



MILITARY JUSTICE MANUAL

COMDTINST M5810.1F

March 2018



Commandant
United States Coast Guard

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COMMANDANT INSTRUCTION M5810.1F

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Subj: MILITARY JUSTICE MANUAL

- Ref:
- (a) Uniform Code of Military Justice, 10 U.S.C. §§ 801 – 946 (as amended)
 - (b) Manual for Courts-Martial (MCM), United States (2016)
 - (c) Discipline and Conduct, COMDTINST M1000.2 (series)
 - (d) Enlisted Accessions, Evaluations and Advancements, COMDTINST M1000.2 (series)
 - (e) Personnel, Pay and Procedures Manual, PPCINST M1000.2 (series)
 - (f) Personnel Data Records System, COMDTINST M1080.10 (series)
 - (g) United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series)
 - (h) Reserve Policy Manual, COMDTINST M1001.28 (series)
 - (i) Coast Guard Investigative Service Roles and Responsibilities, COMDTINST M5520.5 (series)
 - (j) Administrative Investigations Manual, COMDTINST M5830.1 (series)
 - (k) Coast Guard detailing SOP-22C
 - (l) U.S. Navy Manual of the Judge Advocate General, JAGINST 5800.7 (series)
 - (m) Coast Guard Legal Professional Responsibility Program, COMDTINST M5800.1 (series)
 - (n) Special Victims' Counsel Program, COMDTINST 5801.5 (series)
 - (o) Sexual Assault Prevention and Response (SAPR) Program, COMDTINST M1754.10 (series)
 - (p) Office of the Judge Advocate General and Naval Legal Service Command Physical Security Program, JAG/COMNAVLEGSVCCOM INST 5530.2 (series)
 - (q) Coast Guard Freedom of Information (FOIA) and Privacy Acts Manual, COMDTINST M5260.3 (series)
 - (r) Coast Guard Clemency Board, COMDTINST 5814.1 (series)
 - (s) Military Qualifications and Insignia, COMDTINST M1200.1 (series)

DISTRIBUTION – SDL No. 168

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NON-STANDARD DISTRIBUTION:

1. **PURPOSE.** This Manual prescribes Secretarial and Judge Advocate General of the Coast Guard policies, regulations, and procedures applicable to the administration of military justice in the Coast Guard pursuant to, and in support of, References (a) and (b).
2. **ACTION.** All Coast Guard unit commanders, commanding officers, officers-in-charge, deputy/assistant commandants, and chiefs of headquarters staff elements shall comply with the provisions of this Manual. Internet release is authorized.
3. **DIRECTIVES AFFECTED.** Military Justice Manual, COMDTINST M5810.1E is cancelled.
4. **DISCLAIMER.** This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is intended to provide operational guidance for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard.
5. **MAJOR CHANGES.** This is a total recodification of the Military Justice Manual. The Manual has been organized into twenty-six Chapters. It accounts for the numerous statutory, regulatory, and programmatic changes made since 2011, to include those changes made or required by the National Defense Authorization Acts of 2012-2016. In addition, the previous version of the Manual contained more than 25 Enclosures, including copies of Coast Guard and Department of Defense Forms, other Instructions and memoranda, and various checklists, scripts and templates. These have been removed from the Manual. Official forms are available through the Coast Guard and Department of Defense Forms websites. Additional resources and templates are available on the Office of Military Justice (CG-LMJ) website. See Paragraph 9.
6. **ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.**
 - a. The development of this Instruction and the general policies contained within it have been thoroughly reviewed by the originating office in conjunction with the Office of Environmental Management, Commandant (CG-47). This Instruction is categorically excluded under current Department of Homeland Security (DHS) categorical exclusion (CATEX) A3 from further environmental analysis in accordance with “Implementation of the National Environmental Policy Act (NEPA), DHS Instruction Manual 023-01-001-01 (series).”
 - b. This Instruction will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial changes to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this Instruction must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), Department of Homeland Security (DHS) and Coast Guard NEPA policy, and compliance with all other applicable environmental mandates.
7. **DISTRIBUTION.** See Chapter 6 Paragraph J of The Coast Guard Directive System, COMDTINST M5215.6 (series) for details. No paper distribution will be made of this Manual. An electronic version will be located on the following Commandant (CG-612) websites:
<http://www.dcms.uscg.mil/directives/>, and on CGPortal:
<http://cgportal2.uscg.mil/library/directives/SitePages/Home.aspx>.

8. RECORDS MANAGEMENT CONSIDERATIONS. This Manual has been thoroughly reviewed during the directives clearance process, and it has been determined there are no further records scheduling requirements, in accordance with the Federal Records Act, 44 U.S.C. 3101 et seq. NARA requirements, and Information and Life Cycle Management Manual, COMDTINST M5212.12 (series). This policy does not have any significant or substantial change to existing records management requirements.

9. FORMS/REPORTS. The forms referenced in this Manual are available in USCG Electronic Forms on the Standard Workstation or on the Internet: <https://dcms.uscg.afpims.mil/Our-Organization/Assistant-Commandant-for-C4IT-CG-6/The-Office-of-Information-Management-CG-61/> and CGPortal: <https://cgportal2.uscg.mil/library/forms/SitePages/Home.aspx>. Department of Defense forms are available at <http://www.esd.whs.mil/Directives/forms/>. Additional templates and resources are available at on the Office of Military Justice (CG-LMJ) website <https://uscg.uscg.afpims.mil/Resources/Legal/Military-Justice/>.

10. REQUEST FOR CHANGES. Anyone may recommend changes to this Manual. Military members forward changes via the chain of command to the Office of Military Justice at HQS-DG-LST-CG-LMJ@uscg.mil.

S. J. ANDERSEN /S/
Rear Admiral, U.S. Coast Guard
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1. NONPUNITIVE MEASURES

1.A Administrative measures independent of Article 15, UCMJ.

1.A.1 Administrative measures not used as punishment. Commanding officers are authorized and expected to use administrative corrective measures to further the efficiency of their commands or units. These measures are not to be imposed as punishment. The Administrative corrective measures generally fall into three categories: extra military instruction, administrative withholding of privileges, and nonpunitive censure. See also Rule for Court-Martial (R.C.M.) 306(c)(2).

1.A.2 Extra Military Instruction (EMI). EMI is instruction in a phase of military duty in which an individual is deficient. It is intended for, and directed towards, the correction of that deficiency. It is a legitimate training technique to be used for improving the efficiency of an individual within a command or unit through the correction of some deficiency in that individual's performance of duty. It is not to be used as a substitute for judicial (court-martial) punishment or nonjudicial punishment, and must be logically related to the deficiency in performance for which it was assigned. EMI must be initiated in writing.

1.A.2.a *Limitations on EMI:*

- (i) It must not be conducted for more than two hours per day.
- (ii) If assigned or approved by the commanding officer, it may be conducted at a reasonable time outside normal working hours, however it must not be used to deprive a member of normal liberty to which the member is entitled.
- (iii) While its completion may incidentally delay the member's liberty, a member that is otherwise entitled to liberty shall commence normal liberty upon completion of EMI.
- (iv) It must not be conducted over a period that is longer than necessary to correct the performance deficiency for which it was assigned.
- (v) It must not be performed on the member's Sabbath.

1.A.2.b *Authority to assign EMI during normal working hours.* The authority to assign EMI to be performed during normal working hours is not limited to any particular grade or rate, but is an inherent part of that authority over subordinates vested in officers and petty officers in connection with their duties and responsibilities. This authority to assign EMI to be performed during normal working hours may be withdrawn by any superior.

1.A.2.c *Authority to assign EMI after normal working hours.* The commanding officer has the authority to assign EMI to be performed after normal working hours. Such authority may be delegated, as appropriate, to subordinate officers and petty officers, in connection with duties and responsibilities assigned to them. However, after-hours EMI may only be assigned with the knowledge of the commanding officer.

- 1.A.2.d *Supervision of EMI required.* EMI is intended to correct a deficiency and, as such, an individual deemed by the command to be qualified to correct the deficiency must supervise the performance of EMI. EMI may be ordered to coincide with an appropriate supervisor's work or duty schedule during reasonable hours.
- 1.A.2.e *Limitation on time.* EMI should not normally be ordered for a period exceeding fourteen sessions and if not on consecutive days, to exceed one month in total period of time before completed. If the deficiency is not correctable within the training provided under these limitations, alternative actions should be considered (e.g., performance probation, etc.)
- 1.A.2.f *Termination.* EMI is solely intended to correct a deficiency. It is automatically terminated at the end of its ordered period and is terminated sooner if the EMI supervisor determines the deficiency has been corrected.
- 1.A.2.g *Limitations on rank.* EMI is not normally considered appropriate for E-7 or above.
- 1.A.2.h *EMI not punishment.* EMI is not to be confused with the punishment of extra duties that may be awarded at non-judicial punishment (NJP) or hard labor without confinement awarded at court-martial. The tasks and/or training ordered to be performed as EMI must relate to and have the logical purpose of correcting the appropriate deficiency. For example a member may be required to study a manual, reference, or book and produce a report or answer questions about the material. When a member is deficient in completing properly assigned menial labor only then may menial labor be assigned as EMI to correct that deficiency. As EMI takes the form of on-the-job training, a qualified supervisor must be available to answer questions and inspect the task or work accomplished to ensure the training objectives are achieved. That supervisor is authorized to terminate the EMI once the training objectives have been accomplished.

1.A.3 Administrative withholding of privileges.

- 1.A.3.a *Privileges.* A privilege is a benefit, advantage, or favor provided for the convenience or enjoyment of an individual. Examples of privileges that may be temporarily withheld as administrative corrective measures are: special liberty; scheduling of leave during a particular period (reasonable opportunity to take annual leave may not be denied); exchange of duty; participation in special command programs; access to base or ship libraries, base or ship movies, or enlisted or officers' clubs; base parking; and base or ship special services events. It may also encompass the withholding of special pay as well as commissary and exchange privileges, provided such withholding complies with applicable rules and regulations, and is otherwise in accordance with law. In all instances, unless properly delegated, final authority to withhold a privilege, however temporary, must ultimately rest with the level of authority empowered to grant the privilege. Withholding of privileges may be done orally or in writing.

- 1.A.3.b *Deprivation of liberty.* Deprivation of normal liberty as a punishment, except as specifically authorized under the UCMJ, is illegal. Therefore, except as the specific result of a punishment imposed under Article 15, UCMJ, or as the result of the sentence of a court-martial, it is illegal for any officer or petty officer to deny any subordinate normal liberty, or privileges incident thereto, as punishment for any offense. Lawful deprivation of normal liberty may result, however, from other lawful actions (e.g., authorized pretrial restraint; deprivation of normal liberty in a foreign country or in foreign territorial waters, when such action is deemed essential for the protection of foreign relations of the United States). Furthermore, reasonable conditions may be placed on liberty without constituting punishment. For example a commanding officer of a vessel during a port-call may restrict members from renting motorcycles and mopeds, place certain facilities off-limits, or prohibit certain food or drink products as may be reasonably required for the health and well-being of the crew or the conduct of foreign relations. Advice should always be sought from the servicing legal office.
- 1.A.3.c *Nonpunitive nature of certain additional work.* It is not a punishment when members in the Coast Guard are required to remain on board and be physically present outside of normal working hours for work assignments that should have been completed during normal working hours, or for the accomplishment of additional essential work, or to achieve the currently required level of operational readiness. This is necessary for the efficiency of the Coast Guard that official functions are performed and that certain work is accomplished in a timely manner.
- 1.A.4** **Administrative censure.** Administrative censure is not punitive and may be administered either orally or in writing (“letters of censure”). Administrative letters of censure are private in nature and, other than administrative letters of censure issued by the Commandant, must not be forwarded to the Chief of Personnel, quoted in or appended to performance reports, included as enclosures to investigative reports, or otherwise included in official Coast Guard records of the recipient. See Ch. 1.E.4, Discipline and Conduct, COMDTINST M1600.2 (series).
- 1.B** **Conduct marks.**
- 1.B.1** **General.** Rules governing conduct marks are properly a subject of administrative regulation. See Chapter 4.D, Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series).
- 1.B.2** **Policy.** A low conduct mark is not a punishment for an offense, and should not be used as such. A low conduct mark merely reflects that the member has committed an offense. It is the offense (or more specifically, the wrongful conduct underlying the offense), not the holding of a disciplinary proceeding (such as NJP or court-martial), that is the basis for the low conduct mark. Marking officials have discretion to determine appropriate conduct marks.

1.B.3 Good Conduct Medal. To determine the effect of NJP upon a member's qualifications to receive the Good Conduct Medal. See Chapter 5.A.1, Medals and Awards Manual, COMDTINST M1650.25E.

1.C Verbal counseling.

1.C.1 Definition. Counseling refers to senior members or supervisors offering advice and recommendations to juniors or subordinates on matters that may include conduct and performance. The purpose of counseling is to offer guidance to a servicemember in order to improve performance or conduct, enhance the member's career, or help the member overcome personal or professional challenges. Appropriate counseling may take place in an individual setting, or in a group setting such as Chief's Counsel or the Wardroom.

1.C.2 Nonpunitive nature of counseling. Counseling is not a punitive measure. As such, counseling should not include formal aspects such as a green tablecloth, saluting, and reporting. Counseling must not be used as a way to punish a member, such as by embarrassing or verbally abusing the member in order to deter the member or others from conduct or performance problems.

1.C.3 Article 31(b) and counseling. Counseling must never be used to circumvent the protections provided by Article 31(b), UCMJ. As such, counseling must not be used to question a member about suspected conduct or performance issues, or as a substitute for command investigation. If any person conducting counseling suspects the person being counseled of committing an offense, the counselor must immediately stop asking questions and consult with the servicing legal office through the command. If a member is suspected of misconduct, a commanding officer may order members of the chain of command to refrain from counseling the member on the subject of the misconduct until an investigation is completed and disposed of by the commanding officer.

2. NONJUDICIAL PUNISHMENT (NJP)

2.A Authority and Purpose of NJP.

2.A.1 Authority. Article 15, UCMJ, provides commanding officers with the authority to impose NJP without resorting to the judicial forum of a court-martial. Part V, MCM supplements Article 15, UCMJ, and provides procedural guidance. To the extent that Part V, MCM and this Chapter are in conflict, the MCM is controlling. Punishment imposed under Article 15, UCMJ, is called “Nonjudicial Punishment” to distinguish it from punishment imposed by court-martial, which is “judicial punishment.” NJP may also be referred to as Captain’s Mast, Mast, Admiral’s Mast if imposed by a flag officer, or Article 15 Punishment.

2.A.2 Purpose of NJP.

2.A.2.a Maintenance of discipline. Each commanding officer is responsible for the maintenance of discipline within his or her command. In many cases, discipline can be maintained through effective leadership, including, when required, the use of available administrative measures. Administrative measures are not considered NJP and thus are not governed by the provisions of Article 15, UCMJ. See Section 1.A. Allegations of minor offenses should be disposed of in a timely manner and at the lowest appropriate level of disposition. When a minor offense has been committed and lesser administrative measures are considered insufficient to meet the needs of good order and discipline, a commanding officer should consider invoking his or her authority to impose NJP. This disposition decision rests within the sound discretion of the commanding officer and must be made on an individual basis considering the nature of the offenses, any mitigating or extenuating circumstances, any recommendations made by subordinate commanding officers, the interest of justice, military exigencies, and the effect of the decision on the member and the command. The imposition of NJP is not appropriate for serious offenses. See Subsection 2.D.2.

2.A.2.b Rehabilitation. NJP has an important rehabilitative component. It not only provides a commanding officer with an essential and prompt means of maintaining good order and discipline, but may also promote positive behavioral changes.

2.B Persons authorized to impose NJP.

2.B.1 Commanding officers and officers-in-charge of Coast Guard units. All commanding officers may impose NJP upon personnel assigned to their units. All officers-in-charge may impose NJP upon enlisted members assigned to their unit. Throughout this Chapter, references to “commanding officers” as NJP or mast authorities include officers-in-charge, except where specifically noted. A Coast Guard unit is a separately identified Coast Guard organizational entity, under a duly assigned commanding officer or officer-in-charge, provided with personnel and material for the performance of a prescribed mission. A commanding officer’s authority to impose NJP may be withheld or limited by a superior commanding officer or the Secretary.

- 2.B.2 Commanding officers of enlisted or military personnel.** Organizational entities established and headed by a commanding officer of enlisted or military personnel pursuant to Section 3-2-5, United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series), are Coast Guard units for the purpose of this Chapter and therefore the commanding officer of enlisted or military personnel is authorized to impose NJP on members of that command. However, a commanding officer of enlisted or military personnel must not impose NJP on a member assigned to a subordinate unit that has a duly appointed commanding officer or officer-in-charge. For example, a commanding officer of military personnel at a sector must not impose NJP on a member assigned to a station, even if that station is a subordinate unit of the sector. However, unlike the commanding officer of enlisted or military personnel, the commanding officer of a unit is not precluded from exercising his or her own NJP authority over subordinate units in any case where it is deemed appropriate.
- 2.B.3 Acting commanding officer.** The power to impose NJP is inherent in the position and not in the individual. Any officer formally appointed to temporarily replace the commanding officer due to the absence of the assigned commanding officer because of death, incapacitation, illness, TAD assignment, relief for cause, or leave has the power of the assigned commanding officer to impose punishment. However, the maximum punishment that may be imposed by the mast authority is limited by the rank of the successor. For example, a lieutenant (O-3) who succeeds to command in the absence of the assigned commanding officer who is a lieutenant commander (O-4) may impose the amount of punishment allowed a commanding officer in the grade of O-3. A subordinate must not impose NJP in situations where the commanding officer is not present at the unit but has not formally ceded command, such as when the commanding officer is on liberty or is otherwise engaged.
- 2.B.4 Principal assistant.** Any officer exercising general court-martial jurisdiction (OEGCMJ) or an officer of flag rank in command may delegate his or her powers to impose NJP under Article 15, UCMJ, to a “principal assistant.” A principal assistant has the same authority as the officer who delegated the powers, unless the delegation is otherwise limited. The principle assistant must have achieved the rank of at least O-5 and be a member of the OEGCMJ’s staff. Unlike acting commanding officers (discussed in Subsection 2.B.3.), the maximum limitations on punishments will be determined by the grade of the officer delegating this authority. The delegation must be in writing. For example, if an O-7 delegates his or her powers to a principal assistant who is an O-5, the O-5 may impose the amount of punishment allowed a flag officer. The delegation of mast authority to a principal assistant does not prohibit the OEGCMJ from imposing NJP authority him/herself in cases where it is deemed appropriate.
- 2.B.5 Superior commanding officer.** A commanding officer may refer an offense to the next superior commanding officer in the chain of command for disposition, including the imposition of NJP. Although a commanding officer is not disqualified from imposing NJP because of a personal interest or involvement in the case, he or she

- may desire to forward the matter to maintain the appearance of fairness. Forwarding a matter may also be appropriate when the appropriate punishment may be beyond the limits of the commanding officer's NJP authority. Additionally, there are situations in which the member's commanding officer is required to forward a matter to a superior officer in the chain of command, such as if NJP authority has been withheld. See Subsection 2.B.7. Cases shall not be referred to a commanding officer of enlisted or military personnel. See Subsection 2.B.2. If the commanding officer decides to refer the offense to the next superior officer, he or she must forward all pertinent documents, including the Report of Offense and Disposition and Record of Nonjudicial Punishment, Form CG-4910, any written statements, a brief explanation of the reasons for referring the matter, and a recommendation for disposition. See R.C.M. 306(c)(5).
- 2.B.6 Subsequent commanding officer.** If the member is transferred to a new unit after an alleged offense is committed, but before NJP is imposed, all information concerning the alleged offense should be referred for appropriate action to the commanding officer of the member's new unit or a competent authority in the member's new chain of command. Likewise, imposition of NJP by a subsequent commanding officer is permitted if there is a change of command after an alleged offense is committed but before NJP is imposed.
- 2.B.7 Withholding NJP authority.** A superior commanding officer may withhold authority to impose NJP from a subordinate commanding officer. The superior may withhold all NJP authority or may withhold the authority to impose NJP in certain types of cases (e.g., all alcohol cases), for certain ranks/grades (e.g., all officers), or to impose certain punishments (e.g., reduction in rank). A superior commander may also withhold the authority to dispose of individual cases. However, a superior commanding officer must not direct a subordinate authority to impose NJP in a particular case or suggest to a subordinate what categories of offenses should be disposed of at NJP. If the superior command has concerns as to how the case is being handled by the subordinate, he or she should withhold NJP authority for that case and dispose of the matter him/herself. Whenever practicable, such withholding must be in writing.
- 2.C Persons subject to NJP.**
- 2.C.1 Military members of the command.** At the time NJP is imposed, the member being punished must be a member of the command of the commanding officer who imposes the punishment. A member is "of the command" if he or she is assigned or attached to the command by written order. A member may be "of the command" of more than one command at the same time, such as a member assigned or attached to a unit for the purpose of performing TAD.
- 2.C.2 TAD personnel.** NJP may be imposed upon TAD personnel by the commanding officer of the member's permanent unit or by the commanding officer of the unit to which the member is temporarily assigned. Since a member may not be punished by both commanding officers for the same offense, it is desirable, if circumstances permit, for the respective commanding officers to confer and reach agreement as to

which one will exercise NJP authority. Neither commanding officer may attempt to influence or direct the actions of the other. A member must not be assigned TAD from a shore unit to a vessel for the primary purpose of thwarting the member's right to demand trial by court-martial in lieu of NJP. See Subsection 2.H.2.

- 2.C.3 Reservists.** A member of the Reserves is subject to the UCMJ while performing Inactive Duty for Training (IDT), Active Duty for Training (ADT), or active duty. Accordingly, all offenses committed by a reservist while on active duty, IDT, or ADT may subject the reservist to discipline, including NJP. Reservists performing IDT or ADT with an active service unit are considered under that unit's control in the same manner as TAD personnel. See generally Ch. 3, Reserve Policy Manual, COMDTINST M1001.28 (series).
- 2.C.4 Civilians.** Civilians are never subject to NJP, even if otherwise subject to the UCMJ under Article 2(a)(10), UCMJ.
- 2.C.5 Members of other armed forces serving with the Coast Guard.** A Coast Guard commanding officer may exercise NJP authority over a member of another armed force assigned or attached to his or her command. However, exercise of NJP authority by an appropriate officer within the member's same armed force is preferable because of the differing regulations and administrative procedures among the armed forces. Any exercise of NJP over a member of another armed force is subject to the member's service regulations, applicable directives, and inter-service agreements. Such documents, and the servicing legal office, should be consulted if imposition of NJP on members of other services is contemplated. The member's service regulations govern the rights and procedures for imposition of NJP.
- 2.C.6 Members of the Coast Guard serving with other armed forces.** Before an officer in another armed force imposes NJP on a Coast Guard member under his or her command, that commanding officer should review applicable agreements and directives and determine if the Coast Guard member should be permanently or temporarily reassigned to a Coast Guard command. If the commanding officer decides to impose NJP, the member must be afforded all rights provided under this Manual. Following the imposition of NJP, the commanding officer must e-mail a report of the offense and punishment awarded to Commandant (CG-LMJ) and the member's Coast Guard program manager. A commanding officer of another armed force with multiple Coast Guard members assigned may also request that a Coast Guard officer assigned to that command be designated as commanding officer, Coast Guard Military Personnel, in accordance with Section 3-2-5, United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series), which would allow that individual to impose NJP. See Subsection 2.B.2.
- 2.C.7 Retirees.** A retiree may not be recalled to active duty solely for the imposition of NJP, even if otherwise subject to the UCMJ under Article 2(a)(4), UCMJ.

- 2.C.8 Public Health Service officers.** A convening authority may take action under the UCMJ against an active duty member of the Public Health Service (PHS) assigned to duty and serving with the Coast Guard. Before doing so the convening authority should contact his or her servicing legal office to obtain a copy of the current USCG–USPHS Memorandum of Understanding, which may contain procedural guidance concerning military justice and disciplinary proceedings involving PHS personnel.
- 2.D Offenses for which NJP may be appropriate.**
- 2.D.1 Minor offenses.** NJP may be imposed for minor offenses made punishable by the UCMJ. For a list of factors to consider when determining whether an offense is minor. See MCM Part V, Para. 1.e. Questions about whether an alleged offense is minor should be directed to the servicing legal office.
- 2.D.2 Offenses not considered minor.** NJP must not be imposed for offenses made punishable under Articles 120(a), 120(b), 120b, and 125, UCMJ, and attempts to commit those offenses under Article 80, UCMJ, because those offenses are not minor.
- 2.D.3 Offenses in Part IV, MCM.** NJP may only be imposed for punitive offenses listed in Part IV, MCM. This matters because not every failure to follow Coast Guard policy forms a basis for an offense under the UCMJ. Many Coast Guard policies are not enforceable as punitive orders under Article 92. Additionally, not every flag officer in the service is authorized to issue lawful general orders under Article 92(1), UCMJ. Questions regarding whether misconduct constitutes an offense under the UCMJ should be directed to the servicing legal office.
- 2.E Limitations on the exercise of NJP.**
- 2.E.1 Multiple offenses.** All known offenses determined to be appropriate for disposition by NJP and ready to be considered at the time, including all such offenses arising from a single incident or course of conduct must be considered together at a single mast. However, if several offenses arise from the same incident and one or more offenses from that incident are considered to be inappropriate for NJP, the commanding officer should not impose NJP for any offenses without prior consultation with the servicing legal office. A commanding officer is not required to delay NJP to complete an investigation into unrelated conduct.
- 2.E.2 Double punishment.** NJP may not be imposed twice for the same offense. Misconduct punished at NJP may, in some circumstances, subsequently form the basis for charges at court-martial. Compare with R.C.M. 907(b)(2)(D)(iv).
- 2.E.3 Civil offenses and dual adjudication.**
- 2.E.3.a** NJP may not be imposed for an offense that has been prosecuted in a United States federal court. However, the imposition of NJP does not bar the federal government from later trying the offense in federal court.

- 2.E.3.b Dual adjudication occurs when a member is subject to both state or foreign prosecution and NJP for offenses arising out of the same misconduct. This occurs most frequently when the member commits misconduct while on liberty or leave. State or foreign authorities may prosecute that member under state or foreign law, while the military also has jurisdiction to prosecute the member, as the UCMJ applies to active duty members at all times regardless of geographic location. Dual adjudication is not prohibited by law or regulation. However, as a matter of policy it is disfavored in the military. See R.C.M. 201(d) Discussion.
- 2.E.3.c Prior to imposing NJP for misconduct that is pending trial or was adjudicated in a state or foreign court, the commanding officer must request authorization from the Commander, Pacific Area, the Commander, Atlantic Area or the Deputy Commandant for Mission Support, as appropriate. "Pending trial" means that an indictment, complaint, information, or other accusatory instrument has been brought against the member or that the member is being held over for trial based on a judicial probable cause hearing. Any pretrial diversion or similar program in which the member does not receive a criminal record upon successful completion does not amount to being "tried" or "pending trial." Requests for authorization for dual adjudication must be in writing and should provide a thorough justification as to why NJP is necessary in the subject case. Such requests must be routed through the chain of command. Imposition of nonjudicial punishment within the terms of this policy is limited to cases that meet one or more of the following criteria:
- (i) Cases in which punishment by civil authorities consists solely of probation, and local practice, or the actual terms of probation, do not provide rigid supervision of probationers, or the military duties of the probationer make supervision impractical.
 - (ii) Cases in which civilian proceedings concluded without conviction for any reason other than acquittal after trial on the merits.
 - (iii) Other cases in which the interests of justice and discipline are considered to require further action under the UCMJ (e.g., where conduct leading to trial before a State or foreign court has reflected adversely upon the Coast Guard or when a particular and unique military interest was not or could not be adequately vindicated in the civilian tribunal).
- 2.E.3.d *Reporting requirements.* The provisions of this Section do not affect the member's reporting requirements or other actions required under other regulations in cases of convictions of service personnel by domestic or foreign courts and adjudications by juvenile court authorities.
- 2.E.3.f The prohibition against dual adjudication does not apply to offenses that are related to the state or foreign charges but are not themselves being prosecuted by the non-military entity. A commanding officer may impose NJP for offenses that are related to, but not the same as, those being tried by the state or foreign court. This policy applies both to offenses that are military-specific and thus entirely outside of state jurisdiction (e.g., AWOL, conduct unbecoming an officer) or offenses which the state

could prosecute but has decided against pursuing (e.g., imposing NJP for underage drinking when the state, despite the ability to charge the member with underage drinking, has instead only pursued the DUI offense).

2.E.4 Offenses previously tried by court-martial. NJP may not be imposed for an offense previously tried by court-martial. “Tried by court-martial” for the purposes of this Section means that there has been a finding of guilty or not guilty with respect to the offense. “Tried by court-martial” does not carry the same meaning as it does under the UCMJ with respect to double jeopardy. A member has not been tried by court-martial under this Section if the charges were withdrawn and dismissed prior to the announcement of findings.

2.E.5 Statute of limitations. NJP may not be imposed for offenses which were committed more than two years before the date of imposition. Rare exceptions to this prohibition, which apply only to periods of unauthorized absence, are found in Article 43(d), UCMJ.

2.F Report of offense.

2.F.1 Initial report of offense. A report of misconduct, from any source, may serve as the basis for initiating a preliminary inquiry. Report of Offense and Disposition and Record of Nonjudicial Punishment, Form CG-4910, may be used to notify the command of an allegation of misconduct, but it is not required. A person need not have personally witnessed the alleged act in order to report a suspected offense.

2.F.2 Determining type of preliminary inquiry.

2.F.2.a In accordance with R.C.M. 303, when the commanding officer receives information that a member of the command is accused or suspected of committing an offense, he or she must make or cause to be made a preliminary inquiry into the suspected offenses. There are two types of preliminary inquiries that may result from a report of an allegation: command-level investigations and CGIS investigations.

2.F.2.b Not all allegations of misconduct are appropriate for a command-level preliminary inquiry. Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series), requires that the command notify CGIS upon receipt of a report of alleged felony violations, violations of federal criminal law, lost or stolen government property, work place violence, child pornography, child and spouse abuse, and other crimes. Upon receipt of an allegation of misconduct, the command should consult COMDTINST 5520.5 (series) to determine if the allegation is of the type that CGIS notification is required. If CGIS notification is required, the command is prohibited from initiating a command-level investigation until notified by CGIS that CGIS will not undertake an investigation. The command should consult its servicing legal office if there are questions as to whether CGIS notification is required.

2.F.2.c If the allegation does not involve an offense that requires CGIS notification, or if CGIS has been notified and has declined to investigate, the command should then

initiate a command-level investigation into the offense. The authority to initiate a command-level investigation can be delegated to the executive officer.

2.F.3 Allegations of offenses under 120 and 125 and attempts to commit those offenses under Article 80.

2.F.3.a *Initiation of command-investigation prohibited.* A commanding officer who receives a report alleging that any of the following offenses were committed is **prohibited** from initiating a command-level investigation into these allegations:

- (i) Article 120(a), UCMJ, rape;
- (ii) Article 120(b), UCMJ, sexual assault;
- (iii) Article 120(c), UCMJ, aggravated sexual contact;
- (iv) Article 120(d), UCMJ, abusive sexual contact;
- (v) Article 120b(a), UCMJ, rape of a child;
- (vi) Article 120b(b), UCMJ, sexual assault of a child;
- (vii) Article 120b(c), UCMJ, sexual abuse of a child;
- (viii) Article 125, UCMJ, forcible sodomy; and
- (ix) Article 80, UCMJ, attempts to commit offenses listed in (i)-(viii).

2.F.3.b *Reporting requirement.* These allegations must be **immediately** reported to CGIS in accordance with Sexual Assault Prevention and Response Program, COMDTINST M1754.10 (series) and Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series). A checklist for commanders is available on the SAPR website, <http://www.uscg.mil/sapr/>.

2.F.4 Pre-disposition restraint not authorized. Pre-mast confinement or restriction is not authorized. A command may not automatically place a member in restraint solely because he or she has been placed on report or because an allegation has been raised. Pretrial restraint, including pretrial restriction or confinement, may be imposed only in accordance with R.C.M. 304 and R.C.M. 305. Generally, pretrial restraint may be imposed if necessary to ensure an accused's presence at trial or to prevent the commission of additional serious offenses. The member must be immediately released from restraint if the command decides to dispose of the offenses other than at court-martial. If a command believes that the alleged conduct warrants pretrial restraint, it must notify the servicing legal office. However, offenses that warrant pretrial restraint would not typically be considered minor such that disposition at NJP would be appropriate. See Section 6.A (discussing pretrial restraint further).

2.G Initial action.

2.G.1 Initiating a command-level investigation.

2.G.1.a Upon determination that the alleged misconduct does not require a CGIS investigation, the commanding officer must initiate a command-level investigation. The command may also do so if CGIS, having been notified of an allegation as required under Coast Guard Investigative Service Roles and Responsibilities,

COMDTINST 5520.1 (series), has declined to investigate. For allegations of sexual misconduct, see Subsection 2.F.3. The authority to initiate a command-level investigation may be delegated to the executive officer.

- 2.G.1.b *Commanding officer should review the CG-4910 or initial report.* This function may also be performed by the executive officer, chief of military personnel, administrative officer, or any officer or petty officer designated by the commanding officer. If designated, a civilian employee in a supervisory position may also perform this ministerial function. If a Form CG-4910 has not already been generated, the reviewer must do so at this point and fill in the appropriate information. If the reviewer determines that an offense may have been committed and the offense is of the type for which NJP is normally imposed, he or she should designate a preliminary inquiry officer to conduct a preliminary inquiry. See R.C.M. 303. The commanding officer may also dismiss the matter and take no further action or take nonpunitive measures. See Chapter 1.
- 2.G.1.c However, neither the commanding officer nor executive officer may dismiss the matter if the allegation involves an offense of sexual misconduct under Article 120, UCMJ. See Subsection 2.F.3 (discussing disposition of offenses relating to sexual misconduct); and Subsection 5.C.2 (Withholding Initial Disposition Authority in Sexual Assault Cases).
- 2.G.1.d *Designation of preliminary inquiry officer.* The commanding officer, or the executive officer if so delegated, should designate a member of the command to serve as the preliminary inquiry officer (PIO). The designation may be made orally or in writing. As mentioned in Subsection 2.G.1.b, a Form CG-4910 must be generated prior to initiating a preliminary inquiry. The command should contact the servicing legal office if it is impossible or impractical to assign PIO duties to a member of the command; the servicing legal office will help the command find an appropriate alternative PIO.

2.G.2 Preliminary Inquiry Officer duties.

- 2.G.2.a The PIO must become familiar with this section (2.G) in its entirety, and with Ch. 4.E, Administrative Investigations Manual, COMDTINST M5830.1 (series), entitled “Managing the Standard Investigation.” Ch. 4.E provides critical advice on developing an investigation plan, obtaining evidence, documenting witness statements, providing rights advisements, and applying the rules of evidence.
- 2.G.2.b The PIO must ensure the portion of the Form CG-4910, entitled “Information Concerning Accused” is properly completed.
- 2.G.2.c The PIO must review the description of each of the suspected offenses in Part IV, MCM, and address each of the listed elements during the inquiry.
- 2.G.2.d The PIO must question any witnesses and collect any documents (log entries, receipts, etc.), statements, and other evidence of the suspected offenses. The PIO

should obtain a signed written statement from each witness who has information about the alleged offenses. If a witness refuses to provide a written statement, the PIO should prepare a summary of the interview. It is usually recommended that the PIO not question the suspect until after collecting available evidence and questioning other witnesses. By doing so, the PIO is better prepared to interview the suspect, formulate questions, confront issues in contention and ascertain the suspect's credibility.

- 2.G.2.e The Details of Offenses block of the Form CG-4910 should be updated, if necessary, to reflect the evidence collected by the PIO. For example new offenses discovered by the PIO can be added or if the evidence supports a different offense but not the one initially listed the details should be updated. See Subsection 2.G.4.
- 2.G.2.f At the conclusion of the preliminary inquiry, the PIO must complete the section of the Form CG-4910 entitled "Preliminary Inquiry Officer's Report" and return the form and any supporting materials obtained during the inquiry to the executive officer. The report must include the PIO's summarized opinion of what actually occurred along with a recommendation as to the appropriate disposition of the matter. Though it is not required, a PIO may wish to follow Ch. 4.F, "Concluding the Investigation", of the Administrative Investigations Manual, COMDTINST M5830.1 (series), to report findings, opinions, and recommendations.
- 2.G.2.g The PIO may conduct portions of the inquiry remotely, though in most circumstances, an on-site investigation yields superior results. If the inquiry is conducted remotely, the PIO must take extra care when advising a member of the alleged offenses, providing a rights warning, and obtaining a waiver and statement from the member.
- 2.G.3 **Offenses previously investigated.** If the alleged offenses are the subject of a CGIS Report of Investigation, administrative investigation report, or federal, state, or local law enforcement investigative report, the PIO should review and may adopt the facts from that report. The PIO should conduct additional investigation only if he or she believes that additional information is needed before making a recommendation for disposition.
- 2.G.4 **New or different offenses.** If during the course of the inquiry, the PIO becomes aware of new or different offenses that may have been committed by the member; the PIO should inquire into those offenses. The PIO should make a recommendation concerning the disposition of the new offenses.
- 2.G.5 **Suspected serious or significant offenses.** If the preliminary inquiry reveals at any time that a criminal investigation, by CGIS, as discussed in Subsections 2.F.2.b or 2.F.3 is required or may be appropriate, the PIO should stop the inquiry and request further guidance from the authority ordering the investigation. Ordinarily, there is no reason to continue the PIO inquiry if a criminal investigation is commenced.

- 2.G.6 Rights warning.** Under Article 31(b), UCMJ, a military member suspected of an offense may not be questioned unless he or she is informed of the nature of the offense, advised that he or she does not have to make a statement, and informed that any statement made may be used as evidence. The PIO must advise the person named as the suspect of the investigation of his or her rights under Article 31(b), UCMJ, before asking that person any questions. UCMJ and Miranda/Tempia Rights, Form CG-5810E should be used. The PIO should have a separate witness sign the rights advisement and any written statement given by the suspect. If the PIO suspects that other military members have committed an offense, that person must also be advised of their rights before questioning, even if they are not the subject of the preliminary inquiry.
- 2.G.7 Right to consult with an attorney.** If the suspect says that he or she desires to consult with an attorney at any time during the questioning, questioning must stop immediately. The right to consult with an attorney is distinct from and does not include an obligation on behalf of the government to provide an attorney. The PIO should note in the report that the suspect asked to consult with an attorney. Questioning may not resume until after the member has been provided the opportunity to consult with an attorney. However, in most cases, sufficient information about the offenses may be obtained through other sources, and it may not be necessary to question the suspect and thus not necessary to provide the suspect with an opportunity to consult with counsel. The command should consult its servicing legal office if it believes that it cannot properly dispose of the charges without obtaining information directly from the suspect, necessitating the consultation of an attorney at the investigation stage.
- 2.G.8 PIO report recommendation requirements.** The PIO report must include a recommendation for one of four possible dispositions:
- (a) Closure. If the facts indicate that an offense under the UCMJ has not been committed or punishment is not appropriate, the PIO should recommend that the matter be closed.
 - (b) NJP. If the PIO believes the facts support a conclusion that the member committed an offense under the UCMJ (see Subsection 2.J.7 regarding the burden of proof at NJP) and NJP appears appropriate, the PIO should recommend NJP and, as the executive officer may direct, make arrangements for any witnesses, statements, documents, and other physical evidence that bear on both sides of the case to be brought to the attention of the commanding officer.
 - (c) Court-martial. If the PIO believes that the alleged conduct is serious and not minor, the PIO should recommend trial by court-martial.
 - (d) Other administrative measures. The PIO may recommend any administrative measures that might seem appropriate. See 1.A for examples of administrative measures that the PIO may recommend.

2.G.8.a *Punishment recommendation.* The PIO must not recommend a type or amount of punishment. It is appropriate, however, for the PIO to note important factors for the commanding officer to consider when determining an appropriate punishment in the event that NJP is awarded, such as the impact on the victim, the burden on the unit, etc.

2.G.9 Final review.

2.G.9.a *Review of preliminary inquiry.* The executive officer should review the PIO's report as well as the Form CG-4910. The executive officer must refer the matter to the commanding officer recommending a disposition for the offenses. For example, the executive officer may recommend that the offenses be addressed administratively, disposed of at mast, be considered for trial by court-martial, or that the matter be closed.

2.G.9.b *Amending the Report of Offense and Disposition.* The Form CG-4910 may be amended as necessary to ensure the Details of Offenses are supported by evidence.

2.G.10 Executive officers have no NJP authority. Neither an executive officer nor an executive petty officer has any authority to impose NJP. The authority to impose NJP resides solely with the commanding officer. However, subordinate officers may administratively rebuke, censure, criticize, or warn a suspected offender, and, if authorized by the commanding officer, may initiate other administrative action not amounting to NJP. See Subsection 1.A.1. In addition, the executive officer may make a disposition recommendation to the commanding officer. See Subsection 2.B.3 for the policy on acting commanding officers.

2.G.11 Commanding officer's determination of Disposition.

2.G.11.a The commanding officer must make a determination of the proper disposition of the case, in accordance with R.C.M. 306. The commanding officer may take one of the following actions: take no action and thus close the case; take administrative action (See Section 1.A); dispose of the offenses at an Article 15, UCMJ, mast (NJP); forward to a superior authority; or consider trial by court-martial. Note that at this point, there are no preferred charges, as defined in R.C.M. 307. Therefore, the commanding officer may not directly refer the case to court-martial. For information regarding preferral of charges. See Section 11.A.

2.G.11.b If the commanding officer decides a matter should be disposed of at NJP he or she will cause the member to be notified of the intended action and appoint a mast representative. If the matter was one not taken by CGIS, per Subsection 2.F.2.b, CGIS should be informed of the disposition. If the matter is closed or addressed administratively, it is good to inform the individual who initiated the report of the disposition.

2.G.11.c The decision by the commanding officer to dispose of the offenses at NJP does not equate to a finding by the commanding officer that the member committed the offenses. It is a determination that the appropriate forum to determine whether the

offenses were committed is NJP. In order to impose NJP, the commanding officer must find the member committed a criminal offense, as defined under the UCMJ and the MCM, after the member has been afforded a proper hearing, as defined in Part V, MCM.

2.H Right to demand trial by court-martial in lieu of NJP.

2.H.1 By member not attached to or embarked in a vessel. If the matter will be forwarded for NJP, a member who is not attached to or embarked in a vessel must be informed that he or she has a right to demand trial by court-martial in lieu of NJP. He or she must also be informed of the right to consult with an attorney before accepting or rejecting NJP. Acknowledgment of Rights – Acceptance of NJP (Enlisted Member Attached to Shore Unit), CG-5810A, or Acknowledgment of Rights – Acceptance of NJP (Officer Attached to Shore Unit), CG-5810B should be used to document that the member was notified of his or her rights and whether the member demanded court-martial in lieu of NJP. The command should facilitate the consultation with the attorney by contacting the command’s servicing legal office that will provide the member the appropriate contact information. Vessel precommissioning teams or detachments are not attached to or embarked upon a vessel within the meaning of MCM, Part V. Members assigned TAD ashore from a vessel are not attached to or embarked upon a vessel and therefore must be afforded the right to demand trial by court-martial. Members assigned under PCS orders to a vessel as their permanent unit who, subsequent to allegedly committing misconduct, are placed temporarily at shore units, even if not officially assigned under TAD orders, are not attached to or embarked upon a vessel and therefore must be afforded the right to demand trial by court-martial.

2.H.2 No right to demand trial by court-martial in lieu of NJP by member attached to or embarked in a vessel.

2.H.2.a A member attached to a vessel via PCS orders assignment as their permanent unit or embarked in a vessel does not have the right to demand trial by court-martial in lieu of NJP.

2.H.2.b The term “vessel” is defined in 1 U.S.C. § 3 and the Discussion to R.C.M. 103.

2.H.2.c The command may, in its sole discretion and if it will not unreasonably delay the proceedings, arrange for the member to consult with a military attorney or provide the member the opportunity to consult with a civilian attorney at the member’s own expense prior to imposing NJP to allow the member to obtain information about the NJP process. Rights notification must be documented using Acknowledgment of Rights – Acceptance of NJP (Enlisted Member Attached to, or Embarked in, a Vessel), CG-5810C, or Acknowledgment of Rights – Acceptance of NJP (Officer Attached to, or Embarked in, a Vessel), CG-5810D.

2.H.2.d Commands are prohibited from assigning a member to a ship for the purpose of denying the member the right to demand trial by court-martial. However, if a member

is assigned to a cutter under TAD orders, he or she is considered to be attached to the vessel and does not have the right to demand trial by court-martial.

2.H.3 Effect of demand for court-martial in lieu of NJP.

2.H.3.a A demand for trial by court-martial in lieu of NJP by a member not assigned to or embarked in a vessel does not require that charges be preferred, transmitted, or forwarded. The determination to refer a matter to court-martial resides solely with the command and superior commanders, despite a member's demand. NJP may not be imposed, however, while the demand is in effect.

2.H.3.b The transfer of a member from a shore unit to a vessel after refusing NJP does not invalidate the exercise of this right for those offenses for which a demand for court-martial was made. A demand for trial by court-martial does not limit the command's authority to implement administrative measures. See Section 1.A.

2.I Member representation at NJP.

