.

15–8. Removal of counsel or reassignment of duties

Nothing in this chapter will prevent TJAG, The Deputy Judge Advocate General, the military judge or other appropriate official from removing a counsel from acting in a particular court-martial, nor prevent the permanent reassignment or assignment temporarily to different duties prior to, during, or subsequent to proceedings conducted pursuant to the provisions of this chapter.

Section III

Suspension of Military Judges

15–9. General

Action may be initiated to suspend or revoke the certification to act as military judge (see UCMJ, Art. 26; RCM 109) when a person acting or about to act as trial or appellate judge—

a. Is, or has been found guilty of professional, personal, or judicial misconduct or of unfitness of such a serious nature as to show that the individual is lacking in integrity or judicial demeanor; or

b. Is otherwise unfit or unqualified to perform the duties of a military judge.

15–10. Grounds

A military judge may be censured, suspended from acting as military judge, or removed from the judicial role by revocation of his or her certification for actions that—

a. Constitute misconduct, or constitute judicial misconduct or unfitness; or

b. Violate the “Code of Judicial Conduct for Army Trial and Appellate Judges,” the Army “Rules of Professional Conduct for Lawyers” (see AR 27–26), or other applicable standards.

15–11. Removal of a military judge

a. Action to suspend a person from acting as military judge, or to revoke his or her certification as military judge, may be initiated when other available remedial measures are inappropriate or have failed to induce proper behavior. Accordingly, consideration will be given to other measures such as—

(1) Relief from duties as military judge.

(2) Censure.

(3) Admonition.

(4) Instruction.

(5) Other sanctions, including punitive ones, as may be warranted.

b. In appropriate cases the Chief Trial Judge may temporarily withhold a military judge’s detailing authority. Only TJAG can suspend (temporarily or indefinitely) a military judge or military appellate judge.

15–12. Procedure

Information on alleged judicial misconduct or unfitness will be reported to the Chief Trial Judge in the case of trial judges or the Chief Judge, USACCA, in the case of appellate judges, for processing according to AR 27–1.

15–13. Modification or revocation of suspension or decertification

TJAG may (on his or her own initiative or on petition of a person who has been suspended or decertified as a military judge, and on good cause shown) modify or revoke a prior order to suspend or decertify, on the advice of the Chief Judge, USACCA, or Chief Trial Judge, U.S. Army Trial Judiciary.

Chapter 16

Custody Policies Overseas

16–1. General

This chapter establishes the authority and procedures for exercise of custody over U.S. military personnel subject to the criminal jurisdiction of foreign courts. The authority to exercise appropriate forms of custody over such military members pending the outcome of foreign criminal proceedings (pursuant to provisions of status of forces agreements (SOFAs)) does not abrogate, in any manner, the authority of the commander granted pursuant to the UCMJ.

16–2. Custody policies

a. It is U.S. policy to seek the release from foreign custody of Soldiers pending final disposition of their criminal charges under foreign law. Final disposition of foreign criminal charges incorporates all stages of the host country’s criminal proceedings, including appeals, up to commencement of any sentence to confinement resulting from conviction on the foreign criminal charges. Release from foreign custody will be sought through—

- (1) The exercise of U.S. custody rights in accordance with applicable international agreements.
- (2) The posting of bail.
- (3) The exercise of other rights in accordance with local law.

b. U.S. Army personnel pending charges with foreign courts or authorities will not be transferred or removed from the jurisdiction of such courts except in accordance with that court’s approved procedures or until after coordination with OTJAG–NSLD, and with approval of the designated commanding officer. In cases of serious offenses (for example, felonies), TJAG’s approval is required if transfer or removal, including authorized leave, involves the return of the accused to the United States. Requests for such approval will be sent to OTJAG–NSLD. The procedures set forth in AR 600–8–2 will be used as required in that regulation.

c. While U.S. Army personnel under charges in foreign courts are personally responsible for attending scheduled hearings, commanders will ensure that appropriate assistance is rendered to such personnel. When U.S. Army authorities have pretrial custody or custody pending appeal, the individual will be made available for all court hearings in his or her case at which his or her presence is required (in accordance with SOFA or other international agreements).

d. Any U.S. Army personnel stationed in foreign countries who are involved in incidents subject to the jurisdiction of foreign courts will not be curtailed, reassigned, or transferred to avoid jurisdiction by host-country authorities.

16–3. Exercise of custody provisions granted under international agreements

a. The degree of custody required to meet any custodial obligations under pertinent SOFAs is at the discretion of the commander of the Soldier under foreign criminal charges. Such custody may include restriction to certain prescribed limits or confinement in a U.S. installation confinement facility. Confinement in a U.S. installation confinement facility will only be authorized when it is necessary to ensure the presence of the accused at trial or other foreign criminal proceeding, or to avoid foreseeable future serious criminal misconduct by the accused. The seriousness of the offense charged and circumstances surrounding it are factors that may be used to determine whether the accused need be confined to ensure the accused’s presence or whether future serious criminal misconduct is foreseeable.

b. Immediate steps will be taken to inform the individual confined of—

- (1) The specific offense of which the individual is accused.
- (2) The proposed action to be taken against the individual by foreign authorities.

c. Confinement under these provisions pending the final disposition of foreign criminal charges may be authorized by a GCM convening authority responsible for exercising U.S. custody over the Soldier.

d. Minimum due process standards (to be included in procedures drawn to implement these provisions as set forth in para 16–4) will include review of foreign criminal charges by the local SJA to determine whether—

(1) Probable cause exists to believe that confinement is necessary to ensure the accused's presence at trial or other foreign criminal proceeding, or to avoid foreseeable future serious criminal misconduct by the accused within the host country.

(2) Provision of a military legal advisor is necessary under the terms of AR 27–50 for individuals placed in pretrial confinement under this chapter.

e. In addition, SOFA confinement will be reviewed as follows—

(1) A military magistrate or comparable legal officer (an officer other than the officer who ordered the Soldier into confinement) will review the issue of whether probable cause exists to believe that confinement is necessary. The review will be made in light of the SOFA and other international agreements between the United States and the host country. Consistent with the provisions of applicable international agreements and the policy of seeking release of Soldiers from foreign custody, the magistrate or comparable legal officer may also consider any pertinent factors, including specific requests by the host country to confine or by the Soldier to be confined in the United States in lieu of foreign custody. Unless otherwise provided for under SOFA obligations, the military magistrate or comparable legal officer will not inquire into the issue of whether probable cause exists to believe that the accused has committed the offenses charged under foreign law. The military magistrate or comparable legal officer may recommend release from confinement if the military magistrate determines that it is not necessary to ensure the accused's presence and that it is not foreseeable that the accused will engage in future serious criminal misconduct.

(2) The provisions of RCM 305 do not apply to review of SOFA confinement. If the military magistrate or comparable legal officer recommends that confinement is not necessary to ensure the accused's presence at trial or other foreign criminal proceeding, and that it is not foreseeable that the accused will engage in future serious criminal misconduct within the host country, that recommendation will be communicated to the designated commanding officer (DCO). The DCO (see AR 27–50) may, in the DCO's discretion, direct release from confinement or order such other disposition deemed appropriate. Coordination with host country authorities is also within the discretion of the DCO as specified in AR 27–50. If the DCO was also the GCM authority who ordered the Soldier into confinement and does not direct release based on the recommendation of the military magistrate or comparable legal officer, the DCO will forward the recommendation, together with comments, to OTJAG–NSLD. Under such circumstances, TJAG is delegated authority to direct release from U.S. confinement or order such other disposition deemed appropriate.

16–4. Implementation by overseas commands

Each Army overseas commander may, after prior approval by OTJAG–CLD, supplement this chapter and require—

a. A publication for each country in which the Army overseas commander's subordinate commands or assigned units and activities are located.

b. Procedures for the implementation of Army policy regarding custodial rights and responsibilities by Army commands in that country.

Chapter 17

Victim and Witness Assistance

Section I

General Description

17–1. Purpose

This chapter implements DODD 1030.01, DODI 1030.2, and DODI 6400.07. It also establishes policy, designates responsibility, and provides guidance for the assistance and treatment of those persons who are victims of crime and those persons who may be witnesses in criminal justice proceedings.

17–2. Policy

a. The military justice system is designed to ensure good order and discipline within the Army and also to protect the lives and property of members of the military community and the general public, consistent with the fundamental rights of the accused. Without the cooperation of victims and witnesses, the system would cease to function effectively. Accordingly, all persons working within and in support of the system—that is, commanders, JAs, law enforcement and investigative agencies, corrections officials, and other personnel of Army multidisciplinary agencies—must ensure that victims and witnesses of crime are treated courteously and with respect for their privacy. Interference with personal privacy and property rights will be kept to an absolute minimum.

b. In those cases in which a victim has been subjected to attempted or actual violence or trauma, every reasonable effort will be made to minimize further traumatization. Victims will be treated with care and compassion, particularly in circumstances involving children, domestic violence, or sexual misconduct.

c. Effective victim and witness programs are multidisciplinary and utilize all related military and civilian agencies. Each victim/witness liaison (VWL) must be familiar with all such agencies and programs to ensure that necessary services are provided. Multidisciplinary participants include, but are not limited to, investigative and law enforcement personnel, chaplains, health care personnel, Family advocacy/services personnel, JAs and other legal personnel, unit commanding officers and noncommissioned officers, and corrections/confinement facility personnel. In most instances, installations are expected to provide required services without referral to outside agencies. In death cases, the VWL will coordinate with the installation/community casualty working group (see AR 638–8) and CID. The CID points of contact are listed at <http://www.cid.army.mil>.

d. A person's status as a victim or witness does not preclude and should not discourage appropriate recognition of conduct of the victim or witness during or following the perpetration or attempted perpetration of a crime, that clearly demonstrates personal courage under dangerous circumstances. Examples of such conduct include saving of human life under hazardous conditions or extraordinary sacrifice that aids or supports military law, order, or discipline, and that would otherwise merit official recognition (see AR 672–20 and AR 600–8–22). Such recognition normally should be delayed until after local disposition of the incident.

e. The provisions of this chapter are intended to provide guidance for the protection and assistance of victims and witnesses, and for the enhancement of their roles in the military criminal justice process, without infringing on the constitutional and statutory rights of the accused. These provisions are not intended to and do not create any entitlements, causes of actions, or defenses, substantive or procedural, enforceable at law, by any victim, witness, or other person in any matter, civilian or criminal, arising out of the failure to accord a victim or witness the services enumerated in this chapter.

17–3. Application

a. This chapter applies to those components engaged in the detection, investigation, or prosecution of crimes under the UCMJ or federal statutes, and in the detention and incarceration of military accused. This chapter is intended to apply to all victims and witnesses in UCMJ or federal court proceedings or investigations. While special attention will be paid to victims of serious or violent crime, all victims and witnesses of crime will receive the assistance and protection to which they are entitled.

b. Provisions of this chapter may also apply to victims or witnesses of crimes under the jurisdiction of state, other federal or foreign authorities during any portion of the criminal investigation or military justice proceedings conducted primarily by the Army or other DOD components.

17–4. Objectives

The objectives of the policies and procedures set forth in this chapter are—

a. To mitigate, within the means of available resources and under applicable law, the physical, psychological, and financial hardships suffered by victims and witnesses of offenses investigated by Army authorities.

b. To foster the full cooperation of victims and witnesses within the military criminal justice system and federal justice system in cases where the Army has an interest.

c. To ensure that victims and witnesses are advised of and accorded the rights described in the MCM and this regulation subject to available resources, operational commitments, and military exigencies.

17–5. Definitions

For purposes of this chapter, the following definitions apply:

a. *Victim*. A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ, or in violation of the law of another jurisdiction if any portion of the investigation is conducted primarily by the DOD components. Such individuals will include, but are not limited to, the following:

(1) Military members and their Family members.

(2) When stationed outside the continental United States (OCONUS), DOD civilian employees and contractors and their family members. This applies to services not available to DOD civilian employees and contractors, and their family members, in stateside locations, such as medical care in military medical facilities.

(3) When a victim is under 18 years of age, incompetent, incapacitated or deceased, the term includes one of the following (in order of preference): a spouse; legal guardian; parent; child; sibling; another family member; or another person designated by a court or the component responsible official, or designee.

(4) For a victim who is an institutional entity, an authorized representative of the entity. Federal departments and state and local agencies, as entities, are not eligible for services available to individual victims.

b. Witness. A person who has information or evidence about a crime and provides that knowledge to a DOD component concerning an offense within the component's investigative jurisdiction. When the witness is a minor, this term includes a family member or legal guardian. The term "witness" does not include a defense witness or any individual involved in the crime as a perpetrator or accomplice.

Section II

Victim/Witness Assistance Program

17-6. General

a. The Victim/Witness Assistance Program (VWAP) is designed to accomplish the objectives set forth in paragraph 17-4, through—

- (1) Encouraging the development and strengthening of victim and witness services.
- (2) Consolidating information pertaining to victim and witness services.
- (3) Coordinating multidisciplinary victim/witness services by and through victim and witness liaisons (VWLs).

b. TJAG is the responsible official for victim and witness assistance. As such, TJAG exercises oversight of the program to ensure integrated support is provided to victims and witnesses.

c. SJAs are the local responsible officials for victim and witness assistance within their GCM jurisdictions. Accordingly, they will—

- (1) Establish and provide overall supervision for the VWAP within their GCM jurisdictions.
- (2) Ensure coordination, as required, with other GCM jurisdictions, or state or federal VWAPs.
- (3) Establish a Victim and Witness Assistance Council, to the extent practicable, at each significant military installation to ensure interdisciplinary cooperation among victim and witness service providers. Existing installation councils, such as The Family Advocacy Case Management Team, may be used, as appropriate.
- (4) Ensure development of appropriate local management controls to ensure compliance with this chapter.

17-7. Victim/witness personnel

a. Victim/witness liaison. The VWL serves as a point of contact through which victims and witnesses may obtain information and assistance in securing available victim/witness services. The role of the VWL is one of facilitator and coordinator. To be most effective, VWLs must be impartial actors in the prosecution process. The VWL will act in conjunction with the unit victim advocate who is responsible for providing crisis intervention, referral, and ongoing nonclinical support to a sexual assault victim (see AR 600-20).

(1) *Designation.* SJAs will designate, in writing, one or more VWLs they have certified as qualified. This requirement continues in the event of deployment such that at least one officer or, if not practicable, an E-6 or above, accompanying a GCMCA is appointed as a VWL. SJAs will notify the VWL coordinator via email of the name and contact information of any new appointee as well as any changes to the status of current VWLs.

(2) *Criteria and certification.* The designated VWL should, when practicable, be a commissioned officer, or civilian in the grade of GS-11 or above. When necessary, an enlisted person in the grade of E-6 or above, or Civilian in the grade of GS-6 or above, may be designated as a VWL if a commissioned officer is not reasonably available. When for geographic or operational reasons it is necessary to designate more than one VWL within a GCM jurisdiction, the SJA will ensure that the responsibilities for cases or areas of each VWL are clearly defined. The VWL's primary non-VWL responsibilities should be outside the military justice section to the extent permitted by resources. To the extent permitted by resources, SJAs should refrain from appointing attorneys as VWLs. Should an attorney receive a VWL appointment, the attorney must ensure that victims and witnesses understand the attorney's role as a VWL and clearly explain that no attorney-client relationship is formed as a result of VWL services provided by the attorney.

(3) *Role in victim interviews.* VWLs are considered victim advocates for the purposes of UCMJ, Art. 6b(f) (see para 17-10d(4)(b)).

b. Special Victim Prosecutor Witness Liaisons. Special Victim Prosecutor Witness Liaisons (SVLs) work with Special Victim Prosecutors (SVPs) and Special Victim Noncommissioned Officers as an SVP team to develop and litigate special victim cases. SVLs provide victim-witness liaison support to the SVP team. Unlike VWLs, SVLs are not impartial actors in the prosecution process as SVLs work to ensure special victim cases are properly investigated, and when warranted, properly charged and prosecuted. SVLs are assigned to USALSA and are rated by an SVP with oversight from the Chief, TCAP and SVL Program Manager.

c. Special Victim Counsel. SVC provide legal representation to eligible clients who report they are victims of a sex-related offense. SVC services are authorized by 10 USC 1044e(b), 10 USC 806b, and by the Secretary of the Army pursuant to 10 USC 3013(g). An SVC's primary duty is to zealously represent the desires of their client as required by the attorney-

client relationship, even if their client's desires do not align with those of other interested parties, to include the government of the United States. Additional policies pertaining to SVC are addressed in AR 27–3.

d. Interaction between victim/witness personnel. Although VWLs, SVLs, and SVC have distinct roles and responsibilities, all are responsible for ensuring victims are provided responsive and timely support throughout the investigation and proceedings. To the extent permitted by ethical and professional obligations, VWLs, SVLs, and SVC are encouraged to maintain professional working relationships with each other to enhance the support provided to victims.

17–8. Identification of victims and witnesses

At the earliest opportunity after the detection of a crime, and where it may be done without interfering with an investigation, the law enforcement official or commander responsible for the investigation or other individual with victim/witness assistance responsibilities under this chapter will—

- a.* Identify the victims or witnesses of the crime in accordance with the definitions in paragraph 17–5.
- b.* Inform the victims and witnesses of their right to receive the services described in this regulation, and the name, title, official address, and telephone number of the VWL and how to request assistance from the VWL in obtaining the services described in this regulation. DD Form 2701 (Initial Information for Victims and Witnesses of Crime) will be used for this purpose. This notification is required in all cases, regardless of maximum punishment under the UCMJ or other statutory authority, or intended disposition of the offense. In cases where the victim is no longer located at the military installation where the alleged crime occurred, the victim should be referred to the nearest available VWL, who may not necessarily be the VWL where the alleged crime occurred. To determine where the nearest VWL is located, consult appendix E of this regulation, or consult OTJAG–CLD.
- c.* Report victim and witness notification in accordance with DODI 1030.2 and this regulation.
- d.* Ensure that victims receive assistance under the guidelines set forth in this chapter for victims identified as a result of investigations of potential UCMJ violations conducted in accordance with AR 15–6.

17–9. Initiation of liaison service

a. SJAs or their designees will coordinate with military law enforcement, criminal investigative, and other military and civilian multidisciplinary agencies to ensure that these agencies provide victims and witnesses of crime the name, location, and telephone number of a VWL. Procedures should be established to ensure timely notification; however, notification by law enforcement and criminal investigative personnel should not interfere with ongoing investigations. SJAs are encouraged to establish memorandums of agreement to assist in ensuring a cooperative relationship with local civilian agencies to identify, report, investigate, and provide services and treatment to victims.

b. At the earliest opportunity, but no later than appointment of a UCMJ, Art. 32 preliminary hearing officer or referral of charges to court-martial, the VWL, trial counsel, or other government representative will ensure that victims are informed of the services described in this chapter (sections III and V) and are provided a Victim/Witness Information Packet. They will also ensure that witnesses are informed of the services described in this chapter (sections IV and V) and provided a Victim/Witness Information Packet. The DD Form 2701 will be used for this purpose, if available. The victim/witness checklist in appendix D of this regulation, should be used by the VWL to ensure that victims and witnesses are notified of the services described in this chapter.

17–10. Rights of crime victims

a. As provided for in 42 USC 10601, 10 USC 806b, 10 USC 860, 10 USC 846, and the sections that follow, and in DODI 1030.2, a crime victim has the following rights:

- (1) The right to be reasonably protected from the accused offender.
- (2) The right to reasonable, accurate, and timely notice of any of the following:
 - (a)* A public hearing (UCMJ Art. 39(a) session) concerning the continuation of confinement prior to trial of the accused.
 - (b)* A UCMJ, Art. 32 preliminary hearing related to the offense.
 - (c)* A court-martial relating to the offense.
 - (d)* A public proceeding of the service clemency and parole board relating to the offense.
 - (e)* The release, escape, work release, furlough, or any other form of release from custody of the accused, unless such notice may endanger the safety of any person, including notice of the death of the offender, if the offender dies in custody.
- (3) The right not to be excluded from any public hearing or proceeding described in paragraph 17–10a(2) unless the military judge or hearing officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense would be materially altered if the victim heard other testimony at that hearing or proceeding.
- (4) The right to be reasonably heard, which includes, but is not limited to, the right to be heard through counsel, at any of the following:
 - (a)* A public hearing (UCMJ Art. 39(a) session) concerning the continuation of confinement prior to trial of the accused.

- (b) A sentencing hearing relating to the offense.
- (c) A public proceeding of the service clemency and parole board relating to the offense.
- (5) The reasonable right to confer with the counsel representing the government at any proceeding described in paragraph 17–10a(4).
 - (a) Crime victims who are entitled to legal assistance may consult with a legal assistance attorney.
 - (b) Crime victims may also elect to seek the advice of a private attorney, at their own expense.
 - (6) The right to receive restitution, as provided in law.
 - (7) The right to proceedings free from unreasonable delay.
 - (8) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under the UCMJ.
- b. In limited circumstances, the legal guardians of the victim or the representative of the victim’s estate, family members, or any other person designated as suitable by the military judge, may assume the rights of the victim (see UCMJ, Art. 6b(c) and RCM 1001(c)(2)).
- c. UCMJ, Art. 6b does not authorize a cause of action for damages; create, enlarge, or imply any duty or obligation to any victim of a UCMJ offense; or impair the exercise of discretion under UCMJ, Arts. 30 and 34 (see UCMJ, Art. 6b(d)).
- d. Additional rights of crime victims.
 - (1) The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.
 - (2) The right to submit matters to the preliminary hearing officer upon completion of a preliminary hearing convened under UCMJ, Art. 32 for consideration by the convening authority (see RCM 405(k)).
 - (3) The right to submit matters for consideration by the convening authority during the clemency phase of the court-martial process (see RCM 1106A).
 - (4) Victims of a sex-related offense, as defined in paragraph 3–6, who are entitled to legal assistance in accordance with 10 USC 1044, may consult with an SVC.
 - (a) Victims of these covered offenses must be informed by a sexual assault response coordinator (SARC), victim advocate, VWL, military criminal investigator, government counsel, or other local responsible official that they have the right to consult with an SVC on initial contact with the victim and prior to requesting the victim to give a statement or be interviewed.
 - (b) A victim of any UCMJ offense who is designated as a witness at a preliminary hearing convened under UCMJ, Art. 32 or a court-martial may request his or her interview by defense counsel only take place in the presence of trial counsel, counsel for the victim, to include SVC, or if applicable, a victim advocate (see UCMJ Art. 6b(f)).
 - (c) Victims of these covered offenses, committed in the United States, must be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.
 - 1. The trial counsel, VWL, other government representative, or when applicable, the victim’s SVC will obtain the victim’s jurisdictional preference. This preference will be memorialized in MJO on the OTJAG–CLD form provided for that purpose.
 - 2. The convening authority must consider the victim’s preference for jurisdiction, if available, prior to making an initial disposition decision. The victim’s views are not binding on that convening authority.
 - 3. The convening authority should continue to consider the views of the victim as to jurisdiction until final disposition of the case.
 - 4. If the victim of an alleged sex-related offense expresses a preference for prosecution of the offense in a civilian court, the convening authority shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim’s preference for civilian prosecution.
 - 5. The convening authority shall ensure the victim is notified should the convening authority learn of any decision by the civilian authority to prosecute or not prosecute the offense in civilian court.
 - 6. For purposes of the section, convening authority means commanders in the grade of O–6 or higher who possess SPCMCA, commanders who possess GCMCA, or any other appropriate commander taking action on the case.
 - (d) Any questions concerning victim eligibility for SVC representation should be directed to the SVC Program Manager who has authority to determine eligibility and grant exceptions.
 - e. SJAs will ensure that local policies and procedures are established to give crime victims the rights described above.

17–11. Training and publicity

a. SJAs will ensure that annual VWAP training is provided to representatives of all agencies performing victim/witness assistance functions (for example, JAs and legal, investigative and law enforcement personnel; chaplains; health care personnel; Family advocacy/services personnel; unit commanding officers and noncommissioned officers; and corrections/confinement facility personnel) within their GCM jurisdictions. At a minimum, training will cover victims’ rights;

available compensation through federal, state, and local agencies; providers' responsibilities under the VWAP; and requirements and procedures established by this chapter.

b. SJAs also will ensure that the provisions of this chapter are publicized to all military and civilian agencies providing victim/witness services and to commands within their jurisdictions. SJAs will ensure that the DOD Victim and Witness Bill of Rights is displayed in the offices of commanders and Army multidisciplinary agencies that provide victim/witness assistance and that victim/witness brochures and pamphlets are available at appropriate locations throughout their jurisdictions. Installation public affairs resources should be used to obtain maximum publicity within the military community. Use of command policy letters endorsing the VWAP is encouraged.

Section III

Victim Services

17–12. Medical, financial, legal, and social services

a. Medical care. Investigative or law enforcement personnel, the VWL, trial counsel, or other individuals with victim/witness assistance responsibilities under this chapter will inform the victim of a crime of the place where the victim may receive emergency medical care and social service support. When necessary, these personnel will provide appropriate assistance in securing such care. Victims suffering from or indicating injury or trauma will be referred to the nearest available medical facility for emergency treatment. When required for completion of criminal investigations, examination and treatment of civilian victims of assaults committed on Army installations may be provided without charge at the discretion of medical treatment facility (MTF) commanders (see AR 40–400). MTF commanders will construe liberally their authority to waive charges unless inappropriate in view of the unique circumstances. Recipients of transitional compensation under 10 USC 1059 may receive medical and dental care in uniformed services facilities.

b. Financial, legal, and social services. The VWL or other government representative will assist victims of crime in obtaining appropriate financial, legal, and other social service support by informing victims of public and private programs that are available to provide counseling, treatment, and other support, including available compensation through federal, state, and local agencies. The VWL will assist the victim in contacting agencies or individuals responsible for providing necessary services and relief. Examples of assistance and services that may be available to victims, in addition to those available through MTFs, include the following:

- (1) Army Community Services Program (see AR 608–1).
- (2) Army Emergency Relief (see AR 930–4).
- (3) Legal Assistance and SVC representation (see AR 27–3).
- (4) The American Red Cross (see AR 930–5).
- (5) Chaplain Services (see AR 165–1).
- (6) Civilian community-based victim treatment, assistance, and compensation programs.
- (7) For dependents of Soldiers who are victims of abuse by a military spouse or parent, payment of a portion of the disposable retired pay of the Soldier under 10 USC 1408 or payment of transitional compensation benefits under 10 USC 1059.

(8) For families of Soldiers, transportation and shipment of household goods may be available even if the Soldier receives a punitive or other than honorable discharge, (see JTR, chapter 5).

(9) To ensure proper coordination of services and referral for services, VWLs will become familiar with the services, duties and responsibilities of all supporting agencies and personnel including, but not limited to, the above listed services, law enforcement, SVP, local trial counsel, SVC, Sexual Assault Response Coordinator, Sexual Assault Victim Advocate, Family Advocacy Program, Domestic Violence Victim Advocates, Army behavioral health services and off-installation civilian agencies providing similar services.

c. When victims are not eligible for military services, or in those cases in which military services are not available, the VWL will provide liaison assistance in seeking any available nonmilitary services within the civilian community.

17–13. Stages and role in military criminal justice process

Victims should be advised of stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case. This information will be set forth in a Victim Information Packet (DD Form 2701 and DD Form 2702 (Court-Martial Information for Victims and Witnesses of Crime)), and should be further amplified, as required, by the VWL or trial counsel. For example, some offenses may be tried in U.S. Magistrate or U.S. District Court.

17–14. Notification and description of services provided to victims of crime

a. During the investigation and prosecution of a crime, the VWL, trial counsel, or other government representative will provide a victim, or when applicable, the victim's SVC, the earliest possible notice of significant events in the case, to include—

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The decision on whether to prefer (or file in a civilian court) or dismiss the charges against a suspected offender.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at a preliminary hearing under UCMJ, Art. 32.

(5) The scheduling (date, time, and place) of each court proceeding that the victim is either required or entitled to attend and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The opportunity to consult with trial counsel about providing evidence in aggravation concerning financial, social, psychological, and physical harm done to, or loss suffered by, the victim.

(9) The result of trial or other disposition.

(10) If the sentence includes confinement, the probable date by regulation on which the offender will be eligible for parole.

(11) General information regarding the corrections process, including information about work release, furlough, probation, parole and other forms of release from custody, and the offender's eligibility for each.

(12) The right to request, through the VWL, trial counsel, or designee of the commander of the corrections facility to which the offender is assigned, notice of the matters set forth in paragraph 17–14*b*.

(13) How to submit a victim impact statement to the Army Clemency and Parole Board for inclusion in parole and clemency considerations (see AR 15–130).

b. Upon a sentence to confinement, the trial counsel or a representative for the government will—

(1) Formally inform the victim, or when applicable, the victim's SVC, regarding post-trial procedures, to include the victim's eligibility to submit matters for consideration by the convening authority during the clemency phase of the court-martial process under the provisions of RCM 1106A, and the right to be notified if the offender's confinement or parole status changes, and when the offender will be considered for parole or clemency by providing the victim with DD Form 2703 (Post-Trial Information for Victims and Witnesses of Crime).

(2) Ensure the victim's election regarding notification is recorded on DD Form 2704 (Victim/Witness Certification and Election Concerning Inmate Status), in every case, regardless of election. One copy of DD Form 2704 will be given to the victim. One copy of the form will be forwarded to the commander of the gaining confinement facility. One copy of the form will be forwarded to the Army Corrections Command (DAPM–ACC), 150 Army Pentagon, Washington, DC 20310–0150.

