Army Regulation 27–10

Legal Services

Military Justice

Headquarters
Department of the Army
Washington, DC
11 May 2016

UNCLASSIFIED

SUMMARY of CHANGE

AR 27-10
Military Justice

This expedite revision, dated 11 May 2016--

- Requires commanders to annotate and file the record of nonjudicial punishment in the performance folder of the Soldier's official military personnel file, if issued for specified sex-related offenses (para 3-6*b*).

- Authorizes field grade officers in command of a battalion or squadron to convene summary courts-martial, pursuant to Article 24(a)(4), Uniform Code of Military Justice (para 5-2*a(1)(e)*).

- Updates U.S. obligations regarding consular notification under the Vienna Convention on Consular Relations and bilateral agreements between the United States and other nations regarding consular notification (para 5-14).

- Incorporates Army Directive 2014-19, Implementation of Section 1744 of the National Defense Authorization Act for Fiscal Year 2014-Review of Decisions not to Refer Charges of Certain Sex-Related Offenses for Trial by Courts-Martial (hereby superseded) (para 5-19*c*).

- Sets forth the right of qualifying victims of sexual assault to be provided a copy of the record of trial (para 5-45).

- Requires specific notification and forwarding of records of trial in cases in which the death penalty has been adjudged (para 5-46c).

- Establishes rules concerning the release of information pertaining to the administration of military justice and accused persons (para 5-50).

- Establishes processing requirements for disclosure of exculpatory evidence when discovered post-trial (para 5-51).

- Updates requirements and responsibilities of military judges (para 7-1).

- Allows the Chief, Trial Judge (absent conflicts) to detail a military judge to capital cases (para 7-6*b*).

- Prohibits military magistrates from reviewing the determination of enemy belligerents under the law of armed conflict (para 8-3).

- Updates procedures for organizing and grouping courts-martial orders and promulgating orders (para 11-5*a*(2)).

- Updates distribution and addresses for forwarding special court-martial cases (para 11-7b).

- Establishes Military Justice Online reporting requirements (para 14-3).

- Implements Uniform Code of Military Justice, Article 6b rights, as provided for in 10 USC 806b (para 17-10).

- Establishes the right of victims of sexual assault to have the trial counsel, special victim counsel, or victim advocate present during defense requested interviews (para 17-10*a(11)(b)*).

- Provides for consideration of a victim's jurisdictional preference for disposition of sex-related offenses (para 17-10*a*(11)*(c)*).

- Establishes procedures for victim notifications (paras 17-17*c* and *d*).

- Revises complaints under Article 138 (chap 19).

- Defines "military sexual offenders" and "sexually violent offenses" and establishes policy for reporting sex-related offenses (para 24-2).

- Adds policy and procedures on capital litigation (chap 28).

- Updates conduct of nonjudicial punishment proceedings; attorney-client guidelines; and military justice area support responsibilities (apps B, C, and E, respectively).

Headquarters
Department of the Army
Washington, DC
11 May 2016

*Army Regulation 27–10

Effective 11 June 2016

Legal Services

Military Justice

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:

GERALD B. O'KEEFE
Administrative Assistant to the
Secretary of the Army

History. This publication is an expedite revision. The portions affected by this expedite revision are listed in the summary of change.

Summary. This regulation implements, in part, the Department of Defense Reorganization Act; changes to the Manual for Courts-Martial, United States, 2005; Department of Defense Directive 5525.7 (delineating the areas of responsibility for investigating and prosecuting offenses over which the Department of Defense and Department of Justice have concurrent jurisdiction); Public Law 97–291 (Victim and Witness Protection Act of 1982); Public Law 98–473 (Victims of Crime Act of 1984); Public Law 101–647 (Victims' Rights and Restitution Act of 1990); Public Law 102–484 (National Defense Authorization Act for Fiscal Year 1993); Public Law 103–160 (National Defense Authorization Act for Fiscal Year 1994); Public Law 106–523 (Military Extraterritorial Jurisdiction Act of 2000); Public Law 109–163 (National Defense Authorization Act for Fiscal Year 2006); Public Law 109–364 (National Defense Authorization Act for Fiscal Year 2007); Department of Defense Instruction 1325.7 (notifying States regarding sexually violent offenses and offenses against minors); Department of Defense Directive 1030.1 (victim and witness assistance) and Department of Defense Directive 5525.11 (implementing policies and procedures for the Military Extraterritorial Jurisdiction Act); and includes changes on matters of policy and procedure pertaining to the administration of military justice within the Army.

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

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General of the Army. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include a formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

Army internal control process. This regulation contains internal control provisions and provides an internal control evaluation for use in evaluating key internal controls (see appendix G).

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

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

Distribution. This publication is available in electronic media. Special distribution of this publication in paper was made in accordance with initial distribution number 092038, intended for command levels C, D, and E for the active Army, the Army National Guard/Army National Guard of the United States, and the United States Army Reserve.

*This regulation supersedes AR 27–10, dated 3 October 2011, and Army Directive 2014–19, dated 27 June 2014.

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Glossary

Chapter 1
Introduction

1–1. Purpose

This regulation prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial, United States, 2012, hereafter referred to as the MCM, and the rules for courts-martial (RCMs) contained in the MCM.

1–2. References

See appendix A.

1–3. Explanation of abbreviations and terms

See the glossary.

1–4. Responsibilities

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

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

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

Chapter 2
Investigation and Prosecution of Crimes With Concurrent Jurisdiction

2–1. Implementing authority

This chapter implements a memorandum of understanding (MOU) between the Department of Defense (DOD) and the Department of Justice (DOJ), delineating the areas of responsibility for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction. The MOU is available at Appendix 3–1, MCM, 2012, and is implemented by DODI 5525.07.

2–2. Local application

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

2–3. Action by convening authority

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

2–4. Grants of immunity

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

b. Persons subject to the Uniform Code of Military Justice.

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

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

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

(1) Draft a proposed order to testify for the signature of the GCMCA. Include in the requisite findings that the

witness is likely to refuse to testify on Fifth Amendment grounds and that the testimony of the witness is necessary to the public interest. Forward the unsigned draft to OTJAG, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200, for coordination with DOD and the DOJ and approval by the U.S. Attorney General.

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

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

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

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

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

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

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

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

(h) Military status and organization.

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

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

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

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

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

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

(3) If the U.S. Attorney General has authorized a grant of immunity, furnish the following information through the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200, to the Witness Immunity Unit, Criminal Division, Department of Justice, Washington, DC 20530, after the witness has testified, refused to testify, or the proceedings have been terminated without the witness being called to testify:

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

(b) Date of the examination of the witness.

(c) Name and address of the witness.

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

(e) Whether the immunity order was issued.

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

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

d. Cases involving threats to national security. A proposed grant of immunity will be forwarded to the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200. After coordination with the Office of the Deputy Chief of Staff, G–2 the proposed grant will be forwarded through the Army's general counsel, to the general counsel, DOD, for consultation with the DOJ in cases involving—

(1) Espionage.

(2) Subversion.

(3) Aiding the enemy.

(4) Sabotage.

(5) Spying.

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

2–5. Administrative action

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

2–6. Threats against the President

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

2–7. Reporting requirements for cases involving national security crimes

a. Prior to preferral of charges SJAs will provide an unclassified executive summary via e-mail to Office of The

Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200, regarding potential court-martial proceedings in cases that have national security implications. This is in addition to the reporting requirements set forth for cases involving a threat to U.S. national security in which a grant of immunity is being proposed in accordance with paragraph 2–4*d*, above, SJAs will also provide a copy of the unclassified executive summary via e-mail to the International and Operational Law Division (DAJA–IO), 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200. These cases involve offenses such as—

(1) Sedition (Articles 82 and 94, Uniform Code of Military Justice) when foreign power involvement is suspected.

(2) Aiding the enemy by giving intelligence to the enemy (UCMJ, Art. 104).

(3) Spying (UCMJ, Art. 106).

(4) Espionage (UCMJ, Art. 106a).

(5) Suspected or actual unauthorized acquisition of military technology, research and development information, or Army acquisition program information by—or on behalf of—a foreign power.

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

(7) Sabotage conducted by or on behalf of a foreign power.

(8) Subversion, treason, domestic terrorism, and known or suspected unauthorized disclosure of classified information or material.

(9) Attempts (UCMJ, Art. 80), solicitations (UCMJ, Art. 134), or conspiracies (UCMJ, Art. 81) to commit (1) through (8), above.

b. 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.

Chapter 3
Nonjudicial Punishment

Section I
Applicable Policies (para 1, part V, MCM, 2012)

3–1. General

This chapter implements and amplifies UCMJ, Art. 15, Uniform Code of Military Justice, and Part V, MCM, 2012. No action should be taken under the authority of UCMJ, Art. 15 without referring to the appropriate provisions of the MCM and this chapter. This chapter prescribes requirements, policies, limitations, and procedures for—

a. Commanders at all levels imposing nonjudicial punishment.

b. Members on whom this punishment is to be imposed.

c. Other persons who may take some action with respect to the proceedings.

3–2. Use of nonjudicial punishment

A commander should use nonpunitive measures to the fullest extent to further the efficiency of the command before resorting to nonjudicial punishment (see para 1d(1), part V, MCM, 2012). Use of nonjudicial punishment is proper in all cases involving minor offenses in which nonpunitive measures are considered inadequate or inappropriate. If it is clear that nonjudicial punishment will not be sufficient to meet the ends of justice, more stringent measures must be taken. Prompt action is essential for nonjudicial punishment to have the proper corrective effect. Nonjudicial punishment may be imposed to—

a. Correct, educate, and reform offenders whom the imposing commander determines cannot benefit from less stringent measures.

b. Preserve a Soldier's record of service from unnecessary stigma by record of court-martial conviction.

c. Further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

3–3. Relationship of nonjudicial punishment to nonpunitive measures (para 1g, part V, MCM, 2012)

a. General. Nonjudicial punishment is imposed to correct misconduct in violation of the UCMJ. Such conduct may result from intentional disregard of, or failure to comply with, prescribed standards of military conduct. Nonpunitive measures usually deal with misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity, difficulty in adjusting to disciplined military life, and similar deficiencies. These measures are primarily tools for teaching proper standards of conduct and performance and do not constitute punishment. Included among nonpunitive measures are denial of pass or other privileges, counseling, administrative reduction in grade, administrative reprimands and admonitions, extra training (see AR 600–20), bar to reenlistment, and military occupational specialty (MOS) reclassification. Certain commanders may administratively reduce enlisted personnel for

inefficiency and other reasons. This authority exists apart from any authority to punish misconduct under UCMJ, Art. 15. These two separate and distinct kinds of authority should not be confused.

b. Reprimands and admonitions.

(1) Commanding officers have authority to give admonitions or reprimands either as an administrative measure or as nonjudicial punishment. If imposed as a punitive measure under UCMJ, Art. 15, the procedure set forth in paragraph 4, Part V, MCM, 2012, and in section III of this chapter must be followed.

(2) A written administrative admonition or reprimand will contain a statement that it has been imposed as an administrative measure and not as punishment under UCMJ, Art. 15 (see AR 600–37). Admonitions and reprimands imposed as punishment under UCMJ, Art. 15, whether administered orally or in writing (see para 5c(1), part V, MCM, 2012), should state clearly that they were imposed as punishment under that article.

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

3–4. Personal exercise of discretion (para 1d(2), part V, MCM, 2012)

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

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

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

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

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

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

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

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

3–5. Reference to superior

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

(1) The nature and circumstances of the offense.

(2) The age, previous record, maturity, and experience of the offender.

b. If a commander determines that the commander's authority under UCMJ, Art. 15 is insufficient to impose a proper punishment, the case may be referred to an appropriate superior. The same procedure will be followed if the authority of the commander to exercise UCMJ, Art. 15 powers has been withheld or limited (see paras 3–4, above, and 3–7*d*, below). In transmitting a case for action by a superior, no recommendation of the nature or extent of the punishment to be imposed will be made. Transmittal should normally be accomplished by written correspondence using DA Form 5109 (Request to Superior to Exercise Art. 15, UCMJ, Jurisdiction).

3–6. Filing determination

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

b. Any record of nonjudicial punishment which includes a finding of guilty for having committed a sex-related offense will be filed as a sex-related offense in the performance folder of the Soldier's OMPF. This requirement applies to Soldiers in all components, regardless of grade. Imposing commanders do not have the option to designate these documents be filed locally or in the restricted folder of the Soldier's OMPF. Documents will be archived on the interactive Personnel Electronic Records Management System (iPERMS). For the purpose of this subparagraph, sex-related offenses include a violation of the following sections of Title 10, United States Code, and equivalent articles of the Uniform Code of Military Justice (UCMJ):

(1) Section 920–Article 120: Rape and sexual assault. This includes rape, sexual assault, and aggravated sexual contact.

(2) Section 920a–Article 120a: Stalking.

(3) Section 920b–Article 120b: Rape and sexual assault of a child. This includes rape, sexual assault, and sexual abuse of a child.

(4) Section 920c–Article 120c: Other sexual misconduct. This includes indecent viewing, visual recording, or broadcasting.

(5) Section 925–Article 125: Forcible sodomy; bestiality.

(6) Section 880–Article 80: Attempt (any attempt to commit these offenses).

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

d. The filing of a record of nonjudicial punishment imposed upon a member of another armed Service will be done in a manner consistent with the governing regulations of that member's parent Service (see Manual of The Judge Advocate General, Navy 0101 (JAGMAN 0101) for Navy and Marine Corps personnel; Air Force Instruction 51–201 (AFI 51–201) for Air Force personnel; and the U.S. Coast Guard Military Justice Manual (MJM), and Commandant, U.S. Coast Guard instruction M5810.1D (COMDTINST M5810.1D) for that service).

Section II
Authority (para 2, part V, MCM, 2012)

3–7. Who may impose nonjudicial punishment

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

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

(2) The term imposing commander refers to the commander or other officer who actually imposes the nonjudicial punishment.

(3) Commands include the following:

(a) Companies, troops, and batteries.

(b) Numbered units and detachments.

(c) Missions.

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

(e) Service schools.

(f) Area commands.

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

b. Multi-Service commanders and officers in charge. A multi-Service commander or officer in charge, to whose

command the members of the Army are assigned or attached, may impose nonjudicial punishment upon such Soldiers. A multi-Service commander or officer in charge, alternatively, may designate one or more Army units and will for each such Army unit designate an Army commissioned officer as commanding officer for the administration of discipline under the UCMJ, Art. 15. A copy of such designation will be furnished to Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200. A multi-Service commander or officer in charge, when imposing nonjudicial punishment upon a military member of their command, will apply the provisions of this regulation (see para 3–8*c*, below).

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

(1) Any commander authorized to exercise GCM jurisdiction, or any commanding general, may delegate that commander's or commanding general's powers, under UCMJ, Art. 15, to one commissioned officer actually exercising the function of deputy or assistant commander. A commander may, instead of delegating powers under UCMJ, Art. 15 to a deputy or assistant commander, delegate such powers to the chief of staff of the command, provided the chief of staff is a general officer, or frocked to a general officer grade. An officer in command who is frocked to the grade of brigadier general is not a general officer in command as defined in paragraph 2c, Part V, MCM, 2012, and lacks the authority to impose some punishments, including forfeitures and arrest upon commissioned officers. (See para 5(b)(1)(B), part V, MCM, 2012, table 3–1B (Maximum punishment for commissioned officers that may be imposed by a general officer in command or GCMCA), and the areas of AR 600–8–29 that discuss the limitations of frocked officers.)

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

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

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

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

(c) Notification that the delegation has been terminated is made in writing. A delegation does not divest the delegating officer of the right to personally exercise the delegating officer's UCMJ, Art. 15 powers in any case in which the delegating officer desires to act. Although an appeal from punishment imposed under a delegation of UCMJ, Art. 15 powers will be acted on by the authority next superior to the delegating officer (see para 3–30, below), the latter may take the action described in paragraph 3–32, below. (See paras 6 and 7, part V, MCM, 2012, and para 3–38, below.)

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

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

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

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

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

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

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

(3) To determine if an individual is of the command of a particular commanding officer, refer first to those written or oral orders or directives that affect the status of the individual. If orders or directives do not expressly confer authority to administer nonjudicial punishment to the commander of the unit with which the Soldier is affiliated or

present (as when, for example, they contain no provision attaching the Soldier "for disciplinary purposes"), consider all attendant circumstances, such as—

(a) The phraseology used in the orders.

(b) Where the Soldier slept, ate, was paid, performed duty, the duration of the status, and other similar factors.

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

b. Termination of status. Nonjudicial punishment will not be imposed on an individual by a commander after the individual ceases to be of the commander's command, because of transfer or otherwise. However, if UCMJ, Art. 15 proceedings have been instituted and punishment has not been imposed prior to the time of the change of assignment, the commander who instituted the proceedings may forward the record of proceedings to the gaining commander for appropriate disposition.

c. Personnel of other armed forces. An Army commander is not prohibited from imposing nonjudicial punishment on a military member of his or her command solely because the member is a member of another armed service. Other provisions of this regulation notwithstanding, an Army commander may impose punishment upon a member of another Service only under the circumstances, and according to the procedures, prescribed by the member's parent Service. (In particular, see JAGMAN 0101 for Navy and Marine Corps personnel; AFI 51–201, for Air Force personnel, and MJM, COMDINST M5810.1D, for Coast Guard personnel.)

d. Persons serving with or accompanying an armed force in the field in time of declared war or contingency operation. Authority to impose punishment under UCMJ, Art. 15, on persons subject to jurisdiction under UCMJ, Art. 2(a)(10) is limited to those commanders described in chapter 27 of this regulation and as described in guidance provided by the Secretary of Defense by memorandum dated 10 March 2008.

3–9. Minor offenses

Generally, the term "minor" includes misconduct not involving any greater degree of criminality than is involved in the average offense tried by summary court-martial (SCM). It does not include misconduct of a type that, if tried by GCM, could be punished by dishonorable discharge or confinement for more than 1 year (see para 1e, part V, MCM, 2012). This is not a hard and fast rule; the circumstances of the offense might indicate that action under UCMJ, Art. 15 would be appropriate even in a case falling outside these categories. Violations of, or failures to obey, general orders or regulations may be minor offenses if the prohibited conduct itself is of a minor nature even though also prohibited by a general order or regulation. Whether an offense is "minor" is a matter within the discretion of the commander imposing nonjudicial punishment. Nonjudicial punishment for an offense other than a minor offense (even when thought by the commander to be minor) is not a bar to subsequent trial by court-martial for the same offense. See RCM 907(b)(2)(D)(iv). However, the accused may show at trial that nonjudicial punishment was imposed, and if the accused does so, this fact must be considered in determining an appropriate sentence. See UCMJ, Art. 15(f) and RCM 1001(c)(1)(B).

3–10. Double punishment prohibited

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

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

Chapter 4 covers the limitations on nonjudicial punishment after exercise of jurisdiction by civilian authorities.