2.I.1 General. A mast is not an adversarial proceeding. It is different from courts-martial; a member has no right to be represented by an attorney at mast. However, the member may obtain the services of an attorney or any other person, at no expense to the government, to appear as the member's spokesperson. See MCM, Part V, Para.4.c.(1)(B) and Subsection 2.I.5. If the mast authority is a flag officer, he or she may request that a military attorney be detailed to represent the member at the mast. Such requests may be made to the Office of Member Advocacy & Legal Assistance, Military Justice Defense Services (CG-LMA-D). The flag officer need not make this request in every case, and this policy does not create a right to counsel for members subject to punishment at a flag mast.

2.I.2 Consultation with counsel for members not attached to or embarked in a vessel.

2.I.2.a A member not attached to or embarked in a vessel will be afforded the opportunity to consult with counsel in order to make an informed decision, prior to making an election to accept NJP or demand trial by court martial in lieu of NJP. Failure to offer the member an opportunity to consult with counsel prior to making an election to accept or refuse NJP precludes the use of that NJP for sentence enhancing purposes in any future court-martial of the member. This limitation was set forth in the case of *United States v. Booker*, 5 M.J. 238, 243 (C.M.A. 1977). A reference explaining how a consultation with a military attorney may be arranged is available on the Office of Military Justice (CG-LMJ) website. The consultation may be telephonic. A member does not have a right to consult a particular military attorney, and the attorney made available need not be certified in accordance with Article 27(b), UCMJ. The member may also retain a civilian attorney at no expense to the government provided the proceeding is not unduly delayed.

2.I.2.b An attorney-client relationship attaches when the right to consult is exercised, but only for purposes of attorney-client privilege purposes only. Military attorneys available for consultation purposes may not represent the member unless directed to

- do so by proper authority. Whether or not the member exercises the right to confer, any decision to accept NJP must be in writing, signed by the member, and indicate that it was a knowing and voluntary decision. Acknowledgment of Rights – Acceptance of NJP (Enlisted Member Attached to Shore Unit), Form CG-5810A, and Acknowledgment of Rights – Acceptance of NJP (Officer Attached to Shore Unit), Form CG-5810B, are used to document the decision, and must be attached to the record of NJP.
- 2.I.2.c The attorney made available by the Coast Guard may be an attorney from another military service, pursuant to inter-service agreement or memorandum of understanding.
- 2.I.3 No right to consultation with counsel for members attached to or embarked in a vessel.**
- 2.I.3.a A member attached to or embarked in a vessel has no right to demand trial by court-martial in lieu of NJP or, consequently, to consult with a military or civilian attorney prior to NJP regarding the option to demand trial by court-martial.
- 2.I.3.b A commanding officer, at his or her sole discretion, may permit the member to consult with an attorney.
- 2.I.4 Mast representative.**
- 2.I.4.a *Appointment.* A mast representative will be appointed to assist the member in preparing for and participating in the mast proceedings, unless the member affirmatively declines appointment of a mast representative. The representative should be an officer or petty officer and must, if practicable, be attached to the unit of the commanding officer conducting the mast.
- 2.I.4.b *Request for particular mast representative.* If there is an individual attached to the unit whom the member desires to have as a mast representative, such individual should be appointed, if practicable and reasonably available, provided that he or she is neither involved in the matter that is the subject of the mast nor expected to be a witness in the proceedings. The command is not required to assign a particularly requested mast representative and may, in those situations where a requested representative is not assigned, assign as a mast representative an individual deemed capable of best assisting the member to present the member's case. Even if the member declines appointment of a mast representative, the command may, but is not required to, appoint one and so inform the member.
- 2.I.4.c *Role of the mast representative.* The mast representative serves primarily to assist the member in preparing for and presenting the member's side of the matter and to speak for the member, if the member desires. The mast representative may question witnesses, submit questions to be asked of witnesses, present evidence, and make statements inviting the commanding officer's attention to those matters he or she feels are important or essential to an appropriate disposition of the matter. In addition, the mast representative may make a plea for leniency, and to that end, may solicit and

submit statements regarding the reputation of the member at the unit as well as other matters in extenuation or mitigation.

2.I.4.d *Communications between mast representative and member.* Communications between a member and the member's mast representative are not privileged in the same manner as the communications between an attorney and client. Mast representatives will be advised at the time of appointment that their communications are not privileged. Although the communications are not privileged, the commanding officer will respect the privacy of the conversations and give the member and the member's mast representative an opportunity to confer in private.

2.I.5 **Spokesperson**

2.I.5.a *Entitlement.* In lieu of a mast representative, the member may elect to be accompanied at mast by a spokesperson. A spokesperson is different from a mast representative and does not perform the same role at a mast. A spokesperson does not have to be a crewmember or even a member of the Coast Guard, and may be an attorney retained by the member. At the sole discretion of the commanding officer, a member may be accompanied by an assigned mast representative in addition to the spokesperson. A spokesperson is provided or arranged for solely by the member at no cost to the government. A command need not allow a spokesperson to accompany the member so long as the punishment to be imposed will not exceed extra duty for 14 days, restriction for 14 days, and/or an oral reprimand. See MCM, Part V, Para.4.c.(1)(B). A spokesperson is not entitled to travel or similar expenses. Further, any acknowledgement of rights should be made personally by the member, and not by the spokesperson.

2.I.5.b *Qualifications.* A spokesperson need not be an attorney, but the commanding officer may not exclude the spokesperson from the mast solely because he or she is an attorney.

2.I.5.c *Mast need not be delayed.* The reasonable scheduling of a mast need not be delayed to permit the presence of a spokesperson. A mast that was reasonably scheduled and at which the spokesperson could not be present is not limited by the punishment caps.

2.I.5.d *Not an adversarial proceeding.* A mast is not an adversarial proceeding. To prevent that, a spokesperson is not permitted to examine or cross-examine witnesses. The commanding officer may, as a matter of discretion, permit a spokesperson to examine or cross-examine witnesses. A spokesperson is always permitted to speak for a member when the member is otherwise entitled to speak, except for acknowledgment of rights.

2.I.5.e *Communications between spokesperson and member.* Communications between a member and the member's spokesperson are not confidential, unless the spokesperson is an attorney retained to represent the member. If the spokesperson is an attorney, the communications are protected by the attorney-client privilege. The commanding officer will inform the member that the communications are not privileged. Although

the communications are not privileged, the commanding officer will respect the privacy of the conversations and give the member and the member's spokesperson an opportunity to confer in private.

2.I.6 Examination of documents and evidence. Prior to imposition of NJP, the member must be allowed to examine documents and other evidence that the NJP authority will examine and consider in determining whether to impose NJP. If a command is concerned that permitting examination will compromise an interest such as a victim or witness's privacy, or an ongoing law enforcement investigation, the command should contact the servicing legal office. However, the commanding officer may redact documents or place limitations on examination or disclosure of documents to protect interests such as a victim or witness's privacy or an ongoing law enforcement investigation. Upon request, such documents should also be provided to military counsel representing or advising the member. To avoid delays during the mast itself, the member and the member's designated mast representative should be provided the opportunity to review such materials, including the PIO's report and witness statements, prior to the mast. This may have been accomplished at some commands by the PIO or the executive officer. Alternatively, the commanding officer may review the documents and evidence with the member during the mast hearing. The regional CGIS office should be consulted prior to examination of a CGIS Report of Investigation.

2.J Mast procedure.

2.J.1 Nonjudicial in nature. A commanding officer's decision to impose NJP does not constitute a judicial finding of guilt and is not a criminal conviction. A member does not have a criminal record as a result of the imposition of NJP. This distinction prevents the stigma of a criminal conviction while still giving a commanding officer a prompt and efficient tool to maintain good order and discipline at the unit. It is equally important to note that while NJP is an administrative process, as opposed to a criminal process, in order to punish an individual under Article 15, UCMJ, the mast authority must determine that the member committed all elements of an offense as defined by the UCMJ.

2.J.2 Place. Traditionally, mast was held on a ship's quarterdeck, or "before the mast." Although most masts are now held in a cutter's wardroom or cabin or the commanding officer's office ashore, the commanding officer may hold mast where the unit's crew can observe it. The setting should maintain appropriate dignity and decorum for such a proceeding and allow the mast to be held without interruption or distractions. The fact that a mast is held ashore rather than onboard a cutter has no impact on the determination as to whether the member is attached to or embarked in a cutter.

2.J.3 Presence of the member. The member is required to be present at the mast subject to the following exceptions:

- (a) Member afforded rights of a party. A mast may be held in the member's absence where NJP is awarded on the basis of the record of a court of inquiry or an investigative body in which proceedings the member was afforded the rights of a party with respect to the offenses for which NJP is contemplated. *See* Section 2.U.
- (b) Member absent without authority. A mast may be conducted in a member's absence for a member absent without authority if the member was previously given notice that the command was considering NJP, informed of the suspected offenses and his or her rights at mast, and, if not attached to or embarked in a vessel, did not demand trial by court-martial in lieu of NJP.
- (c) Member waives right to be present. A member may waive this right to be present at mast by submitting in writing a statement of his or her desire to waive presence at the mast and an acknowledgement that he or she has had an opportunity to submit all matters in defense, extenuation and mitigation for the commanding officer's consideration. Even if the member properly waives this right, the commanding officer may require the member's presence.

2.J.4 Special arrangements for member at a detached or geographically distributed unit. A member may be considered "present" if the mast is held by two-way videoconference in which the member and the mast authority can see each other. A member assigned to a detached unit may also waive the right to be present at mast or ask to participate in the mast by telephone conference call.

2.J.5 Official attendees. Normally, the unit executive officer, the unit command chief if mast is held for an enlisted member, and the member's department head, division officer, and/or chief petty officer attend the mast. The absence of one of these individuals is not grounds to delay the proceeding. A unit master-at-arms may attend and coordinate the proceeding as directed by the commanding officer. A yeoman or other clerical assistant may be directed to attend to take notes of the proceeding and prepare record entries. If the member has a mast representative, he or she must be present unless excused by the member. If the member has a spokesperson in lieu of a mast representative, the spokesperson may be present if the mast would not be unduly delayed to permit the presence of a spokesperson. All official attendees, including those listed above, attend the mast at the discretion of the commanding officer.

2.J.6 Proceedings open to the public. A mast is normally open to the public unless the commanding officer determines that it should be closed due to operational necessity, to prevent disclosure of classified information, or other good cause. In addition, the commanding officer may close the proceedings if the maximum punishment to be imposed will not exceed extra duty for 14 days, restriction for 14 days, and an oral reprimand. *See* MCM, Part V, Para.4.c.(1)(G). However, an open mast is favored and the commanding officer should give serious consideration to keeping the hearing open, if doing so would not jeopardize the proceedings. Any persons whom the member desires present should be allowed to attend unless the mast is closed or the request for attendance is unreasonable. The command is not required to delay the

- must or make special arrangements to provide public access to the proceeding. Nothing in these requirements precludes the member from conferring privately with the commanding officer during the member's opportunity to make a statement, at the commanding officer's discretion, to relate matters that, in the opinion of the member, are of a personal nature.
- 2.J.7 Burden and standard of proof.** The government bears the burden of proof to demonstrate that the member committed the offenses. The standard of proof required in order to award punishment at NJP is a preponderance of evidence. This standard means that before NJP may be awarded, the commanding officer must determine it is "more likely than not" that the member committed an offense defined by the UCMJ. Each element of each offense as defined in the Manual for Courts-Martial must be supported by a preponderance of the evidence (i.e., it is "more likely than not" that the element occurred). This is a lower standard of proof than the "beyond a reasonable doubt" standard used at a court-martial.
- 2.J.8 Rules of evidence.** A member retains the right against self-incrimination at mast, and may not be forced to make a statement or answer incriminating questions. See Article 31(b), UCMJ. Privileges arising from communications with a spouse, an attorney, a member of the clergy, a psychotherapist, or a victim advocate apply at mast, with certain exceptions. See MCM, Part III, Section V. Other rules of evidence applicable to courts-martial do not apply at mast. The commanding officer may consider hearsay, or statements made outside the mast proceeding, such as police reports and oral or written statements made to an investigator, whether or not the person who made the statement appears in person at the mast. When deciding whether a hearsay statement is credible and the weight it should be given, the commanding officer should carefully evaluate the circumstances under which the statement was made. Judicial exclusionary rules involving rights warnings and search and seizure do not apply at mast, and the commanding officer may consider evidence that would be inadmissible at court-martial. The commanding officer should apply a rule of fundamental fairness: Under all of the circumstances, is it fair to the member to consider this evidence? The commanding officer should consult the servicing legal office with any questions about whether or not to consider specific evidence.
- 2.J.9 NJP disposition agreements.** Commanding officers are discouraged from entering into a "plea agreement" in connection with NJP, and may do so only after consulting the servicing legal office.
- 2.J.10 NJP script.** An NJP Script and Guide is available on the Office of Military Justice (CG-LMJ) website. Following the suggested script is not required for a valid NJP; however, ensuring the member's rights are provided and preserved is required. The script is intended to assist the mast authority to accomplish that goal. The detailed script answers the majority of questions and issues that may arise during a mast hearing. The mast authority may amend and stylize the provided scripts as necessary, or follow a different process to meet the unit's need for good order and discipline to the extent the member's rights under law (Articles 15 and 31b, UCMJ), Presidential

Order (Part V, MCM), and regulations of the Judge Advocate General of the Coast Guard (this Chapter), are followed.

- 2.J.11 Commanding officer's opening statement.** The commanding officer should begin the mast by advising the member of the procedure that will be followed during the hearing. He or she should again inform the member of the right to remain silent, and that any statement may be used against the member in deciding to impose NJP or in a trial by court-martial. A member who is not attached to or embarked in a vessel should also be reminded of the right to demand trial by court-martial in lieu of NJP. The mast must be terminated if the member asserts his or her right to demand trial by court-martial at any time prior to imposition of NJP.
- 2.J.12 Informing the member of the reported offenses.** The commanding officer should inform the member of the identity of the person who submitted the report of offense and the offenses alleged. The description of the offense should be sufficiently detailed to allow the member to respond to the allegations. Normally, this information may be taken directly from the Form CG-4910. In some cases, it may be necessary to provide additional information about the offense to ensure that the member is adequately informed of the allegations.
- 2.J.13 Inquiry of member.** The commanding officer should ask the member if he or she admits committing the alleged offenses. If the member admits committing the offenses, the commanding officer does not need to examine witnesses or receive any additional evidence about the offenses. If the member admits to the offenses, the commanding officer should proceed to the punishment phase of the proceedings. If the member does not admit committing the alleged offenses, the commanding officer will review available evidence and may call witnesses. The member may also invoke the right to remain silent and decline to answer any questions. The commanding officer must not consider the member's silence as evidence that he or she committed an offense or in deciding what punishment to impose.
- 2.J.14 Examination of evidence and witnesses by the commanding officer and member.** The commanding officer may decide that the PIO report or other available evidence is sufficient to establish the offense without calling witnesses. There is no requirement that a commanding officer call witnesses. Further, if the member asks for witnesses, the commanding officer is not obligated to call the witness unless the witness is relevant and not cumulative, reasonably available, and necessary for a full and fair proceeding. If the commanding officer determines that witnesses will be called, a witness may be questioned by speakerphone if he or she is unable to appear at the mast in person. Witnesses may be allowed to be present throughout the mast, or may, at the commanding officer's discretion, be excluded except when called for questioning. A civilian witness, other than a Coast Guard employee, may not be compelled to appear at mast, but may do so voluntarily. A military witness and/or a Coast Guard civilian employee may be ordered to be present for a mast, although may not be ordered to testify if the privilege against self-incrimination is claimed.

- 2.J.15 Questioning by the commanding officer.** Generally, the commanding officer calls and questions each witness, and may call witnesses in any order or sequence. The commanding officer may also keep witnesses separated or direct them to not discuss the case among themselves or with others, but is not required to do so. The commanding officer may use any procedure to develop the facts and circumstances surrounding the alleged offenses (e.g., question and answer, open narrative). Witnesses may be questioned about any prior oral or written statements. The commanding officer may allow the executive officer or any of the other attendees to suggest questions to be asked of a witness.
- 2.J.16 Oaths.** Witnesses are not normally placed under oath, but may be if the commanding officer desires. An appropriate oath for a witness would be as follows: “Do you [swear] [affirm] that the evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth [, so help you God]?” The use of “affirm” versus the combination of “swear” and “so help you God” is a religious preference to be taken by the witness.
- 2.J.17 Questioning by member.** After the commanding officer finishes questioning a witness, the member or the member’s mast representative should be allowed to question the witness. The commanding officer may control the proceedings as necessary to ensure that any questioning helps to discover the truth of the allegations against the member, avoids wasting time, and protects a witness from harassment or unnecessary embarrassment. The commanding officer may also require the member or the member’s mast representatives to submit questions in writing prior to the mast or orally at the mast for the commanding officer to ask a witness. The commanding officer may prohibit a spokesperson from questioning witnesses if in the commanding officer’s opinion such questioning would turn the mast into an adversarial proceeding.
- 2.J.18 Additional witnesses.** After all planned witnesses have been questioned, the member and the member’s mast representative should be asked if they desire that the commanding officer call additional witnesses. If so, those witnesses should be called if they are reasonably available and the commanding officer believes that they will provide relevant information and assist the commanding officer in arriving at a decision. The commanding officer may temporarily suspend the mast while the additional witnesses are located.
- 2.J.19 Dismissing unsupported alleged offenses or duplicative allegations.** The commanding officer should dismiss any alleged offense not supported by a preponderance of the evidence or that the commanding officer believes are duplicative with other existing offenses. A mast ending in dismissal of all offenses is not punishment and no entry will be made in the member’s service record.
- 2.J.20 Opportunity for member’s statement.** The member should be offered an opportunity to make a statement about the alleged offenses after all of the witnesses have been questioned and other evidence considered,. The commanding officer may again remind the member of the right to remain silent. If the member makes a

statement admitting to new or more serious offenses, an additional rights warning is appropriate. *See* Article 31(b), UCMJ. The member may make a statement personally or through the most representative or spokesperson. The member may also submit written statements or ask that additional witnesses be called for questioning. The commanding officer must order the witnesses requested by the member to be present, unless he or she determines that their testimony is not relevant or they are not reasonably available. *See* Part V, Para.4.c.(1)(F). This is not the appropriate place in the proceedings for the member to offer evidence in extenuation or mitigation, as there has not yet been a finding that an offense was committed. Therefore, the commanding officer should advise the member that there will be a later opportunity to present matters in extenuation and mitigation, and to ask for character witnesses.

2.J.21 Resolving discrepancies or inconsistencies. If necessary, the commanding officer may recess to consider if the offenses are supported by a preponderance of the evidence or are duplicative. Also, the commander officer may recall any witness to resolve discrepancies or inconsistencies. The mast will proceed with respect to any remaining offenses. If no offenses remain, the commanding officer will terminate the mast.

2.J.22 Findings. If the commanding officer determines, based on a preponderance of the evidence, that the member committed one or more offenses, the commanding officer should announce, in layman's terms, what offenses the member committed.

2.J.23 Imposition of NJP. If a commanding officer finds that an offense was committed, he or she must consider the appropriate punishment. The following factors should be considered by the commanding officer in choosing the appropriate punishment:

- (a) Seriousness of the offense;
- (b) Circumstances surrounding the offense;
- (c) Member's prior performance and potential;
- (d) Potential rehabilitative effect of punishment on the particular member;
- (e) Mitigating and extenuating circumstances;
- (f) Effect of offense upon the good order and discipline within the command;
- (g) Deterrent effect of punishment on potential offenders;
- (h) Recommendations from any subordinate commanders; and
- (i) Potential adverse administrative consequences (e.g., loss of eligibility for good conduct award; eligibility for reenlistment or promotion; show cause board; recoupment of selective reenlistment bonus; administrative discharge).

2.J.25 Extenuation and mitigation. The commanding officer should allow the member to present evidence in extenuation or mitigation of the offense. Extenuation evidence is information tending to explain the circumstances surrounding the commission of the offenses. Mitigation evidence is information that might justify the imposition of a

- lighter punishment than might otherwise be awarded. Such evidence may be presented orally or in writing.
- 2.J.26 Consideration of prior documented performance.** The commanding officer should review the member's personal data record (PDR) and consider the member's prior performance in deciding whether to impose NJP and, if so, the appropriate punishment. He or she may consider the member's marks, prior NJP or appearances at mast, positive or negative Administrative Remarks entries (CG-3307), and court-martial convictions.
- 2.J.27 Comments by members of the command.** The commanding officer may ask the member's department head or division officer, command chief, and the executive officer to comment on the offenses and the member's prior performance of duties. Other persons in the member's chain of command may also be asked to comment. Those asked to comment should be prepared to present information that will help the commanding officer reach a balanced view of the conduct under consideration. If such individual knows of information that may be helpful to the member that has not been brought out at mast, he or she should make this known to the commanding officer.
- 2.J.28 Suspension of punishment.** When imposing NJP, the commanding officer should also consider whether to suspend all or part of the punishment imposed. Suspension of punishment may be appropriate when it is the member's first offense or where there are extenuating or mitigating circumstances. Suspension provides the member with an additional incentive for proper behavior. The suspension of punishment is still considered NJP, and the collateral consequences thereof will attach.
- 2.J.29 Vacation of earlier suspended punishment.** Vacation of an earlier suspended punishment and reinstatement of the suspended punishment should be announced before new punishment is imposed.
- 2.J.30 Dismissal with a warning.** The commanding officer may decide not to punish a member and dismiss the matter with a warning. Such a decision may be based on a determination that punishment is not appropriate even though the member committed the offenses. Dismissal with a warning is not considered NJP, and no entry will be made in the member's service record.
- 2.J.31 Referral to court-martial.** If the commanding officer determines that the alleged offense is too serious to be disposed of through NJP, he or she should not announce a finding or impose NJP. The commanding officer should inform the member that he or she intends to consider disposing of the matter at trial by court-martial, or referring the matter to his or her superior commander, and that the member will be informed when a decision is made.
- 2.J.32 Further investigation or proceedings.** It is not necessary that the commanding officer dispose of a case in one mast session. In unusual circumstances, the

commanding officer may continue the mast proceedings to a later session to allow more time for deliberation or to require the gathering of additional information. Also, if it appears during the mast proceedings that other persons or major offenses are involved or that further investigation is required, the commanding officer may terminate the mast proceedings and order an investigation by an appropriate investigative body. None of these actions prevent a commanding officer from disposing of the matter at a subsequent mast, unless the matter is determined to involve a serious offense. If at the time the commanding officer reopens an earlier continued mast proceeding, he or she has received reports of additional offenses of which the member is suspected, and the commanding officer has determined that these additional offenses will be disposed of at a mast proceeding, all of the offenses must be disposed of at the same time. This is consistent with the general policy that all known offenses be disposed of at one time at the lowest appropriate forum.

2.J.33 Member's right to appeal. If the commanding officer imposes NJP, he or she must inform the member of the right to appeal.

2.J.34 Publication to unit personnel. Publication of NJP results serves to deter other members of the unit from committing similar offenses and has positive effects on unit morale. Commanding officers may, if the interests of offender rehabilitation, good order and discipline, morale, and perceptions of fairness so warrant, establish a policy to announce NJP disposition decisions. For example, announcement may be made in a Plan of the Day, posted on a bulletin board, announced at formation, announced at all hands, or through official e-mail. If the means of publishing NJP results is accessible to or disseminated to non-military personnel, the results may be published without the member's name.

2.K Punishment at NJP.

2.K.1 Maximum punishment limited by rank or grade. The maximum punishment that may be imposed depends upon the rank of the authority imposing NJP, the rank or grade of the member being punished, and in some situations by the combination of punishments awarded. The limitations shown in the following two tables apply to each instance of NJP and not to each offense.

2.K.2 Table of maximum punishment for officers and warrant officers. Subject to the limitations in Subsections 2.K.4 and 2.L, the following table depicts the maximum punishments that may be awarded at mast to an officer or warrant officer:

Maximum punishment(s) imposed upon an officer or warrant officer when imposed by a...			
Punishment type	Flag officer	LCDR (O-4) or above	LT (O-3) or below
Admonition or reprimand	Yes	Yes	Yes
Arrest in quarters	30 days	No	No
Restriction	60 days	30 days	15 days
Forfeiture of pay	1/2 of 1 month pay per month for 2 months	No	No

2.K.3 Table of maximum punishment for enlisted personnel. Subject to the limitations in Subsections 2.K.4 and 2.L, the following table depicts the maximum punishments that may be awarded at mast to an enlisted member:

Maximum punishment(s) imposed upon an enlisted member when imposed by a(n)...			
Punishment type	LCDR (O-4) or above	LT (O-3) or below	Enlisted officer in charge
Admonition or reprimand	Yes	Yes	No
Restriction	60 days	14 days	14 days
(E-6 & below only) Extra duties	45 days	14 days	14 days
Forfeiture of pay	1/2 of 1 month pay per month for 2 months	7 days pay	3 days pay
(E-6 & below only) Reduction in pay grade	Yes	Yes	No

2.K.4 Limitations and prohibitions on punishments. All authorized maximum punishments listed may be imposed in a single mast with the following exceptions:

- (a) Arrest in quarters may not be imposed in combination with restriction;
- (b) If restriction and extra duties are awarded at the same mast, they must be combined to run concurrently. However, if both restriction and extra duties are awarded, the maximum amount of each must not exceed the maximum that may be imposed for extra duties. See Subsection 2.L.5. Restriction and extra duties may not run consecutively;
- (c) Extra duties may only be imposed on members of the grade of E-6 and below;
- (d) Arrest in quarters and restriction may not be imposed on a reservist at NJP awarded during inactive duty training or involuntary active duty pursuant to an order; and
- (e) Confinement on bread and water (or diminished rations) is not an authorized punishment in the Coast Guard.
- (f) Reduction in rank may only be imposed on members of the grade E-6 and below.

2.L Types of authorized punishments.

2.L.1 Punitive admonition or reprimand.

2.L.1.a See MCM, Part V, Para.5.c.(1); Ch. 1.E., Discipline and Conduct, COMDTINST M1600.2 (series).

2.L.1.b Punitive admonition and reprimand are two forms of censure intended to express adverse reflection upon or criticism of a member's conduct. A reprimand is a more severe form of censure than an admonition. Punitive admonition and reprimand should not be confused with non-punitive censure and other forms of administrative corrective measures. See Ch. 1.E., Discipline and Conduct, COMDTINST M1600.2 (series).

2.L.1.c In the case of commissioned officers and warrant officers, admonitions and reprimands awarded at NJP must be administered in writing. For enlisted members, they may be administered either orally or in writing. The punitive letter of admonition or reprimand must be similar in form to the Template Letter of Reprimand, available on the Office of Military Justice (CG-LMJ) website.

2.L.1.d While punitive letters of admonition or reprimand are not generally considered appropriate in the case of enlisted personnel below the grade of E-7, their use against lower ranking personnel is not precluded.

2.L.1.e If a punitive letter is appealed and overturned on appeal, a copy of the letter will not be filed in the official record of the member concerned.

- 2.L.2 Restriction.** Restriction is moral restraint to specified geographical limits set by the commanding officer imposing the punishment. While the limits of restriction are usually specified to be that of the vessel or the boundaries of a shore unit, the limit can be greater or, within reasonable limits, lesser. It is recommended, especially at larger units, that a written letter be directed to the member setting forth the exact times and geographical limits of the restriction. The letter should be as specific as possible. For example, a restriction to the limits of Coast Guard Sector San Francisco would authorize the restricted member to be anywhere within the limits of Sector San Francisco (e.g., Lake Tahoe, Point Arena, Bodega Bay, Rio Vista and points in between) whereas a restriction to the limits of Station San Francisco would authorize the member to be anywhere on the U.S. property that composes the station. A Template Restriction Letter is available on the Office of Military Justice (CG-LMJ) website.
- 2.L.2.a In the case of a member serving on a vessel, the execution of the punishment may be delayed until arrival of the vessel in port. The commanding officer of a vessel has the discretion to determine whether “arrival of the vessel in port” occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport. However, the restriction must run consecutively. If the commanding officer determines that the restriction will begin during the cutter’s next port call, it cannot be suspended after that brief stop and continues to run, even while the cutter is underway.
- 2.L.2.b Once commenced, restriction runs continuously and cannot be interrupted, except during the service of a punishment of confinement or restriction adjudged by a court-martial, an appeal of the NJP, or emergency leave. In the event that restriction is interrupted, the remaining period of restriction must be served in full upon termination of the interruption.
- 2.L.2.c Unless specified by the commanding officer, a restricted member will ordinarily be required to perform his or her full military duties.
- 2.L.2.d Restriction may, as a collateral consequence, deprive the member of other benefits. Restriction will never be the basis for increases in benefits/pay, such as in the case of family separation allowance.
- 2.L.3 Arrest in quarters.** Arrest in quarters is a moral restraint of officers to specified quarters established by the commanding officer imposing the punishment. The officer may be required to perform certain portions of his or her regular duties as long as the duties do not involve the exercise of authority over subordinates. Only flag officers or their principal assistants can award punishment of arrest in quarters.
- 2.L.4 Correctional custody.** Correctional custody is no longer an authorized punishment at NJP. While correctional custody is a lawful punishment for NJP in the MCM, the Department of Defense no longer operates correctional custody units, and it would be logistically burdensome for Coast Guard to operate a correctional custody unit.

- 2.L.5 Extra duties.** Extra duties means the performance of duties in addition to the member's regular duties. Military duties of any kind may be assigned. Extra duties assigned to petty officers must not be of a type that demeans their grade or position. Extra duties must not constitute a known health or safety hazard to the member or that constitute cruel or unusual punishment. Extra duties are performed before or after regular working hours. The member is not required to perform extra duties on his or her Sabbath day, but will still receive credit for performing extra duty on the Sabbath day if it falls within the prescribed period of extra duty. For example, if the member is awarded five days extra duty at two hours per day on Thursday, and he or she observes a Sabbath day within the next five days, then the member would be credited with performing two hours of extra duty on the Sabbath Day and need only perform extra duties on the remaining four days. In imposing this punishment, the extra duties must be stated in terms of the number of days the extra duties are to be performed. The punishment must not be stated in terms of total hours to be served or in terms that require completion of a specific assignment. The number of hours to be served daily should also be stated, and it may not exceed two hours. If the number of hours to be served daily is not stated, the default is two hours daily.
- 2.L.6 Forfeiture of pay.** Forfeiture is pay lost from the pay record before the member receives it. The term "pay" includes base pay or, in the case of reserve personnel on inactive duty, compensation for periods of inactive duty training. Sea or foreign duty pay is included as "pay," but not special pay for special qualifications.
- 2.L.6.a Any forfeiture of pay imposed must be expressed in whole dollar amounts per month only, and not in dollars and cents, as a percentage of pay, or in number of day's pay.
- 2.L.6.b If NJP includes both reduction in pay grade and forfeiture of pay, the forfeiture must be based on the pay grade to which the member has been reduced even if the reduction is suspended.
- 2.L.7 Reduction in pay grade.** Only E-6 and below may be reduced at mast. The maximum reduction in pay grade at mast, regardless of the rank of the commanding officer imposing punishment or the rank of the member facing NJP, is to the next inferior pay grade. Only commissioned officers serving as mast authority may reduce an enlisted member; officers-in-charge may not.
- 2.L.7.b Commissioned officers serving in command have authority to advance enlisted personnel and exercise promotion authority within the meaning of Article 15(b)(2)(D), UCMJ. Accordingly, when exercising NJP authority, commissioned officers serving in command may reduce an enlisted member of pay grade E-6 and below to the next inferior pay grade.
- 2.M Effective date of punishment.** All NJP takes effect on the date imposed, except:

- (1) When the punishment is suspended.
- (2) If the member is assigned to a vessel and is awarded either restriction or restriction in combination with extra duties while the vessel is underway or during a deployment away from homeport, the restriction and extra duties may be deferred pending arrival of the vessel in port.
- (3) If the member submits a timely appeal of the punishment awarded at NJP (See Section 2.T) and action by the appeal authority is not taken on an appeal within 5 days after the appeal is submitted, any unexecuted punishment involving restraint or extra duties must be stayed, upon request of the member, until after action is taken on the appeal. See MCM, Part V, Para.7.d.
- (4) If a punishment is imposed while a prior punishment of the same type resulting from a separate punitive action is in effect, the prior punishment will be completed before the newer punishment commences. For example, if a member still has one week of restriction remaining and is awarded additional restriction at another mast, the first restriction must be completed before the second period of restriction begins to run. The two periods of restriction run consecutively, not concurrently.

2.N Transfer of member.

2.N.1 Generally. If a member undergoing punishment involving restraint, extra duties, or forfeiture of pay is transferred on PCS orders or departs on TAD orders, before the punishment has been fully completed, the departure of the member from the command normally remits (or cancels) the remaining punishment, except as provided in Subsection 2.N.2.

2.N.2 Exceptions. The punishment is not terminated or remitted when the receiving commanding officer agrees to continue the restraint, extra duties, and/or forfeiture of pay, and:

- 2.N.2.a The sole purpose of the transfer is to provide a suitable place to carry out the unsuspended punishment because the command awarding the punishment was determined to be unsuitable for purposes of executing the punishment;
- 2.N.2.b The punishment is imposed at a temporary duty station and the member is being returned to his or her permanent unit after being temporarily assigned (for a period not in excess of 60 days) to the command imposing the punishment;
- 2.N.2.c The member was transferred to a support command to facilitate discharge processing;
- 2.N.2.d The transfer was because the member missed the sailing or deployment of his or her unit without authority;
- 2.N.2.e The transfer was for the purpose of holding a court-martial, “show cause” board, administrative discharge or re-enlistment review board, medical board or physical

evaluation board. Transfers for medical evaluation and/or treatment (inpatient or outpatient) neither interrupt nor terminate the service of restraint punishment, even though the member may not actually be under restraint; or

2.N.2.f The member was transferred because his or her continued presence adversely affected the good order and discipline or morale of the unit or was interfering with the unit's ability to accomplish its operational mission.

2.N.3 **Discharge.** Any unexecuted portion of NJP is automatically remitted on the day following discharge if the member does not reenlist within 24 hours.

2.O **Deferral of punishment.**

2.O.1 **Generally.** Deferral of punishment is the delaying or postponement of the commencement of the punishment. Deferral differs from suspension, discussed in Section 2.P. While deferral delays the imposition of punishment to a later date, suspension of punishment grants a probationary period where the member does not have to perform the restriction or extra duties and, upon successful completion of the suspension, the unexecuted part of the sentence is remitted (or cancelled).

2.O.2 **A commanding officer imposing punishment may not defer the start of an unsuspended punishment, except as provided in this Subsection:**

- (a) Vessel underway at the time of NJP. The execution of restriction or restriction with extra duties may be deferred until arrival of the vessel in port. The commanding officer of a vessel has the discretion to determine whether "arrival of the vessel in port" occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport.
- (b) Appeal. A member who appeals his or her NJP is required to serve any punishment while appeal is pending. If action by the appeal authority is not taken within 5 calendar days after submission, upon the member's request, any unserved punishment involving restraint or extra duties shall be deferred until action on the appeal is taken. See MCM, Part V, Para.7.d.
- (c) New punishment. If a punishment is imposed while a prior punishment of the same type resulting from a separate punitive action is in effect, the prior punishment will be completed before the newer punishment commences. For example, if a member still has one week of restriction remaining and is awarded additional restriction at another mast, the first restriction must be completed before the second period of restriction begins to run. The second of period is deferred. The two periods of restriction run consecutively, not concurrently.
- (d) Medically unfit. If the member is found by proper authority to be medically unfit to serve the punishment, the commanding officer may defer the execution of the punishment until the member is determined by proper authority to be medically fit to serve the punishment.

- (e) Emergency leave. The commanding officer may defer the execution of an unsuspended punishment if the commanding officer grants the member emergency leave. In this instance, deferral ends and the punishment commences upon the member's return to duties.
- (f) Unauthorized absence. An unauthorized absence by a member serving NJP interrupts the service of that punishment and automatically defers continued service of that punishment. The deferment ends upon the member's return to a Coast Guard unit that knows of the existence of the deferred restraint or extra duty punishment and has the facilities to carry out the punishment. If an absentee is placed in restraint for other reasons (such as restriction or confinement in anticipation of a court-martial), such restraint does not count towards the deferred restraint punishment and the deferral of restraint punishment ends only on completion of the restraint for other reasons.
- (g) Not-fit-for-duty status. If a member who is serving extra duties as a punishment is placed in a not-fit-for-duty status, the not-fit-for-duty status defers the service of extra duties. If the extra duties are being served concurrently with restriction, the restriction will continue to run in spite of the not-fit-for-duty status (so long as the member is medically fit to serve restriction). When the member is returned to a fit-for-duty status, the remaining punishment of extra duties is immediately reinstated. Any extra duty remaining to be served when the sentence to restriction is completed is remitted.

2.P Suspension of punishment.

2.P.1 General. To suspend a punishment means to hold it in abeyance, or not execute it, for a specified probationary period. If the member successfully completes the probationary period, the remainder of the punishment is remitted, or cancelled. See Section 2.S. Unless otherwise stated, an action suspending a punishment includes a condition that the member not violate any punitive article of the UCMJ. Other appropriate conditions of the suspension may be specified in writing by the NJP authority (e.g. successful completion of anger management or alcohol rehabilitation program, attendance at family counseling sessions). If the member violates the conditions of the suspension, the suspension is vacated and the punishment is executed. The commanding officer who imposed NJP, or a successor in command, may, at any time, suspend any part or amount of the unexecuted punishment and may suspend a reduction in pay grade or forfeiture, even if executed. An executed punishment of reduction or forfeiture may be suspended only within a period of four months after the date of execution. The imposition of a punitive letter of admonition or reprimand may not be suspended.

2.P.2 Period of suspension. A suspension must be for a definite period, not to exceed six months from the date of the suspension, and this period must be specified when the punishment is suspended. The running of the period of suspension is tolled during periods of unauthorized and unexcused absence and when proceedings to vacate suspended punishment are commenced.

2.P.3 Transfer of member remits suspended punishment. When a mast punishment is suspended for a specified period and the member is transferred before the end of the period, the punishment is automatically remitted (or cancelled) when the member is transferred on PCS orders or departs on TAD orders except when:

- (a) The sole purpose of the transfer is to provide a place to carry out the unsuspended punishment.
- (b) The punishment is imposed at a temporary duty station and the member is being returned to his or her permanent unit after being temporarily assigned (a period not in excess of 60 days) to the command imposing the punishment.
- (c) The member is being returned to his or her cutter after having missed its sailing without authority.
- (d) The member is being returned to his or her unit after having been on temporary additional duty for the purpose of a court-martial, “show cause” board, administrative discharge board, medical board, physical evaluation board, or for medical evaluation and/or treatment.
- (e) The punishment is imposed by an active service unit on a reservist who returns to his or her reserve unit or any other unit for subsequent periods of active or inactive duty training.
- (f) The member has been assigned TAD or PCS to a support command to facilitate discharge processing.
- (g) The member was transferred because his or her continued presence was adversely affecting the good order and discipline or morale of the unit or was interfering with the unit’s ability to accomplish its operational mission.

2.P.4 Automatic remission. Unless the suspension is sooner vacated, suspended portions of a punishment are remitted (or cancelled), without further action, upon the termination of the period of suspension, promotion, or advancement of the member.

2.Q Vacation of suspension.

2.Q.1 General. To vacate a suspended sentence means to end the period of suspension and enforce the sentence. A commanding officer must consult the servicing legal office before taking action to vacate a suspended punishment. Vacation of a suspended nonjudicial punishment is not itself nonjudicial punishment and additional action to impose nonjudicial punishment for a violation of a punitive article of the UCMJ upon which the vacation action is based is not precluded thereby. See MCM, Part V, Para.6.

2.Q.2 Who may vacate NJP punishment. A commanding officer may vacate all or a portion of the suspended punishment. Any commanding officer competent to impose upon the member punishment of the type and amount involved in the suspension may vacate a suspended punishment during the period of suspension. If the suspended punishment exceeds that which the commanding officer could initially award, the commanding officer may still vacate the suspension; however, only so much of the punishment may be ordered executed that is within the authority of the present

commanding officer to impose. This possibility could arise where a commanding officer was replaced by an officer-in-charge, or where a commanding officer in the grade of LCDR was relieved by a LT. See MCM, Part V, Para.6.

2.Q.3 Reason to vacate NJP punishment. Vacation of a suspension may be based on an offense under the UCMJ or other appropriate conditions of the suspension specified in writing by the NJP authority. See MCM, Part V, Para.6.a.4. This is because unless otherwise stated, an action suspending a punishment includes a condition that the member not violate any punitive article of the UCMJ.

2.Q.3.a *Timing of violation.* Vacation of a suspension must be based on conduct occurring within the period of suspension. To vacate a suspension, the commanding officer must act before the end of the suspension period. The suspension period is stayed when the probationer is notified that the commanding officer is taking action to vacate the suspension.

2.Q.3.b *Conduct not grounds to vacate a suspension.* Misconduct that occurred prior to the period of suspension but discovered within that period is not grounds to vacate the suspension, although it may be grounds to initiate a new Article 15, UCMJ, proceeding, provided that the statute of limitations has not expired.

2.Q.4 Notification. Except when prevented by unauthorized absence of the member, the commanding officer must notify the member in writing that he or she is considering whether to vacate the suspended nonjudicial punishment. The commanding officer must include a description of the grounds for vacation. (See Subsection 2.Q.4.a), and notify the probationer of his or her rights as described in Subsection 2.Q.5.a. The commanding officer should provide the probationer a reasonable amount of time to produce any evidence or witnesses. A template Record of Vacation of Suspended Nonjudicial Punishment is available on the Office of Military Justice (CG-LMJ) website, and may be used to document notification and member elections.

2.Q.4.a *Contents of notification.* As part of the notification, the commanding officer must provide a description of the basis for the vacation and any other information pertinent to the suspended punishment. The notification should include all statements and evidence upon which the commanding officer intends to rely in making his or her decision, or provide an opportunity for the member to review the statements and evidence

2.Q.4.b *When the commanding officer does not personally notify the probationer.* Where circumstances prevent the commanding officer from personally notifying the member or the commanding officer elects not to do so, the commanding officer may direct a subordinate, senior in rank to the member, to notify the member.

2.Q.5 Vacation proceedings. Although a hearing is not required to vacate a suspension, if the punishment is of the kind set out in Article 15(e)(1)-(7), UCMJ, the probationer should, unless impracticable, be given an opportunity to appear before the

- commanding officer to present any matters in defense, extenuation, or mitigation. See MCM, Part V, Para.6.a.(5). If a hearing is held, the template NJP Vacation Proceeding Script, available on the Office of Military Justice (CG-LMJ) website, may be used.
- 2.Q.5.a *Member's rights.* The member may present matters in defense, including reasonably available witnesses, extenuation, or mitigation regarding the violation on which the vacation action is based. The member may make either a written presentation or personal appearance or both. If appearance is impracticable due to the unavailability of the commanding officer or by extraordinary circumstances, the member may appear before a person designated by the commanding officer who will prepare a summary of the personal appearance for the commanding officer. The member may be accompanied by someone to speak on the member's behalf; however there is no requirement that a lawyer be made available to advise the member at the personal appearance.
- 2.Q.5.b *Decision to vacate.* The commanding officer must consider the evidence, including the matters presented by the member, before making a decision. The decision must be documented in writing. A template Record of Vacation of Suspended Nonjudicial Punishment is available on the Office of Military Justice (CG-LMJ) website, and may be used to document the commanding officer's decision.
- 2.Q.6 Effect of Vacation.** If proceedings to vacate a suspended punishment are combined with a new action under Article 15, UCMJ, the commanding officer must ensure it is clear to the member what portion of a prior suspension is vacated prior to imposing NJP for the new conduct. A Template Mast Script, available on the Office of Military Justice (CG-LMJ) website, provides language for doing so. The decision to vacate a suspension of NJP is not an issue that may be appealed under MCM, Part V, Para.7.
- 2.Q.6.a *Effective date of vacation.* Vacated punishment begins on the date the commanding officer orders the suspension vacated, following review by the servicing legal office. The order vacating a suspension must be issued within a reasonable time after commencement of the vacation proceedings.
- 2.Q.6.b *Effect on suspended reductions.* If a reduction in grade is suspended, but the suspension is later vacated, the date of rank in the grade to which the member is reduced is the date the original reduction was imposed by the commanding officer. The effective date, however, is the date of the vacation action. For example, if the commanding officer imposed NJP consisting of a suspended reduction in grade for six months on 1 June, and subsequently vacates the suspension on 2 September, the effective date of the reduction is 2 September, but the member's new date of rank is 1 June.
- 2.Q.7 Remitted punishment.** Remitted (cancelled) punishment may not be vacated. By definition, remitted punishment no longer exists in any form to be resurrected.

2.R Mitigating punishment.

2.R.1 General. Any part or amount of an unserved portion of a punishment may be mitigated, or reduced in severity. In mitigating a punishment, neither the quantity nor quality of the punishment may be increased. This means that the mitigated punishment may not be of any type more severe than the original punishment.

2.R.2 Actions authorized. A commanding officer may mitigate any part or amount of the unexecuted portion of the punishment as follows:

- (a) Arrest in quarters may be mitigated to restriction (officers);
- (b) Extra duties may be mitigated to restriction;
- (c) Reprimand may be mitigated to admonition;
- (d) Reduction in pay grade, regardless of whether the reduction has been executed, may be mitigated to forfeiture. This form of mitigation must be done within four months of imposition and in consultation with Coast Guard Personnel Service Center (PSC).

2.S Remission, restoration, and setting aside.

2.S.1 Persons authorized. The commanding officer who imposed the punishment, successors in command, and superior commanding officers have authority to remit or set aside punishments.

2.S.2 Successor in command. The term “successor in command” is defined as a commanding officer who has succeeded to the command of the commanding officer who imposed the punishment, or under whose delegated power the punishment was imposed, provided that the member punished is still in the command. The commanding officer of a unit to which a member has been transferred, either PCS or TAD, is not a successor in command.