(3) Ensure that a copy of DD Form 2704 is not attached to any portion of a record to which the offender has access.

17–15. Consultation with victims

a. The trial counsel, VWL, or other government representative will consult with victims of crime, and when applicable, the victim's SVC, concerning—

(1) Decisions not to prefer charges.

(2) Decisions concerning pretrial restraint of the alleged offender or his or her release.

(3) Pretrial dismissal of charges.

(4) Negotiations of plea agreements and their potential terms.

b. Consultation may be limited when justified by the circumstances, such as to avoid endangering the safety of a victim or a witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. Although the victim's views should be considered, nothing in this regulation limits the responsibility and authority of appropriate officials to take such action as they deem appropriate in the interest of good order and discipline and to prevent service-discrediting conduct.

17–16. Property return and restitution

a. In coordination with criminal investigative agents and GAD, SJAs or their designees will ensure that all noncontraband property that has been seized or acquired as evidence for use in the prosecution of an offense is safeguarded and returned to the appropriate person, organization, or entity as expeditiously as possible (see AR 195–5, or AR 190–30, as applicable). The VWL or other government representative will ensure that victims are informed of applicable procedures

for requesting return of their property. SOFAs or other international agreements may apply overseas. SJAs will review provisions of applicable agreements.

b. Victims who suffer personal injury, property loss, or damage as a result of an offense should be informed of the various means available to seek restitution. The provisions of UCMJ, Art. 139 may provide some relief if the property loss or damage is the result of a wrongful taking or willful damage by a member of the Armed Forces (care must be taken to ensure that UCMJ, Art. 139 investigations are conducted in a manner that does not interfere with any ongoing criminal investigations or courts-martial proceedings). Victims should also be informed of the possibility of pursuing other remedies, such as claims, private lawsuits, or any crime victim compensation available from federal (for example, the Transitional Compensation Program for abused family members under 10 USC 1059) or civilian sources, and of appropriate and authorized points of contact to assist them. Examples include a local claims office, legal assistance or lawyer referral service, and state victim assistance or compensation programs.

c. Court-martial convening authorities will consider the appropriateness of requiring restitution as a term and condition in plea agreements, and will consider whether the offender has made restitution to the victim when taking post-trial action. The Army Clemency and Parole Board will also consider the appropriateness of restitution in clemency and parole actions.

Section IV

Witness Services

17–17. Notification and description of services provided to witnesses

a. The trial counsel, VWL, or other government representative will make reasonable efforts to notify witnesses and representatives of witnesses who are minors (to include legal guardians, foster parents, or other persons in lawful custody of minors or incompetent individuals), when applicable, at the earliest opportunity of significant events in the case, to include—

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The preferal (or the filing in a civilian court) or dismissal of charges against a suspected offender.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at a UCMJ, Art. 32 preliminary hearing.

(5) The scheduling (date, time, and place) of each court proceeding that the witness is either required or entitled to attend and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The result of trial or other disposition.

(9) If the sentence includes confinement, the probable date by regulation on which the offender will be eligible for parole.

(10) General information regarding the corrections process, including information about work release, furlough, probation, the offender's eligibility for each, and the witness' right to be informed of changes in custody status.

b. Witnesses should be advised of the stages in the military criminal justice system, the role that they can be expected to play in the process, and how to obtain additional information concerning the process and the case. This information will be set forth in a Victim and Witness Information Packet (DD Forms 2701, 2702, and 2703) and should be further amplified, as required, by the trial counsel, VWL, or designee.

c. Upon a sentence to confinement, the trial counsel or other representative of the Government will—

(1) Formally inform those witnesses adversely affected by the offender regarding post-trial procedures and the right to be notified if the offender's confinement or parole status changes, and when the offender will be considered for parole or clemency by providing DD Form 2703. Appropriate cases include, but are not limited to, cases where the life, well-being, or safety of the witness has been, is, or in the future reasonably may be, jeopardized by participation in the criminal investigative or prosecution process.

(2) Ensure the witness' election regarding notification is recorded on DD Form 2704 in every case, regardless of election. One copy of DD Form 2704 will be given to the witness. One copy of the form will be forwarded to the commander of the gaining confinement facility. One copy of the form will be forwarded to the DAPM-ACC. One copy of the form will be forwarded to the Clerk of Court, USACCA, Victim Witness Liaison/Coordinator (VWL/C), 9275 Gunston Road, Fort Belvoir, VA 22060 – 5546. The DD Form 2704 should normally be typed. Email addresses may be added to the DD Form 2704 on a voluntary basis. Include the POC and address of the Military Service Central Repository in Section V.

(3) Ensure that a copy of DD Form 2704 is not attached to any copy of the record of trial to include the accused's copy of the record of trial.

d. The appellate court VWL/C will notify victims of:

- (1) Docketing and decisions of the USACCA;
- (2) Docketing and decisions of the USCAAF; and
- (3) Opportunities to attend oral arguments.

17–18. Limitations

a. The trial counsel, VWL, or other government representative will determine, on a case-by-case basis, the extent to which witnesses are provided the services set forth in sections IV and V of this chapter. For example, it may be unnecessary to provide some or all of these services to AD military witnesses or to expert or character witnesses. Trial counsel or designee will apprise a witness' chain of command of the necessity for the witness' testimony (and the inevitable interference with and absence from duty). Ordinarily, however, doubt about whether to provide the foregoing information or services should be resolved in favor of providing them, especially when services have been requested by the witness.

b. Overseas, status of forces, and other international agreements may limit the availability of such services to victims or witnesses residing in the host country without SOFA status.

Section V

Other Services

17–19. Protection of victims and witnesses

a. *Victim/witness intimidation.* The SJA will ensure that victims and witnesses are advised that their interests are protected by administrative and criminal sanctions. In the criminal context, for example, 18 USC 1512 and 1513 make tampering with or retaliation against a victim or witness punishable under federal law; intimidation and threats to victims or witnesses are punishable under UCMJ, Art. 132. Obstruction or attempted obstruction of justice and subornation of perjury are also offenses under the UCMJ. Victims and witnesses should be further advised that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities (for example, a commander, an SJA, CID, a program manager, a trial counsel or a VWL), that their complaints will be promptly investigated, and that appropriate action will be taken. In the administrative context, the commander may provide victim protection by issuing a written order to the suspect not to contact the victim except when supervised by a member of the chain of command, or by revoking the suspect's pass privileges. Commanders should normally use DD Form 2873, Military Protective Order, when issuing a written no-contact order. Commanders should consult with their servicing JA before taking administrative measures to protect a victim.

b. *Victim/witness protection.* In cases where the life, well-being, or safety of a victim or witness is jeopardized by his or her participation in the criminal investigation or prosecution process, the SJA will ensure that appropriate law enforcement agencies are immediately notified. Commanders, in conjunction with the law enforcement agency concerned, will promptly take, in appropriate circumstances, those measures necessary to provide reasonable protection for the victim or witness. These measures may include temporary attachment or assignment, or permanent reassignment, of military personnel, or in some cases the provision of state, other federal or foreign protective assistance. The trial counsel, VWL, or other government representative will immediately notify the SJA whenever a victim or witness expresses genuine concern for his or her safety. The SJA should contact CID for all victim and witness requests to be in the Federal Witness Protection Program, and for fear of life transfers.

c. *Separate waiting area.* At courts-martial and preliminary hearing proceedings, victims and government witnesses should, to the greatest extent possible, be afforded the opportunity to wait in an area separate from the accused or defense witnesses to avoid embarrassment, coercion, or similar emotional distress. In a deployed environment, victims and government witnesses should be afforded a separate waiting area to the greatest extent practicable.

d. *Arranging witness interviews.* Within the guidelines of RCM 701 and UCMJ Art. 6b(f), and at the request of the witness, a VWL or designee may act as an intermediary between a witness and representatives of the government and the defense for the purpose of arranging witness interviews in preparation for trial. The VWL's role in arranging witness interviews is to ensure that witnesses are treated with courtesy and respect and that interference with their lives and privacy is kept to a minimum. This paragraph is not intended to prevent the defense or the government from contacting potential witnesses not previously identified or who have not requested a VWL to act as an intermediary.

17–20. Notification to employers and creditors

On request of a victim or witness, the trial counsel, VWL, or other government representative will inform an employer that the victim's or witness' innocent involvement in a crime or in the subsequent prosecution may cause or require his or

her absence from work. In addition, if a victim or witness, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, suffers serious financial hardship, a government representative will assist the victim or witness in explaining to creditors the reason for such hardship, as well as ensuring that legal assistance is available to Soldiers, retirees, and their Family members for this purpose.

17–21. Witness fees and costs

Witnesses requested or ordered to appear at preliminary hearings under UCMJ, Art. 32 or courts-martial may be entitled to reimbursement for their expenses under UCMJ, Arts. 46 and 47; RCM 405(g); and chapter 5 of this regulation. The VWL must be familiar with the provisions of these directives and appropriately advise and assist witnesses. Victims and witnesses should be provided assistance in obtaining timely payment of witnesses fees and related costs. In this regard, coordination should be made with local finance offices for establishing procedures for payment after normal duty hours if necessary.

17–22. Civilian witness travel to proceedings overseas

a. When a civilian witness, other than a DOD employee, is located in the continental United States (CONUS) and is scheduled to testify in courts-martial or other legal proceedings overseas, a representative of the convening authority may request that the Clerk of Court, USACCA issue invitational travel orders and arrange for transportation. The witness request should be faxed as follows: Overseas Witness Liaison, Clerk of Court, U.S. Army Court of Criminal Appeals, (facsimile (703) 806–0124; DSN 223–0124).

b. Requests should be timely submitted to ensure receipt by the Clerk of Court, USACCA at least 10 days before the desired arrival date, particularly if passports must be obtained for the witness. Otherwise, the request must be accompanied by a brief explanation of the delay. Each request will include the following information numbered according to the subparagraphs below—

- (1) Name and date of birth of the witness.
 - (2) Name of the case or other proceedings (include grade and complete name of the accused).
 - (3) Type of court, preliminary hearing, or board, including general nature of the charges.
 - (4) Date proceedings are to begin.
 - (5) Desired arrival date of witness, destination or city, and estimated duration of stay.
 - (6) Address of witness, including name of address occupant if different from that of witness.
 - (7) Witness' day and evening telephone numbers.
 - (8) Whether witness already has been contacted concerning attendance, by whom, and with what result.
 - (9) Whether witness is known to possess a current U.S. passport.
 - (10) Relationship of the witness to the proceedings (for example, victim, prosecution witness other than victim, relative of the accused, defense witness not related to the accused).
 - (11) If the witness is a minor or disabled, the information required by paragraphs 17–22*b*(6) through (9), as to the witness' parent, guardian, or other escort.
 - (12) Name, title, and telephone number of counsel requesting the witness and name, location, and telephone number of the VWL.
 - (13) Fund citation to be used in invitational travel orders and any limitation as to the amount available. (Early citation of funds is essential to issuing invitational travel orders.)
 - (14) Lodging information should include the name, address, and telephone number of the facility where the command has made reservations for the witness.
- c.* When the Office of the Clerk of Court, USACCA is arranging a witness' travel, any proposed change by local authorities in the travel arrangements or itinerary must be coordinated first with that office.
- d.* If the requirement is cancelled after the witness has been contacted and agreed to proceed overseas, an explanation to be given the witness will be provided to the Clerk of Court, USACCA.

17–23. Local services

The trial counsel, VWL, or designee will ensure that victims and witnesses are informed of, and provided appropriate assistance to obtain, available services such as transportation, parking, child care, lodging, and court-martial translators or interpreters.

17–24. Transitional compensation

The Transitional Compensation Program provides financial support, dependent upon the Soldier's ETS, for Family members of Soldiers who are discharged or sentenced to total forfeitures by court-martial or administrative separation proceed-

ings for charges that include dependent abuse offenses. VWL, SVL, and all JAs will be familiar with transitional compensation procedures and benefits for victims as described in AR 608–1, DODI 1342.24, and 10 USC 1059. The VWL/SVL and JAs will inform victims of their potential eligibility for this program. VWL/SVL may help victims apply for transitional compensation or refer them to Army Community Services victim advocates for information and assistance. Judge advocates will advise transitional compensation approving officials on the standards for certifying transitional compensation applications (block 22 of DD Form 2698 (Application for Transitional Compensation)). Judge advocates will not conduct an independent legal review of the underlying basis for the transitional compensation and will not serve as approving officials for purposes of DD Form 2698.

17–25. Uniformed Service Former Spouse Protection Act

a. The Uniformed Services Former Spouses Protection Act (10 USC 1408(h)) applies in cases where retirement-eligible Servicemembers are no longer eligible to receive retired pay as a result of misconduct involving abuse of a spouse or dependent child. This statute authorizes a civil court to award a portion of the retirement pay the spouse or former spouse would have received if the Servicemember's eligibility for retired pay had not been terminated. The statute also entitles a spouse or former spouse and dependent child to receive medical and dental care and other benefits in the same manner as if the Servicemember was entitled to retired pay. VWLs and SVLs will be familiar with this statute and refer eligible spouses or dependent children to Legal Assistance for legal advice.

b. Overseas, such services and benefits may be limited by status of forces and other international agreement unless the spouse or child continuous to have SOFA status.

17–26. Requests for investigative reports or other documents

The SJA will ensure that victims' and witnesses' requests for investigative reports or other documents are processed under applicable Freedom of Information Act or Privacy Act procedures. Eligible victims will be provided a copy of a record of trial in accordance with RCM 1112 at no cost. In other cases, the SJA may authorize release of a record of trial to a victim when necessary to ameliorate the physical, psychological, or financial hardships suffered as a result of the criminal act.

Section VI

Confinement Facilities and Central Repository

17–27. Confinement facilities

a. On entry of an offender into confinement, the commander of the confinement facility to which the offender is assigned will ensure receipt of DD Form 2704 and determine whether the victim and/or witness requested notification of changes in confinement status in the offender's case. If the DD Form 2704 is not available, the commander will make inquiry of the trial counsel or central repository to obtain the form.

b. If the victim and/or witness requested notification on DD Form 2704, the commander of the confinement facility will—

(1) Advise the victim and/or witness of the offender's place of confinement and the offender's projected minimum release date.

(2) Provide the victim and/or witness with the earliest possible notice of the following:

(*a*) The escape, work release, furlough, emergency or special temporary home parole, or any other form of release from custody of the offender;

(*b*) The transfer of the offender from one facility to another—this includes temporary custody by state or federal officials for the purpose of answering additional criminal charges;

(*c*) The scheduling of a clemency or parole hearing for the offender;

(*d*) The release of the offender from supervised parole;

(*e*) The death of the offender, if the offender dies while in confinement.

(3) In cases involving escape of a confinee, emergency leave, or temporary home release, confinement facilities will make immediate efforts to notify victims and witnesses. The following will constitute reasonable effort:

(*a*) Attempted telephonic notification;

(*b*) Email notification, if possible;

(*c*) Written notification by overnight mail.

c. Methods used and attempts made will be recorded (including date, time and person notified). The DD Form 2705 (Victim/Witness Notification of Inmate Status) may be used for this purpose.

d. On transfer of the offender, the commander of the confinement facility will notify the gaining confinement facility of the victim's and/or witness' request by forwarding the completed DD Form 2704 with an information copy to the central repository.

e. Annually, no later than 31 January, the commander of the confinement facility will report to the DA central repository the number of victims and witnesses who were notified of changes in confinement status during the reporting period, and the total number of confinees on whom notification is required.

17–28. Reporting requirements and responsibilities

a. The Army Corrections Command (DAPM–ACC), Victim/Witness Central Repository Manager is the Army's central repository for tracking notice of the status of offenders confined in Army confinement facilities and for tracking the following information:

(1) Number of victims and witnesses who were issued DD Form 2701 or DD Form 2702 from law enforcement or criminal investigative personnel;

(2) The number of victims and witnesses who were informed (as recorded on DD Form 2704 or otherwise) of their right to be notified of changes in confinee status;

(3) The number of victims and witnesses who were notified by confinement victim and witness assistance officials, using DD Form 2705, of changes in confinee status;

(4) The number of confinees, by Service, in Army confinement facilities as of 31 December of each year, about whom victim and witness notifications must be made.

b. Annually, no later than 15 February, the central repository will report to OTJAG–CLD, cumulative figures for the previous calendar year on the notification and reporting requirements in paragraph 17–28*a*. DD Form 2706 (Annual Report on Victim and Witness Assistance) will be used for this purpose.

c. Annually, no later than 15 February, the SJA of each command having GCM jurisdiction will report, through major Army command channels, to OTJAG–CLD, cumulative information on the following:

(1) The number of victims and witnesses who received DD Form 2701 or 2702 from trial counsel, VWL or designee;

(2) The number of victims and witnesses who received DD Form 2703 from trial counsel, VWL or designee.

d. SJAs will obtain data for their reports from subordinate commands attached or assigned to their GCM jurisdiction for military justice purposes, including supported RC units. Negative reports are required. The DD Form 2706 will be used for this purpose. OTJAG–CLD will prepare a consolidated report on DD Form 2706 for submission to the DOD (Under Secretary for Personnel and Readiness, Legal Policy Office).

17–29. Evaluation of Victim/Witness Liaison Program services

a. SJAs will ensure that each victim and witness in an incident that is prosecuted at a SPCM or GCM, or investigated pursuant to UCMJ, Art. 32, in those cases not disposed of by SPCM or GCM, receives a victim/witness evaluation form. These forms may also be provided to other victims and witnesses.

b. SJAs will use DA Form 7568 (Army Victim/Witness Liaison Program Evaluation).

c. Evaluation forms will be reviewed locally by the SJA and copies forwarded quarterly to the Victim/Witness Coordinator, OTJAG–CLD, by email.

d. The evaluation form may be provided to victims and witnesses by hand, by mail, though a link to an anonymous internet survey, or otherwise, but must be returned in an anonymous manner, for example, by providing a drop box away from the military justice section, or by providing a pre-addressed envelope or other anonymous means of return. The recipients of the evaluation form must be advised that the form will be returned in an anonymous manner and cannot be accepted in any other manner. The evaluation form will be accompanied by a cover letter, in a hard copy or digital format, under the signature of the SJA. The cover letter will thank the victim/witness for assisting in the prosecution, and emphasize the need for a response and the anonymous nature of the response.

Chapter 18 Military Justice Training

18–1. General

This chapter describes required and optional military justice training. It also sets forth general instructions and information about military justice courses for AD commissioned officers, officer candidates, enlisted personnel in the U.S. Army, cadets of the USMA, and the Senior Reserve Officers' Training Corps (SROTC).

18–2. Training organization

- a. TJAG is responsible for technical supervision of training in military justice.
- b. The Commanding General, U.S. Army Training and Doctrine Command (TRADOC) is responsible for instruction of required and optional military justice training during initial entry training and institutional and SROTC training.
- c. The Superintendent, USMA is responsible for instruction of required and optional military justice training for cadets at USMA.
- d. The Commanding General, TJAGLCS is responsible for military justice courses in the curriculum of TJAGLCS and is also responsible for developing military justice training materials for the Army service school system.
- e. The Commandant, Academy of Health Sciences is responsible for instruction of required and optional military justice training in the curriculum of Academy of Health Sciences.
- f. Unit commanders are responsible for refresher and optional individual training in military justice. All such training will be coordinated in advance with the servicing JA (see para 18–8).

18–3. Curriculum courses

In addition to the military justice instruction taught in Army service schools, training centers, and SROTC programs, military justice courses may be presented in the curricula of Warrant Officer Training System schools, Noncommissioned Officer Education System schools, USAR and ARNG schools and extension courses, and in other Reserve and National Guard training. Military justice training in accordance with this paragraph will be coordinated in advance with the servicing JA (see para 18–8).

18–4. Required military justice training for enlisted Soldiers

- a. Enlisted Soldiers will receive training in military justice in accordance with UCMJ, Art. 137—
 - (1) On or within 6 days of the Soldier’s initial entrance on AD or initial entrance into a duty status with an RC; and
 - (2) After the Soldier has completed 6 months of AD or, in the case of an RC Soldier, after completing basic or recruit training; and
 - (3) At the time of each enlistment.
- b. The HQDA may prescribe additional courses in military justice subjects of special significance to enlisted personnel.

18–5. Required military justice training for commissioned officers, officer candidates, and cadets

Commissioned officers, officer candidates, and cadets will receive military justice training in accordance with UCMJ, Art. 137, through—

- a. *Officer basic courses.* These courses will contain the following learning objectives:
 - (1) How to conduct a preliminary inquiry and determine or recommend disposition of offenses. The officer will learn—
 - (a) How to evaluate evidence of suspected offenses.
 - (b) The concept of and authority for military jurisdiction.
 - (c) How to determine when the military has jurisdiction over the person of the accused and the offense.
 - (d) The basis for, and how to advise a suspect of, the UCMJ, Art. 31b rights, and the right to counsel before questioning.
 - (e) The characteristics, effects, and requirements of nonpunitive disciplinary measures (including corrective training, reprimands, and administrative discharges) as well as those of available punitive measures.
 - (f) How to determine or recommend disposition of offenses.
 - (2) How to order restraint, if warranted, before disposition of an offense. The officer will learn—
 - (a) When pretrial confinement is appropriate.
 - (b) The steps necessary to place an accused in pretrial confinement.
 - (c) How to apprehend, and when and how to place a Soldier under restriction or arrest.
 - (3) How to authorize searches, inspections, and inventories. The officer will learn—
 - (a) To be familiar with the Fourth Amendment of the U.S. Constitution, its application to military actions, and its enforcement in court.
 - (b) To understand the commander’s authority to search, how to determine probable cause, and how to authorize and conduct a search based upon probable cause.
 - (c) What a consent search is and the necessity for voluntariness in consent searches.
 - (d) The scope and limits of a search incident to apprehension.
 - (e) The scope and limits of searches based on exigent circumstances.
 - (f) The rules governing the purposes, limits, and procedures for inspections and inventories.
 - (4) How to initiate and process court-martial charges. The officer will learn—
 - (a) To draft and review court-martial charges and specifications, and to review DD Form 458.
 - (b) To prefer court-martial charges and formally notify the accused of court-martial charges.

- (c) To initiate and process actions and reports when required by SOFA or regulations.
- (d) To understand speedy trial requirements.
- (5) How to administer NJP. The officer will learn—
 - (a) The purpose of NJP, the policies governing its use, and its relationship to punitive and other nonpunitive measures.
 - (b) Who may impose NJP and on whom it may be imposed.
 - (c) The rights of the Soldier and the imposition and appeal procedures for NJP.
 - (6) How to avoid UCI.

b. Officer advanced courses. These courses will teach the same material outlined in paragraphs 18–5a(1) through (6), but will reflect the wider military experience of officer advanced students. The courses will also stress the purpose, structure, and development of the military justice system.

c. Precommissioning courses. These courses will teach the same material outlined in paragraphs 18–5a(1) through (6). In addition, the courses will provide an overview of the purpose, structure, and development of the American military justice system.

18–6. Military justice training for commanders and convening authorities

a. Officers with authority to convene courts-martial or impose NJP shall receive annual training from their servicing OSJA regarding the purposes and administration of the UCMJ. Completion of TJAGLCS’ Senior Officer Legal Orientation course or General Officer Legal Orientation course, or other specifically designed command courses, such as the Pre-Command Course, satisfies the annual training requirement.

b. The servicing OSJA will document compliance with the training requirement in paragraph 18–6a for all current commanders and convening authorities.

18–7. Optional military justice training

The Commanding General, TRADOC; the Superintendent, USMA; the Commandant, Academy of Health Sciences; and other commanders may prescribe additional military justice training for officers, cadets, and enlisted Soldiers in their respective commands on an as-needed basis. Commanders will coordinate with a JA before presenting optional military justice training (see para 18–8). The Commanding General, TJAGLCS, may prescribe military justice training courses to be taught in the curriculum of TJAGLCS.

18–8. Course development and instruction

a. Military qualifications standards for military justice training will conform with this regulation.

b. SJAs and command judge advocates will provide technical assistance and supervision in the development of military justice course programs of instruction not otherwise prescribed by higher authority.

c. JAs will provide technical assistance as needed in all other military justice instruction prescribed by this regulation.

Chapter 19

Complaints Pursuant to UCMJ, Article 138

Section I

General

19–1. Article 138 complaints generally

a. Purpose. This chapter establishes procedures for the preparation, submission, and disposition of complaints made pursuant to UCMJ, Art. 138 by a member of the Armed Forces against a commanding officer.

b. Applicability. This chapter applies to members of all U.S. Army components. Complaints from members of the ARNG and U.S. Army Reserve are limited to matters concerning their federal service (Title 10 duty status).

19–2. Definitions

This chapter uses the following terms:

a. Complainant. The Soldier making the complaint is the complainant.

b. Respondent. The commanding officer against whom the Soldier is complaining is the respondent.

19–3. Duties and responsibilities

a. The GCMCA. The principal responsibility for acting on an Article 138 complaint lies with the GCMCA of the command with jurisdiction over the respondent at the time of the alleged wrong, either organically or as a result of an attachment, area jurisdiction, or a similar basis. If there is no such officer below HQDA, the complaint will be referred to the CG, U.S. Army Forces Command (FORSCOM) to serve as the GCMCA responsible for acting on the complaint. If the CG, FORSCOM is prohibited from taking action on the complaint, the complaint will be forwarded to the CG, TRADOC to serve as the responsible GCMCA.

b. Commanders and respondents. A Soldier has a statutory right to submit a complaint pursuant to UCMJ, Art. 138. Commanders will not restrict the submission of such complaints or retaliate against a Soldier for submitting a complaint.

c. Complainant. The complainant may be asked to testify, provide additional information, or otherwise assist in resolving the complaint. A Soldier who submits an Article 138 complaint does not have a right to participate in any ensuing procedures pursuant to this regulation.

19–4. Limitations on Article 138 complaints

a. Limitation based on status of complainant. Complaints may only be made by a member of the Armed Forces.

b. Limitation based on status of respondent. A complaint pursuant to Article 138 may be made only against a commanding officer of the complainant. At the time of the alleged wrong, the commanding officer must have been an officer in the complainant's chain of command, up to and including the first officer exercising GCM jurisdiction over the complainant. The commanding officer must have been authorized to impose NJP on the complainant (whether or not the authority to impose NJP or to exercise GCM jurisdiction has been limited or withheld by a superior commander).

c. Limitation on subject matter of the complaint. Complaints pursuant to Article 138 must allege that the complainant has been wronged. A wrong is a discretionary act or omission by a commanding officer, under color of federal military authority, that adversely affects the complainant personally and that is:

- (1) In violation of law or regulation;
- (2) Beyond the legitimate authority of that commanding officer;
- (3) Arbitrary, capricious, or an abuse of discretion; or
- (4) Materially unfair.

d. Limitation based on timing. Soldiers who elect to make an Article 138 complaint must deliver the complaint to the complainant's immediate superior commissioned officer within 90 days of discovery of the wrong. The following periods are excluded when calculating whether the complaint was timely submitted:

- (1) Any period during which the initial request for redress was with the respondent.
- (2) If the GCMCA returns the complaint to the complainant as deficient, the days the complaint was in military channels between submission by and return to the complainant.
- (3) When the complainant mails the complaint, the complaint will be considered to have been submitted on the date the complaint is received by the first superior commissioned officer.
- (4) Any period of time excluded by the GCMCA for good cause.

19–5. Legal advice

a. Advice of a military lawyer. A member who desires to submit an Article 138 complaint may consult a military lawyer for advice and assistance in drafting the complaint. Such advice will include whether, under the circumstances, an Article 138 complaint is authorized and appropriate. The member should also be advised of any other laws or regulations under which the member may seek redress. In connection with Article 138 complaints, a military lawyer will be provided only for such consultation and advice, but not to represent the member in any ensuing Article 138 proceedings.

b. Civilian Counsel. A member who desires to submit an Article 138 complaint may consult or retain other legal counsel at no expense to the government. Such counsel may attend any proceedings pursuant to this regulation open to members of the public, but may not participate in such proceedings.

Section II

Prerequisites for Filing a Complaint

19–6. Initial request for redress

Before filing an Article 138 complaint, the complainant must first seek relief from the respondent commanding officer. The initial request for redress must—

- a.* Be in writing and signed by the complainant. An email will satisfy this requirement.
- b.* Clearly identify the relationship between the complainant and the respondent (see para 19–4b).

- c. Clearly identify the date and nature of the alleged wrong (see para 19–4c).
- d. Clearly identify the specific redress desired. Redress is an authorized action by an officer in the complainant’s chain of command to effect the revocation of a previous official action or otherwise to restore the complainant any rights, privileges, property, or status lost as a result of a wrong.
- e. Be submitted through command channels to the respondent commanding officer. If the respondent commanding officer is no longer in command, the initial request for redress must be submitted to the successor in command. The successor in command, upon receipt of the initial request for redress, is the respondent commanding officer.

19–7. Response by the commanding officer to an initial request for redress

a. *Alleged wrongs involving senior officials.* When a respondent commander is a senior official as defined by AR 20–1, the senior official’s command should first contact the Department of the Army Inspector General’s (DAIG) Investigations Division in order to report any allegations of senior official impropriety and misconduct, before further action is taken pursuant to Article 138. Where the DAIG declines to investigate the alleged wrongs, the respondent commander should respond to the initial request for redress, if made, and the respondent commander’s GCMCA should separately review any formal complaint made pursuant to Article 138.

b. *Legal advice.* A commanding officer who receives a request for redress, or against whom an Article 138 complaint is submitted, may obtain legal advice from the commanding officer’s servicing legal advisor.

c. *Form of response.* The respondent commanding officer who receives an initial request for redress pursuant to paragraph 19–6 will respond to the complaint in writing. An email will satisfy this requirement.

d. *Timing of response.*

(1) *Active component.* An active component commander will serve a response on the complainant within 15 days after having received the initial request for redress. If a final response within 15 days is not possible, an interim response will be provided that indicates the estimated date of a final response.