3–12. Statute of limitations

Nonjudicial punishment may not be imposed for offenses which were committed more than 2 years before the date of imposition. Computation of this 2-year limitation is in accordance with the UCMJ, Arts. 43(c) and (d). The period of limitations does not run when the Soldier concerned is absent without authority; fleeing from justice; outside the territory where the United States has authority to apprehend; in the custody of civil authorities; or, in the hands of the enemy.

Section III
Procedure (para 4, part V, MCM, 2012)

3–13. General

The authority to impose nonjudicial punishment charges a commander with the responsibility of exercising the commander's authority in an absolutely fair and judicious manner (see para 1d, part V, MCM, 2012).

3–14. Preliminary inquiry

a. The commander of the alleged offender must ensure that the matter is investigated promptly and adequately. The investigation should provide the commander with sufficient information to make an appropriate disposition of the incident. The investigation should cover—

(1) Whether an offense was committed.

(2) Whether the Soldier was involved.

(3) The character and military record of the Soldier.

b. Usually the preliminary investigation is informal and consists of interviews with witnesses and/or review of police or other informative reports. If, after the preliminary inquiry, the commander determines, based on the evidence currently available, that the Soldier probably has committed an offense and that a nonjudicial punishment procedure is appropriate, the commander should (unless the case is to be referred to a superior commander (see para 3–5)) take action as set forth in this section.

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

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

3–16. Summarized proceedings

a. Preliminary inquiry.

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

(a) Extra duties for 14 days.

(b) Restriction for 14 days.

(c) Oral reprimand or admonition.

(d) Any combination of the above.

(2) The DA Form 2627–1 (Summarized Record of Proceedings Under Art. 15, UCMJ), will be used to record the proceedings. An illustrated example of a completed DA Form 2627–1 is shown at figure 3–1, below. The rules and limitations concerning punishments in section IV and provisions regarding clemency in section V are applicable.

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is OTJAG-CL.

NAME	GRADE	SSN	UNIT & LOCATION	MONTHLY BASE PAY
DOE, John A.	E-3	000-00-0000	A Co., 2-187th IN, 3d BCT 101st ABN DIV, FTCKY	1,823.40

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct:
In that you, did, on or about 10 March 2016, without authority, absent yourself from your unit, to wit: A Company, 2d Battalion, 187th Infantry Regiment, 3d Brigade Combat Team, 101st Airborne Division, located at Fort Campbell, KY, and did so remain absent until on or about 20 March 2016. This is in violation of Article 86, UCMJ.

2. You are not required to make any statements, but if you do, they may be used against you in this proceeding or at a trial by court-martial. You have several rights under this Article 15 proceeding. First I want you to understand I have not yet made a decision whether or not you will be punished. I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense(s). You may ordinarily have an open hearing before me. You may request a person to speak on your behalf. You may present witnesses or other evidence to show why you shouldn't be punished at all *(matters of defense)* or why punishment should be very light *(matters of extenuation and mitigation)*. I will consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. If you do not want me to dispose of this report of misconduct under Article 15, you have the right to demand trial by court-martial instead. In deciding what you want to do you have the right to consult with legal counsel located at Trial Defense Services, Building 35, FTCKY DSN 635-0000. You now have 48 hours to decide what you want to do.

NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE	DATE
JAMES A. DOE, O-3, A Co., 2-187th IN, 3d BCT, 101st ABN DIV		20160401

3. Having been afforded the opportunity to consult with counsel and understanding my rights listed above and on page three of this form, my decisions are as follows *(Initial appropriate blocks, date, and sign)*:

a. [X] I demand trial by court-martial.

b. [ ] I do not demand trial by court-martial and in the Article 15 proceedings:

(1) I request the hearing be: [ ] Open [ ] Closed

(2) A person to speak in my behalf: [ ] Is requested [ ] Is not requested

(3) Matters in defense, extenuation, and/or mitigation:

[ ] Are not presented [ ] Are attached [ ] Will be presented in person

NAME AND GRADE OF SERVICE MEMBER	SIGNATURE	DATE
JOHN A. DOE, E-3		20160403

4a. In a *(n)* [X] Open [ ] Closed hearing, having considered all matters presented, I hereby make the following finding:

[ ] Guilty of All Specifications. [ ] Guilty of Some Specifications *(line out Not Guilty Specifications)*. [X] Not Guilty of All Specifications *(line out all Specifications and sign below)*.

Based on my findings, I impose the punishments that are officially recorded in Item 6 of this form.

4b. I direct the original DA Form 2627 be filed in the:

[ ] Performance section of the OMPF [ ] Restricted section of the OMPF [N/A] NA as soldier was an E-4 or below at start of proceedings

4c. You are advised of your right to appeal to the next superior authority: CDR, 2-187th IN, 3d BCT, 101st ABN DIV within five (5) calendar days. An appeal made after that time may be rejected as untimely. Punishment is effective immediately unless otherwise stated in Item 6.

NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE	DATE
JAMES A. DOE, O-3, A Co., 2-187th IN, 3d BCT, 101st ABN DIV		20160403

5. *(Initial appropriate block, date, and sign)*

[X] I do not appeal [ ] I appeal and do not submit additional matters [ ] I appeal and submit additional matters

NAME AND RANK OF SERVICE MEMBER	SIGNATURE	DATE
JOHN A. DOE, PV2		20160403

DA FORM 2627, OCT 2011 PREVIOUS EDITIONS ARE OBSOLETE. Page 1 of 5 APD LC v1.01

Figure 3–1. Sample of completed DA Form 2627

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

(1) The imposing commander's intention to initiate proceedings under UCMJ, Art. 15.

(2) The fact that the imposing commander intends to use summarized proceedings and the maximum punishments that can be imposed under these proceedings.

(3) The right to remain silent.

(4) Offenses that the Soldier allegedly has committed and the articles of the UCMJ allegedly violated.

(5) The right to demand trial (see para 4a(5), part V, MCM, 2012). Soldiers attached to or embarked in a vessel may not demand trial by court-martial in lieu of nonjudicial punishment. Any other Soldier will be advised that the Soldier has a right to demand trial and that the demand for trial must be made at the start of the hearing prior to any consideration, examination, or presentation of evidence. The Soldier's decision not to demand trial is irrevocable. The Soldier will be told that such trial could be by SCM, special court-martial (SPCM), or GCM. The Soldier will also be told that the Soldier may object to trial by SCM and that at SPCM or GCM the Soldier would be entitled to be represented by qualified military counsel, or by civilian counsel obtained at no expense to the Government.

(6) The right to confront witnesses, examine the evidence, and submit matters in defense, extenuation, and/or mitigation.

(7) The right to appeal.

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

(1) Accept the UCMJ, Art. 15 nonjudicial punishment.

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

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

(1) Consideration of evidence, written or oral, against the Soldier.

(2) Examination of available evidence by the Soldier.

(3) Presentation by the Soldier of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation.

(4) Determination of guilt or innocence by the imposing commander. Before finding a Soldier guilty, the commander must be convinced beyond a reasonable doubt that the Soldier committed the offense(s).

(5) Imposition of punishment or termination of the proceedings.

(6) Explanation of right to appeal.

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

f. Recording and filing of DA Form 2627–1. The proceedings will be legibly summarized on DA Form 2627–1, ordinarily with handwritten entries. These forms will be maintained locally in nonjudicial punishment files (file number 27–10f). They will be destroyed at the end of 2 years from the date of imposition of punishment or on the Soldier's transfer from the unit, whichever occurs first. A copy will be provided to the Soldier if a request is submitted during the filing period.

3–17. Formal proceedings (para 4, part V, MCM, 2012)

A commander who, after a preliminary inquiry, determines—

a. That the Soldier alleged to have committed an offense is an officer, or

b. That punishment, if it should prove to be appropriate, might exceed extra duties for 14 days, restriction for 14 days, oral reprimand on admonition, or any combination thereof, will proceed as set forth below. All entries will be recorded on DA Form 2627. An illustrated example of a completed DA Form 2627 is shown at figure 3–2, below.

SUMMARIZED RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10, Chapter 3; the proponent agency is OTJAG-CL.

A summarized Article 15 may only be used for enlisted personnel. The punishments that may be imposed are limited to: extra duty for 14 days or less, restriction for 14 days or less, an oral reprimand/admonition, or any combination thereof. The imposing commander will ensure that the Soldier understands the rights found on page 2 of this form. An NCO will normally go over these rights with the Soldier.

NAME	GRADE	SSN	UNIT & LOCATION
DOE, John A.	E-3	000-00-0000	A Co., 2-187th IN, 3d BCT, FTCKY

1. On 1 April, 20 16 the above Soldier was informed that the commander was considering imposition of nonjudicial punishment under the provisions of Article 15, UCMJ, Summarized Proceedings, for the following misconduct:

In that you, did, at or near Fort Campbell, KY, on or about 20 March 2016, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: 0630 hours, accountability formation. This is in violation of Article 86, UCMJ.

2. The member was advised that no statement was required, but that any statement made could be used against him or her in the proceeding or in a court - martial. The member was also informed of the right to demand trial by court-martial, the right to present matters in defense, extenuation and/or mitigation, that any matters presented would be considered by me before deciding whether to impose punishment, the type or amount of punishment, if imposed, and that no punishment would be imposed unless I was convinced beyond a reasonable doubt that the service member committed the misconduct. The service member was afforded the opportunity to take 24 hours to make a decision regarding these rights. No demand for trial by court-martial was made. After considering all matters presented, the following punishment was imposed:

☐ Guilty of all offenses **OR** ☐ Guilty of the offenses not lined out **OR** ☐ Not guilty of all offenses *(destroy form)*

Based on the findings, I imposed the following punishment *(s)*:

Extra Duty for N/A days *(max of 14)* Restriction for 14 days *(max of 14)* ☒ Oral reprimand or admonition

The punishment(s) of restriction for 14 days was *(was / were)* suspended, to be automatically remitted if not vacated before 20160501 *(date)*.

3. I advised the Soldier of his or her right to appeal to the next superior authority within five *(5)* calendar days, that an appeal made after that time could be rejected as untimely, and that the punishment was effective immediately unless otherwise stated. The Soldier:

☐ Elected immediately not to appeal ☐ Requested a reasonable time to decide whether to appeal.

NAME, RANK, AND ORGANIZATION OF COMMANDER	SIGNATURE	DATE
JAMES. A. DOE, CPT, A Co., 2-187th IN, 3d BCT, 101st ABN DIV	James Doe	20160401

4. *(Initial appropriate block, date, and sign)*

a. ☐ I do not appeal. b. ☐ I appeal and do not submit matters for consideration. c. ☐ I appeal and submit additional matters

NAME AND RANK OF SERVICE MEMBER	SIGNATURE	DATE
JOHN A. DOE, PFC	John Doe	20160401

5. After consideration of all matters presented in appeal, the appeal is:

☐ Denied ☐ Granted as follows:

NAME, RANK, AND ORGANIZATION OF COMMANDER	SIGNATURE	DATE
		20160401

6. I have seen the action taken on my appeal.	SIGNATURE OF SERVICE MEMBER	DATE

7. ALLIED DOCUMENTS AND/OR COMMENTS

DA FORM 2627-1, OCT 2011 PREVIOUS EDITIONS ARE OBSOLETE. Page 1 of 3 APD LC v1.01

Figure 3–2. Sample of completed DA Form 2627–1

3–18. Notification and explanation of rights

a. General. The imposing commander will ensure that the Soldier is notified of the commander's intention to dispose of the matter under the provisions of UCMJ, Art. 15. The Soldier will also be notified of the maximum punishment that the commander could impose under UCMJ, Art. 15. The Soldier will be provided a copy of DA Form 2627 with items 1 and 2 completed, including the date and signature of the imposing commander. The imposing commander may authorize a commissioned officer or NCO (sergeant first class (SFC) or above), provided such person is senior to the Soldier being notified, to deliver the DA Form 2627 and inform the Soldier of the Soldier's rights. The NCO performing the notification should ordinarily be the unit first sergeant or the senior NCO of the command concerned. If it is not possible or practical for an officer or NCO senior to the Soldier to deliver the DA Form 2627 and inform the Soldier of his rights, any judge advocate (JA) may complete the notification process. In such cases, the notifier should follow the steps in appendix B as modified. The Soldier will be provided with a copy of DA Form 2627 and supporting documents and statements for use during the proceedings. The Soldier will return the copy to the commander for annotation. It will be given to the Soldier for retention when all proceedings are completed.

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

(1) The Soldier is not required to make any statement regarding the offense or offenses of which the Soldier is suspected, and

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

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

d. Right to demand trial. Soldiers attached to or embarked in a vessel may not demand trial by court-martial instead of nonjudicial punishment. Any other Soldier will be advised that the Soldier has a right to demand trial. The demand for trial may be made at any time prior to imposition of punishment. The Soldier will be told that if the Soldier demands trial, trial could be by SCM, SPCM, or GCM. The Soldier will also be told that the Soldier may object to trial by SCM and that at SPCM or GCM the Soldier would be entitled to be represented by qualified military counsel, or by civilian counsel obtained at no Government expense.

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

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

(2) Call witnesses (see para 4c(1)(F), part V, MCM, 2012).

(3) Present evidence.

(4) Request that the Soldier be accompanied by a spokesperson (see para 3–18*h*, below).

(5) Request an open hearing (see para 3–18*g*, below).

(6) Examine available evidence.

f. Decision period.

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

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

(3) If the Soldier demands trial by court-martial on any offense, no further action will be taken to impose nonjudicial punishment for that offense, unless the Soldier's demand is voluntarily withdrawn. Whether court-martial

charges will be preferred against the Soldier for the remaining offense(s) and the level of court-martial selected will be resolved by the appropriate commander. A Soldier's demand for trial by court-martial will not bar disposition of minor offenses by nonpunitive measures by the appropriate commander.

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

g. Hearing.

(1) In the presence of the commander, the Soldier will be allowed to personally present matters in defense, extenuation, or mitigation in the presence of the imposing commander, except when appearance is prevented by the unavailability of the commander or by extraordinary circumstances (for example, the Soldier is stationed at a geographic location remote from that of the imposing commander and cannot be readily brought before the commander). When personal appearance is requested, but is not granted, the imposing commander will appoint a commissioned officer to conduct the hearing and make a written summary and recommendations. The Soldier will be entitled to appear before the officer designated to conduct the hearing (see para 4c(1), part V, MCM, 2012). Within the limitations of AR 27–26, JAs may attend Art. 15 proceedings and provide advice to clients. Advice should be provided during a recess in the proceedings. When defense counsel, military or civilian, act as spokespersons, they speak on behalf of the accused and do not serve in a representative capacity.

(2) Ordinarily, hearings are open. The UCMJ, Art. 15 proceedings are not adversarial in nature. However, a Soldier may request an open or closed hearing. In all cases, the imposing commander will, after considering all the facts and circumstances, determine whether the hearing will be open or closed (see para 4c(1)(G), part V, MCM, 2012). An open hearing is a hearing open to the public but does not require the commander to hold the proceeding in a location different from that in which the commander conducts normal business—that is, the commander's office. A closed hearing is one in which the commander decides that members of the public will not attend. The fact that a Soldier requests and is granted a closed hearing does not preclude announcement of punishment as provided in paragraph 3–22, below. The fact that a closed hearing has been granted does not preclude appearance of witnesses. The commander may grant a request for a closed hearing, yet allow the attendance of certain members of the chain of command or others deemed appropriate to the conduct of the proceedings.

(3) Staff Judge Advocates or their representatives who attend UCMJ, Art. 15 proceedings in their official capacity shall strictly comply with AR 27–26, Rule 4–2 and Rule 4–3.

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

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

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

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

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

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

Section IV
Punishment (para 5, part V, MCM, 2012)

3–19. Rules and limitations

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

b. Pursuant to the authority of the Secretary of the Army, as set forth in paragraph 5a, part V, MCM, 2012, the following additional rules and limitations concerning the kinds and amounts of punishment authorized under the UCMJ, Art. 15 apply (see also table 3–1, below):

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

(2) *Confinement on bread and water or diminished rations.* This punishment may be imposed only on a Soldier in the rank of PFC or below who is attached to or embarked on a vessel.

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

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

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

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

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

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

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

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

(6) *Reduction in grade.*

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

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

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

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

authorized to reduce and if the circumstances of the case indicate that the commander was authorized and intended to reduce the Soldier at least one grade, a one-grade reduction may be approved. Also, if a reduction is to a lower specialist grade when reduction should have been to a lower NCO grade (or vice versa), administrative action will be taken to place the offender in the proper rank for the MOS held in the reduced pay grade. All rights, privileges, and property, including pay and allowances, of which a Soldier was deprived by a reduction that has been set aside must be restored.

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

(7) *Forfeiture of pay.*

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

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

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

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

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

(b) Forfeitures. Forfeiture of pay should be entered on DA Form 2627 per the following examples (see para 5c(8), part V, MCM, 2012):

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

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

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

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

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

(d) Admonition and reprimand. Admonitions or reprimands imposed on commissioned officers must be in writing (see para 5(c)(1), part V, MCM, 2012). Admonitions or reprimands imposed on enlisted Soldiers under formal proceedings may be administered orally or in writing. Written admonitions and reprimands imposed as a punitive measure under UCMJ, Art. 15 will be in memorandum format, per AR 25–50, and will be listed as an attachment in item 10, DA Form 2627. Oral admonitions and reprimands will be identified as such in either item 6 on DA Form 2627, or item 2 on DA Form 2627–1.

Table 3–1
Maximum punishments for enlisted members and commissioned officers

Maximum punishment	Imposed by company grade officers	Imposed by field grade officers	Imposed by field grade and general officers	Imposed by general officers or GCMCAs
For enlisted members[1]—				
Admonition/reprimand	Yes		Yes	
AND Extra duties	14 days		45 days	
AND Restriction	14 days		60 days	
or Correctional custody[2] (E–1 through E–3)	7 days		30 days	
or Restricted diet confinement (E–1 through E–3 attached or embarked on vessel)	3 days		4 days	
AND Reduction (E–1 through E–4) Reduction (E–5 through E–6)	one grade		one or more grades one grade in peace time[4]	
AND Forfeiture[3]	7 days' pay		1/2 of 1 month's pay for 2 months	
For commissioned officers—				
Admonition/reprimand	Yes	Yes		Yes
AND Arrest in quarters	No	No	30 days	
or Restriction	30 days	30 days		60 days
AND Forfeiture	No	No		1/2 of 1 month's pay for 2 months
Computing monthly authorized forfeitures of pay under UCMJ, Art. 15				
For forfeiture on enlisted persons—	When forfeiture is imposed by major or above—	Use the formula—	(Monthly basic pay[3,6]) divided by 2=the maximum forfeiture per month.	The amount will be rounded to the next lower whole dollar.
	When forfeiture is imposed by a captain or below—	Use the formula—	(Monthly basic pay[3,6]) x 7 divided by 30=the maximum forfeiture per month.	The amount will be rounded to the next lower whole dollar.
For forfeiture on commissioned officers—	When forfeiture is imposed by an officer with general court-martial jurisdiction, or by a general officer in command—	Use the formula—	(Monthly basic pay[5]) divided by 2=maximum authorized forfeiture per month.	The amount will be rounded to the next lower whole dollar.