2.S.3 Initiating action. Action to remit or set aside a part of the punishment and to restore some or all rights, privileges, and property affected may be taken at the commanding officer’s own initiative or on application of the member punished. Any such application should be made within a reasonable period of time.

2.S.4 Remission. Remitting a punishment is an exercise of clemency and applies only to an unexecuted part of a punishment. The unexecuted part of the punishment that is remitted is not carried out, but that part that has already been served, forfeited, etc., is not restored. Once remitted, an unexecuted punishment may never be revived and re-imposed. Because NJP was imposed, the collateral consequences associated with the NJP will not be affected by the remission.

2.S.5 Setting aside and restoration. Setting aside all punishment is the equivalent of the member never having been punished pursuant to Article 15, UCMJ. The power to set aside punishment and restore rights, privileges, and property affected by the executed portion of a punishment should ordinarily be exercised only when the authority

considering the case believes that the ends of justice and discipline are best served by setting aside some or all of the punishment. Both executed and unexecuted portions of a punishment may be set aside. Any punishment set aside is extinguished and, unlike suspended punishment, may not be resurrected. The power to set aside executed punishment should be exercised only within a reasonable time after the punishment has been executed (four months absent unusual circumstances). If the entire punishment imposed at a mast is set aside, then:

- 2.S.5.a The effective date of restoration to the former pay grade is the date of advancement to that pay grade prior to the date of the mast that effected the reduction. Any restoration of pay grade must be coordinated with PSC.
- 2.S.5.b The NJP that has been set aside is not considered NJP for purposes of determining the member's eligibility for a Good Conduct Medal, advancement, or appointment to warrant officer.
- 2.S.5.c A conduct mark lowered as a result of the conduct that resulted in the NJP will not automatically be raised, unless the commanding officer assigning the conduct mark deems it appropriate. Assigning an appropriate conduct mark is an administrative decision that must be made as a result of awarding NJP, but NJP is not a pre-requisite to appropriately evaluating a member's conduct under personnel regulations.

2.T Appeal of NJP.

2.T.1 Bases and time limit to appeal. A member who received NJP may appeal if he or she considers the punishment imposed "unjust" or "disproportionate" to the acts of misconduct for which punished. Any appeal must be submitted in writing within 5 calendar days of the imposition of the punishment, or the right to appeal is waived in the absence of good cause shown. The day the punishment is awarded does not count in the computation; however, the day that the appeal is submitted does count in the computation. The appeal period commences to run even though all or any part of the punishment imposed is suspended. An appeal is "submitted" when it is received by the member's supervisor or any more senior individual in the member's unit chain of command. The appeal must be temperate and factual.

2.T.2 Definitions.

2.T.2.a *Unjust.* The term "unjust" denotes illegality. Examples of unjust punishment include: the act of misconduct for which punishment was imposed was not a punishable offense under the UCMJ; the member was not subject to the jurisdiction of the commanding officer who imposed punishment; the commanding officer who imposed punishment was without power or authority to act in the member's case; or the punishment exceeded legal limitation based upon the status of the member and/or the commanding officer who imposed the punishment. Similarly, the illegality may result from the denial of a substantial right of the member at any stage of the proceedings (e.g., investigation, preliminary inquiry, interrogation, or mast). Illegality may result from the failure to comply with procedural provisions applicable to mast punishment.

Additionally, a member who received a punitive letter may appeal, claiming that a matter raised in the letter is inaccurate or not relevant to the offense committed or the punishment imposed. Finally, illegality may result from a lack of sufficient evidence to establish that it was more likely than not, that the member committed the misconduct.

2.T.2.b *Disproportionate*. The term “disproportionate” indicates that although the punishment imposed was legal, it was excessive or too severe considering all of the circumstances (e.g., the nature of the misconduct involved; the absence of aggravating circumstances; the prior good record of the member; or any other circumstances that tend to lessen the severity of the misconduct or explain it in a light more favorable to the member). Adverse administrative consequences of NJP such as delay in advancement or inability to reenlist are not punishment and are not a proper basis for NJP appeal.

2.T.3 Who acts on appeal. Appeals must be submitted through the commanding officer who imposed the NJP and any superiors in the commanding officer’s chain of command to the “superior authority” designated by this Section to act upon that appeal. Unless otherwise specified in this Chapter or required by law or policy, the superior authority empowered to act on an appeal of the imposition of NJP is the first flag officer in the chain of command above the commanding officer who imposed the NJP or under whose authority a principal assistant imposed NJP. An officer who has delegated his NJP powers to a principal assistant may not act on an appeal from punishment imposed by that principal assistant. For example, if a district commander’s principal assistant imposed NJP, the area commander, and not the district commander, is the superior authority who acts on the appeal. The superior authority must consult with his or her servicing legal office prior to taking action on an NJP appeal. Specific exceptions to the general rule that the superior authority is the first flag officer in the chain of command of the commanding officer who imposed the NJP are:

- (a) The Deputy Commandant for Mission Support (DCMS) is the superior authority for Area Commanders, the Coast Guard Force Readiness Command (FORCECOM), the Personnel Service Center (PSC), the Director of Operational Logistics (DOL), and the Superintendent, United States Coast Guard Academy, and all service and logistics centers/commands (except those falling under FORCECOM, PSC, or DOL) or a principal assistant to whom NJP authority has been delegated by any command or unit above.
- (b) The Vice Commandant (VCG) is the superior authority for NJP imposed by the Commanding Officer, Coast Guard Headquarters, or the Deputy Commandant for Mission Support, or a principal assistant to whom NJP authority has been delegated by them.
- (c) The superior authority for other commanding officers imposing NJP on Coast Guard members serving with other armed forces, in the absence of a specific, contrary directive controlling appeals, is the first Coast Guard flag

officer in the member's chain of command, or the Deputy Commandant for Mission Support (DCMS) if there is no Coast Guard flag officer in the member's chain of command.

- 2.T.4 Delegation of appeal authority.** An appeal authority who is an officer of flag rank may delegate the power to respond to NJP appeals under Article 15(e), UCMJ, to a principal assistant. See 2.B.4.
- 2.T.5 Format of appeal.** The appeal must be in writing, must be temperate and factual, and must set forth a summary of the prior proceedings in the member's case; a detailed explanation of the basis for the appeal stating that the punishment imposed was either unjust or disproportionate, or both, and why; and the specific action that the superior officer to whom the appeal is made is requested to take. A template NJP Appeal and CO's Endorsement is available on the Office of Military Justice (CG-LMJ) website.
- 2.T.6 Intermediate action on NJP appeal.**
- 2.T.6.a *Appeal granted by NJP authority.* If upon receipt of an appeal, the commanding officer who imposed the punishment determines that the appeal has merit, he or she may either set aside the punishment or adjust the punishment to that requested by the member making the appeal. If that action is taken, the commanding officer must so advise the member and will not forward the appeal. The unit punishment log and associated personnel record entries must be appropriately corrected.
- 2.T.6.b *Appeal denied and forwarded by NJP authority.* If upon receipt of an appeal, the commanding officer determines that the requested relief should not be granted in total, the commanding officer must forward the appeal to the next superior commanding officer in the chain of command. Appeals should be forwarded as soon as possible to avoid deferments of punishment. The commanding officer must submit an endorsement when forwarding the appeal. The commanding officer's endorsement must be signed personally by the commanding officer imposing punishment or the acting commanding officer and must contain the following:
- (i) A statement summarizing the proceedings held in the matter;
 - (ii) A statement of the facts found by the commanding officer who imposed punishment based on the information considered by him or her and those facts that formed the basis for the punishment imposed;
 - (iii) A statement of the commanding officer's reasons as to why the member's appeal should not be granted;
 - (iv) A copy of the applicable Report of Offense and Disposition and Record of Nonjudicial Punishment, Form CG-4910. The original CG-4910 remains in Unit Punishment Log;
 - (v) All written documents relating to the member's case must also be submitted including, but not limited to: any written report by the individual assigned to conduct the preliminary inquiry in the member's case; any written statements of persons appearing at the mast as witnesses; and the report of

any investigation or court of inquiry that served as the basis for the imposition of NJP if no mast hearing was held; and

(vi) A copy of the endorsement to the appeal will be provided to the member.

- 2.T.7 Punishment pending decision on appeal.** A member who appeals his or her NJP punishment is required to serve any punishment while the appeal is pending. If action by the appeal authority is not taken on the appeal within 5 calendar days after submission, however, upon the member's request, any unserved punishment involving restraint or extra duties shall be deferred until the action on appeal is taken. See MCM, Part V, Para.7.d.
- 2.T.8 Action on appeals.** Appeals should be expedited whenever possible so that punishments need not be deferred.
- 2.T.9 Review by a judge advocate.** An officer acting on an appeal must refer the appeal to a Judge Advocate for consideration and advice prior to acting on the appeal if any of the punishments below have been imposed, otherwise review by a Judge Advocate is encouraged but not required:
- (a) Arrest in quarters for more than seven days;
 - (b) Forfeiture of more than seven days pay;
 - (c) Reduction from pay grade E-4 or higher;
 - (d) Extra duties for more than 14 days; or
 - (e) Restriction for more than 14 days.
- 2.T.10 Additional inquiry permitted.** The reviewing Judge Advocate is not limited to an examination of the written material that comprises the record of proceedings and may make such additional inquiry as necessary to resolve all issues.
- 2.T.11 Action that may be taken on appeal.** The officer acting on an appeal may exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment or his or her successor in command. The superior officer may take this action even if no appeal has been filed. Under no circumstances may the superior official increase either the quality or quantity of punishment.
- 2.T.12 Notification.** Upon completion of the action by the appeal authority, the member and the commanding officer imposing the punishment and any intermediate commanding officers will be promptly notified of the results of the appeal.
- 2.T.13 Effective date of punishment that has been deferred.**
- 2.T.13.a *Members assigned to shore units.* A punishment that has been deferred pending the decision of an appeal takes effect again on the date the member's commanding officer is advised of the appeal decision.

- 2.T.13.b *Members attached to or embarked in a vessel.* In the case of punishment imposed upon a member attached to or embarked on a vessel and deferred pending resolution of an appeal, unless the appeal authority directs otherwise, the deferred punishment remains deferred until arrival of the vessel in port. The commanding officer of a vessel has the discretion to determine whether “arrival of the vessel in port” occurs at a brief stop or port call lasting only a few days or at the end of the current deployment and return to homeport.
- 2.T.14 Attachments to the NJP punishment log.** Final action on a member’s appeal must be attached to the NJP package in the unit punishment log, inputted into Direct Access, and a copy provided to the member.
- 2.U NJP without a hearing.**
- 2.U.1 Member afforded the rights of a party.** Punishment under Article 15, UCMJ, may be imposed on the basis of the record of a court of inquiry or an investigative body in which the member was afforded the rights of a party with respect to the offense(s) for which punishment is contemplated. See Administrative Investigations Manual, COMDTINST M5830.1 (series). The report of investigation or of the court of inquiry must have recorded that the member being punished was afforded the rights of a party. A member has been “afforded” these rights when he or she has been advised of them, when he or she understands them, and when he or she has either exercised these rights or knowingly and voluntarily waived them (or some of them).
- 2.U.2 Consult servicing legal office.** A commanding officer considering imposing NJP based on this Section should consult his or her servicing legal office prior to doing so.
- 2.U.3 Procedure.** The commanding officer may direct the appearance of the member before imposing NJP, but need not do so. Whether or not the member appears before the commanding officer before punishment is imposed, the member must be advised in writing of the right to demand trial by court-martial in lieu of NJP, if appropriate, and of the right to appeal.
- 2.U.4 Referral to superior commanding officer.** If the commanding officer lacks the authority to impose what he or she considers appropriate punishment, the commanding officer will refer the report of the investigative body or court of inquiry to the next superior officer in the chain of command. That officer may then impose punishment under Article 15, UCMJ, with or without the personal appearance of the member. The member must be advised of the right to demand trial by court-martial in lieu of NJP, if appropriate, and of the right to appeal. The senior commanding officer has all the options available to him or her (i.e., dismiss the case, address the matter through administrative measures, address the matter at NJP, refer the matter to court-martial, etc.).
- 2.U.5 Investigation from prior unit.** In some instances, the report of a court of inquiry or investigative body may not be finalized until after a member has been transferred from his or her prior unit to a new unit. If that member was a party to the court of

inquiry or investigative body, he or she is considered to be “of the command” of the prior unit even though transferred to a new unit before such a report was finalized or NJP imposed. The commanding officer who had jurisdiction when the member became a party retains jurisdiction for purposes of issuing a punitive letter under Article 15, UCMJ. Although a party is considered to be “of the command” of the prior unit, the determination of whether that party is attached to or embarked in a vessel, for the purpose of demanding trial by court-martial in lieu of NJP, is based on the party’s actual unit at the time the punitive letter is issued.

2.U.6 Member not afforded the rights of a party. If punishment under Article 15, UCMJ, is contemplated in view of the facts developed at an investigative body or court of inquiry before which the member was not a party, he or she can be punished only after holding mast (a hearing) or, in the alternative, only after the record of the investigative body or court of inquiry has been returned and additional proceedings held to afford the member the rights of a party.

2.V Subsequent court-martial for offense punished at NJP.

2.V.1 General rule. NJP is not a bar to a subsequent court-martial for a serious offense or pattern of offenses that grew out of an act or omission that was previously punished at NJP. If a member is punished under Article 15, UCMJ, and is later sentenced at court-martial for the same offense, the member may present the prior punishment as a fact in mitigation at the court-martial (see R.C.M. 1001(c)(1)(B)), and, if presented, the sentencing authority must consider the prior punishment under Article 15, UCMJ, when determining the court-martial sentence. Charges that were the subject of NJP that are referred to court-martial are subject to a motion to dismiss under R.C.M. 907(b)(2)(D)(iv) if the offenses were minor.

2.W Effects of errors.

2.W.1 General rule. In accordance with MCM, Part V, Para.1.i., failure to comply with these regulations does not invalidate punishment imposed under Article 15, UCMJ, unless the error materially prejudiced a substantial right of the service member on whom the punishment was imposed.

2.W.2 Willful or deliberate failure to comply with regulations. Disciplinary actions may be imposed on service members for willful or deliberate failure to comply with these regulations. Cases where willful or deliberate action is substantiated may form the basis to invalidate Article 15, UCMJ, punishment.

2.W.3 Reservists: Additional considerations prior to NJP.

2.W.3.a Scheduling of NJP. A member of the Reserve is subject to the UCMJ while performing Inactive Duty for Training (IDT), Active Duty for Training (ADT), or other forms of reserve duty status, or active duty. A reservist may not be retained on IDT or ADT solely for the purpose of maintaining NJP authority. If a command intends to impose NJP on a reservist who is not on active duty for an offense

committed while that reservist was subject to the UCMJ, and a mast cannot be held during the member's current ADT or IDT, the mast should be held during the member's next scheduled ADT or IDT period.

- 2.W.3.b *Involuntary order to active duty.* If, due to special circumstances, it is impractical to wait for a member's next scheduled ADT or IDT period, or the member fails to report for his or her next scheduled ADT or IDT period, the commanding officer may request, by message or letter, that the officer exercising general court-martial jurisdiction (OEGCMJ) over that reservist order the reservist to involuntary active duty. Whenever practical, the requested period of active duty should coincide with the member's regular IDT schedule (e.g., same day of the week as normal IDT).
- 2.W.3.c *Cancellation of orders when NJP is refused.* If a reservist notifies the OEGCMJ, in writing, that he or she is exercising a right to demand trial by court-martial in lieu of NJP before the reporting date of the order to active duty, the order to active duty is rescinded.
- 2.W.3.d *Reservists: Conclusion of a period of duty.* If a reservist on active duty undergoing punishment involving restraint is released from active duty before the restraint punishment has been fully completed, the release automatically remits the remainder of the punishment. Conclusion of a period of active duty or inactive duty training does not terminate any other punishment. Except as provided above, unserved punishments may be carried over to subsequent periods of inactive duty training or active duty. See MCM, Part V, 5.e and 5.f.

2.X Documentation required following NJP.

- 2.X.1 Direct Access Enlisted Employee Review entries.** For both active duty and reserve personnel, after completing the Form CG-4910, one copy of the completed form must be forwarded to the Servicing Personnel Office (SPO) handling the member's record for appropriate entries in the member's Personnel Data Record and other action required for disciplinary proceedings. If a mast proceeding was held, but no punishment was awarded, then no further action is necessary, regardless of whether the matter was dismissed, dismissed with a warning, dismissed with administrative action taken, referred to courts-martial, or resulted in a recommendation for a court-martial.
- 2.X.2 Reduction in pay grade.** Personnel record entries are required by Ch.10.B.1 of the Personnel, Pay, and Procedures Manual, PPCINST M1000.2 (series) and Ch. 3.A.30.h., Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series) when reduction in pay grade is awarded under Article 15, UCMJ, or court-martial.
- 2.X.3 Reserve personnel.** Personnel actions regarding reserve personnel will be entered into Direct Access by the Servicing Personnel Office (SPO) that maintains the reservist's records. Accordingly, one copy of each CG-4910 documenting the

imposition of NJP on reserve personnel will be provided to the SPO that maintains the reservist's records.

- 2.X.4 Excused absences.** In an absence case, excusing a member's absence does not necessarily amount to a determination that the absence was unavoidable or that the time lost is not deductible. This is a separate administrative determination and the command is not limited in taking administrative action based upon the results of a hearing under Article 15, UCMJ. See Military Personnel Data Records (PDR) System, COMDTINST M1080.10 (series).
- 2.X.5** Unit punishment log (or unit punishment book). A unit punishment log (book) must be maintained at every unit authorized to award punishment under Article 15, UCMJ. When final action has been taken on the Report of Offense and Disposition and Record of Nonjudicial Punishment, Form CG-4910, the form and associated mast documentation, including investigation package, final action on appeal, etc., must be filed in the unit punishment book. If a CG-4910 is not used, all documents used in its place must be completed. These forms and supporting documents must be retained at the unit for four years.

3. SUMMARY COURTS-MARTIAL

3.A Function and jurisdiction.

3.A.1 Function of summary courts-martial.

3.A.1.a *Purpose.* A summary court-martial (SCM) is a disciplinary, non-criminal proceeding intended to provide prompt adjudication of minor offenses by a simple procedure. It is designed to inquire thoroughly and impartially into both sides of a matter to ensure the interests of both the government and the accused are safeguarded. The procedures for SCM are contained in R.C.M. 1301-06, MCM, Part II.

3.A.1.b *Composition.* A summary court-martial consists of a single impartial commissioned officer on active duty. The officer must be a Coast Guard officer unless specific authority for an officer from another service is granted by the Judge Advocate General (CG-094). The officer should be a lieutenant or above and be designated as a judge advocate, whenever practicable. If more than one officer is attached to the command, the convening authority must not be the summary court-martial.

3.A.1.c *Standard of proof.* Summary courts-martial have the independent duty to determine all factual conclusions drawn from the evidence, the guilt or innocence of the accused, and the sentence to be imposed, if any. These decisions are to be made based on the evidence actually received at the trial in the presence of the accused. The standard of proof is beyond a reasonable doubt.

3.A.1.d *Legal advice.* Summary courts-martial may seek legal advice from the convening authority's servicing legal office.

3.A.2 Summary court-martial jurisdiction

3.A.2.a *In general.* Summary courts-martial have the jurisdiction to try all enlisted persons subject to the Uniform Code of Military Justice (UCMJ) for any non-capital offense made punishable under the UCMJ. See MCM, Part IV.

3.A.2.b *No jurisdiction for sex offenses.* Summary courts-martial do not have jurisdiction to try certain sexual assault offenses, namely offenses under Articles 120(a), 120(b), 120b, 125, or attempts thereof under Article 80. See Article 18(c), UCMJ.

3.A.2.c *Cases with concurrent jurisdiction.* Summary courts-martial may not try an offense prosecuted in a United States federal court. Authorization from the appropriate Area Commander or the Deputy Commandant for Mission Support must be obtained before summary court-martial may try an offense pending trial or tried by a state or foreign criminal court. "Pending trial" means that a state or foreign government has issued an indictment or information or has taken similar steps toward prosecution. Requests for such authorization must be in writing to the Staff Judge Advocate for the Area Commander or Deputy Commandant for Mission Support and provide a thorough justification why trial by summary court-martial should be authorized.

3.A.2.d *Reservists.* In general, the same policies regarding trial of a reservist apply at a summary court-martial as to other forms of court-martial. A reservist may be tried by SCM either while on active or inactive duty training. A reservist, not on active duty, may be ordered to active duty for trial by SCM. A summary court-martial conducted during inactive duty training may be in session only during normal periods of such training. A period of inactive duty training must not be scheduled solely for the purpose of conducting a SCM.

3.B Convening a SCM.

3.B.1 Who may convene. Any person who may convene a general or special court-martial may convene summary courts-martial. See Article 24, UCMJ. However, a convening authority who is also the accuser, victim, or witness in a case should forward the charges to a superior authority for disposition.

3.B.2 Restricting authority to convene. The authority to convene a SCM may be restricted by competent superior authority. R.C.M. 1302(a), MCM.

3.C Right to refuse summary court-martial.

3.C.1 Refusal. An accused may refuse to be tried by SCM. This is true even if the person also refused NJP and demanded court-martial for the same offense. See R.C.M. 1303.

3.C.2 Acceptance. An accused may accept trial by SCM with or without prior consultation with an attorney. An accused wishing to accept SCM should state in a signed writing that the acceptance is knowing and voluntary. A template SCM Rights Advisement is available on the Office of Military Justice (CG-LMJ) website. The original of such form should be attached to the record of trial. The absence of the form, however, has no effect on the validity of the SCM itself.

3.D Right to counsel at summary court-martial.

3.D.1 Opportunity to consult with a military or civilian attorney prior to accepting SCM. Unless doing so will result in unreasonable delay, the accused should be afforded the opportunity to consult with a military attorney, certified in accordance with Article 27(b), UCMJ, or a civilian attorney, prior to deciding whether to accept SCM. The convening authority or his or her designee is responsible for advising the accused of the opportunity to confer with a military or civilian attorney. If an accused waives this opportunity to confer, he or she must do so in writing. A template SCM Rights Advisement is available on the Office of Military Justice (CG-LMJ) website.

3.D.2 Limitations on consultation. A military attorney may be consulted regarding whether to accept trial by SCM at no cost to the accused. A reference explaining how to arrange consultation with a military attorney is available on the Office of Military Justice (CG-LMJ) website. An accused does not have a right to the consultation with any particular military attorney. R.C.M. 506(a). The accused may also consult with a civilian attorney at no expense to the government, provided the consultation does not

unduly delay the summary court-martial proceeding. A consultation does not create an attorney-client relationship absent further action establishing a relationship.

3.E Representation for accused.

3.E.1 Attorney representation. Generally, the accused has no right to be represented by an attorney during the SCM proceeding. However, the convening authority may request that the Office of Member Advocacy & Legal Assistance, Defense Services, (CG-LMA-D) detail a military attorney to represent the accused during the proceeding if extraordinary circumstances require the presence of a military attorney. Before making such a request, the convening authority should consult with their servicing legal office. A civilian attorney hired by the accused may be allowed to appear to represent the accused at a SCM proceeding, provided the attorney is qualified under R.C.M. 502(d)(3) and such appearance will not unduly delay the proceeding.

3.E.2 Non-attorney representation. Although a summary court is charged with safeguarding the rights of the accused, including assisting him or her with the examination of witnesses, the convening authority may in certain cases provide a representative to assist the accused. Whether a representative is to be provided is a matter within the sole discretion of the convening authority. When considering whether one should be appointed, the convening authority should consider the complexity of the case as well as the capability of the individual accused to understand and participate in the court proceedings. Any appointed representative must be an officer or petty officer and should normally be attached to the same unit as the accused. The representative assists the accused in preparing for and participating in the court proceedings including, as necessary and appropriate, questioning witnesses, presenting the accused's case, and acting as a spokesperson for the accused. The relationship between the accused and the appointed representative is privileged in the same manner as is the relationship between an attorney and his or her client.

3.F Summary courts-martial procedures.

3.F.1 Consultation. The convening authority must consult with the servicing legal office before preferring charges.

3.F.2 Charge sheet. The charge sheet must be prepared in accordance with MCM Appendix 4 and Charge Sheet, Form DD-458.

3.F.3 Convening order. The convening order may consist of an order from the convening authority (a template SCM Convening Order is available on the Office of Military Justice (CG-LMJ) website) or a notation signed by the convening authority on the charge sheet (See R.C.M. 1302(c), MCM). Whether done through separate written order or as a notation on the charge sheet a written statement will be made as follows: "Designation of this convening authority is Secretarial and pursuant to Article 24, UCMJ." This will satisfy the requirements of R.C.M. 504(d)(2).

3.F.4 Pretrial Duties of the SCM. The SCM officer examines the charge sheet, all allied papers, the service record of the accused if reasonably available, and R.C.M. 1301 through 1306 before trial. Any substantial irregularities noted during this review should be immediately reported to the convening authority. See R.C.M. 1304(a)(1)-(2).

3.F.4.a The SCM officer may, subject to R.C.M. 603 (minor v. major changes and when changes may be made), correct errors on the charge sheet by initialing them. See R.C.M. 1304(a)(3).

3.F.4.b The SCM officer may discuss the case and seek advice on legal matters with the command's servicing legal office.

3.F.4.c The convening authority working with the servicing legal office should arrange logistics, such as a time and place to hold open sessions of court.

3.F.4.d The SCM officer should ask the accused to provide:

- (i) A list of names and contact information of any witnesses; and
- (ii) A copy of all documentary evidence (or, if the evidence is not in the accused's possession, a description and request for the evidence) which the accused wishes to be presented at the trial.

3.F.5 SCM procedure: Scripts and forms. The SCM should follow R.C.M. 1304, and use the script at Appendix 9 to the Manual for Courts-Martial (Guide for Summary Courts-Martial). As the accused is read each right, the SCM should mark the appropriate block on the Record of Trial by Summary Court-Martial, Form DD-2329.

3.G SCM punishments.

3.G.1 Maximum punishments E-4 and below. The following maximum punishment that may be adjudged at a SCM on an E-4 or below:

- (a) One month confinement;
- (b) Forty-five days hard labor without confinement;
- (c) Two months restriction (in accordance with R.C.M. 1304(b)(2)(F)(ii) and R.C.M. 1003(b)(3) and accompanying Discussion, the Summary Court-martial designates the place of restriction);
- (d) Forfeiture of two-thirds of one month's pay (expressed in whole dollar amounts), or a fine not exceeding the amount of two-thirds of one month's pay, or both fine and forfeiture but the combination not to exceed two-thirds of one month's pay;
- (e) Reduction to the lowest pay grade; and
- (f) Reprimand.

3.G.2 Maximum punishments E-5 and above. The following maximum punishment that may be adjudged at a SCM on an E-5 or above:

- (a) Two months restriction;
- (b) Forfeiture of two-thirds of one month's pay, or a fine not exceeding the amount of two-thirds of one month's pay, or both fine and forfeiture but the combination not to exceed two-thirds of one month's pay;
- (c) Reduction to the next inferior pay grade; and
- (d) Reprimand.

3.G.3 Awarding punishments.

- 3.G.3.a *Maximum for each category of punishment may be awarded.* The maximum sentence for each permissible category of punishment may be awarded, regardless of what other punishments are adjudged. For example, the maximum forfeiture of pay, and the maximum reduction in pay grade may be adjudged, regardless of whether any other punishment is adjudged.
- 3.G.3.b *Prohibition against awarding confinement to members E-5 and above.* A sentence imposed upon enlisted members above the pay grade of E-4 may not include confinement, hard labor without confinement, or reduction in grade except to the next inferior grade. This includes an E-5 who is reduced by the summary court-martial to E-4. R.C.M. 1301(d)(2).
- 3.G.3.c *Limitations on fines and forfeitures.* The forfeiture of pay, fine, or combination of forfeiture and fine may not exceed two-thirds of one month's basic pay. Although based on a single month's pay, a sentence of forfeiture by a summary court-martial may be allocated to occur over a two-month period. A forfeiture or fine is recorded in the exact whole dollar amount. R.C.M. 1003(b)(2).
- 3.G.3.d *Awarding fines.* A fine may only be adjudged in an amount equal to or less than the maximum forfeiture that could have been adjudged and should normally only be adjudged when the offense committed resulted in unjust enrichment to the accused.
- 3.G.3.e *Combining fines and forfeitures with reduction in pay grade.* If a reduction in pay grade is adjudged along with a forfeiture or fine, the maximum amount of the forfeiture, fine, or both, is based upon the pay grade to which the accused is reduced.
- 3.G.3.f *Combining restriction and hard labor without confinement.* A sentence that includes both restriction and hard labor without confinement may be awarded so long as it does not exceed the maximum limit for each type of punishment. For example: 60 days restriction and 45 days hard labor without confinement would be a proper combination of the two punishments. Note: this is different from the rules for combining restriction and extra duties as non-judicial punishment under Article 15, UCMJ. The combined punishments are served concurrently, unless otherwise suspended or deferred.
- 3.G.3.g *Combining restriction and confinement.* A sentence that includes a combination of confinement and restriction may be imposed as an appropriate sentence so long as it does not exceed the maximum amount of confinement authorized. Restriction can be

substituted for confinement at the rate of two days restriction for each day of confinement. (For example: 15 days confinement and 30 days restriction would be a proper combination of the two punishments.) The combined punishments are served consecutively, unless otherwise suspended or deferred.

- 3.G.3.h *Combining confinement and hard labor without confinement.* A sentence that includes confinement and hard labor without confinement may be imposed as an appropriate punishment so long as it does not exceed the maximum amount of confinement authorized. Hard labor without confinement can be substituted for confinement at the rate of two days hard labor without confinement for each day of confinement (e.g., 15 days confinement and 30 days hard labor without confinement would be a proper combination of the two punishments). The combined punishments are served consecutively, unless otherwise suspended or deferred.
- 3.G.3.i *Records of SCM.* Records of Nonjudicial Punishment (NJP) and prior SCM(s) are not “convictions” and must not be noted as convictions in the record of trial. If obtained from the accused’s personnel records and properly introduced in evidence, records of NJP(s) and prior SCM(s) may be considered as evidence of the accused’s prior military service. See R.C.M. 1001(b)(2) and (3).
- 3.G.3.j *Imposing punishment on reservists.* Confinement or restriction may not be imposed on a reservist tried by SCM conducted during inactive duty training, or active duty pursuant to an order to duty for purposes of standing trial unless the order was approved by the Director, Reserve and Military Personnel (CG-13). Forfeitures imposed on a reservist at a SCM may be collected from pay received during subsequent periods of service whether active or inactive duty.
- 3.G.3.k *Effective date of punishment.* Confinement starts on the date announced unless otherwise deferred by the convening authority. All other approved and unsuspended punishments are effective on the date of the convening authority’s action.
- 3.G.3.l *Suspension of sentences.* A SCM may not suspend any part of a sentence. The SCM may recommend suspension of all or a part of a sentence to the convening authority.

3.H Post-trial matters.

3.H.1 Preparation of record of trial. The record of trial consists of a summary memorandum prepared by the SCM, with enclosures. The memorandum must include a summary of all evidence received at trial to prove each element of each offense of which the accused was found guilty. A template Record of SCM Trial is available on the Office of Military Justice (CG-LMJ) website. The summary memorandum includes the following enclosures:

- (a) Original convening order;
- (b) Charge sheet;
- (c) Record of Trial by Summary Court-Martial, Form DD-2329;
- (d) Acknowledgement of Rights;

- (e) Stipulation of fact (if any); and
- (f) All documentary evidence.

After the record of trial is assembled, a copy must be served on the accused, and the original must be hand-delivered or mailed to the convening authority by DHS-approved commercial carrier (e.g., FedEx or UPS).

3.H.2 Submissions by accused and crime victim.

3.H.2.a *Submissions by the accused.* In accordance with R.C.M. 1105(c)(2), the accused has 7 days from the date the sentence is announced in which to submit matters to the Convening authority. The Convening authority may extend this period by 20 days for good cause. R.C.M. 1105(c)(2).

3.H.2.b *Submissions by crime victims.* A crime victim also has 7 days from the date the sentence is announced to submit matters to the convening authority under R.C.M. 1105A(d)(2). The convening authority may extend this period by 20 days for good cause. R.C.M. 1105A(d)(3). For the purposes of this Chapter, a crime victim is defined as a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty and on which the convening authority is taking action. Matters submitted by crime victims must be in the form of a written statement signed by the crime victim. Statements may include photographs, but must not include videos, audio, or other media. The SCM should make reasonable efforts to inform crime victims of their right to submit matters and what matters they may submit.

3.H.3 Action by the Convening Authority.

3.H.3.a *When action may be taken.* The convening authority may not take action until the accused and any crime victims have either submitted matters or waived submission of such matters, or until the expiration of the 7-day period plus any extensions, and the convening authority consults with the servicing legal office.

3.H.3.b *How to take action.* The convening authority must take action on the record as provided in R.C.M. 1107. The action is written on the Record of Trial by Summary Court-Martial, Form DD-2329, but the language must follow the format for action for all courts-martial, except that the phrase “[i]n the case of ____” may be omitted. Appendix 16 of the MCM provides example actions.

3.H.3.c *Actions other than approval of sentence.* Forms for actions other than approval of the sentence can be found in Appendix 16 of the MCM. Convening authorities should consult with the servicing legal office before taking any action other than approving the sentence.

3.H.3.d *Cases of acquittal.* If the accused is acquitted, the convening authority does not take action.

- 3.H.3.e *Promulgating orders.* An order promulgating the results of trial by SCM is not required.
- 3.H.3.f *Vacating a suspension of a sentence.* The suspension of a summary court-martial sentence may be vacated in accordance with R.C.M. 1109.

3.I Review and disposition of the record.

3.I.1 Review by judge advocate. After action by the convening authority, the record must be forwarded by a DHS-approved commercial carrier (e.g., FedEx or UPS) to the legal office of the OEGCMJ over the convening authority for review by a judge advocate in accordance with R.C.M. 1112.

3.I.2 Review by the Judge Advocate General. Article 69(b), UCMJ, provides authority for review and action within the Office of the Judge Advocate General of courts-martial which are not subject to review under either Article 66 or Article 69(a), UCMJ – i.e. summary courts-martial and special courts-martial where no bad-conduct discharge is approved. Under Article 69(b), UCMJ, the Judge Advocate General has authority to modify or set aside the findings and sentence in these cases. The accused may petition for review under Article 69(b), UCMJ, a final conviction by SCM to the Office of the Judge Advocate General in accordance with R.C.M. 1306(d).

3.I.3 Retention of records. All original ROTs will be retained by the Office of Military Justice (CG-LMJ).

4. JURISDICTION

4.A Areas of responsibility.

4.A.1 Universal jurisdiction. The authority to convene general and special courts-martial is universal and is not limited by geography, unit or personnel assignment, unit location, or chain of command. A properly constituted court-martial may try any person subject to the UCMJ, even if the accused is not under the command of the convening authority. See R.C.M. 601(b). Geographic areas of primary responsibility are designated for administrative purposes only and neither create exclusive jurisdiction with any of the individual officers exercising general and special courts-martial jurisdiction nor operate as a limitation on jurisdiction. As a practical matter, however, the accused ordinarily will have to be subject to the orders of the convening authority or otherwise under the convening authority's control to assure appearance of accused at trial. It is strongly recommended that prior to referral of charges, if the member against whom charges have been preferred is not a member of or under the command of the convening authority, Coast Guard convening authorities advise the member's commanding officer of the impending referral. In general, if a member is administratively assigned to another command pending investigation or trial, the original convening authority continues to exercise jurisdiction.

4.A.2. Primary general court-martial jurisdiction.

4.A.2.a *Generally.* The Coast Guard general court-martial convening authorities are listed at 5.A. The chart below illustrates what personnel each convening authority would normally exercise jurisdiction over.

Primary General Court-Martial Jurisdiction	
GCMCA	Units Subject to Jurisdiction
District Commander	All personnel of the District
Area Commander	All personnel of the Area
Director of Operational Logistics (DOL)	All personnel of DOL units, including bases and DOL staff.
Force Readiness Command (FORCECOM)	All personnel of FORCECOM units, including training centers and FORCECOM staff
Personnel Service Command (PSC)	<ul style="list-style-type: none"> • All personnel of PSC units • Coast Guard personnel assigned to all non-Coast Guard commands, such as joint commands, joint task forces, unified commands, and combatant commands, when the service to which the member is assigned forwards the case for Coast Guard disposition. • All retired personnel • All personnel on appellate leave.
Deputy to the Deputy Commandant for Mission Support (DCMS-D) (Note 1)	All personnel assigned to Headquarters, including personnel attending funded advanced education or other full-time duty instruction under the cognizance of Headquarters program managers,
Superintendent, Coast Guard Academy	All personnel of the Coast Guard Academy.

Note 1: DCMS-D is designated the Commanding Officer of Headquarters, and is therefore the GCMCA for personnel of this unit.

4.A.2.b *Superior convening authorities.* In general, the Area Commander is the superior commander for the District Commander. The Deputy Commandant for Mission Support (DCMS) is the superior commander for the DOL, FORCECOM, PSC, and the Coast Guard Academy.

- 4.B General court-martial mandatory jurisdiction.**
- 4.B.1 Certain sexual assault offenses.** Only general courts-martial have jurisdiction over offenses under Articles 120(a), 120(b), 120b, and 125, UCMJ, or attempts thereof.
- 4.C Jurisdiction limited under Articles 2 and 3, UCMJ.**
- 4.C.1 Retired members.** No case of a retiree amenable to jurisdiction under Article 2(a)(4) or (5), UCMJ, will be referred for trial by court-martial without the prior authorization of the appropriate Area Commander or DCMS. This rule applies to offenses allegedly committed by such persons regardless of whether they were on active duty either at the time of the alleged offense or at the time they were accused or suspected of the offense. Specific authorization from the appropriate Area Commander or DCMS must also be obtained for the apprehension, arrest, or confinement of any retired member.
- 4.C.2 United States Public Health Service members.** Prior to taking action under the UCMJ against an active duty member of the Public Health Service assigned to duty and serving with the Coast Guard, the convening authority should contact his or her servicing legal office to obtain a copy of the current USCG-USPHS Memorandum of Understanding, which may contain procedural guidance concerning military justice and disciplinary proceedings involving PHS officers.
- 4.C.3 Reservists.** The officer exercising general court-martial jurisdiction (OEGCMJ) must consult with the Director, Reserve and Military Personnel (CG-13) if pre-trial confinement or other restraints on liberty are contemplated against a Reservist ordered to active duty for trial. See the Reserve Policy Manual, Ch 3.B.4.d, COMDTINST M10001.28 (series).
- 4.C.4 Civilians.** No case of a civilian amenable to jurisdiction under Article 2(a)(10), UCMJ, will be referred for trial by court-martial without prior consultation with the Office of the Judge Advocate General (CG-LMJ).
- 4.C.5 Jurisdiction to try certain personnel under Article 3, UCMJ.** No case in which jurisdiction is based on Article 3(a)-(c), UCMJ, will be referred for trial by court-martial without prior consultation with the Office of the Judge Advocate General (CG-LMJ). Specific authorization from the appropriate Area Commander or DCMS must also be obtained for the apprehension, arrest, or confinement of any person amenable to trial by court-martial solely by reason of the provisions of Article 3, UCMJ.
- 4.D Cases adjudicated or pending adjudication in domestic or foreign criminal courts.**
- 4.D.1** No person in the Coast Guard may be tried for the same acts that constitute an offense against state or foreign law and for which the accused has been tried or is pending trial by the state or foreign country, without first obtaining authorization from the

appropriate Area Commander or DCMS. Letter requests for authorization must contain complete justification as to why deviation from the general policy against second trials is appropriate. See R.C.M. 201(d).

4.D.2 This policy is based on comity between the federal government and state or foreign governments, and is not intended to confer additional rights upon the accused.

4.D.3 “Pending trial” means that an indictment, complaint, information, or other accusatory instrument has been brought against the accused or that the accused is being held over for trial based on a judicial probable cause hearing. Any pretrial diversion or similar program does not amount to being “tried” or “pending trial.”

4.D.4 In any case, close coordination with officials of other jurisdictions may be necessary to ensure that the policy against second trials is followed, and because many such jurisdictions have laws prohibiting second trials for persons tried in federal courts or courts-martial. This requirement for prior approval from the appropriate Area Commander or DCMS applies also to trial by summary court-martial and nonjudicial punishment.

4.E International agreements.

4.E.1 International agreements, such as Status of Forces Agreements (SOFA), may affect the decision of whether to exercise court-martial jurisdiction. For Coast Guard members assigned overseas, Convening Authorities should consult with their servicing legal office to determine whether an international agreement impacts the exercise of court-martial jurisdiction.

4.F Civilian federal offenses.

4.F.1 Federal civil authorities may have concurrent jurisdiction with military authorities over offenses committed by military personnel that violate both federal criminal law and the UCMJ. Coordination between the servicing legal office and the Office of the Judge Advocate General (CG-LMJ) should begin as soon as this issue is identified.

4.F.2 If during a federal civilian agency investigation, circumstances arise that favor the exercise of jurisdiction by Coast Guard authorities, the OEGCMJ will contact the cognizant U.S. Attorney to coordinate the possibility of trial by court-martial of the member and inform the Office of the Judge Advocate General (CG-LMJ).

4.G Capital offenses.

4.G.1 Notwithstanding R.C.M. 201(f)(2)(A), Coast Guard special court-martial convening authorities are not authorized to refer offenses that have a potential maximum punishment of death to special courts-martial without first obtaining the written consent of the appropriate OEGCMJ.

4.H Investigation and prosecution of crimes with concurrent jurisdiction.

- 4.H.1 Implementing authority.** This Chapter implements a memorandum of understanding (MOU), dated October 1967, with the Department of Justice (DOJ) delineating the areas of responsibility for investigating and prosecuting offenses over which the Coast Guard and DOJ have concurrent jurisdiction. The MOU is available at Appendix 3.1, MCM, 2016.
- 4.H.2 Coordination with the Office of the Judge Advocate General.** Decisions with respect to the provisions of the MOU will be coordinated between the servicing legal office for the convening authority and the Office of Military Justice (CG-LMJ). Federal civil authorities may have concurrent jurisdiction with military authorities over offenses committed by military personnel that violate both federal criminal law and the UCMJ. Coordination between the servicing legal office and the Office of the Judge Advocate General (CG-LMJ) should begin as soon as this issue is identified. If during a federal agency investigation, circumstances arise that favor the exercise of jurisdiction by Coast Guard authorities, the OEGCMJ will contact the cognizant U.S. Attorney to coordinate the possibility of trial by court-martial of the member, and inform the Office of the Judge Advocate General (CG-LMJ) by e-mail at HQS-DG-LST-CG-LMJ@uscg.mil.
- 4.I Requests for Immunity in National Security Cases.** Proposed grants of immunity may be e-mailed to the Office of The Judge Advocate General, Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil. After coordination, the proposed grant will be forwarded to the General Counsel, Department of Homeland Security, for consultation with the DOJ in cases involving—
- (1) Espionage;
 - (2) Subversion;
 - (3) Aiding the enemy;
 - (4) Sabotage;
 - (5) Spying; and
 - (6) Violation of rules or statutes concerning classified information, or the foreign relations of the United States.
- 4.J Administrative action.** Administrative action, according to paragraph 4 of the MOU, will be conducted in such a manner so as not to interfere with or otherwise prejudice the investigation by the responsible DOJ investigative agency.
- 4.K Threats against the President.**
- 4.K.1** 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 U.S.C. § 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 OEGCMJ over the Coast Guard suspect will meet with representatives of the DOJ and the Secret Service to determine whether military authorities or DOJ will exercise further jurisdiction in the case.

4.L Reporting requirements for cases involving national security crimes.

4.L.1 Prior to preferral of charges SJAs must e-mail an unclassified executive summary to Office of the Judge Advocate General, Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil regarding potential court-martial proceedings in cases that have national security implications. 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 Section 4.I, SJAs will also e-mail the unclassified executive summary to the Office of Information and Intelligence Law (CG-LII). The following are considered national security crimes:

- (a) Sedition (Articles 82 and 94, UCMJ) when foreign power involvement is suspected;
- (b) Aiding the enemy by giving intelligence to the enemy (UCMJ, Art. 104).
- (c) Spying (UCMJ, Art. 106);
- (d) Espionage (UCMJ, Art. 106a);
- (e) Suspected or actual unauthorized acquisition of military technology, research and development information, or Coast Guard 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; and
- (i) Attempts (UCMJ, Art. 80), solicitations (UCMJ, Art. 134), or conspiracies (UCMJ, Art. 81) to commit (a) through (h), above.

4.L.2 Staff judge advocate notification is designed to improve force protection and security while at the same time protecting the accused's right to a fair trial, free from unlawful command influence.

4.M Order to active duty of reservists.

4.M.1 Order to active duty for preliminary hearing. If charges against a reservist not on active duty are to be submitted to an Article 32, UCMJ, preliminary hearing, the reservist will be ordered to active duty for the duration of the hearing. The OEGCMJ who convenes, or approves the convening of the Article 32, UCMJ, preliminary hearing, is responsible for issuing any necessary recall orders. The reservist should be released from active duty within one working day of the close of the taking of evidence. To minimize the disruption on civilian life and employment, a reservist may be released from active duty during any extended adjournment of the hearing and recalled when the proceedings reconvene.