(2) *Reserve component.* RC commanders who are not on AD must respond to an initial request for redress within 60 days from receipt.

e. *Content of response.* A final response must specifically address what redress the commander is granting or otherwise state why redress is denied.

f. *Failure to provide a response.* A Soldier who, through no fault of the Soldier’s own, has not received a final response within 15 days (or 60 days from an RC commander), or an interim response containing the date of a final response that does not unreasonably delay the final response, may elect to treat that as a denial of redress.

Section III

Form, Submission, and Transmittal of a Complaint

19–8. Article 138 complaint requirements

a. *General.* If the attempt to resolve a perceived wrong through an initial request for redress is unsuccessful, the Soldier may submit an Article 138 complaint to the GCMCA of the command with jurisdiction over the respondent at the time of the alleged wrong.

b. *Form of the complaint.* The following list identifies the required form and content of an Article 138 complaint. An Article 138 complaint must:

- (1) Be in writing and signed by the complainant. An email will satisfy this requirement.
- (2) Be addressed to the GCMCA with jurisdiction over the respondent at the time of the alleged wrong.
- (3) Clearly identify the complainant’s current military organization and address.
- (4) Clearly identify the complainant’s military organization at the time of the wrong.
- (5) Clearly identify the commanding officer who the Soldier believes committed the wrong.
- (6) Indicate the date a written initial request for redress was submitted to that commanding officer, and the date of the respondent commanding officer’s response or lack thereof.
- (7) Specifically state that it is a complaint submitted pursuant to the provisions of UCMJ, Art. 138 and this regulation.
- (8) Clearly and concisely describe the specific wrong or wrongs complained of. When not readily apparent, state the reason the complainant considers it a wrong.
- (9) State the specific redress the complainant seeks. Unless it is readily apparent, state the reason the complainant considers the redress appropriate.
- (10) Have attached to it—
 - (a) The complainant’s initial request for redress and the commanding officer’s response, if any.
 - (b) Any supporting information or documents the complainant desires to be considered.

19–9. Submission and transmittal of an Article 138 complaint.

a. Submission. A complainant will submit an Article 138 complaint to any superior commissioned officer.

b. Transmittal. A superior commissioned officer in receipt of an Article 138 complaint pursuant to paragraph 19–9a will promptly forward the complaint, through his or her chain of command, to the GCMCA of the respondent commanding officer at the time of the alleged wrong. The superior commissioned officer receiving the complaint, or any commander through whom it is forwarded, may add pertinent material to the file or grant any redress within that officer’s authority. If either action is taken, it will be noted in the transmittal documents. The complaint will be forwarded to the GCMCA even if the complainant’s requests for redress are fully granted.

c. Withdrawal. The complainant may withdraw the complaint at any time before final action. If a complaint is withdrawn, it must be a completely voluntary act on the part of the complainant. Withdrawal must be in writing. An email will satisfy this requirement.

Section IV

Action on the Complaint

19–10. Determination of sufficiency

a. Sufficiency review. Once the appropriate GCMCA receives an Article 138 complaint, the GCMCA will determine whether the complaint is sufficient. A complaint is not sufficient unless:

- (1) the complainant first submitted to the respondent an initial request for redress pursuant to paragraph 19–6; and
- (2) the complaint meets all of the requirements in paragraphs 19–4 and 19–8.

b. Review by legal advisor. The GCMCA may have his or her legal advisor conduct a review of the complaint to identify its sufficiency.

c. Action on deficient complaints. Unless specifically waived pursuant to paragraph 19–10d, a GCMCA may not examine into, take action on, or make any determination as to the merits of a deficient complaint. If a complaint is deficient in one or more respects the GCMCA will return the complaint to the complainant with a statement explaining why the complaint is deficient and how it may be corrected.

d. Waiver. For good cause, the GCMCA may waive certain deficiencies in a complaint. A complaint in which all deficiencies have been waived is a “sufficient” complaint. The GCMCA may waive any deficiency in a complaint, except:

- (1) when the complainant is not a member of the armed forces (see para 19–4a);
- (2) when the complaint does not allege a wrong (see para 19–4c);
- (3) when the complaint does not identify the commanding officer of the complainant who is alleged to have committed the wrong; and
- (4) a failure to specifically state the redress the complainant seeks from the GCMCA.

19–11. Determination of appropriate and inappropriate subject matter

a. In general. Where a GCMCA determines a complaint is sufficient pursuant to this chapter, a GCMCA must next determine if each of the alleged wrongs made in the complaint is or is not an appropriate matter for further examination and action pursuant to Article 138, UCMJ.

b. Inappropriate alleged wrong defined. An alleged wrong is inappropriate when other adequate processes exist for addressing the wrong alleged in the complaint. An action is an inappropriate matter for resolution pursuant to Article 138 procedures when—

(1) Review is provided specifically by the UCMJ, or the action is otherwise reviewable by a court authorized by the UCMJ or by a military judge.

(2) It is taken pursuant to the recommendation of a board authorized by Army regulation at which the complainant was afforded substantially the rights of a respondent (see AR 15–6).

(3) Army regulations specifically authorize an administrative appeal or similar redress.

(4) It is a commander’s recommendation or initiation of an action included in paragraphs 19–11b(1), (2), or (3).

c. Examples of inappropriate alleged wrongs. Examples of actions for which a review pursuant to UCMJ, Art. 138 is inappropriate include—

(1) Matters relating to courts-martial, NJP, and similar actions taken pursuant to the UCMJ, the MCM, or military criminal law regulations. However, an alleged wrong concerning a vacation of suspended NJP is reviewable pursuant to UCMJ, Art. 138, procedures, because there is no review by an authority superior to the officer vacating the punishment.

(2) Officer or enlisted elimination actions (see AR 600–8–24 and AR 635–200).

(3) Whistleblower reprisal allegations reported pursuant to 10 USC 1034.

(4) Withdrawals of flying status (see AR 600–105).

- (5) Appeals from findings of pecuniary liability (see AR 37–104–4 and AR 735–5).
- (6) Appeals from administrative reductions in enlisted grades (see AR 600–8–19).
- (7) Appeals from OERs or enlisted evaluation reports (see AR 623–3).
- (8) Filing of adverse information (for example, administrative reprimand) in official personnel records (see AR 600–37).

d. Review by ABCMR and ADRB. The fact that adverse action alleged to have a causal relationship to the wrong complained of could be redressed by the ABCMR (AR 15–185) or ADRB (AR 15–180) does not by itself make UCMJ, Art. 138 procedures inappropriate.

e. Examination into inappropriate alleged wrongs. Upon receipt of a facially inappropriate alleged wrong, the examination by the GCMCA will be limited to determining whether the other channels or procedures are, in fact, adequate and available for resolving the alleged wrong. If the GCMCA determines the other channels or procedures are inadequate or unavailable, then the GCMCA should conduct a full examination as provided in paragraph 19–12, and otherwise treat the complaint as appropriate subject matter for resolution pursuant to Article 138.

f. Action on inappropriate alleged wrong. If the GCMCA determines the alleged wrong is an inappropriate subject for resolution pursuant to Article 138 and determines that other channels or procedures are adequate and available for resolving the alleged wrong, then the GCMCA will so inform the complainant. A decision that the complaint is an inappropriate subject for resolution pursuant to Article 138 and to leave the matter to be processed in alternate channels must be conveyed to the complainant, and such notice constitutes “proper measures for redressing the wrong complained of” within the meaning of UCMJ, Art. 138. The complainant will be notified that—

- (1) The alleged wrong is already being considered in other official channels, if that is the case; or
- (2) A more appropriate official channel is available to redress the alleged wrong. The officer will specify that channel, any applicable regulation under which the complainant may proceed, and any Army assistance available to the complainant in using that channel.

g. Forwarding. Action on an inappropriate alleged wrong will be forwarded and disposed of in accordance with paragraph 19–14.

19–12. Examination into the complaint

a. Examination required. Where a GCMCA determines a complaint is both sufficient and contains one or more alleged wrongs appropriate for potential redress pursuant to this chapter, the GCMCA will examine into the complaint.

b. Method for examining the complaint. Except as provided in paragraph 19–12*e*, the nature and method of the examination is discretionary with the GCMCA.

c. Delegation. The examination into the complaint may be delegated but not to a person subordinate to the respondent in the chain of command nor, except for good cause, explained in the correspondence forwarding the complaint, to a person junior in grade to the respondent. Examinations so delegated will include a specific recommendation regarding the appropriateness of the redress requested and of any other corrective action.

d. Presumption. If the evidence made available by the examination does not establish the validity of a complaint, a respondent is presumed to have acted properly.

e. Findings. The final report of the examination into the complaint will include specific findings regarding each alleged wrong determined to be appropriate for potential redress pursuant to this chapter and will describe the factual basis and reasoning for each finding. The specific findings must address whether the act or omission complained of was—

- (1) In violation of law or regulation;
- (2) Beyond the legitimate authority of the respondent;
- (3) Arbitrary, capricious, or an abuse of discretion; or
- (4) Materially unfair.

19–13. Action on the complaint.

a. Personal action required. The GCMCA must act personally on the Article 138 complaint. This authority may not be delegated.

b. Legal review required. Before taking action on the complaint, the legal advisor to the GCMCA will conduct a legal review of the proposed action.

c. Actions. After examination into the complaint is completed, the GCMCA will take the first of the following actions that applies to the particular complaint.

- (1) If no redress is appropriate, the GCMCA will deny the redress.
- (2) The GCMCA will grant whatever redress is appropriate and is within such officer’s authority to provide.

(3) If the GCMCA determines that appropriate redress is beyond such officer's authority to provide, but that another Army commander or agency could provide appropriate redress, such officer will forward the following to the commander or agency with the necessary authority:

- (a) The documents described in paragraphs 19–14a(1) through (3).
- (b) An explanation of why the GCMCA considers redress appropriate.
- (c) The GCMCA's specific recommendations as to what redress should be granted.
- (d) A request that, upon completion of the action, the file be forwarded to HQDA in accordance with paragraph 19–14.

19–14. Forwarding and final disposition of the complaint

a. Forwarding to OTJAG. Upon completion of action on the complaint, the GCMCA will forward the complaint packet to OTJAG, Administrative Law Division (DAJA–AL), HQDA, 2200 Army Pentagon, Washington, DC 20310–2200 (OTJAG–AL). All actions taken pursuant to paragraph 19–13, including determinations that a complaint is an inappropriate matter for resolution pursuant to Article 138, must be forwarded to OTJAG–AL. The complaint packet will include:

(1) The complaint, the initial request for redress, the response of the commanding officer, and any supporting materials submitted by the complainant.

(2) The results of the examination into the complaint, together with any supporting documentation.

(3) A copy of the notice to the complainant.

(4) A legal review of the GCMCA's action.

(5) An endorsement or memorandum of transmittal—

(a) Indicating that the GCMCA personally acted on the complaint.

(b) Describing the GCMCA's action, and the reasons therefore.

(c) Explaining any waiver of deficiencies in the complaint or inadequacy or unavailability of established channels.

b. Review by TJAG. The action of the GCMCA is reviewed by TJAG (or that officer's designee) on behalf of the Secretary of the Army. TJAG, or TJAG's designee, may, in that officer's discretion, return the file for additional information or investigation or for other action. The file will be forwarded to OTJAG–AL. Upon receipt, OTJAG–AL will review the file.

c. Final action. Unless the GCMCA is otherwise notified by OTJAG–AL within 90 days of forwarding the file to OTJAG–AL, the GCMCA's action on the Article 138 complaint is considered final. The GCMCA is responsible for notifying the complainant of any final action.

Chapter 20

Military Justice in the Reserve Components

Section I

General

20–1. Purpose

a. This chapter prescribes policies and procedures for implementing 10 USC 802. It also prescribes policies and procedures for implementing RCM 202(a), which addresses persons subject to the code; RCM 204, which details jurisdiction over certain RC personnel; RCMs 707(a)(3) and (c)(8), on speedy trials; and RCM 1003(c), on punishments in the RC.

b. The provisions of this chapter supplement the policies and procedures pertaining to the administration of military justice set out in other parts of this regulation, including the training requirements of paragraph 18–4.

20–2. Policy

a. U.S. Army Reserve Soldiers will be subject to the UCMJ whenever they are in a 10 USC (Title 10) duty status. Examples of such duty status are AD; active duty for training (ADT); annual training (AT); active guard reserve (AGR) duty; and IDT. IDT normally consists of weekend drills by troop program units, but may also include any training authorized by appropriate authority. All USAR Soldiers are subject to the provisions of the UCMJ from the date scheduled to report to AD, ADT, and AT, including authorized travel days to and from such duty, until the date the Soldier is released from that status.

b. Reserve Soldiers reporting to IDT are subject to the UCMJ when traveling to and from the IDT site, intervals between consecutive periods of IDT on the same day, and intervals between IDT on consecutive days. The use of sign-in and sign-out rosters during IDT for personal accountability, pay purposes, or other reasons during breaks in periods of IDT does not affect personal jurisdiction established by UCMJ, Art. 2(a)(3)(B).

c. All ARNG Soldiers will be subject to the UCMJ when in federal service as ARNGUS pursuant to 10 USC, and when otherwise called into federal service. The ARNG Soldiers are not subject to the UCMJ while in state service pursuant to 32 USC (Title 32).

d. RC commanders must be in a Title 10 duty status (see para 20–2a) whenever they take action such as offering or imposing NJP, preferral or referral of court-martial charges, conducting open hearings pursuant to UCMJ, Art. 15, or vacating suspended sentences pursuant to UCMJ, Art. 15. However, RC commanders may forward charges pursuant to RCM 401, initiate, or forward requests for involuntary AD pursuant to RCM 204, or act on UCMJ, Art. 15 appeals pursuant to paragraph 3-30, anytime, even when not in a Title 10 duty status.

e. Costs associated with disciplining USAR Soldiers by USAR commanders will normally be paid from Reserve Personnel, Army, appropriations. However, costs (to include pay and allowances, and all authorized travel) associated with disciplining USAR Soldiers, when involuntarily ordered to AD or involuntarily extended on AD by a RA commander, will be paid from Military Personnel, Army appropriations.

Section II

Involuntary Active Duty and Extension on Active Duty

20–3. Involuntary active duty

a. Any RC Soldiers, including those in a retired status, who are not serving on AD are subject to UCMJ jurisdiction for offenses allegedly committed while serving in a Title 10 duty status (see paras 20–2a and b), and involuntary orders may be issued for the purpose of—

- (1) Preliminary hearing pursuant to UCMJ, Art. 32.
- (2) Trial by court-martial.
- (3) Proceedings pursuant to UCMJ, Art. 15.

b. An involuntary order to AD for the reasons in paragraphs 20–3a(1) through (3) may be issued only by a RA GCMCA or an RC commander specifically designated as a GCMCA pursuant to UCMJ, Art. 22(a)(7) and Art. 23(a)(7) who has all the internal resources necessary to involuntarily order an RC Soldier to AD and to conduct any necessary proceeding, including court-martial. No other authority is required to approve the order to AD. However, no Soldier ordered to AD may be confined or deprived of liberty (to include pretrial confinement or restriction) until the involuntary order to AD is approved or ratified by the Secretary of the Army or the Secretary of the Army’s designee (secretarial approval). The Assistant Secretary of the Army (Manpower and Reserve Affairs) is the Secretary of the Army’s designee for this purpose. Requests for secretarial approval or ratification of involuntary orders to AD will be forwarded through OTJAG–CLD, to the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs). The request should include the initial request for the order to AD, including the information specified in paragraph 20–3h, and the order to AD issued by the AC GCMCA. OTJAG–CLD will notify the forwarding AC GCMCA of the decision on the request.

c. Pursuant to paragraph 20–3b, not all involuntary orders to AD require the Secretary of the Army or secretarial approval. An RA GCMCA may issue an involuntary order to AD and process a Soldier for any purpose in paragraphs 20–3a(1) through (3), without secretarial approval, provided no confinement or deprivation of liberty occurs. For example, a Soldier may be ordered involuntarily to AD, charged with an offense pursuant to the UCMJ, and then granted a discharge in lieu of court-martial pursuant to chapter 10, AR 635–200 for enlisted personnel or a resignation in lieu of court-martial pursuant to chapter 3, AR 600–8–24 for officers, without secretarial approval. For those cases where pretrial confinement, arrest, or restriction in lieu of arrest are contemplated, or where sentences to confinement or deprivation of liberty are anticipated, the request for secretarial approval should be made sufficiently in advance of the deprivation of liberty or confinement. This is to prevent a delay in the execution of the deprivation of liberty or confinement.

d. The RC unit commanders who become aware of misconduct committed by RC members while serving on AD and consider it appropriate to request an involuntary recall to AD will forward a request through command channels. These channels include the appropriate state Adjutant General, the unit directly reporting to the USARC with one or more full-time JAs assigned, any other USARC subordinate unit designated in writing by the USARC Commander or USARC Commander’s designee, or Human Resources Command–St. Louis (HRC–STL) to an appropriate RA GCMCA. Any RA commanders who become aware of misconduct by RC members who are no longer on AD will forward requests for involuntary recall to AD to an appropriate RA GCMCA.

e. Ordinarily, the appropriate RA GCMCA authorized to involuntarily order a reserve member to AD is either of the following:

- (1) The RA GCMCA specified in appendix E of this regulation, with area of support or responsibility; or
- (2) The RA GCMCA for the RA component unit where the member performed duty when the offense occurred.

f. Not all misconduct committed by RC personnel before departure from AD requires involuntary recall. Commanders should consider the gravity of the alleged misconduct, the ability to prosecute the case, the effect on good order and

discipline of an involuntary recall, and other factors listed in the discussion to RCM 306 and appendix 2.1, MCM, 2019. Before a request for involuntary recall is made, commanders will consult with servicing RA and RC OSJA personnel. Normally, commanders should not request an involuntary recall to AD solely for the purpose of administering NJP pursuant to UCMJ, Art. 15. In such cases, commanders should normally administer NJP during the member's next period of inactive training or AD. However, there may be cases where an involuntary recall solely to administer NJP is appropriate, and that determination is left to the discretion of the commander with the advice from the servicing SJA.

g. Preferral of charges is not necessary before an involuntary order of a RC Soldier to AD is issued. However, preferral must be contemplated. A Soldier may not be involuntarily recalled to AD pursuant to this provision solely for the purpose of investigating an offense. In those cases where charges are preferred prior to the order to AD, great care should be exercised to avoid triggering the speedy trial provisions of RCM 707.

h. Requests for an order to AD pursuant to this paragraph should include the following:

(1) Complete identity of the accused including grade, full name, social security number, current military status of the accused to include component to which assigned, unit to which assigned and its location, and home address of the accused at the time of the request;

(2) Detailed summary of the contemplated charges and specifications or a copy of a preferred charge sheet;

(3) Prior convictions and NJP if known;

(4) Summary of the evidence of the case and a copy of the report of investigation, if available;

(5) Analysis of the evidence demonstrating the need for and likelihood of successful prosecution at trial by courts-martial or the need for imposition of NJP through involuntary order to AD; and

(6) Indication of where the accused should be ordered to AD and why the order is advisable.

i. Any RA GCMCA who involuntarily orders a Soldier to AD will immediately inform the ASCC and FORSCOM commanders, the state Adjutant General, the Commander, U.S. Army Reserve Command, and the Chief, National Guard Bureau, as appropriate, of the initiation of UCMJ action against the RC Soldier.

20-4. Extending reserve component Soldiers on active duty

a. The requirements for RA GCMCA activation and/or secretarial approval in paragraph 20-3, do not apply to RC Soldiers on AD. Any RC Soldiers serving on AD, ADT, or AT in a Title 10 duty status may be extended on AD involuntarily, so long as action with a view toward prosecution is taken before the expiration of the AD, ADT, or AT period (see AR 635-200). Any such extensions must be completed pursuant to the provisions of AR 135-200. The RA GCMCAs will make every attempt to complete administrative measures to be taken against a Soldier prior to release from AD.

b. A RC Soldier who is suspected or accused of an additional offense after being ordered to AD for any of the purposes in paragraph 20-3*a*, may be retained on AD pursuant to RCM 202(c)(1).

20-5. Preservation of jurisdiction and punishment

a. All RC Soldiers remain subject to UCMJ jurisdiction for offenses committed while serving in a Title 10 duty status (see para 20-2) notwithstanding termination of a period of such duty, provided they have not been discharged from all further military service (see RCM 204(d)). Retired RC Soldiers are subject to recall to AD for the investigation of UCMJ offenses they are alleged to have committed while in a Title 10 duty status, for trial by court-martial, or for proceedings pursuant to UCMJ, Art. 15, so long as the recall is in accordance with the procedures set out in paragraph 20-3.

b. All lawful punishments remaining unserved when RC Soldiers are released from AD, ADT, AT, or IDT, including any uncollected forfeitures of pay, are carried over to subsequent periods of AD, ADT, AT or IDT. However, an RC Soldier may not be held beyond the end of a normal period of IDT for trial, or service of any punishment, nor may IDT be scheduled solely for the purpose of UCMJ action. Involuntary activation pursuant to paragraph 20-3*a* is authorized only in accordance with the procedures set out in paragraph 20-3*c*.

Section III

Nonjudicial Punishment Pursuant to UCMJ, Article 15 and Courts-Martial

20-6. Nonjudicial punishment (Article 15)

a. The provisions of chapter 3 that are not otherwise inconsistent with this chapter are applicable to the administration of NJP in the RC. In particular, commanders are reminded of the policy in paragraph 3-2, that nonpunitive or administrative remedies should be exhausted before resorting to NJP.

b. All RC Soldiers may receive NJP pursuant to UCMJ, Art. 15, while serving in a Title 10 status on AD, ADT, AT, or IDT. The RC Soldiers may be punished pursuant to UCMJ, Art. 15 while serving on IDT, provided that the proceedings

are conducted and any punishment administered is served during normal IDT periods. Prior to taking such actions, RC commanders should consult with their supporting RC or RA SJA or command judge advocate.

c. Either RC or RA commanders may punish RC enlisted Soldiers of their commands (see para 3–8).

d. Unless further restricted by higher authority (see para 3–7*c*), punishment for RC officers is reserved to the RA or RC GCMCA to whose command the RC officer is assigned or attached for disciplinary purposes or to commanding generals in the RC officer's chain of command.

20–7. Summary courts-martial

a. RC Soldiers may be tried by SCM while serving in a Title 10 status (AD, ADT, AT, or IDT). RC Soldiers may be tried by SCM while serving on IDT, provided that the trial is conducted and punishment is served during normal IDT periods (see Discussion, RCM 204(b)(2)).

b. Either RC or RA SCMCA may refer charges against RC Soldiers to trial by SCM. An RC SCMCA may refer charges to SCM while on IDT. However, UCMJ, Art. 25 requires that the summary court officer must be on AD at the time of trial.

c. Commanders of major subordinate commands should attach all Soldiers without an intermediate commander, authorized to exercise NJP or SCM authority pursuant to UCMJ, Arts. 15 and 24, to an appropriate subordinate commander for such purposes.

20–8. Special and general courts-martial

a. RC Soldiers may be tried by SPCM or GCM only while serving on AD.

b. Ordinarily, only an AD convening authority may refer charges against an RC Soldier to a SPCM or GCM. Such courts-martial will normally be conducted at the installation of the supporting RA GCMCA, as designated in appendix E of this regulation, or based upon an agreement of the supporting RA GCMCA, a different RA GCMCA, and the general officer in command of the RC unit. Authority for USAR commanders to convene SPCM or GCM is withdrawn, for USARC officers qualified as a GCMCA or SPCMCA, except for those specifically designated pursuant to UCMJ, Arts. 22(a)(8) or 23(a)(7), or those designated in an exception to policy by TJAG or TJAG's designee.

c. Authority to convene SPCMs is withheld from USARC convening authorities to the Commander, USARC. The USARC commander or designee has the discretion to delegate SPCMCA on a case-by-case basis or as otherwise appropriate, so long as such delegation extends only to units with one or more full-time JA officers assigned. All such delegations, if any, should be in writing, signed by the USARC commander or designee.

d. This withholding of the authority to convene a SPCM or GCM does not deprive USAR officers who are otherwise qualified convening authorities of any other regulatory responsibilities or authorities, not involving the convening of courts-martial, tied to the SPCMCA or GCMCA.

20–9. Forfeitures

a. Consistent with DOD 7000.14–R, forfeitures imposed on RC Soldiers pursuant to UCMJ, Art. 15 or court-martial will be calculated in whole dollar amounts. Forfeitures are calculated by converting the stated amount of forfeiture to a percentage using the base pay for an RA Soldier of the same grade and time in service on the date the forfeiture sentence is approved. Apply the resulting percentage to the Soldier's pay for every period of duty the Soldier actually performs during the stated time period of the forfeiture. For example—

(1) A Soldier (SPC or CPL) over 2 years of service (for pay purposes) receives a sentence (either NJP or court-martial sentence) that includes a forfeiture of \$500 a month for 2 months, for a total of \$1,000.

(2) Next, determine the Soldier's monthly rate of base pay. In this example, it is \$2,248.

(3) Then, convert the original forfeiture to a percentage: $500/2,248 = 22.24$ percent.

(4) So for each period of duty performed during the stated period of the sentence, collect 22.24 percent of the Soldier's pay from the Soldier's AD and IDT pay.

b. The forfeiture sentence is satisfied by collecting from the pay the Soldier receives for periods of duty the Soldier performs during the stated period of forfeiture. If a Soldier performs duty without forfeiture collections, the amount of forfeitures not collected becomes an amount due the U.S. government.

c. The forfeiture sentence is satisfied by collection from pay for duty performed only during the stated period of forfeiture (for example, forfeitures are imposed for 2 months, then collections may only be made for 2 months, with the two-month period beginning on the date the forfeitures are imposed). If a Soldier performs no duty, or the Soldier's pay is insufficient to satisfy the forfeiture in full during the stated period of the forfeiture, no further collection action is authorized.

d. This paragraph applies only when the RC Soldier receives forfeitures from a court-martial or from NJP and the forfeitures are carried over to subsequent periods of IDT or ADT. If the RC Soldier receives forfeitures from a court-

martial or from NJP in an AD status and does not revert to an inactive duty status during the execution of the punishment, then forfeitures are to be based upon the base pay for an RA Soldier of the same grade and time in service.

Section IV

Support Personnel and Responsibilities

20–10. Support personnel

a. The SJA of the RA command designated in appendix E to support a USAR command will supervise prosecutions of USAR Soldiers, including coordinating requirements for advice and personnel support, when the RA commander convenes a court-martial against a USAR Soldier. Generally, RA JAs will be used as trial counsel. USAR JAs may supplement these prosecutions when feasible. When a supporting RA SJA decides to use a USAR JA, the SJA will inform the USAR JA's immediate commander of that decision.

b. The USATDS office servicing the RA command will detail either RA or RC defense counsel in accordance with guidelines established by the Chief, USATDS.

c. The senior military judge designated to support the RA GCM jurisdiction supporting the RC command will detail RA or RC military judges in accordance with guidelines established by the Chief, U.S. Army Trial Judiciary.

20–11. Support responsibilities for Regular Army general court-martial convening authorities

The active component GCMCAs designated in appendix E of this regulation will support RC commands in accordance with this paragraph. When questions arise as to which RA command is responsible pursuant to appendix E because the USAR command consists of a widely dispersed subordinate command structure, the headquarters of the USAR geographic or functional command will serve as the designated location, unless the interested RA GCMCAs and RC SJAs otherwise agree that another RA command is better suited to provide support. The RA GCMCA will—

a. Order RC Soldiers to AD for the purposes set out in paragraph 20–3. The orders will cite 10 USC 802(d) for authority.

b. Forward requests for involuntary AD orders requiring secretarial approval in accordance with paragraph 20–3.

c. Coordinate the allocation of personnel, funds, and other resources to support the administration of military justice in the supported RC command.

d. Inform the MSC or state Adjutant General, Commander, U.S. Army Reserve Command or the Commander, FORSCOM as appropriate, of USAR actions pursuant to the provisions of the UCMJ involving USAR Soldiers assigned to USAR units located in CONUS.

e. Inform the commander of the concerned Army Service Component Command of RC actions pursuant to the UCMJ involving RC Soldiers assigned to RC units located OCONUS.

f. When appropriate, order pretrial confinement for RC Soldiers in accordance with RCM 305 following involuntary AD approved in accordance with paragraph 20–3.

g. Make appropriate disposition of charges against RC Soldiers including referral to court-martial, imposition of punishment pursuant to UCMJ, Art. 15, or administrative measures. Every attempt to complete administrative measures (to include separation or grade reduction actions) will be taken prior to that RC Soldier's release from AD.

h. Arrange for orders placing RC Soldiers on AD status for duty as witnesses, counsel, military judges, court members, or other personnel of the court-martial.