Notes:

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

[2] Subject to limitations imposed by superior authority and presence of adequate facilities under AR 190–47. If punishment includes reduction to E–3 or below, reduction must be unsuspended.

[3] Amount of forfeiture is computed at the reduced grade, even if suspended, if reduction is part of the punishment imposed. For RC Soldiers, use monthly basic pay for the grade and time in service of an Active Army (AA) Soldier (see para 20–9).

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

[5] In the case of commissioned officers and warrant officers, admonitions and reprimands given as nonjudicial punishment must be administered in writing per paragraph 5c(1), part V, MCM, 2012.

[6] At the time punishment is imposed.

3–20. Effect on promotable status

See AR 600–8–19 and AR 600–8–2.

3–21. Effective date and execution of punishments

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

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

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

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

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

3–22. Announcement of punishment

The punishment may be announced at the next unit formation after punishment is imposed or, if appealed, after the decision on the appeal. After deleting the social security account number of the Soldier and other relevant privacy information, the results of the UCMJ, Art. 15 punishment may be posted on the unit bulletin board. The purpose of announcing the results of punishments is to preclude perceptions of unfairness of punishment and to deter similar misconduct by other Soldiers. An inconsistent or arbitrary policy should be avoided regarding the announcement of punishments that might result in the appearance of vindictiveness or favoritism. In deciding whether to announce punishment of Soldiers in the grade of SGT or above, the following should be considered:

a. The nature of the offense.

b. The individual's military record and duty position.

c. The deterrent effect.

d. The impact on unit morale or mission.

e. The impact on the victim.

f. The impact on the leadership effectiveness of the individual concerned.

Section V
Suspension, Vacation, Mitigation, Remission, and Setting Aside (para 6, part V, MCM, 2012)

3–23. Clemency

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

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

(2) Mitigate reduction in grade, whether executed or unexecuted, to forfeiture of pay.

(3) At any time, suspend probationally any part or amount of the unexecuted portion of the punishment imposed.

(4) Suspend probationally a reduction in grade or forfeiture, whether or not executed. An uncollected forfeiture of pay will be considered unexecuted.

b. Meaning of "successor-in-command." As used in paragraph 6a, part V, MCM, 2012, a successor-in-command is

the officer who has authority to impose the same kind and amount of punishment on a Soldier concerned that was initially imposed or was the result of a modification and who—

(1) Commands the unit to which the punished Soldier is currently assigned or attached (see para 3–8, above).

(2) Is the commander succeeding to the command occupied by the imposing commander, provided the Soldier still is of that command, or

(3) Is the successor to the delegate who imposed the punishment, provided the same authority has been delegated under paragraph 3–7*c*, above, to that successor and the Soldier is still of that command.

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

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

RECORD OF SUPPLEMENTARY ACTION UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10, Chapter 3; the proponent agency is OTJAG-CL.

NAME	GRADE	SSN	UNIT & LOCATION
DOE, John A.	E-3	000000000	A Co., 2-187th IN, 3d BCT, 101st ABN DIV, Fort Campbell, KY

TYPE OF SUPPLEMENTAL ACTION *(OTHER THAN SUPERIOR AUTHORITY ACTING ON APPEAL) (CHECK APPROPRIATE BOX)*

☒ SUSPENSION *(Complete Item 1 below)* ☐ MITIGATION *(Complete Item 2 below)* ☐ REMISSION *(Complete Item 3 below)*

☐ SETTING ASIDE *(Complete Item 4 below)* ☐ VACATION OF SUSPENSION *(Complete Item 5 below)*

1. SUSPENSION

The punishment(s) of: restriction for 14 days

imposed on the above service member on 20160401 _____
(date of punishment)

suspended and will automatically be remitted if not vacated before 20160501 .
(date)

2. MITIGATION

The punishment(s) of: _____

imposed on the above service member on _____ _____ mitigated to _____
(date of punishment)

3. REMISSION

The punishment(s) of: _____

imposed on the above service member on _____ _____ remitted.
(date of punishment)

4. SETTING ASIDE

The punishment(s) of: _____

imposed on the above service member on _____ _____ set aside on the basis of _____
(date of punishment)

All rights, privileges, and property affected are hereby restored.

5. VACATION OF SUSPENSION

a. The suspension of the punishment(s) of: _____

imposed on the above service member on _____ _____ hereby vacated. The unexecuted portion(s) of the punishment(s) will be duly executed (date of punishment).
(date of punishment)

b. Vacation is based on the following offense(s): _____

c. The service member _____ given an opportunity to rebut *(see para. 3-25, AR 27-10)*. N/A
(was / was not)

d. The service member _____ present at the vacation proceeding *(see para. 3-25, AR 27-10)*.
(was / was not)

6. THE ORIGINAL DA FORM 2627 WAS FILED AS FOLLOWS:

☐ Performance section of the OMPF ☐ Restricted section of the OMPF. ☒ NA as soldier was an E-4 or below at start of proceedings

7. BY MY ORDER:

☒ AS THE OFFICER WHO IMPOSED THE PUNISHMENT ☐ AS THE SUCCESSOR IN COMMAND TO THE IMPOSING OFFICER ☐ AS THE SUPERIOR AUTHORITY

NAME, RANK, AND ORGANIZATION OF COMMANDER	SIGNATURE	DATE
JAMES A. DOE, CPT, A Co., 2-187th IN, 3d BCT, 101st ABN DIV	James Doe	20160401

DA FORM 2627-2, OCT 2011 PREVIOUS EDITIONS ARE OBSOLETE. APD LC v1.01

Figure 3–3. Sample of a completed DA Form 2627–2

3–24. Suspension

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

3–25. Vacation

a. A commander may vacate any suspended punishment (see para 6a(4), part V, MCM, 2012), provided the punishment is of the type and amount the commander could impose and where the commander has determined that the Soldier has committed misconduct (amounting to an offense under the UCMJ) during the suspension period. The commander is not bound by the formal rules of evidence before courts-martial and may consider any matter, including unsworn statements, the commander reasonably believes to be relevant to the misconduct. There is no appeal from a decision to vacate a suspension. Unless the vacation is prior to the expiration of the stated period of suspension, the suspended punishment is remitted automatically without further action. The death, discharge, or separation from service of the Soldier punished prior to the expiration of the suspension automatically remits the suspended punishment. Misconduct resulting in vacation of a suspended punishment may also be the basis for the imposition of another UCMJ, Art. 15 nonjudicial punishment.

b. Commanders will observe the following procedures in determining whether to vacate suspended punishments:

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

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

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

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

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

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

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

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

3–26. Mitigation

a. General.

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

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

b. Appropriateness. Mitigation is appropriate when—

(1) The recipient has, by the recipient's subsequent good conduct, merited a reduction in the severity of the punishment.

(2) The punishment imposed was disproportionate to the offense or the offender.

c. Limitation on mitigation.

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

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

3–27. Remission

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

3–28. Setting aside and restoration

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

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

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

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

Section VI
Appeals (para 7, part V, MCM, 2012)

3–29. General

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

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

3–30. Who may act on an appeal

a. The next superior authority to the commanding officer who imposed the UCMJ, Art. 15 punishment will act on an appeal if the Soldier punished is still of the command of that officer at the time of appeal. If the commander acted under a delegation of authority, the appeal will be acted on by the authority next superior to the delegating officer. If, at the time of appeal, the Soldier is no longer of the imposing commander's command, the authority next superior to the commander of the imposing command (who can impose the same kind and amount of punishment as that imposed or resulting from subsequent modifications) will act on the appeal.

b. The authority "next superior" to an imposing commander is normally the next superior in the chain-of-command, or such other authority as may be designated by competent authority as being next superior for the purposes of UCMJ, Art. 15. Appeals pursued by Soldiers from punishments imposed by commanders on installations managed by IMCOM will be processed through ACOM, ASCC, or DRU chains of command as necessary and appropriate. A superior authority who exercises GCM jurisdiction, or is a general officer in command, may delegate those powers the superior authority has as superior authority under UCMJ, Art. 15(e), to a commissioned officer of the superior authority's command subject to the limitations in paragraph 3–7*c*, above. Regardless of the grade of the imposing commander, TJAG is delegated the authority next superior for acting on appeals when no intermediate superior authority is reasonably available. Such appeals will be forwarded to the OTJAG, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200.

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

d. When an Army commander imposes nonjudicial punishment on a member of another Service, the authority next superior will be the authority prescribed by the member's parent Service. (See JAGMAN 0101 for Navy and Marine Corps personnel; AFI 51–201 for Air Force personnel; and MJM COMDTINST M5810.1D for Coast Guard personnel.) Other provisions of this regulation notwithstanding, an appeal by such member will be processed according to procedures contained in the governing regulation of the member's parent Service.

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

3–31. Procedure for submitting an appeal

All appeals will be made on DA Form 2627 or DA Form 2627–1 and forwarded through the imposing commander or successor-in-command, when applicable, to the superior authority. The superior authority will act on the appeal unless otherwise directed by competent authority. The Soldier may attach documents to the appeal for consideration. A Soldier is not required to state reasons for the Soldier's appeal; however, the Soldier may do so. For example, the person may state the following in the appeal:

a. Based on the evidence the Soldier does not believe the Soldier is guilty.

b. The punishment imposed is excessive, or that a certain punishment should be mitigated or suspended.

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

The imposing commander or the successor-in-command may take any action on the appeal with respect to the punishment that the superior authority could take (see para 6, part V, MCM, 2012, and see para 3–33, below). If the imposing commander or a successor-in-command suspends, mitigates, remits, or sets aside any part of the punishment, this action will be recorded on item 8 of DA Form 2627, or item 5 of DA Form 2627–1. The appellant will be advised and asked to state whether, in view of this action, the appellant wishes to withdraw the appeal. Unless the appeal is voluntarily withdrawn, the appeal will be forwarded to the appropriate superior authority. An officer forwarding the appeal may attach any matter in rebuttal of assertions made by the Soldier. When the Soldier desires to appeal, the imposing commander, or the successor-in-command, will make available to the Soldier reasonable assistance in preparing the appeal and will promptly forward the appeal to the appropriate superior authority.

3–33. Action by the superior authority

Action by the superior authority on appeal will be entered in item 8 on DA Form 2627, or item 5 on DA Form 2627–1. A superior authority will act on the appeal expeditiously. Once the Soldier has submitted an appeal, including all pertinent allied documents, the appeal normally should be decided within 5 calendar days (3 days for summarized proceedings). The superior authority may conduct an independent inquiry into the case, if necessary or desirable. The superior authority may refer an appeal in any case to a JA for consideration and advice before taking action; however, the superior authority must refer an appeal from certain punishments to a JA, whether or not suspended (see note 9,

DA Form 2627). In acting on an appeal, the superior authority may exercise the same powers as may be exercised by the imposing commander or the imposing commander's successor-in-command. A timely appeal does not terminate merely because a Soldier is discharged from the Service. It will be processed to completion by the superior authority.

3–34. Action by a judge advocate

a. When an appeal is referred to a JA, the superior authority will be advised either orally or in writing of the JA's opinion on—

(1) The appropriateness of the punishment.

(2) Whether the proceedings were conducted under law and regulations.

b. If the advice is given orally, that fact and the name of the JA who rendered the advice will be recorded in item 7 of DA Form 2627.

c. The JA is not limited to an examination of written matters of the record of proceedings and may make any inquiries that are necessary.

d. The JA rendering the advice should be the JA providing legal advice to the officer taking action on the appeal.

3–35. Action by superior authority regardless of appeal

Any superior authority may exercise the same powers, as may be exercised by the imposing commander, or the imposing commander's successor-in-command, whether or not an appeal has been made from the punishment (see para 7f(1), part V, MCM, 2012). "Any superior authority" has the same meaning as that given to the term "authority next superior" in paragraph 3–30, except that it also includes any authority superior to that authority. A Soldier has no right to petition for relief under this paragraph and any petition so made may be summarily denied by the superior authority to whom it is addressed.

Section VII
Records of Punishment, DA Form 2627 (para 8, part V, MCM, 2012)

3–36. Records of punishment

All actions taken under UCMJ, Art. 15, including notification, acknowledgement, imposition, filing determinations, appeal, action on appeal, or any other action taken prior to action being taken on an appeal, except summarized proceedings (see sec III, and fig 3–1, both above), will be recorded on DA Form 2627. The DA Form 2627 is a record of completed actions and either the DA Form 2627 or a duplicate as defined in Military Rules of Evidence 1001(4) may be considered for use at courts-martial or administrative proceedings independently of any written statements or other documentary evidence considered by an imposing commander, a successor, or a superior authority.

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

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

b. Original of DA Form 2627.

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

(a) For all other Soldiers, the original will be sent to the appropriate custodian listed subparagraph (3), below, for filing in the OMPF. The decision to file the original DA Form 2627 on the performance folder or the restricted folder in the OMPF will be made by the imposing commander at the time punishment is imposed. The filing decision of the imposing commander is subject to review by any superior authority. However, the superior authority cannot direct that a UCMJ, Art. 15 report be filed in the performance folder that the imposing commander directed to be filed in the restricted folder. The imposing commander's filing decision will be indicated in item 4b of DA Form 2627. A change

in the filing decision should be recorded in block 8 of DA Form 2627. When a commander or any superior authority makes a decision regarding the filing, the commander should consider the following:

1. Any record of nonjudicial punishment which includes a finding of guilty for having committed a sex-related offense will be filed as a sex-related offense in the performance folder of the Soldier's OMPF. This requirement applies to all Soldiers in all components, regardless of grade. Commanders do not have the option to designate these documents be filed locally or in the restricted folder of the Soldier's OMPF. Documents will be archived on the interactive Personnel Electronic Records Management System (iPERMS) (see paragraph 3–6, above).

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

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

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

(2) *Mailing addresses.* The original DA Form 2627 will be transmitted by the MPD or unit personnel office to one of the following:

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

(b) For U.S. Army Reserve (USAR) commissioned officers: U.S. Army Human Resources Command (AHRC–CIS–P), 1 Reserve Way, St. Louis, MO 63132–5200.

(c) For Army National Guard (ARNG) commissioned officers: Chief, Army National Guard Bureau (NGB–ARP–C), 111 South George Mason Drive, Arlington, VA 22204–1382.

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

(e) For USAR enlisted Soldiers: U.S. Army Human Resources Command (AHRC–CIS–P), 1 Reserve Way, St. Louis, MO 63132–5200.

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

c. Unit copy.

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

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

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

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

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

g. Allied documents. Allied documents will be transmitted for administrative convenience with the original DA Form 2627 for filing in the restricted folder of the OMPF (see para 3–44, below). The servicing legal office shall redact the personally identifiable information of all parties, except the Soldier being punished and any co-conspirator(s), from all allied documents transmitted for filing in a Soldier's OMPF or uploaded into the Military Justice Online enterprise system.

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

3–38. Supplementary action

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

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

c. Distribution and filing.

(1) *Original.* If the DA 2627 that initially imposed punishment was forwarded to the appropriate custodian of the

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

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

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

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

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

3–39. Reconciliation log

Imposing commanders, assisted by their supporting paralegal specialist, will ensure that punishments imposed under the provisions of UCMJ, Art. 15 are executed. Execution of punishments of reduction and forfeiture of pay will be verified and documented by the mandatory use of the Reconciliation Log, DA Form 5110 (Article 15–Reconciliation Log), showing the punishment, dates verified, and initials of verifying paralegal specialist. To properly use DA Form 5110, all UCMJ, Art. 15 records (DA Form 2627) made by the unit paralegal specialist must be sequentially numbered and the required data entered in the DA Form 5110. Unit paralegal specialists will use the unit commander's financial report, the Soldier's leave and earnings statement, or the daily record of financial transactions to verify execution of forfeitures and reductions. For active duty (AD) Soldiers, the chief paralegal NCO for the GCMCA or a designee will inspect, at least annually, the execution of UCMJ, Art. 15 forfeitures and reductions by review of DA Form 5110, including random verification using finance records. For Army reserve Soldiers, the chief paralegal NCO of the regional readiness commands or other major subordinate commands (MSC) reporting to the U.S. Army Reserve Command (USARC) is required to conduct this inspection at least every 2 years. The chief legal NCO or designee at the GCM level, on a quarterly basis, will transmit to the custodian of the OMPF the name, social security number, and the date the nonjudicial punishment was imposed. For Army reserve Soldiers, the chief paralegal NCO of regional readiness commands or MSCs reporting to USARC will transmit this information to the custodian of the OMPF twice yearly. The OMPF custodian will transmit verification of the OMPF filing of nonjudicial punishment records to the chief legal NCO or designee. After information is verified on the DA Form 5110, supporting finance documentation showing execution of the reduction or forfeitures, as well as the verification of OMPF filings by the OMPF custodian will be retained for 2 years after the date the punishment was imposed.

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

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

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

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

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

a. Change in status on or after 1 September 1979. On approval of a change in status from enlisted to commissioned officer, on or after 1 September 1979, DA Forms 2627—recording nonjudicial punishment received while in an enlisted status and filed in the OMPF—will be transferred to the restricted section of the OMPF. Copies of such

records in the career management individual file (CMIF) and unit nonjudicial punishment or personnel files will be destroyed.

b. Wholly set aside since 1 September 1979. All DA Forms 2627 of commissioned officers and enlisted Soldiers filed in the OMPF reflecting that punishments have been wholly set aside (see para 3–28, above) since 1 September 1979, will be removed from the Soldier's record. The DA Form 2627 reflecting the original imposition of punishment, if filed in the military personnel records jacket, CMIF, or unit nonjudicial punishment or unit personnel files will be destroyed.

c. Change in status and wholly set aside prior to 1 September 1979.

(1) On request of the individual Soldier, the following will be transferred to the restricted section of the Soldier's OMPF:

(a) Records of nonjudicial punishment received while serving in a prior enlisted status.

(b) Records of nonjudicial punishment wholly set aside prior to 1 September 1979. Copies of such records filed in the CMIF, military personnel records jacket, or the unit nonjudicial punishment or personnel files will be destroyed.

(2) Transfer from the performance to the restricted file will automatically cause copies of such records filed in the CMIF to be destroyed. Requests will be mailed directly to the custodian of the MPF (usually at the local MPD or unit personnel office) and to the following custodian of the OMPF:

(a) For AA commissioned officers, send requests to the U.S. Army Human Resources Command (AHRC: PDR–R), 1600 Spearhead Division Ave., DEPT. 420, Fort Knox, KY 40122–5420.

(b) For AA enlisted personnel, send requests to U.S. Army Human Resources Command (AHRC-EFS), 1600 Spearhead Division Ave., Fort Knox, KY 40122.

(c) For reserve personnel, send requests to the Commander, HRC-St. Louis (DARP–PAS–EV), 9700 Page Blvd., St. Louis, MO 63132–5200.

(3) These requests will not constitute a basis for review by a special selection board or its equivalent.