4.M.2 Reservist ordered to active duty for courts-martial. An accused reservist must be on active duty to be tried by a special or general court-martial. The reservist must be recalled before arraignment. See R.C.M. 204(b)(1). If a reservist is not already on active duty, the convening authority must request the cognizant OEGCMJ order the

reservist to active duty. Such an order must be approved by the Director, Reserve and Military Personnel (CG-13) if confinement is to be an authorized punishment. To minimize the disruption on civilian life and employment, a reservist may be released from active duty during any extended adjournment of the court-martial and recalled when the proceedings reconvene. Such members may not be retained on active duty after service of the confinement or other restriction on liberty. See Art. 2(d)(5), R.C.M. 1003(c)(3). All punishments remaining unserved at the time the reservist is released from active duty may be carried over to subsequent periods of inactive-duty training or active duty.

5. COURT-MARTIAL CONVENING AUTHORITIES

5.A General courts-martial convening authorities. Under the authority of Article 22(a)(8), UCMJ, the Secretary has designated the following commanding officers of the Coast Guard as general court-martial convening authorities:

- (1) Commandant of the Coast Guard;
- (2) Commander of any Coast Guard Area;
- (3) Commander of any Coast Guard District;
- (4) Deputy Commandant for Mission Support (DCMS);
- (5) Director of Operational Logistics (DOL);
- (6) Commanding Officer, Coast Guard Headquarters;
- (7) Superintendent, Coast Guard Academy;
- (8) Commander, Coast Guard Personnel Service Center (PSC); and
- (9) Commander, Coast Guard Force Readiness Command (FORCECOM).

5.B Special courts-martial convening authorities. By virtue of the authority of Article 23(a)(7), UCMJ, the Secretary has designated the following commanding officers of the Coast Guard as special court-martial convening authorities:

- (1) Commanding Officers of all Coast Guard units, some of whom have specific statutory authority;
- (2) Commander of any Coast Guard Sector;
- (3) Commanding Officer, Staff Enlisted Personnel, at each Coast Guard Area;
- (4) Commanding Officer, Staff Enlisted Personnel, at each Coast Guard District;
- (5) Commanding Officer, Enlisted Personnel, Coast Guard Academy;
- (6) Commanding Officer, Enlisted Personnel, Coast Guard Yard;
- (7) Commanding Officer, Military Personnel, National Pollution Funds Center;
- (8) Commanding Officer, Staff Enlisted Personnel, Coast Guard Force Readiness Command; and
- (9) Commanding Officer, Military Personnel, Coast Guard Command, Control, Communications, Computers, and Information Technology Center.

5.C Restriction on exercise of court-martial jurisdiction.

5.C.1 Limitation on authority by superior commander. A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally

5.C.1.a *Limitations on Discretion Not Permitted.* A superior commander may not limit the discretion of a subordinate commander to act on cases over which authority has not been withheld. See R.C.M. 306.

5.C.1.b *Consolidated Disposition Authority.* In some cases, such as those that involve multiple subjects from different commands engaged in closely related misconduct, it may be appropriate to designate a single disposition authority. This is done by a

superior commander withholding disposition authority from the subordinate commanders who might otherwise be authorized to act. The superior commander must be superior to all of the commanders who would otherwise be authorized to dispose of charges, impose nonjudicial punishment, or convene courts-martial for the subjects involved. The superior commander can retain disposition authority or can designate a subordinate commander to be a consolidated disposition authority. Consult with CG-LMJ is required prior to designating a Consolidated Disposition Authority.

5.C.2 Withholding initial disposition authority in sexual assault cases.

5.C.2.a *Sexual assault cases.* Initial disposition authority, as described in R.C.M. 306 and 401, is withheld by authority of the Commandant from all commanding officers and commanders who are not at least special court-martial convening authority, hold the rank of Captain (O-6) and have an assigned Staff Judge Advocate for any allegation of any of the following offenses:

- (i) Article 120(a), UCMJ, rape;
- (ii) Article 120(b), UCMJ, sexual assault;
- (iii) Article 120(c), UCMJ, aggravated sexual contact;
- (iv) Article 120(d), UCMJ, abusive sexual contact;
- (v) Article 120b(a), UCMJ, rape of a child;
- (vi) Article 120b(b), UCMJ, sexual assault of a child;
- (vii) Article 120b(c), UCMJ, sexual abuse of a child;
- (viii) Article 125, UCMJ, forcible sodomy; and
- (ix) Article 80, UCMJ, attempts to commit offenses listed in (i)-(viii).

For the purpose of carrying out this policy, Commanding Officer of the Legal Service Command is the assigned Staff Judge Advocate to O-6 Base Commanders.

5.C.2.b *Sexual assault initial disposition authority.* The officer making the initial disposition determination will be referred to as the Sexual Assault Initial Disposition Authority (SA-IDA). This policy does not preclude initial disposition decisions being made at the general court-martial convening authority level. In fact, in the vast majority of serious sexual assault cases, a Flag Officer will likely be the SA-IDA (e.g. Area or District Commanders). This policy also does not preclude any individual Flag Officer exercising general court-martial jurisdiction (OEGCMJ) from exercising their own superior command authority and further withholding and/or limiting disposition this class of cases (or others) to their level in accordance with R.C.M. 306 and 401.

5.C.2.c *Collateral misconduct.* This withholding applies to all other alleged offenses arising from or relating to the same incident, whether committed by the alleged perpetrator or the crime victim.

- 5.C.2.d *Memorialized decisions.* SA-IDA determinations to dismiss cases or take no further action under the UCMJ are made only after full and informed consultation with the assigned Staff Judge Advocate and the decision must be memorialized in writing.
- 5.C.2.e *Responsibilities of the immediate commander.* Immediate commanders of an accused and/or crime victim (with or without SA-IDA) are not restricted by this policy from taking all necessary discretionary actions related to the alleged suspect or crime victim, if otherwise authorized to do so. This would include placing a suspect in pre-trial restraint under R.C.M. 304 or pre-trial confinement under R.C.M. 305 (and conducting a hearing pursuant to R.C.M. 305(h)), issuing military protective orders, issuing probable cause search authorizations, and coordinating investigative assistance. Equally important is that the immediate commander is not relieved by this policy of the obligation to provide and coordinate all required crime victim support and advocacy as required under the Sexual Assault Prevention and Response (SAPR) Program, COMDTINST M1754.10 (series).
- 5.C.2.f *No limitations on forwarding.* Nothing in this Section limits a commander exercising court-martial jurisdiction from forwarding a matter concerning an offense or charges to a superior competent authority for disposition if warranted.
- 5.C.3 Commanding officer as an accuser.**
- 5.C.3.a The definition of an “accuser” as used in this Chapter is broader than the individual who swears, or makes charges against another. See Article 1(9), R.C.M. 307(a) Discussion. An “accuser” means a person who directs that charge be signed and sworn to by another, an individual who was a victim of the alleged offense(s), or whose personal interest outweighs his or her professional responsibilities.
- 5.C.3.b A commanding officer who is an accuser or is otherwise disqualified in a case may not refer the charges in that case to trial by general or special court-martial. If a commanding officer is disqualified, that commanding officer must forward the draft charges and accompanying paperwork to the next superior in the chain of command authorized to convene the type of court-martial deemed appropriate. The advice of the command’s servicing legal office should be sought in any case in which a convening authority believes he or she might be disqualified or might be considered an accuser in the broadest sense of that term.

6. PRETRIAL RESTRAINT AND CONFINEMENT

6.A Generally.

6.A.1 Definition of pretrial restraint. Pretrial restraint is either a moral or physical restraint on a member imposed before or during disposition of offenses. No person may be ordered into restraint before trial unless there is probable cause to believe:

- (a) The member committed an offense under the UCMJ; and
- (b) The restraint is required by the circumstances.

6.A.2 Prohibition on using pretrial restraint as punishment. Pretrial restraint may not be used as a form of punishment. The restraint should not be more rigorous than the circumstances require to ensure the presence of the member restrained and to prevent foreseeable serious criminal misconduct. R.C.M. 304 contains specific guidance regarding pretrial restraint including: types of pretrial restraint, who may order pretrial restraint, when a person may be restrained, procedures for ordering pretrial restraint, prohibition against pretrial restraint as punishment, release, and administrative restraint. The officer imposing restraint is responsible for ensuring the member under restraint is notified in writing of the restraint, including its terms and limits.

6.A.3 Pretrial restraint of reservist. Pretrial restraint in the form of restriction or arrest should not be imposed on a reservist who is not on active duty. If it is necessary to confine a reservist who is not on active duty, the reservist should be ordered to active duty as soon as possible. See Subsection 4.C.3. A reservist may be retained on active duty until the completion of action in a case where the offense warrants trial by court-martial. See Subsection 4.M.1 Retaining a reservist on active duty does not constitute pretrial restraint.

6.A.4 Pretrial confinement.

6.A.4.a Definition. Pretrial confinement is physical restraint depriving a member of freedom pending disposition of charges. No person may be ordered into pretrial confinement unless probable cause exists. Probable cause to order pretrial confinement exists when there is a reasonable belief that:

- (i) The member committed an offense under the UCMJ;
- (ii) Confinement is required by the circumstances; and
- (iii) Less severe forms of restraint are inadequate.

6.A.4.b When pretrial confinement is appropriate. Pretrial confinement is only appropriate in contemplation of disposition at a special or general court-martial. R.C.M. 305 contains specific guidance regarding pretrial confinement, including: who may be confined; who may order confinement; when a member may be confined; advice to the accused upon confinement; military counsel rights; who may direct release from confinement; notification and action required of the commander of the confinee; procedures for review of pretrial confinement; provision for review by the military

- judge; remedy for noncompliance; and exceptions to the application of the provisions of the rule. Confinees must be afforded facilities and treatment in accordance with Ch. 1.F.3, Discipline and Conduct Manual, COMDTINST M1600.2 (series) and applicable regulations of the confinement facility into which ordered.
- 6.A.4.c *Pretrial restriction tantamount to confinement.* Pretrial confinement includes pretrial restriction that is tantamount to confinement. Pretrial restriction is tantamount to confinement when the restraints on the member's liberty and freedom of movement so closely resemble confinement that their effect upon the accused is the practical equivalent of confinement. The actual nature of the restraint imposed, and not the characterization of it by the officer imposing it, will be the controlling factor in distinguishing between pretrial restriction and pretrial restriction tantamount to confinement.
- 6.A.4.d *Ordering pretrial confinement.* Only the commanding officer or superior commander of an officer may order pretrial confinement of that officer. See R.C.M. 304(b)(1). Any commissioned officer may order any enlisted member into pretrial confinement. See R.C.M. 304(b)(2). A Confinement Order, Form DD-2707 will be used. A template Pretrial Confinement Notification and Acknowledgement of Rights is available on the Office of Military Justice (CG-LMJ) website.
- 6.A.4.e *Military attorney.* A member ordered into pretrial confinement must be advised he or she is entitled to consult with a military attorney. A member who requests a military attorney must be provided with a detailed military attorney for the purpose of the initial review required by R.C.M. 305(i). The member has no right to an individual military attorney of his or her own selection.
- 6.B Review of Pretrial Confinement.**
- 6.B.1 Responsibilities of Commanding Officer.** The commanding officer should promptly consult his or her servicing legal office when a member is ordered into pretrial confinement.
- 6.B.1.a *48-hour review.* The commanding officer must ensure that a neutral and detached officer determines within 48 hours of confinement whether probable cause exists to continue pretrial confinement. See R.C.M. 305(i)(1).
- 6.B.1.b *72-hour review.* The commanding officer must personally decide within 72 hours whether pretrial confinement will continue and prepare a written memorandum documenting his or her decision. See R.C.M. 305(h)(2)(C).
- 6.B.1.c *Notification to crime victim.* The commanding officer must ensure that a victim of a crime, as defined in Article 6b, UCMJ, related to the reasons for why a member was ordered into pre-trial confinement is provided accurate and timely notice of any hearing to review the continuation of pre-trial confinement.

6.B.1.d *Single determination.* The 48-hour determination and 72-hour review may be combined into a single determination and written memorandum completed by the commanding officer within 48 hours of confinement. See R.C.M. 305(h)(2)(A). A commanding officer who ordered pretrial confinement is not precluded from making the 48-hour determination if he or she is otherwise neutral and detached regarding the case. Preparation of the commanding officer's memorandum should be coordinated with the servicing legal office. A template 48-Hour and 72-Hour Memorandum is available on the Office of Military Justice (CG-LMJ) website.

6.B.1.e *If member retained in pretrial confinement.* The commanding officer must ensure command visits are performed in accordance with Ch.1.F.6.b, Discipline and Conduct, COMDTINST 1600.2 (series).

6.B.2 Requirement for review of pretrial confinement by Initial Review Officer.

6.B.2.a *Requirement.* Under R.C.M. 305, a review of the adequacy of probable cause to believe a member in pretrial confinement committed an offense, the necessity for continued pretrial confinement, and the conditions of confinement, must be conducted by a neutral and detached officer within seven days of the imposition of confinement.

6.B.2.b *Designating IROs.* Each OEGCMJ is required to designate, in writing, one or more officers of the grade of O-4 or higher to act as the Initial Review Officer (IRO) for purposes of R.C.M. 305(i)(2). Officers designated as IRO should be neutral and detached and, if practicable, not within the chain of the command of the OEGCMJ. The OEGCMJ must authorize each IRO to approve continued confinement or order the immediate release of pretrial confinees whose cases are referred to him or her for initial review.

6.B.2.c *Using the DoD confinement facility IRO.* The OEGCMJ may authorize and accept the R.C.M. 305 initial review conducted by a duly designated IRO assigned to the confinement facility. Most Department of Defense (DoD) confinement facilities have permanently assigned IROs and will conduct an R.C.M. 305 review of the pretrial confinement order independent of a Coast Guard review.

6.B.3 Procedure.

- (a) After a member is ordered into pretrial confinement, the member's commanding officer is required to prepare a memorandum in accordance with R.C.M. 305(h)(2)(C). This memorandum must be forwarded by e-mail to the appropriate servicing legal office. A copy of the memorandum must be forwarded by e-mail to the military attorney assigned to represent the member at the IRO hearing. In addition to the information specifically required by R.C.M. 305(h)(2), the commanding officer must include in the memorandum any other information necessary for the IRO to make a complete and informed review of the commanding officer's confinement decision.

- (b) The servicing legal office must promptly provide the commanding officer's confinement memorandum to the IRO appointed to review the confinement decision.
- (c) Upon receipt of the commanding officer's confinement memorandum, and in any event within seven calendar days of the imposition of confinement, the IRO must review the memorandum submitted by the accused's commanding officer, ensure the accused is notified of his or her rights and may also:
 - (i) Consider additional written matters submitted by the accused; or
 - (ii) Hold either a personal or telephonic interview with the accused and the accused's attorney, if any, at which a representative of the accused's command may also appear, the purpose of which is to hear statements made by either or both parties regarding the continued pretrial confinement of the accused; or
 - (iii) Consider any information provided by a crime victim or the victim's representative.
- (d) The personal or telephonic interview should be informal and non-adversarial in nature. With the exception of Military Rules of Evidence (MRE), Section V (Privileges), and MRE 302 and 305, the Military Rules of Evidence do not apply to the matters considered. A template Initial Review Procedure Guide is available on the Office of Military Justice (CG-LMJ) website.
- (e) R.C.M. 305 authorizes the IRO, for good cause, to extend the time limit for completion of the initial review to 10 days after the imposition of pretrial confinement.
- (f) If the necessity for pretrial confinement is not demonstrated by a preponderance of the evidence, the IRO must promptly order the accused's release and advise the confinement facility and the command ordering the accused into confinement. That command may thereafter impose any form of pretrial restraint, other than confinement, deemed necessary in accordance with the provisions of R.C.M. 304.
- (g) The IRO must also review the conditions of the accused's pretrial confinement. The purpose of this review is to assure that the conditions of confinement do not amount to punishment in violation of Article 13, UCMJ. Conditions that are intended to punish the pretrial confinee violate Article 13, UCMJ, unless they are imposed for infractions of discipline while confined. If the IRO finds that confinement conditions violate Article 13, UCMJ, those conditions must be brought to the attention of the commanding officer who ordered the accused into pretrial confinement and servicing legal office for the responsible OEGCMJ. The commanding officer, in consultation with the servicing legal office, must review those conditions and assess whether they violate Article 13, UCMJ. If they concur that the conditions violate Article 13, UCMJ, the commanding officer must correct them, move the accused to a facility where such violations do not exist, or release the accused from pretrial confinement.
- (h) Promptly after the conclusion of the informal hearing the IRO must determine whether the accused should remain in confinement. The decision

to release the member or continue confinement must be reduced to a written memorandum and include the IRO's conclusions, including the factual findings on which they are based. A template IRO Record of Proceedings is available on the Office of Military Justice (CG-LMJ) website. A copy of the decision memorandum must be promptly provided to the accused, the accused's command and servicing legal office for the responsible OEGCMJ. The original memorandum and all documents considered by the IRO must be delivered to the command ordering the accused into pretrial confinement. This command is responsible for maintaining the documents until trial counsel is assigned and takes possession of them.

- (i) Once ordered released by the IRO, the accused may be returned to confinement only as provided by R.C.M. 305(l). If returned to confinement, the provisions of R.C.M. 305 and this Section apply anew.
- (j) The decision of the IRO is final except as provided by R.C.M. 305(j). If release from confinement is denied, however, the accused may later petition the IRO for a new consideration of the case. Such a petition must be based on new circumstances that have arisen since the initial determination was made or on new information available concerning the legality or appropriateness of confinement. The IRO may hold a new hearing.
- (k) In the rare case where the IRO to whom the OEGCMJ assigns a case is not neutral and detached with respect to the order into confinement, he or she must promptly advise the OEGCMJ, who must assign the case to another IRO.
- (l) Any OEGCMJ is authorized to empower any IRO of the military service operating a confinement facility in which a Coast Guard member is in pretrial confinement to release a Coast Guard pretrial confinee on the terms of the regulations applicable to the pretrial confinement review system of that service.
- (m) When Director, Reserve and Military Personnel (CG-13), has authorized pretrial confinement in a civilian facility pursuant to Ch.1.F.4.c, Discipline and Conduct, COMDTINST M1600.2 (series), that authorization must direct the District Commander within whose geographical area of responsibility the civilian facility is located, to provide for review by an IRO in the same manner as prescribed herein for members confined in military confinement facilities.
- (n) This Section does not apply to cases of Coast Guard members assigned to units of another military service who are placed in pretrial confinement by an officer of that service. The pretrial confinement review program of the military service to which the accused is assigned applies. It is important to note that while a member may be ordered to perform duties with another service, he or she may actually be assigned to a Coast Guard commander and, in that case, the Coast Guard commander is responsible for executing the provisions of this Section.

6.B.4 Rights of crime victims at pretrial confinement determinations. A victim of an alleged offense committed by the prisoner has the right to reasonable, accurate, and

timely notice of the IRO hearing; the right to confer with a representative of the command and counsel for the government, if any; and the right to be reasonably heard during the review. However, the hearing must not be unduly delayed for this purpose. See Art. 6b, UCMJ, and R.C.M. 305(i)(2)(A)(iv). Government counsel from the servicing legal office must notify the crime victim in writing of the time and place of the IRO hearing, and of the crime victim's rights. The crime victim must be permitted to attend in person, if practicable, but is not entitled to funding to travel to such hearings. If in-person attendance is not practicable, alternative testimony in the form of written or telephonic statements is appropriate.

7. EVIDENTIARY MATTERS

7.A Psychotherapist-patient privilege. When psychotherapist-patient communications are involved, consult the psychotherapist-patient privilege under M.R.E. 513.

7.A.1 Applicability of privilege. M.R.E. 513 provides that the privilege applies only to “case[s] arising under the UCMJ.” It extends to all stages of a proceeding under the UCMJ, including law enforcement investigations into suspected offenses, proceedings for search authorizations, nonjudicial punishment proceedings, court-martial actions, and other proceedings enumerated in M.R.E. 1101. M.R.E. 513 is a limited evidentiary privilege that applies only to psychotherapist-patient communications sought for UCMJ proceedings. The privilege does not apply to records sought for other reasons, such as to make a fitness-for-duty determination. Other statutes and regulations may apply when information is sought for reasons unrelated to UCMJ proceedings.

7.A.2 Handling of psychotherapist-patient communications. A command must not seek mental health records of any person without first consulting with the servicing legal office. If, in a case involving preferred charges, government counsel believes that there are psychotherapist-patient communications which are necessary for the UCMJ proceedings, and protected by the privilege, government counsel should not seek to obtain such communications. Rather, the government counsel should first ask the patient (through the patient’s counsel, if applicable) to waive the privilege in writing. If the patient does not waive the privilege, the government counsel should, once charges are referred, request the military judge order the records produced for in-camera review under the procedures set out in M.R.E. 513(e). If the military judge orders such records produced, government counsel should arrange for the records to be provided by the custodian directly to the military judge.

7.B Confidentiality of sexual assault program records. In a case arising under the UCMJ, a crime victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made between the victim and a victim advocate or between the victim and a DoD Safe Helpline staff member, if such communication is made for the purpose of facilitating advice or assistance to the victim. See M.R.E. 514. When communications between a victim of sexual assault and a Sexual Assault Response Coordinator (SARC) or Victim Advocate (VA) are involved, consult the confidential reporting program for victims of sexual assault established by DoDI 6495.01, Sexual Assault Prevention and Response (SAPR) Program and Sexual Assault Prevention and Response, COMDTINST M1754.10(series).

7.C Personal data and character of prior service.

7.C.1 Presentencing materials at sentencing. In accordance with R.C.M. 1001(b)(2), trial counsel may introduce certain evidence from the personnel records of the accused. See R.C.M. 1001(b)(3), concerning admission of evidence concerning accused’s prior convictions.

- 7.C.2 Personal data.** Personnel records of the accused include, but is not limited to, those records that reflect the past military efficiency, conduct, performance, and history of the accused made and maintained in accordance with the Military Personnel Data Records (PDR) System, COMDTINST M1080.10 (series); Personnel, Pay and Procedures Manual, PSCINST M1000.2 (series); and the Performance, Training and Education Manual, COMDTINST M1500.10 (series).

8. CLASSIFIED MATTERS

- 8.A General concerns regarding classified information.** All persons involved in the military justice process must protect the security of classified matter and other government information that, if disclosed, would be detrimental to national security. Criminal cases involving classified material must not be referred to a summary court-martial. The Convening Authority will notify the Judge Advocate General through the Office of Military Justice (CG-LMJ) of any case involving classified information. If a court-martial involves classified information, the convening authority, military judge, and trial counsel, as appropriate, are charged with the responsibility of ensuring compliance with applicable provisions of the Classified Information Management Program, COMDTINST M5510.23 (series), R.C.M. 401(d) and 407(b), and M.R.E. 505-506. Only the Secretary of Homeland Security, the Commandant, or the head of a government agency for documents owned by agencies outside the Coast Guard, may claim the privilege from disclosure of classified information. See M.R.E. 505(h)(1)(A). A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on his or her behalf. E-mail requests for assertion of the privilege to the Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil. Article 62, UCMJ, provides that the Government may appeal an order or ruling by a military judge that directs the disclosure of classified material, imposes sanctions for the nondisclosure of classified information, or refuses to issue a protective order sought by the Government to prevent the disclosure of classified information. See R.C.M. 908.
- 8.B Security clearance of personnel.** If classified matter is to be used for prosecution, appropriate personnel security clearances in accordance with the Classified Information Management Program, COMDTINST M5510.23 (series) must be held by all members of the court, members of the prosecution and defense, court reporters and interpreters, and all other persons whose presence is required when classified matter is introduced before the court. Civilian defense counsel or civilian court reporting services must likewise be cleared before classified matter may be disclosed to him or her. The necessity for clearing the accused, and the practicability of obtaining such clearance, rests in the sound discretion of the convening authority and may be one of the considerations in the determination to try a particular case or in determining the appropriate forum. If it appears during the course of a trial that classified matter will be disclosed, and if the provisions of this Section have not been complied with, the military judge is required to adjourn the court and refer the matter to the convening authority. See M.R.E. 505.
- 8.B.1 Procedures concerning spectators.** Special considerations and procedures apply to prevent dissemination of classified information to other than authorized persons. See R.C.M. 806 & 405; M.R.E. 505-506.
- 8.C Records of trial containing classified evidence.** Special procedures and requirements apply in cases where classified material may be used as evidence. In all such cases, contact the Office of Military Justice (CG-LMJ) and Security Policy &

Management Division (DCMS-342) as soon as possible for guidance on how to proceed. When a ROT contains classified material, an initial step is to determine what, if any, of the classified material may be declassified. Authority to downgrade or declassify classified information is exercised by the original classification authority through DCMS-34. If it is impossible to declassify the material, the record must be classified. In determining whether a particular ROT must be classified because of its content, consideration should be given to Classified Information Management Program, COMDTINST M5510.23 (series). The military judge must allow classified information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the court-martial proceeding, and may, upon motion by the Government, seal exhibits containing classified information in accordance with R.C.M. 1103A for any period after trial as necessary to prevent a disclosure of classified information when a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration setting forth the damage to the national security that the disclosure of such information reasonably could be expected to cause.

9. PRELIMINARY HEARINGS UNDER ARTICLE 32, UCMJ

9.A General. Prior to referring a case to a general court-martial a preliminary hearing must be conducted to determine whether there is probable cause to believe an offense has been committed and the accused committed the offense, determine whether the convening authority has court-martial jurisdiction over the offense and the accused, consider the form of charges, and recommend the disposition that should be made of the charges.

9.A.1 Who may direct a preliminary hearing.

When in receipt of charges that may warrant trial by general court-martial, a commanding officer exercising summary or special court-martial jurisdiction may order an Article 32, UCMJ, preliminary hearing, or may request an OEGCMJ to order a preliminary hearing under Article 32, UCMJ, and R.C.M. 405. When an OEGCMJ receives a request for a hearing, he or she may order a preliminary hearing in accordance with the provisions of R.C.M. 405 is not required to do so.. The convening of an Article 32, UCMJ, hearing is solely a matter within the discretion of the convening authority.

9.A.2 Hearing officer.

9.A.2.a The preliminary hearing officer must be an impartial judge advocate certified under Article 27(b), UCMJ, except in exceptional circumstances. In exceptional circumstances, the convening authority may request permission from the Judge Advocate General (CG-094) to use a hearing officer who is not a certified judge advocate. In those circumstances, a judge advocate certified under Article 27(b), UCMJ, must be made available to provide advice to the hearing officer. Whenever practicable, the hearing officer must be equal to or senior in rank to the military counsel detailed to represent the accused and the government.

9.A.2.b The Staff Judge Advocate of the convening authority may provide the names of qualified individuals to serve as hearing officer to the convening authority. Where practicable, the hearing officer should not be of the command of the convening authority or accused. In circumstances where the Staff Judge Advocate cannot identify an appropriate hearing officer, the convening authority may e-mail a request for request assistance in identifying a judge advocate available to serve as preliminary hearing officer to the Office of Legal Policy and Program Development (CG-LPD), copy to the Office of Military Justice (CG-LMJ). The request must contain the following information:

- (i) Case name;
- (ii) Tentative convening date;
- (iii) Estimated duration of the investigation;
- (iv) General nature of the charge(s);
- (v) Name of any attorney assigned;
- (vi) Whether the accused is in pretrial confinement; and,
- (vii) The date charges were preferred.

- 9.A.3 Reporter.** A reporter may be detailed to a hearing under Article 32, UCMJ, to produce a verbatim record at the discretion of the convening authority. Normally, reporters are detailed only for unusual or complex cases. A request that a reporter be detailed to the hearing must be forwarded to the convening authority for the preliminary hearing for decision. The convening authority for the Article 32, UCMJ, preliminary hearing should consult with their servicing legal office prior to making a decision on whether to detail a reporter.
- 9.A.4 Recording the hearing.** Counsel for the government must ensure that the accused receives a copy of the recording. Upon request, counsel for the government must provide the victim a summarized transcript, or a recording, of the victim's testimony at the preliminary hearing. A victim may also request access to, or a copy of, the recording of the preliminary hearing. Upon request, counsel for the government must provide access to, or a copy of, the recording to the victim either following dismissal of the charges, unless the charges are dismissed for the purpose or re-referral, or upon court-martial adjournment. A victim is not entitled to classified information or access to or a copy of a recording of closed sessions that the victim did not have the right to attend under R.C.M. 405(i)(2)C) or (D). See also R.C.M. 405(i)(6).
- 9.A.5 Procedure.** The most current versions of the procedural guide and script are posted on the Office of Military Justice (CG-LMJ) website.
- 9.B Rights of accused and crime victims.**
- 9.B.1 Rights of accused.** The rights of the accused are set forth in R.C.M. 405(f)(1)(A).
- 9.B.2 Rights of crime victims.** The rights of the victim are set forth in R.C.M. 405(i)(2)(A).
- 9.C Claims of privilege.**
- 9.C.1 General privileges.** The privileges contained in MCM, Part III, apply to preliminary hearings.
- 9.C.2 Mishap investigations.** The purpose of a mishap investigation is to determine the facts and causes of accidents in order to prevent future accidents and to determine the most likely organization to initiate corrective actions. The primary purpose of investigating and reporting Coast Guard operational accidents is prevention. A safety investigation cannot normally be used as the basis for disciplinary action, nor can the report be used as evidence or to obtain evidence for disciplinary action. Information sought or obtained from a mishap investigation may be privileged. Chapter 3.F.1, Safety and Environmental Health Manual, COMDTINST M5100.47B, provides policy regarding use of information from mishap investigations.
- 9.C.3 Use of investigative material.** The investigating officer may refer to investigative materials, such as a PIO report or a CGIS Report of Investigation in order to obtain necessary information on preliminary issues, such as which witnesses to question and initial determinations on witness and evidence availability. Such materials will not be

considered in making the determinations required in R.C.M. 405(j)(2)(H) and (I) unless produced at the investigation in accordance with R.C.M. 405(g).

10. REFERRAL OF CHARGES TO SPECIAL OR GENERAL COURTS-MARTIAL

10.A Notification

10.A.1 After a determination to refer a case to special or general court-martial, the servicing legal office for the convening authority must follow the procedures set forth in 12.A to obtain a military judge.

10.A.2 When charges are referred to trial by court-martial, a copy of the charges and specifications, and a copy of the convening order must be e-mailed to the trial counsel, defense counsel, Chief Trial Judge (CG-094J), military judge detailed to the court-martial, Special Victims Counsel if one has been detailed, and to the Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil.

10.A.3 When trial is to be by general court-martial, a copy of the report of preliminary hearing conducted pursuant to Article 32, UCMJ, and the pretrial advice will be furnished to both trial and defense counsel at or before the time charges are referred to trial.

10.B Contents of convening order. The text of the convening order is provided in the forms in MCM, Appendix 6, and the notes therein. For convenience in adapting the forms in MCM, Appendix 6, to Coast Guard format, a template court-martial convening order is available on the Office of Military Justice (CG-LMJ) website.

10.C Distribution of convening order. A copy of the convening order and each amending order must be provided to each member named in the order, the military judge, defense counsel and Special Victims' Counsel if one has been detailed. The original must be provided to trial counsel.

10.D Rights of crime victims to receive timely notice.

10.D.1 Opportunity to express views for victims of sex-related offenses. Prior to referral of an offense charged under Article 120, 120a, 120b, 120c, 125, or any attempt thereof under Article 80, UCMJ, the victim of the offense must be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. The commander, and if charges are preferred, the convening authority, is required to consider such views as to the victim's preference for jurisdiction prior to making an initial disposition decision. However, this input is not binding. See R.C.M. 306(e). If the input is provided in writing, a copy must be provided to the accused pursuant to R.C.M. 701(a)(1)(A). Normally, the input will be sought and provided by counsel for the Government after consulting directly with the victim, or, if the victim is represented by Special Victims Counsel or other counsel, through contact with the victim's counsel.

10.D.2 Right to notice for all crime victims. A victim of an offense under the UCMJ has the right to reasonable, accurate and timely notice of a court-martial relating to the

offense. Once the decision to convene a court-martial has been made, the crime victim, or the Special Victims' Counsel, must be notified of the decision and be given a reasonable right to confer with the counsel representing the government at any proceeding or hearing involving the continuation of pretrial confinement, Article 32, UCMJ, preliminary hearings, courts-martial, and clemency or parole board hearings.

10.E Higher level review of certain sex related offenses

10.E.1 A higher competent authority will review any decision not to refer a specification for court-martial in cases where a sex-related offense has been preferred as follows:

10.E.1.a In any case where the Staff Judge Advocate (SJA), in Article 34, UCMJ, pretrial advice, recommends referring a specification of a sex-related offense for trial by court-martial, but the General Court-Martial convening authority (GCMCA) declines to refer that specification, the GCMCA must forward the case file to the Commandant of the Coast Guard for review.

10.E.1.b In any case where the SJA, in Article 34, UCMJ, pretrial advice, recommends that a specification of a sex-related offense should not be referred to trial by court-martial and the convening authority decides not to refer that sex-related specification to a court-martial, the convening authority will forward the case file for review to the next superior commander authorized to convene general courts-martial. If the convening authority is LANT or PAC, DCMS is considered the next superior commander. If DCMS is the convening authority, LANT is considered the next superior commander.

10.E.2 Applicability. The term "sex-related offense" is defined as any of the following:

- a. Rape or sexual assault under Articles 120(a), 120(b) or 125, UCMJ;
- b. Rape or sexual assault of a child under Article 120b, UCMJ;
- c. Forcible sodomy under Article 125, UCMJ; or
- d. Attempts to commit an offense under Article 120(a), 120(b), 120b, or 125, UCMJ.

10.E.3 Procedure. The reviewing authority must determine whether the referral decision was appropriate. The reviewing authority will specifically consider the victim's statement provided during the course of the investigation and whether the victim's statement and views were considered by the convening authority in making the referral decision. The results of the review by the Commandant or the next superior GCMCA, respectively, will be binding and final. Nothing should be read to construe an additional right of review beyond that established in this policy.

10.E.4 Review by Chief Prosecutor. In any case where the Staff Judge Advocate, in Article 34, UCMJ, pretrial advice, recommends that a specification of a sex-related offense should not be referred to trial by court-martial and the General Court-Martial convening authority (GCMCA) declines to refer the specification, the government counsel detailed to the case may petition the Chief Prosecutor, U.S. Coast Guard Office of Military Justice, to request that he or she refer the case to the Commandant for higher level review under the procedures set forth in 10.E.1. A decision by the

- Chief Prosecutor to not refer the case to the Commandant for higher level review is final and not subject to review.
- 10.E.4.a *Timing.* In accordance with Subsection 10.E.1, any decision by a GCMCA, made on the advice of the SJA, not to refer a sex-related specification to court-martial is reviewed by the next higher GCMCA. Therefore, the government counsel's petition to the Chief Prosecutor may only be made after that review is complete.
- 10.E.4.b *Definition.* The term Chief Prosecutor is defined as the individual who has been designated the Chief Prosecutor by the Judge Advocate General in writing.
- 10.E.4.c *Limitations.* This policy does not limit the independent discretion of the convening authority to take action deemed appropriate as authorized by the UCMJ and the Rules for Court-Martial, except when such authority has been properly withheld by a superior commander.

11. PREPARATION, FORWARDING, CHANGES TO AND WITHDRAWAL OF CHARGES AND SPECIFICATIONS

11.A Preparation of charge sheet. Proper preparation of the Charge Sheet, Form DD-458 is the foundation of each trial and describes in precise terms the crime with which an accused is charged and must defend against and also the crime that the government must prove. The servicing legal office should be consulted prior to preparing a charge sheet. Preferral of charges (i.e., signing block 11.d. of the charge sheet) has critical legal ramifications because it may constitute the start of time for speedy trial purposes. Charges must not be signed and sworn (block 11.d.) without prior consultation with the servicing legal office. Failure to comply with the procedural requirements for preferral and notice of charges under Rules for Courts-Martial 307, 308, and 707 may preclude military justice action. Errors in the charge sheet may be corrected in accordance with R.C.M. 603. The officer making corrections on the charge sheet should initial them. When charges are recommended as a result of an administrative investigation under the Administrative Investigations Manual, COMDTINST M5830.1 (series), a draft charge sheet (not signed and sworn) may be submitted as an enclosure to an investigative report.

11.A.1 Forwarding of charges.

11.A.1.a *Summary and special courts-martial.* When a commanding officer taking action on charges deems trial by special or summary court-martial appropriate, but is not authorized to convene the court-martial, the charges and accompanying paperwork must be forwarded to the next superior in the chain of command authorized to convene the type of court-martial deemed appropriate.

11.A.1.b *General courts-martial.* When a commanding officer taking action following a preliminary hearing convened under Article 32, UCMJ, deems trial by general court-martial to be appropriate, but is not authorized to convene such a court-martial or finds the convening of such court-martial impracticable, the charges and accompanying paperwork will be forwarded to the OEGCMJ, along with the commanding officer's recommendation. But see Subsection 5.C.2 regarding initial disposition authority for certain cases.

11.A.2 Forwarding with disposition recommendation. A commanding officer may always forward the charges and accompanying paperwork to the next superior in the chain of command with a recommendation for disposition and an explanation why the matter is forwarded for disposition. See R.C.M. 401(c)(2). This may be done, for example, by a special court-martial convening authority who believes that a charge(s) should be investigated at an Article 32, UCMJ, preliminary hearing and, after consulting with the servicing legal office and the superior commander, believes the superior commanding officer has more resources with which to comply with the requirements of Article 32, UCMJ, and R.C.M. 405.

11.A.3 Disposition of investigations when a member has transferred.

11.A.3.a *Investigating command.* When a member transfers from a command prior to the completion of an investigation into matters that may form the basis for charges against that member, the command from which the member has transferred retains responsibility to determine if an investigation is warranted, and if so, promptly complete an investigation of the matter.

11.A.3.b *Disposition.* Upon completion of an investigation, the commanding officer of the investigating command should determine an appropriate disposition of the matter. In making this determination, the matter should be discussed with the servicing legal office. The commanding officer may forward the matter with a recommendation for disposition to another appropriate convening authority or to the current command of the member. However, the commanding officer must not include a disposition recommendation when forwarding a case to a commander other than a superior commander. See R.C.M. 401(c)(2)(B). The recommended disposition may be no further action, further investigation by another command, administrative action, NJP, or court-martial. If empowered, the commanding officer of the investigating command may opt to convene a court-martial. A properly constituted court-martial may try any member subject to the UCMJ, even if the accused is not under the command of the convening authority so long as the member is properly ordered to report before the court-martial. Factors that a convening authority may consider in deciding whether to convene a court-martial of a member not currently under the command of the convening authority include, but are not limited to:

- (i) The effect upon discipline at that command;
- (ii) The effect upon operations;
- (iii) Location of parties, evidence and witnesses; and
- (iv) Costs.

Consultation between a convening authority not having the member in his or her command and the current commanding officer of the member is essential to ensure all factors are properly considered and to ensure administrative and logistical support. Lack of such consultation, while unwise, will not deprive a properly constituted court-martial of jurisdiction.

11.A.3.c *Forwarding investigation to another command.* The investigating command may take the following actions if the commanding officer decides the matter should be disposed of by another command:

- (i) Forward the investigation (e.g., Report of Investigation, Form CG-4608 or Report of Offense and Disposition and Record of Nonjudicial Punishment, Form CG-4910) to his or her OEGCMJ and the receiving command's OEGCMJ, and to the receiving command (typically, the commanding officer or officer-in-charge of the member who was the subject of the investigation). If the investigating command and the receiving command have the same OEGCMJ, the investigation must be forwarded through that officer.

- (ii) Include with the investigation a recommended disposition of the matter to the OEGCMJ, the reason for the recommended disposition, and the reason why the investigating command forwarded the investigation.
- (iii) Include, unless clearly unwarranted, draft and unsigned proposed charges for use by the OEGCMJ or the receiving command. Draft charges will focus the receiving command upon the relevant issues of the case. Charges should not be preferred (signed or sworn to) without consulting the servicing legal office. Charges must not be preferred when an investigating command chooses to forward the investigation unless preferral is coordinated with the receiving command. Preferral of charges has critical legal ramifications because it may constitute the start of time for speedy trial purposes.

11.A.3.d *Action by receiving command.* When a command receives an investigation and draft charges concerning an attached member, the receiving command will review and analyze the investigation and draft charges to determine appropriate disposition. The receiving command may elect to do nothing, take appropriate administrative action, impose NJP or, if empowered, convene a court-martial. The command should consult with its servicing legal office to determine appropriate disposition. Consultation with the investigating command is strongly recommended. Upon determination of an appropriate disposition, the receiving command must report that determination to its servicing legal office and the reasons for that determination.

11.B Changes. Minor and major changes may be made to charges and/or specifications after referral as authorized and explained in R.C.M. 603. Changes should be made by lining through the material while ensuring the form remains legible. All changes and modifications should be dated and initialed by the trial counsel with the permission of the convening authority. Do not use white-out tape or liquid for minor or major changes.

11.B.1 Minor changes. Make minor changes to a charge and/or specification on the charge sheet. Initial and date the change. Minor changes may be accomplished without having the charge sworn anew by the accuser. Promptly provide copies of the charge sheet with the changes to the accused and defense counsel. After arraignment, only a military judge may authorize minor changes to the charge sheet.

11.B.2 Major changes. Major changes or amendments to a charge and/or specification cannot be made over the objection of the accused, unless the charge and/or specification affected are preferred anew. A new referral will also be necessary and, in the case of a GCM, a new Article 32, UCMJ, preliminary hearing will be required if the charge and/or specification, as changed, was not covered in the prior investigation.

11.B.2.a *How to make a change.* Make a major change or amendment to a charge and/or specification on the original charge sheet. Initial and date the change. If the accused objects to the change, a new preferral and referral of the changed or amended charge and/or specification must be accomplished by attaching an endorsement to the

original charge sheet containing the following matters: a new preferral, notification to the accused, receipt by summary court-martial convening authority, referral, and service under R.C.M. 602.

11.B.2.b *Objections to changes.* Even if an accused does not object to a major change or amendment, it may be prudent to prefer anew. Re-preferral and re-referral may avoid a jurisdictional issue as to whether the accused was improperly tried for a charge never referred to trial by the convening authority in an actual order or functional equivalent. *United States v. Wilkins*, 29 M.J. 421, 423 (C.M.A. 1990). See also *United States v. Reese*, 76 M.J. 297 (C.A.A.F. 2017).

11.C Withdrawal. Before findings are announced, a convening authority may cause any charges or specifications to be withdrawn from a court-martial. R.C.M. 604. Withdrawal of charges or specifications extinguishes the jurisdiction of a court-martial over them, unlike a dismissal that extinguishes the charges themselves. Withdrawn charges and/or specifications should be disposed of promptly (e.g., dismissed, re-referred to another court-martial, or forwarded to another convening authority for disposition). An officer authorized to sign referrals or trial counsel may withdraw charges and/or specifications at the direction of the convening authority.

11.C.1 Withdrawing all charges and specifications. To withdraw all charges and specifications from a court-martial, trial counsel lines through the referral portion (Part V) of the charge sheet, specifies the disposition and the date, and initials the action taken (e.g., “Withdrawn on 15 Sep 16, [initials]”). If the convening authority or a superior competent authority directs both withdrawal and dismissal of all charges and specifications, reflect accordingly (e.g., “Withdrawn and Dismissed on 15 Sep 16, [initials]”).

11.C.2 Withdrawing some charges or specifications. To withdraw a specific charge and/or specification from a court-martial, while allowing the other offense(s) to proceed to trial, line through the affected charge and/or specification, specify the disposition and the date, and initial the action taken. (e.g., “Withdrawn on 15 Sep 16, [initials]”). If the convening authority directs both withdrawal and dismissal of a particular charge and/or specification, reflect accordingly (e.g., “Withdrawn and Dismissed on 15 Sep 16, [initials]”). The trial counsel must determine whether any remaining charges and/or specifications should be renumbered (and if renumbered, initial the renumbering). The following rules apply to renumbering charges and/or specifications:

11.C.2.a *Before arraignment.* When charges and/or specifications are withdrawn before arraignment, the remaining charges and/or specifications must be renumbered and the new numbers reflected on the charge sheet and throughout the ROT.

11.C.2.c *After arraignment before members informed.* When charges and/or specifications are withdrawn after arraignment but before the court members are aware of the charges, the remaining charges and/or specifications should, at the direction of the military

judge, be renumbered. The new numbers should be reflected on the charge sheet and referred to throughout the ROT from the point of renumbering. If the military judge directs renumbering, withdrawn charges and/or specifications should not be brought to the attention of the members. If the military judge does not direct renumbering, the remaining charges and/or specifications should not be renumbered and the military judge instructs the members that they should not draw any inference from the numbering of the charges and/or specifications.

- 11.C.2.b *After arraignment and after members informed.* When charges and/or specifications are withdrawn after arraignment and after they have come to the attention of court members (or the military judge sitting alone), the remaining charges and/or specifications should not be renumbered. The military judge instructs the members that the withdrawn charges and/or specifications should not be considered for any reason.

12. COURT-MARTIAL PERSONNEL

12.A Detailing military judges to courts-martial.

12.A.1 Request for detail of military judges to courts-martial. Trial counsel is responsible for requesting that the Chief Trial Judge detail a military judge in accordance with the CG Rules of Court. This request must contain the following information:

- (a) Convening authority and type of court;
- (b) Case name;
- (c) Trial location;
- (d) Preferred trial date, and backup date if any;
- (e) Estimated trial duration;
- (f) General nature of charges or UCMJ Article numbers;
- (g) Names, telephone numbers, facsimile numbers, and e-mail addresses of trial, defense counsel and Special Victims' Counsel if one has been detailed;
- (h) State whether the accused is in pretrial confinement and date confined; and,
- (i) Speedy trial deadline under R.C.M. 707.