20–12. Multiple component units

a. Commensurate with their positions and subject to restrictions found elsewhere in this regulation, RA and USAR officers will exercise UCMJ authority over RA and USAR Soldiers assigned to their multiple component units (MCUs).

b. Authority and responsibility for military discipline over ARNG Soldiers not in federal status rests with each state. Every ARNG element will have a designated state chain of command for purposes of military justice. Non-ARNGUS MCU commanders will forward recommendations for disciplinary action of ARNG Soldiers to the designated ARNG commander from the state of the respective ARNG element. The ARNGUS MCU commanders whose MCU includes ARNG elements from outside their own state, will forward recommendations for disciplinary action pertaining to such ARNG Soldiers to the designated ARNG commander from the state of that element.

c. For RA and USAR Soldiers assigned to an MCU with an ARNGUS commander, the RA and USAR will attach these Soldiers on orders for purposes of UCMJ administration to the nearest appropriate RA or USAR command. The ARNGUS unit commander will forward recommendations for disciplinary action pertaining to USAR or RA Soldiers to the designated USAR or RA commander.

Chapter 21

United States Army Trial Counsel Assistance Program

21–1. General

This chapter governs the operations of TCAP. It sets forth information, policies, and procedures applicable to the support of trial counsel throughout the Army.

21–2. Mission

The SJA and the chief of military justice are responsible for the daily supervision and training of trial counsel. TCAP's mission is to provide assistance, resources, and support for the prosecution function throughout the Army and to serve as a source of resolution of problems encountered by trial counsel. TCAP provides publications and references for chiefs of military justice and trial counsel and conducts periodic advocacy training. TCAP can also assist an SJA office in the prosecution of specific cases. The program serves as the liaison between chiefs of military justice and GAD concerning potential government appeals pursuant to UCMJ, Art. 62.

21–3. Organization

TCAP functions as a part of GAD and is an activity of USALSA, a field operating agency of TJAG. Operational control and supervision of TCAP is exercised by the Chief, GAD, for the Assistant Judge Advocate General for Military Law and Operations. Command functions other than operational control are provided by the Commander, USALSA. The office is composed of a chief and training and litigation officers, as necessary. For purposes of this regulation and the UCMJ, the Chief, TCAP, is the chief prosecutor for the U.S. Army.

21–4. Training

a. TCAP conducts advocacy courses for chiefs of military justice and trial counsel as determined by the Chief, TCAP. The Chief, TCAP is responsible for the content of this training. TCAP staff will conduct on-site training when requested and when resources allow, and coordinate training offered by other agencies.

b. All new trial counsel will attend TCAP's Trial Advocacy Level 1 Course (Basic Trial Advocacy Course) and the Prosecuting Sexual Assault Course. Trial Advocacy Level 2 (Intermediate Trial Advocacy Course) will be offered annually by TJAGLCS. All SVPs will attend Trial Advocacy Level 3 (Sexual Assault Trial Advocacy Course). Other TCAP courses focusing on specialized issues will be offered for practitioners of all levels.

c. TCAP provides training through monthly updates for chiefs of military justice and trial counsel. These updates inform counsel of time-sensitive decisions of appellate military courts and also address specific problem areas of interest to trial counsel.

21–5. Technical assistance

a. Chiefs of military justice may request technical assistance or guidance from the TCAP and the GAD. Trial counsel may initiate such requests after coordination with the chief of justice, the Deputy SJA, or the SJA. Such requests may be telephonic or by electronic means by email at usarmy.pentagon.hqda-otjag.list.usalsa-tcap@mail.mil. Such requests should describe the military justice matter at issue with reasonable specificity, identify any relevant suspense dates, and provide a telephone number.

b. TCAP counsel and GAD counsel are available for on-site assistance in unique or difficult cases. SJAs may request such assistance through the Chief, TCAP; the Chief, GAD; and the Assistant Judge Advocate General for Military Law and Operations. The request should specify the name of the case, the unique factors requiring TCAP or GAD assistance, the period of time involved, and the extent of assistance desired. When the requesting unit requests that TCAP fund TDY and other associated expenses of providing the assistance, the Assistant Judge Advocate General for Military Law and Operations will determine whether TCAP assistance will be provided and the extent of such assistance. The Chief, TCAP, and the requesting SJA will coordinate such assistance, including the specific involvement of TCAP or GAD counsel. SJAs requesting TCAP or GAD technical assistance will fund all TCAP travel connected with the request. Exceptions to these funding rules may be made by the Assistant Judge Advocate General for Military Law and Operations.

Chapter 22

United States Army Defense Counsel Assistance Program

22–1. General

This chapter governs the operations of DCAP. It sets forth information, policies, and procedures applicable to the support of defense counsel throughout the Army.

22–2. Mission

The RDC and SDC are responsible for the daily supervision and training of defense counsel. DCAP provides training, resources, and assistance for Army defense counsel worldwide. The program assists the Chief, USATDS on the development of USATDS policy and strategic initiatives.

22–3. Organization

DCAP functions as part of USATDS Headquarters and is an activity of USALSA, a field operating agency of TJAG. Operational control and supervision of DCAP is exercised by the Chief, USATDS. Command functions other than operational control are provided by the Commander, USALSA. The office is composed of a chief, training officers, and other personnel as authorized by TJAG.

22–4. Training

a. As required by paragraph 6–6, the Chief, USATDS, is responsible for developing programs and policies to enhance the professional qualifications of defense counsel.

b. DCAP conducts training on substantive criminal law, leadership, professional responsibility, USATDS policy, trial strategy and advocacy for each USATDS region. The Chief, DCAP is responsible for the content of this training. DCAP plans mandatory conferences for each RDC, SDC, and USATDS counsel from CONUS and OCONUS regions. In addition, DCAP will facilitate defense counsel attendance at training courses offered by other agencies.

c. DCAP provides training and practice resources through periodic legal updates, deskbooks, and online libraries containing motions, information papers, expert pages, and new developments in the law that are pertinent to the practice of a defense counsel.

d. Servicing SJAs, convening authorities, and military judges will deconflict military justice requirements with USATDS training requirements unless impracticable.

22–5. Technical assistance

a. Defense counsel may request technical assistance or guidance from DCAP. Such requests may be telephonic, by electronic means, or in writing.

b. The Chief, USATDS is the approval authority for a defense counsel assigned to DCAP to be detailed as a defense counsel for any matter. The program's primary role is assistance to defense counsel with legal issues that may arise in their cases.

c. DCAP may assist USATDS counsel with responding to orders for an affidavit from USACCA when counsel's conduct at trial has been challenged on appeal.

d. DCAP also serves as the liaison between trial defense counsel and DAD concerning extraordinary writs.

22–6. Policy and strategic initiatives

The DCAP reviews, develops, and recommends changes to legislation, executive orders, Army regulations, Army pamphlets, and other policy and procedures that deal with trial defense support, including the UCMJ, the MCM, AR 27–10, and the USATDS standard operating procedures for Chief, USATDS.

Chapter 23

Prosecution of Criminal Offenses in Federal Courts

23–1. Scope

a. This chapter contains policies and procedures for prosecutions in U.S. District Court before either a district judge or a magistrate judge for violations of federal law committed on Army installations or violations that involve Army interests or property. This chapter does not apply to military courts-martial.

b. An individual (whether civilian or military) who violates federal law can be prosecuted in U.S. District Court or the Magistrate Division. These prosecutions can include, but are not limited to, the following situations: The violation of

federal law on a military installation by a civilian not subject to the UCMJ, or the commission of a serious offense by a Soldier where the DOJ seeks a federal indictment and prosecution despite existing UCMJ jurisdiction. Routine traffic violations, whether the offender is military or civilian, are referred to the local U.S. Magistrate Division.

23–2. Authority

The following authorities apply to this chapter:

- a.* 18 USC 3401, which covers trials by U.S. magistrate judges.
- b.* 28 USC 515, which details authority for legal proceedings; commission, oath, and salary for special attorneys.
- c.* 28 USC 543, on the appointment of special attorneys by the Attorney General.
- d.* Rule 58, Federal Rules of Criminal Procedure, which covers procedures for petty offenses and other misdemeanors.
- e.* AR 190–45, which prescribes policy on misdemeanors and uniform notices referred to the U.S. magistrate or district courts.

23–3. Felony prosecution programs

a. General. The DOJ is responsible for prosecuting federal offenses in U.S. District Court, whether before a district or a magistrate judge. It is often beneficial to both the Army and DOJ, however, to prosecute offenses in which the Army has an interest through a felony prosecution program, whereby one or more Army attorneys are appointed Special Assistant U.S. Attorneys (SAUSAs). A felony prosecution program can promote rapid and efficient prosecution of offenses in which the Army has an interest.

b. Authorization. If an installation SJA or legal advisor believes a felony prosecution program would be in the Army's best interest, the SJA or legal advisor will seek the views of the appropriate U.S. Attorney. If the U.S. Attorney agrees, the installation SJA or legal advisor will draft a mutually agreeable MOU. The SJA will forward the MOU and a request to begin the program to OTJAG–CLD.

23–4. Appointment of attorneys as Special Assistant U.S. Attorneys

a. General. Prosecutions in federal court are a DOJ responsibility. SJAs or legal advisors often find it beneficial, however, to have one or more JA or DA civilian attorneys appointed as SAUSA pursuant to 28 USC 543 to prosecute crimes in which the Army has an interest.

b. Procedure. The appropriate U.S. Attorney must agree to the appointment of an Army attorney as a SAUSA. The U.S. Attorney may find such an appointment to be in his or her best interest, as the U.S. Attorney gains an additional prosecutor at no additional expense to DOJ. If the U.S. Attorney agrees, he or she will forward the request for appointment to the U.S. Attorney General for approval (see 28 USC 543).

c. Supervision. Army attorneys acting as SAUSAs will be supervised in that role primarily by the U.S. Attorney's office. The SAUSAs will perform their duties consistent with the MOU between the U.S. Attorney and the SJA or legal advisor. SJAs and legal advisors will monitor prosecutions conducted by SAUSAs and will, if necessary, provide additional supervision.

d. Civil litigation. Any SAUSAs appointed to prosecute criminal cases will not undertake representation of the United States in civil litigation unless authorized by the Chief, Litigation Division.

23–5. Misdemeanors

a. General. Any individual, whether military or civilian, who commits a misdemeanor or infraction on a military installation or on federal property can be prosecuted before a magistrate judge. The magistrate system is particularly well-adapted to dispose of traffic cases. Army attorneys appointed as SAUSAs can represent the United States before a magistrate judge.

b. Petition to U.S. District Court. If no magistrate judge has been designated to try misdemeanors committed on an installation, the SJA or legal advisor should request that the U.S. Attorney petition the U.S. District Court to designate a magistrate judge for that purpose. OTJAG–CLD should be notified of any unsuccessful attempts to have a magistrate judge designated.

c. Complaints, warrants, and citations. A magistrate judge has authority to issue arrest warrants based upon complaints filed with the court. Assistant U.S. Attorneys and SAUSAs prepare complaints and warrants in accordance with local court rules and procedures. As a rule, petty offenses committed in the presence of a police officer may be prosecuted on a citation or violation notice, but SAUSAs should consult local state law for exceptions.

d. Consent to be tried. A person charged with a misdemeanor may elect to be tried before a district judge rather than before a magistrate judge (see 18 USC 3401). The defendant must be informed of this right and should complete an AO Form 86A. If permitted by MOU, an Army SAUSA may prosecute misdemeanors before a district judge when a defendant declines to consent to be tried by the magistrate judge.

e. Procedure. Attorneys designated to prosecute cases before a magistrate judge must familiarize themselves with the local rules of court and Rule 58, Federal Rules of Criminal Procedure.

f. Memorandum of understanding and request for authorization. The SJA or legal advisor should execute an MOU with the U.S. Attorney covering responsibilities and procedures for trials in magistrate court. Installations with a felony prosecution program should also include specific procedures for district court in the MOU governing that program. If the installation only has a Magistrate Court Program, then an MOU should be prepared and forwarded to OTJAG–CLD for approval of the program.

23–6. Witness expenses

SAUSAs will follow the procedures outlined in the *Justice Manual* (available at <https://www.justice.gov/jm/justice-manual>) for obtaining witnesses and funding for their travel. In misdemeanor prosecutions, however, witness expenses that would be funded from the DA witness travel account if the case were a felony prosecution are the responsibility of the installation prosecuting the case.

Chapter 24

Registration of Military Sexual Offenders and Processing of Sex-Related Offenses

24–1. General

This chapter implements 34 USC 20901 *et seq.*, and DODI 1325.07, which require military officials to notify state officials upon release of Soldiers or transfer of unconfined Soldiers who are convicted at SPCMs or GCMs of sexual offenses and offenses against minor victims. Soldiers convicted of either covered offenses as set forth in appendix 4 to Enclosure 2 of DODI 1325.07 or of a civilian offense that requires sex offender registration are designated as “military sexual offenders” in this chapter. This chapter also requires military sexual offenders to register with the provost marshal. Failure to register with the installation provost marshal as described in this chapter and in AR 190–45 may be punished for violating the UCMJ, Art. 92. A military sexual offender whose conviction of covered sexual offenses is reversed on appeal will be removed from military sexual offender registrations and not required to register at new duty locations even if retrial is pending. The chapter also provides additional guidance on the processing of sex-related offenses referenced in AR 600–37.

24–2. Covered offenses and sexually violent offenses

a. All of the offenses listed in appendix 4 of DODI 1325.07 and 34 USC 20901 *et seq.* are both “covered offenses” and “sexually violent offenses” for purposes of this regulation and other Army Regulations, including: AR 135-175, AR 135-178, AR 600–8–24, AR 601–100, AR 614–100, AR 601–210, AR 614–200, and AR 635–200.

b. A Soldier who is convicted in a SPCM or GCM of any of the offenses listed in appendix 4 of DoDI 1325.07 or 34 USC 20901 *et seq.*, must register with the appropriate authorities in the jurisdiction (any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands, or Indian tribes) in which he or she will reside, work, or attend school upon leaving confinement, or upon conviction if not confined. Generally, this registration must take place within 3 days of release from confinement or within 3 days of conviction if not confined.

c. This paragraph also applies to Soldiers who are convicted by foreign governments of an equivalent or closely analogous covered offense (see 34 USC 20911(5)(B) and U.S. Department of Justice, Office of the Attorney General, The National Guidelines for Sex Offender Registration and Notification, Final Guidelines, 73 Fed. Reg. 38030, 38050–1 (July 2, 2008)).

d. Nonreportable offenses—

(1) An offense involving consensual sexual conduct between adults is not a reportable offense unless the adult victim was under the custodial care of the offender at the time of the offense.

(2) An offense involving consensual sexual conduct is not a reportable offense if the victim was at the time of the conduct at least 13 years old and the offender was not more than four years older than the victim, as determined by date of birth.

(3) Offenses under UCMJ, Art. 120 or 134 that constitute only public sex acts between consenting adults, such as indecent exposure.

24–3. Trial counsel and provost marshal responsibilities

a. Notice to the accused of requirement to register. When a SPCM or GCM finds an accused guilty of a covered offense but the sentence does not include confinement, the trial counsel, in the presence of the defense counsel, will immediately

provide notice that the military sexual offender is subject to a registration requirement as a sex offender by requiring the military sexual offender to complete the acknowledgment, DD Form 2791 (Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements). Failure of the trial counsel to notify offenders required to register will not relieve those offenders of their duty to register.

b. Notice to others of accused's requirement to register following court-martial conviction. The trial counsel will immediately notify the convicted Soldier's immediate commander of the Soldier's registration requirements and ensure that copies of the DD Form 2791 are distributed as follows—

- (1) To both the immediate commander and the garrison commander.
- (2) Filed in the allied papers of the record of trial.
- (3) Provided to the installation provost marshal where the military sexual offender is assigned or will be assigned.
- (4) Filed in the military sexual offender's performance portion of the Soldier's AMHRR and unit file.
- (5) Forwarded to OTJAG–CLD.
- (6) Forwarded to Director U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134 and emailed to usarmy.belvoir.usarc.mbx.mailcicr@mail.mil.
- (7) Provided, along with a copy of the Statement of Trial Results, to U.S. Marshal's Service, IOD/SOIB/NSOTC, Military Liaison, CGN Tower, Suite 200 Washington DC 20530-0001 or via email at iod.nsotc@usdoj.gov.
- (8) For convicted USAR Soldiers, forwarded to USARC, OSJA, 4710 Knox Street, Fort Bragg, North Carolina 28310-5010 or via email to usarmy.usarc.usarc-hq.mbx.usarc-osja-mj@mail.mil.

c. Notice to the accused of requirement to register following civilian conviction. When a Soldier is convicted by a state or federal civilian court or a foreign government of an equivalent or closely analogous covered offense, the trial counsel, within 5 days of notice of conviction, will notify the military sexual offender of registration requirements and have the Soldier complete the acknowledgment, DD Form 2791.

d. Notice to others of accused's requirement to register following civilian conviction. The trial counsel will ensure that copies of the DD Form 2791 are distributed as follows—

- (1) To the installation provost marshal where the military sexual offender is assigned or will be assigned.
- (2) Filed in the military sexual offender's performance portion of the Soldier's AMHRR and unit file.
- (3) Forwarded to OTJAG–CLD.
- (4) Forwarded to Director U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134 and emailed to usarmy.belvoir.usarc.mbx.mailcicr@mail.mil.
- (5) Provided, along with a copy of the Statement of Trial Results, to U.S. Marshal's Service, IOD/SOIB/NSOTC, Military Liaison, CGN Tower, Suite 200 Washington DC 20530-0001 or via email at iod.nsotc@usdoj.gov.
- (6) For convicted USAR Soldiers, forwarded to USARC, Protection Directorate/Provost Marshall, 4710 Knox Street, Fort Bragg, North Carolina 28310-5010 or via email at usarmy.usarc.usarc-hq.list.criminal-information.

e. Provost marshal responsibilities are set forth in AR 190–45.

24–4. Sexual offenders

Military sexual offenders are required by this chapter and AR 190–45 to register with the installation provost marshal and with state and local officials. Violations by military sexual offenders of the registration requirement are punishable pursuant to UCMJ, Art. 92. Military sexual offenders subject to registration requirements as a sex offender in any state or U.S. territory in which they reside, are employed, carry on a vocation, or are a student, are also required to register with the provost marshal at the Army installation where assigned, where they are present for duty for more than 30 days, or when they reside on or are employed on a military installation, whether or not they are on AD.

24–5. Processing of documented sex-related offenses (ASCO L3)

a. In general. The implementing procedures described in this paragraph apply to active component Soldiers only. U.S. Army Reserve Command and the applicable state or territory Adjutant General will use their respective procedures to process USAR and ARNG Soldiers with documented sex-related offenses. AR 600–37 mandates filing in the performance disciplinary folder of the AMHRR documentation of a court-martial conviction, NJP, or punitive administrative action for a sex-related offense listed in that regulation (documented sex-related offense). Punitive administrative action means any adverse administrative action initiated as a result of a sex-related offense and includes, but is not limited to, separation in lieu of court-martial, and memorandums of reprimand, admonishment, or censure, from all levels of command. The Commander, HRC, assigns an assignment consideration code (ASCO) of L3 for Soldiers with documented sex-related offenses.

b. Responsibility. The servicing JA for the SCMCA of the Soldier with the documented sex-related offense is responsible for assisting the SCMCA's compliance with the documented sex-related offense processing requirements in AR 600–37. The servicing JA may consult OTJAG–CLD in such a case, but is not required to do so.

c. Timeliness. The processing of documentation to HRC for L3 codes will be completed within five days of the completion of the military action requiring the L3 code.

d. Documenting sex-related offenses. The servicing JA will process requests for L3 codes with required documentation as follows—

(1) *Court-martial conviction.* A completed Statement of Trial Results that shows a conviction for a sex-related offense, with an indication on the form that the conviction warrants an ASCO of L3 is sufficient documentation of a sex-related offense. An additional memorandum documenting a court-martial conviction is not required.

(2) *Non-judicial punishment.* A completed DA Form 2627, and any supporting documentation, showing a guilty finding for one of the sex-related offenses listed in AR 600–37, with a statement in Block 10 that the guilty finding for a sex-related offense requires an ASCO of L3, signed and dated by a legal advisor (with name and title). Commanders must file the DA 2627 for a qualified sex-related offense in the performance folder of the AMHRR.

(3) *Punitive administrative action.* A memorandum, signed by a legal advisor (with name and title), that includes the full name, last four of the SSN, grade, and unit of the Soldier, indicating that the punitive administrative action requires an ASCO of L3 for a documented sex-related offense, with the punitive administrative action and any rebuttal matters attached.

e. Processing sex-related offenses. The servicing judge advocate will process requests for L3 codes with the required documentation listed in paragraph 24–5*d* via MJO. HRC will file the documents received via MJO in the AMHRR and add the L3 ASCO to the Soldier’s record brief.

24–6. Processing of offenses that require sex offender registration (ASCO L8)

a. In general. The implementing procedures described in this paragraph apply to active component Soldiers only. U.S. Army Reserve Command and the applicable state or territory Adjutant General will use their respective procedures to process USAR and ARNG Soldiers with offenses requiring sex offender registration. DODI 1325.07 requires sex offender registration for conviction of any of the offenses listed in appendix 4 of that instruction. The Commander, HRC, has designated ASCO L8 for Soldiers either convicted of an offense requiring sex offender registration under applicable state or federal law, or one that directly correlates to an offense requiring sex offender processing under appendix 4, DODI 1325.07, regardless of the jurisdiction in which the conviction occurred. For purposes of this rule, a civilian conviction includes an action tantamount to a finding of guilty, if sex offender registration is required.

b. Responsibility. The servicing JA for the SCMCA of the Soldier with the conviction requiring sex offender registration is responsible for assisting the SCMCA’s compliance with the requirements of appendix 4, DODI 1325.07, and AR 614–100 for enlisted Soldiers with such convictions, and AR 614–200 for officers with such convictions. The servicing JA may consult OTJAG–CLD in such a case, but is not required to do so.

c. Timeliness. The processing of documentation to HRC for L8 codes will be completed within five days of the completion of the military action requiring the L8 code, or within five days of notice that a Soldier was convicted in a civilian court for an offense requiring sex offender registration.

d. Initiation of separation. Commanders will initiate administrative separation for Soldiers convicted of an offense that requires sex offender registration but who were not sentenced to a punitive discharge or dismissal (see Army Directive 2013–21).

e. Documenting and processing offenses that require sex offender registration. The servicing JA will process requests for L8 codes via MJO to HRC with required documentation as follows—

(1) *Court-martial conviction.* A completed Statement of Trial Results that shows a conviction for an offense requiring sex offender registration as shown in appendix 4, DODI 1325.07 with an indication on the form that the conviction warrants an ASCO of L8, is sufficient documentation for this purpose. An additional memorandum documenting a court-martial conviction is not required.

(2) *Civilian conviction.* The servicing JA will assist the SCMCA in obtaining a certified copy of a judgment of a U.S. or foreign criminal court showing a conviction for an offense requiring sex offender registration. A signed memorandum from a legal advisor (with name and title), containing the full name, last four of the SSN, and grade of the convicted Soldier, stating the civilian conviction is for an offense that requires an ASCO of L8, along with the certified copy of the judgment of the court, is sufficient documentation for this purpose.

Chapter 25 United States Army Court Reporter Program

25–1. General

This chapter governs the training, detailing, performance standards, technology to be used, and certification of military and DOD civilian court reporters throughout the Army.

25–2. Training court reporters

a. The training of military court reporters and court reporter doctrine is the responsibility of TJAGLCS. Training is accomplished during various court reporter courses, speech recognition redictation courses, and at field locations as directed by the commanding general, TJAGLCS. This institution is also responsible for testing and evaluating technologies, policies, and procedures employed in the JAGC's court reporting business area, and training judge advocates, warrant officers, court reporters, and paralegal noncommissioned officers in courtroom and court-reporting methods and technology.

b. As a JAGC standard, digital audio recording devices are required for Army courtrooms.

c. SJAs are encouraged to send court reporters to the annual Senior Court Reporting course, as well as any refresher or update courses offered at TJAGLCS. Funding is the responsibility of individual commands.

d. Awarding the additional skill identifier (ASI) of C5 to Soldiers in MOS 27D is dependent upon successful completion of a TJAGLCS court reporter training course in accordance with AR 611–1, AR 614–200, and DA Pam 611–21.

25–3. Detailing of court reporters and oath requirements

a. See para 5–5 for additional guidance concerning the detailing of court reporters.

b. See chapter 10 for administering oaths to court reporters.

25–4. Definitions

a. *Redictation method.* The method of speech recognition designated by the JAGC's senior leadership for rapid transcript production. The redictation method is explained as follows:

(1) A court reporter digitally records the court-martial proceeding, hearing, and so forth, while performing all courtroom management responsibilities such as exhibit marking, note taking, and closed-mask and open microphone recording. Redictation occurs when the court-martial has adjourned and the record of trial production phase begins. The reporter listens to the audio recordings and repeats it back into a speech recognition engine (software). The software uses a specific Army court-martial language model.

(2) The redictation method is accomplished using an integrated headset and microphone. The reporter's voice is acoustically enhanced, thereby increasing the accuracy rate, in that the computer more accurately converts the reporter's speech into text. This is called the rapid text entry phase.

(3) The rapid text entry phase is done in 20-minute increments. The reason for 20-minute increments is that the speech recognition software is not word processing software, and the reporter risks losing text data if more than 20 minutes of dictation is inputted. The reporter saves each 20-minute file chronologically into Microsoft Word documents.

b. *Scoping.* The process of proofreading transcripts via listening to recorded audio and following along the written transcript, correcting mistakes and inaccuracies, and updating speech recognition software. The scoping phase of transcript production using the redictation method can be accomplished in different ways.

(1) Redictate for 20 minutes, immediately go back, proofread and edit that portion of the transcript, save it into Microsoft Word, and continue, repeating this method for each 20 minutes of audio.

(2) Redictate in the 20-minute increments, save the files into Microsoft Word documents, and then proof and edit the entire transcript at one time.

(3) Reporters may identify and use other scoping methods to increase their individual productivity.

c. *Digital Recording.* Digital recording equipment, a computer or other special purpose equipment, is the standard for court reporting in all Army courtrooms. Digital recording produces computer files that can be shared among court reporters globally via the Court Reporter Training Department Knowledge Center are in Army Knowledge Online (AKO), at <https://www.us.army.mil/suite/kc/5011165>.

25–5. Court reporter performance standards metric

a. Court reporters using the redictation method will produce, at minimum, the following averages:

(1) Newly trained court reporter—

(a) Within 6 months of graduation from the Court Reporter Course—5 scoped verbatim pages of transcript per hour;

(b) Within 12 months of graduation from the Court Reporter Course—8 scoped verbatim pages per hour;

(c) Within 18 months of graduating from the Court Reporter Course—10 scoped verbatim pages per hour.

(2) Experienced reporters (at least 2 years actively working as a court reporter) newly trained in the redictation method will produce an average of 10 scoped verbatim pages of transcript per hour within 36 months of graduating from the Redictation Course.

b. Court reporters, untrained in the redictation method, using the manual transcription method will produce, at minimum, an average of 7 proofed verbatim pages of transcript per hour.

c. Paragraphs 25–5*a* and *b*, are minimum standards. They may be used to substantiate performance awards, evaluations, and NCOER comments as well as for counseling for substandard performance which may lead to ASI removal and/or other administrative action. As court reporters gain experience, it is reasonable for supervisors to expect increased productivity and establish individual productivity goals accordingly.

d. SJAs will establish local standards regarding errata commensurate with a court reporter’s experience level.

25–6. Reports

a. The commanding general, TJAGLCS, is responsible for evaluating the effectiveness of policies and the efficiency of procedures related to the Army court reporting business area and with collecting and maintaining data that facilitates the eradication of transcription backlogs in the JAGC enterprise.

b. SJAs will ensure the transmission of the Court Reporting Productivity Report, in electronic form on MJO not later than the 5th business day of each month. The report will cover the previous calendar month.

c. A daily individual work log should be maintained by each court reporter to aid them and supervisors in monitoring individual productivity, minimizing distractions from production, and facilitating the reporting requirement in paragraphs 25-5*a* and *b*. A work log format may be downloaded from the Court Reporter Training Department Knowledge Center on AKO.

25–7. Management of court reporters

a. Availability for a 2-year utility tour upon completion of the Court Reporter Course is prerequisite to attending the course.

b. SJAs are highly encouraged to—

(1) Ensure that court reporters use the redictation method to produce transcripts. They are also highly encouraged to ensure that all assigned court reporters who are not trained in the redictation method receive formal redictation training as soon as practicable;

(2) Review and, if necessary, revise civilian court reporter position descriptions (series 00319) to ensure that the redictation method of transcript production is a stated performance expectation/critical element, and that appropriate productivity standards are addressed; and

(3) Where feasible, and to the maximum extent practicable, allow their court reporters to assist other jurisdictions in transcribing backlogged cases.

c. The Chief, Court Reporter Training Department at TJAGLCS, will collaborate with HRC on all court reporter assignments. For mentoring and professional development, newly trained court reporters will be stationed with an experienced court reporter. Assigning new court reporters to jurisdictions where only one reporter is authorized should be avoided.

d. Civilian court reporter position descriptions that are classified under a job series other than 00319 will be converted to job series 00319 as soon as practicable.

e. SJAs should seek approval from the proper authority to excuse military court reporters from performing some or all additional duties, if the production of records of trial is adversely impacted by such duties.

25–8. Reserve component court reporters

a. RC Soldiers in MOS 27D who satisfy the prerequisites are encouraged to attend the TJAGLCS Court Reporter Course. Funding is the responsibility of the individual’s command.

b. The RC Court reporters are encouraged to partner with an RA OSJA for the purpose of transcribing records of trial during unit drill periods. SJAs in the RA and RC may award retirement points in the form of 2 points for each 50 pages of the transcript typed (one 8-hour day) during non-drill periods. Such retirement points will be recorded on DA Form 1380 (Record of Individual Performance of Reserve Duty Training).