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

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

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

Rule	If the—	on the basis that—	then the record of nonjudicial punishment (DA Form 2627) file in—	
1	Commander who imposed the punishment, successor in command, or superior authority wholly sets aside the punishment.	Evidence exists which demonstrates that the punishment resulted in a "clear injustice " (see para 3–28).	Removed from the Soldier's record.	
2	Member in the grade of E5 or above applies to the DASEB for transfer.	The record of nonjudicial punishment has served its punishment, has served its purpose, and that removal is in the best interest of the Army.	The performance portion of the OMPF will, on approval of the member's application, be transferred to the restricted portion of the OMPF and the copy in the unit nonjudicial punishment file removed.	
3	Member applies to ABCMR for transfer of records of nonjudicial punishment from the performance portion of the OMPF.	Evidence exists which demonstrates error or injustice to a degree justifying removal.	The performance portion of the OMPF will, on approval of the member's application, be processed in accordance with the instructions of the ABCMR.	Providing that, if the member is in the grade of E–5 or above and applies for the reasons described in paragraph 3–43*b*(1), the member has already applied to DASEB, and the request was denied.

b. Policies.

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

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

(3) The request must be in writing and should include the Soldier's current unit mailing address and duty telephone number. Requests by enlisted Soldiers (SGT and above) should also include a true copy of the DA Form 2 (Personnel Qualification Record–Part I) and DA Form 2–1 (Personnel Qualification Record–Part II), certified by the custodian of the record. No person is authorized to appear in person before the DASEB.

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

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

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

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

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

c. Processing requests.

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

(2) *Reserve component personnel.*

(a) Requests submitted by USAR officer and enlisted Soldiers not on active duty are normally processed through the Commander, U.S. Army Human Resources Command (AHRC–CIS–P), 1 Reserve Way, St. Louis, MO 63132–5200. The DASEB will then take action on the request.

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

d. Amendment rights. These procedures do not limit or restrict the right of Soldiers to request amendments of their records under the Privacy Act and AR 340–21. Neither do they limit or restrict the authority of the DASEB to act as the denial authority under AR 340–21.

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

3–44. Use of records

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

b. A record of nonjudicial punishment or a duplicate as defined in Military Rule of Evidence 1001(4), not otherwise inadmissible, may be admitted at courts-martial or administrative proceedings from any file in which it is properly maintained by regulation. A record of nonjudicial punishment, otherwise properly filed, will not be inadmissible merely because the wrong copy was maintained in a file.

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

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

Chapter 4
Disciplinary Proceedings Subsequent to Exercise of Jurisdiction by Civilian Authorities

4–1. General
This chapter covers policies on disciplinary proceedings under the UCMJ against persons who previously have been tried within the meaning of UCMJ, Art. 44 in a civilian court deriving its authority from a State of the United States or a foreign country.

4–2. Policy
A person subject to the UCMJ who has been tried in a civilian court may, but ordinarily will not, be tried by court-martial or punished under UCMJ, Art. 15, for the same act over which the civilian court has exercised jurisdiction.

4–3. Procedure
Subject to provisions of applicable international agreements on U.S. forces stationed in foreign countries, an officer exercising GCM jurisdiction may authorize disposition of a case under the UCMJ and the MCM despite a previous trial. The officer must personally determine that authorized administrative action alone is inadequate and punitive action is essential to maintain discipline in the command, provided the case is processed as follows:

a. When the officer exercising SCM jurisdiction over the offender determines that the imposing nonjudicial punishment under UCMJ, Art. 15, is appropriate, a full written report will be sent through channels to the officer exercising GCM jurisdiction. The officer exercising GCM jurisdiction may dispose of the matter or authorize proceeding under UCMJ, Art. 15.

b. When the officer exercising SCM jurisdiction over the offender determines that trial by court-martial is required, a full written report to include charge sheets will be forwarded through channels, to the officer exercising GCM jurisdiction. The officer exercising GCM jurisdiction may, at that officer's discretion, dispose of such charges or, by endorsement, authorize a subordinate to take such action.

Chapter 5
Procedures for Courts-Martial

Section I
General

5–1. Scope
This chapter implements certain provisions of the RCM; the UCMJ; 10 USC chapter 47, as amended; and 28 USC 2101, which require implementation by the SECARMY, and provides other procedures related to courts-martial. For procedures related to courts-martial of foreign nationals subject to the UCMJ, see AR 27–52.

5–2. Courts-martial jurisdiction
a. Authority to convene courts.

(1) *Designation.* If a commander desires authority to convene courts-martial pursuant to UCMJ, Arts. 22(a)(8), 23(a)(7), and 24(a)(4), forward a request, through the SJA of the ACOM, to OTJAG, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200.

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

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

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

(d) Requests for designation as a convening authority must include the unit's official name and unit identification code, as established by the U.S. Army Center for Military History (DAMH) and must include the SJA paragraph(s) of the table of organization and equipment or the table of distribution and allowances (TDA), as appropriate, that has been approved by the Office of the Deputy Chief of Staff, G–3 (DAMO). The convening authority will send a copy of the redesignation directive or orders to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

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

(2) *Contingency commands.* Commanders exercising GCM authority may establish deployment contingency plans that, when ordered into execution, designate provisional units under AR 220–5.

b. Exercise of personal jurisdiction.

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

(2) *Members of reserve components.* Members of RCs must be on active duty, in a Title 10 duty status prior to arraignment (see chapter 20 for procedures to involuntarily activate RC Soldiers for courts-martial).

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

Section II
Court-Martial Personnel

5–3. Detail of trial counsel

a. Detail of trial counsel is a ministerial function to be exercised by the SJA or that officer's designee. The SJAs will provide timely notice to OTJAG, Criminal Law Division, of all officers performing trial counsel functions within their jurisdiction in order to facilitate future training and OTJAG tracking of individuals performing trial counsel duties.

b. The order detailing a trial counsel will indicate by whom the trial counsel was detailed, in writing in the record of trial or announced orally on the record.

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

5–4. Certification and use of lawyers

a. Commissioned officers, who are not members of the Army Judge Advocate General's Corps (JAGC), but who possess legal qualifications in the sense stated in UCMJ, Art. 27(b)(1) may be certified for duty as counsel by TJAG. As with certified JAGC counsel, detail of certified non-JAGC officers as trial and assistant trial counsel is a ministerial function performed by the SJA or that officer's delegate for the GCM jurisdiction where counsel are assigned or attached. The certified officer's commander must concur with the detail of the non-JAGC certified counsel. Funded Legal Education Program officers performing on the job training (OJT) may be detailed as assistant trial counsel. A Funded Legal Education Program officer who is detailed as assistant trial counsel must work under the supervision of a certified JA, detailed as trial counsel, who is primarily responsible for presentation of the case in court. The Chief, USATDS, or that officer's delegate will detail USATDS officers as defense counsel or assistant or associate defense counsel (see para 6–9, below).

b. The SJAs of GCM jurisdictions will submit the following to the Personnel, Plans and Training Office (DAJA–PT), 2200 Army Pentagon, Room 2B517, Washington, DC 20310-2200:

(1) Resumes of legal qualifications of officers recommended by them for certification.

(2) An affidavit or certificate attesting to admission to practice (under UCMJ, Art. 27(b)) and experience.

5–5. Qualified counsel at courts-martial

a. In all SPCMs and GCMs, the accused must be afforded the opportunity to be represented by counsel qualified under UCMJ, Art. 27(b).

b. Staff Judge Advocates may enter into arrangements with SJAs of local Navy or Air Force installations for certified, qualified counsel. Copies of such arrangements will be forwarded through major command SJAs to the

Commander, U.S. Army Legal Services Agency (USALSA). Exchanges involving USATDS counsel must be approved by the Chief, USATDS.

5–6. Qualified individual civilian counsel at courts-martial

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

a. The military judge.

b. The president of a court-martial sitting without a military judge, or

c. The SJA.

5–7. Individual military counsel

a. General. The accused has the right to be represented in his or her defense before a GCM or SPCM or at a preliminary hearing under UCMJ, Art. 32 by—

(1) Civilian counsel, if provided by the accused at no expense to the Government; and

(2) Military counsel assigned by the Trial Defense Service prior to referral of charges to represent an accused at a UCMJ, Art. 32 preliminary hearing or military counsel detailed after referral of charges in accordance with UCMJ, Art. 27; or

(3) Military counsel of the accused's own selection, if reasonably available. (See RCM 405(d)(2) and 506(b).)

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

c. Persons not reasonably available.

(1) The RCM 506(b)(1) provides in part as follows: While so assigned the following persons are unavailable to serve as individual military counsel because of the nature of their duties or positions:

(a) A general or flag officer;

(b) A trial or appellate military judge;

(c) A trial counsel;

(d) An appellate defense or Government counsel;

(e) A principal legal advisor to a command, organization, or agency and, when such command, organization, or agency has GCM jurisdiction, the principal assistant of such an advisor;

(f) An instructor or student at a service school or academy;

(g) A student at a college or university;

(h) Judge advocates assigned to the HQDA and DOD staff and Office of the General Counsel;

(i) A member of the staff of the Judge Advocate General of the Army, Navy, or Air Force, the Chief Counsel of the Coast Guard, or the Director, Judge Advocate Division, Headquarters, Marine Corps. These are in addition to any persons the Secretary concerned may determine to be not "reasonably available" to act as individual military counsel because of the nature or responsibilities of their assignments, geographic considerations, exigent circumstances, or military necessity.

(2) "Trial counsel" as used in RCM 506(b)(1)(C) is defined as a JA whose primary duty involves the law enforcement and prosecuting function.

(3) Pursuant to the authority set forth in UCMJ, Art. 38, and in RCM 506(b)(1), the following persons are also deemed not reasonably available to serve as individual military counsel:

(a) The Chief, Military Justice/Criminal Law Section, or person serving in an equivalent position.

(b) The USATDS counsel as set forth in paragraph 6–10*b*, of this regulation.

(c) Other persons determined to be unavailable under the provisions of *d*, below.

d. Reasonable availability determinations. In determining the availability of counsel not governed by the provisions of paragraph *c*, above, the responsible authority under RCM 506(b)(1) may consider all relevant factors, including, but not limited to, the following:

(1) The requested counsel's duty position, responsibilities, and workload.

(2) Any ethical considerations that might prohibit or limit the participation of the requested counsel.

(3) Time and distance factors, that is, travel to and from the sites, the anticipated date, and length of the trial or hearing.

(4) The effect of the requested counsel's absence on the proper representation of the requested counsel's other clients.

(5) The number of counsel assigned as trial or assistant trial counsel to the UCMJ, Art. 32 preliminary hearing or trial.

(6) The nature and complexity of the charges and legal issues involved in the case.

(7) The experience level, duties, and caseload of the detailed military defense counsel.

(8) Overall impact of the requested counsel's absence on the ability of the requested counsel's office to perform its

required mission; for example, personnel strength, scheduled departures or leaves, and unit training and mission requirements.

e. Prior attorney-client relationship. Notwithstanding the provisions of *c* and *d*, above, if an attorney-client relationship exists between the accused and the requested counsel regarding matters that relate solely to the charges in question, the requested counsel will ordinarily be considered available to act as individual military counsel. The Chief, USATDS (or as applicable, appropriate designee pursuant to paras 6–9 and 6–10) will review all claims asserting the existence of a prior attorney-client relationship.

f. Procedure.

(1) Request for an individual military counsel should be made by the accused or the detailed defense counsel through the trial counsel to the convening authority. If the requested person is among those not reasonably available under subsection (b)(1) of RCM 506 or under regulations of the Secretary concerned, the convening authority will deny the request and notify the accused, unless the accused asserts that there is an existing attorney-client relationship regarding a charge in question or that the person requested will not, at the time of the trial or preliminary hearing for which requested, be among those so listed as not reasonably available.

(a) If first, there is no claim of an existing attorney-client relationship, and second, the person is not among those so listed as not reasonably available, the convening authority will forward the request to the commander or head of the organization, activity, or agency to which the requested person is assigned. That authority will make the administrative determination as to whether the requested person is reasonably available in accordance with the procedure prescribed by the Secretary concerned. The availability determination is a matter within the sole discretion of this authority. An adverse determination may be reviewed upon request of the accused through that authority to the next higher commander or level of supervision, but no administrative review may be made that requires action at the Department of the Army or higher level.

(b) If the accused's request claims an existing attorney-client relationship and the requested counsel is no longer assigned to the USATDS, then the convening authority will forward the request to the Chief, USATDS, and the commander or head of the organization, activity, or agency to which the requested person is currently assigned. The Chief, USATDS will consult with the commander or head of the organization, activity, or agency to which the requested person is assigned. The Chief, USATDS will make an administrative determination as to whether an attorney-client relationship in fact exists. If it is determined that such a relationship exists there will be a presumption that the requested person is reasonably available. The commander or head of the organization, activity, or agency to which the requested person is assigned, however, will make the final determination as to whether the requested person is reasonably available in accordance with the procedure prescribed by the Secretary concerned. This determination is a matter within the sole discretion of this authority. An adverse determination may be reviewed upon request of the accused through the Chief, USATDS, to the Commandant and Commander, The Judge Advocate General's Legal Center and School (TJAGLCS) or other designated higher commander or level of supervision. However, no administrative review may be made that requires action at the Department of the Army or higher level.

(2) Requests for personnel to act as individual military counsel will be processed under the provisions of RCM 506(b)(2) and this regulation. They will be sent through the trial counsel to the convening authority. Requests will contain, at a minimum, the following information:

(a) Name, grade, and station of the requested counsel.

(b) Name, grade, and station of the accused and the accused's detailed defense counsel.

(c) The UCMJ article(s) violated and a summary of the offense(s).

(d) Date charges were preferred and status of case, for example, referred for preliminary hearing under UCMJ, Art. 32, referred for trial by GCM, or SPCM.

(e) Date and nature of pretrial restraint, if any.

(f) Anticipated date and length of trial or hearing.

(g) Existence of an attorney-client relationship between the requested counsel and the accused, in this or any prior case.

(h) Special circumstances or other factors relevant to determine availability.

(3) Requests for USATDS counsel to act as individual military counsel will contain the same information as in (2), above, and will be processed according to paragraph 6–10 of this regulation.

(4) Requests for military judges to act as individual military counsel pursuant to paragraph 5–7*e* above, will contain the same information as in (2), above, and will be processed according to paragraph 7–9 of this regulation.

g. Control and support of individual military counsel.

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

(2) The Chief, USATDS, will exercise operational control over non-USATDS individual military counsel when counsel are to perform required defense duties. The USATDS will provide non-USATDS individual military counsel all support normally given to USATDS counsel. The USATDS will also render letter reports when appropriate.

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

5–8. Professional standards

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

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

c. Personnel involved in court-martial proceedings are encouraged to look as well to other recognized sources (for example, decisions issued by State and Federal courts or ethics opinions issued by the American Bar Association (ABA) and the States) for guidance in interpreting these standards and resolving issues of professional responsibility.

5–9. Rating of court members, counsel, and military judges

a. Court members and counsel.

(1) Under the UCMJ, Art. 37(b) the consideration and evaluation of the performance of duty as members of a court-martial is prohibited in preparing effectiveness, fitness, or evaluation reports on members of the Armed Forces. The UCMJ, Art. 37(b) also prohibits giving a less favorable rating or evaluation of any member of the Armed Forces because of the zeal with which such member, as counsel, represented any accused or victim before a court-martial (see UCMJ, Art. 37(a) and RCM 104 regarding prohibition of unlawful command influence).

(2) Counsel assigned to the USATDS will be rated as provided by the Chief, USATDS.

b. Military judges. The UCMJ, Art. 26(c) provides that, unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of the convening authority's staff will prepare or review any effectiveness, fitness, or evaluation report of the military judge of a GCM that relates to that officer's performance as a military judge. All active and reserve members of the U.S. Army Trial Judiciary will be rated within judicial channels in accordance with rating schemes promulgated by the chief trial judge. All active and reserve appellate judges will be rated in accordance with rating schemes published by the Chief Judge, U.S. Army Court of Criminal Appeals.

5–10. Preparation by court-martial personnel

a. To be properly prepared for duty as president or counsel of an SPCM or as an SCM officer, persons so detailed must read and understand publications about their duties (see subparagraphs (1) through (3), below). Before the trial of the first case by a court, the SJA will ensure, through counsel who are not involved with the prosecution, that—

(1) The president of the SPCM, and at the discretion of the SJA, those members who may become president because of challenges or other reasons, are familiar with Appendix 8, MCM, 2012.

(2) Detailed trial counsel of the SPCM who are not certified under UCMJ, Art. 27(b), are familiar with Appendix 8, MCM, 2012.

(3) The SCM officer is familiar with DA Pam 27–7.

b. The DA Pam 27–7 should be used by the SCM officer during trial (see also app 9, MCM, 2012). In special courts-martial without a military judge, the procedural guide in Appendix 8, MCM, 2012, should be used by the SPCM president both in open and closed session.

c. The general instructional or informational courses in military justice excluded from the general prohibitions contained in UCMJ, Art. 37(a) and RCM 104, are those authorized in chapter 18 of this regulation. No other instruction related to the exercise of UCMJ requirements is authorized. However, this does not restrict the procedural preparation of court-martial personnel as outlined in this paragraph. Court members detailed to a functioning court may never be oriented or instructed on their immediate responsibilities in court-martial proceedings except by—

(1) The military judge, or

(2) The president of a SPCM without a military judge in open court.

5–11. Reporters

a. Detail. Reporters will not be detailed to SCMs. Reporters will be detailed to all SPCMs and GCMs.

b. Clerical assistance. A convening authority will, when necessary, furnish clerical personnel to assist SCMs and SPCMs to maintain and prepare a record of the proceedings.

5–12. Authorization for payment of transportation expenses and allowances to civilian witnesses appearing before Article 32 preliminary hearings

a. A civilian witness, whose testimony is determined to be relevant, not cumulative, and necessary under RCM 405(g) and who is invited to testify before a UCMJ, Art. 32 preliminary hearing, is authorized transportation expenses and allowances.

b. Civilian witnesses will not be requested to appear before a UCMJ, Art. 32 preliminary hearing until payment of the transportation expenses and allowances has been approved by the GCMCA. The authority to approve, but not disapprove, the payment of transportation expenses and allowances may be delegated to the preliminary hearing officer or the GCMCA's SJA. An approved request to appear will inform the witness of the pertinent entitlements.