12.A.2 Detail pursuant to R.C.M. 503(b)(1). The Chief Trial Judge details military judges to general and special courts-martial. During periods of unavailability due to leave or illness, the alternate docketing judge, designated by the Chief Trial Judge, may detail judges. If no alternate docketing judge is available, the Judge Advocate General will designate a certified military judge to so act.

12.A.3 Docket control. The Chief Trial Judge maintains the docket for all general and special court-martial military judges. The Chief Trial Judge will provide access to the court-martial docket to the Office of Military Justice (CG-LMJ). The Chief Trial Judge (CG-094J) may establish additional procedures for docketing courts-martial. A copy of the trial docket, redacted as necessary, will be posted to the Judge Advocate General's public web page to ensure public access to information about pending courts-martial. The publicly available trial docket will be updated every time the Chief Trial Judge's docket is updated.

12.A.4 Restrictions.

- (a) A special court-martial military judge must not be detailed to a special court-martial if he or she is assigned to the staff of the convening authority or the OEGCMJ over the command of the convening authority or is in the performance evaluation or reviewing chain for any participating counsel.
- (b) Notwithstanding Article 19, UCMJ, a Coast Guard special court-martial must have a military judge (or magistrate if applicable) detailed.

12.A.5 Continuances. Once detailed, the military judge has sole authority to grant continuances.

12.B Detailing certified defense counsel. The Office of Member Advocacy and Legal Assistance (CG-LMA) will detail Article 27(b), UCMJ, certified defense counsel in

accordance with its established procedures. At the time the charges are preferred, the servicing legal office should contact the Office of Member Advocacy and Legal Assistance (CG-LMA) to arrange for detail of defense counsel. The process for obtaining detailed defense counsel will not be delayed because doing so may delay the court-martial unnecessarily. Detailed defense counsel may be a Coast Guard judge advocate or a military attorney pursuant to an inter-service agreement. The Coast Guard–Navy MOU Regarding Mutual Support in Military Justice Matters, and the Coast Guard detailing TJAG SOP – 22C, are available on the Office of Military Justice (CG-LMJ) website. The accused is not entitled to be represented by more than one military attorney. See R.C.M. 506(a).

- 12.B.1 Restriction.** The detailed defense counsel must not have either the SJA to the convening authority or trial counsel in his or her rating chain.
- 12.B.2 Excusal or withdrawal of detailed defense counsel.** A detailed defense counsel may be excused only with the express consent of the accused, or by a military judge upon application for withdrawal by the detailed defense counsel for good cause shown.
- 12.C Obtaining individual military counsel (IMC).** Article 38, UCMJ, provides that an accused has a right to be represented before a general or special court-martial or at a preliminary hearing under Article 32, UCMJ, by military counsel of the accused’s own selection if that counsel is reasonably available. Counsel serving in the Coast Guard or Department of the Navy are “reasonably available” to represent a Coast Guard accused unless they are unavailable within the meaning of R.C.M. 506, this Section or under regulations of the Secretary of the Navy. See JAGMAN Section 0131.
- 12.C.1 Categorical determinations of non-availability.** Under the authority of R.C.M. 506(b)(1) the following Coast Guard personnel, in addition to those listed in R.C.M. 506(b)(1) are, by regulation, deemed “not reasonably available” because of the nature of their assignments:
- (a) Persons on terminal leave or not on active duty;
 - (b) Persons assigned to an out-of-specialty or non-legal billet;
 - (c) Persons assigned as a full-time military judge or active as a part-time military judge;
 - (d) Persons assigned to Coast Guard appellate advocacy duties (either government or defense) and their supervisors;
 - (e) Persons assigned to an organization, activity, or agency other than any of the armed forces of the United States; and,
 - (f) Persons assigned to duty at the departmental level or higher.
- 12.C.2 Exception to categorical determinations of non-availability: Existing attorney-client relationship.** If an attorney in one of the categories in 12.C.1 has an existing attorney-client relationship with the accused regarding a charged offense, the

attorney's availability must be determined under the procedures in Subsection 12.C.6. See R.C.M. 506(b)(2).

- 12.C.2.a *Relationships that do not qualify for exception to categorical determination of "not reasonably available."* If the attorney-client relationship were created solely to provide advice to a member pursuant *United States v. Booker* solely for representation of the accused at a pretrial confinement IRO hearing pursuant to R.C.M. 305(f), or to represent the accused as an appellate counsel pursuant to Article 70, UCMJ, this exception does not apply. Contact with a prospective IMC to discuss the IMC's availability does not create an "existing" attorney-client relationship and the exception does not apply. Simply discussing the legal and factual issues in the case with the accused, or conducting legal research concerning an issue in the case does not constitute active pretrial preparation and strategy and the exception does not apply.
- 12.C.2.b *Attorney-client relationship defined.* An attorney-client relationship exists between the accused and requested counsel when it has been properly authorized by the responsible authority, the requested counsel and the accused have had a privileged conversation relating to a charge pending before a proceeding (e.g., GCM, SPCM, Article 32), and the requested counsel has engaged in active pretrial preparation and strategy with regard to that charge. A counsel will be deemed to have engaged in active pretrial preparation and strategy if that counsel has taken action on the case that materially limits the range of options available to the accused at the pending proceeding. Examples of active pretrial preparation include, but are not limited to: advising the accused to waive or assert a legal right, other than simply asserting the right to remain silent, where the accused followed such advice by waiving or asserting that right; representing the accused at an Article 32, UCMJ, preliminary hearing dealing with the same subject matter as any charge pending before the proceeding; submitting evidence for testing or analysis; offering a pretrial agreement on behalf of the accused; submitting a request for an administrative discharge in lieu of trial on behalf of the accused; or interviewing witnesses relative to any charge pending before the proceeding.
- 12.C.3 Submitting individual military counsel requests.** Requests for an IMC may be submitted to the convening authority through the trial counsel and the convening authority's SJA. The request must include any matters to be considered in favor of providing the requested counsel. If the accused has an existing attorney-client relationship with the requested attorney regarding a charged offense, the request must include the general circumstances and authority under which the relationship was established, the approximate dates of the relationship, and the specific charged offenses that were the subject of the relationship, without revealing privileged information. If the requested attorney is one of those "not reasonably available" under Subsection 12.C.1 because of the nature of that attorney's current assignment, the request must state whether the attorney is expected to be available at the time of the proceedings, and the reasons therefore.

- 12.C.4 Action on requests for attorneys categorically deemed “not reasonably available.”** If an accused before a general or special court-martial requests an IMC who is deemed “not reasonably available” and the request does not assert an exception under this chapter, the convening authority must deny the request and state the reasons therefore, citing this Subsection and R.C.M. 506(b)(1).
- 12.C.5 Action on other cases.** In other cases, if an accused before a general or special court-martial requests an IMC, the convening authority must forward the request to the commander or head of the organization, activity, or agency to which the requested person is assigned. For attorneys assigned to duty with another military service, the procedures of that service apply. For attorneys assigned to Coast Guard commands, the request must be e-mailed to the SJA for the requested IMC’s commanding officer (“IMC’s SJA”), copying the Office of Member Advocacy and Legal Assistance (CG-LMA) at HQS-DG-LST-CG-LMA-D@uscg.mil, the military judge (if detailed), and other appropriate commands. The IMC’s SJA determines whether the requested IMC is reasonably available, using the criteria in Subsection 12.C.6.
- 12.C.5.a If the IMC’s SJA concludes that the requested IMC is not reasonably available, he or she will forward the request to the attorney’s commanding officer who will make a final determination. To provide a basis for review, all determinations that a requested IMC is not reasonably available must be in writing, and state the reasons for the determination, and must be provided to the accused.
- 12.C.5.b When counsel is determined to be available, the IMC’s SJA notifies the detailing authority, who details the counsel, and may excuse previously detailed counsel, in accordance with R.C.M. 506(b)(3).
- 12.C.6 Factors for determining availability.** In determining the availability of counsel to serve as IMC, all relevant factors may be considered, including, but not limited to, the following:
- (a) The existence of an attorney-client relationship between the accused and the requested IMC regarding a charged offense. If the attorney was detailed as counsel to the accused, see R.C.M. 505(d)(2)(B);
 - (b) Any disqualifying factors relating to the requested IMC’s duty assignment; any previous involvement with the case as an investigating officer, preliminary hearing officer, or a witness; or assignment to the same rating chain of the trial counsel or cognizant SJA (rating chain disqualification’s ordinarily may be remedied with an express knowing waiver by the accused);
 - (c) The requested IMC’s duty, position, responsibilities, and workload;
 - (d) Any ethical considerations that might prohibit or limit the participation of the requested IMC;
 - (e) Time and distance factors (e.g., travel to and from the sites, anticipated date, length of the trial or hearing, the nature and complexity of the charges and legal issues involved in the case, associated costs and availability of

funding). Availability of funding may be determined by consultation with the detailing authority, or arrangements may be made for funding from other sources;

- (f) The effect of requested IMC's absence on the proper representation of the requested IMC's other clients;
- (g) Overall impact of the requested IMC's absence on the ability of the requested IMC's office to perform its required mission (e.g., personnel strength, scheduled departures or leaves, and unit training and mission requirements); and
- (h) The detailing authorities must ensure that neither the SJA detailing trial counsel nor the trial counsel is in the rating chain of the IMC.

12.C.7 Review of determinations that requested IMC is not reasonably available.

- (a) When a request for IMC is denied, an accused has no right to review of this decision except by motion before a court-martial.
- (b) Where a determination that an IMC assigned to duty with another service is not reasonably available is based on that service's determination of unavailability, any appeal must be submitted in accordance with that service's regulations.
- (c) In other cases, an accused may, upon timely request, obtain review for abuse of discretion of a determination of unavailability by an appropriate OEGCMJ. If the OEGCMJ or higher authority made the determination, the next higher authority in the chain of command will conduct the review. An accused is not entitled to such review if the reviewing authority under this Subsection is the Commandant.
- (d) Any request for review of a determination of unavailability must be submitted promptly. In the absence of circumstances justifying a longer delay, review may be denied as untimely if the request is submitted more than three working days after the accused's receipt of the adverse determination.
- (e) Requests for review of a determination that requested IMC is not reasonably available must be made in writing to the appropriate authority, with copies to the other involved commands. The request for review must contain a copy of the determination and articulate why the determination was an abuse of discretion.

12.C.8 Excusal or withdrawal of IMC. Like detailed defense counsel, an approved IMC may be excused only with the express consent of the accused, or by a military judge upon application for withdrawal by the IMC for good cause shown. See R.C.M. 506(c); Coast Guard Legal Professional Responsibility Program, COMDTINST M5800.1(series).

12.D Detail of trial counsel to courts-martial.

- 12.D.1** The SJA for the OEGCMJ details trial counsel for general and special courts-martial. Such an SJA, having a deputy staff judge advocate on his or her staff, may delegate this authority to his or her deputy. At least one of the trial counsel detailed to a general court martial must be certified in accordance with Article 27(b), UCMJ. The detailing authorities may also detail assistant trial counsel to general and special courts-martial. Assistant trial counsel need not be certified in accordance with Article 27(b), UCMJ. Although not required, at least one of the trial counsel detailed to a special court-martial should normally have the same qualifications under Article 27(b), UCMJ, as the detailed defense counsel.
- 12.D.2** **Restriction.** The SJA assigned to an OEGCMJ must not be detailed as trial counsel to a court-martial convened by a unit within the geographical limits of the command to which he or she is assigned.
- 12.E** **Special Victims' Counsel.** An individual eligible for military legal assistance under 10 U.S. C. §1044 who is the victim of an alleged sex-related offense must be offered the option of receiving assistance from a Special Victims' Counsel. If at the time of an interview by any military criminal investigator or counsel for the Government, a Special Victims' Counsel is not involved, the investigator or counsel for the Government must notify the victim in writing, of their option to receive assistance from a Special Victims' Counsel prior to the interview. See Special Victims' Counsel Program, COMDTINST 5801.5(series).
- 12.E.1** **Eligibility.** The assistance of Special Victims' Counsel is available to individuals eligible for military legal assistance under 10 U.S. C. §1044, and other persons authorized by the Judge Advocate General who are the victims of a sex-related offense.
- 12.E.2** **Excuse or withdrawal of detailed Special Victims' Counsel.** A detailed Special Victims' Counsel may be excused only in accordance with Special Victim Counsel program guidance.
- 12.F** **Court reporters, interpreters, bailiffs, and court security personnel, generally.**
- 12.F.1** **Appointment.** Appointment of reporters, interpreters, bailiffs, and court security personnel by the convening authority or authority directing the proceedings may be effected personally, or, at his or her discretion, by any other person. Such appointment may be oral or in writing.
- 12.F.2** **Disqualification.** Reporters, interpreters, bailiffs, and court security personnel are disqualified as provided in R.C.M. 502(e)(2).
- 12.F.3** **Duties.** The duties of reporters, interpreters, bailiffs, and court security personnel are prescribed in R.C.M. 502(e)(3), other applicable provisions of this Manual, and by the military judge or trial counsel. A Bailiff Guide and a Court Reporter Guide are available on the Office of Military Justice (CG-LMJ) website.

12.F.4 Court reporters.

12.F.4.a *Generally.* In all special and general courts-martial, the convening authority must detail a qualified court reporter. Court reporters detailed to those courts-martial must record verbatim, by shorthand, mechanical, electronic or other means all the proceedings of the court. A reporter may also be detailed, by the appropriate official, to a summary court-martial, a deposition, or an Article 32, UCMJ preliminary hearing.

12.F.4.b Court reporter qualification and duty:

- (i) The term “qualified court reporter” as used in this Section means a professional civilian court reporter from a commercial court reporting service or a yeoman with competency code YNL1 or YNL2, or any other person having equivalent qualifications.
- (ii) Detail as a reporter under this Section is a full time duty until the record of the proceedings is complete. No other duties will be assigned to the reporter that might interfere with his or her preparation of the record of trial or preliminary hearing in a timely fashion.
- (iii) Under the supervision and at the direction of the trial counsel of a general or special court-martial, the reporter must prepare a record of trial, using MCM, Appendix 14 as a guide. The court reporter must preserve the complete shorthand notes or mechanical record of the proceedings under the supervision of the trial counsel. Additional clerical assistants may be detailed when necessary. See R.C.M. 501(e).

12.F.5 Interpreters. In each court-martial case, Article 32, UCMJ, preliminary hearing, or deposition the convening authority or the officer directing such proceeding will appoint, when necessary, an interpreter for the proceeding. Interpreters must be qualified under M.R.E 604.

12.F.6 Bailiffs and Court Security Personnel. The convening authority must appoint a bailiff for every general and special court-martial. The bailiff must be present at every court-martial session unless excused by the military judge. The trial counsel will brief the bailiff as to his or her duties well in advance of trial. Trial counsel must make an initial security risk assessment and determine whether to take special security precautions. Assistance may be obtained from CGIS. Trial counsel will notify the convening authority, military judge and defense counsel before trial of any special security arrangements deemed necessary. The convening authority will appoint court security personnel as necessary. If special security arrangements are deemed necessary, the trial counsel should coordinate the arrangements with the convening authority, bailiff, court security personnel, and CGIS.

12.G Members.

- 12.G.1 Changes in membership before court has been assembled.** A general court-martial or special court-martial convening authority may delegate his or her authority to excuse members under R.C.M. 505(c)(1) to a principal assistant or to the SJA.
- 12.G.2 Changes in membership after court has been assembled.** Article 29(a), UCMJ, and R.C.M. 505(c)(2) provide that no member of a general or special court-martial may be absent or excused after a court-martial has been assembled except for physical disability, as a result of a challenge, or by order of the convening authority for good cause.
- 12.G.3 Court-martial member questionnaire.** Convening authorities may use a court-martial questionnaire to evaluate whether prospective court-martial members are best qualified to serve on the court-martial under Article 25(d)(2), UCMJ. A Court-Martial Member's Questionnaire, available on the Office of Military Justice (CG-LMJ) website, may be used for this purpose. Convening authorities may require additional information in order to perform their duties under Article 25(d)(2), UCMJ. The Court-Martial Questionnaire, and any other materials considered by the convening authority in selecting members must be provided to any party upon request under R.C.M. 912(b)(2). The trial counsel may, and must, upon request of defense counsel, submit a questionnaire to the members before trial, requesting information about any of the matters set out in R.C.M. 912(a)(1) that were not covered in the materials considered by the convening authority in selecting members.
- 12.G.4 Detailing court-martial members from other commands.** Convening authorities are authorized to detail any member under their command by applying the selection criteria of R.C.M. 502(a) and Article 25, UCMJ. The size and geographic location of Coast Guard field units and the constraints of Article 25, UCMJ, often require convening authorities to seek assistance from other local commands. R.C.M. 503(a)(3) allows a convening authority to consider members from outside the convening authority's unit only after they have been "made available by their commander." This request may be done on an ad hoc basis or as part of a pre-existing blanket arrangement, whereby a senior commander memorializes that subordinate unit members are considered to be available to serve on courts-martial panels for cases arising out of other units.

13. COURTROOM FACILITIES AND SECURITY

13.A Uniform for trial. The military judge must wear a judicial robe. All other military personnel required to be present at sessions of trial must wear the uniform prescribed by the military judge. See CG Rules of Court, Rule 19.

13.B Courtroom and trial facilities.

13.B.1 Military judge evaluation of facilities. The military judge may refuse to commence trial if the site, facilities, and security provided are not suitable. Among the factors that should be taken into account in determining the appropriateness of the site and facilities of the courtroom are:

- (a) Freedom from noise or other disturbing influences;
- (b) Adequacy of the bench;
- (c) Adequacy of seating for the members of the court;
- (d) Adequacy of space for spectators;
- (e) Adequacy of lighting and ventilation;
- (f) Adequacy of counsel tables;
- (g) Adequacy of recording equipment;
- (h) Adequacy of space for the deliberation of court members;
- (i) Availability of separate waiting rooms for government and defense witnesses;
- (j) Adequacy of space for witnesses waiting to testify; and
- (k) Any other factors that create or detract from an appropriate judicial forum.

13.B.2 Courtroom security. Office of the Judge Advocate General and Naval Legal Service Command Physical Security Program, JAG/COMNAVLEGSVCCOMINST 5530.2D, should be used to the maximum extent possible to determine courtroom security needs. Navy defense counsel use the criteria set out in that Instruction to determine whether they are permitted to appear in a particular courtroom. The Instruction also provides very sound guidance for security for a courtroom conducting a federal criminal proceeding. If a particular courtroom cannot meet the security standards set out in the Command Physical Security Program instruction, the trial must be moved to a courtroom that does possess, or can be modified, permanently or temporarily, to possess, adequate security measures.

13.C Venue selection.

13.C.1 Convening Authority role in venue selection. It is the convening authority's responsibility to ensure an appropriate location and facilities for court-martial are provided. The convening authority designates where the court-martial will meet by specifying the location in the convening order. See R.C.M. 504(d) and (e). For motions to change venue, see R.C.M. 906(b)(11).

13.C.2 Military judge's role as to venue. The military judge maintains authority as to the appropriateness of the particulars of the actual physical location of a trial. If the

facilities are unsuitable for trial, the military judge may refuse to begin trial. The authority to designate the venue of trial remains with the convening authority.

14. AUTHORITY TO GRANT IMMUNITY FROM PROSECUTION

14.A General. In certain cases involving more than one participant in criminal conduct, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying in the investigation and/or the trial of another offender. Transactional immunity, as that term is used in this Chapter, means immunity from criminal prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this Chapter, means immunity from the use in aid of future criminal prosecution, of testimony or other information compelled under an order to testify. Ordinarily, testimonial immunity is all that is required to protect the right against self-incrimination and compel a witness to testify. The authority to grant either transactional or testimonial immunity to a witness is reserved to the cognizant OEGCMJ. This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined in this Chapter.

14.B Procedure. The procedures outlined here are in amplification of R.C.M. 704, and the “Discussion” under that rule. A written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the public interest must be forwarded to the cognizant OEGCMJ by the trial counsel in cases referred for trial, the preliminary hearing officer, the counsel or recorder of any other fact finding body, or the investigator when no charges have been preferred. The recommendation must state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The OEGCMJ must act upon such request after referring it to his or her legal office for consideration and advice.

14.C Civilian witness, or military witness liable to federal prosecution.

14.C.1 *Obtaining Immunity.* The OEGCMJ may obtain the approval of the Attorney General for immunity for civilian witnesses by directing a request through the local United States Attorney's office and following the procedures established by the U.S. Attorney to obtain a grant of immunity for the witness from the Attorney General. Working through the local United States Attorney's office to seek approval of the Attorney General may be specifically useful where it is expected that the witness may refuse to testify even after a grant of testimonial immunity, as it will be the local U.S. Attorney that would help enforce/compel the witness's obligation to testify after a grant of immunity. Regardless of what process the OEGCMJ uses, where the witness is also exposed to possible prosecution in a state court, the OEGCMJ can facilitate the approval of the Attorney General by seeking concurrence of the appropriate state authorities in the state in which the witness is exposed to possible prosecution. Where the OEGCMJ seeks approval of the Attorney General through the local U.S. Attorney, the OEGCMJ must notify the Office of Military Justice (CG-LMJ) of such a request. The U.S. Attorney Handbook, USAM 9-23.000, provides additional information on obtaining approval of witness immunity from the Attorney General.

14.C.2 *Alternative Procedure.* If a military witness is liable to prosecution for civilian federal offenses, but is willing to testify under a grant of immunity from court-martial pursuant to R.C.M. 704, the OEGCMJ should grant such immunity only after determining that the cognizant United States Attorney is not interested in pursuing the case. See R.C.M. 704. Pursuant to R.C.M. 704, if the United States Attorney believes that authorization for immunity should be sought from the Attorney General, any proposed grant of immunity must meet the requirements of 18 U.S.C. §§ 6002 and 6004. See R.C.M. 704. If a grant of immunity to a civilian witness, or to a military witness who is liable to prosecution for civilian federal offenses, is necessary in the public interest, the approval of the Attorney General of the United States, or his or her designee, should be obtained prior to granting immunity by the cognizant OEGCMJ. The OEGCMJ may obtain the approval of the Attorney General in such circumstances by directing a letter to the Office of Military Justice (CG-LMJ) requesting assistance in obtaining a grant of immunity for the witness, and enclosing the signed grant of immunity and order to testify to be approved. A Template for Transactional Immunity and Template for Testimonial Immunity are available on the Office of Military Justice (CG-LMJ) website. Once approved through the Department of Justice, a grant of immunity signed by the OEGCMJ extends to all federal actions. Requests to grant immunity must be in writing, allowing at least three weeks for consideration, and must contain the following information:

- (a) Name, citation, or other identifying information, of the proceeding in which the order is to be used;
- (b) Name of the person for whom the immunity is requested;
- (c) Name of employer, company or unit with which the witness is associated;
- (d) Date and place of birth, if known, of the witness;
- (e) FBI number or local police number, if any, and if known;
- (f) Whether any State or federal charges are pending against the prospective witness and the nature of the charges;
- (g) Whether the witness is currently incarcerated, under what conditions, and for what length of time;
- (h) A brief resume of the background of the investigation or proceeding before the agency or department;
- (i) An estimate of whether the witness has invoked the privilege against self-incrimination; or is likely to invoke the privilege (if so, based on what information);
- (j) A concise statement of the reasons for the request, including: what testimony the prospective witness is expected to give; how this testimony will serve the public interest; and
- (k) An estimate as to whether the witness is likely to testify in the event immunity is granted.

14.D **Post-testimony procedures.** After the witness has testified, the following information, together with a verbatim transcript of the witness' testimony,

authenticated by the military judge, must be provided to the Office of Military Justice (CG-LMJ) for further transmittal to the United States Department of Justice, Criminal Division, Immunity Unit:

- (1) Name, citation, or other identifying information, of the proceeding in which the order was requested;
- (2) Date of the examination of the witness;
- (3) Name and residence address of the witness;
- (4) Whether the witness invoked the privilege;
- (5) Whether the immunity order was used;
- (6) Whether the witness testified pursuant to the order; and,
- (7) If the witness refused to comply with the order, whether contempt proceedings were instituted or contemplated, and, if contempt proceedings were concluded, the result of the contempt proceeding.

14.E Form of grant of immunity: Order to testify. In any case in which a military witness is granted transactional immunity, and is not liable to prosecution in a federal district court, the OEGCMJ should execute a written grant and order to testify substantially in the form provided in the Template for Transactional Immunity, available on the Office of Military Justice (CG-LMJ) website. In any case in which a military witness is granted testimonial immunity, the OEGCMJ should execute a written grant and order to testify substantially in the form provided in the Template for Testimonial Immunity available on the Office of Military Justice (CG-LMJ) website. In any case in which a civilian witness is granted testimonial immunity, the OEGCMJ should execute a written grant and order to testify substantially in the form provided in Template Order to Testify available on the Office of Military Justice (CG-LMJ) website. The language of the written grant determines the scope of this immunity. The forms set out in referenced templates should be tailored as necessary to incorporate the terms of the grant of immunity. For example, a grant conditioned on the act of testifying becomes effective only when the witness testifies. If the witness is to be granted immunity to give information during the investigation of a matter, this must be provided for in the grant of immunity.

14.F Crime victim misconduct. The following Section applies to offenses other than those sexually-related offenses listed in Subsection 5.C.2. When a crime victim, as defined in Article 6b, UCMJ, is suspected of an offense that occurred at the time of or in conjunction with the alleged offense committed against them, a convening authority contemplating any action against the crime victim under the UCMJ, to include nonjudicial punishment under Article 15, UCMJ, must notify the next superior commander of the intent to dispose of allegations of misconduct against the crime victim under the UCMJ. No action may be taken until the next superior commander informs the convening authority in writing whether or not the next superior commander will withhold disposition authority in accordance with R.C.M. 306(a). An example of the type of misconduct that requires superior commander notification is a victim of assault consummated by a battery who was under the influence of illegal drugs at the time of the attack. An example of crime victim

misconduct that does not require superior commander notification is drug use that takes place six months after the alleged assault, even if it is asserted that the reason for the drug use was in some manner related to the earlier assault. Convening authorities should consult with their servicing legal office about whether to proceed with action against an alleged crime victim, and whether to notify a superior commander of the intent to take action against an alleged crime victim.

15. COMPREHENSIVE INFORMATION AND SERVICES TO BE PROVIDED TO VICTIMS AND WITNESSES

15.A Rights of Crime Victims. Personnel directly engaged in the prevention, detection, investigation, and disposition of offenses, to include courts-martial, including law enforcement and legal personnel, sexual assault response coordinators (SARC), commanding officers and officers-in-charge, health care providers, Special Victims' Counsel (SVC), trial counsel, and staff judge advocates, will ensure that crime victims, as defined in Article 6b, UCMJ are afforded their rights in accordance with that Article. This policy does not create any entitlement, cause of action, or defense in favor of any person arising out of the failure to accord a crime victim the notice outlined in this policy. A crime victim has the right to:

- (1) Be reasonably protected from the accused offender;
- (2) Be provided with reasonable, accurate, and timely notice of:
 - (a) A public hearing concerning the continuation of confinement before the trial of the accused, to include proceedings under R.C.M. 305(i);
 - (b) A preliminary hearing pursuant to Article 32, UCMJ, relating to the offense;
 - (c) A court-martial relating to the offense;
 - (d) A public proceeding of the Coast Guard Clemency Board or the Department of the Navy Clemency and Parole Board hearing relating to the offense; and
 - (e) The release or escape of the accused, unless such notice may endanger the safety of any person;
- (3) Be present at, and not be excluded from any public hearing or proceeding unless the military judge or preliminary hearing officer, after receiving clear and convincing evidence, determines that testimony by the crime victim would be materially affected if the crime victim was present ;
- (4) Be reasonably heard personally or through counsel at:
 - (a) A public hearing concerning the continuation of confinement before the court-martial of the accused;
 - (b) A preliminary hearing pursuant to Article 32, UCMJ, and court-martial proceedings relating to the Military Rules of Evidence (M.R.E.) 412, 513, and 514 and regarding other rights provided by statute, regulation, or case law;
 - (c) A public sentencing hearing relating to the offense; and
 - (d) A public hearing before the Coast Guard Clemency Board or the Department of the Navy Clemency and Parole Board relating to the offense. A crime victim may make a personal appearance before the Department of the Navy Clemency and Parole Board or submit an audio, video, or written statement;
- (5) Confer with the attorney for the U.S. Government in the case. This will include the reasonable right to confer with this attorney at any proceeding described in this Section (pre-trial confinement, Article 32, UCMJ, hearing, trial by court-martial, and clemency or parole hearing):

- (a) Crime victims who are entitled to legal assistance may consult with a legal assistance attorney;
- (b) Crime victims of an offense under Articles 120, 120a, 120b, or 120c or forcible sodomy under the UCMJ or attempts to commit such offenses under Article 80, UCMJ, who are entitled to legal assistance in accordance with 10 U.S.C. § 1044, may consult with a SVC. Crime victims of these covered offenses must be informed by a sexual assault response coordinator (SARC), victim advocate, military criminal investigator, trial counsel, or other local responsible official that they have the right to with a SVC as soon as they seek assistance from that individual in accordance with 10 U.S.C. § 1565b, and as otherwise authorized by Coast Guard policy; and
- (c) All crime victims may also elect to seek the advice of a private attorney, at their own expense;
- (6) Receive restitution as provided in accordance with State and Federal law;
- (7) Proceedings free from unreasonable delay;
- (8) Be treated with fairness and respect for his or her dignity and privacy; and
- (9) Express his or her views to the convening authority as to disposition of the case.

15.A.1 Underage, incompetent, or deceased victims. In the case of a crime victim who is less than 18 years of age and not a member of the Military Services, or who is incompetent, incapacitated, or deceased, the military judge will designate in writing a representative of the crime victim, a family member, or another suitable individual to assume the crime victim's rights under the UCMJ. The crime victim's representative is designated for the sole purpose of assuming the legal rights of the crime victim as they pertain to the person's status as a victim of any offense(s) properly before the court. Under no circumstances will the individual designated as representative have been accused of any crime against the victim. In making a decision to appoint a representative, the military judge should consider:

- (a) The age, maturity, and relationship to the victim of the proposed designee;
- (b) The physical proximity to the victim;
- (c) The costs incurred in effecting the appointment;
- (d) The willingness of the proposed designee to serve in such a role;
- (e) The previous appointment of a guardian by a court of competent jurisdiction;
- (f) The preference of the victim, if known;
- (g) Any potential delay in any proceeding that may be caused by a specific appointment; and
- (h) Any other relevant information.

The representative, legal guardian, or equivalent of a crime victim of who is eligible, or in the case of a deceased victim, was eligible at the time of death for legal assistance may elect to consult with an SVC on behalf of the victim.

15.A.2 Special Victims' Counsel. If the victim is entitled to and has elected to consult an SVC, all parties must ensure compliance with the Special Victims' Counsel Program, COMDTINST 5801.5 (series).

15.B Initial Information and Services. To safeguard the rights of crime victims and provide notice as required, victims must receive timely and accurate information regarding significant military justice matters. Therefore, the government must provide the victim with the information listed in this Section. A request by the victim is not required. If the victim is represented by a SVC or other counsel, all notices required throughout this Chapter will be provided to the victim through counsel.

15.B.1 Investigation Stage . During the investigation stage and prior to the preferral of charges a crime victim is entitled to:

- (a) A copy of all statements and documentary evidence adopted, produced, or provided by the victim that are in possession of the Trial Counsel or a Staff Judge Advocate.
- (b) A copy of all official requests, subpoenas, search authorization, or search warrants issued by military authorities to any third-party custodian for documents or records in which the victim maintains a privacy interest. This includes, but is not limited to, requests for the crime victim's medical or behavioral health records from a military treatment facility or subpoenas issued to a telecommunications carrier for a victim's telephone records. The copy should be provided prior to execution when possible.
- (c) The date, time, and location of any pretrial confinement review hearing pursuant to R.C.M. 305.

15.B.2 At preferral of charges. Upon preferral of charges a crime victim is entitled to:

- (a) A copy of all statements and documentary evidence produced or provided by the crime victim and of any recordings of interviews of the victim, unless previously provided;
- (b) A copy of all official requests, subpoenas, search authorization, or search warrants issued by military authorities to any third-party custodian for documents or records in which the crime victim maintains a privacy interest, unless previously provided;
- (c) An excerpt of the charge sheet setting forth the preferred specifications pertaining to that crime victim;
- (d) The date, time, and location of any pretrial confinement review pursuant to R.C.M. 305, unless previously provided;
- (e) The time, date, and location of the preliminary hearing pursuant to Article 32, UCMJ, and any information necessary to facilitate attendance by the SVC;
- (f) A copy of any military protective order issued to protect the crime victim or the victim's family; and
- (g) Any request to interview the crime victim.

15.B.3 Government filings. Upon receipt or filing by the government, a crime victim is entitled to:

- (a) A summarized transcript or copy of the recording of the crime victim's testimony at the Article 32, UCMJ, preliminary hearing;
- (b) A copy of the charge sheet setting forth the referred specifications, except that the names and personal information of any other crime victims listed in the referred specifications will be redacted;
- (c) The time and date of any R.C.M. 802 conferences regarding scheduling a court-martial, docket requests, and docketing or scheduling orders, including deadlines for filing motions and the date, time, and location for any session of trial;
- (d) A copy of any motion or responsive pleadings that may limit a crime victim's ability to participate in the court-martial, affect the victim's possessory rights in any property, concern the victim's privileged communications or private medical information, or involve the victim's right to be heard, except that the names and personal information of any other crime victims will be redacted;
- (e) Any request to interview the crime victim received from defense counsel;
- (f) Notice of pretrial agreement negotiations and an opportunity to express the views of the crime victim regarding the proposed terms of the agreement; and,
- (g) A copy of any approved pretrial agreement.

15.B.4 Requests for information not released under this policy. Any requests by crime victims or their designated counsel for documents or portions of the report of investigation not provided for under this policy will be processed under the applicable procedures of the Freedom of Information Act (FOIA) or Privacy Act. Information about filing a FOIA request can be found at <http://www.uscg.mil/foia>.

15.B.5 Additional information to be provided to crime victims. Immediately after identification of a crime victim or witness, the SARC or, law enforcement officer will explain and provide information to each crime victim and witness including:

15.B.5.a The CGIS Pamphlet, "Initial Information for Victims and Witnesses of Crime" or computer-generated equivalent will be used as a handout to convey basic information. Specific points of contact will be recorded in the appropriate place.

15.B.5.b Proper completion of this pamphlet serves as evidence that the SARC or designee, law enforcement officer, or criminal investigative officer notified the victim of his or her rights. The date the form is given to the victim or witness will be recorded on the document along with signed acknowledgement from the victim or witness. This serves as evidence the victim was timely notified of his or her rights under Article 6b, UCMJ.

15.B.6 Information to be provided during investigation of a crime. If a crime victim or witness has not already received the CGIS Pamphlet “Initial Information for Victims and Witnesses of Crime” from the SARC or designee, it will be provided by law enforcement officer or investigator.

15.B.6.a SARCs or law enforcement investigators will inform crime victims and witnesses, of the status of the investigation of the crime, to the extent providing such information does not interfere with the investigation.

15.B.7 Information and services to be provided concerning the prosecution of a crime. Court-Martial Information for Victims and Witnesses of Crime, Form DD-2702, will be used as a handout to convey basic information about the court-martial process. The date it is given to the crime victim or witness must be recorded by the delivering official. If applicable, the following will be explained and provided by the U.S. Government attorney, or designee, or Special Victims’ Counsel to crime victims and witnesses:

- (a) Notification of crime victims’ rights, to include a crime victim’s right to express views as to disposition of case to the responsible commander and convening authority, in accordance with Rule for Court-Martial 306;
- (b) Notification of the crime victim’s right to seek the advice of an attorney with respect to his or her rights as a crime victim pursuant to federal law and Coast Guard policy. This includes the right of service members and their dependents to consult a military legal assistance attorney or a SVC;
- (c) Consultation concerning the decisions to prefer or not prefer charges against the accused offender and the disposition of the offense if other than a trial by court-martial;
- (d) Consultation concerning the decision to refer or not to refer the charges against the accused offender to trial by court-martial and notification of the decision to pursue or not pursue court-martial charges against the accused offender;
- (e) Notification of the initial appearance of the accused offender before a reviewing officer or military judge at a public pretrial confinement hearing or at a preliminary hearing in accordance with Article 32, UCMJ;
- (f) Notification of the release of the suspected offender from pretrial confinement;
- (g) Explanation of the court-martial process on referral to trial;
- (h) Before any court proceedings (as defined to include preliminary hearings pursuant to Article 32, UCMJ, pretrial hearings pursuant to Article 39(a), UCMJ, trial, and presentencing hearings), assistance in obtaining available services such as transportation, parking, child care, lodging, and courtroom translators or interpreters that may be necessary to allow the victim to participate in court proceedings;
- (i) During the court proceedings, a private waiting area out of the sight and hearing of the accused and defense witnesses. In the case of proceedings

- conducted aboard ship or in a deployed environment, provide a private waiting area to the greatest extent practicable;
- (j) Notification of the scheduling, including changes and delays, of a preliminary hearing pursuant to Article 32, UCMJ, and each court proceeding the crime victim is entitled to or required to attend will be made without delay. On request of a crime victim or witness whose absence from work or inability to pay an account is caused by the crime or cooperation in the investigation or prosecution, the employer or creditor of the crime victim or witness will be informed of the reasons for the absence from work or inability to make timely payments on an account. This requirement does not create an independent entitlement to legal assistance or a legal defense against claims of indebtedness;
 - (k) Notification of the recommendation of a preliminary hearing officer when an Article 32, UCMJ, preliminary hearing is held;
 - (l) Consultation concerning any decision to dismiss charges or to enter into a pretrial agreement;
 - (m) Notification of the disposition of the case, to include the acceptance of a plea of “guilty,” the rendering of a verdict, the withdrawal or dismissal of charges, or disposition other than court-martial, to specifically include nonjudicial punishment under Article 15, UCMJ, administrative processing or separation, or other administrative actions;
 - (n) Notification to crime victims of the opportunity to present to the court at sentencing, in compliance with applicable law and regulations, a statement of the impact of the crime on the crime victim, including financial, social, psychological, and physical harm suffered by the victim. The right to submit a victim impact statement is limited to the sentencing phase and does not extend to the providence (guilty plea) inquiry before sentencing;
 - (o) Notification of the offender’s sentence and general information regarding minimum release date, parole, clemency, and mandatory supervised release; and/or
 - (p) Notification of the opportunity to receive a copy of proceedings. The convening authority or subsequent responsible official must authorize release of a copy of the record of trial without cost to a victim of sexual assault as defined in R.C.M. 1104 and Article 54(e), UCMJ. Victims of offenses other than sexual assault may also receive a copy of the record of trial, without cost, when necessary to lessen the physical, psychological, or financial hardships suffered as a result of a criminal act.

15.B.8 Information provided upon request of victim after preferral. Upon preferral of charges, counsel for the Government must provide, a crime victim or counsel for a crime victim:

- (a) A copy of all statements and documentary evidence adopted, produced or provided by the victim and of any recordings of interviews of the victim, that are in the possession of the Trial Counsel, the Staff Judge Advocate, or other local servicing attorney that have not been previously provided;

- (b) A copy of all official requests, subpoenas, search authorizations, or search warrants issued by military authorities to any third-party custodian for documents or records in which the victim maintains a privacy interest that have not been previously provided. Copies should be provided prior to execution when possible;
- (c) An excerpt of the charge sheet setting forth the preferred specifications pertaining to that victim;
- (d) The date, time, and location of any pretrial confinement review pursuant to R.C.M. 305, unless previously provided;
- (e) The time, date, and location of the preliminary hearing pursuant to Article 32, UCMJ, and any information necessary to facilitate attendance by the SVC;
- (f) A copy of any military protective order issued to protect the victim or the victim's family; and
- (g) Any request to interview the victim.

15.B.9 Evidence obtained from crime victim. After court proceedings, Government representatives (SARC, trial counsel, or CGIS) will take appropriate action to ensure that property of a crime victim or witness held as evidence is safeguarded and returned as expeditiously as possible.

15.B.10 Requests for information by crime victims. Except for information that is provided by law enforcement officials and U.S. Government trial counsel, requests by witnesses and crime victims for information relating to the investigation and prosecution of a crime (e.g., investigative reports and related documents) from a crime victim or witness will be processed in accordance with The Coast Guard Freedom of Information (FOIA) and Privacy Acts Manual, COMDTINST M5260.3 (series).

15.B.11 Crime victim access to convening authorities. SJAs and trial counsel should seek to ensure crime victims and/or their SVC are given meaningful opportunities to consult with convening authorities, either in writing, telephonically, or in person, prior to any decision concerning whether or not to prosecute, pursue a disposition by plea, or dismiss charges involving the victim. In general, commanders and convening authorities may seek input from or engage with crime victims and their counsel.

15.B.12 Information and services to be provided on conviction. Coast Guard trial counsel, or the Special Victims' Counsel, if one is appointed, will explain and provide services to crime victims and witnesses on the conviction of an offender in a court-martial. Post-Trial Information for Victims and Witnesses of Crime, Form DD-2703, will be used as a handout to convey basic information about the post-trial process. The following will be provided to crime victims and witnesses:

- (a) General information regarding convening authority action, the appellate process, the corrections process, information about work release, furlough,

- probation, parole, mandatory supervised release, or other forms of release from custody, and eligibility for each;
- (b) Specific information regarding the election to be notified of further actions in the case, to include the convening authority's action, hearings and decisions on appeal, changes in inmate status, and consideration for parole. Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, will be explained to and used for victims and appropriate witnesses (e.g., those who fear harm by the offender) to elect to be notified of these actions, hearings, decisions, and changes in the offender's status in confinement;
 - (c) For all cases resulting in a sentence to confinement, Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704 will be completed and forwarded to the Office of the Judge Advocate General (CG-LMJ), the gaining confinement facility, the SARC, and the victim or witness, if any, with appropriate redactions made by the delivering official. Incomplete Forms DD-2704 received by the Office of the Judge Advocate General (CG-LMJ) must be accompanied by a signed memorandum from Staff Judge Advocate or the SJA's designee, detailing the reasons for the incomplete information, or they will be returned to the responsible legal office for correction. Do not allow an inmate access to the DD- 2704 or attach copy of the forms to any record to which the confinee has access. Doing so could endanger the crime victim or witness;
 - (d) For all cases resulting in conviction but no sentence to confinement Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, will be completed and e-mailed to the Office of the Judge Advocate General (CG-LMJ), the SARC, and the crime victim or witness, if any;
 - (e) Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, and Notification to Victim/Witness of Prisoner, Form DD-2705, are exempt from release under the Freedom of Information Act; and
 - (f) Specific information regarding the deadline and method for submitting a written statement to the convening authority for consideration when taking action on the case in accordance with Article 60, UCMJ, and R.C.M. 1105A.

15.B.13 Information and services to be provided on entry into confinement facilities. The victim and witness assistance coordinator at the military confinement facility will:

- 15.B.13.a Upon entry of an offender into post-trial confinement, trial counsel or SVC should obtain Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, to determine crime victim or witness notification requirements and provide to the confinement facility.
- 15.B.13.b When a crime victim or witness has requested notification of changes in inmate status on the Victim/Witness Certification and Election Concerning Prisoner Status, Form

DD-2704, and that status changes, use the Notification to Victim/Witness of Prisoner Status, Form DD-2705 to notify the crime victim or witness:

- (i) The date the DD-2705 is given to the crime victim or witness must be recorded by the delivering official. This serves as evidence that the officer notified the crime victim or witness of his or her statutory rights; and
- (ii) Do not allow the inmate access to DD- 2705 or attach a copy of the forms to any record to which the inmate has access.

15.B.13.c Provide the earliest possible notice of:

- (i) The scheduling of a clemency or parole hearing for the inmate;
- (ii) The results of the Coast Guard Clemency Board or the Department of the Navy Clemency and Parole Board;
- (iii) The transfer of the inmate from one facility to another;
- (iv) The escape, immediately on escape, and subsequent return to custody, work release, furlough, or any other form of release from custody of the inmate;
- (v) The release of the inmate to supervision;
- (vi) The death of the inmate, if the inmate dies while in custody or under supervision; and
- (vii) A change in the scheduled release date of more than 30 days from the last notification due to a disposition or disciplinary and adjustment board.

15.B.13.d Make reasonable efforts to notify all crime victims and witnesses who have requested notification of changes in inmate status of any emergency or special temporary home release granted an inmate.

15.B.13.e On transfer of an inmate to another military confinement facility, forward the Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, to the gaining facility, and e-mail a copy to the Office of the Judge Advocate General (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil.

15.B.14 Information and services to be provided on appeal. When an offender's case is docketed for review by the Coast Guard Court of Criminal Appeals, or is granted review by the Court of Appeals for the Armed Forces (C.A.A.F.) or by the U.S. Supreme Court, the appellate counsel for the Government will ensure that all crime victims who have indicated a desire to be notified receive this information, if applicable:

- (a) Notification of the scheduling, including changes and delays, of each public court proceeding that the crime victim is entitled to attend; and
- (b) Notification of the decision of the court; and

When an offender's case is reviewed by the Office of the Judge Advocate General pursuant to Article 69, UCMJ, and Article 73, UCMJ, the Office of Military Justice (CG-LMJ) will ensure that all victims who have indicated a desire to be notified on

the Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704 receive notification of the outcome of the review.

15.B.15 Information and services to be provided on consideration for parole or supervised release.

15.B.15.a Before the parole or supervised release of a prisoner, DoD Policy requires the military confinement facility staff to review the Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704 to ensure it has been properly completed. If there is a question concerning named persons or contact information, it should be immediately referred to the appropriate Staff Judge Advocate for correction.