25–9. Removing the C5 designation

All recommendations requesting removal of ASI C5 from military Court reporters will be forwarded by the SJA to the Chief, Court Reporter Training Department, 600 Massie Road, Charlottesville, VA 22903. The authority to remove the C5 designation rests with the commanding general, TJAGLCS.

25–10. Court reporting equipment

a. This paragraph recommends materiel solutions for digital recording and transcript production.

b. Equipment—

(1) Each Army courtroom should have a static set of digital recording equipment and a backup recording device.

(2) Court Reporters should be equipped with a notebook computer that has at least a 3-gigahertz processor, 2 gigabytes of random access memory (RAM), a 160-gigabyte hard drive, and a CD/DVD writer and other hardware specifications

and software capable of supporting four discrete channel digital audio recording, foot-pedal-controlled audio playback for the aforementioned audio recordings, and speech to text (speech recognition) software. Peripheral equipment should include a combination headset/high gain microphone, a 4-port USB hub; and a USB flash drive of at least 4 gigabytes of storage capacity. SJAs of MTOE organizations that are authorized court reporters must make other peripheral equipment available to court reporters for reporting courts-martial and producing records of trial in remote or austere environments. These resources include but are not limited to printers, sound mixers, high gain microphones, microphone stands, network and Internet access for file sharing and archiving, and so forth.

(3) Court reporters assigned to TDA organizations do not have a doctrinal requirement to report courts-martial in remote or austere environments. Table of distribution and allowance-assigned court reporters should be equipped with a notebook or desktop computer that has at least a 3-gigahertz processor, 2 gigabytes of RAM, a 160-gigabyte hard drive, and a CD/DVD writer and other hardware specifications and software capable of supporting foot-pedal-controlled audio playback that is compatible with the static courtroom recording system, and speech to text (speech recognition) software. Peripheral equipment should include a combination headset/high gain microphone, a 4-port USB hub, and a USB flash drive of at least 2 gigabytes of storage capacity.

(4) SJAs will ensure that the equipment used by court reporters is updated and replaced to remain current with developments in hardware and software as much as is feasible under the circumstances.

Chapter 26

Prosecution of Criminal Offenses pursuant to the Military Extraterritorial Jurisdiction Act of 2000

26–1. Applicability and purpose

a. The Military Extraterritorial Jurisdiction Act (MEJA) establishes federal criminal jurisdiction over whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year (that is, a felony offense) for civilians employed by or accompanying the Armed Forces of the United States, certain members of the Armed Forces subject to the UCMJ, and former members of the Armed Forces.

b. No action should be taken pursuant to the authority of the MEJA without referring to the appropriate provisions of the act, to DODI 5525.11, and to Part 153, Title 32, Code of Federal Regulations. JAs should also reference directives established by their combatant commanders (CCDR) and designated commanding officers (DCO) for procedures in handling cases under the MEJA. This chapter outlines procedures for qualified military counsel under the MEJA.

26–2. Qualified military counsel and responsibilities of the U.S. Army Trial Defense Service

a. Ordinarily, the USATDS will provide qualified military counsel from among the defense counsel assigned within the USATDS region supporting the combatant command (CCMD) or DCO where the MEJA case arises. However, when the RDC determines that the workload within that region temporarily exceeds the capability of the defense counsel in that region to perform the regular USATDS mission, the RDC will state in writing the inability of USATDS to provide such counsel and the rationale behind that decision. In such instances, SJAs have the ultimate responsibility for providing qualified military counsel.

(1) The RDC may seek assistance from other RDC or HQ, USATDS in order to provide qualified military counsel. Whenever the RDC fails to provide qualified military counsel, either from within that region or from another region, the SJA may seek the opinion of the Chief, USATDS. Whenever the Chief, USATDS, determines that the USATDS workload does not allow for USATDS to provide qualified military counsel, the SJA will provide qualified military counsel from among SJA counsel assets.

(2) Whenever USATDS counsel must incur TDY costs in order to serve as qualified military counsel, such expenses will be funded by the SJA.

b. Any JA assigned to USATDS and certified pursuant to UCMJ, Art. 27(b) may be considered qualified military counsel pursuant to DODI 5525.11. Those qualified military counsel within the region supporting the CCMD or DCO's command may be considered reasonably available for any initial proceedings within their AOR. The federal magistrate will appoint qualified military counsel, as necessary, to represent an individual for initial proceedings under the MEJA.

c. The USATDS will establish procedures to assist CCMD SJAs and DCO SJAs in preparing, updating as necessary, and making available to federal magistrate judges upon request, a list of qualified military counsel who are determined to be reasonably available for the purpose of providing limited representation at initial proceedings required by the MEJA.

d. The RDC will ensure that each field and branch office under their supervision maintains or has readily available a current copy of the MEJA and DODI 5525.11 and its implementing 32 CFR 153. The RDC will assist CCMD SJAs and DCO SJAs by ensuring that in all cases in which a qualified military counsel is provided for initial proceedings required

by the MEJA, the person arrested or charged under the MEJA is informed that any qualified military counsel will be made available only for the limited objective of representing that person in any initial proceedings required by the MEJA. Such individuals will also be informed that such representation does not extend to further legal proceedings. Qualified military counsel will use an “Acknowledgement of Limited Representation” form to complete this notice (see enclosure 4 to DODI 5525.11).

e. The RDC will ensure that a copy of the “Acknowledgement of Limited Representation” form is provided to the person arrested or charged under the MEJA, as well as to the qualified military counsel. The RDC will also ensure the original acknowledgement form is forwarded to the office of the DCO SJA for filing in accordance with DODI 5525.11.

Chapter 27

Procedures Related to Civilians Subject to UCMJ, pursuant to Article 2(a)(10)

Section I

General

27–1. Scope

The following provisions implement Section 552, Act of 17 October 2006, Public Law 109–364; and SECDEF Memo dated March 10, 2008 (see appendix F). This chapter addresses UCMJ disciplinary procedure, to include court-martial procedures for civilians serving with or accompanying an armed force in the field in time of declared war or a contingency operation (personnel covered pursuant to UCMJ, Art. 2(a)(10)). These procedures supplement the court-martial procedures set forth in chapter 5 of this regulation. Where a conflict exists between these procedures and those set forth in chapter 5, the provisions of this chapter shall govern personnel covered pursuant to UCMJ, Art. 2(a)(10).

27–2. Applicability and purpose

a. UCMJ, Art. 2(a)(10) extends criminal jurisdiction to civilians serving with or accompanying the Armed Forces in the field, during time of declared war or contingency operation. Any civilian who engages in conduct that would constitute an offense punishable pursuant to the UCMJ, while serving with or accompanying the Armed Forces of the United States in the field, is subject to jurisdiction pursuant to UCMJ, Art. 2(a)(10).

b. No action should be taken pursuant to the authority of UCMJ, Art. 2(a)(10) without referring to the appropriate provisions of the UCMJ, RCMs, MREs, as well as DOD and Department of the Army, and this regulation. JAs must also review any directives established by their CCDRs and other commanding officers for local procedures related to UCMJ, Art. 2(a)(10) jurisdiction.

c. The exercise of jurisdiction over civilians pursuant to UCMJ, Art. 2(a)(10) is generally warranted where there otherwise would be no U.S. federal criminal jurisdiction, federal authorities decline or are unable to exercise jurisdiction, the host nation has no local criminal jurisdiction or declines such jurisdiction or is unable to exercise jurisdiction, or when the conduct in question is adverse to a significant military interest of the United States.

d. Jurisdiction under this chapter applies to third country nationals serving with or accompanying the force in the field. Before proceeding with a UCMJ action against a foreign national, commanders must coordinate through their SJAs with OTJAG–NSLD to determine whether notification of the foreign national’s government is necessary.

e. Commanders will not initiate or proceed with court-martial actions pursuant to UCMJ authority against civilians for matters in which the DOJ has asserted jurisdiction under the MEJA, 18 USC 3261, or other extraterritorial application of federal law. This does not preclude military authorities in deployed environments from responding to an incident, restoring safety and order, investigating offenses, apprehending offenders, or otherwise addressing the immediate needs of a situation.

27–3. Courts-martial jurisdiction

a. In general. Chapter 5 of this regulation is applicable to civilians serving with or accompanying an armed force in the field in time of declared war or a contingency operation (personnel covered pursuant to the provisions of UCMJ, Art. 2(a)(10)).

b. Definitions.

(1) “Serving with” is a term that applies to those civilians serving with the Armed Forces outside the United States. This group is comprised of civilian employees of DOD (including a nonappropriated fund instrumentality of DOD) and DOD contractors (including a subcontractor at any tier), employees of DOD contractors (including a subcontractor at any tier), and others working in conjunction with U.S. Forces, if they work alongside or are supervised by military personnel, or if the manner in which they perform their work and conduct their personal activities have a direct bearing on the efficiency,

discipline, and reputation of the forces in the area in which they are operating. (See *United States v. Burney*, 21 CMR 9827 (1956).)

(2) “Accompanying an armed force” is a term that applies to those civilians accompanying an armed force outside the United States. Their presence must be connected with or dependent upon the activities of the armed forces or its personnel; a presence within a military installation may constitute “accompanying” if it is more than merely incidental. One can be accompanying a force even though the person’s service or government contract has ended, because of continued presence with the force under circumstances that require the force to secure, house, feed, or exercise other pervasive military control over the civilian person. (See *Perlstein v. United States et al.*, 151 F. 2d. 167 (3rd Cir. 1945).)

(a) It excludes from its reach those civilians employed by or accompanying the Armed Forces who are nationals of the host nation or ordinarily resident in the host nation.

(b) Non-DOD federal employees may be subject to UCMJ, Art. 2(a)(10) jurisdiction if the manner in which they perform their work and conduct their personal activities fits within the definitions given in paragraphs 27–3b(1) and (2).

(c) Third-country nationals may be subject to UCMJ, Art. 2(a)(10) jurisdiction if they are DOD employees, DOD contractors or subcontractors, or employees of the same, or if the manner in which they perform their work and conduct their personal activities fit within the definitions given in 27–3b(1) and (2).

(3) An “armed force” is the Army, Navy, Air Force, Marines, and Coast Guard (see 10 USC 101(4)).

(4) “In the field” implies military operations with a view toward the enemy—not to be determined by locality in which the armed force is found, but rather by the activity in which it is engaged. (See *Hines v. Mikell*, 259 F. 28 (4th Cir. 1919) and *McCune v. Kilpatrick*, 53 F. Supp. 80 (E.D. Virginia 1943).)

(5) “Declared war” is a congressionally declared war.

(6) A “contingency operation” means a military operation as designated by the Secretary of Defense or by operation of law (see 10 USC 101(a)(13)).

c. Authority to exercise court-martial convening authority and impose NJP against personnel covered pursuant to UCMJ, Art. 2(a)(10) is withheld in all cases to commanders of geographic CCMDs, and those commanders assigned or attached to the CCMD who possess the authority to convene a GCM. Certain civilian personnel may be assigned to a GCMCA upon arrival into the overseas area or theater of operation. If not already assigned, a civilian subject to UCMJ, Art. 2(a)(10) jurisdiction may be attached to a GCMCA and military chain of command once the alleged misconduct is discovered.

(1) Personnel covered under UCMJ, Art. 2(a)(10) are considered to be “of the command” of a commander if they are—

(a) Assigned to an organization commanded by that commander; or

(b) Affiliated with the command (by attachment, detail, or otherwise) under conditions, either expressed or implied, that indicate that the commander of the unit to which affiliated and the commander of the unit to which they are assigned is to exercise administrative or disciplinary authority over them; or

(c) Attached to the command. Upon discovery of allegations of misconduct by civilian personnel subject to jurisdiction pursuant to UCMJ, Art. 2(a)(10), action should be taken to ensure that the person is attached to a command closest to the area where they are assigned or performed the majority of their duties. This is normally accomplished through written orders or command directives.

(2) A commander may be assigned territorial command responsibility for UCMJ, Art. 2(a)(10) personnel so that all or certain civilian personnel in the geographic area will be considered to be of the command for the purpose of establishing an appropriate GCMCA authority.

(3) To determine if an individual is of the command of a particular commanding officer, refer first to those written or oral orders, directives, or contracts that affect the status of the individual. If orders, directives, or contracts do not expressly confer authority to administer UCMJ to the commander of the unit with which the individual is affiliated or present (as when, for example, they contain no provision attaching the individual “for disciplinary purposes”), consider all attendant circumstances, such as—

(a) The wording used in the orders.

(b) Where the civilian slept, ate, was paid, and performed duty, as well as the duration of the status, and other similar factors.

(4) If orders or directives include such terms as “attached for administration of military justice,” or simply “attached for administration,” the individual so attached will be considered to be of the command.

(5) If not already assigned to a GCMCA upon arrival into the overseas area or theater of operation, a civilian subject to UCMJ, Art. 2(a)(10) jurisdiction may be attached to a GCMCA once the alleged misconduct is discovered. When existing circumstances do not provide for a clear chain of military command over a civilian suspected of committing a UCMJ offense, commanders may issue orders and directives attaching a civilian to a chain of command to establish the authority of that chain of command to process UCMJ actions. This attachment should be directed or ratified at the GCMCA level to avoid confusion about the appropriate chain of command for civilian suspects.

d. To determine whether an individual is subject to Art. 2(a)(10) jurisdiction, command and control relationships must be reviewed to determine their assignment, duty and/or position. Command and control relationships often change to meet the needs of particular deployments. Therefore, what may be appropriate command and control structure during peacetime or at a person's normal place of work may be different in the field.

(1) While overseas or in the theater of operations, personnel covered pursuant to UCMJ, Art. 2(a)(10) may be within the geographic area of a military chain of command.

(a) The on-site supervisory chain of command will perform the normal supervisory personnel functions for U.S. government personnel; for example, those related to performance evaluations, task assignments and instructions, and initiating and effecting recognition and disciplinary actions (see DA Pam 690–47). Contract supervisory personnel will perform the same supervisory personnel functions for persons for whom they are responsible.

(b) Contracts specify the terms and conditions under which they are to be performed. Contracting personnel give contractors guidance and direction on routine matters of contract performance. A contractor's failure to perform the terms of the contract and any modifications made by contracting personnel would not normally be the basis for UCMJ action, but may provide a basis for contractual remedies available to the government. The ranking military commander, however, may give contractors and their employees orders, whether or not within the scope of the contract, that are enforceable under the UCMJ if reasonably necessary to protect the armed force and accomplish a military mission. Further, contractors and their employees must comply with all general orders applicable to DOD civilian personnel in the area of operations.

(2) Personnel covered under UCMJ, Art. 2(a)(10) who are DOD civilian employees remain subject to the normal administrative disciplinary procedures within the civilian personnel system and are subject to disciplinary actions taken in accordance with the UCMJ by their supervisory chain of command (see AR 690–700).

e. The UCMJ, Art. 2(a)(10) jurisdiction over civilians suspected of a UCMJ violation does not terminate when the civilian leaves the overseas area. However, the Secretary of Defense has withheld authority to exercise court-martial convening authority and impose NJP over persons subject to UCMJ, Art. 2(a)(10) jurisdiction with respect to the following:

(1) Offenses committed within the "United States," which includes the several states of the United States, the District of Columbia, and the commonwealths, territories and possessions of the United States;

(2) Civilians who were not at all times during the alleged misconduct located outside the United States;

(3) Civilians who at the time court-martial charges are preferred or notice of UCMJ, Art. 15 proceedings is given are located within the United States.

f. When appropriate, personnel covered under UCMJ, Art. 2(a)(10) may be attached to a unit, installation, or activity for court-martial jurisdiction and the general administration of military justice. This includes related civilian personnel actions.

g. Civilians serving with or accompanying the Armed Forces outside the United States who are not nationals of the United States will be informed of the jurisdiction of the UCMJ, Art. 2(a)(10) when they are hired for overseas employment or on sponsorship into the overseas command, assigned to a GCMCA upon their arrival into the overseas area or theater of operation, or after being attached to a GCMCA upon the discovery of alleged misconduct, whichever event is first applicable.

(1) Such notice will also be provided during employee training and any briefings provided to these civilians when they first arrive in the foreign country in which they shall be assigned, employed by or accompanying the Armed Forces. Knowledge of UCMJ, Art. 2(a)(10) jurisdiction and its potential consequences serves as a deterrent in helping preserve good order and discipline in military communities outside the United States.

(2) Failure to provide the notice, briefings, or information about the jurisdiction pursuant to UCMJ, Art. 2(a)(10) pursuant to paragraph 27–3c(1), will not create any rights or privileges in the persons referenced, and will not operate to defeat the jurisdiction of a court-martial or any other court of the United States or provide a defense or other remedy in any proceeding arising pursuant to the UCMJ.

(3) Each GCMCA will ensure that training is provided to civilian personnel who are designated and authorized pursuant to the UCMJ and other DOD policies to make arrests outside the United States of civilians who allegedly have committed violations implicating UCMJ, Art. 2(a)(10). The training, at a minimum, should include the rights of individuals subject to arrest.

27–4. Panels

A civilian accused, subject to jurisdiction pursuant to UCMJ, Art. 2(a)(10), whose case has been referred to trial at a SPCM or GCM, will be tried by a court-martial consisting of a panel of officers unless the accused elects to be tried by military judge alone. The GCMCA can refer a civilian accused to a court-martial with an existing (standing) panel, or appoint a panel specifically to hear the case of a particular civilian accused. For civilian accused being tried pursuant to UCMJ, Art. 2(a)(10), convening authorities and military judges should, if possible, exclude panel members who are junior in grade to the accused, and consider the equivalency of civilian grades to military ranks when selecting or excusing panel members

(see table 27–1). When there is no method of determining equivalency of the civilian accused’s status or position, the convening authority should prepare a written statement to this effect for the record at the time of referral.

Table 27–1 Civilian and military grade equivalents
Accused civilian GS grade: Senior executive service Military grade equivalent: General officer
Accused civilian GS grade: GS–15 Military grade equivalent: COL (O–6)
Accused civilian GS grade: GS–13, GS–14 Military grade equivalent: LTC (O–5)
Accused civilian GS grade: GS–12 Military grade equivalent: MAJ (O–4)
Accused civilian GS grade: GS–10, GS–11 Military grade equivalent: CPT (O–3)
Accused civilian GS grade: GS–8, GS–9 Military grade equivalent: 1LT (O–2)
Accused civilian GS grade: GS–7 Military grade equivalent: 2LT (O–1)

Section II

Processing the action

See table 27–2 for steps for processing reports of civilian misconduct.

Table 27–2 Steps in processing reports of civilian misconduct			
Step	Action	Actor	Notes
1	Receive report of civilian misconduct	chain of command	
2	Determine if civilian is subject to UCMJ jurisdiction pursuant to UCMJ, Art. 2(a)(10)	GCMCA	In coordination with SJA
3	Initiate investigation	CID, MPI, or IO	May be conducted by law enforcement agency or by an investigating officer appointed in accordance with AR 15–6 or RCM 303
4	Notify OTJAG Criminal Law Division	SJA	In accordance with paragraphs 27–5b and e.
5a	Notify civilian employee’s immediate supervisor, human resources office, and the labor and employment counsel	SJA	Only for federal civilian employees
5b	Notify contracting officer (or contracting officer technical representative) and the Army Procurement Fraud Division	SJA	Only for contractor personnel
6	Evaluate facts after investigation, and determine if UCMJ action is appropriate	GCMCA, in coordination with SJA	Apply criteria in the Discussion, RCM 306(b)
7	Notify CCDR if UCMJ action is being considered	GCMCA and SJA	If there is federal civilian jurisdiction, so advise CCDR
8	Notify DOJ via the DOD Office of General Counsel to determine if DOJ will exercise jurisdiction	CCDR and SJA	
9	Receive response from DOJ	CCDR	Via DOD Office of General Counsel
10	Receive response from CCDR	GCMCA	Indicates if DOJ will take jurisdiction and if CCDR will withhold authority

Table 27–2**Steps in processing reports of civilian misconduct—Continued**

11	Return case to company- or battalion-level command for recommendations	GCMCA	If not already assigned or attached to a chain of command, attach civilian to a unit prior to referral of any charge
12	Decide whether to prefer charges	company or battalion commander	If charges are preferred, the chain of command also recommends disposition (level of court-martial) in accordance with paragraph 27–8 <i>d</i>
13	Notify OTJAG Criminal Law Division	SJA	In accordance with paragraph 27–8 <i>d</i>
14a	Appoint UCMJ, Art. 32 preliminary hearing officer	SPCMCA, in coordination with TC	When considering a GCM recommendation
14b	Forward to GCMCA	SPCMCA, in coordination with TC	After UCMJ, Art. 32 hearing, or when SPCM is recommended
15	Decide whether to refer charges	GCMCA, in coordination with SJA	SPCM or GCM, NJP administrative measures, or returning the case to the accused's supervisor to be handled as a civilian personnel matter

27–5. Notification

a. Commanders below the GCMCA level will expeditiously forward all allegations of misconduct that may be subject to UCMJ, Art. 2(a)(10) jurisdiction to the first GCMCA in the suspect's chain of command.

b. Any military authority, including a military law enforcement agency, that receives a report of an offense committed by a civilian person potentially subject to UCMJ, Art. 2(a)(10) shall, at the initiation of the investigation, and during all critical stages thereof, notify the OSJA for the command possessing GCMCA authority over the civilian person, the area in which the offense occurred, and/or where the person is located.

c. Upon the discovery or report of allegations of UCMJ offenses by civilians potentially subject to UCMJ, Art. 2(a)(10) jurisdiction, the SJA will immediately notify OTJAG–CLD and provide an unclassified executive summary that includes—

- (1) Name, grade, SSN, last known U.S. residence and unit or agency of employment or contractor (including subcontractor and prime contractor) that employs the accused.
- (2) Offense(s) of which the accused is suspected.
- (3) Date(s) of the suspected incident(s) or offense(s).
- (4) Conditions of restraint, if any.

d. The GCMCA concerned, through the SJA, must notify via email the respective CCDR of any intended disposition by courts-martial or NJP. The GCMCA will not allow referral of charges or imposition of NJP against UCMJ, Art. 2(a)(10) personnel prior to notifying and receiving a response from the SJA of the CCDR. This function may not be delegated. The CCDR must notify the GCMCA regarding whether the CCDR will withhold authority over the case.

e. For all cases in which disposition pursuant to UCMJ, Art. 2(a)(10) is contemplated, the CCDR must provide notice in writing to the Department of Justice, Domestic Security Section, Criminal Division, at 950 Pennsylvania Ave., Washington, DC 20530–0001, or by email: criminal.division@usdoj.gov. No further UCMJ action will be taken until such time as the DOJ or CCDR decision is received by the GCMCA. Normally, the CCDR will be notified by DOJ (within 14 business days) as to whether the DOJ will assert federal jurisdiction in the case and the CCDR will in turn notify the GCMCA regarding whether either entity will exercise authority over the case.

f. While awaiting the notice, action pursuant to RCM 306–308, and 401–406 is prohibited (see also para 27–6).

g. After initial notification under paragraph 27–5*c*, updates to OTJAG–CLD, are required until completion of any UCMJ action. Notification within legal technical channels is designed to improve communications within the DOD while at the same time protecting the accused's right to a fair trial, free from UCI (see para 5–14).

h. The GCMCA, through the SJA, should notify the entity listed in paragraph 27–5*i*, when a civilian is—

- (1) Apprehended under circumstances likely to result in confinement or trial by court-martial;
- (2) Ordered into arrest or confinement;
- (3) Held for trial with or without restraint; or
- (4) When court-martial charges against the accused are preferred and referred for trial.

i. Employment or contracting agency to be notified.

(1) Where an offense was committed by a DOD employee (noncontractor personnel), the SJA shall notify, and coordinate with, the employee's immediate supervisor as well as the applicable human resources office and/or labor and employment counsel.

(2) Where an offense was committed by a non-DOD federal agency civilian who is otherwise subject to UCMJ, Art. 2(a)(10), the SJA must notify the applicable federal agency or parent agency of the individual suspected of misconduct.

(3) Where an offense was committed by a non-federal civilian (that is, an employee, contractor, subcontractor at any tier, or employee thereof) who is otherwise subject to UCMJ, Art. 2(a)(10), the SJA must notify the applicable contracting officer and/or contracting officer technical representative and Army Procurement Fraud Division, 9275 Gunston Road, Fort Belvoir, VA 22060-5546.

(4) Where an offense was committed by a third-country national who is otherwise subject to UCMJ, Art. 2(a)(10), the SJA must notify the applicable federal agency or parent agency of the individual suspected of misconduct.

j. The SJA shall notify the SDC of the servicing USATDS Field Office when—

- (1) A civilian is ordered into pretrial confinement, or
- (2) Court-martial charges against a civilian are preferred.

27-6. Commander's authority

Commanders have authority to disarm, apprehend, and detain civilians subject to UCMJ, Art. 2(a)(10) jurisdiction suspected of committing an offense in violation of the UCMJ. Pursuant to an investigation of misconduct by personnel covered under UCMJ, Art. 2(a)(10), a commander may authorize a search in accordance with MRE 315.

27-7. Criminal investigations, commander's inquiries, and investigations pursuant to Army Regulation 15-6

Criminal investigations, commander's inquiries, or investigations in accordance with AR 15-6 into allegations of suspected misconduct may be initiated or may continue while awaiting a response from the DOJ or the CCDR as to whether federal jurisdiction will be asserted or whether UCMJ jurisdiction will be withheld.

27-8. Qualified military counsel and responsibilities of the U.S. Army Trial Defense Service

a. An accused pursuant to UCMJ, Art. 2(a)(10) is entitled to military defense counsel in the same manner and under the same provisions that apply to Soldiers (see chap 6 of this regulation).

b. An accused may seek to be represented by civilian defense counsel. Civilian defense counsel representation will not be at the expense of the DOD or the military departments.

c. To the extent practicable, military authorities will establish procedures by which civilians arrested or charged pursuant to UCMJ, Art. 2(a)(10) may seek the assistance of civilian defense counsel by telephone. Consultation with such civilian counsel shall be private and protected by attorney-client privilege.

d. Civilian defense counsel practicing in host nations do not gain DOD sponsorship, or any diplomatic status, as a result of their role as defense counsel. To the extent practicable, notice to this effect will be provided to the civilian defense counsel when the civilian defense counsel's identity is made known to appropriate military authorities.

27-9. Pretrial restraint or confinement

a. A GCMCA, or designee (brigade commander in the grade of O-6), may order the pretrial restraint, or pretrial confinement, pursuant to RCMs 304 and 305, of UCMJ, Art. (2)(a)(10) personnel, within the GCMCA's area of responsibility outside the United States, who is suspected of violating the UCMJ. The GCMCA, or designee, may determine that the personnel covered pursuant to UCMJ, Art. (2)(a)(10) need not be held in restraint or confinement pending the receipt of notification from the CCDR required by paragraph 27-5. All pretrial restraint or confinements must comply with the provisions of RCMs 304 and 305.

b. Personnel covered under UCMJ, Art. (2)(a)(10) who are apprehended for suspected UCMJ violations, pursuant to RCM 302, may be placed in pretrial confinement in military detention facilities for a reasonable period, in accordance with RCMs 304 and 305 and the regulations of the military departments responsible for the confinement facility.

c. Absent emergency or exigent circumstances, personnel covered under UCMJ, Art. 2(a)(10) will not be placed in pretrial confinement prior to notification of the SJA of the commander exercising GCMCA authority, who must ensure that the civilian is assigned or attached to the command prior to imposition of pretrial confinement and that the pretrial confinement is warranted and in accordance with RCM 305. The accused is entitled to representation by USATDS counsel (or a civilian counsel, as outlined in para 27-8) at all pretrial confinement hearings.

27–10. Action by convening authority after a response is received

a. If the DOJ elects to exercise federal criminal jurisdiction over the case, neither the CCDR nor a lower level convening authority is authorized to take action to dispose of the charges by court-martial or NJP proceedings. If the DOJ asserts jurisdiction under MEJA, the procedures contained in the statute and DOD directive concerning MEJA (chap 26 of this regulation) must be followed. In cases where the DOJ asserts jurisdiction under Federal law with extraterritorial application, MEJA procedures can be used as a guide for supporting DOJ actions.

b. If the DOJ determines that the exercise of federal criminal jurisdiction is not applicable or is not warranted, the CCDR will so notify the respective GCMCA of that determination and also advise the GCMCA whether the CCDR will withhold UCMJ authority in a particular case.

c. If neither the DOJ nor the CCDR decides to exercise or withhold jurisdiction over the case, the GCMCA may determine the appropriate disposition of the case. However, once authority is returned to the GCMCA, the GCMCA is not required to initiate further action to dispose of the case. If it is appropriate to consider resolving the matter pursuant to the UCMJ, including preferring court-martial charges or NJP, the accused who is subject to UCMJ, Art. 2(a)(10) jurisdiction will be, if not already, attached to a chain of command to include a company, battalion, and brigade commander, to the extent it is practicable. The company or battalion commander will receive the case and determine whether it is appropriate to prefer charges, impose NJP or take any other appropriate action. If charges are preferred with recommendation for a SPCM or GCM, the charges will be processed in accordance with the RCM, permitting each commander to make his or her own judgment as to the proper disposition of charges under the circumstances. If the SPCMCA considers a recommendation for GCM potential under the circumstances, the commander will appoint a preliminary hearing officer and direct a preliminary hearing under UCMJ, Art. 32(b). If upon receipt and review of the report of preliminary hearing the SPCMCA considers referral appropriate, he or she will forward the matter with recommendation for disposition to the GCMCA. The authority to refer such charges to either a SPCM or GCM is withheld to the GCMCA (see chap 5 of this regulation).

d. The convening authority's SJA must notify OTJAG–CLD of the following information upon preferral of any cases pursuant to UCMJ, Art. 2(a)(10):

- (1) Name, grade, SSN, date of birth, race, and unit of the accused.
- (2) The offenses with which the accused is charged.
- (3) The names, sex, ages, and military or civilian statuses of the victims.
- (4) The date of preferral and referral.
- (5) Whether the accused is in pretrial confinement and the date confinement began.
- (6) The names of the military judge, trial counsel, and defense counsel in the case.

e. A copy of the notice must be incorporated as part of the allied papers of the court-martial record of trial, if any.