5–13. Reports and investigation of offenses

a. Any military authority, including a military law enforcement agency, that receives a report of a serious offense, will advise the trial counsel at the initiation of, and critical stages in, the investigation. The commanding general, U.S. Army Criminal Investigation Command (USACIDC) may approve exceptions to this requirement on a case-by-case basis. Trial counsel will confer regularly about all developing cases with the local Criminal Investigation Command (CID) and military police (MP) personnel. Trial counsel should work closely with and provide legal advice to investigative entities throughout the investigative process. If the alleged misconduct involves an Army Reserve Soldier, military authorities must make the same notifications to the Chief, Military Law Division, OTJAG, U.S. Army Reserve Command. This will ensure that the Army Reserve is aware of any serious allegations of misconduct involving Army Reserve Personnel.

b. Staff Judge Advocates shall report to the Chief, OTJAG, Criminal Law Division and the Executive Officer to TJAG, via e-mail or telephone, all allegations of serious offenses committed by Soldiers assigned to their respective GCMCAs, as well as all cases that may have significant media and/or high visibility interest. Staff Judge Advocates must be sensitive to reporting requirements in this chapter, and make complete and timely reports. Such reports are designed to improve situational awareness and communication within the DOD, while at the same time protecting the accused's right to a fair trial, free from unlawful command influence. None of the reporting requirements, are intended to preclude a commander's complete evaluation of a case and the exercise of independent discretion before deciding what action to take, if any. Information forwarded under this paragraph does not constitute protected attorney work-product.

(1) For purposes of this paragraph, serious offenses include:

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

(b) Any alleged UCMJ, Art. 118 offense.

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

(d) Any alleged grave breaches of, or serious crimes under, the law of armed conflict.

(2) Reports of serious offenses will be submitted within 48 hours of discovery or notification of the offense when there is a credible allegation that a Servicemember has committed a serious offense. A credible allegation exists when there is probably cause to believe the offense was committed by the Servicemember (see para 5–13b(3) for initial report format requirements).

(3) Contents of the initial report (this information is exempt under AR 335–15 from management information control).

(a) Initial reports shall include that information normally contained in a Serious Incident Report (SIR). (See AR 190–45.) The initial report shall also contain the investigating agency, counsel (if known), and confinement status of the subject. If available, ERBs or ORBs of the subject(s) should accompany the initial report.

(b) Updates will provide the date of all significant events and a brief description of the outcome of that event. Copies of the preferred charges, referred charges, and result of trial will be provided within 24 hours of their completion.

(4) For offenses punishable by death under the UCMJ:

(a) Initial reports will be updated immediately following significant events, which include, but are not limited to, the following: preferral of charges, completion of the Article 32 preliminary hearing, completion of the Article 32 preliminary hearing officer's report, referral of charges, arraignment, Article 39(a) sessions, trial, and initial action. Additionally, updates should be provided for the substitution or addition of counsel and within 24 hours of any decision to dismiss any specification alleging a serious offense.

(b) Within 30 days of either preferral or pretrial confinement, whichever is sooner, a more complete report (see fig. 27–1) detailing the allegations, potential RCM 1004(c) aggravating factors, victims, and other available information must be submitted by electronic or traditional mail: OTJAG, Criminal Law Division (DAJA-CL), 2200 Army Pentagon, Room 3D548, Washington, DC 20310–2200 and the Personnel, Plans, and Training Office (DAJA-PT), 2200 Army Pentagon, Room 2B517, Washington, DC 20301–2200. If USATDS has provided input regarding expected personnel requirements, budgeting estimation, facility needs, and other resourcing requirements, this input must also be included in the report.

(c) At least 7 days prior to determination of disposition, the SJA must notify the Chief, OTJAG, Criminal Law Division and the Executive Officer by e-mail or telephone.

(d) See chapter 28 for resourcing considerations and other issues regarding capital cases. For cases alleging an UCMJ, Art. 118 offenses or any other case involving complex issues or high-visibility, use chapter 28 as a guide to securing sufficient personnel and resources to manage the case.

5–14. Procedures related to U.S. Soldiers of foreign nationality facing courts-martial

This paragraph provides the notification requirements of the Vienna Convention on Consular Relations and bilateral agreements between the United States and other nations regarding consular notification applicable to foreign nationals

serving in the U.S. Army who are apprehended or detained to face court-martial within the territory of the United States.

a. The SJA must determine whether an agreement exists between the United States and the foreign national's country that requires mandatory notification of the foreign country's nearest embassy or consulate when its national is arrested or detained by the United States. A list of mandatory notification countries and jurisdictions is available at the State Department's Web page: http://www.travel.state.gov/content/travel/english/consularnotification/countries-and-jurisdictions-with-mandatory-notifications.html. For assistance with determining the existence of applicable agreements, contact OTJAG, International and Operational Law Division.

b. If a mandatory notification agreement exists:

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

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

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

c. If there is no mandatory notification agreement:

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

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

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

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

Section III
Pretrial

5–15. Pretrial confinement

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

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

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

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

5–16. Preparation of charge sheet

a. The RCM 307 and DD Form 458 (Charge Sheet), provide instructions in the preparation of charges and specifications. (The DD Form 458 is approved for electronic generation; see the app 4, MCM, 2012, for an example of a properly prepared charge sheet.) Available data as to service, social security number, and similar items required to complete the first page of the charge sheet will be included. The original will be forwarded (see para 5–17) and signed. If several accused are charged on one charge sheet with the commission of a joint offense (see RCM 307(c)(5)), the complete personal data for each accused will appear on the first page of the charge sheet or on an attached copy. An extra signed copy of the charge sheet will be prepared for each additional accused.

b. After any charge is preferred, the DD Form 458 will automatically act to suspend all favorable personnel actions, including discharge, promotion, and reenlistment. Filing of a DA Form 268 (Report to Suspend Favorable Personnel Action), and other related personnel actions are still required. Failure to file DA Form 268, does not affect the suspension accomplished by the DD Form 458, or give rise to any rights to the Soldier (see AR 600–8–2). After preferral of a charge, regardless of any action purporting to discharge or separate a Soldier, any issuance of a discharge

certificate is void until the charge is dismissed, the Soldier is acquitted at trial by court-martial, or appellate review of a conviction is complete. Moreover, if a court-martial has adjudged an unsuspended punitive discharge, any issuance of a nonpunitive discharge certificate is void unless the GCMCA or an appellate court has disapproved the adjudged punitive discharge. The Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary's delegate, or the officer exercising GCMCA over the Soldier at the time of the Soldier's request for exception, may approve an exception to this subparagraph.

5–17. Forwarding of charges

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

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

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

5–18. Convening authority actions upon receipt of approved resignation for the good of the service in lieu of general court-martial

The tender of a receipt of approved resignation for the good of the Service (RFGOS) does not preclude or suspend courts-martial procedures. Commands may proceed with courts-martial, but the convening authority may not act on the findings and sentence of the court until the SECARMY or his delegate acts on the RFGOS. The command should expeditiously process the RFGOS to Commander, U.S. Army Human Resources Command (HRC) and not hold it in abeyance for any reason (see AR 600–8–24). In the event a court-martial is completed prior to action on the RFGOS, the SJA will immediately notify the Commander, HRC of the findings and sentence of the court-martial. No action will be taken to approve the findings and sentence, however, pending a decision on the RFGOS. When the SECARMY approves a RFGOS and the case requires a record of trial (after arraignment has occurred), a summarized report of the proceedings may be prepared instead of a verbatim transcript. If the convening authority receives an approved RFGOS from the Secretary of the Army or his delegee, the convening authority must—

a. Immediately release the accused from confinement, whether pretrial or post-trial, and

b. Disapprove findings only upon evidence of the approving authority's specific intent to vacate the entire court-martial proceedings. Absent this intent, continue to process the case through the appellate process, and

c. Disapprove the sentence and dismiss any pending charges.

d. Promptly notify the detailed military judge of the action on the request for resignation, if the case has already been referred.

5–19. Referral of charges

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

b. The convening authority or the convening authority's designee will notify the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200 of the following information on referral of a capital case (this information is exempt, under AR 335–15, from management information control):

(1) Name, grade, social security number (SSN), date of birth, race, and unit of the accused.

(2) The offenses with which the accused is charged.

(3) The names, sex, ages, and military or civilian status of the victims.

(4) The date of referral.

(5) Whether the accused is in pretrial confinement and the date confinement began.

(6) The names of the military judge, trial counsel, and defense counsel in the case.

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

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

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

(a) Rape or sexual assault under subsection (a) or (b) of UCMJ, Art. 120.

(b) Forcible sodomy under UCMJ, Art. 125.

(c) An attempt to commit specified in subparagraph *(a)* or *(b)*, above, as punishable under UCMJ, Art. 80.

(3) *Non-referral decisions requiring review.* A superior competent authority will review GCMCA decisions not to refer charges to trial by court-martial in cases involving sex-related offenses alleged by a victim as set forth in subparagraphs (4) and (5), below.

(a) In any case in which the accused is charged with committing multiple sex-related offenses against one victim and the GCMCA refers at least one sex-related offense to trial by court-martial, superior competent authority review is not required. If none of the sex-related offenses are referred, review by the appropriate superior competent authority is required (see subparagraphs (4) and (5), below).

(b) In any case in which the accused is charged with committing sex-related offenses against one or more victims and the GCMCA does not refer a sex-related offense allegedly committed against one or more victim(s), review by the appropriate superior competent authority is required (see subparagraphs (4) and (5), below).

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

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

1. Specific review requirements. As part of the review, the SECARMY will consider the following:

a. All statements provided by the victim(s) during the course of the criminal investigation regarding the alleged sex related offense(s); and

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

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

a. All preferred charges and specifications;

b. All reports of investigations of such charges, including the military criminal investigation organization report and the Art 32 investigation or preliminary hearing, as appropriate, report;

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

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

e. The SJA's written UCMJ, Art. 34 pretrial advice to the GCMCA;

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

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

3. Procedure for forwarding case file to the SECARMY. Case files forwarded to the SECARMY pursuant to this paragraph must be submitted to: OTJAG, Criminal Law Division (DAJA-CL), 2200 Army Pentagon, Room 3D548, Washington, DC 203010-2200.

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

b. The servicing OSJA shall email a scanned copy of the file, along with a hard copy file, containing the originals of the charge sheet, transmittal documents, and each of the documents and certifications set forth in subparagraph (4)*(a)(2)* above.

c. The Chief, OTJAG, Criminal Law Division will forward the file to The Deputy Judge Advocate General who will prepare the case file for review by the SECARMY. Nothing in this paragraph should be construed to provide an enforceable right of review beyond the SECARMY.

(b) In any case where a GCMCA declines to refer a sex-related offense to trial by court-martial, the SECARMY shall review the decision as the superior competent authority if the chief prosecutor, in response to a request by the detailed Government counsel, requests review of the decision by the SECARMY.

1. Submission of requests. Requests for review made to the chief prosecutor will be submitted to: OTJAG, Criminal Law Division (DAJA-CL), 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200.

2. Enclosures. The servicing OSJA shall email a scanned copy of the Government counsel's request and a scanned

copy of the file, along with a hard copy file, containing the originals of the charge sheet, transmittal documents, and each of the documents and certifications set forth in subparagraph (4)*(a)(2)* above.

3. Designation of a chief prosecutor. Upon receipt, TJAG will designate a chief prosecutor to review the request.

4. Review by SECARMY. If the chief prosecutor approves the request, the elements of the case file will be forwarded to the SECARMY within 7 days of approval in accordance with subparagraph *(4)(a)3c* above.

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

(a) Specific review requirements. As part of the review conducted by the next superior GCMCA, consideration will be given to the requirements set forth in subparagraph *(4)(a)1* above.

(b) Elements of case file. A case file forwarded to the next superior GCMCA for review shall include each of the elements set forth in subparagraph *(4)(a)2* above.

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

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

2. Decision not to refer case to trial by court-martial. If the next superior GCMCA agrees with the subordinate GCMCA's decision not to refer the charges of a sex-related offense to trial by court-martial, he or she shall provide written justification for the decision and immediately notify the victim(s) as set forth in subparagraph f below. The next superior GCMCA will store the original case file in accordance with the file storage procedures outlined in AR 25-400-2 and DoDD 5055.2.

(6) *Victim to be informed of review decision.* The victim(s) of the alleged sex-related offense(s) shall be notified of the results of any review conducted pursuant to paragraphs *(4)* or *(5)* above. Notification to the victim(s) shall be conducted in a manner consistent with paragraph 17-15 of this regulation.

5–20. Accused's copy of charge sheet

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

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

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

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

5–21. Preliminary procedures

a. Docketing and calendar management.

(1) Upon referral of charges for trial, the trial counsel will—

(a) Serve or cause the charges to be served on the accused.

(b) Furnish a copy of the charges and specifications to the defense counsel detailed to the court-martial.

(c) Furnish a copy of the charges and specifications to the military judge with docketing responsibility for the convening authority's military unit by the next duty day. In the event of uncertainty about the identity of the military judge with docketing responsibility, the convening authority will cause a copy of the referred charges to be sent to the Office of the Chief Trial Judge. Charges should normally be transmitted by facsimile or electronically.

(2) If the accused has been or is under pretrial restraint, including confinement, arrest or restriction in lieu of arrest, or conditions on liberty, the trial counsel will inform the trial judge of its nature and duration. When the trial judge receives the charges and specifications, the trial judge will in all cases set the case for trial at an early date. The trial judge should normally docket a case for trial within 20 calendar days of the service of charges on the accused.

(3) Docketing procedures may include—

(a) Requesting mutually agreeable dates from counsel.

(b) Conferences under RCM 802.

(c) Sessions under UCMJ, Art. 39(a).

(4) The procedure used must ensure an early and orderly disposition of charges, so that—

(a) The right of the accused to a speedy trial is assured.

(b) The right of the Government to prompt resolution of charges in the interest of good order and discipline is assured.

(c) The right of the victim, if any, to proceedings free from unreasonable delay is assured.

(5) As part of the docketing procedure, counsel should report to the judge—

(a) Anticipated pleas.

(b) Estimated duration of proceedings.

(c) Whether the trial will be by judge alone.

(6) Once the military judge has set a date for trial, a party moving for continuance must present full justification as provided by law. If final disposition occurs by other means, such as administrative separation, counsel will advise the trial judge immediately.

(7) In computing the time periods above, the day that charges are served on the accused will be excluded. The last day of the period will be included unless it falls on Saturday, Sunday, or a legal holiday.

b. Court-martial sessions without members, under the Uniform Code of Military Justice, Article 39(a).

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

(a) A statement of the substance of the matter.

(b) The points and authorities on which counsel will rely.

(2) Counsel will comply with orders of the military judge regarding submission of briefs on pretrial motions. In the absence of an order, counsel are encouraged to submit briefs to the military judge and opposing counsel before UCMJ, Art. 39(a) sessions, outlining and citing authority for their position and will submit briefs in accordance with the Uniform Rules of Court (available on JAGCNet). The foregoing does not preclude matters from being raised and disposed of at the UCMJ, Art. 39(a), session other than those contained in the counsel's notice form.

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

(4) The use of audiovisual technology (such as video teleconferencing technology) to establish the presence of the accused is authorized, provided that the requirements of UCMJ, Art. 39 and the Manual for Courts-Martial, are satisfied.

c. Excusal of members. Prior to assembly of a court-martial, detailed members may be excused by the convening authority. The convening authority may delegate the preassembly excusal authority to a deputy or assistant commander, the chief of staff, or the SJA. After assembly of the members, members may be excused for good cause only by the detailed military judge or the convening authority (see RCM 505).

5–22. Witness attendance

a. Subpoenas. A subpoena must be sent certified first class mail, return receipt requested, and restricted delivery may be used for formal service of subpoenas (see RCM 703(e)(2)(D) and Discussion).

b. Warrants of attachment. When it is necessary to issue a warrant of attachment, the military judge or the convening authority, if there is no military judge, will use DD Form 454 (Warrant of Attachment). A warrant of attachment may be executed by a U.S. marshal or such other person who is not less than 18 years of age as the authority issuing the warrant may direct. When practicable, execution should be effected through a civilian officer of the United States (see RCM 703(e)(2)(g) and Discussion).

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

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

Section IV
Trial

5–23. Procedure for summary courts-martial

a. The DA Pam 27–7 and Appendix 9, MCM 2012, will serve as guides for SCM procedure (see also DA Pam 27–9), but nothing contained therein will give an accused any greater protection than that required by military due process.

b. Except when military exigencies require otherwise, the SCM officer will grant the accused an opportunity to consult with qualified defense counsel before the trial date for advice concerning—

(1) The accused's rights and options.

(2) The consequences of waivers of these rights in voluntarily consenting to trial by SCM.

c. Whenever the SCM officer denies the accused an opportunity to consult with counsel before trial, the circumstances will be fully documented by the SCM officer in a certificate attached to the record of trial. Failure to provide the accused with the opportunity to consult with counsel may make the record of the SCM inadmissible at a subsequent court-martial.

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

e. Counsel will not represent the Government at SCM unless the accused is represented by counsel and the staff judge advocate approves the representation.

5–24. Arraignment and pleas

When a UCMJ, Art. 39(a) session is conducted by the military judge before assembly, the arraignment may be held and the plea of the accused may be accepted at that time by the military judge. In addition, the military judge may enter at that time findings of guilty on an accepted plea of guilty.

5–25. Disclosure of pretrial restraint

If the accused has been subjected to pretrial restraint, the trial counsel will—

a. Disclose on the record that the accused has been subjected to pretrial restraint.

b. If necessary, present evidence explaining the nature of the restraint.

c. If the defense objects to the Government's characterization of the nature of the restraint, request the military judge to conduct an inquiry to determine the relevant facts and rule whether the restraint was tantamount to confinement.

5–26. Entry of findings of guilty pursuant to a plea

a. In a trial by courts-martial with members, a finding of guilty of the charge and specification may be entered immediately without vote (after a plea of guilty has been accepted by the military judge or president of a SPCM without a military judge). No such entry should be made as to any plea of guilty to a lesser included offense.

b. Because conditional guilty pleas subject the government to substantial risks of appellate reversal and the expense of retrial, SJAs should consult with the Chief, Criminal Law Division (DAJA–CL), OTJAG, HQDA, prior to the government's consent regarding an accused entering a conditional guilty plea at court-martial. Once this coordination is complete, the trial counsel may consent, on behalf of the government, to the entering of the conditional guilty plea by the accused in accordance with RCM 910(a)(2).

c. The military judge or president of a SPCM without a military judge will put the finding of guilty in proper form following the forms indicated in Appendix 10, MCM, 2012, and the instructions contained in RCM 918.

5–27. Personal identifiers of witnesses

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

5–28. Special courts-martial guidance

a. In each special court-martial (SPCM), a military judge shall be detailed except when a military judge cannot be detailed because of physical conditions or military exigencies; counsel qualified under UCMJ, Art. 27(b), will be detailed to represent the accused; and a verbatim record of the proceedings and testimony was made (see RCM 1103(c)(1)).

b. The servicing Staff Judge Advocate will prepare a pretrial advice, following generally the format of RCM 406(b).

c. Unless the convening authority causes restrictive language to be added to the "instructions" portion of block 14, DD Form 458, all SPCM referrals that meet the three requirements in subsection *a*, above, are empowered to adjudge a

bad-conduct discharge. There is no requirement to annotate on block 14 of DD Form 458 that the court is empowered to adjudge a bad-conduct discharge.