15.B.15.b When considering a prisoner for release on supervision, DoD policy requires the military confinement facility commander ensure that all victims on the Victim/Witness Certification and Election Concerning Prisoner Status, Form DD-2704, indicating a desire to be notified were provided an opportunity to provide information to the Coast Guard Clemency Board or the Department of the Navy Clemency and Parole Board in advance of its determination, as documented in the confinement file.

15.C Complaint process.

15.C.1 Where to file a complaint. A crime victim may file a complaint with the Coast Guard if that person believes that a Coast Guard employee violated or failed to provide their rights under Article 6b, UCMJ. This right is in addition to the right to petition for extraordinary relief under Article 6b(e), UCMJ. This right only applies to violations of the Uniform Code of Military Justice committed by members of the Coast Guard.

15.C.1.a A complaint against a Coast Guard attorney, judge advocate or military judge must be filed with the Office of Legal Policy and Program Development (CG-LPD) in the Office of the Judge Advocate General.

Office of Legal Policy and Program Development (CG-LPD)
Office of the Judge Advocate General
U.S. Coast Guard Stop 7213
2703 Martin Luther King Avenue SE
Washington, D.C. 20593-7213

15.C.1.b A complaint against a member of the Coast Guard Investigative Service, must be filed with the Deputy Director of the Coast Guard Investigative Service.

Deputy Director, Coast Guard Investigative Service
Coast Guard Investigative Service Headquarters
U.S. Coast Guard Stop 7301
2703 Martin Luther King Avenue SE
Washington, D.C. 20593-7301

- 15.C.1.c A complaint against any other employee of the Coast Guard regarding allegations an employee violated or failed to provide rights under Article 6b, UCMJ, must be filed with the Office of Military Justice (CG-LMJ), Office of the Judge Advocate General.

Office of Military Justice (CG-LMJ)
Office of the Judge Advocate General,
U.S. Coast Guard Stop 7213
2703 Martin Luther King Avenue SE
Washington, D.C. 20593-7213

- 15.C.2 Time for filing and content of complaint.** A complaint must be filed within sixty (60) days of a victim's knowledge of a violation by a Coast Guard employee, but not more than one year after the actual violation. The complaint must be signed and dated. If the crime victim is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the complaint may be signed by a legal guardian of the crime victim or a representative of the crime victim's estate, family member, or any other person appointed by a court.

- 15.C.3 Notification of decision on complaint.** The office that reviews a complaint will provide the crime victim written notification that the complaint has been received. Complaints that contain specific and credible information that demonstrate that one or more rights may have been violated by a Coast Guard employee or office will be investigated. The office which reviews a complaint will notify the crime victim whether or not a violation has been found.

- 15.C.4 Request for review of decision on complaint.** If a crime victim disagrees with the determination as to whether a violation of the victim's rights has occurred, the crime victim may request further review of the complaint by the Deputy Commandant for Mission Support. The request for further review must identify the specific error in the initial review. Any request for further review must be made in writing within ten (10) days of notification of the results of the review of the complaint. Determination by the Deputy Commandant for Mission Support is final.

Deputy Commandant for Mission Support (CG-DCMS)
U.S. Coast Guard Stop 7202
Victims' Rights Compliance Review
2703 Martin Luther King Avenue SE
Washington, D.C. 20593-7202

15.D Legal assistance for crime victims.

- 15.D.1 Eligibility.** Active and retired Service members and their dependents are entitled to receive legal assistance pursuant to 10 U.S.C. § 1044.

- 15.D.2 Information and services.** Legal assistance services for crime victims are protected by the attorney client privilege and may include advice and assistance for crime victims to address:

- (a) Rights and benefits afforded to the crime victim under law and Coast Guard policy;
- (b) Role of the Victim and Witness Assistance Program coordinator;
- (c) Role of the victim advocate;
- (d) Privileges existing between the crime victim and victim advocate;
- (e) Differences between restricted and unrestricted reporting;
- (f) Overview of the military justice system;
- (g) Services available from appropriate agencies for emotional and mental health counseling and other medical services;
- (h) Advising of rights to expedited transfer; and
- (i) Availability of and protections offered by civilian and military protective orders.

15.E Special Victims' Counsel programs.

15.E.1 Eligibility. The Coast Guard will provide legal counsel, known as SVC, to assist crime victims who have made allegations of sex-related offenses under Articles 120, 120a, 120b, and 120c, forcible sodomy under Article 125, UCMJ, attempts to commit such offenses under Article 80 of the UCMJ, or other crimes under the UCMJ as authorized as prescribed by the Coast Guard policies. See Special Victims' Counsel Program, COMDTINST 5801.5 (series) for information about the SVC program. Individuals eligible for SVC representation include any of the following:

- (a) Individuals entitled to military legal assistance under 10 U.S.C. §§ 1044 and 1044e, and as further prescribed by Coast Guard policies.
- (b) Members of the Coast Guard Reserve, in accordance with Section 533 of NDAA 2015, and as further prescribed by Coast Guard policies.
- (c) Coast Guard civilian employees.

16. WITNESS REIMBURSEMENT

- 16.A Financial responsibility.** Financial responsibility for costs incurred as the result of witnesses called before courts-martial, including Article 32, UCMJ, preliminary hearings, are normally borne by the convening authority. In cases involving excessive costs, funding may be requested from higher authority in the chain of command.
- 16.B Attendance of witnesses.**
- 16.B.1 Trial counsel responsibilities.** Trial counsel is required to take timely and appropriate action to ensure the presence of both prosecution and defense witnesses whose presence is required at trial. The trial counsel must inform the defense counsel of the trial date as soon as it is known. This may be accomplished orally or in writing.
- 16.B.2 Subpoenas in general.** Having ascertained the names of all required witnesses, the trial counsel may issue a subpoena to all civilian witnesses using the Subpoena, Form DD-453, and inform the convening authority of the required military witnesses.
- 16.B.3 Military witnesses.** Military witnesses attached to local commands other than that of the convening authority must be notified of the time and place of their required attendance by the trial counsel through their commanding officers. This may be done orally, but to ensure no miscommunication as to witnesses, uniforms, times, and locations, written notifications are recommended. Formal requests, usually by message, must be made to commands of military witnesses not within commuting distance of the trial location. Travel order numbers and accounting data must be included in the request. A command receiving a proper request for a military witness must provide that witness as requested or promptly notify the trial counsel that the witness will not be provided so the trial counsel can report the matter to the military judge. Failure to order a military witness to the trial can have significant consequences and may delay the trial.
- 16.B.4 Warrant of attachment.** A military judge may issue a Warrant of Attachment, Form DD-454, to obtain production of witness or evidence after a proper subpoena was ignored or refused. See R.C.M. 703(e)(2)(G).
- 16.B.5 Active duty witness reimbursement.** Active duty military witnesses are reimbursed Temporary Assigned Duty (TAD) per diem and transportation in accordance with the Joint Travel Regulations (JTR).
- 16.C Fees, per diem, and transportation for civilian witnesses.** Fees for civilian witness travel are paid in accordance with the JTR and the Personnel, Pay and Procedures Manual, PPCINST M1000.2 (series) (PPPM). A guide to reimbursement for civilian witnesses is available on the Office of Military Justice (CG-LMJ) website.
- 16.D Expert witnesses.**

- 16.D.1 Expert fees.** The provisions of Section 16.C are applicable to expert witnesses; however, the expert witness fee prescribed by the convening authority will be paid in lieu of the ordinary attendance fee only on those days the witness is required to attend the court.
- 16.D.2 Expert expenses.** An expert witness employed in accordance with this Section may be paid compensation in advance at the rate authorized by the convening authority. An expert witness' claim for fees and mileage must also contain a certified copy of the convening authority's authorization for the expert's employment. Absent such authorization, only the fees paid to an ordinary (non-expert) witness may be paid.
- 16.D.3 Convening Authority authorization for employment of expert witness.** The convening authority may authorize the employment of an expert witness. Such authorization must be in writing and must fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States Attorneys for attendance of a witness of such standing in the United States courts in the area involved. Information concerning such normal compensation may be obtained from the servicing legal office. Convening authorities in the Fourteenth District will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Staff Judge Advocate, Fourteenth Coast Guard District Legal Office.
- 16.E Payment of witnesses who are foreign nationals.** Witnesses who are foreign nationals are reimbursed in accordance with the PPPM. An OEGCMJ in areas other than a state of the United States establishes rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas. Foreign nationals must provide an Individual Tax Identification Number on their travel claim for reimbursement.
- 16.F Advance payments.**
- 16.F.1 Who may authorize advance payments.** Travel advances for witnesses may be authorized in accordance with the PPPM and FINCEN SOP. See Section 16.C.
- 16.F.2 Process for advance payments.** A preferred procedure for the expeditious advance of funds for witness travel is to provide a travel debit card. The travel debit card program is governed by Government Travel Card (GTCC) Program Policies and Procedures, COMDTINST M4600.18 (series), and is used as a tool to obtain a travel advance when someone does not possess a Government Travel Charge Card (GTCC), time does not allow for the use of the routine travel advance process, and non receipt of a travel advance would cause financial hardship to the witness. Additional information can be found at the GTCC website: http://www.uscg.mil/psc/bops/govtrvl/Debit_Card/default_Debit_Card.asp. It is critical that supporting documents be complete and accurate in order for FINCEN to reimburse the bank for the issued debit card. The advanced fees, allowances, and travel expenses that are represented by the witness' debit card must be included on the witness' travel claim as a prior payment.

- 16.G Certificate of person before whom deposition is taken.** The certificate of a person before whom the witness gave a deposition is evidence of the fact and period of attendance of the witness and the place from which summoned.
- 16.H Payment of accrued fees.** Payments of accrued fees will be made in accordance with PPPM procedures. See Section 16.C.
- 16.I Civilian witnesses at Article 32 preliminary hearings.** Reimbursement of per diem allowances, travel expenses and fees to civilians requested to testify at Article 32, UCMJ, preliminary hearings is authorized the same as if the witness testified at a court-martial, provided the preliminary hearing officer certifies that the witness was reasonably available (see R.C.M. 405(g)(3)) and that the witness appeared and testified. The preliminary hearing officer's certificate substitutes for a subpoena in support of a claim. Travel is performed and reimbursed under an Invitational Travel Authorization (ITA) governed by Invitational Travel Orders, COMDTINST 12570.3 (series).

17. ARTICLE 39(a), UCMJ, SESSIONS, RELEASE OF INFORMATION, AND CLASSIFIED MATTERS

17.A Administered oaths.

17.A.1 Military judges. A military judge, certified in accordance with Article 26(b), UCMJ, may take a one-time oath to perform all duties faithfully and impartially in all cases to which detailed. This oath may be taken at any time and may be administered by any person authorized by Article 136, UCMJ, to administer oaths. Once such an oath is taken, the military judge need not be sworn again at any court-martial to which subsequently detailed. Military judges will customarily be given a one-time oath. In the event that a military judge detailed to a particular court-martial has not been previously sworn, the trial counsel will administer the oath to the military judge at the appropriate point in the proceedings. The following oath is used for the swearing in of military judges, see R.C.M. 807(b)(2) discussion:

Do you swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws applicable to trials by courts-martial, all the duties incumbent upon you as military judge to this court-martial (, so help you God)?

17.A.2 Counsel. Any military counsel, certified in accordance with Article 27(b), UCMJ, may be given a one-time oath. Such oath will customarily be administered when military counsel is certified. The oath may be given at any time and by any person authorized by Article 136, UCMJ, to administer oaths. Once such an oath is taken, certified military counsel need not be sworn again at any trial to which he or she is detailed, or in any case in which he or she is serving as individual counsel at the request of the accused. Certified military counsel who have taken one-time oaths administered by armed services other than the Coast Guard need not again be sworn in courts-martial convened in the Coast Guard. Counsel who are not certified in accordance with Article 27(b), UCMJ, including all civilian counsel, must be sworn in each case. The following oath may be used in administering a one-time oath to counsel, see R.C.M. 807(b)(2) discussion:

Do you swear (or affirm) that you will faithfully perform the duties of counsel in the case now in hearing (, so help you God)?

17.A.3 Court members. Court members may be given one oath for all cases that are referred to the court in accordance with the convening order that detailed them as members. In the event the convening order is amended, a new member will be sworn when he or she arrives. This oath may be administered by any officer authorized by Article 136, UCMJ, to administer oaths. When court members are not sworn at trial, the fact that they have previously been sworn will be recorded in the transcript or record of trial. The oaths used for court members will be those prescribed in the discussion to R.C.M. 807(b)(2). See also MCM, Appendix 8, Section II,

- 17.A.4 Reporters.** Any court reporter, military or civilian, may be given a one-time oath. The oath normally will be administered by trial counsel in the first court-martial to which the court reporter is assigned. Once such oath is taken, the court reporter need not be sworn again at any trial to which assigned. When the court reporter is not sworn at trial, the fact that he or she has been previously sworn will be recorded in the transcript or record of trial. The following oath may be used in administering a one-time oath to court reporters, see R.C.M. 807(b)(2) discussion:

Do you swear (or affirm) that you will faithfully perform the duties of reporter to this court-martial (, so help you God)?

- 17.A.5 Interpreters.** Interpreters will be sworn by trial counsel as provided in the discussion to R.C.M. 807(b)(2). See also MCM, Appendix 8.

- 17.A.6 Recording one-time oaths of reporters and interpreters.** The certified counsel who take the oath prescribed above for reporters and interpreters will transmit a signed copy to (CG-LMJ). When a court reporter is a member of the Coast Guard assigned copy of the oath taken by the court reporter will be filed in the court reporter's official service record. The copies must bear below the signature of the person sworn a statement signed by the person who administered the oath, in a form as follows:

*[Quote the Oath and state purpose why administered; followed by]
The undersigned personally administered the foregoing oath to the above-named [Person Sworn], this ____ day of _____, 20____, at [Location].*

Signature and Rank

17.B Matters for sessions held pursuant to Article 39(a), UCMJ.

- 17.B.1 Arraignment and pleas.** As authorized under Article 39(a), UCMJ, a session of the court without the presence of the members may be called for the purpose of holding the arraignment and receiving the pleas of the accused. See CG Rules of Court, Rule 9.2.
- 17.B.2 Pretrial motions.** Pretrial motions will be submitted in accordance with the orders of the military judge assigned to the case, and, unless otherwise permitted or ordered by the military judge assigned to the case, will follow the format prescribed in the CG Rules of Court.
- 17.B.3 Custody and restraint of accused.** Physical restraint must not be imposed on the accused during open sessions of the court-martial unless prescribed by the military judge. See R.C.M. 804(c)(2).
- 17.B.4 Conditional pleas.** The accused may enter a conditional plea of guilty in accordance with R.C.M. 910(a)(2). Such plea must be in writing and must set forth the particular pretrial motion(s) to which the right of appeal is reserved. Because conditional guilty pleas subject the government to substantial risks of appellate reversal and the expense

- of retrial, SJAs should consult with the Chief, Office of Military Justice (CG-LMJ) prior to the government's consent regarding an accused entering a conditional guilty plea at court-martial. Once this coordination is complete, the government's consent to the plea may be given by trial counsel and must be noted on the document over the signature of the trial counsel.
- 17.C Remote Article 39(a) sessions.** The use of audiovisual and teleconferencing technology is authorized by, to the extent and under the conditions allowed for in, R.C.M. 804(b), 805(a), 805(c).
- 17.C.1 When remote Article 39(a) sessions may be authorized.** Article 39 (a), UCMJ, sessions will be called by order of the military judge. Either counsel, however, may make a request to the military judge that such a session be called. The military judge of a general or special court-martial may, at an Article 39(a), UCMJ, session, arraign the accused, hear argument and rule on motions, and receive the pleas of the accused during a remote Article 39(a) session. If the accused pleads guilty, the military judge may at that time make the appropriate inquiry into the providence of the accused's plea. The military judge may also at that time accept the plea of the accused. Upon acceptance of a plea of guilty, the military judge is authorized to enter a finding of guilty immediately, except when the plea is to a lesser included offense and the prosecution intends to proceed to trial on a greater offense. In a case where the accused pleads guilty, the military judge may hear evidence on sentencing and sentence the accused.
- 17.C.2 Procedure for remote Article 39(a) sessions.** Consistent with R.C.M. 804 and 805, the military judge may order the use of audiovisual technology, such as video teleconferencing technology, among the parties and the military judge for purposes of Article 39(a), UCMJ, sessions if all parties consent, or if the benefit of conducting the remote Article 39(a), UCMJ, session significantly outweighs its cost. Use of such audiovisual technology will satisfy the "presence" requirement of the accused only when the accused has a defense counsel physically present at the accused's location. Such technology may include two or more remote sites as long as all parties can see and hear each other.
- 17.C.3 Requirements for remote Article 39(a) sessions.** The audiovisual technology employed must be capable of providing real time, two way communications of video images and sound such that the accused and the military judge can see all participants, and the court reporter is able to record everything said in all locations. A transcript of remote Article 39(a), UCMJ, sessions will be produced verbatim, capturing a written record of all proceedings, transcribing everything said in all locations. Testimony of witnesses during remote Article 39(a), UCMJ, session must not take place in a location other than the location of the accused unless the accused affirmatively waives the right to have the witness present in the same location on the record, or such witness testimony is otherwise permitted under the Military Rules of Evidence or Rules for Court-Martial outside of the presence of the accused.
- 17.D Release of information at trial.**

- 17.D.1 Release of information.** The information contained in this Section is a synopsis of the information provided in the Court-Martial Public Affairs Guide available on the Office of Military Justice (CG-LMJ) website and should be referred to for more complete information than is provided in this Section.
- 17.D.2 General.** The task of striking a fair balance between the protection of members accused of offenses against improper or unwarranted publicity pertaining to their cases, and public understanding of the problems of controlling misconduct in the armed forces and the workings of military justice depends largely on the exercise of sound judgment by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused, or the allegations against him or her, is the prohibition against providing statements or information to news media for the purpose of, or which reasonably could have the effect of, influencing the outcome of a trial.
- 17.D.3 Applicability.** These provisions apply to all persons who may obtain information as the result of duties performed in connection with the processing of an accused, the investigation of suspected offenses, or trials by court-martial. These provisions are applicable from the time of apprehension, the referral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the completion of trial or disposition of the case without trial. These provisions also prescribe guidelines for the release or dissemination of information to public news agencies, other public media, or other persons or agencies.
- 17.D.4 Responsibilities regarding release of information.**
- 17.D.4.a As a general matter, Coast Guard employees should not initiate release of information pertaining to an accused. Information of this nature should be released only upon specific request, and, subject to the following guidelines, should not exceed the scope of the inquiry concerned.
- 17.D.4.b Determination of whether a case should be the subject of a proactive public affairs stance should be developed in conjunction with the convening authority, the servicing legal office, and the cognizant public affairs officer. For sexual assault related cases, amplifying guidance should be obtained from the Office of the Judge Advocate General (CG-094) and the Office of Governmental & Public Affairs (CG-092). A final decision on the release rests with the convening authority.
- 17.D.4.c Except in unusual circumstances, information subject to release under these provisions should be reviewed and released by the cognizant public affairs officer, and requests for information received by others from the media should be referred to such officer for action. In high visibility cases a trained attorney should assist the cognizant public affairs officer. When a member is suspected or accused of an offense, care should be taken to indicate that the member is alleged to have committed an offense or is suspected or accused of having committed an offense, as distinguished from stating or implying that the accused has committed the offense(s).

17.D.5 Information subject to release. When deemed appropriate, the following information concerning a member accused or suspected of an offense(s) may generally be released, except as provided in Subsection 17.D.6:

- (a) The accused's name, grade, age, unit, and regular assigned duties;
- (b) The substance of the offense(s) of which the individual is accused or suspected;
- (c) The identity of the apprehending and investigating agency and the identity of the attorney for the accused, if any;
- (d) The type and place of custody, if any;
- (e) Information that has become a part of the record of proceedings of the court-martial in open session;
- (f) The scheduling or result of any stage in the judicial process; and
- (g) The denial of the commission of any offense(s) of which he or she may be accused or suspected (when release of such information is approved by the attorney of the accused).

17.D.6 Information prohibited for release. The following information concerning a member accused or suspected of an offense(s) normally is not released except as provided in Subsection 17.D.7:

- (a) Subjective opinions, observations or comments concerning the accused's character, demeanor at any time, or guilt of the offense or offenses involved;
- (b) The prior criminal record (including other apprehensions, charges, or trials) or the character or reputation of the accused;
- (c) The existence or contents of any confession, admission, statement or alibi given by the accused, or the refusal or failure of the accused to make any statement;
- (d) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or the failure of the accused to submit to an examination or test;
- (e) The identity, testimony, or credibility of any crime victim;
- (f) The identity, testimony, or credibility of possible witnesses;
- (g) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty;
- (h) References to confidential sources or investigative techniques or procedures; and
- (i) Any other matter when there is reasonable likelihood that its dissemination 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 either before, during, or after trial.

17.D.7 Exceptional cases. The provisions of this Section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused

or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, because the purpose of this Section is to prescribe generally applicable guidelines, there may be circumstances that warrant the release of information normally not released in accordance with 17.D.6 above, or the non-release of information authorized for release under 17.D.5 above. In these cases, the servicing legal office will advise the convening authority on whether such material should be released.

17.D.8 Military judge's authority. The foregoing is in no way to be viewed as in derogation of the authority of the military judge, who, upon being detailed, is, in his or her discretion, empowered to regulate many of the matters discussed in this Section by court order. See R.C.M. 801.

17.E Spectators at judicial proceedings

17.E.1 Spectators at court-martial. The sessions of courts-martial will be public and, in general, all persons except those who may be required to give evidence will be admitted as spectators. But see Article 6b(3), UCMJ. The trial counsel must post a Notice of Public Trial. A template Notice of Public Trial is available on the Office of Military Justice (CG-LMJ) website. Spectators or classes of spectators may be excluded only when, in the discretion of the military judge of a general or special court-martial, he or she determines such action to be legally necessary and proper. See R.C.M. 806. Summary courts-martial officers must consult with the servicing legal office before restricting access to a summary court-martial proceeding.

17.E.2 Spectators at preliminary hearings. The sessions of a preliminary hearing convened in accordance with Article 32, UCMJ, should ordinarily be open to the public. See R.C.M. 405(i)(4). A convening authority will consult with the servicing legal office before restricting access to a preliminary hearing.

18. GOVERNMENT APPEAL FROM ADVERSE RULINGS AT TRIAL AND PETITIONS FOR EXTRAORDINARY RELIEF

18.A Interlocutory appeals under Article 62. Article 62, UCMJ, and R.C.M. 908 authorize the United States to appeal a ruling or order of the military judge that terminates the proceedings with respect to a charge or specification, excludes evidence that is substantial proof of a fact material to the proceedings, or jeopardizes the security of classified material.

18.B Procedures and persons authorized to act.

18.B.1 Trial counsel. If trial counsel wishes to seek an appeal under Article 62, UCMJ, written notice of the intent to do so must be received by the military judge within 72 hours of the order or decision that gives rise to the appeal pursuant to R.C.M. 908(b)(3). Written notice must contain both the date and time that the notice was served on the military judge. In any case in which trial counsel wishes to file an Article 62, UCMJ, appeal, trial counsel should if practicable confer with appellate government counsel at the Office of Military Justice (CG-LMJ) prior to providing written notice of its intent to appeal. Trial counsel may request a recess from the court in order to do so. Trial counsel must present a summary of the ruling or order, the issue involved, and the evidence in the case and describe the reasons why trial counsel believes the ruling or order is one that should be appealed. After the consultation, appellate government counsel will advise trial counsel on whether to file notice of intent to appeal. If trial counsel cannot confer with appellate government counsel in a reasonable time, trial counsel must file the written notice within 72 hours to preserve the right to appeal, and should contact the Office of Military Justice as soon as practicable thereafter. The 72-hour rule is an inflexible rule and must be strictly adhered to. If trial counsel wishes to seek reconsideration of a ruling, and contemplates that he or she will seek an Article 62, UCMJ, appeal if reconsideration is denied, the request for reconsideration must come within 72 hours of the order or decision. The appellate courts do not have jurisdiction to hear an interlocutory appeal where trial counsel waited longer than 72 hours before seeking reconsideration and then sought to file an Article 62, UCMJ, appeal within 72 hours of the reconsideration denial.

18.B.2 Appellate government counsel. Once advised of the matter, appellate government counsel will authorize trial counsel to advise the military judge and parties that:

- (a) The government will not appeal the ruling, in which case the trial should proceed; or
- (b) The government has decided to appeal.

18.C Forwarding notice of appeal. Trial counsel must e-mail a notice of intent to appeal filed under R.C.M. 908 to appellate government counsel, Office of Military Justice (CG-LMJ), at HQS-DG-LST-CG-LMJ@uscg.mil as soon as practicable after it is filed. Under R.C.M. 908(b)(6), the trial counsel must also provide a summary of the proceedings and relevant facts, a statement of the error assigned and relief requested,

notice of appeal, and the Record of Trial (ROT) in the form described in Subsection 18.C.1.

18.C.1 Record of trial.

18.C.1.a The authenticated ROT must be received by the Office of Military Justice (CG-LMJ) within 20 days from the date the notice of appeal is filed to comply with Coast Guard Court of Criminal Appeals rules (See Court of Criminal Appeals Rule 21). The trial counsel must mail the ROT to the Office of Military Justice (CG-LMJ). Only that portion of the ROT involving the alleged error(s) need be transcribed, authenticated, and forwarded.

18.C.1.b In extraordinary cases where authentication is expected to take more than 20 days, the Office of Military Justice may request an enlargement of time from the CGCCA in accordance with Court of Criminal Appeals Rule 21(d)(1). When delay is expected, trial counsel must inform the Office of Military Justice of the expected delay, and the reasons for the delay, as early as possible. In cases where there is delay, trial counsel must e-mail the matters required under R.C.M. 908(b)(6), and an unauthenticated ROT to the Office of Military Justice (CG-LMJ), HQS-DG-LST-CG-LMJ@uscg.mil, to be followed by the authenticated record as soon as possible.

18.C.1.c Trial counsel should retain a copy of the authenticated ROT so that trial may resume after the Coast Guard of Criminal Appeals issues a decision, if authorized.

18.C.2 Writing the appeal. The Office of Military Justice (CG-LMJ) is responsible for writing and filing the appeal and has final authority on what issues are contained within the brief. Appellate counsel will consult with trial counsel throughout the writing process. Chief, Office of Military Justice, is the final authority on whether the appeal will be filed. If at any time after notice of intent to file has been given and before the filing of the appeal, the Chief, Office of Military Justice determines that the appeal is not in the best interest of the Coast Guard, notice will be made to trial counsel in writing of that decision, and the trial will resume.

18.C.3 Authority to conduct further proceedings. After notice of a decision by the Coast Guard Court of Criminal Appeals or Court of Appeals for the Armed Forces is provided, the trial may proceed, if authorized, in a manner consistent with the decision, unless further proceedings are stayed by order of a higher court.

18.D Petitions for extraordinary relief. The process for filing, and responding to, petitions for extraordinary relief, including those under Article 6b(e), UCMJ, is outlined in Court of Criminal Appeals Rule 20.

19. SENTENCING MATTERS

19.A Court-martial punishment limitations.

19.A.1 No automatic reduction. As a matter of policy, administrative action of automatic reduction to the lowest enlisted pay grade authorized under Article 58a, UCMJ, is not effected in the Coast Guard. This policy does not preclude reduction to the lowest enlisted pay grade being adjudged and approved as part of a lawful sentence.

19.A.2 Hard labor without confinement. Hard labor without confinement is performed in accordance with the same regulations applicable to extra duties imposed as NJP under Article 15, UCMJ.

19.B Reservists ordered to active duty.

19.B.1 Approved by Director, Reserve and Military Personnel (CG-13). A reservist tried by court-martial after an order approved by Director, Reserve and Military Personnel (CG-13) to active duty pursuant to 4.M.2 may receive any punishment otherwise authorized by the court-martial.

19.B.2 Not approved by Director, Reserve and Military Personnel (CG-13). Unless the order to active duty is approved by the Director, Reserve and Military Personnel (CG-13), confinement is not an authorized punishment for a reservist ordered to active duty at court-martial. In addition, the reservist accused may not be retained on active duty to serve any other punishment, see discussion to R.C.M. 1003(c)(3). Imposed forfeitures may be collected, and imposed restrictions on liberty may be served during subsequent periods of inactive duty training or active duty.

19.C Sentences including reprimand. Reprimands issued in execution of court-martial sentences are punitive reprimands (and to be distinguished from administrative non-punitive reprimands) and are required to be in writing and detailed in the member's PDR.

19.C.1 By whom issued. Punitive letters of reprimand adjudged by a court-martial are normally issued by the convening authority as part of the action on the ROT under R.C.M. 1107(f)(4)(G) and 1003(b)(1).

19.C.2 Contents. The punitive letter of reprimand must include the time and place of trial, type of court, and a statement of the charges and specifications of which convicted. It must also contain the following paragraph:

A copy of this letter will be placed in your official record at Coast Guard Headquarters. You may forward to Coast Guard Personnel Service Center (PSC-psd-mr) within 15 days after receipt of this action such statement concerning this letter as you may desire for inclusion in your record. In connection with your statement, you are advised that any statement submitted must be couched in temperate language and must be confined to pertinent facts. Opinions must not be

expressed nor the motives of other personnel impugned. Your statement must not contain countercharges.

19.C.3 Procedure for issuance.

- (a) The original letter must be delivered to the accused personally or by First Class Certified Mail or a DHS-approved commercial carrier that provides a delivery receipt or tracking number. If personally delivered, the accused must acknowledge receipt of the punitive letter of reprimand on Personnel Service Center's copy of the letter to be filed in the member's official record. A copy of the letter will be appended to the convening authority action (or, if not issued by the convening authority, to the promulgating order of the officer subsequently directing execution of the sentence). The action (or order) should refer to the letter in the following tenor:

Pursuant to the sentence of the court, as herein approved, a letter of reprimand is this date being served upon the accused and a copy thereof is hereby incorporated as an integral part of this action.

- (b) Forwarding Copy to Coast Guard Personnel Service Center. A copy of the letter of reprimand, with either the accused's acknowledgment of receipt or the signed return receipt attached, will be forwarded to Coast Guard Personnel Service Center (CG PSC-bops-mr).

19.C.4 Appeals of letters of reprimand. Review, including appellate review, of letters of reprimand issued as part of an approved court-martial sentence will be accomplished as provided for by the UCMJ, the MCM, and this Manual with respect to the proceedings of the particular court-martial that imposed the sentence. No separate appeal from these letters will be considered.

19.D Effective date of courts-martial sentences.

19.D.1 General. Except for an adjudged sentence of confinement (See R.C.M. 1101), adjudged reduction in pay grade (See Article 57(a)(1), UCMJ), and/or adjudged (See Article 57(a)(1), UCMJ) or automatic (See Article 58b, UCMJ) forfeiture of pay and allowances, no part of a court-martial sentence may be carried out until it has been ordered executed. Those approved portions of the sentence that do not extend to death, dismissal, or dishonorable or bad conduct discharge will normally be ordered executed in the initial convening authority Action, unless suspended or deferred in that action.

19.D.2 Death or dismissal. Sentences to death may be approved only by the President. A sentence of dismissal may be approved only by the Secretary of the Department of Homeland Security, or the Secretary of the Navy if the Coast Guard is operating as a service under the Navy. Only the Secretary can order executed an approved death sentence or dismissal.

- 19.D.3 Confinement.** Unless deferred, any period of confinement included in a court-martial sentence begins on the date the sentence is adjudged, regardless of whether the accused is already confined. See Art 57(b), UCMJ.
- 19.D.4 Deferment of sentence to confinement.** If requested by the accused, a sentence to confinement may be deferred by the Convening authority or by the OEGCMJ over the accused if the accused is no longer in the Convening authority's command. This request must originate with the accused and must be in writing. For termination of deferment, see R.C.M. 1101(c)(6). Any request for deferment of confinement and the written action on the request must be included in the ROT.
- 19.D.5 Punitive discharge.** No dishonorable or bad conduct discharge may be ordered executed until the conviction is final under R.C.M. 1209. The OEGCMJ may order the sentence executed in all cases where the accused has waived appellate review and review under R.C.M. 1112(f) is final.
- 19.D.5.a In all other cases, even after the conviction is final, the punitive discharge may not be ordered executed until the ROT has been reviewed for clemency in accordance with Ch. 1.F.6.d(4), Discipline and Conduct Manual, COMDTINST M1600.2 (series), and the discharge approved by Commandant. When clemency review is completed the Office of Military Justice (CG-LMJ) will advise whether clemency was granted or denied pursuant to Article 74(a), UCMJ, and notify the Coast Guard Personnel Service Center of the type of discharge to be issued.
- 19.D.5.b If a punitive discharge is approved in the initial action, the discharge is self-executing in accordance with R.C.M. 1113(d).
- 19.D.6 Reductions in pay grade.** Article 57(a), UCMJ, makes reductions in pay grade effective 14 days after being adjudged or on the date the sentence is approved by the convening authority, whichever is earlier. Upon application of the accused the convening authority may defer the effective date of reduction in pay grade at any time until the date the convening authority acts on the sentence. Deferment may be rescinded based on information not previously considered. The Coast Guard by policy does not affect the administrative reduction in pay grade authorized under Article 58a, UCMJ. See 19.A.1.
- 19.D.7 Effective date of adjudged forfeitures.** Article 57(a), UCMJ, makes adjudged forfeitures of pay and allowances effective 14 days after being adjudged or on the date the sentence is approved by the convening authority, whichever is earlier. Upon application of the accused, the convening authority may defer the effective date of forfeitures at any time until the date the convening authority acts on the sentence. Deferment may be rescinded based on information not previously considered.
- 19.D.8 Statutory forfeitures pursuant to Article 58b.** Article 58b, UCMJ, provides for administrative forfeiture of pay and allowances during confinement for a member sentenced by a court-martial to a period of confinement exceeding 6 months or any

period of confinement accompanied by a punitive discharge. Forfeitures under Article 58b, UCMJ, are not an adjudged court-martial sentence.

- 19.D.8.a If Article 58b, UCMJ, administrative forfeitures apply in the case of a general court-martial, all pay and allowances are automatically forfeited during the period of confinement. In the case of a special court-martial, two-thirds of pay is automatically forfeited during the period of confinement. The amount forfeited by operation of Article 58b, UCMJ, is that amount above any adjudged and approved fines or forfeitures. The total adjudged fines and forfeitures and administrative forfeitures may not exceed the jurisdictional limit of the court-martial. Article 58b, UCMJ, administrative forfeitures automatically take effect, but may be deferred.
- 19.D.8.b In cases where a member subject to Article 58b, UCMJ, administrative forfeitures has dependents, all or part of the forfeiture may be waived by the convening authority anytime after sentencing for a period not to exceed 6 months, provided that the amounts waived are paid directly to the accused's dependents.
- 19.D.8.c Administrative forfeiture under Article 58b, UCMJ, is a congressionally required administrative (not a courts-martial sentencing or punitive) action applicable only if a prisoner is otherwise entitled to pay. There are circumstances in which a member is convicted and sentenced to confinement and is not entitled to, or loses entitlement to military pay. Notable is the loss of entitlement to pay when a prisoner's enlistment expires while in confinement (e.g., a prior extension does not become effective if the member is confined and a prisoner is precluded from reenlisting) or if a member's enlistment has expired but he or she is involuntarily extended for purposes of courts-martial (the member is automatically released from active duty and assumes a non-pay status upon announcement of the sentence).

19.D.9 Deferring and waiving forfeitures.

- 19.D.9.a An order deferring any forfeitures or reduction in pay grade should be signed by the convening authority and worded substantially as follows:

The (forfeitures/reduction in pay grade) (adjudged/arising by operation of Article 58b, UCMJ, from the sentence adjudged) on (date sentence adjudged) in the case of (accused's name, EMPLID, and unit) by the (Special/General) Court-Martial convened by my order number (convening order number) dated (date) are hereby deferred from (effective date of deferral) until (end date of deferral/date action is taken on the sentence).

- 19.D.9.b An order waiving administrative forfeitures should be signed by the convening authority or person acting under Article 60, UCMJ, and R.C.M. 1107 and worded substantially as follows:

Any forfeitures arising by operation of Article 58b, UCMJ, as a result of the sentence adjudged (date sentence imposed) in the case of (accused's name, EMPLID, and unit) by my (Special/General) Court-Martial Order (CM Order

Number) dated (date) are hereby waived as follows: Effective date of waiver, (date); End date of waiver,(date -- not to exceed 6 months from start date); Amount of forfeitures waived per month (stated in whole dollar amounts). This waiver applies only to forfeitures arising by operation of Article 58b, UCMJ, and does not apply to adjudged forfeitures. All amounts waived are to be paid to the accused's dependents. (If applicable -- This waiver is granted at the request of (the accused, defense counsel, the accused's spouse, etc.). (Attach copy of any request.))

19.D.9.c Deferral and waiver orders may be combined in a single document. This document may be the convening authority's action; however, deferral decisions may be made prior to the action. A certified copy of any order waiving administrative forfeitures, or deferring forfeitures or reductions in pay grade, must be provided immediately to the Servicing Personnel Office responsible for the accused's service record. Orders denying deferral requests should include the reasons for denial. See R.C.M. 1101(c)(3) Discussion. All original orders must be attached to the ROT.

19.D.10 Effective date of other punishment. All other punishments adjudged by a court-martial take effect on the date ordered executed. See Article 57, UCMJ.

19.D.11 Payment of fines. The accused must pay fines by mailing or delivering a check or money order payable to the U.S. Treasury to the Pay and Personnel Center (PPC), Topeka, Kansas:

Commanding Officer (SES)
USCG Pay and Personnel Center
444 SE Quincy Street
Topeka, KS 66683-3591

19.D.12 Payment of restitution. The Coast Guard utilizes a lockbox facility to receive payment for restitution as part of a pretrial agreement (i.e. the repayment of misused or stolen funds by an accused). To make restitution, the accused must mail a check or money order payable to "The United States of America" to:

USCG Art/Others
PO Box 530249
Atlanta, GA 30353-0249

For Overnight Courier:
Bank of America
Lockbox Number 530249
1075 Loop Road
Atlanta, GA 30337-6002

19.E Appellate rights advisement. Each convicted accused must be advised of his or her appellate rights, prior to adjourning the court-martial. A completed appellate rights

form must be included as an appellate exhibit in the record of trial. See R.C.M. 1010. A template Appellate Rights Notice is available on the Office of Military Justice (CG-LMJ) website.

20. POST-TRIAL

20.A Trial counsel responsibilities in the immediate aftermath of trial.

20.A.1 Report of results of trial.

20.A.1.a *Generally.* After final adjournment of the court-martial, the trial counsel must promptly notify the accused's commanding officer, the convening authority, the Office of Military Justice (CG-LMJ) and, if appropriate, the officer-in-charge of the confinement facility of the findings and sentence. The trial counsel must draft a Report of Results of Trial in order to complete this notification. See R.C.M. 1101(a). Use the Department of Defense Report of Results of Trial, Form DD-2707-1 to report the Results of Trial. Trial counsel must also provide a copy of the Report of Results of Trial to the defense counsel, military judge, Servicing Personnel Office for the accused, Office of Military Justice (CG-LMJ), Office of Member Advocacy and Legal Assistance (CG-LMA), and to the servicing CGIS office.

20.A.1.b *Crimes of Domestic Violence.* In SPCM involving domestic violence, trial counsel must supplement the report of results of trial with a memo stating which offenses meet the definition of a "misdemeanor crime of domestic violence" under 18 U.S.C. § 921(a)(33). A template Supplement to Report of Results of Trial for Misdemeanor Crimes of Domestic Violence is available on the Office of Military Justice (CG-LMJ) website. This memo must be attached the report of results of trial.

20.A.2 Confinement order. The trial counsel must be familiar with the brig rules regarding admitting confinees. Use the Confinement Order, Form DD-2707.

20.B Courts-Martial Action and Review

20.B.1 Action. Action on the sentence and findings is taken by the authority that convened the court in accordance with Article 60, UCMJ, R.C.M. 1105A, and R.C.M. 1107. Forms for action are contained in MCM, Appendix 16. Use the Army's Post Trial Processing Guide for examples of convening authority action. The convening authority must adhere to applicable time limits set forth in R.C.M. 1107(b)(2), 1105, and 1106(f). No action by the convening authority is required in those cases resulting in an acquittal.

20.B.2 Convening Authority discretion. The convening authority is not required to take any action on the findings, to review the case for legal errors, or to review the case for factual sufficiency. Action taken on the findings and sentence consistent with Article 60(c), UCMJ.

20.B.3 Action on findings for offenses on or after 24 June 2014. The convening authority may take action on findings subject to the following limitations:

- 20.B.3.a For offenses charged under subsection (a) or (b) of Article 120, UCMJ; offenses charged under Article 120b; and offenses charged under Article 125, UCMJ, the convening authority is prohibited from:
- (i) Setting aside any finding of guilt or dismissing a specification; or
 - (ii) Changing a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.
- 20.B.3.b The convening authority may direct a rehearing in accordance with sub-section (e) of R.C.M. 1107.
- 20.B.3.c For offenses other than subsection (a) or (b) of Article 120, UCMJ; offenses charged under Article 120b, UCMJ, for which the maximum sentence of confinement that may be adjudged does not exceed two years without regard to the jurisdictional limits of the court; and where the sentence adjudged does not include dismissal, a dishonorable discharge, bad-conduct discharge, or confinement for more than six months, the convening authority may:
- (i) Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification; or
 - (ii) Set aside any finding of guilty and dismiss the specification and, if appropriate, the charge; or
 - (iii) Direct a rehearing in accordance with R.C.M. 1107(e).
- 20.B.3.d If the convening authority acts to dismiss or change any charge or specification for an offense, the convening authority must provide, at the same time, a written explanation of the reasons for such action. The written explanation will be made a part of the record of trial and action.
- 20.B.4 Action on the sentence for offenses committed on or after 24 June 2014.** Unless authorized by this Section or R.C.M. 1107 and Article 60(c), UCMJ:
- (a) The convening authority is prohibited from disapproving, commuting, or suspending in whole or in part any portion of an adjudged sentence of confinement for more than six months;
 - (b) The convening authority is prohibited from disapproving, commuting, or suspending that portion of an adjudged sentence that includes a dismissal, dishonorable discharge, or bad conduct discharge;
 - (c) The convening authority is prohibited from disapproving, commuting or suspending any mandatory minimum sentence, except that if a mandatory minimum sentence of dishonorable discharge applies to an offense for which an accused has been convicted, the convening authority may commute the dishonorable discharge to a bad-conduct discharge pursuant to the terms of a pre-trial agreement;

- (d) The convening authority may disapprove, commute, or suspend in whole or in part any portion of an adjudged sentence not explicitly prohibited by this rule, to include reduction in pay grade, forfeitures of pay and allowances, fines, reprimands, restrictions, and hard labor without confinement; and
- (e) If the convening authority acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense, the convening authority must provide, at the same time, a written explanation of the reasons for such action. The written explanation will be made a part of the record of trial and action.

20.B.5 Impracticable for Convening Authority to act or OEGCMJ is disqualified.

20.B.5.a *Special court-martial.* When it is impracticable for the special court-martial convening authority to act, the ROT will be forwarded to the OEGCMJ with a statement of the reason why the convening authority did not act. The OEGCMJ may take action or, in that officer's discretion, refer the case to any other subordinate special court-martial convening authority for action.

20.B.5.b *OEGCMJ.* When it is impracticable for the OEGCMJ as convening authority, to act in accordance with R.C.M. 1107, or when the OEGCMJ is disqualified to act under R.C.M. 1112(f) or otherwise, the Office of Military Justice (CG-LMJ) will be advised and requested to assist with designation of another OEGCMJ to take action. The ROT will then be forwarded to the designated officer with a statement of the reason why the OEGCMJ did not act. The designation of an alternate convening authority/OEGCMJ will be made part of the ROT.

20.C Staff Judge Advocate recommendation (SJAR)

20.C.1 Designation of SJA. Prior to taking action on the ROT of a general court-martial or a special court-martial in which a bad conduct discharge was adjudged, the convening authority, or the substitute convening authority designated, must obtain the recommendation of his or her SJA. See R.C.M. 1106. A template Staff Judge Advocate Recommendation is available on the Office of Military Justice (CG-LMJ) website. When a convening authority has no SJA, he or she must forward the ROT for action to the OEGCMJ, or request the OEGCMJ designate a judge advocate to prepare the recommendation. Such officer may be the SJA of the OEGCMJ or any judge advocate on his or her staff who is not otherwise disqualified by prior participation as counsel or preliminary hearing officer in the case or one related to it. The OEGCMJ may request the Office of Military Justice (CG-LMJ) designate a judge advocate if no qualified officer is available on staff.

20.C.2 Contents of SJAR. The SJAR must include items required by R.C.M. 1106(d) that are not included on the personal data sheet or the Report of Results of Trial memorandum. The SJAR should also state the maximum sentence for the guilty specifications/charges, and attach the victim impact statement (if any), and a copy or summary of the terms and conditions of any pretrial agreement, including a statement of any action the convening authority is obligated to take under the agreement or a

statement of the reasons why the convening authority is not obligated to take specific action under the agreement. In addition, the SJAR should contain a statement informing the convening authority what he or she cannot do under the new Article 60(c), UCMJ, for offenses committed on or after 24 June 2014 per Fiscal Year 2014 National Defense Authorization Act § 1702(b). Any trial counsel recommendation that the convening authority recognize the accused for substantial assistance must be included as an attachment of the SJAR.