27–11. Sentencing

a. With respect to personnel covered under UCMJ, Art. 2(a)(10), trial and defense counsel may, at their discretion, present to the military judge copies of any available personnel records that reflect the past conduct and performance of the accused (see para 5–36 for examples).

b. The following punishments authorized pursuant to RCM 1003(b) are applicable in cases where jurisdiction over the accused is based on UCMJ, Art. 2(a)(10). No other punishments listed in RCM 1003(b) are authorized.

(1) A fine may be imposed in all cases as a monetary penalty on personnel covered under UCMJ, Art. 2(a)(10), including in any case where the accused was unjustly enriched as a result of the offense to which the accused was convicted.

(2) Restriction to specified limits.

(3) Confinement.

c. NJP is also authorized and will be imposed only in accordance with UCMJ, Art. 15; Part V, MCM, 2019; the guidance in the SECDEF Memo dated 10 March 2008 (see appendix F); and chapter 3 of this regulation.

27–12. Post-trial procedure and review of courts-martial

The provisions of UCMJ, Arts. 59 through 76, are applicable to court-martial proceedings involving personnel covered under UCMJ, Art. 2(a)(10).

Chapter 28

Capital Litigation

28–1. Applicability and purpose

This chapter sets forth the policies and procedures for all Army cases in which an accused is charged, or could be charged, with an offense that may subject the accused to the death penalty, and for which there is probable cause that an aggravating

factor exists as set forth in RCM 1004(c). The provisions of this chapter apply regardless of any present intention of the GCMCA to charge the accused with an offense that may subject the accused to the death penalty.

28–2. Reports in capital cases

a. In general. This paragraph establishes special reporting requirements for capital offenses and courts-martial. Such reports are designed to improve situational awareness and communications with the DOD, while at the same time protecting an accused’s right to a fair, complete evaluation of a case and the exercise of independent discretion. Information forwarded pursuant to this paragraph does not constitute protected attorney-client work product.

b. Initial reports of capital eligible offenses. Initial reports of all capital eligible offenses will be completed in accordance with paragraph 5–14.

c. Subsequent report. Within 30 days of either preferral or pretrial confinement, whichever is sooner, the advising SJA will submit a more complete report detailing the allegations, potential RCM 1004(c) aggravating factors, victims, and other available information, by electronic or traditional mail, to OTJAG–CLD and OTJAG–PPTO. If USATDS has provided input regarding expected personnel requirements, budgeting estimation, facility needs, and other resourcing requirements, this input must also be included in the report.

d. Report prior to disposition decision. At least 7 days prior to determination of disposition, the SJA must notify the Chief, OTJAG–CLD and the Executive Officer to OTJAG by email or telephone (see paragraph 28–3).

e. Requirement for updates. SJAs will update reports made to the Chief, OTJAG–CLD involving a capital offense immediately following significant events, which include the following:

- (1) Preferral of charges;
- (2) Completion of the UCMJ, Art. 32 preliminary hearing;
- (3) Completion of the UCMJ, Art. 32 preliminary hearing officer’s report;
- (4) Referral of charges;
- (5) Arraignment;
- (6) Each UCMJ, Art. 39(a) session;
- (7) Commencement of trial on the merits;
- (8) Any action by the convening authority;
- (9) The entry of judgment;
- (10) Any decision to substitute or add counsel; and
- (11) Within 24 hours, any decision to dismiss any specification alleging a serious offense.

f. Report when sentence includes death. In cases in which the death penalty has been adjudged, and prior to forwarding the record of trial to the Clerk of Court, USACCA, the SJA must send notice that the record of trial is complete to the following: OTJAG–CLD; GAD; DAD, and OTJAG–PPTO.

28–3. Referral

At least 7 days prior to referral of a potential capital case, or other serious offense as defined in paragraph 5–14, the SJA must consult with the Chief, OTJAG–CLD. After an offense is referred as a capital offense, a copy of the capital referral notice must be sent to the Chief, USATDS and the affected RDC.

28–4. Required court-martial personnel for capital courts-martial

This paragraph establishes the minimum requirements for detailing authorities to detail counsel in capital cases. As used in this chapter, the term “capital counsel” is a counsel who, in accordance with this chapter, has been determined by TJAG to be learned in the law applicable to capital cases. Capital counsel may be a civilian attorney or a JA. Civilian capital counsel will only be provided at government expense when there are no JAs so designated by TJAG available.

a. Defense counsel.

(1) *Preliminary hearing.* In any case in which (a) a preliminary hearing pursuant to UCMJ, Art. 32 has been ordered into an offense for which death may be an authorized punishment; and (b) the preliminary hearing officer has been detailed to consider aggravating factors pursuant to RCM 1004(c), the Chief, USATDS will detail a capital counsel, if available. If no capital counsel are available within USATDS, then the Chief, USATDS shall request a list of capital counsel from Chief, PPTO. The Chief, PPTO will provide a list of available capital counsel available for detail to the Chief, USATDS within 30 duty days of the request.

(2) *Referral.* In any case that is referred to trial as a capital court-martial the Chief, USATDS must detail to the case at least one capital counsel unless such counsel have been previously detailed. If no capital counsel is available, the Chief of USATDS shall immediately notify the Chief, PPTO. The Chief, PPTO will provide a list of available capital counsel available for detail to the Chief, USATDS within 30 duty days of the request.

b. Appellate defense counsel. In any case in which (a) the sentence entered into judgment includes a sentence of death; and (b) the accused is entitled to counsel pursuant to UCMJ, Art. 70, the Chief, DAD must detail to the case at least one appellate capital counsel. If no capital counsel is available, the Chief, DAD shall immediately notify the Chief, OTJAG–CLD and Chief, PPTO. The Chief, PPTO will provide a list of available capital counsel available for detail to the Chief, DAD within 30 duty days of the request.

c. Trial counsel. In any case in which there is probable cause to believe an offense punishable by death has been committed by someone subject to the code, and there is probable cause to believe that one or more aggravating factors listed in RCM 1004 are present, the SJA will, if available within the OSJA, detail to the case a capital trial counsel. If no such counsel is available within the OSJA, the SJA will coordinate with Chief, OTJAG–CLD and Chief, PPTO to determine whether capital counsel may be made available.

d. Appellate government counsel. In any case in which the sentence entered into judgment includes a sentence of death, the Chief, GAD will detail to the case at least one appellate capital counsel, if available. If no such capital counsel is available, the Chief, GAD will notify the Chief, OTJAG–CLD and Chief, PPTO.

28–5. Standards for capital counsel

a. In general.

(1) TJAG will determine when a counsel’s training, experience, and temperament qualify the counsel as capital counsel. The determination by TJAG will be made without a view toward whether the counsel should be detailed to a particular case.

(2) Detailing authorities will consider the merits and challenges of each case and the talents and experience of each counsel prior to detailing counsel to a capital case. A TJAG determination that a counsel is a capital counsel does not obviate the need for individualized consideration.

b. Recommendation by Chief, PPTO. The Chief, PPTO will screen and select counsel for TJAG determination as capital counsel and make recommendations to TJAG.

c. Considerations. Prior to submitting a counsel to TJAG for a determination, the Chief, PPTO may consider:

- (1) the in-court observations of counsel performance by senior supervising JAs;
- (2) writing samples;
- (3) recommendations from judges before whom the counsel has appeared;
- (4) information from attorneys, supervisors, and former clients who are familiar with the counsel’s professional abilities;
- (5) the ASI of the counsel concerned;
- (6) information submitted by the counsel; and
- (7) any other information the Chief, PPTO determines is appropriate.

d. Quantitative criteria. The Chief, PPTO will only recommend to TJAG attorneys as capital counsel who meet the minimum screening criteria in paragraphs 28–5d(1)-(4).

(1) JAs being considered as capital counsel must be certified by TJAG as competent under UCMJ, Art. 27(b) to perform the duties as counsel at a GCM.

(2) Counsel being considered as capital counsel will have at least five years of criminal litigation experience, at least three years of which includes experience litigating courts-martial under the UCMJ;

(3) Counsel being considered as capital counsel will have served as lead counsel or first assistant counsel in no fewer than five contested panel GCMs.

(4) Counsel being considered as capital counsel must have prior experience as the lead counsel in a contested panel GCM.

e. Qualitative criteria. The Chief, PPTO will forward to TJAG the names of counsel such that each capital accused within the Army receives high quality legal representation. Accordingly, the Chief, PPTO will submit the names of counsel for approval so that the pool of capital counsel includes a sufficient number of attorneys who have demonstrated, or having received specialized training, possess:

- (1) substantial knowledge and understanding of the relevant UCMJ provisions, both procedural and substantive, and relevant federal statutes and case law governing capital cases;
- (2) skill in the management and conduct of complex negotiations and litigation;
- (3) skill in legal research, analysis, and the drafting of litigation documents;
- (4) skill in oral advocacy;
- (5) skill in the use of expert witnesses and familiarity with common areas of forensic investigation, such as fingerprints, ballistics, forensic pathology, and DNA evidence;
- (6) skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
- (7) skill in the investigation, preparation, and presentation of mitigating evidence; and

(8) skill in the elements of trial advocacy, such as panel selection, cross-examination of witnesses, and opening and closing statements.

f. Exception. In the case of a JA who has demonstrated exceptional prior performance, to include prior exceptional performance as the lead or assistant counsel in a capital case, TJAG may waive the requirements of this paragraph.

28–6. Administrative and logistical support for trial

a. Prosecution support. SJAs will ensure that prosecution teams are resourced. The SJA will use internal resources to the maximum extent practicable. For additional personnel support, the SJA may coordinate with PPTO and TCAP.

b. Defense support. SJAs will ensure that defense teams are resourced. In any case after prefferal in which an offense punishable by death under the UCMJ is charged, the defense may submit a request in writing to the servicing SJA for support greater than that required by paragraph 6–4, including but not limited to: paralegals (with criminal law experience), legal administrator, investigative support, office administrative resource support (as defined by the defense team), security managers, interpreters, translators, and other specialized expertise as may be required. The SJA will use internal resources to the maximum extent practicable. For additional personnel support, the SJA may coordinate with PPTO and OTJAG–CLD.

(1) Office administrative resource support may include support such as private, lockable office space, SIPRnet capability, computers authorized to handle classified information and documents, separate defense witness waiting room under the control of the defense team, desktop computers with double monitors, copiers, printers, case management software, projectors, routine office supplies, textbooks and reference materials, and full access to installation network and internet. This list is not to be interpreted as exhaustive, but rather illustrative.

(2) The SJA must make reasonable efforts to provide the additional support within 30 days of the request or deny the request by stating the reasons in writing within the same period.

(3) The requesting counsel will forward all denied requests through the defense technical chain to Chief, USATDS. The Chief, USATDS will make reasonable efforts to fill the request internally. The Chief, USATDS will forward all unfilled requests for personnel to PPTO within 15 days of receipt stating the reasons that USATDS is unable to support the request. Assets provided by USATDS will be funded in accordance with paragraph 6–5.

(4) Nothing in this paragraph should be interpreted to create a substantial right or remedy of the accused; rather this section provides a system of accountability to ensure proper resources and support are provided.

28–7 Training for capital counsel

a. Initial requirements. Capital counsel will attend specialized training within one year of being determined by TJAG as capital counsel. Counsel who have attended specialized training within a year of having been determined to be capital counsel are not required to attend initial training.

b. Reports of training. The Chief, PPTO will maintain a roster of persons determined by TJAG to be capital counsel. Capital counsel will notify PPTO after completing the specialized training required by this paragraph.

c. Minimum requirement. Capital counsel may not be detailed as capital counsel to a capital case unless they have attended specialized training within two years prior to detailing. Any counsel who has not attended specialized training for three years will no longer be considered to be capital counsel.

d. Specialized training.

(1) “Specialized training” under this paragraph refers to advanced training for experienced criminal litigators as determined by Chief, PPTO in consultation with Chief, OTJAG–CLD; Chief, DAD; Chief, GAD; Chief, TCAP; and Chief, USATDS. When available, counsel will attend training that is focused entirely on the litigation of capital cases. However, counsel who have already attended a particular training program are not expected to attend the same training program every year in order to maintain status as capital counsel. Decisions on which training to attend should be made by considering the needs of each individual, rather than expediently meeting the training requirement of this paragraph.

(2) A determination by TJAG that a person is capital counsel under this chapter and has met the minimum requirements for such a determination should not be substituted for an individualized determination by a detailing authority as to whether a specific capital counsel should be detailed to a specific case. Detailing authorities should assess the qualities of each counsel and the nature of a case and consider whether additional training is appropriate prior to (or closely after) detailing a capital counsel to a particular case.

28–8. Funding responsibilities

Requests for funding of fee requests for expert services and related purposes in capital cases should be made to the appropriate authority: the commander presently exercising GCMCA over the accused or appellant. The GCMCA will carefully consider all such requests, coordinate with other agencies and departments, if necessary, and respond in a timely fashion, in writing. Requests for review of such denials will be submitted to the court before which the case is pending (a trial court

after referral but before the entry of judgment; after entry of judgment the USACCA or USCAAF, as appropriate). Neither TJAG nor the Commander, USALSA, will approve or consider the merits of requests for funds to obtain expert services or for related purposes.

Chapter 29

Definitions Pertaining to Prohibited Activities with Military Recruits or Trainees

29–1. General

This chapter provides definitions pertaining to UCMJ, Art. 93a, regarding prohibited activities with military recruits or trainees by persons in positions of special trust. This chapter does not prohibit the issuance of general orders or general regulations that impose additional restrictions on inappropriate conduct with military recruits and trainees. This chapter does not create or change Army policy as it relates to the Sexual Harassment/Assault Response and Prevention (SHARP) program.

29–2. Terms

a. Training program for initial career qualification. For the purposes of UCMJ, Art. 93a(d)(1)(C) and UCMJ, Art. 93a(d)(2)(A), the term “training program for initial career qualification” includes all initial entry training. Initial entry training is the mandatory training that each member of the U.S. Army must complete upon initial entry in the service to qualify in a military specialty or branch. The term encompasses the completion of basic training and specialty or branch qualification while serving on AD or ADT. It includes completion of initial active duty for training (IADT), the officer basic course (OBC), the warrant officer candidate school (WOCS), and the warrant officer basic course (WOBC). Entry-level training includes students both in training status and in holding status.

b. Applicant for military service. For the purposes of UCMJ, Art. 93a(d)(3), an “applicant for military service” includes—

(1) Any person who has expressed, to a military recruiter, an interest in enlisting or receiving an appointment in a Military Service and who appears to possess, or who may in the future possess, the potential and qualifications for enlistment or appointment in Military Service;

(2) Any person who has agreed to process for enlistment or commissioning in a Military Service;

(3) Any person who has initiated a DD Form 1966 (Record of Military Processing – Armed Forces of the United States) or comparable form. This includes, but is not limited to, applicants to the U.S. Military Academy and U.S. Military Preparatory School, applicants to the Junior or Senior Reserve Officer Training Corps, and individuals in the Delayed Entry Program (Future Soldiers Program), Delayed Training Program, Recruit Sustainment Program, or similar programs.

(4) Any person who, for one year after expressing their loss of interest to recruiting personnel, previously met one of the definitions of paragraphs 29–2b(1) through (3), but subsequently lost interest in service. A person ceases to be “an applicant for military service” one year from the date he or she expresses their loss of interest to recruiting personnel, or ceased all contact with recruiting personnel, provided he or she has not attempted to begin processing for enlistment or appointment.

c. Military recruiter. For the purposes of UCMJ, Art. 93a(d)(4), a “military recruiter” is a person, subject to the UCMJ, performing a direct recruiting function that supports the accomplishment of the recruiting mission. This includes—

(1) Soldiers holding the primary military occupational specialty (MOS) 79R.

(2) Department of the Army select recruiters.

(3) Recruiting officers.

(4) Recruiting warrant officers.

(5) A commander of a recruiting company, battalion, or brigade.

(6) Soldiers assigned to MOS-immaterial recruiting offices.

d. Prohibited sexual activity. For the purposes of UCMJ, Art. 93a(d)(5), the term “prohibited sexual activity” includes—

(1) Any sexual act as defined by UCMJ, Art. 120.

(2) Any sexual contact as defined by UCMJ, Art. 120.

(3) Any attempt to commit a sexual act or sexual contact, or any solicitation to commit a sexual act or sexual contact.

Appendix A

References

Section I

Required Publications

AR 15–6

Procedures for Investigating Officers and Boards of Officers (Cited in para 9–8.)

AR 15–185

Army Board for Correction of Military Records (Cited in para 3–43*e*.)

AR 25–50

Preparing and Managing Correspondence (Cited in para 3–19*b*(8)(*d*).)

AR 25–51

Official Mail and Distribution Management (Cited in para 12–11*g*.)

AR 25–400–2

The Army Records Information Management System (ARIMS) (Cited in para 5–59*a*.)

AR 27–1

Legal Services, Judge Advocate Legal Services (Cited in para 6–4*a*(5).)

AR 27–3

The Army Legal Assistance Program (Cited in para 17–12*b*(3).)

AR 27–26

Rules of Professional Conduct for Lawyers (Cited in para 3–18*g*(1).)

AR 27–40

Litigation (Cited in para C–2*c*.)

AR 27–50

Status of Forces Policies, Procedures, and Information (Cited in para 16–3*d*(2).)

AR 27–52

Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice (Cited in para 5–1.)

AR 37–104–4

Military Pay and Allowances Policy (Cited in para 5-61*a*(3).)

AR 40–400

Patient Administration (Cited in para 17–12*a*.)

AR 135–200

Active Duty for Missions, Projects, and Training for Reserve Component Soldiers (Cited in para 20–4*a*.)

AR 165–1

Army Chaplain Corps Activities (Cited in para 17–12*b*(5).)

AR 190–30

Military Police Investigations (Cited in para 8–10*c*.)

AR 190–45

Law Enforcement Reporting (Cited in para 5-14*b*(4).)

AR 190–47

The Army Corrections System (Cited in para 3–19*b*(1).)

AR 190–53

Interception of Wire and Oral Communications for Law Enforcement Purposes (Cited in para 7–4*c*(4).)

AR 195–5

Evidence Procedures (Cited in para 8–10*b*.)

AR 220–5
Designation, Classification, and Change in Status of Units (Cited in para 3–7a(4).)

AR 335–15
Management Information Control System (Cited in para 5–14c(4).)

AR 600–8–2
Suspension of Favorable Personnel Actions (FLAGS) (Cited in para 3–20.)

AR 600–8–10
Leaves and Passes (Cited in para 12–13a.)

AR 600–8–19
Enlisted Promotions and Reductions (Cited in para 3–19b(5)(a).)

AR 600–8–22
Military Awards (Cited in para 17–2d.)

AR 600–8–24
Officer Transfers and Discharges (Cited in para 5–26a.)

AR 600–8–29
Officer Promotions (Cited in para 3–7c(1).)

AR 600–8–104
Army Military Human Resources Records Management (Cited in para 3–37b(1)(a)3.)

AR 600–8–105
Military Orders (Cited in para 11–3a(1).)

AR 600–20
Army Command Policy (Cited in para 3–19b(4)(e).)

AR 600–37
Unfavorable Information (Cited in para 3–3b(2).)

AR 600–105
Aviation Service of Rated Army Officers (Cited in para 19–11c(4).)

AR 608–1
Army Community Service (Cited in para 17–12b(1).)

AR 614–100
Officers Assignment Policies, Details, and Transfers (Cited in para 5–28a.)

AR 614–200
Enlisted Assignments and Utilization Management (Cited in para 24–2a.)

AR 623–3
Evaluation Reporting System (Cited in para 19–11c(7).)

AR 635–200
Active Duty Enlisted Administrative Separations (Cited in para 19–11c(2).)

AR 638–8
Army Casualty Program (Cited in para 17–2c.)

AR 672–20
Incentive Awards (Cited in para 17–2d.)

AR 690–700
Personnel Relations and Services (General) (Cited in para 27–3d(2).)

AR 930–4
Army Emergency Relief (Cited in para 17–12b(2).)

AR 930–5
American National Red Cross Service Program and Army Utilization (Cited in para 17–12b(4).)

DA Pam 27-7

Guide for Summary Court-Martial Trial Procedure (Cited in para 5-13.)

DOD 7000.14-R

Department of Defense Financial Management Regulation (DOD FMR) (Cited in para 3-19b(6)(a).)

DODD 1030.01

Victim and Witness Assistance (Cited in para 17-1.)

DODI 1030.2

Victim and Witness Assistance Procedures (Cited in para 17-1.)

DODI 1325.07

Administration of Military Correctional Facilities and Clemency and Parole Authority (Cited in para 5-40b(3).)

DODI 5505.14

Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations (Cited in para F-1.)

DODI 5525.11

Criminal Jurisdiction Over Civilians Employed by or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members (Cited in para 26-1b.)

Section II

Related Publications

A related publication is additional information. The user does not have to read it to understand the publication.

AR 11-2

Managers' Internal Control Program

AR 15-130

Army Clemency and Parole Board

AR 15-180

Army Discharge Review Board

AR 25-30

Army Publishing Program

AR 25-55

The Department of the Army Freedom of Information Act Program

AR 27-20

Claims

AR 190-9

Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies

AR 195-6

Department of the Army Polygraph Activities

AR 350-1

Army Training and Leader Development

AR 600-43

Conscientious Objection

AR 600-85

The Army Substance Abuse Program

AR 608-18

The Army Family Advocacy Program

AR 630-10

Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings

AR 633-30

Military Sentences to Confinement

AR 735–5

Property Accountability Policies

DA Pam 27–17

Procedural Guide for Article 32 Preliminary Hearing Officer

DFAS–IN Regulation 37–1

Finance and Accounting

DODI 1342.24

Transitional Compensation for Abused Dependents

DODI 5525.07

Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DOJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes

MCM United States (2019 Edition)

Manual for Courts-Martial

RCM

Rules for Courts-Martial

UCMJ

Uniform Code of Military Justice

UCMJ, Art. 139

Redress of injuries to property

10 USC 802

Art. 2. Persons subject to this chapter

10 USC 806b

Art. 6b. Rights of the victim of an offense under this chapter

10 USC 860

Art. 60. Post-trial processing in general and special courts-martial

10 USC 972

Members: effect of time lost

10 USC 1034

Protected communications; prohibition of retaliatory personnel actions

10 USC 1059

Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits

10 USC 1076a

Medical and dental care for dependents: general rule

10 USC 3013

Secretary of the Army

10 USC 1408

Payment of retired or retainer pay in compliance with court orders

10 USC 1565

DNA identification information: collection from certain offenders; use

18 USC 219

Officers and employees acting as agents of foreign principals

18 USC 871

Threats against President and successors to the Presidency

18 USC 1512

Tampering with a witness, victim, or an informant

18 USC 1513

Retaliating against a witness, victim, or an informant

18 USC 3041

Power of courts and magistrates

18 USC 3481

Competency of accused

28 USC 515

Authority for legal proceedings; commission, oath, and salary for special attorneys

28 USC 543

Special attorneys

28 USC 2101

Supreme Court; time for appeal or certiorari; docketing; stay

28 USC 2242

Application (writ of *habeas corpus*)

42 USC 10601

Crime victims fund

42 USC 10607

Services to victims

42 USC 16901

Declaration of Purpose

Section III

Prescribed Forms

Except where otherwise indicated below, the following forms are available on the APD website (<https://armypubs.army.mil>); DD Forms are available from the OSD website (<https://www.esd.whs.mil/DD>).

DA Form 2627

Record of Proceedings Under Article 15, UCMJ (Prescribed in para 3–6c.)

DA Form 2627–1

Summarized Record of Proceedings Under Article 15, UCMJ (Prescribed in para 3–16a(2).)

DA Form 2627–2

Record of Supplementary Action Under Article 15, UCMJ (Prescribed in para 3–23d.)

DA Form 3497

Counsel’s Oath (Prescribed in para 10–4a.)

DA Form 3499

Application for Relief from Court-Martial Findings and/or Sentence Under the Provisions of Title 10, United States Code, Section 869 (Prescribed in para 13–2a.)

DA Form 3744

Affidavit Supporting Request for Authorization to Search and Seize or Apprehend (8–7d)

DA Form 3745

Search and Seizure Authorization (8–7d)

DA Form 3745–1

Apprehension Authorization (Prescribed in para 8–7d.)

DA Form 4916

Certificate of Service/Attempted Service (Prescribed in para 12–11d.)

DA Form 4917

Advice as to Appellate Rights (Prescribed in para 12–4c.)

DA Form 4918

Petition for Grant of Review in the United States Court of Appeals for the Armed Forces (Prescribed in para 12–4c.)

DA Form 4919

Request for Final Action (Prescribed in para 12–4c.)

DA Form 5109

Request to Superior to Exercise Article 15, UCMJ, Jurisdiction (Prescribed in para 3–5b.)

DA Form 5110

Article 15–Reconciliation Log (Prescribed in para 3–39.)

DA Form 5111

Summary Courts-Martial Rights Notification/Waiver Statement (Prescribed in para 5–33d.)

DA Form 5112

Checklist for Pretrial Confinement (Prescribed in 8-5b(2).)

DA Form 7568

Army Victim/Witness Liaison Program Evaluation (Prescribed in para 5–53c.)

Section IV**Referenced Forms**

Except where otherwise indicated below, the following forms are available as follows: DA Forms are available on the APD website (<https://armypubs.army.mil>); DD Forms are available from the OSD website (<https://www.esd.whs.mil/DD>).

AO Form 86A

Consent to Proceed Before a Magistrate Judge in Misdemeanor Case (Available at <http://www.uscourts.gov/services-forms/forms>.)

AO Form 91

Criminal Complaint (Available at <http://www.uscourts.gov/services-forms/forms>.)

DA Form 31

Request and Authority for Leave

DA Form 268

Report to Suspend Favorable Personnel Actions (FLAG)

DA Form 1380

Record of Individual Performance of Reserve Duty Training

DA Form 2028

Recommended Changes to Publications and Blank Forms

DA Form 4137

Evidence/Property Custody Document

DA Form 4187

Personnel Action

DD Form 454

Warrant of Attachment

DD Form 455

Report of Proceedings to Vacate Suspension of a General Court-Martial Sentence or of Special Court-Martial Sentence Including a Bad-Conduct Discharge Under Article 72, UCMJ, and RCM 1108

DD Form 458

Charge Sheet

DD Form 490

Record of Trial

DD Form 2329

Record of Trial by Summary Court-Martial

DD Form 2330

Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review

DD Form 2331

Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General

DD Form 2698

Application for Transitional Compensation

DD Form 2701

Initial Information for Victims and Witnesses of Crime

DD Form 2702

Court-Martial Information for Victims and Witnesses of Crime

DD Form 2703

Post-Trial Information for Victims and Witnesses of Crime

DD Form 2704

Victim/Witness Certification and Election Concerning Prisoner Status

DD Form 2705

Victim/Witness Notification of Prisoner Status

DD Form 2706

Annual Report on Victim and Witness Assistance

DD Form 2707

Confinement Order

DD Form 2791

Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements

DD Form 2873

Military Protective Order (MPO)

Appendix B

Script for Conduct of Nonjudicial Punishment Proceedings

B–1. General

This guide is designed to ensure that the proceedings conducted pursuant to UCMJ, Art. 15 comply with all legal requirements. It contemplates a three-step process conducted in the presence of the Soldier, consisting of the following:

- (1) notification,
- (2) hearing (that may be omitted if the Soldier admits guilt), and
- (3) imposition of punishment (if the findings result in determination of guilt beyond a reasonable doubt).

This guide may be tailored for formal and summarized NJP proceedings. The script for the commander/implementing official is italicized.

B–2. Notification

If the notification of punishment is to be accomplished by other than the imposing commander, the procedures under this provision should be appropriately modified (see note B-2q(4) as well as the language in parentheses).

a. Statement of commanding officer or command representative.

(1) As your commander, I have disciplinary powers under Article 15 of the UCMJ. I have received a report that you violated the Uniform Code of Military Justice, and I am considering imposing nonjudicial punishment. (Your commander has disciplinary powers under Article 15 of the UCMJ and has asked me to notify you that he/she has received a report that you violated the Uniform Code of Military Justice, and is considering imposing nonjudicial punishment.) This is not a formal trial like a court-martial. As a record of these proceedings, I will use DA Form 2627. I now hand you this form. Read items 1 and 2. Item 1 states the offense(s) you are reported to have committed and item 2 lists the rights you have in these proceedings. Under the provisions of Article 31 of the UCMJ, you are not required to make any statement or provide any information concerning the alleged offense(s). If you do, it may be used against you in these proceedings or in a trial by court-martial. You have the right to consult with a lawyer as stated in item 2.

Note. Wait for the Soldier to read items 1 and 2 of DA Form 2627. Allow him or her to retain a copy of the form until the proceedings are finished and the commander has either imposed punishment or decided not to impose it.