5–29. Sentencing

a. For purposes of RCM 1001(b)(2) and (d), trial counsel may, at the trial counsel's discretion, present to the military judge (for use by the court-martial members or military judge sitting alone) copies of any personnel records that reflect the past conduct and performance of the accused, made or maintained according to departmental regulations. Examples of personnel records that may be presented include—

(1) The DA Form 2 and DA Form 2–1.

(2) Promotion, assignment, and qualification orders, if material.

(3) Award orders and other citations and commendations.

(4) Except for summarized records of proceedings under UCMJ, Art. 15 (DA Form 2627–1), records of punishment under UCMJ, Art. 15, from any file in which the record is properly maintained by regulation.

(5) Written reprimands or admonitions required by regulation to be maintained in the OMPF or Career Management Information File (CMIF) of the accused.

(6) Reductions for inefficiency or misconduct.

(7) Bars to reenlistment.

(8) Evidence of civilian convictions entered in official military files.

(9) Officer and enlisted evaluation reports.

(10) The DA Form 3180 (Personnel Screening and Evaluation Record).

(11) Records relating to discipline and adjustment boards and other disciplinary records filed in corrections files in accordance with AR 190–47.

b. These personnel records include local nonjudicial punishment files, personnel records contained in the OMPF or located elsewhere, including but not limited to the CMIF and the correctional file, unless prohibited by law or other regulation. (See AR 600–8–104, which discusses personnel files, and AR 190–47, which discusses corrections files.) Such records may not, however, include DA Form 2627–1.

c. Original records may be presented instead of copies with permission to substitute copies in the record. (See MRE 901, for authentication of original copies.)

d. Staff Judge Advocates may designate personnel within the SJA Office to act as authorizing officials for Soldiers' OMPFs. Designation must be in writing and specify the period of time in which the designation will be valid. Once designated, these authorizing officials may access and download Soldiers' OMPFs from Government databases for use at courts-martial or administrative proceedings.

e. Automatic reduction to the lowest enlisted pay grade by operation of UCMJ, Art. 58a will be effected in the Army only in accordance with this paragraph.

(1) The trial court may adjudge a reduction to the grade of private E–1 or any intermediate grade or no reduction at all.

(2) Reduction to the lowest enlisted pay grade will be automatic only in a case in which the approved sentence includes, whether or not suspended, either—

(a) A dishonorable or bad-conduct discharge, or

(b) Confinement in excess of 180 days (if the sentence is awarded in days) or in excess of 6 months (if the sentence is awarded in months).

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

g. Hard labor without confinement. Hard labor without confinement is an authorized courts-martial sentence (see RCMs 1003(b)(6) and 1301(d)(1)). Hard labor without confinement (like the punishment of restriction) is not served until ordered executed in the convening authority's action in accordance with UCMJ, Art. 57c. A convening authority's approval of hard labor without confinement does not automatically reduce the convicted Soldier to the rank of private E–1 (see subpara *e* above, eliminating hard labor as triggering an automatic reduction under UCMJ, Art. 58a). Hard labor without confinement will—

(1) Be performed in a manner directed by the Soldier's immediate commander. Such duties will normally be performed in public view and may not include duties that constitute a safety or health hazard to the convicted Soldier;

(2) Focus on punishment and may include duty to induce fatigue;

(3) Not excuse the Soldier from his regular duties. The immediate commander will determine the number of hours of hard labor the Soldier will perform in addition to his regular duties;

(4) Not include duties associated with maintaining good order and discipline, such as charge of quarters and guard duties;

(5) Run consecutively once ordered executed and served in its entirely unless the executed portions are remitted by the convening authority;

(6) Soldiers performing hard labor without confinement will be provided the opportunity to consume three meals daily, though meals may be provided by meals ready to eat, or similar substitutes. Upon completion of the duties specified as the daily assignment of hard labor without confinement the Soldier should be permitted to take leave or liberty to which entitled.

Section V
Post-trial

5–30. Report of result of trial

a. Under RCMs 1101(a) or 1304(b)(2)(F)(v), the trial counsel or SCM officer will prepare a report of the result of trial at the end of the court-martial proceedings. It will be prepared on DD Form 2702–1 (Department of Defense Report of Result of Trial). A copy of the DD Form 2707–1 will be included in allied papers accompanying the record of trial. Post-trial prisoners who are transferred to the U.S. Disciplinary Barracks (USDB) or other military corrections system facilities must carry a copy of the DD Form 2707–1. The DD Form 2707–1 will include the total number of days credited against confinement adjudged whether automatic credit for pretrial confinement under *U.S. v. Allen*, 17 M.J. 126 (CMA 1984), or judge-ordered additional administrative credit under RCM 304, RCM 305, *U.S. v. Suzuki*, 14 M.J. 491 (CMA 1983), or for any other reason specified by the judge, in accordance with the blocks on the form numbered 7–9. It will also include the names and social security numbers of any co-accused. If required under the provision of 10 USC 1565, (see DOD interim policy in AR 27–10, for qualifying military offenses), the DD Form 2707–1 will identify the need for processing of a deoxyribo nucleic acid (DNA) sample. In addition, the DD Form 2707–1 will indicate whether the conviction requires sex offender registration (see para 24–2 for qualifying offenses). The completed DD Form 2707–1 will be typewritten, if practicable, or legibly handwritten.

b. The trial counsel will ensure that a copy of the DD Form 2707–1 is expeditiously provided to the DMPO in any case involving a reduction in rank or forfeiture of pay or fine. In Block 5 the trial counsel should indicate the effective date of any forfeiture or reduction in grade (see UCMJ, Arts. 57–58b, and RCM 1101).

c. When a sentence of death is adjudged, the SJA will immediately notify Criminal Law Division (DAJA–CL), OTJAG, HQDA of the following (this information is exempt under AR 335–15 from management control):

(1) Name, grade, SSN, and unit of the accused.

(2) Date sentence was adjudged.

(3) Offense(s) for which the sentence was adjudged.

d. The GCM authority will ensure that the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546, is expeditiously furnished copies of all transfer orders and excess leave orders or a copy of DA Form 31 (Request and Authority for Leave), when an accused has been transferred from his or her jurisdiction or placed on excess leave.

5–31. Assignment of post-trial Soldiers in confinement or on excess leave

Personnel accountability for post-trial Soldiers in confinement will be administratively transferred immediately after trial from their unit to the appropriate personnel control facility of the designated military confinement facility (MCF), except those Soldiers who receive a sentence of 120 days (4 months) or less of confinement, without a discharge, who will remain assigned to their parent unit. Personnel accountability for post-trial Soldiers on excess leave will be administratively transferred immediately after trial from their unit to the personnel control facility of the nearest confinement facility, or elsewhere based on direction from the Commander, HRC, or his delegate (see AR 190–47 and AR 600–62). Such administrative transfer of personnel accountability will not affect the authority of the convening authority who referred the case to trial to take action on the findings and sentence. All documents reflecting a change in the Soldier's duty status or unit assignment, including voluntary or involuntary excess leave documents, will be included with the allied papers in the record of trial. If the record of trial has been previously forwarded for appellate review, any new documents reflecting a change in duty status or unit assignment including voluntary, involuntary excess leave documents will be mailed promptly to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

5–32. Convening authority action

a. When taking action ordering the execution of any sentence to confinement, the convening authority will not designate the place of confinement. The place of confinement will be determined under AR 190–47. The convening authority will show in his or her initial action all credits against a sentence to confinement, either as adjudged or as approved, regardless of the source of the credit (automatic credit for pretrial confinement under *U.S. v. Allen*, 17 M.J. 126 (CMA 1984), or judge-ordered additional administrative credit under *U.S. v. Suzuki*, 14 M.J. 491 (CMA 1983)), RCM 304, RCM 305, or for any other reason specified by the judge. The convening authority will also show in the initial action if either adjudged or automatic forfeitures in accordance UCMJ, Art. 58b, were deferred or waived or both. If a reduction to private E–1 is required in accordance with UCMJ, Art. 58a, and paragraph 5–28 above, based on the approved sentence, such reduction will be noted in the convening authority's action and is effective on the date of

the action. If waivers of forfeitures are approved and included in the action, the waiver sentence must state the person to whom the forfeitures are to be awarded.

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

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

(2) The date sentence was adjudged.

(3) The exact sentence adjudged by the court.

(4) The convening authority's action, to include the heading, date, and name of the officer taking action.

c. Copies of orders promulgating convening authority action will be forwarded under paragraph 11–3 of this regulation.

d. See paragraph 5–29*e*, above, for instructions regarding the rules governing automatic reductions to the lowest enlisted pay grade when a convening authority approves confinement or a punitive discharge.

5–33. Transfer of convening authority action

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

5–34. Rehearing in cases in which the accused is absent without leave

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

a. Action by convening authority. The convening authority having jurisdiction over the appellant will make the final decision on the practicability of holding a rehearing. If the convening authority decides to defer the final decision, the convening authority will cause a notation to be placed in the accused's unit personnel file. The notation will state that the accused is in an absent without leave status and that a decision regarding rehearing on other charges is pending at a certain jurisdiction. In such cases, the SJA will return the original and all copies of the record for safekeeping to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

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

5–35. Suspension of sentence

a. The authority to suspend the execution of parts of a sentence is set forth in RCM 1108(b). No part of a sentence for which a convening authority is authorized to suspend as set forth in RCM 1108 may be suspended beyond a reasonable period. A reasonable period of suspension will be calculated from the date of the order announcing the suspension and will not extend beyond—

(1) Three months for an SCM.

(2) One year for an SPCM in which a bad-conduct discharge (BCD) was adjudged.

(3) Two years or the period of any unexecuted portion of confinement (that portion of approved confinement unserved as of the date of action), whichever is longer, for a GCM.

b. These limits do not include any time in which a suspension period is legitimately interrupted under RCM 1109(b)(4).

5–36. Vacation of suspended sentences

a. Sentences adjudged by GCM or by SPCM including a BCD.

(1) See RCM 1109(d). The DD Form 455 (Report of Proceedings to Vacate Suspension of a General Court-Martial or of a Special Court-Martial Sentence Including a Bad-Conduct Discharge Under UCMJ, Art. 72, and the RCM 1109) (see app 18, MCM, 2012) with appropriate modifications, may be used as a guide for the hearing and for recording the evidence relied on and the reason(s) for vacating the suspension. The original and two copies of any proceedings vacating a suspension will be sent to the office of the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

(2) In a case of a suspended dismissal, the officer exercising GCM jurisdiction over the accused, following a

vacation hearing under RCM 1109(d), will forward the record of the hearing and all recommendations and a proposed action to vacate the suspension, if the GCM authority recommends vacation, to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

b. Sentences adjudged by SPCM not including a BCD or by SCM (see RCM 1109(e)).

5–37. Disposition of recommendations and reviews after bad-conduct discharges approved

The original recommendation of the SJA or legal officer and the original of any subsequent review by a JA or legal officer will be attached to the record of trial. In addition, one copy will be attached to each copy of the record of trial. One additional copy of the recommendation or review will be sent without delay to the commander of the confinement facility to which the accused is being or has been transferred (see AR 190–47, chap 4).

5–38. Stay of execution of death sentence when accused lacks mental capacity

a. A convening authority will stay the execution of a death sentence as set out in RCM 1113(d)(1)(b).

b. A verbatim transcript of the hearing conducted, pursuant to RCM 1113(d)(1)(B), will accompany the findings of fact made by the military judge.

5–39. Clemency under Article 74

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

b. The SECARMY's functions, powers, and duties concerning military justice matters, which include UCMJ, Art. 74 clemency powers, have been assigned to the Assistant Secretary of the Army (Manpower and Reserve Affairs). (See 10 USC 3013(f).)

c. Except as noted below, TJAG may mitigate, remit, or suspend, in whole or in part, any unexecuted portion of a court-martial sentence prior to completion of appellate review. TJAG may not mitigate, remit, or suspend a sentence affecting a general officer, a sentence to confinement for life without eligibility for parole after that sentence is ordered to be executed, or a sentence imposing death or dismissal. The unexecuted portion of a court-martial sentence includes discharges or dismissals not yet ordered into execution; unserved confinement, hard labor without confinement, or restriction; and uncollected fines and forfeitures. Appellate review is complete upon promulgation of an order directing execution of the sentence in its entirety.

d. All other requests for clemency petitions to the SECARMY under UCMJ, Art. 74, should be addressed to the Army Review Boards Agency, Clemency and Parole Board, 251 18th Street South, CS5, 4th floor, Arlington, VA 22202–3531, and must be submitted by the convicted Soldier or an attorney or recognized veterans organization acting on the Soldier's behalf. If the Soldier is in confinement, the petition will be forwarded through the confinement facility commander. The confinement facility commander will forward the petition along with copies of relevant records reflecting on the Soldier's record in confinement. If the Soldier has reached his or her maximum release date, the Clemency and Parole Board no longer has authority to act on a clemency request. At that point, the Soldier should direct their request to either the Army Board for Correction of Military Records or the Army Discharge Review Board. The Army Discharge Review Board does not have authority over punitive discharges adjudged by a general court-martial.

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

5–40. Petition for new trial under Article 73

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

b. When direct review of petitioner's case is before either the U.S. Army Court of Criminal Appeals (USACCA) or the U.S. Court of Appeals for the Armed Forces (USCAAF), the petition for new trial will be filed with the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546. For all other cases, the petition will be filed with the Chief, Criminal Law Division, Office of The Judge Advocate General, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200. In either event, the petition must be filed within 2 years following the date of the convening authority's action on the record of trial.

Section VI
Records of Trial

5–41. Preparation

a. Records of trial will be prepared as prescribed in RCM 1103 and RCM 1305. Materials regarding pretrial confinement will be included in the record of trial. This includes, but is not limited to, a copy of the commander's checklist for pretrial confinement, DA Form 5112 (Checklist for Pretrial Confinement), and a copy of the magistrate's memorandum approving or disapproving pretrial confinement. Also, see paragraph 12–6 of this regulation for identification of companion cases on the covers of original records of trial. In all cases in which the convening authority approves confinement for 12 months or more, whether or not all or part of the confinement is suspended, an additional copy of the record of trial will be prepared for the Army Clemency and Parole Board for clemency review purposes and distributed under paragraph 5–46, below. The cover of this additional copy will be marked prominently with the phrase "Clemency Copy."

b. Prepare DD Form 490 (Record of Trial) and DD Form 491 (Summarized Record of Trial, Chronology Sheets). See also Appendix 14, MCM, 2012. The computation of elapsed days on the chronology sheets must be uniformly calculated.

(1) Staff Judge Advocates will indicate the number of days from the initiation of the investigation of the most serious arraigned offense to the date of arraignment in the remarks section of the DD Forms 490 and 491. No delays will be deducted, but an explanation for significant delays, such as additional offenses, sanity board, and so forth, may be discussed in the remarks section. The Clerk of Court (JALS–CCZ) will track this processing time for each general court-martial jurisdiction.

(2) The "cumulative elapsed days" column in item No. 7 will reflect only those delays listed in block No. 6. That portion of block No. 6 titled, "delay at request of defense," should be interpreted to mean only those delays that would be defense delays on speedy trial motions or those approved by the convening authority or the military judge in writing or on the record (see *United States v. Carlisle*, 25 M.J. 426 (CMA 1988)). Specific explanations of all delays listed in block No. 6 should be provided in the remarks section of the chronology sheet. For post-trial processing the only delays that may be deducted are extensions of time granted pursuant to RCMs 1105(c)(1), 1106(f)(5), and 1110(f)(1) or periods where action by the convening authority is expressly deferred pending the accused's testimony in another case, cooperation with an investigation, restitution of the victim, or similar contingency. Delays for the latter reasons should be documented by a granted defense request or explanatory memorandum in the accompanying papers. The number of days extension must be reflected by a negative number inserted immediately before the final total in the "cumulative elapsed days" column for delays pursuant to RCM 1105 and RCM 1106, and immediately after the final total in the "cumulative elapsed days" column for delays pursuant to RCM 1110. This should be accompanied by an entry in the remarks section. For example, "defense delay, RCM 1105(c): 6 days (31 March-5 April 1989)." Other post-trial delays, such as the time required for authentication of the record or time consumed in sending a record or recommendation to a distant defense counsel, may be noted in the remarks section, if desired, but no deduction will be made.

c. The SJA will include in the remarks section of the Chronology Sheet of DD Forms 490 and 491 a statement showing the confinement facility, personnel control facility, or other command to which the accused has been transferred, or whether the accused remains assigned to the unit indicated in the initial promulgating order. (See para 12–11*b* for other requirements.)

d. In GCM and SPCM cases in which a summarized record of trial is authorized (see RCM 1103(b)(2)), DD Form 491 will be used to prepare the summarized report (see app 13, MCM, 2012). If a reporter was detailed and actually served in that capacity throughout the trial, the convening or higher authority may direct that the proceedings be reported verbatim as prescribed by RCM 1103(b)(2)(B) and 1103(c)(1) and as indicated in Appendix 14, MCM, 2012.

e. If the proceedings have resulted in an acquittal of all charges and specifications or in termination before or after findings, the record of trial will be prepared under RCM 1103(e). In addition, the record will include a summary of the trial proceedings up to the disposition of the case and all documentary exhibits and allied papers. The DD Form 491 may be modified and used as a binder for the record of trial.

f. In SCM cases, preparation of DD Form 2329 (Record of Trial by Summary Court-Martial), (see app 15, MCM, 2012) also will include the following:

(1) In the left hand column of item 8, insert each article of the UCMJ alleged to have been violated and include a summary of each specification in the format outlined in Appendix 17, MCM, 2012.

(2) In the lower right hand corner of item 8, or the upper right hand corner of item 13, and only after the written review required by RCM 1112 has been completed and has determined the record of trial to be legally sufficient, enter the following phrase in block form: "This record of trial has been reviewed under UCMJ, Art. 64(a) and RCM 1112 and is legally sufficient."

(3) In those cases where review is completed under RCM 1112(f) or RCM 1201(b)(2), item 8 or item 13, as noted in (2) above, will be annotated with the result of the completed review. The original charge sheet (DD Form 458) and all allied papers, documentary evidence, and descriptions or photographs of physical evidence will be attached to the

original record of trial. After initial action, this file will be forwarded for JA review under paragraph 5–46*b*, of this regulation before disposition under paragraph 5–47*a*, of this regulation.

g. In the event a Soldier is tried in absentia, the Staff Judge Advocate will ensure that the documents used to notify the Deserter Control Point are included among the allied papers submitted with the record of trial.

h. Preparation of electronic records of trial in addition to an original record of trial will be accomplished in accordance with RCM 1103.

5–42. Readability of records of trial

The original and all copies of records of trial forwarded for appellate review, including examination under UCMJ, Art. 69, must meet the standards set forth below:

a. All copies must appear double-spaced on one side of 8 1/2- by 11-inch letter-size white paper of sufficient weight (for example, 20-lb.) that the print on each succeeding page does not show through the page above.

b. The type font must be pica, such as Courier 10 or a similar typeface with no more than 10 characters per inch, and it must clearly distinguish each character from all others, such as the letter "l" from the numeral "1."

c. The method used (typewriter, impact printer, laser printer) must produce a clear, solid, black imprint.

d. The top margin of each page must be sufficient (for example, 2 inches) so that no line of text is obscured by the document fasteners used to attach the pages.

e. All accompanying papers, to include stipulations, motions, briefs, appellate exhibits and copies, should, to the maximum extent practicable, be prepared in accordance with the standards noted above.