20.C.3 Distribution of SJA recommendation. The original recommendation must be attached to the original ROT. A copy must be served on counsel for the accused, and, if appropriate, on a crime victim or counsel for a victim, as set forth in R.C.M. 1106(f). Receipt of the recommendation by the defense counsel must be verified by use of a receipt. A copy of the recommendation and the verification of receipt by the defense counsel must be attached to each copy of the ROT.

20.D Disposition of ROTs after Convening Authority action.

20.D.1 Approved death sentence, punitive discharge, or confinement for one year or longer. A convening authority, upon acting on a general or special court-martial with a sentence including an approved death sentence, punitive discharge (regardless of whether the discharge was suspended), or confinement for one year or longer, must forward the ROT as follows:

20.D.1.a If the sentence includes death, or if there is no waiver or withdrawal of appellate review under R.C.M. 1110, the ROT will be mailed to the Office of Military Justice (CG-LMJ) by DHS-approved commercial carrier (e.g., FedEx or UPS). The convening authority will notify the SJA when he or she takes action and provide a copy of the action and promulgating order to the OEGCMJ.

20.D.1.b If the sentence does not include death and there is a waiver under R.C.M. 1110, the ROT will be referred to a judge advocate for review under R.C.M. 1112.

20.D.2 GCM including a conviction and a sentence.

20.D.2.a In a case in which there has been a finding of guilty and a sentence, and there is not a waiver under R.C.M. 1110, but the case is not subject to review the ROT will be sent directly to the Office of Military Justice (CG-LMJ) for review in the Office of the Judge Advocate General of the Coast Guard under Article 69(a), UCMJ, and R.C.M. 1201(b)(1). The record must be mailed to the Office of Military Justice (CG-LMJ) by DHS-approved commercial carrier (e.g., FedEx or UPS).

20.D.2.b In cases in which there is a waiver under R.C.M. 1110, the ROT will be referred to a judge advocate for review under R.C.M. 1112.

20.D.3 SPCM not including approved BCD.

20.D.3.a In special court-martial cases not including an approved bad conduct discharge the ROT must be referred to a judge advocate for review under R.C.M. 1112, following

- action by the convening authority. Following review under R.C.M. 1112, the ROT and reviewer's findings/recommendations must be mailed to the Office of Military Justice (CG-LMJ) by DHS-approved commercial carrier (e.g., FedEx or UPS).
- 20.D.3.b Under R.C.M. 1201(b)(3), the accused may request review by the Judge Advocate General under Article 69(b), UCMJ, of a final conviction by special court-martial that does not include a sentence of a BCD.
- 20.D.4 **GCM and SPCM resulting in acquittal.** In all such cases, the ROT will be filed by the Office of Military Justice (CG-LMJ). After the issuance of the promulgating order by the convening authority, the ROT must be mailed to the Office of Military Justice (CG-LMJ) by DHS-approved commercial carrier (e.g., FedEx or UPS).
- 20.E SJA review and forwarding.**
- 20.E.1 Review by a judge advocate.** ROTs requiring review under R.C.M. 1112, will be forwarded to the SJA of the OEGCMJ. The SJA may review the ROT or cause a judge advocate on his or her staff to review it. A template R.C.M. 1112 review memo may be found on the Office of Military Justice (CG-LMJ) website. If the SJA is disqualified or otherwise unavailable and no judge advocate on his or her staff is qualified or available, the SJA will request the Office of Military Justice (CG-LMJ) designate an alternate SJA to review the ROT or cause the ROT to be reviewed by another judge advocate on his or her staff. The ROT will be forwarded to the alternate SJA who will review the ROT or cause it to be reviewed. If action is required under R.C.M. 1112(e), the ROT and review will be forwarded to the original OEGCMJ, or a substitute OEGCMJ if one was designated.
- 20.E.2 Forwarding.** In cases where action is required by R.C.M. 1112(e), the ROT will be forwarded to the OEGCMJ for action under R.C.M. 1112(f). The original review will accompany the ROT. A template R.C.M. 1112(f) action is available on the Office of Military Justice (CG-LMJ) website. The original action will be attached to the original ROT. In cases requiring review under R.C.M. 1112, the original review, and any accompanying action, will be attached to the original ROT and must be mailed to the Office of Military Justice (CG-LMJ) by DHS-approved commercial carrier (e.g., FedEx or UPS).
- 20.E.3 Distribution.** Any R.C.M. 1112 review or any action by the OEGCMJ under R.C.M. 1112 will be distributed as follows:
- (a) Original attached to original ROT;
 - (b) One certified copy forwarded to the Servicing Personnel Office maintaining service record of accused;
 - (c) One copy forwarded to accused; and

- (d) One copy forwarded to each trial counsel, defense counsel, special victims counsel and military judge detailed to the court that tried the accused.

20.F Accounting for delays in review.

20.F.1 Delays that require accounting. In all cases in which there was any finding of guilty and any of the following criteria apply, the post-trial delay must be accounted for:

- (a) More than 120 days elapsed between the date the sentence was adjudged and the date the convening authority's action under R.C.M. 1107 was taken;
- (b) More than 3 days elapsed between the date the convening authority's action was taken and the date the ROT was mailed to the Office of Military Justice (CG-LMJ).
- (c) In a case subject to review under R.C.M. 1112, more than 120 days elapsed between the date the sentence was adjudged and the date the judge advocate completed the review required by R.C.M. 1112; or,
- (d) The accused was in post-trial confinement for more than 90 days before the convening authority's action under R.C.M. 1107 was taken.

20.F.2 Format. An accounting required by Subsection 20.F.1 above must include a chronology showing post-trial processing of the case; a description of unusual delays attributable to the defense or military judge, including any significant documents not otherwise included in the ROT; a concise explanation of any other circumstances significantly contributing to the delay; and corrective action, if any, taken.

20.F.3 Cases forwarded for review by the Coast Guard Court of Criminal Appeals. The accounting must be included in the letter of transmittal forwarding the case to the Office of Military Justice (CG-LMJ) for further review (See R.C.M. 1111(a)(1)) and signed by the convening authority or SJA.

20.F.4 Accounting for delay in R.C.M. 1112 reviews. The accounting and a recommendation as to any appropriate action to be taken as a result of any delay in accordance with R.C.M. 1112 (d)(3) must be included in the judge advocate's review. The accounting and ROT will be sent for action to the OEGCMJ in accordance with R.C.M. 1112(e) if corrective action due to delay is recommended.

20.F.5 Distribution. A copy of the action of the convening authority, of the review by a judge advocate, and of the action of the OEGCMJ will be distributed to each military judge, trial counsel, and defense counsel of the court martial before which the case was tried.

20.G Preparation of records of trial.

20.G.1 Verbatim transcript. A verbatim transcript and complete record of trial (ROT) must be prepared in certain general and special courts-martial as required by Article 54, UCMJ, and R.C.M. 1103, and the orders of the trial court. When a verbatim transcript is prepared, the trial counsel must retain or cause to be retained any notes or

- recordings from which the ROT was prepared until such time as the conviction is final under R.C.M. 1209(a).
- 20.G.2 Summarized transcript.** With the concurrence of the responsible SJA and the military judge presiding over the case, a summarized transcript may be prepared in lieu of a verbatim transcript, in cases where a verbatim transcript is not required. MCM, Appendix 13 is used as a guide when preparing a summarized transcript. When a summarized ROT is prepared, the trial counsel must retain or cause to be retained any notes or recordings from which the ROT was prepared until such time as the conviction is final under R.C.M. 1209(a).
- 20.G.3 Acquittals and findings of not guilty.** At the conclusion of a court-martial resulting in an acquittal, finding of not guilty by reason of lack of mental responsibility, or termination of the proceedings prior to findings as to all charges and specifications, there is no need to prepare either a summarized or verbatim transcript. However, a ROT must be prepared in accordance with the requirements set forth in R.C.M. 1103(e) and must include the original charge sheet, a copy of the convening order, and sufficient information to establish jurisdiction. In addition, when a court-martial involves a qualifying victim within the meaning of R.C.M. 1103(g)(3), and there is a finding on any specification involving that victim, a record of trial must be provide to that victim. The promulgating order should be accompany the ROT. The trial counsel's notes, reporter's notes, and recordings must be retained for three years from the date the trial is adjourned. At that time, such notes, recordings, and local copies of the transcript (if prepared) are considered non-record material and may be destroyed. If the accused is found not guilty by lack of mental responsibility and subsequently placed in the care of a DOJ facility in accordance with procedures agreed with Federal Bureau of Prisons, there may be a requirement to create an abbreviated ROT for administrative purposes. In such instances, the servicing legal office should contact the Office of Military Justice (CG-LMJ) for current guidance.
- 20.G.4 Manner of recording proceedings.** The preferred method for recording trial proceedings is by a multi-channel redundant digital recording device operated by a qualified Coast Guard court reporter, civilian contractor court-reporter, or qualified court-reporter from another armed service. The methods set forth in R.C.M. 1103(j)(1) and (3), which allow for video tape, audio tape or similar methods of recording without the presence of a certified court reporter may not be used in the Coast Guard without prior authorization from the Office of Military Justice (CG-LMJ).
- 20.G.5 Trial counsel responsibilities in the immediate aftermath of trial.**
- 20.G.5.a *Report of results of trial.* After final adjournment of the court-martial, the trial counsel must promptly notify the accused's commanding officer, the convening authority, the Office of Military Justice (CG-LMJ) and, if appropriate, the officer-in-charge of the confinement facility of the findings and sentence. The trial counsel must prepare a Report of Results of Trial in order to complete this notification. See R.C.M. 1101(a). Use the Department of Defense Report of Results of Trial, Form DD-2701-

1. Trial counsel must also provide a copy of the Report or Results of Trial to the defense counsel, military judge, Servicing Personnel Office for the accused, Office of Military Justice (CG-LMJ), Office of Member Advocacy and Legal Assistance (CG-LMA), and to the servicing CGIS office.

20.G.5.b *Cases resulting in adjudged or automatic forfeitures or adjudged reduction in pay grade.* In all cases resulting in adjudged forfeitures or reduction in pay grade or administrative forfeitures compelled by operation of Article 58b, UCMJ, trial counsel must include in the Results of Trial memo a statement substantially as follows:

Adjudged and/or automatic forfeitures under Article 58b, UCMJ, and/or adjudged reduction in pay grade will be effective (effective date), unless they are deferred or waived by the convening authority.

20.G.5.c *Confinement order.* The trial counsel must be familiar with the brig rules regarding admitting confinees. Use Confinement Order, Form DD-2707.

20.G.6 Preparation, arrangement, and authentication of ROT. For both verbatim and summarized transcripts, the preparation, arrangement, and authentication of ROTs and allied papers, to the extent possible, will be in accordance with R.C.M. 1103, Appendices 13 and 14 of the MCM, and the rules contained in this Section. A Record of Trial Preparation Checklist is available on the Office of Military Justice (CG-LMJ) website.

20.G.6.a *Charge sheets.* The original charge sheet should be inserted into the original ROT by the military judge at arraignment. When minor changes to the charge sheet are made after arraignment, any such changes must be fully detailed in the ROT.

20.G.6.b *Request for trial before military judge alone.* If the accused was tried before the military judge alone, the military judge must include a copy of the written request, if one was submitted, in the ROT as an appellate exhibit. The request for trial by military judge alone may be included as a provision of a pre-trial agreement.

20.G.6.c *Detailing letters.* The detailing letters for the military judge and counsel, if submitted, must be included in the ROT as appellate exhibits.

20.G.6.d *Court-Martial Data Sheet.* Unless otherwise directed by the OEGCMJ, the use of the Court-Martial Data Sheet, Form DD-494 is not required.

20.G.6.e *Exhibits.*

- (i) **Digital Media.** If an exhibit consists of video or audio tapes or other digital media, affix clear and complete labels to the original media and to the media's box or protective sleeve. The label must indicate the case name, the exhibit number, and any relevant witness or event names (i.e., "U.S. v. Smith, Prosecution Exhibit _____, Interview of SN Jones 2/13/98" or "U.S.

v. Jones, Defense Exhibit ____, Videotape of Scene Following 2/13/98 Automobile Accident”).

- (ii) **Marking.** The first page of a document must be marked to indicate the point in the ROT where the exhibit was marked, offered (or not), and admitted (or not). Draw a line through the parts of the marking(s) that do not apply. For example:

*Prosecution Exhibit ____ for identification,
page 1 of ____ page(s). Marked at R ____,
offered at R ____, admitted at R ____.*

- (iii) **Second and subsequent pages of exhibits** must be marked with the exhibit number and, in the case of multiple page exhibits, the page number. Draw a line through the parts of the marking that do not apply. For example:

*Prosecution Exhibit ____,
page ____ of ____ pages.*

- (iv) **Standard Size.** All documentary or photographic exhibits must be mounted on standard size 8 1/2” x 11” paper. Originals of larger exhibits must be folded, to the extent possible, to 8 1/2” x 11” in size. Copies of larger exhibits must, if feasible, be reduced to 8 1/2” x 11” size.
- (v) **Sealed Exhibits.** Except as noted in Subsection 20.G.6.e(6) for exhibits containing child pornography, exhibits that have been sealed by the military judge must be included in the ROT. The pages of a sealed exhibit must be marked in the same way as other exhibits prior to being sealed.
- (vi) **Child Pornography Sealed Exhibits.** In order to ensure compliance with the Adam Walsh Act, 18 U.S.C. § 3509(m), sealed exhibits containing child pornography must not be copied, and the actual child pornography material must not be included with the original record of trial. At the conclusion of trial, the original sealed exhibit containing child pornography must be turned over to the servicing Coast Guard Investigative Service office. A one-page memorandum explaining these procedures and where the sealed exhibit is located will be inserted in place of the exhibit. Once the record of trial is complete and received by the Office of Military Justice (CG-LMJ) the original sealed exhibit containing child pornography will be sent from the servicing CGIS office to CGIS Headquarters, in accordance with CGIS policy and requirements for transportation of such contraband, where it will be held pending appellate review. When a case is final in accordance with R.C.M. 1209, the Office of Military Justice will inform CGIS Headquarters and the child pornography exhibits may then be destroyed.

20.G.6.f *General Instructions.*

- (i) Complete and sign the chronology sheet, Form DD 490 or DD 491;
- (ii) Compile the record using only “slide” fasteners (with compressors) and bind ROTs at the top. Do not use “book style” or “left-hand” binding, 3-ring binders, “screw and post” type fasteners, or report covers;
- (iii) Insert original versions of all documents. To the extent copies must be used, they may be “certified as a true copy” by annotation and signature. In addition:
 - (a) All copies must be copied one-sided;
 - (b) Copies must be as legible as originals; and
 - (c) Copies of video or audiotapes, charts, photographs, etc., must appear substantially as they appear in the original;
- (iv) Do not exceed size limitations for individual volumes in a multi-volume ROT; and
- (v) Authenticate the record of trial in accordance with R.C.M. 1104.

20.G.7 Procedures after authentication. Once the original record is completely assembled and authenticated, a digital scan of the complete record must be produced by the servicing legal office. The following guidelines apply:

- 20.G.7.a The entire record, including all prosecution exhibits, defense exhibits, appellate exhibits, and other ancillary documents must be scanned into one complete Adobe Acrobat pdf file.
- 20.G.7.b The resolution of the scan should provide a copy of equivalent quality to the original ROT.
- 20.G.7.c One electronic copy of the ROT must be e-mailed to the Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil. The hard-copy original must be mailed to the Office of Military Justice (CG-LMJ) by a DHS-approved commercial carrier (e.g., FedEx or UPS). Digital copies are retained by the office preparing the ROT, either on a server, on removable media, or both. Brig prisoners have limited access to computers, so to the extent a prisoner is required to receive a copy of the ROT, a hard-copy will be prepared and distributed.
- 20.G.7.d Digital copies may be provided in lieu of hard copies, with the consent of the receiving party, for copies required to be distributed by other provisions of this Manual or the Manual for Courts-Martial.
- 20.G.7.e When mailing a ROT, fill empty space in shipping boxes with packing material to avoid damage to the ROT.
- 20.G.7.f Provide a complete copy of the ROT, either a hard-copy or digital reproduction, by traceable means to all defense counsel (including IMC and civilian defense counsel (if any)).

- 20.G.7.g Ensure return receipts for service of documents to the accused and counsel (e.g., ROT, SJARs, etc.) are attached the ROT.
- 20.G.8 Arrangement of the ROT.** After authentication, when preparing to forward the record to the Office of Military Justice (CG-LMJ), a verbatim ROT must be arranged in the following sequence as is appropriate:
- 20.G.8.a Front cover and chronology sheet (Form DD 490 or DD 491);
- 20.G.8.b Records of proceedings in connection with vacation of suspension;
- 20.G.8.c Conditions of suspensions and proof of service on probationer under R.C.M. 1108;
- 20.G.8.d Waivers or withdrawal of appellate review under R.C.M. 1110;
- 20.G.8.e Promulgating order;
- 20.G.8.f Action of OEGCMJ;
- 20.G.8.g Dated and signed action of convening authority or substitute convening authority or, statement why it is impracticable for the convening authority to act. Attach a copy of any letter of reprimand;
- 20.G.8.h Matters submitted by accused under R.C.M. 1105, or written waivers, and any brief submitted under Article 38(c), UCMJ;
- 20.G.8.i Recommendations and other matters relative to clemency not contained in Subsection 20.G.8.h;
- 20.G.8.j Certificate of service of SJA recommendation (SJAR) or judge advocate review under R.C.M. 1112 on defense counsel;
- 20.G.8.k Signed SJA recommendation (SJAR) or judge advocate review under R.C.M. 1112;
- 20.G.8.l Verification of receipt by defense counsel of the R.C.M. 1106 or 1112 recommendation and any response by defense counsel to the SJA or judge advocate reviewer's recommendations;
- 20.G.8.m Any deferment request and action taken on such request;
- 20.G.8.n Explanation for any substitute authentication under R.C.M. 1104(a)(2)(B);
- 20.G.8.o Other appropriate matters, including items set forth in R.C.M. 1103(b)(3)(F);

- 20.G.8.p Article 32, UCMJ, preliminary hearing, if any, including all enclosures and exhibits. If waived, include documentation of waiver (this may be a separate waiver or included as a provision of a pre-trial agreement);
- 20.G.8.q Article 34, UCMJ, SJA advice. If the accused waives the advice, include documentation of waiver;
- 20.G.8.r Records of former trial (in the case of a rehearing);
- 20.G.8.s Counsel requests and action taken (e.g., requests concerning delay, depositions, etc.). Depending on the circumstances, these documents may alternatively be marked as appellate exhibits and assembled as indicated in Subsection 20.G.8.t;
- 20.G.8.t The transcript portion of the ROT compiled in the following order:
- (i) Index sheet;
 - (ii) Receipt of accused, or certificate of trial counsel indicating delivery of a copy of the ROT to accused;
 - (iii) Written, verbatim record of court proceedings or summarized record, as required by R.C.M. 1103;
 - (iv) Exhibits admitted in evidence - When an exhibit is in the form of an audio or videotape, chart, photograph, or other non-written testimony, a copy of the exhibit must be made and attached to each ROT copy. For physical evidence, with the permission of the military judge, a photograph may be substituted in the ROT, with the original evidence and chain of custody documents, if any, retained locally until the case is final (as certified by the Office of Military Justice (CG-LMJ));
 - (v) Appellate exhibits;
 - (vi) Offered exhibits not received in evidence;
- 20.G.8.u Summarized ROTs will be arranged in the same sequence as verbatim ROTs, so far as may be appropriate; and
- 20.G.8.v If an item required above is available in full in another part of the ROT a “filler page” identifying the location of the item in the record may be used in place of a second copy.
- 20.G.9 Number and distribution of ROT copies.**
- 20.G.9.a The original ROT and a digital reproduction are filed with the Office of Military Justice (CG-LMJ).
- 20.G.9.b One copy, either hard-copy or digital, for each accused.
- 20.G.9.c One copy, either hard-copy or digital, for the convening authority.
- 20.G.9.d One copy, either hard-copy or digital, for the OEGCMJ.

- 20.G.9.e Additional copies, either hard-copy or digital, as required by trial counsel or the convening authority.
- 20.G.9.f In all cases where approved confinement is for a period of 12 months or more, provide a complete copy of the ROT directly to the Naval Clemency and Parole Board in accordance with Department of the Navy Clemency and Parole Systems, SECNAVINST 5815.3H, paragraph 304. The address of the Naval Clemency and Parole Board is:
- President
Naval Clemency and Parole Board
720 Kennon Street SE, Room 322
Washington Naval Yard
Washington, DC. 20374-5023
- 20.G.9.g Pursuant to Article 54(e), UCMJ, victims of a crime punishable under Article 120, UCMJ, who testified during the proceedings of a special or general court-martial are entitled to a copy of the record of proceedings without charge as soon as the records are authenticated. If the crime victim is a minor, a copy of the record of trial must instead be provided to the parent or legal guardian of the crime victim. In a case with a conviction, in accordance with R.C.M. 1103(b)(2)(B-D), provide victims with the record of proceedings to include: a copy of the record of trial; a copy of the charge sheet; a copy of the convening order and any amending orders; a copy of the request, if any, for trial by military judge alone, or that the membership of the court include enlisted persons; a copy of the exhibits which were received in evidence; and, when made available, a copy of the dated, signed, action by the convening authority. Since the convening authority's action is normally prepared after authentication, offer to delay providing the record to the victim until after the convening authority's action is signed. If the crime victim agrees, obtain written confirmation of the victim's decision. If the crime victim instead elects to receive the authenticated record of trial as soon as it is available, the convening authority's signed action must be served on the victim as soon as it is available. *Note: Ensure records sealed in accordance with RCM 1103A are not provided to the victim. Also ensure all records provided to the victim are redacted in accordance with the Freedom of Information Act and the Privacy Act.* In a case with an acquittal, in accordance with R.C.M. 1103(e), furnish the crime victim with the same record provided to the accused: a copy of the convening order (and any amending orders); sufficient information to establish jurisdiction over the accused and the offense, and abbreviated ROT. *Note: Ensure all records provided to the crime victim are redacted in accordance with the Freedom of Information Act and the Privacy Act.*
- 20.G.9.h Original and copies of required ROT will be retained and disposed of in accordance with the Information and Life Cycle Management Manual, COMDTINST M5212.12 (series).

20.G.9.i Rules and policy related to sealed exhibits, classified matters, and privacy apply to all records provided to crime victims. Matters sealed pursuant to R.C.M. 1103A must not be provided to the crime victim. Furthermore, legal offices must comply with the Privacy Act, 5 U.S.C. § 552a, and Freedom of Information Act, 5 U.S.C. § 552. Compliance may require, among other things, redacting matters that would constitute a clearly unwarranted invasion of personal privacy for the accused, other crime victims, or any other witness (e.g., social security numbers).

20.H Promulgating orders for GCM and SPCM.

20.H.1 Initial order. The convening authority will issue a promulgating order in every court-martial (including acquittals). A separate court-martial order will be issued for each accused tried. See R.C.M. 1114 and MCM, Appendix 17.

20.H.2 Supplementary order. Any action taken after issuance of the initial court-martial order that changes the findings, sentence, or place of confinement requires a supplementary court-martial order. The convening authority or a superior or substitute convening authority will prepare the supplementary court-martial order with distribution the same as that of the initial order. A change in the place of confinement as a result of an administrative decision made within the corrections system does not require a supplemental court-martial order.

20.H.3 Supplementary orders in cases reviewed by the Coast Guard Court of Criminal Appeals. If the sentence was ordered executed or suspended in its entirety by the convening or other authority, and the conviction has become final without modification of the findings or sentence, no supplementary court-martial order is necessary. A supplementary promulgating order must be issued in all other cases. Such orders must be published as follows:

20.H.3.a The Judge Advocate General issues supplementary orders in cases involving death sentences and dismissals by direction of the President, or the Secretary, Department of Homeland Security, as appropriate.

20.H.3.b The cognizant OEGCMJ or convening authority must issue other supplementary orders in cases in which appellate review was required, upon notification by the Office of Military Justice (CG-LMJ) if any are required.

20.H.4 Promulgating order form. Various forms for promulgating orders are contained in MCM, Appendix 17. A template Promulgating Order is available on the Office of Military Justice (CG-LMJ) website. The order must be subscribed by the officer issuing the order or by a subordinate officer designated by him or her. In case the name, grade, and title of the subscribing officer, including his or her unit, must be given. Where a subordinate officer signs by direction, his or her name, title, and organization must be followed by the words: "By direction of (name, grade, and title of issuing officer)." Certified copies of promulgating orders are copies bearing the statement: "Certified to be a true copy," over the signature, grade, and title of an officer.

20.H.5 Promulgating order numbering. Each promulgating order and supplementary order is unique and numbered in a separate sequence, starting with 1-FY (where “FY” is the fiscal year in which the order is signed) to identify the first promulgating order or supplementary order of the fiscal year and continuing with 2-FY, 3-FY, etc., as a subsequent promulgating order or supplementary order is issued during the same fiscal year.

20.H.6 Required DNA processing language. The Coast Guard is required to collect DNA from each member convicted at a general or special court-martial of a qualifying military offense under 10 U.S.C. § 1565. Qualifying military offenses include any offense under the UMCJ punishable by a sentence of confinement for more than one year (regardless of the forum or the sentence adjudged and/or approved), prostitution involving a minor, arson, solicitation of another to commit a qualifying offense, and certain assimilative offenses charged under Article 134, UCMJ. A full list of qualifying offenses is found in 10 U.S.C. §1565. If the conviction requires DNA processing, the following language must be placed in bold lettering at the top of the initial promulgating order: “DNA processing required IAW 10 U.S.C. 1565.” Upon receipt of the promulgating order, the servicing CGIS office (see Subsection 20.H.7) will facilitate the collection.

20.H.7 Distribution. All initial and supplementary promulgating orders must be distributed as follows:

- (a) Original attached to the original ROT.
- (b) One certified copy forwarded to the Servicing Personnel Office maintaining the service record of the accused for appropriate service record entries (or, in the case of a retired member, the Pay and Personnel Center).
- (c) Two certified copies forwarded to the place of confinement (if the accused is still in confinement).
- (d) One copy forwarded to each accused.
- (e) One copy forwarded to each trial and defense counsel.
- (f) If the accused is confined in a Navy or Marine Corps Correctional Center, one copy forwarded to the Secretary, Naval Clemency and Parole Board
- (g) One copy forwarded to PSC (adm-3).
- (h) One copy forwarded to the servicing CGIS office.
- (i) One copy forwarded to detailed Special Victim’s Counsel, if any.
- (j) If the crime victim testified at the court-martial, see Art. 54(e), UCMJ.

20.I Disposition of court-martial records of trial.

20.I.1 Disposition of the original. Original ROT by court-martial, including trials that do not result in conviction, will be transmitted to the Office of Military Justice (CG-LMJ) after completion of all reviews and actions required to be accomplished in the field.

- 20.I.2 Disposition of copies.** Convening authorities and the OEGCMJ must retain a file copy of the ROT for three years from the date the conviction is final under R.C.M. 1209(a)(2), or until the conviction is final under R.C.M. 1209(a)(1) and final action has been taken on any punitive discharge, whichever period is greater.
- 20.J Service of Coast Guard Court of Criminal Appeals decisions.**
- 20.J.1 General rule.** The accused must be notified of the Coast Guard Court of Criminal Appeals decision once it is announced.
- 20.J.2 Accused serving in an active duty status.** Where the accused is serving on active duty, the Office of Military Justice (CG-LMJ) e-mails a copy of a service packet (including a copy of the decision, and an endorsement on the copy of the decision informing accused of the right to petition for review, and receipt) to the SJA for the cognizant OEGCMJ. The SJA must forward the packet to the accused's immediate commanding officer, who must serve the accused, procure the accused's signature on the provided receipt as evidence of service, and return the executed form to the Office of Military Justice (CG-LMJ) through the chain of command, including the OEGCMJ.
- 20.J.3 Accused discharged, released from active duty, or on appellate leave.** Where accused has been placed on appellate leave, released from active duty, or discharged, the Office of Military Justice (CG-LMJ) sends the service packet directly to the accused by First Class Certified Mail.
- 20.J.4 Accused cannot be served.** If the attempted service of the decision is unsuccessful, a certificate of attempted service will be prepared by the officer attempting service. The certificate will detail all attempts at service. If service by mail was unsuccessful, service by publication may be initiated by the Office of Military Justice (CG-LMJ).
- 20.J.5 Authorizing service on defense counsel.** Service of the decision may be made upon appellate or trial defense counsel in those cases where accused has executed a power of attorney authorizing service of the decision on defense counsel.
- 20.J.6 Service on crime victim and Special Victims' Counsel (SVC).** Upon request of a crime victim as defined in Article 6b, UCMJ, the Office of Military Justice (CG-LMJ) will provide a copy of the Coast Guard Court of Criminal Appeals decision to the crime victim.
- 20.J.7 Government appeal or petition for extraordinary relief.** Following a decision of the Coast Guard Court of Criminal Appeals or the Court of Appeals for the Armed Forces on a government appeal or a petition for extraordinary relief, the Office of Military Justice (CG-LMJ) will cause a copy of the decision to be served on trial counsel, defense counsel, the convening authority, and the military judge. Upon receipt of a copy of the decision, trial may proceed, if authorized, consistent with the decision of the appellate court unless the trial is stayed by order of a higher court.

- 20.J.8 SVC petition to the Coast Guard Court of Criminal Appeals.** An SVC has the authority to petition a service court of appeals for extraordinary relief if the crime victim believes a violation of the victim's rights under Art.6b, UCMJ, has occurred.
- 20.K Application for relief under Article 69(b), UCMJ.**
- 20.K.1 Statutory provisions.** Article 69(b), UCMJ, cases are either special court-martial cases in which no bad conduct discharge is approved, or summary courts-martial. Under Article 69(b), UCMJ, the Judge Advocate General may review these cases upon application of the accused or, if there is no application of the accused, on a discretionary basis. The Judge Advocate General may refer Article 69(b), UCMJ, cases to the Coast Guard Court of Criminal Appeals.
- 20.K.2 Time limitations.** If the applicant is on active duty, an application for relief to be considered must be placed in military channels or be deposited in the mail if the applicant is no longer on active duty, on or before the last day of the two-year period beginning on the date the sentence is approved by the convening authority. An application not filed in compliance with these time limits may be considered if the Judge Advocate General determines, in his or her sole discretion, that "good cause" for failure to file within the time limits has been established by the applicant.
- 20.K.3 Submission procedures.** Applications for relief may be submitted to the Judge Advocate General, through the Office of Military Justice (CG-LMJ), by e-mail at HQS-DG-LST-CG-LMJ@uscg.mil. If the accused is on active duty the application must be submitted through the applicant's commanding officer, the command that convened the court, and the command that reviewed the case under Article 64(b), UCMJ. The endorsement will include information and specific comment on the grounds for relief asserted in the application and an opinion on the merits of the application. If the applicant is no longer on active duty the application may be submitted directly to the Judge Advocate General via the Office of Military Justice (CG-LMJ).
- 20.K.4 Contents of applications.** All applications for relief must contain:
- (a) The full name of the applicant;
 - (b) Social security number or Employee Identification Number and branch of service, if any;
 - (c) Present grade if on active duty or retired, or "civilian" or "deceased" as applicable;
 - (d) Address at time the application is forwarded;
 - (e) Date of trial;
 - (f) Place of trial;
 - (g) Command title of the organization at which the court-martial was convened (convening authority);
 - (h) Command title of the OEGCMJ over the applicant at the time of trial (if applicable);
 - (i) Type of court-martial that convicted the applicant, and sentence adjudged;

- (j) General grounds for relief, which must be one or more of the following:
 - (i) Newly discovered evidence;
 - (ii) Fraud on the court;
 - (iii) Lack of jurisdiction over the accused or the offense;
 - (iv) Error prejudicial to the substantial rights of the accused; or,
 - (v) Appropriateness of the sentence;
- (k) An elaboration of the specific prejudice resulting from any error cited. Legal authorities to support the applicant's contentions may be included and the format used may take the form of a legal brief if the applicant so desires;
- (l) Any other matter that the applicant desires to submit;
- (m) The specific relief requested;
- (n) Facts and circumstances to establish "good cause" for a failure to file the application within the time limits prescribed, if applicable; and
- (o) If the application is signed by a person other than the applicant an explanation of the circumstances rendering the applicant incapable of making application.

20.K.5 Signatures on applications. Unless incapable of making application, the applicant must personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian, or other person with a proper interest in the matter. Applicant is considered incapable of making application for purposes of this Section when unable to sign the application under oath due to physical or mental incapacity.

20.K.6 Consideration of application. When an application has been properly submitted, it will be reviewed together with the original ROT in the Office of Military Justice (CG-LMJ).

20.K.7 Notification of results of an application. The applicant, and if applicable his or her attorney, will be notified of the action taken or decision rendered in response to the application for relief. When appropriate, crime victims must also be provided notice of the decision taken or decision rendered in response to an application for relief.

20.K.8 Notification in *sua sponte* Article 69(b) cases. When the record of trial has been reviewed under Article 69(b), UCMJ, following a *sua sponte* referral by the Judge Advocate General, notification is required if TJAG action includes corrective action. If TJAG action does not include corrective action, no notification is required.

20.L Petition for new trial under Article 73, UCMJ.

20.L.1 Time limitations. If the petition for new trial was placed in military channels within two years after approval of a sentence by the convening authority, regardless of the date of its receipt by the Judge Advocate General, it will be considered to have been timely filed. Except in extraordinary circumstances, the Judge Advocate General will not act upon petitions until all reviews contemplated by Article 65, UCMJ, have been completed.

- 20.L.2 Submission procedures.** The petition must be submitted directly to the Judge Advocate General for action. Crime Victims within the meaning of Article 6b, UCMJ, must be provided notice of an application for a new trial.
- 20.L.3 Contents of petitions.** The form and contents of petitions for new trial are specified in R.C.M. 1210(c). In addition, the petition must include the command title of the OEGCMJ over the petitioner at the time of trial.
- 20.L.4 Action on the petition.** If the case is pending before the Coast Guard Court of Criminal Appeals or the Court of Appeals for the Armed Forces, the petition will be referred for action to the appropriate court. If referred for action to the Coast Guard Court of Criminal Appeals, that Court takes action in accordance with Courts of Criminal Appeals Rules of Practice and Procedure. In all other cases the Judge Advocate General will return the petition for compliance with the procedural requirements of R.C.M. 1210(c).
- 20.M Residual clemency.**
- 20.M.1** Residual clemency authority is derived from Article 74(a), UCMJ. The Secretary, Department of Homeland Security, has delegated residual clemency authority to the Commandant, U.S. Coast Guard. See Department of Homeland Security Delegation Number 0170.1, available on the Office of Military Justice (CG-LMJ) website.
- 20.M.2** The Commandant has the authority to remit or suspend any part or amount of the unexecuted part of any sentence, except those unexecuted sentences approved by the President. Residual clemency may not be granted while a case is being reviewed by the Coast Guard Criminal Court of Appeals, U.S. Court of Appeals for the Armed Force, or the U.S. Supreme Court. Crime Victims within the meaning of Article 6b, UCMJ, are entitled to notice of decisions regarding residual clemency.
- 20.M.3** For guidance on the residual clemency implementation procedures, see Coast Guard Clemency Board, COMDTINST 5814.1 (series).

20.N Trial Counsel Responsibility to Forward Information to CGIS for Entry in Criminal Justice Information System Databases

20.N.1 Trial counsel will forward a copy of the charge sheet in any case where a convening authority refers charges for trial by a general court-martial to the servicing CGIS office that handled the investigation or would provide investigative services to the convening authority for the case for entry in the National Instant Background Check System (NICS). The copy must be sent as soon as practicable after referral.

20.N.2 Under Subsection 20.A.1.a, trial counsel must forward a copy of all Reports of Results of Trial to the servicing CGIS office. If the trial results in a conviction:

- (a) at a general court-martial for any offense where the maximum period of confinement is more than one year;
- (b) constitutes a misdemeanor crime of domestic violence as defined in 18 United States Code Section 921(a)(33);
- (c) at a general court-martial and the accused is sentenced to a dishonorable discharge or, for officers, a dismissal;
- (d) is for violation of Article 112A of the UCMJ;

trial counsel shall note in the Report of Results of Trial that the conviction requires entry in NICS. See Subsection 20.A.1.b for direction on how to note matters in Report of Results of Trial.

20.N.3 If an accused is found not competent to stand trial under Article 70b, UCMJ, or not guilty due to lack of mental responsibility under Article 50a, UCMJ, trial counsel shall forward a copy of the finding to the servicing CGIS office and inform the servicing CGIS office that the finding requires entry in NICS.

20.N.4 In accordance with Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series), CGIS enters, and, as appropriate, requests removal of, information in NICS, the National Crime Information Center (NCIC) database, and the Interstate Identification Index (III or “triple-eye”).

21. UNLAWFUL INFLUENCE IN MILITARY JUSTICE PROCEEDINGS

21.A Unlawful command influence defined. The military judicial system has, over time, more fully defined the scope of the prohibition in Article 37, UCMJ. Unlawful command influence (UCI) occurs when senior personnel knowingly or unknowingly influence court members, witnesses, or others participating in military justice cases to the detriment of the accused. In its most extreme forms, UCI may involve:

- (1) influencing, or attempting to influence, subordinate commanders taking action on a specific case;
- (2) influencing, or attempting to influence, the military judge or court members to reach a particular result or impose a particular sentence;
- (3) influencing, or attempting to influence, the witnesses;
- (4) discouraging or prohibiting anyone from appearing as a defense witnesses or talking to the defense counsel (or NJP mast representative);
- (5) introducing, or attempting to introduce, command policy into the courtroom;
- (6) criticizing court members, the military judge, or other court personnel for not returning the desired result, ruling, or sentence; and
- (7) giving less favorable performance ratings to court personnel because the court did not produce the desired result.

UCI may also occur if senior officials appear to take such actions. In some cases, the actions of subordinates may be imputed to the commander.

21.B Prohibition. Article 37(a), UCMJ, prohibits unlawful influence in military justice proceedings. All convening authorities, SJAs, trial counsel, and others members involved in the administration of military justice must be thoroughly familiar with Article 37(a), UCMJ. Unlawful influence in violation of Article 37(a), UCMJ, has been called the “mortal enemy of military justice” because it tends to destroy both the fact and the appearance of fairness in military justice proceedings.

21.C Responsibilities regarding unlawful command influence.

21.C.1 Command responsibilities. All those in command positions must be proactive in recognizing and addressing potential UCI and, upon becoming aware of a suspected violation, must consult with their servicing legal offices about an appropriate response to the situation, regardless of whether a violation has in fact affected a military justice proceeding. Appropriate responses may include administrative or disciplinary measures. Violations of Article 37(a), UCMJ, may be punishable under Article 98, UCMJ, as well as other criminal provisions.

21.C.2 Member responsibilities. Any Coast Guard member who becomes aware of a suspected Article 37(a), UCMJ, violation must promptly report such information to appropriate authorities, including the command of the suspected violator, trial counsel, military judge, or convening authority of any potentially affected military justice proceeding.

21.D **Protection of individual whistleblowers.** No Coast Guard member or employee may take or fail to take, or threaten to take or fail to take, a negative personnel action with respect to any employee or military member because that person has reasonably made a good faith report of UCI. The purpose of this provision is to protect those who make good faith reports of UCI. It does not preclude positive recognition, when appropriate. The Whistleblower Protection Act, 5 U.S.C. § 2302(a)(2) and (b)(8), applies to reports of UCI by civilian employees and applies to members of the Coast Guard through 10 U.S.C. § 1034 (the Military Whistleblower Protection Act) as implemented by 33 C.F.R. Part 53 (Coast Guard Whistleblower Protection).

22. MILITARY JUSTICE PRACTITIONERS

22.A Article 6 visits. Article 6, UCMJ, requires the Judge Advocate General to “make frequent inspection in the field in supervision of the administration of military justice.” During these trips, the Judge Advocate General will endeavor to meet, to the extent possible, with convening authorities, particularly those empowered to convene a general court-martial.

22.B Certification of counsel under Article 27(b), UCMJ.

22.B.1 General. In addition to the requirements stated in R.C.M. 502, each attorney is expected to meet the qualifications listed in this Section in order to become certified in accordance with Article 27(b), UCMJ.

22.B.2 Designation as judge advocate. Each attorney serving in a legal program billet is expected to obtain designation as a judge advocate. Authority to designate attorneys as judge advocates has been delegated to the Judge Advocate General. Requests for designation as a judge advocate may be made to TJAG and must include the information required by Chapter 11.C, Military Qualifications and Insignia, COMDTINST M1200.1. Requests are submitted in writing. When requesting certification, copies of the applicant’s law degree and a certificate of good standing from the member’s state bar must be transmitted to the Office of Legal Policy and Program Development (CG-LPD) to complete the application.

22.B.3 Basic Lawyer Course. Each judge advocate must successfully complete the Basic Lawyer Course conducted by the Naval Justice School or the Basic Judge Advocate Course conducted by the U.S. Army or Air Force. Waivers of this requirement may be granted on a case-by-case basis and must include a positive recommendation from the SJA requesting the waiver. Waiver requests should also include a listing of all military justice on-the-job training such as assistant counsel at courts-martial, comparable prior trial experience in civilian courts or previous certification in another military service.

22.B.4 Certification. Personnel already designated as judge advocate will normally receive Article 27(b), UCMJ, certification and be sworn in upon graduation from the Basic Lawyer Course at the Naval Justice School (or the U.S. Army or Air Force equivalent). Those attorneys who are unable to obtain designation as a judge advocate prior to the completion of the Basic Lawyer Course must seek designation as a judge advocate and certification under Article 27(b), UCMJ, as soon as the requirements in Chapter 11.C, Military Qualifications and Insignia, COMDTINST M1200.1 (series) are met.

22.C Professional supervision.

22.C.1 General. Subject to the limitations of Article 37, UCMJ, information as to alleged personal or professional misconduct by Coast Guard attorneys, including willful and wanton disregard for crime victim rights under Article 6b, UCMJ, should be reported,

together with appropriate supporting information, to the Judge Advocate General. For the purpose of this Section, “misconduct” is defined as any act or omission that is a violation of an applicable standard of professional responsibility or serves to demonstrate the unfitness of the respective Coast Guard attorney to perform his or her legal duties. For the purpose of this Section, “Coast Guard attorney” is defined as a military trial or appellate judge or an attorney practicing in proceedings governed by the UCMJ and MCM. This Section does not affect any other criminal or administrative proceedings arising from the underlying alleged misconduct. This Section addresses only the authority of Coast Guard military trial and appellate judges and attorneys to practice as a judge or attorney for the Coast Guard.

22.C.2 Investigation and discipline of Coast Guard attorneys. The Judge Advocate General promulgated the Coast Guard Legal Rules of Professional Responsibility regarding the investigation of alleged misconduct by, and professional supervision of, Coast Guard attorneys in Coast Guard Legal Professional Responsibility Program, COMDTINST M5800.1 (series).

22.C.3 Complaints. Complaints may be made in accordance with the Coast Guard Legal Responsibility Program Procedures for Reporting and Resolving Allegations of Professional Misconduct, Enclosure (3) to Guard Legal Professional Responsibility Program, COMDTINST M5800.1 (series).

22.D Standards of conduct.

22.D.1 Professional responsibility. The Coast Guard Legal Professional Responsibility Program, COMDTINST M5800.1 (series), applies to all Coast Guard attorneys. As far as practicable and not inconsistent with law, the MCM, and United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series), the following American Bar Association Standards for the Administration of Criminal Justice are also applicable to Coast Guard courts-martial: the Prosecution Function and the Defense Function, the Function of the Trial Judge, and Fair Trial and Free Press. The American Bar Association Standards for the Administration of Criminal Justice are published and periodically updated by the American Bar Association.
http://www.americanbar.org/groups/criminal_justice/standards.html.

23. ARTICLE 138 UCMJ, COMPLAINTS

23.A Generally. An Article 138, UCMJ, complaint is a formal complaint against a Commanding Officer. Members of the Armed Forces who believe themselves wronged by their commanding officers, and have been refused redress by their commanding officers, may complain to any superior commanding officer, who then forwards the complaint to the officer exercising general court-martial jurisdiction (OEGCMJ) over the complained-of commanding officer. Before submitting an Article 138 complaint, members must request in writing that their commanding officer redress the wrong. The Commanding Officer must act upon this request for redress in a timely manner (ordinarily within 30 days) and notify the complainant in writing of the action taken. The Article 138 complaint may address a broad range of subjects, but does not include issues covered by a specific appeal process, such as evaluations, non-judicial punishment, and court-martial. Article 138, UCMJ.

23.B Definitions.

23.B.1 Wrong. Any act, omission, decision or order, except those excluded by Subsection 23.D, taken, caused, or ratified by a commanding officer, under color of that officer's military authority, that (1) results in personal detriment, harm, or injury to a military subordinate; and (2) is without statutory or regulatory basis, unauthorized, an abuse of discretion, arbitrary and capricious, unjust or discriminatory.

23.B.2 Commanding officer. For purposes of an Article 138 complaint, "commanding officer" means a commissioned or warrant officer who, by virtue of rank, assignment, or both, exercises primary command authority over a military organization, or prescribed territorial area, to which the complainant is assigned, that under official directives is recognized as a "command." See MCM, Part V. Para. 2a.

23.B.3 Officer exercising general court-martial jurisdiction (OEGCMJ). The primary OEGCMJ is the OEGCMJ for the unit of the commanding officer about whom the complaint is filed.

23.B.4 Respondent. The individual who committed the alleged wrong(s) against the complainant, and against whom the complaint of wrongs is made. The respondent may be a uniformed member of any armed service.