(2) Do you understand item 1? Do you understand the offense(s) you are reported to have committed?

b. Response of Soldier. Yes/No. If the Soldier does not understand the offense(s), explain the offense(s) to him/her.

c. Statement of commanding officer or command representative. *Do you understand item 2? Do you have any questions about your rights in these proceedings?*

d. Response of Soldier. Yes/No. If the Soldier does not understand his or her rights, explain them in greater detail. If the Soldier asks a question you cannot answer, recess the proceedings. You probably can find the answer in one of the following sources: UCMJ, Art. 15; Part V, MCM, 2019; or contact your servicing judge advocate.

e. Statement of commanding officer or command representative. *There are some decisions you have to make—*

(1) You have to decide whether you want to demand trial by court-martial. If you demand a court-martial these proceedings will stop. I then will have to decide whether to initiate court-martial proceedings against you. If you were to be tried by court-martial for the offense(s) alleged against you, you could be tried by summary court-martial, special court-martial, or general court-martial. If you were to be tried by special or general court-martial you would be able to be represented by a military lawyer appointed at no expense to you or by a civilian lawyer of your choosing at no expense to the government.

(2) If you do not demand trial by court-martial, you must then decide whether you want to present witnesses or submit other evidence in defense, extenuation, and/or mitigation. Your decision not to demand trial by court-martial will not be considered as an admission that you committed the offense(s); you can still submit evidence on your behalf.

(a) Evidence in defense is facts showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in defense, you can still present evidence in extenuation or mitigation.

(b) Evidence in extenuation is circumstances surrounding the offense showing that the offense was not very serious.

(c) Evidence in mitigation is facts about you showing that you are a good Soldier and that you deserve light punishment.

(3) You can make a statement and request to have a spokesperson appear with you and speak on your behalf. I will interview any available witnesses and consider any evidence you think I should examine.

(4) Finally, you must decide whether you wish to request that the proceedings be open to the public. Do you understand the decisions you have to make?

f. Response of Soldier. Yes/No.

g. Statement of commanding officer or command representative.

(1) *If you do not demand trial by court-martial and after you have presented your evidence, if I am (the commander is) convinced that you committed the offense, I could then punish you. The maximum punishment I could impose on you would be (punishment). (See table 3–1 for maximum punishments.)*

(2) *You should compare this punishment with the punishment you could receive in a court-martial. (If the Soldier requests to be informed of the maximum court-martial sentence you may state the following: The maximum sentence you could receive in a court-martial is (sentence) for the offense(s).)*

Note. Part IV, MCM, 2019 lists for each punitive Article the punishments a court-martial may impose for violations of the various Articles of the UCMJ. The CO—

(a) *May inform the Soldier that referring the charges to a summary or special court-martial would reduce the maximum sentence. For example, a summary court may not impose more than 1 month of confinement at hard labor. A special court may not impose more than 12 months of confinement.*

(b) *Should not inform the Soldier of the particular punishment you (the commander) may consider imposing until all evidence has been considered.*

(3) *As item 2 points out, you have a right to talk to an attorney before you make your decisions. A military lawyer from the Trial Defense Service is available with whom you can talk to free of charge and is located at (location). The next brief they have is at (state day and time) and that is your assigned place of duty at that time. (Normally the unit provides an escort to confirm attendance and ensure that the correct paperwork accompanies the Soldier to the USATDS office. If the command intends to appoint an escort, inform the Soldier at this time for coordination purposes.)*

h. Response of Soldier. Yes/No. *If the Soldier desires to talk to an attorney, arrange for the Soldier to consult an attorney. The Soldier should be encouraged to consult the attorney promptly. Inform the Soldier that consultation with an attorney may be by telephone. The Soldier should be advised that he or she is to notify you if any difficulty is encountered in consulting an attorney. If the Soldier does not desire to talk to an attorney, this decision will be documented in a memorandum for record and attached to DA Form 2627.*

i. Statements of commanding officer.

(1) *You will have 48 hours to think about what you should do in this case. You may advise me of your decision at any time within the 48-hour period and waive the remainder of the time if you so desire. If you do not make a timely demand for trial or if you refuse to sign that part of DA Form 2627 indicating your decision on these matters, I (the commander) can continue with these Article 15 proceedings even without your consent. You are dismissed.*

Note. At this point, the proceedings should be recessed unless the Soldier affirmatively indicates that he or she has made a decision and does not need additional time or to consult with an attorney. In the event the Soldier does not make a decision within the specified time or refuses to complete or sign item 3 of DA Form 2627, see paragraph 3–18f(4). When the commander resumes the proceedings, begin at item 3, DA Form 2627.

j. Statements of commanding officer or command representative

(1) *Do you demand trial by court-martial?*

(2) *Response of Soldier.* Yes/No. (If the answer is yes, continue to B-2k(1).) If the answer is no, skip to B-2k(2).)

k. Statements of commanding officer.

(1) *Initial block a, sign and date item 3. Because you have demanded trial by court-martial, these proceedings will stop. I now must decide whether to initiate court-martial proceedings against you. I will notify you when I have reached a decision. You are dismissed.*

(2) *An open hearing means that the proceeding is open to the public. If the hearing is closed, only you, designated Soldiers of the chain of command, available witnesses, a spokesperson, if designated, and I will be present. Do you request an open hearing?*

l. Response of Soldier. Yes/No.

m. Statement of commanding officer. *Do you wish to be accompanied by a spokesperson?*

n. Response of Soldier. Yes/No.

o. Statement of commanding officer. *Initial block 3b(1) and (2) indicating your decision. Do you want to submit any evidence showing that you did not commit the offense(s), or explaining why you committed the offense(s), or any other information about yourself that you would like me to know? Do you wish to have any witnesses testify, including witnesses who would testify about your good past military record or character?*

p. Response of Soldier. Yes/No.

q. Statement of commanding officer. *Now initial block 3b(3) indicating your decision, and sign and date the form in the space provided under that item.*

Note. The CO will—

(1) Wait until the Soldier initials the blocks and signs and dates the form. If the answers to all the questions are “no,” you may proceed to making a finding of guilty/not guilty (beyond a reasonable doubt) for each charge and, if you find the Soldier guilty of one or more of the offenses, you may proceed to impose punishment.

(2) If the answer regarding witnesses and evidence is “yes” and the Soldier is prepared to present his or her evidence immediately, proceed as follows. Consider the evidence presented. If the evidence persuades you that you should not punish the Soldier, terminate the proceedings, inform the Soldier, and destroy all copies of DA Form 2627. If you are convinced that the Soldier committed the offense(s) **beyond a reasonable doubt** and deserves to be punished, proceed to impose punishment.

(3) If the Soldier needs additional time to gather his or her evidence, give the Soldier a reasonable period of time to gather the evidence. Tell the Soldier when the proceedings will resume and recess the proceedings.

(4) If someone else conducted the notification proceedings, the imposing commander should conduct the remainder of the proceedings. When you resume the proceedings, consider the Soldier’s evidence. Ensure that the Soldier has the opportunity he or she deserves to present any evidence. Ask the Soldier, “Do you have any further evidence to present?” If the evidence persuades you that you should not punish the Soldier, terminate the proceedings, inform the Soldier of your decision, and destroy all copies of DA Form 2627. If you are still convinced that the Soldier committed the offense(s) and deserves to be punished, impose punishment.

B–3. Imposition of punishment

Statement of commanding officer: *I have considered all the evidence. I am convinced, beyond a reasonable doubt, that you committed the offense(s). I have considered any evidence in extenuation and mitigation. I impose the following punishment: (announce punishment).*

Note. After you have imposed punishment, complete items 4, 5, and 6 of DA Form 2627 and sign the blank below item 6.

B–4. Appellate advice

Note. The CO will hand the DA Form 2627 to the Soldier.

a. Statement of commanding officer. *Read item 4, which lists the punishment I have just imposed on you. Now read item 6, which points out that you have a right to appeal this punishment to (title and organization of next superior authority). You can appeal if you believe that you should not have been punished at all, or that the punishment is too severe. Any appeal should be submitted within 5 calendar days. An appeal submitted after that time may be rejected. Even if you appeal, the punishment is effective today (unless the imposing commander sets another date). Once you submit your appeal, it must be acted upon by (title and organization of next superior) within 5 calendar days, excluding the day of submission. Otherwise, any punishment involving deprivation of liberty (correctional custody, restriction, or extra duty), at your request, may be interrupted pending the decision on the appeal. Do you understand your right to appeal?*

b. *Response of Soldier.* Yes/No.

c. Statement of commanding officer. *Do you desire to appeal?*

d. *Response of Soldier.* Yes/No.

Note. If the answer is yes, go to note at B-4e(3). If the answer is no, continue with next statement.

e. Statements of commanding officer.

(1) *If you do not want to appeal, initial block “a” in item 7 and sign the blank below item 7.*

Note. Now give the Soldier detailed orders as to how you want him or her to carry out the punishments.

(2) *You are dismissed.*

(3) *Do you want to submit any additional matters to be considered in an appeal?*

f. *Response of Soldier.* Yes/No. (If the answer is yes, go to note at B-2g(2). If the answer is no, continue with next statement.)

g. Statements of commanding officer.

(1) *Initial block “b” in item 7 and sign the blank below item 7. I will notify you when I learn what action has been taken on your appeal. You are dismissed.*

Note. If the answer is yes, continue with next statement.

(2) *If you intend to appeal and do not have the additional matters with you, item 7 will not be completed until after you have obtained all the additional material you wish to have considered on appeal. When you have obtained this material, return with it by (specify a date 5 calendar days from the date punishment is imposed) and complete item 7, by initialing*

the box and signing the blank below. After you complete item 7, I will send the DA Form 2627 and the additional matters you submit to (title and organization of next superior authority). During this period you will be permitted to consult with the Trial Defense Service if you so desire. Remember that the punishment will not be delayed (unless the imposing commander sets another date). You are dismissed.

Appendix C

Attorney-Client Guidelines

These guidelines have been approved by The Judge Advocate General (TJAG). Military personnel who act in courts-martial, including all Army attorneys, will apply these principles insofar as practicable. However, the guidelines do not purport to encompass all matters of concern to defense counsel, either trial or appellate. Attorneys must always comply with TJAG policy and the ethical guidance of their licensing jurisdictions. As problem areas are identified, TJAG will develop a common position and policies for the guidance of all concerned.

C–1. Problem areas in general

a. Applicability of the attorney-client relationship rules to military practice generally. Military attorneys and counsel are bound by the law and the highest recognized standards of professional conduct. The Army “Rules of Professional Conduct for Lawyers” (see AR 27–26), and the “Code of Judicial Conduct for Army Trial and Appellate Judges” are applicable to all attorneys who appear in military justice matters.

b. Attorney-client relationship in the military criminal practice.

(1) *Establishment.* When an officer holds himself or herself out as an attorney or is designated on orders as a detailed defense counsel, he or she is regarded for the purposes of these guidelines as an attorney and is expected to adhere to the same standards of professional conduct. Any authorized contact with a Soldier seeking his or her services as a defense counsel or as an attorney for that Soldier in his or her personal capacity results in at least a colorable attorney-client relationship, although the relationship may be for a limited time or purpose. When an attorney’s assigned or reasonably anticipated military duties indicate that the relationship is for a limited time or purpose, he or she must inform the prospective client of these limitations. There is no service obligation to appoint an attorney as detailed counsel merely because an attorney-client relationship has been established. However, an attorney will not later place himself or herself (or allow such placement) in the position of acting adversely to the client on the same matter.

(2) *Dissolution.* An attorney should not normally be assigned as counsel to a case unless he or she can be expected to remain for the trial or adverse administrative proceeding. This does not apply to court-martial appeals, as those might take several years. If it appears that he or she will not be available for the trial or adverse administrative proceeding, the client must be notified at the inception of the relationship or as soon as availability is known, whichever is sooner. Military requirements or orders to move the attorney (as proper personnel management requires) will be respected. An attorney will not, without his or her own agreement, be retained on duty beyond a service appointment merely to maintain an existing relationship with respect to a particular case or client. As no authority exists to hire a civilian attorney at government expense to represent a Soldier in a court-martial or adverse administrative proceeding, no former officer should expect to be retained by the government to represent a Soldier with whom that officer has developed an attorney-client relationship. A military defense counsel may not solicit clients for future civilian employment.

(3) *Content.* The attorney should represent his or her Soldier client to the fullest extent possible within the limits of the law and applicable regulations. No information obtained in an attorney-client relationship may be used against the interests of the client except in accordance with the Army “Rules of Professional Conduct for Lawyers” (see AR 27–26).

c. Restrictions in exhausting legal and administrative remedies. Military attorneys will normally confine their activities to proceedings provided for in the UCMJ and Army regulations (see para C–2c). They will be guided by local policies as to the extent that a military defense counsel is allowed to handle other matters, such as general legal assistance. The activities of USATDS counsel are governed by chapter 6 of this regulation.

d. State rules of professional conduct. When an ARNG defense counsel, in Title 32 status, serves in a state in which the attorney is not licensed, such counsel must review and comply with the state’s rules of professional conduct before entering into an attorney-client relationship. As an exception, an ARNG defense counsel is permitted to represent NG members in “covered legal defense actions” defined by National Guard Regulation (NGR) 27–12, Judge Advocate Cross Jurisdictional Practice of Law for Legal Defense Services, in all States, Territories, and the District of Columbia, regardless of the defense counsel’s state(s) of licensure.

C–2. Problems associated with trials

a. Steps to ensure that conflicts of attorney’s interest do not arise because of multiple clients.

(1) Barring unusual circumstances, a military attorney will not undertake or be detailed to represent more than one client where there are multiple accused. Prior to the time that defense counsel are detailed, the Chief, USATDS, or his or her delegate (see para 6–9), will ensure that co-accused are initially contacted by separate defense counsel. Once detailed to represent one of two or more co-accused, a military attorney will not represent another co-accused in the absence of a request for individual military counsel processed under UCMJ, Art. 38(b); RCM 506; and this regulation.

(2) Requests for individual military counsel will not be approved unless—

(a) Each co-accused to be represented by the same attorney has signed a statement reflecting informed consent to multiple representation.

(b) It is clearly shown that a conflict of interest is not likely to develop.

(3) In no instance will a military attorney knowingly establish an attorney-client relationship with two or more co-accused prior to gaining approval from the appropriate authority.

(4) If a civilian or military attorney is representing two or more co-accused at the commencement of trial, the defense counsel concerned will bring the matter to the attention of the military judge. The military judge will then determine the issue of adequate representation with respect to each co-accused who is before the court as an accused at that time. For additional guidance see The Defense Function, section 3.5, and the Function of the Trial Judge, section 3.4(b), Code of Judicial Conduct for Army Trial and Appellate Judges; and Rule 1.7, Army “Rules of Professional Conduct for Lawyers” (AR 27–26).

(5) If additional defense counsel will be required by a command due to the prohibition on multiple client representation, the SJA concerned or his or her representative will contact the SDC supporting his or her jurisdiction who will act expeditiously on such requests according to USATDS procedures. Funding for USATDS counsel will be provided in accordance with chapter 6 of this regulation.

b. Relationship between military and civilian defense counsel.

(1) Military counsel will not recommend any specific civilian counsel. This rule does not prohibit military attorneys from referring clients to public interest or *pro bono* resources. The best method of providing options for private representation is to show the accused a list of local attorneys. This list should be compiled by personnel in the SJA office and representatives of the local bar association. This will ensure that local attorneys who have no interest in such referrals will not appear on the list. The accused must be told that—

(a) This list is not exclusive.

(b) He or she is not limited to the services of a local attorney.

(c) The listing of an attorney is not necessarily an endorsement of the attorney’s capability or character. The accused should be reminded that the responsibility for the choice is solely his or hers.

(2) The civilian counsel is expected to treat an associated military attorney as a professional equal. Military and civilian counsel are expected to treat each other with the respect and courtesy due their professional status.

(3) Where the conflict between military and civilian counsel concerns defense tactics, the military counsel must defer to the civilian counsel if the accused has made the civilian counsel lead counsel. If the civilian counsel is not the lead counsel, the client should be consulted as to any conflicts between counsel. If the military counsel determines that the civilian counsel is conducting himself or herself contrary to the Army “Rules of Professional Conduct for Lawyers” (see AR 27–26) or violating the law, the military counsel should first discuss the problem with the civilian counsel. If the matter cannot be resolved, the military counsel, after consultation with the defense supervisory chain of command, has the duty to inform the accused of the civilian counsel’s actions. The military counsel should inform the civilian counsel of his or her intention to discuss the matter with the accused. If the accused approves of the civilian counsel’s conduct, the military counsel must inform the accused that he or she will inform the military judge or, if before referral, the convening authority, if either action is appropriate and allowed under the rules of professional responsibility.

c. Collateral civil court proceedings.

(1) A military defense counsel’s ability to act in such matters is regulated by Army policy in AR 27–40 (Litigation).

(2) The military defense counsel is not required to prepare a *habeas corpus* petition pursuant to 28 USC 2242 and is prohibited from doing so unless the provisions of AR 27–40 are followed. However, nothing prohibits the military counsel from explaining how to prepare a *pro se* petition to the accused. This would entail the accused’s writing to the federal district court judge requesting a writ of *habeas corpus* or other relief. Also, nothing prohibits the military defense counsel’s explaining to the accused the right to retain civilian counsel in the matter. Further, this section does not prohibit military counsel from filing a petition for an extraordinary writ with USACCA or USCAAF if such a petition is otherwise allowed and appropriate.

(3) Extent of participation when civilian counsel has initiated such proceedings. Military counsel would be acting contrary to the spirit of AR 27–40 if he or she acted through civilian counsel to perform a service for a client that military counsel could not perform on his or her own (for example, preparation of pleadings in *habeas corpus* proceedings) and should not do so.

d. Scope of trial defense counsel’s responsibility after appellate defense counsel has been appointed. After appellate defense counsel has been appointed, trial defense counsel should assist the appellate defense counsel where such assistance does not interfere with his or her regularly assigned duties or violate attorney-client confidentiality. Trial defense counsel have an obligation to provide all client files upon receipt of a limited waiver of attorney-client confidentiality (a *Dorman* waiver) by appellate defense counsel. Trial defense counsel have no right or obligation to assist in preparation of briefs for anyone other than appellate defense counsel after appellate defense counsel has been appointed.

e. Ability of trial defense counsel to provide otherwise privileged information when his or her conduct at trial has been raised on appeal. When a trial defense counsel's conduct at trial has been raised on appeal, any privilege is waived to the extent necessary to address the issues raised when the accused has argued he or she was inadequately represented at trial. In protecting his or her professional integrity against such a challenge, trial defense counsel may reveal, only to the extent necessary, otherwise privileged matters. Trial defense counsel should consult with DCAP prior to submitting such an affidavit.

C-3. Problems associated with appeals

a. Appellate defense attorney-client relationship.

(1) *Creation.* The attorney-client relationship exists between the accused and counsel designated to represent the accused pursuant to UCMJ, Art. 70. Generally, TJAG initially directs the Chief, DAD, to represent an accused. The Chief, DAD, as the chief appellate defense counsel, designates other appellate counsel assigned to the DAD to assist as appellate defense counsel. The duty of representation is established at the time of the appointment for the purpose of the appointment and the relationship remains in effect until—

(a) withdrawal of representation and appropriate notice to USACCA; or

(b) completion of the direct appellate processes under the UCMJ.

(2) *Termination.* An accused has no right to select specific military appellate defense counsel or to initiate termination of the attorney-client relationship. The scope of representation is limited to the court-martial appeal and when direct appeal is complete, the relationship terminates. The designation may be terminated earlier for administrative purposes.

(3) *Relationship generally.* Face-to-face interviews are normally not necessary in an appellate defense attorney-client relationship. Telephonic facilities are available at no cost to clients in military confinement for communication between the appellant and his or her counsel. If the chief appellate defense counsel determines that a face-to-face interview is essential, necessary travel funds will be provided, if available. General legal assistance is available at any Army legal assistance office.

b. Extent of attorney's duties.

(1) *Collateral attacks in civilian courts.* The UCMJ, Art. 70 mandates that appellate counsel will represent the accused before the military appellate courts and will "perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs." The direct review of a court-martial is set out in the UCMJ, and military representation of the accused does not include collateral attacks in the federal courts except as permitted pursuant to AR 27-40.

(2) *Administrative proceedings in confinement facilities.* Military attorneys assigned to the installations containing confinement facilities have the responsibility to provide counsel to the confined accused when he or she is entitled to such counsel.

c. Conflict between appellate attorneys. Divergent views between military appellate defense counsel and retained civilian counsel must be resolved in the same manner as at trial, discussed in paragraph C-2b(3). Military appellate defense counsel must defer to the decisions of the Chief, DAD, on matters of representation. If irreconcilable differences appear, the assisting military appellate defense counsel should ask to be relieved from the case. The Chief, DAD has the authority to grant such a request.

Appendix D

Victim/Witness Checklist

D-1. Victim checklist

- a.* Coordinate with the installation/community casualty working group and the CID survivor point of contact in death cases (see para 17-2*c*).
- b.* Ensure that victims are provided the name, location, and telephone number of the VWL, and when applicable, the SVC (see paras 17-8*b* and 17-10*d*(4)).
- c.* Inform victims of the right to receive the services described in chapter 17 (secs III and V) and provide a Victim and Witness Information Packet (see para 17-9*b*).
- d.* Inform victims of their rights as provided in para 17-10.
- e.* Inform victims of the availability of emergency medical and social care and, when necessary, provide appropriate assistance in securing such care (see para 17-12*a*).
- f.* Inform victims of dependent abuse offenses of the Transitional Compensation Program. VWLs/SVLs may assist eligible victims with the application process or refer to Army Community Service victim advocates (see para 17-24, and AR 608-1).
- g.* Help victims obtain financial, legal, and other social service support by informing victims of the military and/or civilian programs that are available to provide counseling, treatment, and other support, to include available compensation through federal, state, and local agencies (see para 17-12*b*).
- h.* Refer dependents of retirement-eligible Soldiers who are victims of abuse by the retirement-eligible Soldier to Legal Assistance for advice on the Uniformed Services Former Spouses Protection Act (see para 17-25).
- i.* Inform victims that families of Soldiers may be eligible for transportation and shipment of household goods regardless of the character of the Soldier's discharge (para 17-12*b*(8)).
- j.* Inform victims of the various means available to seek restitution (see UCMJ, Art. 139; other remedies, such as claims, private lawsuits; or any state compensation programs) and of appropriate and authorized points of contact (see para 17-16*b*).
- k.* Inform a victim concerning the stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case (see para 17-13).
- l.* Inform victims of the right to receive notice of significant events in the case (see para 17-14*a*).
- m.* Advise victims that they may ordinarily consult with a government representative concerning the following decisions in accordance with paragraph 17-15:
 - (1) Decisions not to prefer charges;
 - (2) Decisions concerning pretrial restraint;
 - (3) Pretrial dismissal of charges; and
 - (4) Negotiations of plea agreements and their terms.
- n.* Advise victims that all non-contraband property that has been seized or acquired as evidence will be safeguarded and returned as expeditiously as possible. Inform victims of applicable procedures for requesting return of property (see para 17-16*a*).
- o.* Inform victims that their interests are protected by administrative and criminal sanctions; that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities; and that their complaints will be promptly investigated and appropriate action will be taken (see para 17-19).
- p.* Inform victims that, within the guidelines of RCM 701(e) and UCMJ, Art. 6b(f), and upon request, the VWL or when applicable, the victim's SVC may act as an intermediary between the victim and representatives of the government and the defense for the purpose of arranging witness interviews in preparation for trial (see para 17-19*d*).
- q.* Trial counsel will use best efforts to apprise a victim's chain of command of the necessity for the victim's testimony, and the inevitable interference with and absence from duty (see para 17-18).
- r.* Inform victims that, upon request, reasonable steps will be taken to inform an employer should the victim's innocent involvement in a crime or in the subsequent military justice process cause or require absence from work (see para 17-20).
- s.* Inform victims that, upon request, reasonable steps will be taken to explain to a creditor when the victim, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, is subjected to serious financial hardship (see para 17-20).
- t.* Inform victims of the availability of a separate waiting area (see para 17-19*c*).
- u.* Inform victims of, and provide appropriate assistance to obtain, available services such as transportation, parking, childcare, lodging, and court-martial translators/interpreters (see para 17-23).

v. Inform victims that witnesses requested or ordered to appear at UCMJ, Art. 32 preliminary hearings or courts-martial may be entitled to reimbursement for their expenses under UCMJ, Arts. 46 and 47; RCM 405(g); DFAS-IN 37-1; and chapter 5 of this regulation (see paras 5-25 and 17-21).

w. Assist victims in obtaining timely payment of witness fees and related costs and coordinate with local finance officers for establishing procedures for payment after normal duty hours if necessary (para 17-21).

x. For the trial counsel or designated government representative:

(1) No later than after trial if the offender is sentenced to confinement, advise victims of the offender's place of confinement and the offender's projected minimum release date and determine whether the victims desire to be notified of the offender's confinement or parole status changes or consideration for parole or clemency by using DD Form 2703 (see para 17-14b).

(2) In all cases, record the victims' elections regarding notification of changes in confinement status using DD Form 2704. Give one copy to each victim; forward one copy of the form to the commander of the gaining confinement facility; forward one copy of the form to the Army's central repository, Army Corrections Command.

(3) Do not attach DD Form 2704 to any portion of a record to which the offender has access (see para 17-14b).

y. Process the victims' requests for investigative reports or other documents under applicable Freedom of Information Act or Privacy Act procedures. Eligible victims will receive a copy of the Statement of Trial Results, convening authority's action, judgment of the court, and a copy of the certified record of trial (see para 17-26).

z. Ensure that each victim in an incident that is prosecuted at a SPCM, GCM, or investigated pursuant to a UCMJ, Art. 32 preliminary hearing in those cases not disposed of by SPCM or GCM, receives a DA Form 7568, Army Victim/Witness Liaison Program Evaluation form. These forms may also be provided to other victims (see para 17-29).

D-2. Witness checklist

a. Coordinate with installation/community casualty working group and the CID survivor point of contact in death cases (see para 17-2c).

b. Ensure that witnesses are provided the name, location, and telephone number of the VWL (see para 17-8b).

c. Inform witnesses of the right to request the services described in this chapter (secs IV and V) and provide a Victim/Witness Information Packet (DD Forms 2701 and 2702) when necessary or requested (see para 17-9b).

d. Inform witnesses concerning the stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case (see para 17-17b).

e. Inform witnesses regarding notification of the following significant events in the case (see para 17-17):

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The preferral or dismissal of charges or specifications.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at a preliminary hearing under the provisions of UCMJ, Art. 32.

(5) The scheduling (date, time, and place) of each court proceeding that the witness is either required or entitled to attend, and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The result of trial.

(9) If the sentence includes confinement, the probable parole date.

(10) General information regarding the corrections process, including information about forms of release from custody, and the offender's eligibility for each.

(11) In appropriate cases, inform the witness of the right to request notice of the offender's confinement or parole status.

(12) Inform the witness that the witness' interests are protected by criminal sanctions, that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities, and that complaints will be promptly investigated and appropriate action will be taken (see para 17-19).

(13) Inform the witness that the VWL may act as an intermediary between a witness and representatives of the government and the defense for the purpose of arranging witness interviews in preparation for trial, within the guidelines of RCM 701(e) and upon request (see para 17-19d).

(14) Trial counsel will apprise a witness' chain of command of the necessity for the witness' testimony, and the inevitable interference with and absence from duty (see para 17-18).

(15) Inform witnesses that, upon request, reasonable steps will be taken to inform an employer should the witness' innocent involvement in a crime or in the subsequent military justice process cause or require absence from work (see para 17-20).

(16) Inform the witness that, upon request, reasonable steps will be taken to explain to a creditor when the witness, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, is subjected to serious financial hardship (see para 17–20).

(17) Inform the witness of the availability of a separate waiting area (see para 17–19c).

(18) Inform the witness of, and provide appropriate assistance to obtain, available services such as transportation, parking, childcare, lodging, and court-martial translators/interpreters (see para 17–23).

(19) Inform the witness that witnesses requested or ordered to appear at UCMJ, Art. 32 preliminary hearings or courts-martial may be entitled to reimbursement for their expenses under UCMJ, Arts. 46 and 47; RCM 405(g); DFAS–IN 37–1; and chapter 5 of this regulation (see paras 5-25 and 17–21).

(20) Assist the witness in obtaining timely payment of witnesses fees and related costs and coordinate with local finance officers for establishing procedures for payment after normal duty hours if necessary (see para 17–21).

f. For the trial counsel or designated government representative:

(1) No later than after trial if the offender is sentenced to confinement, advise the witness of the offender’s place of confinement and the offender’s projected minimum release date.

(2) In all cases, advise the witness regarding the right to be notified of the offender’s confinement or parole status changes or consideration for parole or clemency by using DD Form 2703 (see para 17–17).

g. For the VWL or designated government representative.

(1) In all cases, complete DD Form 2704 regarding the witness’ election regarding notification of changes in confinement status and give one copy to the witness; forward one copy of the form to the commander of the gaining confinement facility; and forward one copy of the form to the Army’s central repository, Army Corrections Command (see para 17–17).

(2) Do not attach DD Form 2704 to any portion of a record to which the offender has access (see para 17–17b).

h. Process a witness’ request for investigative reports or other documents under applicable Freedom of Information or Privacy Act procedures (see para 17–26).

i. Ensure that each witness in an incident that is prosecuted at a GCM, SPCM or investigated pursuant to a UCMJ, Art. 32 preliminary hearing, in those cases not disposed of by SPCM or GCM, receives a DA Form 7568, Army Victim/Witness Liaison Program Evaluation form. These forms may also be provided to other witnesses (see para 17–29).