5–43. Retention of trial notes or recordings

a. For cases in which a summarized record of trial is authorized, the notes or recordings of the original proceedings will be retained until the record is authenticated.

b. For cases in which a verbatim transcript is required, the verbatim notes or recordings of the original proceedings will be retained until completion of final action or appellate review, whichever is later.

c. The verbatim notes or recordings may be kept by the trial counsel, an assistant, court reporter, or a clerk or stenographer acting under the trial counsel's direction.

5–44. Authentication of records of trial

a. Records of trial will be authenticated under RCM 1104(a).

b. The record of trial of a SPCM will be authenticated in the same manner as that of a GCM.

c. Records of trial should not be authenticated until all known administrative corrections have been made.

d. For purposes of authentication by the military judge, "record of trial" means the written transcript of all court-martial sessions and all prosecution and defense exhibits which were marked for identification or referred to on the record, regardless of whether received into evidence, and all appellate exhibits.

5–45. Service of record of trial on the accused and trial victims of sex-related offenses

a. Accused.

(1) Records of trial will be served under RCM 1104 (a) and (b), and RCM 1305(d). Under the provisions of RCM 1104 (a)(1) "[s]ervice of an authenticated electronic copy of the record of trial *with a means to review the record of trial* satisfies the requirement of service under RCM 1105(c) and RCM 1305(d)." (Emphasis added.) A prisoner who is not provided with the equipment necessary to review an authenticated electronic record of trial to the same extent that the prisoner would be able to review a printed record of trial does not have a reasonable "means to review the record of trial." Similarly, an unconfined accused without access to the necessary equipment to privately review an electronic record of trial does not have a reasonable "means to review the record of trial." Absent an express written waiver, service of an electronic record of trial on an accused without a reasonable means to review the record of trial does not satisfy the requirements of service under RCM 1105(c) and RCM 1305(d).

(2) Copies of the judge advocate's review under RCM 1112 shall be attached to the original and all copies of the record of trial. After the officer exercising general court-martial jurisdiction has taken final action, the accused shall be notified of the action and the accused shall be provided with a copy of the judge advocate's review. A certificate of service, attached to the record of trial, would be appropriate when the accused is served personally; otherwise receipt of service is required.

b. Victims of sexual assault. In a general or special court-martial, unless declined, a copy of the record of trial shall be given free of charge to a victim who has suffered a direct, physical, emotional, or pecuniary harm as a result of matters set forth in a charge or specification and is in named in a specification under UCMJ, Articles 120, 120b, 120c, 125, or any attempt to commit such offense in violation of UCMJ, Art. 80.

(1) *Notice.* Trial counsel shall cause each qualifying victim, as defined in subparagraph *b*, above, to be notified of the opportunity to receive a copy of the record of trial no later than authentication of the record of trial. A victim entitled to the record of trial may decline receipt of such documents in writing and any written declination shall be attached to the original record of trial.

(2) *Scope.* In a general or special court-martial, a copy of the record of trial shall be given free of charge to a victim as defined in subparagraph *b*, above, for a specification identified in subparagraph a, above, that resulted in any finding under RCM 918(a)(1). If a victim is a minor, a copy of the record of trial shall instead be provided to the parent or legal guardian of the victim.

(3) *Additional requirements.* Notice requirements and documents that are to be provided to qualifying victims are set forth in RCM 1103.

5–46. Forwarding of records of trial after initial action

a. In GCM cases (including proceedings ending in acquittal or termination (see RCM 1103(e)) and in SPCM cases in which a BCD or confinement for 1 year has been approved, where the accused has not waived appellate review under RCM 1110, the record of trial will be forwarded to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546. (See para 12–6 for identification of companion cases.) In cases in which an additional record of trial is prepared for the Army Clemency and Parole Board, the record will be sent directly to the Army Review Boards Agency, Clemency and Parole Board, 251 18th Street South, CS5, 4th floor, Arlington, VA 22202–3531.

b. In cases under RCM 1112(a) (including those in which the accused withdraws appellate review), the record of trial will be forwarded to a JA for review. Review under RCM 1112 may be done either by a JA in the Office of the SJA of the convening command or by a JA otherwise under the technical supervision of the SJA, if available. In the event no JA is available, the SJA may request that his higher technical chain appoint a JA to conduct this review. Following JA review, those records of trial that are required to be forwarded under RCM 1112(g) (1) or (2) will be transmitted to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546. Records of trial not required to be forwarded under RCM 1112(g)(1) or (2) will be filed under paragraph 5–47, below.

c. Forwarding of electronic copies of records of trial shall be in accordance with RCM 1104(a)(1). In cases in which the death penalty has been adjudged, and prior to forwarding the record of trial to the Clerk of Court, the SJA shall send notice that the record of trial is complete to the following: OTJAG, Criminal Law Division (DAJA-CL), 2200 Army Pentagon, Room 3D548, Washington, DC 20301-2200; the Government Appellate Division (JALS-GA), U.S. Army Legal Services Agency, 9275 Gunston Road, Fort Belvoir, VA 22060-5546; the Defense Appellate Division (JALS-DA), U.S. Army Legal Services Agency, 9275 Gunston Road, Fort Belvoir, VA 22060-5546; and the Personnel, Plans, and Training Office (DAJA-PT), 2200 Army Pentagon, Room 2B517, Washington, DC 20301–2200 (PP&TO).

5–47. Disposition of records of trial

a. On completion of review and any required supplemental action, records of trial for SCMs and SPCMs that do not involve approved BCDs or confinement of more than 364 days will be filed in accordance with AR 25–400–2 (record numbers 27–10a 1 and 2, and 27–10c 1 and 2, respectively).

b. On completion of any required review and supplemental action, original records of trial of GCMs, and SPCMs with approved BCDs or Dishonorable Discharges, or confinement for more than 364 days, will be sent for filing to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546. The distribution of the record of trial in SCM proceedings is discussed in paragraph 11–7*e* of this regulation.

5–48. Transmittal of records of trial

Delivery by electronic means should be used to transmit records of trial for any official purpose to recipients that permit the delivery of authenticated electronic copies of records of trial. Otherwise, certified first class mail with return receipt requested or delivery by commercial means with return receipt requested should be used to transmit records of trial for any official purpose.

5–49. Delegation of authority to modify procedures

Notwithstanding any other provision in this regulation and to the extent permitted by UCMJ, Art. 54 and the Manual for Courts-Martial, The Judge Advocate General has the authority to issue directions through technical channels, changing the procedures for preparing, copying, serving, certifying, authenticating, or distributing records of trial, including allied papers and orders, in order to make better use of technological improvements, notwithstanding any other provision in this regulation. Such direction may be promulgated by issuance of policy memoranda, technical instructions, or through other means deemed appropriate by The Judge Advocate General.

Section VII
Other considerations

5–50. Release of information pertaining to the administration of military justice and accused persons

a. General. Public information and access to military judicial proceedings promotes public awareness and confidence in the military justice system. Those responsible for administering military justice and those providing information to the public and the media must exercise sound judgment to strike a fair balance among the following: protection of individuals accused of offenses, the presumption of innocence until guilt is proven, improper or unwarranted publicity, public understanding and transparency of the military justice system, and the state of discipline in the military. No statements or other information shall be furnished to the news media or any other source for the purpose of prejudicing the outcome of an accused's trial, or which could reasonably be expected to have such an effect (see AR 27–26).

b. Release and dissemination of information. The release and dissemination of information pertaining to military justice matters, including accused persons, shall be accomplished via the convening authority's public affairs officer. Requests for information received from representatives of news media shall be referred to the appropriate public affairs officer for action. Care should be taken to indicate that the accused is alleged to have committed an offense, as distinguished from stating or implying that the accused has actually committed an offense. As a general rule, the charge sheet should not be released before arraignment unless the public interest significantly outweighs the privacy interest of the accused and the charge sheet has been appropriately redacted. The following factors should be considered when releasing charge sheets:

(1) *After preferral.* Generally, the grade of the accused and the general nature of the offenses may be released but the charge sheet should not be released because specifications can easily be amended.

(2) *Cases pending Article 32.* Generally, the name and grade of the accused and the general nature of the offenses may be released but the charge sheet should not be released because specifications can easily be amended.

(3) *After referral.* Generally, the name, grade, age, unit, duty station, and gender of the accused and the general nature of the charges may be released. A copy of the charge sheet generally will not be released.

(4) *After arraignment.* Because arraignment signifies greater finality of the charges (see RCM 601), an appropriately redacted copy of the charge sheet may be released. Any release of the charge sheet should be accompanied by a statement that charges are merely accusations and that the accused is presumed innocent until proven guilty.

(5) *Prohibited information.* Subjective opinions, observations, or comments concerning the accused or any witness's character, demeanor, credibility, or expected testimony will not be released. Nor will any other information be released, when there is a reasonable likelihood that the dissemination of such information will affect the deliberations of an investigative body or the findings or sentence of a court-martial, or otherwise prejudice the due administration or military justice before, during, or after trial. Except for individuals listed in subparagraph *c* , below, no interviews or responses to the news media will be conducted without permission by the Executive Officer to the TJAG.

c. Trial defense counsel and defense appellate counsel. Personnel assigned to the Defense Appellate Division (DAD), U.S. Army Legal Services Agency (USALSA), will handle media inquiries in accordance with the policies of the Chief, DAD.

5–51. Exculpatory evidence discovered post-trial

a. General. Any member of the Judge Advocate Legal Service (JALS) who learns of new, credible, and material evidence or information creating a reasonable likelihood that an accused did not commit an offense of which the accused has been convicted at court-martial shall process that evidence as provided below.

b. After adjournment but before initial action.

(1) Any trial counsel who learns of such evidence or information shall promptly disclose that evidence to the accused through counsel and make reasonable efforts to cause an investigation to determine whether the evidence substantially affects any finding of guilty or the sentence.

(2) Any other member of JALS who learns of such evidence or information shall promptly disclose that evidence to the Staff Judge Advocate of the Convening Authority who referred the case to trial. The Staff Judge Advocate will then ensure such evidence is processed in accordance with subparagraph b(1) above.

c. After initial action but before final action. Any member of JALS who learns of such evidence or information shall promptly notify the Clerk of Court, JALS-CCZ, U.S. Army Legal Services Agency, 9275 Gunston Road, Fort Belvoir, VA 22060-5546. If the case in pending review under Article 66, UCMJ, the Clerk shall forward the notice to the appellate defense counsel of record or, if none has been assigned, the Chief, Defense Appellate Division. If the case is pending review under Article 69, UCMJ, the Clerk shall forward the notice to Office of The Judge Advocate General, Criminal Law Division (DAJA-CL), 2200 Army Pentagon, Room 3D548, Washington, DC 20310–2200.

d. After final action. Any member of JALS who learns of such evidence or information shall promptly notify the

Office of The Judge Advocate General (DAJA-CL), 2200 Army Pentagon, Washington, D.C. 20310-2200. The Criminal Law Division shall promptly forward the notice to the last known address of the accused.

Chapter 6
United States Army Trial Defense Service

6–1. General

This chapter governs the operations of the USATDS. It sets forth information, policies, and procedures applicable to the provision of defense counsel services throughout the Army. The Chief, USATDS, promulgates policies and procedures for the Trial Defense Service (TDS) that are incorporated by reference into AR 27–10.

6–2. Mission

The mission of USATDS is to provide specified defense counsel services for Army personnel, whenever required by law or regulation and authorized by TJAG or TJAG's designee. The USATDS will also develop programs and policies to promote the effective and efficient use of defense counsel resources and enhance the professional qualifications of all personnel providing defense services.

6–3. Organization

The USALSA, a field operating agency of TJAG, provides manpower, budgetary, and administrative support to USATDS. The agency may also receive manpower support from sustainment brigades and defense legal support organizations. Whether assigned to USALSA with duty at a particular installation or assigned to another organization, USATDS counsel are supervised, managed, and rated solely by their respective USATDS supervisory chain. Staff Judge Advocate and installation support responsibilities for TDS counsel (see para 6–4, below, and AR 27–1) apply, regardless of the TDA or modification table of organization and equipment (MTOE) authorization that the individual TDS counsel occupies. The Commander and Commandant, TJAGLCS, provide professional control and supervision of USATDS and its counsel, including UCMJ authority. The Commander, USALSA, exercises other command functions for USATDS counsel.

a. Chief, U.S. Army Trial Defense Service. The Chief, USATDS, is a JA, designated by TJAG, who exercises supervision, control, and direction of defense counsel services in the active Army and reserve component.

b. Region. The region is the major subordinate supervisory and control element of USATDS. It encompasses a geographical area designated by TJAG. The Chief, USATDS, has full authority and responsibility for the timely detail of defense counsel in courts-martial, UCMJ, Art. 32 preliminary hearings, and in other judicial and administrative proceedings requiring such detail. This authority may be delegated.

c. Regional defense counsel.

(1) An RDC is a JA designated by TJAG and certified under UCMJ, Art. 27(b), and is—

(a) Responsible for the performance of the USATDS mission within a region.

(b) The supervisor of all senior defense counsel within the region.

(2) The RDC—

(a) Provides training in military justice, trial tactics, and professional responsibility as directed by the Chief, USATDS.

(b) Maintains continuing liaison with SJAs, military judges, commanders, and convening authorities.

(c) Makes periodic visits to all field and branch offices within the region.

(d) As authorized by the Chief, USATDS, details defense counsel (see para 6–9, below).

(e) Recommends replacements for departing USATDS counsel.

d. Field office. A field office is a subordinate operating element of a region. It provides defense counsel services for specified organizations or geographical areas determined by the Chief, USATDS.

e. Branch office. A branch office is subordinate to a field office and is the smallest USATDS operational element. It normally consists of one USATDS counsel who provides defense services to specified organizations.

f. Senior defense counsel.

(1) A senior defense counsel is a JA, certified under UCMJ, Art. 27(b), who is responsible for the performance of the USATDS mission within the area serviced by a field office. The senior defense counsel is the direct supervisor of all trial defense counsel within a field office. This includes those serving in subordinate branch offices.

(2) The senior defense counsel—

(a) As authorized by the Chief, USATDS and the regional defense counsel, details defense counsel (see para 6–9, below).

(b) Provides technical advice to trial defense counsel.

(c) Acts as the primary USATDS liaison with SJAs, commanders, and convening authorities of organizations served by the field office.

(d) Represents Soldiers in courts-martial, administrative boards, and other proceedings.

(e) Acts as consulting counsel prescribed by the Chief, USATDS.

g. Trial defense counsel. A trial defense counsel is a JA, certified under UCMJ, Art. 27(b), and currently assigned, attached, or detailed to the U.S. Army Legal Services Agency and the U.S. Army Trial Defense Service, whose primary duties are to represent Soldiers in courts-martial, administrative boards, and other proceedings and act as consulting counsel as required by law or regulations. Trial defense counsel performs other defense-related duties as prescribed by the Chief, USATDS.

6–4. Administrative and logistical support

Commanders of installations or organizations and their respective SJAs or the supporting legal office selected as duty stations for USATDS counsel will provide administrative and logistical support for USATDS personnel and document such support on organizational TDA or MTOE documents whenever possible. Specifically, the respective SJA is still responsible for administrative and logistical support of counsel assigned to a sustainment brigade regardless of the lack of command relationship between the sustainment brigade and the division or corps that those counsel and the SJA support. This support, specified by TJAG as essential to the performance of the defense mission, includes but is not limited to—

a. Permanent quarters for USATDS officers and Family members to the same degree as provided regularly assigned officers of similar grade and responsibility.

b. Processing of financial records, preparation of pay vouchers, and payment of all USATDS personnel.

c. Processing of military personnel records, officer record briefs, officer qualification records, leave records, and similar personnel requirements. The Chief, USATDS sets leave policies and approval authority for personnel assigned or attached to TDS.

d. The USATDS headquarters (HQ) staff will be responsible for preparing TDY orders of defense counsel and its support personnel.

e. Officer evaluation reports will be processed through HQ, USATDS.

f. Army transportation needed to perform the defense mission, at least to the same degree as is provided to regularly assigned officers of similar grade and responsibility. Government owned vehicles will be provided whenever possible when needed to support the defense mission.

g. Private office space, office furniture, equipment, supplies, class A telephone service, electronic research capacity, and library and reference material to the same degree as is provided to JAGC officers of the supported organization or greater if required (see AR 27–1). This may include technology, such as wireless laptops; personal computers; copiers; printers; Internet access; scanners; electronic mail accounts; facsimile machines; cellular telephones, and wireless handheld e-mail devices or services; to allow the provision of defense services to continue during periods of mission-related travel by the defense counsel.

h. Experienced and skilled enlisted clerical and support personnel.

(1) Such personnel will perform duties under the direct supervision of the senior defense counsel (SDC). Defense paralegals and support personnel will not be assigned legal duties within the local legal office without coordination with the SDC. Defense paralegals shall be rated and/or senior rated by TDS personnel whenever feasible. When preparing evaluation reports for defense paralegals and support personnel, the senior paralegal NCO for the servicing OTJAG will be consulted to ensure proper procedures and techniques are followed.

(2) Despite the manpower source from which they are derived (such as USALSA, sustainment brigades, defense Legal Services Organizations, and the OSJA), the primary duty of defense paralegals is TDS support. Accordingly, in the absence of coordination with the SDC and approval of the chief paralegal NCO and/or paralegal sergeant major assigned to the servicing GCMCA, defense paralegals will not perform duties incompatible with their primary mission. Soldiers performing duty as defense paralegals and support personnel will wear the TDS shoulder sleeve insignia and be assigned to a USATDS office for a minimum of 1 year, if practicable, in order to provide a stable defense work environment (see AR 27–1 and AR 570–4). Movement of legal personnel supporting a TDS office before serving in that capacity for 1 year will be coordinated with the RDC for the particular region concerned. Like TDS counsel, defense paralegal personnel will be offered training opportunities to be proficient as defense paralegals.

i. The adequacy of support provided by host installations will be a subject of special interest to TJAG in making statutory visits under UCMJ, Art. 6.

6–5. Funding responsibilities

a. Unless otherwise provided in subparagraph *b*, below, the Commander, USALSA, provides funding only for the travel and per diem costs of USATDS counsel and support personnel when travel away from the individual's place of duty or employment is ordered by the Chief, USATDS and is necessary to accomplish the following:

(1) Obtain professional and continuing legal education training for USATDS counsel and support personnel. However, the initial funding source for Defense Counsel Assistance Program (DCAP) directed or approved training for enlisted and civilian support personnel will be the convening authority for those personnel. If this funding is not available from the convening authority, the Commander, USALSA, will provide this funding.