23.B.5 Examination of a complaint. A formal or informal inquiry into all facts material to the complaint. The specific type of inquiry conducted depends on the nature of the alleged wrong. See Administrative Investigations Manual, COMDTINST M5830.1(series).

23.B.6 Complainant. Member submitting complaint.

23.B.7 Redress. Any lawful action by the commanding officer, the OEGCMCJ, or any officer in the chain of command that restores the complainant any rights, privileges, property, or status he or she would have been entitled to had the wrong not occurred.

23.C Policy. It is the policy of the Secretary, Department of Homeland Security (DHS) to resolve complaints of wrong at the lowest possible level. There is a presumption of administrative regularity. A commanding officer must not restrict the submission of complaints under Article 138, UCMJ, and all such complaints must be forwarded directly to the responsible OEGCMJ over the complainant.

23.D Improper subject of a complaint under Article 138, UCMJ. The following actions are not proper subjects of a complaint of wrongs:

- (1) Acts, omissions, decisions and orders not taken, caused or ratified by respondent;
- (2) Acts that are not final;
- (3) General policies of the Department of Homeland Security or the Coast Guard, including the instructions and other documents promulgating such policies;
- (4) The OEGCMJ's decisions and procedures on complaints of wrongs, except for failure to forward the complaint;
- (5) Proceedings, findings, or final actions of nonjudicial punishment (NJP), court-martial, and officer, enlisted, and cadet administrative discharge procedures and results;
- (6) Actions regarding officer fitness reports;
- (7) Actions regarding enlisted performance evaluation marks;
- (8) Actions in accordance with the Enlisted Accessions, Evaluations and Advancement Manual, COMDTINST M1000.2, regarding withdrawal removal of designator or administrative reductions in enlisted grade;
- (9) Appeal from findings of pecuniary liability;
- (10) Withdrawal of flying status;
- (11) Military civil rights complaints under the Coast Guard Civil Rights Manual, COMDTINST M5350.4(series); and
- (12) Reliefs for cause of commanding officers and officers-in-charge.

23.E. Improper redress of a complaint of wrongs. Action against or on behalf of another person, such as court-martial charges, NJP, or apologies, may not be requested to a redress a wrong under this Chapter.

23.F Participants to a complaint of wrongs.

23.F.1 Who may complain. At the time the complaint is submitted, the complainant must be:

- (a) A member of the armed forces on active duty, concerning a wrong which is alleged to have occurred while the complainant was on active duty; or

- (b) Any reservist, concerning a wrong alleged to have been committed by the respondent acting in his or her official capacity as a commanding officer.

23.F.2 Who may be the subject of a complaint. A complaint must be against a specific person, not a command or position. Any commanding officer, as defined in Subsection 23.B.2, may be the respondent to a complaint of wrongs. The Secretary of Homeland Security may not be a respondent to a complaint of wrongs.

23.F.3 Who considers the complaint.

23.F.3.a *General Rule.* The OEGCMJ has the primary responsibility to conduct an inquiry into the complaint of wrongs, take action on it, and submit a report of the proceedings to the Commandant through the Office of Military Justice (CG-LMJ).

23.F.3.b *Reassignment of the complainant or respondent.* If the complainant, respondent, or both, detach prior to the submission of a complaint of wrongs, the complaint will be forwarded to the OEGCMJ over the respondent at the time of the alleged wrong, through the complainant's current commanding officer and the respondent.

23.F.3.c *Review of complaints from joint commands.* Where the complainant is assigned to a joint command, and the OEGCMJ over the respondent is a member of another service, the complaint is forwarded to the OEGCMJ through the senior Coast Guard officer in the joint command. If the OEGCMJ determines that the complaint it raises issues unique to the Coast Guard and addressable only under Coast Guard Instructions, the complaint is forwarded to the Coast Guard OEGCMJ overseeing the activity or joint command at issue.

23.F.3.d *Authority of intermediate superior officers.* An intermediate superior officer, subordinate to the OEGCMJ, to whom a complaint is forwarded, may comment on the merits of the complaint, add pertinent evidence, and, if empowered to do so, grant redress, noting such action on the record. In all cases, immediate superior officers must promptly forward the complaint to the OEGCMJ, and provide a copy of the endorsement to the complainant.

23.G Procedure.

23.G.1 Request to Commanding Officer for Redress. Before a complainant may submit a complaint of wrongs under Article 138, UCMJ, the complainant must request, in writing, that the Commanding Officer redress the wrong. The Commanding Officer must act upon this request for redress in a timely manner, ordinarily within 30 days, and notify the complainant in writing of the action taken.

23.G.2 Time limitations. A complaint must be submitted within a reasonable time after discovery of the alleged wrong. Absent unusual circumstances, a complaint submitted more than 90 days after the complainant discovers the alleged wrong is untimely. The period during which the commanding officer is considering the complainant's written request for redress under Subsection 3.G.1 is not included in this 90-day period. The

OEGCMJ may deny relief solely because the complaint is untimely. If, however, the OEGCMJ determines that unusual circumstances justify the delay in submission, the OEGCMJ may find that the complaint is timely and act on it.

23.G.3 Form of complaint. The complaint must contain the following information:

- (a) The complainant must specify the wrongs alleged and the specific redress requested, followed thereafter by explanatory information.
- (b) The complaint should submit all relevant evidence, including affidavits, statements, and documents with the complaint as numbered enclosures.
- (c) The complaint must be couched in temperate language and be confined to pertinent facts.

23.G.4 Joinder. A complaint may not be joined with the complaints of other individuals. Similarly, each complainant may seek redress for the wrong(s) of only one respondent. If the complainant believes more than one respondent has committed a wrong, the complainant must submit a separate complaint against each respondent, not against a group such as “the chain of command.”

23.G.5 Forwarding the complaint. The complainant must forward the complaint to the OEGCMJ, through his or her current chain of command and the respondent.

23.G.6 Endorsements. Intermediate endorsers should ordinarily forward the complaint within 10 working days after receipt. Endorsements not completed within 10 working days of receipt must contain an explanation for the delay. Subject to applicable security of classified material instructions, endorsers must provide to the complainant copies of their endorsement, including enclosures.

23.G.7 Respondent’s response. The respondent must respond, in writing, to the complaint of wrongs and forward that response, along with the complaint and any endorsements, to the OEGCMJ within 10 working days after receipt of the complaint. If the response is not completed within 10 working days of receipt, the response must explain the delay. Subject to applicable security of classified material instructions, the respondent must provide the complainant with copies of his or her response, including enclosures. If a complaint of wrongs is received by the OEGCMJ without a response from the respondent, it must be forwarded to the respondent to provide a written response back to the OEGCMJ, with a copy to the complainant, prior to being considered by the OEGCMJ.

22.G.8 Complainant’s notifications and rebuttal. Subject to applicable security of classified material instructions, the OEGCMJ must:

- (a) Ensure that the complainant has been provided a copy of all materials (to include, but not limited to, the Respondent’s response and any substantive endorsements) received, as well as any evidence developed by the OEGCMJ’s inquiry; and

- (b) Notify the complainant of the opportunity to rebut any matter contained therein within 10 working days of receipt of the notice.

- 23.G.8.a No opportunity to rebut is required where the OEGCMJ returns the complaint to the complainant pursuant to 23.H.2. The complainant may submit any rebuttal to the OEGCMJ, through the commanding officer and the respondent. No further opportunity to rebut is required where the respondent or intermediate endorsers provided plain endorsements on the rebuttal, for example, “forwarded,” “forwarded for action as appropriate,” or “forwarded recommending denial.” However, complainant must be provided a copy of such endorsements.
- 23.G.8.b The OEGCMJ must provide a copy of the rebuttal notification and the rebuttal as enclosures to the final report. See Section 23.I. If the complainant declines to provide rebuttal or fails to provide rebuttal within 10 working days, the final report must adequately document the declination or failure.
- 23.G.9 Withdrawal of complaint.** A complainant may withdraw a complaint at any time. The withdrawal must be in writing and signed by the complainant.
- 23.G.10 Waiver of requirements.** The GCMCA may waive any requirement in Section 23.G, except those afforded to benefit a complainant, such as the right to receive copies of all materials received and to rebut any matters submitted to or discovered by the GCMCA or any intermediate endorsers.

23.H Review of the complaint by the OEGCMJ.

23.H.1 Review of the complaint. The OEGCMJ must review the complaint to ensure that:

- (a) The complainant has requested redress from the respondent;
- (b) The complaint is timely;
- (c) The complaint is complete;
- (d) The complaint does not join more than one complaint or more than one respondent;
- (e) The complaint has been properly forwarded;
- (f) The respondent has responded to the complaint in writing;
- (g) The alleged wrong is a wrong and a proper subject of a complaint of wrongs; and
- (h) The requested redress is proper.

23.H.2 Defective or improper complaints. If the complaint is defective in that it fails to satisfy the requirements of Subsections 23.F.1 (who may complain) or 23.F.2 (who may be the subject of a complaint), does not allege a wrong that is a proper subject of a complaint of wrongs, or makes no proper request for relief, the OEGCMJ must return the defective complaint to the complainant with an explanation as to why it is outside the scope of this Chapter. In returning a complaint to the complainant under this Subsection, if appropriate, the OEGCMJ should inform the complainant about other channels available to resolve the alleged wrong.

If the complaint is incomplete or otherwise fails to satisfy the procedural requirements of Subsections 23.G.1-4, the OEGCMJ must, unless the deficiency is waived under Subsection 23.G.10, return the complaint to the complainant with an explanation. In returning the complaint to the complainant under this Subsection, the OEGCMJ must not address the merits of the complaint.

23.H.3 Inquiry. If the complaint is not improper or defective, the OEGCMJ must inquire into the merits of the allegation(s). The extent and nature of such inquiry is within the OEGCMJ's discretion, and depends on the seriousness of the allegations, the extent of the investigation conducted by the chain of command subordinate to the OEGCMJ, the available time, and the exigencies of operations. The OEGCMJ may appoint an investigating officer to inquire into the complaint. The OEGCMJ may also request the complainant, the respondent, or both submit additional explanatory statements or other relevant documents.

23.H.4 Complainant's rebuttal and notifications. Prior to taking final action on a complaint, and subject to applicable security of classified material instructions, the OEGCMJ must:

- (a) Ensure compliance with Subsection 23.G.8;
- (b) Ensure the complainant has been provided a copy of any new matters developed by the OEGCMJ inquiry; and
- (c) Inform the complainant of the opportunity to rebut any new matter within 10 working days.

The complainant must submit any new rebuttal materials to the OEGCMJ through the complainant's commanding officer and the respondent. As with the original complaint, if the respondent or intermediate endorsers provide anything more than plain endorsements, for example, "forwarded," "forwarded for action as appropriate," or "forwarded recommending denial," in forwarding the rebuttal, the OEGCMJ must ensure the complainant is provided a copy of all materials received and inform the complainant of the opportunity to rebut any matters contained therein. If the respondent or intermediate endorsers only provide a plain endorsement, the OEGCMJ must ensure the complainant receives a copy.

23.H.5 Time limitations. Except in unusual circumstances, the OEGCMJ must act on the complaint within 90 days of receipt. If the OEGCMJ action is not completed within 90 days of receipt, the action must explain the delay.

23.H.6 Personal action by the OEGCMJ. The OEGCMJ must take personal action on the complaint. The OEGCMJ must not delegate such authority to a subordinate command or individual.

23.H.7 Standard of proof. Facts must be established in the OEGCMJ's determination by a "preponderance of the evidence."

23.H.8 Redress. The following provides guidance to OEGCMJ's in the event they determine redress may be warranted.

- (a) If the OEGCMJ determines the complaint is without merit, the OEGCMJ must deny redress.
- (b) If the OEGCMJ determines the complaint has merit, the OEGCMJ must grant such redress as is appropriate and within the OEGCMJ's authority. In certain situations, a complaint may have merit; however, redress may not be available, appropriate, or proper within the context of a complaint of wrongs. In such cases the OEGCMJ should acknowledge the merit of the complaint, even if relief is denied.
- (c) If the OEGCMJ determines the complaint has merit, but cannot actually effect the appropriate redress (i.e., removal of a fitness report or performance evaluation from a service record), the OEGCMJ must forward the record to the officer who can effect it, requesting that the specific relief be granted. The officer so requested must effect the relief, unless the officer determines that the relief requested is not permitted by current regulations or is otherwise prohibited by law or policy.

23.I Action and forwarding.

23.I.1 Written response to the complainant. The OEGCMJ must advise the complainant in writing of the action taken on the complaint. The letter must specifically indicate which of the complainant's allegations have merit and which are without merit and must either specify the relief granted or expressly deny the requested relief.

23.I.2 Forwarding of OEGCMJ report. In all cases, the OEGCMJ must prepare and forward to the Commandant, through the Judge Advocate General (CG-LMJ) a report on the complaint. In cases where Commandant, U.S. Coast Guard is the respondent, the Secretary of Homeland Security provides review and makes final disposition. The report must include the complaint with all endorsements and enclosures, a copy of any relevant correspondence with the complainant or respondent including any rebuttal notifications and rebuttals, and a copy of any pertinent investigations that were used in the decision and had been provided to the complainant. The basic letter should simply state "Per references (a) and (b), forwarded for final review." No further elaboration is required (as any elaboration may require forwarding back to the complainant for review).

23.I.3 Signature of OEGCMJ. The report submitted to the Commandant and the response to the complainant, if by separate correspondence, must be signed personally by the OEGCMJ, or, in that officer's absence, by the officer officially acting in such capacity, with the signature block so indicating.

23.J Action by the Judge Advocate General. When complaint has been acted upon by OEGCMJ, upon receipt of the OEGCMJ's report, the Judge Advocate General must ensure that there has been substantial compliance with Article 138, UCMJ.

Responsibility for review for compliance is with the Office of Military Justice (CG-LMJ) on behalf of the Judge Advocate General.

- 23.J.1** If there has not been substantial compliance, the Office of Military Justice (CG-LMJ) will notify the Judge Advocate General and return the file to the OEGCMJ for additional investigation or further action.
- 23.J.2** If there has been substantial compliance, the office of Military Justice (CG-LMJ) will review the complaint and action. If the Judge Advocate General agrees with the action taken, the complaint will be filed for the Commandant in the Office of Military Justice (CG-LMJ). If the Judge Advocate General disagrees with the action taken, the Judge Advocate General will forward the file to the Secretary, recommending a different action.
- 23.K** **Action by the Secretary.** If the Secretary, in his or her discretion, takes action on a complaint, the complainant, respondent, and OEGCMJ will be informed.

24. CERTIFICATION AND DESIGNATION OF JUDGES

24.A Role of Coast Guard military trial judges. Coast Guard trial judges preside over special and general courts-martial. In doing so, they ensure that trial proceedings are conducted in a fair, orderly, transparent, and efficient manner, enhance public confidence in the Coast Guard's military justice system, and develop new judge advocates and legal yeomen serving in courts-martial.

24.B How Coast Guard military trial judges are selected and certified. Judge Advocates are selected, certified under Article 26(b), UCMJ, designated, and assigned as military judges by The Judge Advocate General of the Coast Guard (TJAG). TJAG designates both full-time military judges (including the Chief Trial Judge of the Coast Guard) and collateral duty military judges.

24.C Qualifications. TJAG selects the best qualified judge advocates for both full-time and collateral-duty military judge assignments using the following factors:

- (1) *Prior certification as counsel.* Candidates must be certified under Article 27(b), UCMJ.
- (2) *Military justice experience.* Candidates must have a solid foundation of military justice and trial experience. Such experience may be demonstrated by prior assignment as trial or defense counsel in courts-martial or civilian trials, as well as by previous assignments or experience as Special Victims Counsel, appellate government or defense counsel, preliminary hearing officer, judicial clerk, in military justice policy or rulemaking capacities, or supervising or instructing other military justice practitioners. Experience trying cases in civilian jurisdictions, while helpful, is generally not sufficient for qualification. Candidates should describe in detail their military justice and trial experience, to include number of trials completed in each role or capacity, noting whether such trials were contested, whether they were before members, and any particularly complex or significant issues that arose during the trial(s). Candidates should also detail appellate practice experience, to include number and complexity of briefs prepared and oral arguments made. Education and training, both at continuing legal education courses and degree programs such as LLM programs in trial advocacy, and national publications on military justice topics, are also factors in determining whether candidates have the requisite experience and in distinguishing those best-qualified.
- (3) *Paygrade.* Candidates must be in pay grade O-5 or above. However, waivers may be granted for candidates in pay grade O-4 who are best-qualified due to significant military justice experience and judicial temperament.
- (4) *Availability to serve.* Candidates for collateral-duty military judge assignment must be available to serve as a military judge at four trials per year for three years following certification. They must also be available to attend the annual five-day Joint Military Judiciary Annual Training (JMJAT), and to complete a certificate program through the National Judicial College (NJC). In addition, collateral duty trial judges must be

prepared to serve in a capacity to be on call to review search authorizations in accordance with policies determined by the Chief Trial Judge.

- (5) *Prior performance.* The candidate's Headquarters Personnel Data Record (PDR) will be reviewed.
- (6) *Other information.* Any relevant information provided from other sources, including but not limited to the comments of judges the applicant has practiced before, professional reputation within the Coast Guard, and performance information submitted by the applicant that is not contained in the PDR. Information from other sources may be disclosed to the applicant, upon request.

The number of applicants to be recommended in a given year will depend on the projected needs of the service for replacements of military judges expected to become unavailable.

24.D Disqualifying duty assignments. Those currently serving in a full-time military justice capacity, such as trial or appellate defense or government counsel, or Special Victims' Counsel, and those serving in a command position designated as a special court-martial convening authority, and assignments to Naval Justice School, the Army Judge Advocate General's Legal Center and School, and the Air Force Judge Advocate General's School will not be designated as military judges while serving in those capacities.

24.E Procedures. Coast Guard judge advocates desiring to be certified as a military trial judge must apply, through their chain of command, and the Chief Trial Judge (CG-094J), to the Office of Legal Policy and Program Development (CG-LPD), no later than 31 January annually. The application will include the following information:

- (1) *Format.* The application must be in memo format.
- (2) *Education.* Include all education after high school (with names of institutions attended and year of graduation) including academic distinctions attained and approximate (if not exactly known) place in class on graduation.
- (3) *Military experience.* List all military assignments, including primary duties at each.
- (4) *Dates.* List dates designated a judge advocate and certified as counsel for general courts-martial.
- (5) *Legal experience other than military justice.* Identify all prior legal experience that did not involve military justice. This will include experience gained prior to becoming a member of the Coast Guard, all non-legal assignments significantly law related, and all assignments in legal billets, delineating the primary, nonmilitary justice areas of the law dealt with as required by the billet.
- (6) *Military justice experience.* State, in detail, all past experience with military justice, both prior and subsequent to being designated a law specialist. Be as

specific as possible in the number, forum, type, and level of review of records of trial. See Section 24.C.

- (7) *Evidence of requisite knowledge and temperament to be a military judge.* Provide this information in the form of opinion by one or more qualified persons having opportunity to form such opinion by courtroom or other observation. The evidence may consist of extracts from one or more OERs, letters or statements, endorsement on the letter application, or a combination of these. For each item, the name, qualifications, and opportunity to observe should be stated either in the item itself or separately. Judicial temperament includes, but is not limited to, patience, forbearance to avoid premature decisions, calm demeanor, respect for others, and projection of an air of authority.
- (8) *Statement of Availability.* A statement concerning the applicant's expected availability to serve as military judge for the three years following the next Military Judge Course. The statement should cover both the likelihood of remaining in a billet from which the applicant could periodically be spared and any special restrictions on availability within the billet (e.g., any assignment that precludes military judge service during the months of July and August).
- (9) *Authorization.* A PDR Review Authorization enclosure signed and dated by the applicant, coordinated by Personnel Service Command.

24.F Selection. The Chief Trial Judge, in consultation with the Office of Legal Policy and Program Development (CG-LPD), will review applications for certification, prepare a recommendation, and forward it to the Judge Advocate General. The Judge Advocate General will select the best qualified applicants, who will be assigned to attend the Military Judge Course. CG-LPD will notify the applicants of the results. TJAG will certify the new judges after they successfully complete the Military Judge Course.

24.G Designation as military judges.

24.G.1 General court-martial military trial judges. General court-martial military judges are designated, and located at Coast Guard units, as determined by TJAG. Administrative and logistics support, including office space, office equipment, stationery, and office supplies, telephone and other communication services, access to law library, and clerical assistance, will be provided by the unit where the military judge is located.

24.G.2 Collateral duty special court-martial military trial judges. In addition to full-time general court-martial judges, TJAG may also designate collateral duty judges to serve as special court-martial military trial judges.

24.G.3 Oath. A military judge certified in accordance with Article 26(b), UCMJ, may take a one-time oath to perform his or her duties faithfully and impartially in all cases to which detailed. The oath may be taken at any time and may be administered by any officer authorized by Article 136, UCMJ, to administer oaths. Once such an oath is

taken, the military judge need not be re-sworn at any court-martial to which subsequently detailed.

24.H Officer evaluation reports. The Judge Advocate General is the assigned supervisor, reporting officer, and reviewer for the Chief Trial Judge. The Judge Advocate General is assigned as the Reviewer and must provide a Coast Guard form 5315 (CG-5315) for all active military trial and appellate judges. See Ch 5.D.2, Officer Accessions, Evaluations and Promotions, COMDTINST M1000.3A.

24.I Duties.

24.I.1 General court-martial judges. The primary duty of general court-martial military judges is to preside at general courts-martial. No person may assign them any duties other than that of military judge without prior authorization of TJAG. TJAG has determined that general court-martial military judges will be made available for detail as military judge for special courts-martial on a not-to-interfere basis with their primary duty. TJAG approves leave and temporary duty for the Chief Trial Judge. The Chief Trial Judge approves leave and temporary duty for the other general court-martial military judges.

24.I.2 Collateral duty judges. The primary duty of collateral duty special-court-martial military judges is normally in accordance with their assigned permanent billets. However, when detailed to preside over a special court-martial, the military judge must perform this duty fully and expeditiously, and is responsible for balancing his or her primary duties to accomplish this. Primary duty supervisors of collateral-duty military judges should be aware that duty as a special court-martial military judge may need to be considered equivalent to the officer's primary duties.

24.J Assignment lengths for military trial and appellate military judges.

24.J.1 General court-martial military trial judges. A General Court-Martial military trial judge, including the Chief Trial Judge, is assigned for a minimum of three years, except when he or she:

- (a) Retires or otherwise separates from military service;
- (b) Assigned elsewhere to meet exceptional needs of the service; or,
- (c) Is temporarily, indefinitely, or permanently suspended from practice as a military trial judge by TJAG for good cause.

24.J.2 Collateral duty special court-martial military judges. A collateral duty military trial judge is assigned for a minimum of three years and may request to serve beyond the normal three-year term. Requests may be made to the Chief Trial Judge by no later than 1 February of the year in which the normal three-year term ends. The minimum 3-year term does not apply whenever the Special Court-Martial Judge:

- (a) Assumes duty as a trial judge on a less than three-year basis or requests to be relieved of trial judge duties, and TJAG approves such assignment;

- (b) Retires or otherwise separates from military service;
- (c) Is reassigned to another billet, under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties, which billet TJAG determines is incompatible with duty as a military trial judge; or,
- (d) Is temporarily, indefinitely, or permanently suspended from practice as a military trial judge by TJAG for good cause.

24.K Appellate military judges. TJAG also designates a Chief Appellate Judge, other judges of the Coast Guard Court of Criminal Appeals, as well as collateral-duty judges on the United States Court of Criminal Appeals. The selection qualifications for all appellate judges are the same as those described in Section 24.C. The process for selecting collateral duty appellate judges is the same as that set out in Section 24.E.

24.L Chief appellate judge. The position of the Chief Judge of the Coast Guard Court of Criminal Appeals is a designated civilian position. The Chief Judge remains in the position until he or she:

- (a) Retires or otherwise separates from Coast Guard service;
- (b) Accepts another position, under normal federal civilian employment processes; or,
- (c) Is temporarily, indefinitely, or permanently suspended from practice as an appellate judge by TJAG for good cause.

24.L.2 Appellate judges. Full-time judges of the Coast Guard Court of Criminal Appeals may be military or civilian. Civilian Judges are appointed by the Secretary. Military judges serve a full-time assignment to the Coast Guard Court of Criminal Appeals for a minimum of three years. Appellate judges remain in their positions until:

- (a) Retire or otherwise separates from Coast Guard service;
- (b) Per the individual's request, accept another position, under normal federal civilian employment processes or under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties; or,
- (c) Are temporarily, indefinitely, or permanently suspended from practice as an appellate judge by TJAG for good cause.

24.L.3 Collateral duty appellate judges. An appellate judge is assigned to collateral duty on the United States Coast Guard Court of Criminal Appeals for a minimum of three years, except when he or she:

- (a) Assumed the duty as an appellate judge on a less than three year basis or requests to be relieved of duty as appellate judge, and TJAG approves such request;
- (b) Retires or otherwise separates from Coast Guard or DHS service;

- (c) Is reassigned to another billet, under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties, which billet TJAG determines is incompatible with duty as an appellate judge; or,
- (d) Is temporarily, indefinitely, or permanently suspended from practice as an appellate judge by TJAG for good cause.

24.M Court Rules of Practice and Procedure.

24.M.1 Court rules. The Court Rules of Practice and Procedure before Coast Guard Courts-Martial are promulgated by the Chief Trial Judge. The Coast Guard Rules of Practice and Procedure before the Coast Guard Court of Criminal Appeals are promulgated by the Chief Appellate Judge.

24.M.2 Role of the military judge. R.C.M. 108 authorizes the Judge Advocate General and persons designated by him or her to issue rules of court that are consistent with the UCMJ and MCM. R.C.M. 801(b)(1) authorizes the military judge to promulgate and enforce rules of court.

25. SEARCH AUTHORIZATIONS

- 25.A Purpose.** This Chapter establishes the procedure for the issuance of search authorizations. A search authorization is express permission issued by competent military authority to search a person or an area. Although the procedures and standards set out in this Chapter should be followed as appropriate under the circumstances, deviations will not invalidate an otherwise lawful search.
- 25.B Military judge.**
- 25.B.1 Authority of military judge.** Pursuant to the authority of M.R.E. 315(d)(2), Coast Guard military trial judges are empowered to authorize searches. This includes the authority to issue a search warrant authorization by telephone.
- 25.B.2 Limitations.** Only the following persons may obtain search authorizations from a military judge:
- (a) Individual commanding officers or officers-in-charge;
 - (b) Persons designated by the commanding officer or officer-in-charge to obtain such search authorizations (this authorization need not be in writing, but must be communicated to the military judge or indicated in the application);
 - (c) CGIS agents assigned to investigative duties—this includes CGIS agents bearing current credentials and assigned to an investigation billet; or
 - (d) Counsel for the government.
- 25.B.3 Coordination with servicing legal office required.** Persons authorized to seek search authorizations must coordinate their request for a search authorization with the servicing legal office having primary military justice jurisdiction over the case.
- 25.C Commanding officers and officers-in-charge.** Pursuant to the authority of M.R.E. 315(d)(1), Coast Guard commanding officers and officers-in-charge are empowered to authorize searches. Commanding officers and officers-in-charge may only grant search authorizations requested in person; telephonic applications are not authorized.
- 25.D Probable cause.** Upon a finding of probable cause a commanding officer or officer-in-charge may authorize a search of any person or place over which he or she has control. M.R.E. 315(f) sets out the basis for determining probable cause.
- 25.E Procedure.** Commanding officers and officers-in-charge may issue search authorizations only on the basis of a personal application. Commanding officers or officers-in-charge issuing a search authorization must ensure that the procedures of this Chapter are followed, substituting themselves for the military judge. Commanding officers and officers-in-charge must consult with their servicing legal office prior to authorizing a search, if practicable.
- 25.F Preference for search authorizations issued by military judges.** Commanding officers and officers-in-charge are encouraged when circumstances allow, to refer

applicants seeking a search authorization to a military trial judge rather than acting on the application themselves. They should, however, act themselves if resorting to a military trial judge would likely result in harm or loss of evidence.

25.G Issuance of search authorizations.

25.G.1 Application. A search authorization must be issued by a military judge pursuant to the requirements of M.R.E. 315. United States Coast Guard Application for Search Authorization, Form CG-5810F, may be used.

25.G.1.a *Personal application.* Search authorizations from a commanding officer may only be obtained in person. If time and the circumstances permit, written affidavits may be submitted in person to the military judge. Before ruling on a request for a search authorization, the military judge may require the affiant to appear personally and may examine the affiant and any witnesses he or she may produce, under oath if desired, to obtain additional information. It is normal however, that search authorizations are obtained telephonically from a military trial judge due to geographic separation.

25.G.1.b *Telephonic application.* Application for a search authorization may be made by telephonic communication between the applicant and a military judge. A judge advocate of the servicing legal office should ordinarily be on the telephone conference call with the applicant and military judge. The military judge will normally need an affidavit from the applicant. A Search Authorization Application Script is available on the Office of Military Justice (CG-LMJ) website. Prior to the telephone call, the applicant should submit to the military judge the following documents (electronic submission is sufficient):

- (i) *Completed search application.* A search application with all parts completed except any signatures.
- (ii) *Written affidavit.* A written affidavit in support of the application must be provided. The affidavit should contain all the facts and circumstances to support a determination that probable cause exists to issue the authorization. The affidavit will be signed and sworn to by the applicant.
- (iii) *Completed search authorization.* A completed search authorization (CG-5810I) that is ready for the military judge's signature. The completed authorization should contain all the relevant information, but should leave blank those items that are to be determined by the military judge during the phone call.

25.G.2 Issuance. Upon the presentation, by way of personal or telephonic application, of information establishing probable cause, a military trial judge must issue a search authorization identifying the specified property or evidence to be seized and naming or describing the person or property to be searched.

25.G.2.a *Scope.* A military trial judge may issue a search authorization directing a search of any of the persons or property permitted under M.R.E. 315. It is imperative that

- persons seeking and executing search authorizations be completely familiar with M.R.E. 315.
- 25.G.2.b *Signature.* If personal application is made, the military trial judge must sign the original search authorization before delivering it to the applicant. If telephonic application is made, the search authorization should be sent electronically to the military trial judge and then returned electronically to the applicant with the military trial judge's signature. A copy of the search authorization will take the place of the original for purposes of executing a search. In the event that electronic means are unavailable, the military trial judge may orally authorize the applicant to sign the military trial judge's name above the applicant's signature on a duplicate original search authorization. This duplicate original search authorization is deemed to be a search authorization and it will be returned along with the unsigned original search authorization to the military trial judge. In such cases, the military trial judge will enter on the face of the original search authorization the exact time of the issuance of the search authorization and sign and forward the original search authorization and the duplicate original search authorization.
- 25.G.3 Authorization.** The search authorization issued by a military trial judge must be directed to a named individual who will usually be the applicant or any agent of such person. If good cause is shown the military trial judge may direct the search authorization to a person other than the applicant.
- 25.G.3.a *Contents.* U.S. Coast Guard Search and Seizure Authorization, Form CG-5810I, is the search authorization form. The preparer should fill out all applicable blanks on the form.
- 25.G.3.b *Attachments.* The affidavit presented to the military trial judge will be attached to the search authorization.
- 25.G.4 Disclosure required for reapplication.** Any person requesting a search authorization must disclose during the application procedure any knowledge he or she has of a denial of any previous request for a search authorization or permission to search involving the same individual and the same property.
- 25.H Execution of search authorizations.**
- 25.H.1 Time limit.** The search authorization issued by a military trial judge must begin within ten days after its date of issue if execution is not required earlier. If the search authorization is not executed within that time, or for any other reason, the unexecuted search authorization must be returned to the issuing military trial judge with an explanation as to why the search authorization was not executed.
- 25.H.2 Notice to command.** The individual conducting the search must notify the commanding officer of the person to be searched, or the commanding officer who is responsible for the premises to be searched, prior to initiating the search unless the military trial judge, in his or her discretion, concludes that such notice would impede

the orderly execution of the search authorization. The military trial judge may in such a case waive the requirement for prior notice to the commanding officer; however, such a waiver must be clearly indicated in the search authorization. The appropriate commanding officer will be notified after the search when prior notice is not given.

- 25.H.3 Notice to the individual.** The individual conducting the search must give to the person searched or whose premises are searched a copy of the search authorization and a receipt for items seized at the place searched. It is not required that a copy of the application proceedings establishing the grounds for issuing the search authorization be attached to this copy of the search authorization.
- 25.H.4 Receipt for property seized.** A receipt will be given for any property seized. The receipt must contain an inventory of the property. This inventory must be made in the presence of the person searched or whose premises are searched. If such person is not present, the inventory must be made in the presence of some other person, preferably designated by the commanding officer.
- 25.H.5 Property that may be seized.** Care must be taken that only property fully described in the search authorization is seized, unless other types of evidence come into plain view or are encountered within the lawful execution of the search authorization.
- 25.H.6 Administrative inspections.** This Section is not applicable to valid administrative inspections. See M.R.E. 313.
- 25.I Execution and return of search authorizations.**
- 25.I.1 Return disposition.** After the search authorization has been executed, or at the end of the ten day period if unexecuted, the search authorization, together with a copy of the inventory of property seized, if any, must be returned to the issuing military trial judge. All documents and papers relative to a search authorized under the provisions of this Chapter must be retained by the unit or organization responsible for the application and the servicing legal office, to be available in any future litigation or proceeding considering the results the search.
- 25.I.2 Describing the premises to be searched.** The areas most frequently subject to search in the Coast Guard are barracks, berthing spaces, and workspaces. The description of the area to be searched must be as specific as possible and as limited in scope as is consistent with the goals of the search.
- 25.I.3 Describing the person to be searched.** The description of the person to be searched should include as much specific information about the person as possible. This should include, when known, the name, rank or rate, Employee Identification Number, and physical description of the individual. When the name of the suspect is not known the affidavit should contain all possible relevant information including physical description, places that he or she frequents, known associates, type of car and clothing, pattern of operation, etc.

25.I.4 Describing personal property.

- 25.I.4.a *Vehicles.* The description should contain the make and model, color, license number, and any peculiarities of the vehicle. Include the vehicle identification number when possible.
- 25.I.4.b *Lockers.* Include a complete description of where the particular locker is located.
- 25.I.4.c *Suitcases, bags, etc.* Include a description of the color, approximate size, location, type of fastener, stencil or shipping labels, and any available information.

25.I.5 Describing the property to be seized. The following general types of property may be seized pursuant to a lawful search authorization: instrumentalities of a crime, fruits of a crime, things that might be used to resist apprehension or to effect escape, property the possession of which is itself a crime (contraband), and evidence that there is a reason to believe will otherwise aid in a particular apprehension or conviction. The latter category may include identification evidence.

- 25.I.5.a *Instrumentalities of a crime.* This category encompasses property used in a crime. Often these will be items used in the consumption and transfer of drugs, but may also include such items as weapons that do not fit into the contraband category and tools used in the commission of the offense.
- 25.I.5.b *Fruits of a crime.* This category usually consists of stolen property.
- 25.I.5.c *Contraband.* Contraband means items that are illegal to possess. Examples of contraband items include narcotics, unregistered or unlicensed weapons, endangered species, and child pornography.
- 25.I.5.d *Reason to believe evidence will aid in a apprehension or conviction.* The law dealing with this general category of evidence is extremely complex and is beyond the scope of this Chapter as it frequently changes. The applicant for a search authorization must rely on the advice of his or her servicing legal office when faced with a question as to the extent of this provision.
- 25.I.5.e *Identification evidence.* Whenever evidence is seized, identification evidence should also be seized if necessary to connect the suspect with the other evidence seized. This category includes items that can tie the suspect to the crime, or establish that the suspect is in control of the area or article searched. It includes such items as cancelled mail envelopes, stenciled or monogrammed clothing, vehicle registration, etc.
- 25.I.5.f *Plain view doctrine.* Under this doctrine, incriminating evidence such as contraband or recognized fruits or tools of a crime may be seized in the course of a lawful search even if the seized item does not relate to the original purpose of the search as long as the seized item is readily apparent in “plain view.” The individual making the search or seizure must be lawfully present at the scene within the proper scope of authority. The “plain view doctrine” is limited by the “elephant in a matchbox” common sense

limitation. That is, a search of a locker for a submachine gun, pursuant to a search authorization could not lawfully extend to the seizure of a cigarette package containing narcotics if the package must be opened in order for the narcotics to come into view because the submachine gun could never be hidden in a cigarette package.

25.I.6 Sample descriptions.

- 25.I.6.a *Basic rule.* The basic rule in describing the property is to go from the general to the specific. For example, if the purpose of the search is to discover and seize a Thompson Machine gun the search authorization should state: “Automatic firearms, including, but not limited to, one “Thompson Machine gun.” It is important to fully describe property to be seized because only that property described in the search authorization, or otherwise lawfully seized, can be used in court.
- 25.I.6.b *Contraband.* Example: “Narcotics, including, but not limited to, heroin and paraphernalia for the use, packaging, and sale of said contraband, including, but not limited, to burnt spoons, hypodermic syringes and needles, balloons, cotton, lactose and rubber tubing.”
- 25.I.6.c *Fruits of a crime.* Example of stolen property: “Household appliances, including but not limited to, one General Electric clock radio, light blue in color, having an AM-FM selector, and one Sony 15” portable color TV, tan in color, with black knobs.”
- 25.I.6.d *Tools of a crime.* Example, marijuana paraphernalia: “Items used in the sale and consumption of marijuana including, but not limited to, plastic baggies, smoking pipes, scales used in the weighing of marijuana, cigarette rolling machines, and cigarette papers.”
- 25.I.6.e *Identification evidence.* Example: “Papers, documents, and effects that show possession, dominion, and control of said area or objects including, but not limited to, keys, cancelled mail envelopes, monogrammed or stenciled clothing, wallets, and receipts.”
- 25.I.6.f *Electronic media.* Example: “Any and all electronic media to include cellular phones, tablet computers, computers, zip drives, hard drives, cameras, and any other possible media storage devices.”

25.J Corroboration. The application should include any information showing the suspect committed the crime or that the described property is at the described location. Corroboration is particularly important where the application is based on information supplied by an informant rather than on the personal knowledge or observation of the applicant.

25.K Telephonic application procedure and checklist.

25.K.1 Advance preparation. Before contacting the military trial judge, an applicant for a search authorization should:

- (a) Be thoroughly familiar with the contents of this Chapter and the procedures set out herein. Have the facts organized.
- (b) Contact the servicing judge advocate and relate the facts giving probable cause for the search authorization.
- (c) With the assistance of the judge advocate, fill out a United States Coast Guard Application for Search Authorization, Form CG-5810F, to include the description of the person or location to be searched, and the property to be seized.
- (d) Refer to the script for application for search authorizations and write out the answers to the questions that will be asked by the military trial judge.
- (e) Ensure the same verbatim description of the place or person to be searched and the articles to be seized is used in both the application and the search authorization.
- (f) Applicants for search authorization must complete a search authorization application and be prepared to hand deliver, e-mail, or fax a copy to the military trial judge to whom the application will be directed.

25.K.2 Application procedure. After completing the preliminary steps, the applicant's servicing legal office will help the applicant contact the appropriate military trial judge by telephone.

25.K.3 Procedure for executing the search authorization. After obtaining the search authorization, the applicant should take the following action:

- (a) If the person whose property is to be searched is present, give him or her a copy of the search authorization and allow the person to read the original if he or she so desires.
- (b) Enter the time of execution on the authorization.
- (c) Detail all property seized on a receipted inventory form and give a copy to the individual if present.
- (d) Forward all documents.
- (e) Maintain secure custody of items seized, and initiate a proper chain of custody if the items seized change hands.

26. DELIVERY OF PERSONNEL TO CIVIL AUTHORITIES

26.A Purpose. This Chapter sets forth the authority, policy, and procedures for delivery of Coast Guard military personnel to civil authorities for trial. See Article 14, UCMJ.

26.B Definitions.

26.B.1 State. “State” includes each of the states of the United States; District of Columbia; Commonwealth of Puerto Rico; Guam; American Samoa; United States Virgin Islands; Commonwealth of the Northern Mariana Islands; and any other commonwealth, territory, or possession of the United States.

26.B.2 Civil authorities. “Civil authorities” are state agents or representatives acting under the authority of their respective state or jurisdiction.

26.B.3 Foreign authorities. “Foreign authorities” are all authorities not defined as a state or federal authority.

26.B.4 Personnel. “Personnel,” “Coast Guard personnel,” “Coast Guard member” or “member” as used in this Chapter refer to Coast Guard military personnel and U.S. military personnel attached to the Coast Guard. This Chapter does not apply to civilian personnel, civilian contractors, or foreign military personnel.

26.C Applicability.

26.C.1 Coast Guard personnel. This Chapter applies to all Coast Guard personnel.

26.C.2 Non-applicability to foreign authorities. This Chapter does not apply to delivery of personnel to foreign authorities. It also does not apply to situations where a member is arrested by civil authorities without a formal request to the Coast Guard for delivery of that person.

26.D Policy. It is Coast Guard policy to cooperate with civil authorities to the maximum extent possible consistent with needs of the service and the individual rights of the service members concerned. It is contrary to Coast Guard policy to transfer a Coast Guard member from a command within one state to a command within another state solely, or primarily, for the purpose of making the individual amenable to prosecution by civil authorities.

26.E Within the territorial limits of the requesting state. When the delivery of any person in the Coast Guard is requested by civil authorities of a state for the alleged commission of an offense punishable under the laws of that jurisdiction and such person is within the requesting authority’s territorial limits (including territorial waters), commanding officers are authorized to deliver such person when a proper warrant is presented and the approval of the Judge Advocate General, if necessary, has been obtained. See Section 2.K for situations where such approval is required.

26.F Beyond the territorial limits of the requesting state. When delivery of any member of the Coast Guard is requested by civil authorities of a state for the alleged commission of an offense punishable under the laws of that jurisdiction, and the member is not within the requesting state's territorial limits (including territorial waters) the OEGCMJ or staff officer designated by him or her, over the command of the person may authorize the individual's delivery when all of the following conditions are met:

- (1) A signed warrant is presented or there has been a valid waiver of formal extradition.
- (2) The approval of the Judge Advocate General, if necessary, has been obtained.

26.G Waiver of extradition. All persons in the Coast Guard requested to be delivered under this Chapter must be afforded the opportunity to consult with a judge advocate or with a civilian attorney at no cost to the government concerning the formal extradition process of the jurisdiction in which the person is located. Consultation with a judge advocate will be arranged through the Office of Member Advocacy & Legal Assistance (CG-LMA). Once having received advice from an attorney the person may waive extradition. A waiver must be in writing and witnessed. It must include a statement that the person signing the extradition waiver has received the advice of an attorney and include the name and address of that attorney. The waiver must be substantially in the form suggested in Waiver of Extradition Template, available on the Office of Military Justice (CG-LMJ) website. An executed copy of each waiver of extradition must be e-mailed to the Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil

26.H Refusal to waive extradition. When a member declines to waive extradition, or refuses to consult with an attorney, the requesting civil authority will be notified and advised delivery may only be made to local civil authorities on the presentation of a warrant.

26.I Agreement prior to delivery to state authorities.

26.I.1 Terms of agreement. When delivery is authorized directly or ultimately to a state other than the one where the member is located the member's commanding officer must, before making such delivery, obtain a written agreement providing:

- (a) The commanding officer will be informed of the outcome of the trial;
- (b) The member so delivered will be transported to the requesting state without expense to the member or the United States; and,
- (c) The member so delivered will be returned to the place of delivery, or such place as is mutually agreeable to the Judge Advocate General and the requesting state, upon disposition of the case, provided the Coast Guard desires the member's return.

26.I.2 Form of agreement. The language of the agreement must be substantially the same as that in Extradition Agreement Template, available on the Office of Military Justice

(CG-LMJ) website. Substantial deviations from the suggested language require the advance approval of the Office of Military Justice (CG-LMJ).

26.I.3 Parties to the agreement. When delivery is made directly to the requesting state, the Governor or authorized agent of the requesting state is required to complete the agreement. When delivery is made to local civil authorities to provide for formal extradition, process attempts will be made to have the agreement executed by the officials of both the requesting state and the local state.

26.J Delivery of personnel to federal authorities.

26.J.1 General. Commanding officers are authorized to deliver personnel to federal authorities on presentation of a warrant in all cases if the approval of the Judge Advocate General, if applicable, has been obtained.

26.J.2 Agreement not required of federal authorities. An agreement as to expenses will not be exacted as a condition of delivery of Coast Guard members to federal authorities either in response to writs of habeas corpus, as witnesses, or for trial.

26.K Deliveries requiring advance TJAG approval. Approval of the Judge Advocate General is required prior to delivery of Coast Guard personnel to federal or state authorities when:

- (1) Disciplinary or judicial proceedings involving offenses in violation of the UCMJ are pending (e.g., charges have been preferred or potential charges are under investigation) against the member;
- (2) The member is serving a sentence imposed by a court-martial;
- (3) In the opinion of the commanding officer, it is in the best interest of the Coast Guard to refuse delivery.

Any requests for TJAG approval must be submitted to the Judge Advocate General by e-mailing the Office of Military Justice (CG-LMJ) at HQS-DG-LST-CG-LMJ@uscg.mil.

26.L Reporting requirements. The commanding officer concerned must, either upon delivery or refusal to deliver personnel under this Chapter, e-mail a report with pertinent documents to the Office of Military Justice (CG-LMJ), through the chain of command. The report must include a full statement of the facts in the following cases:

- (1) When delivery is ultimately refused;
- (2) When a member is delivered to state authorities pursuant to an agreement under Section 26.I; or
- (3) When the advance approval of the Judge Advocate General is necessary.