Appendix E

Military Justice Area Support Responsibilities

E–1. Coordinating installations

Commanders of coordinating installations exercising GCM jurisdiction will exercise those aspects of UCMJ authority, withheld as a matter of policy from RC commanders pursuant to chapter 20 of this regulation, over units and activities within the following geographical areas of responsibility. Commanders of coordinating installations exercising GCM jurisdiction will serve as GCMCAs for Community Based Warrior Transition Units based on geographical areas of responsibility.

E–2. Geographical areas of responsibility

See Table E–1 for support areas.

E–3. Outside continental United States support relationships

U.S. Army Reserve units OCONUS should continue existing support relationships already established within their geographic areas, such as that established by the 8th Theater Support Command for all U.S. Army Reserve units located in Hawaii, and that established by U.S. Army in Europe Regulation 27–10 for the 7th Army Reserve Command. Changes to the current GCMCA support arrangement in CONUS or OCONUS reflected in Table E–1, intended to last for more than 18 months, will be followed by email notification of such changes to OTJAG–CLD for information purposes. Also, OTJAG–CLD will be provided with an electronic courtesy copy of the U.S. Army in Europe Regulation 27–10 within 90 days following each updated publication.

Table E-1
Installations and areas of support responsibility

Aberdeen Proving Ground (CECOM), MD

New Jersey – All

Fort Belvoir, VA

a. Virginia counties

(1) Culpeper	(6) Madison	(11) Rappahannock	(16) Stafford
(2) Fauquier	(7) Northumberland	(12) Richmond	(17) Warren
(3) Greene	(8) Orange	(13) Rockingham	
(4) King George	(9) Page	(14) Shenandoah	
(5) Lancaster	(10) Prince William	(15) Spotsylvania	

b. West Virginia counties

(1) Grant	(2) Hardy	(3) Pendleton
-----------	-----------	---------------

c. Military District of Washington (MDW): During mobilization planning and execution, Fort Belvoir is responsible for unit. Reserve component support located in Arlington and Fairfax counties.

Fort Benning, GA

a. Alabama counties

(1) Bullock	(4) Montgomery	(7) Lee
(2) Chambers	(5) Coosa	(8) Russell
(3) Macon	(6) Elmore	(9) Tallapoosa

b. Florida counties

(1) Bay	(7) Gadsden	(13) Jefferson	(19) Santa Rosa
(2) Calhoun	(8) Gilchrist	(14) Lafayette	(20) Suwanee
(3) Columbia	(9) Gulf	(15) Leon	(21) Walton
(4) Dixie	(10) Hamilton	(16) Liberty	(22) Wakulla
(5) Escambia	(11) Holmes	(17) Madison	(23) Washington
(6) Franklin	(12) Jackson	(18) Okaloosa	

c. Georgia – All counties except those listed under Fort Gordon and Fort Stewart

d. Puerto Rico – All

e. Virgin Islands – All

Fort Bliss, TX

a. New Mexico – All

b. Texas counties

(1) Brewster	(4) Hudspeth	(7) Pecos	(10) Terrell
(2) Culberson	(5) Jeff Davis	(8) Presidio	(11) Ward
(3) El Paso	(6) Loving	(9) Reeves	(12) Winkler

Fort Bragg, NC

North Carolina – All

Table E-1. Installations and areas of support responsibility

Table E-1 Continued

Fort Campbell, KY

- a. Kentucky counties
(1) Edmonson (2) Grayson (3) Warren (4) All counties west of Allen
- b. Tennessee - All

Fort Carson, CO

- a. Colorado – All c. Montana – All e. Wyoming – All
b. Idaho – All d. Utah – All

Fort Drum, NY

- a. New York – All counties except those under USMA e. New Hampshire – All
b. Connecticut – All f. Rhode Island – All
c. Maine – All g. Vermont – All
d. Massachusetts – All

Fort George G. Meade, MD

- a. Maryland counties – All except those listed under MDW
b. Delaware counties – All
c. Pennsylvania counties
d. Virginia counties
(1) Accomack (3) Frederick (5) Northampton
(2) Clarke (4) Loudoun
e. West Virginia – All counties except Grant, Hardy, and Pendleton

Fort Gordon, GA

- a. South Carolina counties
(1) Abbeville (5) Barnwell (9) Hampton (13) Pickens
(2) Aiken (6) Edgefield (10) Laurens (14) Saluda
(3) Allendale (7) Greenville (11) McCormick (15) Spartanburg
(4) Anderson (8) Greenwood (12) Oconee
- b. Georgia counties
(1) Baldwin (9) Glascock (17) Laurens (25) Richmond
(2) Banks (10) Green (18) Lincoln (26) Screven
(3) Burke (11) Hancock (19) Madison (27) Stephens
(4) Clarke (12) Hart (20) McDuffie (28) Taliaferro
(5) Columbia (13) Jackson (21) Morgan (29) Warren
(6) Elbert (14) Jefferson (22) Oconee (30) Washington
(7) Emanuel (15) Jenkins (23) Oglethorpe (31) Wilkes
(8) Franklin (16) Johnson (24) Putnam (32) Wilkinson

Fort Hood, TX

- Texas – All counties except those listed under Fort Bliss, Fort Sam Houston, and Fort Polk

Table E-1. Installations and areas of support responsibility—continued

Table E-1 Continued

Fort Huachuca, AZ

Arizona – All

Fort Irwin, CA

a. California counties

- | | | | |
|--------------|-----------------|---------------------|--------------|
| (1) Fresno | (6) Los Angeles | (11) Riverside | (16) Tulare |
| (2) Imperial | (7) Madera | (12) San Benito | (17) Ventura |
| (3) Inyo | (8) Mariposa | (13) San Bernardino | |
| (4) Kern | (9) Mono | (14) San Diego | |
| (5) Kings | (10) Orange | (15) Santa Barbara | |

b. Nevada counties

- | | | |
|-------------|---------------|---------|
| (1) Clark | (3) Esmeralda | (5) Nye |
| (2) Lincoln | (4) Lincoln | |

Fort Jackson, SC

South Carolina – All counties except those listed under Fort Gordon and Fort Stewart

Fort Knox, KY

a. Illinois counties

- | | | | |
|----------------|----------------|---------------|----------------|
| (1) Champaign | (8) Douglas | (15) Jasper | (22) Moultrie |
| (2) Christian | (9) Edgar | (16) Laurence | (23) Piatt |
| (3) Clark | (10) Edwards | (17) Logan | (24) Richland |
| (4) Coles | (11) Effingham | (18) Macon | (25) Shelby |
| (5) Crawford | (12) Ford | (19) Mason | (26) Tazewell |
| (6) Cumberland | (13) Fulton | (20) McLean | (27) Vermilion |
| (7) DeWitt | (14) Iroquois | (21) Menard | (28) Wabas |

b. Indiana – All counties except for those listed under Fort Leavenworth

c. Kentucky – All counties except those listed under Fort Campbell

d. Ohio – All

Fort Leavenworth, KS

a. Iowa – All

b. Michigan – All

c. Minnesota – All

d. Wisconsin – All

e. Illinois counties

- | | | | |
|---------------|-----------------|-----------------|------------------|
| (1) Boone | (9) Henry | (17) Lee | (25) Rock Island |
| (2) Bureau | (10) Jo Daviess | (18) Livingston | (26) Stark |
| (3) Carroll | (11) Kane | (19) Marshall | (27) Stephenson |
| (4) Cook | (12) Kankakee | (20) McHenry | (28) Warren |
| (5) DeKalb | (13) Kendall | (21) Mercer | (29) Whiteside |
| (6) DuPage | (14) Knox | (22) Ogle | (30) Will |
| (7) Grundy | (15) Lake | (23) Peoria | (31) Winnebago |
| (8) Henderson | (16) La Salle | (24) Putnam | (32) Woodford |

f. Indiana counties

- | | | |
|-------------|-------------|----------------|
| (1) Elkhart | (3) Laporte | (5) St. Joseph |
| (2) Lake | (4) Porter | |

Table E-1. Installations and areas of support responsibility—continued

Table E-1 Continued

Fort Lee, VA

Virginia – All counties except those listed under Fort Meade, Fort Belvoir, and MDW

Fort Leonard Wood, MO

- a. Illinois – All counties except those listed under Fort Knox and Fort Leavenworth
 - b. Missouri – All
-

Fort Polk, LA

- a. Louisiana - All
 - b. Texas counties
 - (1) Chambers
 - (2) Jefferson
 - (3) Orange (Beaumont area)
-

Fort Riley, KS

- a. Kansas - All
 - b. Nebraska - All
 - c. North Dakota – All
 - d. South Dakota - All
-

Fort Rucker, AL

- a. Alabama counties – All counties except those listed under Fort Benning
 - b. Mississippi – All
-

Fort Sill, OK

- a. Arkansas - All
 - b. Oklahoma – All
-

Fort Stewart, GA

- a. Florida – All counties except those listed under Fort Benning
- b. Georgia
 - (1) Appling
 - (2) Atkinson
 - (3) Bacon
 - (4) Brantley
 - (5) Bryan
 - (6) Bullock
 - (7) Camden
 - (8) Candler
 - (9) Charlton
 - (10) Chatham
 - (11) Coffee
 - (12) Effingham
 - (13) Evans
 - (14) Glynn
 - (15) Jeff Davis
 - (16) Liberty
 - (17) Long
 - (18) McIntosh
 - (19) Montgomery
 - (20) Pierce
 - (21) Tattnall
 - (22) Telfair
 - (23) Toombs
 - (24) Treutlen
 - (25) Ware
 - (26) Wayne
 - (27) Wheeler
- c. South Carolina
 - (1) Beaufort
 - (2) Jasper

Table E-1. Installations and areas of support responsibility—continued

Appendix F

Guidance on DNA, and jurisdiction during war and contingency operations

F–1. DNA samples

The DOD policy for collecting DNA samples from military prisoners has been updated from the previous policy issued December 22, 2015. The new policy is set forth in a memorandum (see DODI 5505.14).

F–2. Jurisdiction over DoD civilians and other persons during war and contingency operations

Guidance to commanders on the exercise of their UCMJ authority during contingency operations regarding nonmilitary personnel, is set forth in a Secretary of Defense Memorandum (SECDEF Memo) dated March 10, 2008, Subject: UCMJ Jurisdiction over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations.

Appendix G
Internal Control Evaluation

RESERVED

Appendix H

Points of Contact

ARBA

Army Review Boards Agency, 251 18th Street S., Suite 385, 4th floor, Arlington, VA 22202

Army Corrections Command

Army Corrections Command (DAPM-ACC), Victim/Witness Central Repository Manager, 150 Army Pentagon, Washington, DC 20310-0150

ARNG TDS

U.S. Army National Guard Trial Defense Service, 111 South George Mason Drive, Arlington, VA 22204

CID

HQ, U.S. Army Criminal Investigations Command (CIOP-ZC), 27130 Telegraph Road, Quantico, VA 22134

Court Reporter Training

The Judge Advocate General's Legal Center and School, Chief, Court Reporter Training Department, 600 Massie Rd., Charlottesville, VA 22903

Crime Records Center

U.S. Army Crime Records Center, 27130 Telegraph Rd., Quantico, VA 22134

DAD

Defense Appellate Division (JALS-DA), 9275 Gunston Rd., Suite 3200, Fort Belvoir, VA 22060

DOJ Domestic Security Section

Department of Justice, Domestic Security Section, Criminal Division, 950 Pennsylvania Ave., Washington, DC 20530

DOJ Witness Immunity Unit

Department of Justice, Witness Immunity Unit, 1301 New York Ave., 10th floor, Washington, DC 20530

GAD

Government Appellate Division (JALS-GA), 9275 Gunston Rd., Suite 2000, Fort Belvoir, VA 22060

HRC

U.S. Army Human Resources Command, 1600 Spearhead Ave., Dept. 420 (AHRC-PD-R), Fort Knox, KY 40122-5420
Email: usarmy.knox.hrc.mbx.perms-records@mail.mil

OTJAG-AL

Office of The Judge Advocate General, Administrative Law Division (DAJA-AL), HQDA, 2200 Army Pentagon, Washington, DC 20310-2200

OTJAG-CLD

Office of the Judge Advocate General, Criminal Law Division (DAJA-CL), 2200 Army Pentagon, Room 3D548, Washington, DC, 20310-2200

OTJAG-NSLD

Office of the Judge Advocate General, National Security Law Division (DAJA-NSL), 2200 Army Pentagon, Room 3B548, Washington, DC, 20310-2200

OTJAG-PPTO

Office of the Judge Advocate General, Personnel, Plans, and Training Office (DAJA-PT), 2200 Army Pentagon, Room 2B517, Washington, DC 20310-2200

USACCA

U.S. Army Court of Criminal Appeals, Office of the Clerk of Court (JALS-CCZ), 9275 Gunston Rd., Fort Belvoir, VA 22060

USACIL

U.S. Army Criminal Investigation Laboratory, 4930 North 31st Street, Forest Park, GA 30297

USALSA

U.S. Army Legal Services Agency, 9275 Gunston Rd., Fort Belvoir, VA 22060

USARC

U.S. Army Reserve Command, Office of the Staff Judge Advocate, Chief Military Law Division, 4710 Knox St. Fort Bragg, NC 28310

USDB

U.S. Disciplinary Barracks, Office of the Command Judge Advocate, 1301 North Warehouse Rd., Fort Leavenworth, KS 66027

U.S. Marshals

U.S. Marshal Service, Military Liaison, CGN, West Tower, Suite 200, Washington, DC 20310

Appendix I

Distribution of Court-Martial Orders and Documents

I-1. General

This appendix is a summary of the distribution requirements for official copies of court-martial orders and documents, and amending orders, if any. These distribution requirements are in addition to any required by the UCMJ or RCMs, and are not intended to duplicate those requirements. Where a street address is shown for distribution, a valid, official email address for the addressee may be substituted.

I-2. Court-martial convening orders

Court-martial convening orders (CMCOs) will be distributed as follows:

- a.* One copy to each individual named in the order.
- b.* One copy to the officer exercising GCM jurisdiction (inferior courts only).
- c.* One copy each for original and copies of the record of trial.

I-3. Statements of trial results

The statement of trial results (STR) will be distributed as follows, if appropriate:

- a.* One copy to the servicing DMPO in any case involving a reduction in rank, a forfeiture of pay, or a fine.
- b.* One copy to escorts for post-trial prisoners transferred to the USDB or other military corrections system facilities for delivery to the USDB with the prisoner.
- c.* One copy to the military law enforcement agency that investigated the case, either the servicing Provost Marshal's Office for MPI investigations; or HQ, CID, CIOP-ZC, 27130 Telegraph Road, Quantico, VA 22134 for CID investigations.

I-4. Entries of judgment

The entry of judgment (EOJ) will be distributed as follows, if appropriate:

- a.* One copy each to the immediate and next higher commander of the individual tried.
- b.* Two copies for each individual tried to the GCM authority (the SJA).
- c.* One copy each to the commanding officer of the installation and the commander of the corrections facility where the individual tried is confined.
- d.* One copy to the MPD or PSC maintaining the personnel records of the individual tried, addressed to the Records Section, in compliance with AR 600-8-104. The MPD or PSC will ensure the order is transmitted to the finance and accounting office maintaining the pay account of the individual tried for filing and for use as a substantiating document, according to AR 37-104-4.
- e.* One copy for each RA or active guard reserve (AGR) officer tried, to the U.S. Army Human Resources Command (PDR-R), 1600 Spearhead Division Ave., Dept. 420, Fort Knox, KY 40122-5420.
- f.* In all SPCM cases, three copies forwarded to the Clerk of Court, U.S. Army Court of Criminal Appeals, JALS-CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060-5546.
- g.* One copy to the local Department of Emergency Services or Provost Marshal's Office, if applicable.
- h.* One copy to the local investigating CID office.
- i.* One copy to the HQ, CID, CIOP-ZC, 27130 Telegraph Road, Quantico, VA 22134.
- j.* One copy to the Army Corrections Command (DAPM-ACC), 150 Army Pentagon, Washington, DC 20310-0150.
- k.* One copy, for each member of the Army Reserve tried, to Commander, USARC, Office of the Staff Judge Advocate, Chief Military Law Division, 4710 Knox St. Fort Bragg, NC 28307.
- l.* One copy to U.S. Army Criminal Investigation Laboratory, 4930 North 31st Street, Forest Park, GA 30297-5205.
- m.* One copy to the finance office of the installation in which the Soldier is confined.
- n.* One copy to the Special Actions Branch of the Fort Sill Defense Military Payment Office, Fort Sill DMPO, 4700 Mow Way Rd., Suite 190, Fort Sill, OK 73503 (only if Soldier is confined for 121 days or more).
- o.* In all cases without a finding of guilty, one copy to U.S. Army Court of Criminal Appeals, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060-5546.

Appendix J

Preparing and Arranging Certified Records of Trial

Pursuant to RCMs 1112, 1116, and this regulation, a court reporter is responsible for certifying record of trial, prior to transmittal to the U.S. Army Court of Criminal Appeals (USACCA). Final certification will only be completed after the court reporter ensures that the record of trial and allied papers are arranged and bound in the sequence indicated below:

a. Pages 1 (cover page) and 2 (Chronology Sheet) of DD Form 490. MJO will calculate the dates on Chronology Sheet for you. (See para 12–7, Interim AR 27–10 for guidance on companion and other cases).

b. Substantially verbatim recording of court-martial proceedings. Segregate open and closed sessions of the court-martial in accordance with RCM 1113 and the following guidance (see also para z, this appendix):

(1) Ensure that each closed session of the court-martial is recorded on a separate DVD marked CLOSED SESSION, placed in its own envelope marked CLOSED SESSION, and sealed.

(2) Label all DVD(s) and envelopes with the information on page 1.

(3) Mark all DVDs and envelopes with “1 of X,” as necessary (for example, the second DVD of six DVDs and its envelope should be marked, 2 of 6). All DVDs of open sessions may be in one envelope.

(4) Mark all DVDs with their beginning and ending timestamps. The timestamps for closed sessions should match those shown on the Index.

c. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate review under RCM 1115, if applicable.

d. All transfer orders, confinement orders, and excess leave orders or a copy of DA Form 31.

e. Briefs of counsel submitted after trial, if any.

f. Entry of Judgment and all attached documentation, including Statement of Trial Results, in 5 copies.

g. Signed advice of staff judge advocate or legal officer (when required), together with all clemency papers, including clemency recommendations by court members.

h. Any requests for copies of the court-martial record pursuant to RCM 1106 or 1106A (attach written requests, and any certificates of service).

i. Matters submitted by the accused and/or victim under RCM 1106 or 1106A, or any written waiver of the right to submit such matters.

j. Any deferment request and the action on it (including any request to waive automatic forfeitures under Article 58b).

k. Conditions of suspension and proof of service on probationer under RCM 1107, if any.

l. Copy of convening order and any amending order (unless included in the transcript).

m. DD Form 458 (unless included at the point of arraignment in the transcript).

n. Congressional inquiries and replies, if any.

o. DD Form 457, if a preliminary hearing was conducted. Include any other allied papers that accompanied the charges when referred for trial (including any matters submitted under RCM 405(k)), unless included elsewhere in the record of trial. (See para z, this appendix, regarding handling of closed sessions and sealed matters).

p. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

q. Requests by counsel and action of the convening authority taken thereon (for example, requests concerning delay, witnesses, and depositions).

r. Records of former proceedings (Article 30a) and/or trials, (for example, electronic/digital record of former proceeding, including audio recording and any scanned documentation/transcripts, CD/DVD format). (See para z, this appendix, regarding handling of closed sessions and sealed matters).

s. Printed transcript of the court-martial proceedings in the following order:

(1) The first page of the written transcript should begin with: “Proceedings of a [General/Special] Court Martial. The military judge called the Article 39(a) session to order. The court met at [location] at [time] on [date] pursuant to CMCO [number].”

(2) The Index containing both page numbers from the transcript (if included), and timestamps from the audio recording.

(3) Receipts of accused, and victim, or counsel, for copies of certified record, or certificates of service.

(4) Substantially verbatim transcript of proceedings in court, including Article 39(a) sessions, if any. (See para z, this appendix, regarding handling of closed sessions and sealed matters).

(5) Signed military judge authentication statement.

(6) Signed court reporter certification statement, attesting that the transcript is a true, accurate, and complete copy of the audio recording of the court-martial.

(7) A certificate of correction, if any (including any supplemental certification for additional proceedings).

(8) If a printed transcript is not required in a particular case, copy the digital version of the transcript to DVDs and prepare the digital transcript in the same fashion as the audio record in paragraph *b*(1)–(4), above, including the careful separation of open and closed sessions.

t. Action of convening authority, if any, including any action pursuant to RCM 1109(e)(3)(B). If convening authority took action, including signed copy of action.

u. Exhibits admitted in evidence (Prosecution and Defense Exhibits, in that order). (See para *z*, this appendix, regarding handling of closed sessions and sealed matters). Include the transcript page number and the timestamp in the audio record where the evidence was offered and admitted.

v. Exhibits offered and not admitted in evidence. Include the transcript page number and the timestamp in the audio record where the evidence was offered and not admitted. (Prosecution and Defense Exhibits, in that order). (See para *z*, this appendix, regarding handling of closed sessions and sealed matters).

w. Exhibits pre-marked for identification, but not offered or admitted. (Prosecution and Defense Exhibits, in that order). (See para *z*, this appendix, regarding handling of closed sessions and sealed matters).

x. Appellate exhibits. Appellate exhibits include, but are not limited to:

(1) Proposed instructions.

(2) Written offers of proof or preliminary evidence (real or documentary).

(3) Briefs of counsel submitted at trial.

(4) Request to be tried by military judge alone (if any).

(5) The accused election of members under RCM 903 (if any).

(6) Any statement by convening authority required under RCM 503(a)(2).

(7) The election for sentencing by members in lieu of sentencing by military judge under RCM 1002(b).

y. Redaction. The following information shall be redacted from the record of trial prior to releasing it to any accused or victim, (including any transcript made pursuant to RCM 1114 and attached to the record of trial), unless the information establishes an element of an offense, or is otherwise required:

(1) Any recordings of closed sessions, any transcripts of closed sessions, and any sealed exhibits.

(2) Names of minor victims, and names of minor witnesses; if an identifier is used, use only the initials.

(3) Social Security Numbers. If an individual's social security number is relevant, use only the last four digits.

(4) Financial account information. If financial account numbers are relevant, use only the last four digits.

(5) Home addresses. If a home address is relevant, use only the city and state.

(6) Telephone numbers. If a telephone number is relevant, use only the last four digits.

(7) Personal email addresses. If a personal email address is relevant, use only the first two characters and domain separated by three asterisks (e.g., a2***@msn.com).

(8) Dates of birth. If a named individual's date of birth is relevant, use only the year, unless birth month is relevant to the charged offense.

(9) Any other information that could be used to identify a specific person other than the accused.

z. Closed sessions and sealed items. If the report of preliminary hearing or record of trial contains exhibits, proceedings, or other materials ordered sealed by the preliminary hearing officer or military judge, counsel for the Government, the court reporter, or trial counsel shall cause such materials to be sealed so as to prevent unauthorized examination or disclosure, pursuant to RCM 1113. Sealed material shall be properly marked, individually placed in separate envelopes with a copy of the preliminary hearing officer or military judge sealing order affixed to it, and inserted at the appropriate place in the record of trial. Do not duplicate sealed material for purposes of including in any copy of the record of trial. Instead, insert a copy of the sealing order in lieu of any sealed material, in any copies of the record of trial.

Glossary

Section I

Abbreviations

ABCMR

Army Board for Correction of Military Records

ACOM

Army command

AD

active duty

ADT

active duty for training

AGR

active guard reserve

AKO

Army Knowledge Online

AMHRR

Army Military Human Resource Record

AR

Army regulation

ARBA

Army Review Boards Agency

ARNG

Army National Guard

ARNG TDS

Army National Guard Trial Defense Service

ARNGUS

Army National Guard of the United States

Art.

Article (of the UCMJ)

ASA (M&RA)

Assistant Secretary of the Army for Manpower and Reserve Affairs

ASCC

Army service component command

ASI

additional skill identifier

AT

annual training

BCD

bad-conduct discharge

CID

Criminal Investigation Command

CMCO

court-martial convening order

CMO
court-martial order

CCDR
combatant commander

CCMD
combatant command

CONUS
continental United States

CPL
corporal

DA
Department of the Army

DAD
Defense Appellate Division

DASEB
Department of the Army Suitability Evaluation Board

DCAP
Defense Counsel Assistance Program

DCO
designated commanding officer

DCS
deputy chief of staff

DD
dishonorable discharge

DJMS
Defense Joint Military Pay System

DMPO
Defense Military Pay Office

DNA
deoxyribonucleic acid

DOD
Department of Defense

DODD
Department of Defense directive

DODI
Department of Defense instruction

DOJ
Department of Justice

DRU
direct reporting unit

ECS
electronic communication service

EOJ
entry of judgment

ETS
expiration of term of service

FAO
finance and accounting office

FORSCOM
U.S. Army Forces Command

FORSCOM

GAD
Government Appellate Division

GCM
general court-martial

GCMCA
general court-martial convening authority

HQ
headquarters

HQDA
Headquarters, Department of the Army

HRC
U.S. Army Human Resources Command

IDT
inactive duty training

IMC
individual military counsel

IMCOM
Installation Management Command

iPERMS
interactive personnel electronic records management system

JA
judge advocate

JAGC
Judge Advocate General's Corps

JAGCNet
Judge Advocate General's Corps Network

JALS
Judge Advocate Legal Service

LOD
legal operations detachment

MCM
Manual for Courts-Martial

MCU
multiple component units

MDW
Military District of Washington

MEJA
Military Extraterritorial Jurisdiction Act of 2000

MJO

Military Justice Online

MOS

military occupational specialty

MOU

memorandum of understanding

MP

military police

MPD

military personnel division

MRE

Military Rules of Evidence (found in the MCM)

MSC

major subordinate command

MTF

medical treatment facility

NCO

noncommissioned officer

NGB

National Guard Bureau

NJP

nonjudicial punishment

OBC

officer basic course

OCONUS

outside continental United States

OER

officer evaluation report

OSJA

office of the staff judge advocate

OTJAG

Office of The Judge Advocate General

PHI

protected health information

PII

personally identifiable information

PMO

provost marshal office

PPTO

Personnel, Plans, and Training Office

PSC

personnel service company

RA

Regular Army

RC

Reserve component

RCF
regional confinement facility

RCM
Rules for Courts-Martial

RDC
regional defense counsel

RFGOS
resignation for the good of the Service

ROT
record of trial

RCS
remote computing service

SAUSA
special assistant U.S. attorney

SCM
summary court-martial

SDC
senior defense counsel

SECDEF
Secretary of Defense

SGT
sergeant

SIR
serious incident report

SJA
staff judge advocate

SOFA
status of forces agreement

SPC
specialist

SPCM
special court-martial

SPCMCA
special court-martial convening authority

SRB
Soldier record brief

SROTC
Senior Reserve Officers' Training Corps

SSN
social security number

STR
statement of trial results

SVC
special victim counsel

SVL
special victim prosecutor witness liaison

SVP

special victim prosecutor

TCAP

Trial Counsel Assistance Program

TDY

temporary duty

TJAG

The Judge Advocate General

TJAGLCS

The Judge Advocate General's Legal Center and School

TRADOC

Training and Doctrine Command

UCI

unlawful command influence

USACCA

U.S. Army Court of Criminal Appeals

USALSA

U.S. Army Legal Services Agency

USAR

U.S. Army Reserve

USARC

U.S. Army Reserve Command

USATDS

U.S. Army Trial Defense Service

USC

United States Code

USCAAF

U.S. Court of Appeals for the Armed Forces

USDB

U.S. Disciplinary Barracks

USMA

United States Military Academy

VA

victim advocate

VWAP

Victim/Witness Assistance Program

VWL

victim/witness liaison

WOBC

warrant office basic course

WOCS

warrant officer candidate school

Section II

Terms

Active duty

Full-time duty in the active military Service of the United States including full-time training duty, annual training duty, and attendance, while in the active military Service, at a school designated as a Service school by law or by the Secretary of the Army.

Admonition

A warning or reminder given to an offender to deter repetition of a type of misconduct and to advise the offender of the consequences that may flow from a recurrence of that misconduct.

Chief circuit judge

The senior military judge in a judicial circuit, or other judge designated by the chief trial judge.

Chief Judge of the Army Court of Criminal Appeals

An appellate military judge of the U.S. Army Court of Criminal Appeals who is designated as Chief Judge of that court by TJAG.

Inactive duty training

Duty prescribed for Reserves by the Secretary of the Army pursuant to 37 USC 206 or any other provision of law and special additional duties authorized for Reserves by an authority designated by the Secretary of the Army and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Judicial circuit

One or more GCM jurisdictions, or the geographical area where the headquarters of such jurisdictions are situated, as designated by TJAG.

Military judge

A JA officer who has been certified by TJAG as qualified to preside over GCMs and/or SPCMs.

Military Judge Program

A system in which military judges are designated and made available for detail as judges of SPCMs and GCMs.

Mitigation

A reduction in either the quantity or quality of a punishment, its general nature remaining the same.

Preferral of charges

The act of bringing charges against another party.

Referral of charges

The order of a convening authority that charges and specifications against an accused will be tried by a specified court-martial.

Reprimand

An act of formal censure that reproves or rebukes an offender for misconduct.

Reserve Component

That part of the U.S. Army consisting of the Army National Guard of the United States and the United States Army Reserve.

Section III

Special Abbreviations and Terms

ABA

American Bar Association