(2) Provide representation to any service member facing court-martial charges. This representational travel includes trips to interview the accused or any witnesses; take depositions requested by the defense; investigate the case; and to attend GCM, SPCM, UCMJ, Art. 32 hearings, pretrial confinement hearings, or other pretrial hearings.

b. Convening authorities will continue to fund all other authorized costs related to judicial and administrative proceedings including, but not limited to, the following:

(1) Travel and per diem costs for USATDS counsel and support personnel when such travel is necessitated by a permanent change of location for the accused or a change in the location of the proceedings after preferral of charges.

(2) The USATDS counsel travel caused by the temporary movement of the accused from the accused's duty station. (Example: A Soldier, stationed at Fort Huachuca, AZ is placed in pretrial confinement at Fort Sill. Referral of charges is immaterial in establishing the convening authority's obligation to pay for such travel.)

(3) Travel and per diem costs for USATDS counsel and support personnel to attend depositions requested by the Government or ordered by a military judge.

(4) The appearance of individual military counsel not currently assigned to USATDS.

(5) All other investigative expenses properly authorized by a convening authority or military judge.

(6) The attendance of lay witnesses.

(7) When U.S. Government experts are not members of the defense team, but travel to testify as a witness at a trial, a UCMJ, Art. 32 hearing, or other pretrial hearing, whether called by the defense or Government, the travel and per diem expenses will be paid by the convening authority.

(8) Employment of civilian experts. When the convening authority hires non-U.S. Government-employed experts for the defense, the convening authority fixes the compensation and pays all costs related to such assistance, including all pretrial assistance to the defense. The USALSA pays no costs or expenses relating to the employment of civilian experts. Additional compensation deemed necessary by the defense will be addressed by subsequent requests to the convening authority or military judge.

c. Commanders will fund all USATDS counsel travel in support of operational or training exercise deployments and all USATDS counsel travel required for matters that are nonjudicial or administrative in nature. This includes separation boards, pre-deployment training, and medical travel.

d. Regarding fee requests for expert services and related purposes in capital cases, neither TJAG nor the Commander, USALSA, will approve or consider the merits of requests for funds to obtain expert services or for related purposes. Moreover, TJAG and the Commander, USALSA, will not consider, ex-parte, matters submitted in support of such requests. Requests for funding of this nature should be made to the appropriate authority: the commander presently exercising general court-martial convening authority over the accused or appellant, or the court before which the case is pending (a trial court after referral but before the authentication of the record of trial by the military judge; after authentication the USACCA or USCAAF as appropriate).

6–6. Training

As required by paragraph 6–2, above, the Chief, USATDS, in coordination with DCAP, develops programs and policies designed to enhance the professional qualifications of defense counsel and USATDS paralegal personnel. This will be accomplished primarily through the use of internally developed programs of instruction and attendance by USATDS counsel and USATDS paralegal personnel at continuing legal education courses offered by The Judge Advocate General's Legal Center and School (TJAGLCS). These programs may be supplemented at the discretion of the Chief, USATDS by criminal law, ethics, and related courses sponsored either by military agencies or civilian organizations. Attendance at courses sponsored by civilian organizations must be approved according to AR 1–211.

6–7. Installations without a U.S. Army Trial Defense Service office

a. When a USATDS office is not located at an installation, the post, organization, or activity JA will provide for all defense services and associated support requirements. The JA will not provide for representation at GCMs, SPCMs, and UCMJ, Art. 32 preliminary hearings. As such, representation remains a USATDS responsibility. The USATDS counsel will be provided on a TDY basis to perform such duties. Appropriate administrative and logistical support, similar to that outlined in paragraph 6–4, above, will be provided by the installation. Where personnel constraints do not permit the post or activity JA to provide defense services, JAs should coordinate with USATDS to install appropriate technology (for example, telephones, desktop video teleconferencing) that will permit the remote provision of defense services.

b. Except in unusual circumstances as determined by the Chief, USATDS, counsel will not be provided on a TDY basis by USATDS in matters that are nonjudicial or administrative in nature.

c. The post or activity JA will, on a continuing basis, designate an individual to act as direct liaison with the USATDS regional defense counsel on—

(1) Technical aspects of the defense function at the installation.

(2) Requirements for USATDS support.

d. When an installation has no servicing USATDS office or assigned JA, assistance will be obtained from the commander exercising GCM jurisdiction.

6–8. Mutual support responsibilities

a. General. Staff Judge Advocates and senior defense counsel will develop administrative policies and procedures to meet local requirements and support the basic mission of the command being served. They should meet often to discuss matters of mutual concern. Provision of counsel in cases involving such administrative matters as reports of survey, evaluation report rebuttals or appeals, traffic violations, or administrative letters of counseling or reprimand is an SJA responsibility. Senior defense counsel and SJAs should discuss and agree on the extent to which USATDS will share that responsibility.

b. Compliance with local policies. The USATDS counsel will comply with host installation command, personnel, and administrative policies; for example, duty hours, physical fitness, appearance, weapons qualification, uniform and equipment standards, and similar requirements, to the extent practicable and commensurate with the mission of USATDS. Senior defense counsel are encouraged to execute memoranda of understanding with local supporting units or organizations to reflect TDS independence and responsibility to ensure necessary Army and local standards are met. Approval authority for such MOUs rests with the RDC.

(1) The following exceptions to local policy exist independently of any MOU: U.S. Army Trial Defense Service counsel will not perform duty as installation or command staff duty officer or wear the shoulder patch or distinctive insignia of the local organization or command. The USATDS counsel will wear shoulder patches or other distinctive insignia as determined by TJAG.

(2) In all other cases, the RDC will coordinate proposed exceptions with the Chief, USATDS.

c. Assistance to Staff Judge Advocates. When the senior defense counsel determines that USATDS counsel are not fully employed in performing the defense mission, they will assist the SJA in performing other legal services. Such duties will be performed under the overall supervision of the SJA and may involve any aspect of the legal services mission not inconsistent with the defense function. Nondefense duties for military justice will be limited to those involving training or instruction. The USATDS counsel will not be assigned duties as on-call officer for the SJA. Senior defense counsel will, however, ensure that defense services are available and accessible during nonduty periods.

d. Assistance to the U.S. Army Trial Defense Service. If the defense workload at an installation temporarily exceeds the capability of the USATDS office to perform its mission, the SJA will, within the SJA's capability, provide non-USATDS counsel to assist in providing defense services. Non-USATDS counsel will not be detailed to a TDS office by an SJA without the approval of the Chief, USATDS, and when detailed, will perform defense duties under the supervision of the SDC. Normally, such duties will not involve representation at courts-martial or UCMJ, Art. 32 preliminary hearings. Non-USATDS counsel should not assist Soldiers with matters related to the subject of an attorney-client relationship that the Soldier already enjoys with a USATDS counsel.

e. Nondefense duties. Except as outlined in *a, b,* and *c* above, only the Chief, USATDS, may direct the performance of nondefense duties by USATDS counsel. The USATDS counsel may only be ordered to depart on or return from TDY by the Chief, USATDS. This latter authority may be delegated to a regional or senior defense counsel.

f. Tactical unit support. If a USATDS office is in support of a command whose mission includes field deployment for operational or training purposes, the Chief, USATDS, will designate one or more USATDS counsel, by name, for deployment. The HQ, USATDS staff will develop and maintain plans for USATDS' support of units with deployment missions. Deployment of USATDS counsel will be coordinated with, and approved by, the Chief, USATDS. The SJAs will coordinate with the senior defense counsel when USATDS tactical unit support is required.

g. Situations requiring immediate action. It is the intent of this regulation to ensure that an accused or suspect is promptly provided with legal consultation or representation, whenever required by law or regulation. If a situation arises requiring the immediate services of defense counsel, and USATDS counsel are not available, the SJAs will designate non-USATDS counsel to perform this service. The RDC will be advised of the circumstances. The USATDS counsel will thereafter be designated or detailed to represent the accused or suspect at further proceedings.

6–9. Detail of defense counsel

a. The Chief, USATDS details trial defense counsel for GCMs and SPCMs. This authority may be delegated down to senior defense counsel. Detail of counsel will be reduced to writing and included in the record of trial or announced orally on the record at court-martial. The writing or announcement will indicate by whom the counsel was detailed.

b. The authority to detail counsel does not alter an accused's right to be represented by civilian counsel provided at no expense to the Government or by military counsel of the accused's own selection (whether or not assigned to USATDS), if reasonably available. The act of detailing is an administrative designation by the detailing authority. It does not confer any status or rights nor does it alter any status or rights that may exist at the time of detailing. To meet requirements, the Chief, USATDS may authorize SJAs to recommend the detail of non-USATDS counsel. The Chief, USATDS or that officer's designee will detail non-USATDS counsel. The establishment of USATDS does not affect the basic legal qualifications of any JA, certified under UCMJ, Art. 27(b), to perform defense counsel duties, when such are properly assigned.

c. Detailing and IMCOM requests: When counsel is detailed to a case and an attorney-client relationship is established, there will be no need for an IMCOM request unless such a request comes after this relationship was appropriately severed (for example, the military judge granted an application for withdrawal; the accused expressly consented to the excusal or withdrawal of the trial defense counsel or previously dismissed such counsel from such service; or the ETS/resignation of the attorney or client), even if the defense counsel or accused change duty stations or assignments. The detailed trial defense counsel will continue to serve as the accused's attorney.

6–10. Requests for individual military counsel

a. General. In circumstances when the accused and a requested individual military counsel assigned or detailed to USATDS are within the same USATDS region, the Chief, USATDS may delegate the authority to determine eligibility of individual military counsel to the RDC. In such delegation cases, the Chief, USATDS will act on appeals from adverse determinations made by the RDC. In all other cases, the Chief, USATDS determines the availability of USATDS counsel when requested as individual military counsel under the provisions of RCM 506(b) and this regulation. The Commander, TJAGLCS, acts on appeals from adverse determinations made by the Chief, USATDS. (See para 5–7*g*, above, for control and support of non-USATDS individual military counsel.)

b. Limitations on availability. Pursuant to UCMJ, Art. 38, RCM 506(b)(1), and paragraph 5–7*c*, above, USATDS counsel assigned to and with duty station at the Office of the Chief, USATDS are unavailable to serve as individual military counsel. The Chief, USATDS may detail attorneys assigned to DCAP who have been requested as individual military counsel subject to their availability.

c. Reasonable availability determinations. The provisions of paragraphs 5–7*d* and 5–7*e* of this regulation apply.

d. Procedure. Request for USATDS counsel to serve as individual military counsel will be processed through the trial counsel at the installation or command where the request originated. It will contain the same information as required by paragraph 5–7*f*. If the requested counsel is subject to the limitations in paragraphs 5–7*c*, 5–7*d*, or 6–10*b*(1) through (3), above, the convening authority will notify the accused that the requested counsel is unavailable. All other requests will be transmitted directly to the Chief, U.S. Army Trial Defense Service, JALS–TD, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546. The USATDS field office at which the requested counsel is stationed will be included as an information addressee.

6–11. Professional standards

a. General. The professional standards referred to in paragraph 5–8, above, apply to USATDS counsel.

b. Exercise of independent professional judgment.

(1) Nothing in this chapter limits a USATDS counsel's duty to exercise independent professional judgment on behalf of a client. The Chief, USATDS is granted authority to promulgate rules and requirements governing—

(a) The establishment of attorney-client relationships.

(b) Allocation of personnel resources.

(c) The setting of priorities within the various categories of services rendered by USATDS counsel.

(d) Trial Defense Service standard operating procedures.

(2) The USATDS counsel will strictly comply with these directives. However, once an attorney-client relationship is formed pursuant to these rules and requirements, defense counsel have a positive duty to exercise independent judgment in control of the case. This duty is limited only by law, regulation, and the Army "Rules of Professional Conduct for Lawyers" (see AR 27–26). Complaints involving the professional conduct or performance of USATDS counsel should be forwarded to the Chief, USATDS, for action according to chapter 15, below.

c. Referral cards. To implement the ABA Standards relating to providing defense services and to provide indicia of professionalism for defense counsel, such counsel are authorized to be provided with referral cards, DA Form 4441 (United States Army Trial Defense Service), for the purpose of identification when assigned to represent an individual.

Chapter 7
United States Army Trial Judiciary-Military Judge Program

7–1. General

a. Military Judge Program. The Military Judge Program is a system in which military judges are designated and detailed as judges of GCM and SPCM. This chapter governs the Army-wide operation of the Military Judge Program and sets forth procedures to be followed in administering it. This regulation implements UCMJ, Art. 26, which provides for an independent judiciary within the U.S. Army.

b. Organization. The U.S. Army Trial Judiciary is an element of the USALSA, a field operating agency of TJAG.

c. Military judge of a court-martial. A military judge will be detailed to all GCMs. A military judge will be detailed to each SPCM, unless a military judge cannot be obtained because of physical conditions or military exigencies. If a military judge is not detailed to a SPCM, the convening authority and Chief Circuit Judge will make a detailed written

statement of explanation to be appended to the record. Mere inconvenience will not be a reason for failure to detail a military judge. The primary duty of a military judge is to preside over GCMs and SPCMs to which the judge is detailed. Active duty military judges (or mobilized USAR military judges) are assigned to the U.S. Army Trial Judiciary. Non-mobilized USAR military judges are assigned to the 150th Legal Operational Detachment (LOD), U.S. Army Reserve Legal Command. All military judges, active duty or USAR, are under the professional supervision of the U.S. Army Trial Judiciary.

d. Chief trial judge. A military trial judge who is designated by TJAG (see para 1–4*b*, above) as the chief of military trial judges.

e. Tenure for military trial judges. Judge advocates are certified as military judges by TJAG and assigned to the Trial Judiciary for a minimum of 3 years, except under any of the following circumstances:

(1) The military judge is assigned to the Republic of Korea or such other area where officers are normally assigned for a short tour of 1 or 2 years; in such cases the military judge will be appointed for a 1- or 2-year term;

(2) The military judge voluntarily requests to be reassigned to other duties, and TJAG approves such assignment;

(3) The military judge retires or otherwise separates from military service;

(4) The military judge is reassigned to other duties by TJAG based on the needs of the Service in a time of war or national emergency;

(5) The officer's certification as a military judge is withdrawn by TJAG for good cause. See section III, chapter 15, Suspension of Military Judges.

7–2. Qualifications of military judges

a. A military judge is a JA who has been certified by TJAG as qualified to preside over a GCM and/or SPCM. Before performing duties as a military judge of a GCM, a JA officer must be—

(1) Certified by TJAG as qualified for duty as a military judge.

(2) Designated by TJAG or his or her designee for detail as a military judge.

(3) Assigned to the U.S. Army Trial Judiciary, or assigned and directly responsible to TJAG's designee under UCMJ, Art. 26(c). All military judges who meet the requirements for presiding over a GCM may also preside over a SPCM.

b. Appropriate records will be maintained by the Chief Trial Judge as follows:

(1) Current lists of military judges assigned or attached to the U.S. Army Trial Judiciary and to the 150th LOD.

(2) A list of supporting documents showing that the qualifications of each military judge have been met.

7–3. Judicial circuits

A judicial circuit is one or more GCM jurisdictions, or the geographical area where the headquarters of such jurisdictions are situated, as designated by TJAG or TJAG's designee, the Chief Trial Judge. Judicial circuits will be established, but may be altered and dissolved by TJAG, or TJAG's designee as required, at which time all convening authorities concerned will be notified. The Judge Advocate General or TJAG's designee also will designate one or more duty stations within each judicial circuit at which military judges assigned to the U.S. Army Trial Judiciary will be located.

7–4. Functions and duties of military judges

a. General.

(1) The primary functions of military judges are to—

(a) Designate the uniform and the date and time of trial, giving due consideration to military missions.

(b) Designate the place of trial subject to any directions contained in the convening order.

(c) Preside over each court-martial to which they have been detailed, to include performance of all judicial duties imposed or authorized by the UCMJ or theMCM.

(2) The military judge's judicial duties in a case with members include, but are not limited to—

(a) Calling the court into session without the presence of members to hold the arraignment.

(b) Receiving pleas and resolving matters that the court members are not required to consider (under UCMJ, Art. 39(a)).

(c) Entering findings of guilty based upon providently entered pleas of guilty immediately without a vote, when the accused pled guilty.

(d) Ruling on requests for continuances.

(e) Conducting post-trial sessions under RCM 1102.

(3) The purpose of a UCMJ, Art. 39(a), session is to dispose of all matters not requiring the attendance of the members of the court. To achieve the maximum use of such a session, the military judge must ensure that counsel have due notice of the session and sufficient time to prepare for the disposition of matters that must or should be considered.

(4) Military judges assigned to the U.S. Army Trial Judiciary, including all USAR judges under the professional supervision of the U.S. Army Trial Judiciary may—

(a) Perform magisterial duties according to chapters 8 and 16 of this regulation.

(b) Issue authorizations on probable cause under chapter 8 of this regulation.

(c) Issue orders based on a probably cause standard, pursuant to 10 USC 1565a, requiring DOD repositories to make available specific DNA samples in accordance with the military judge's order.

(d) After DOD approval of a request for authorization, receive applications for nonconsensual wire and oral communication intercept authorization orders and determine whether to issue such orders, according to AR 190–53.

(e) Conduct hearings pursuant to AR 190–47 to determine whether an inmate at the USDB suffers from a mental disease or defect that requires inpatient psychiatric care or treatment beyond that available at the USDB.

(f) Conduct training sessions for trial and defense counsel.

(g) Serve as fact finders in debarment and suspension proceedings involving Government contracts.

(h) Conduct investigations, hearings, or similar proceedings when detailed, appointed, or made available for appointment, by the Chief Trial Judge.

b. Summary courts-martial. A military judge may be detailed to a SCM if made available by the Chief Trial Judge or Chief Trial Judge's designee.

c. Courts-martial composed of a military judge only.

(1) A military judge who is detailed to a court-martial must be satisfied that an accused's request for trial by a court-martial consisting only of a military judge has been made knowingly and voluntarily. After a full inquiry into the accused's understanding of the request, the military judge should grant the request, absent unusual circumstances. If the trial counsel desires to contest the appropriateness of a trial by military judge alone, the military judge should hear arguments from trial and defense counsel before deciding the issue (RCM 903).

(2) In addition to duties and functions performed when sitting with members (except those relating to instructions), the military judge, when sitting as a court consisting of only a military judge, will—

(a) Rule on all questions of fact arising during the proceedings.

(b) Determine whether the accused is guilty or not guilty in the form of general findings (and will make special findings when required (under UCMJ, Art. 51(d)).

(c) If the accused is convicted, adjudge an appropriate sentence.

d. Administrative responsibilities. Each military judge is responsible for—

(1) Maintaining an orderly trial calendar that will make efficient use of available time and provide to the maximum extent possible for scheduling of trials as requested by convening authorities.

(2) Submitting required reports as directed by the Chief Trial Judge.

(3) Cooperating closely with SJAs and military judges in the circuit. The military judge must exercise every legitimate and appropriate effort to assist convening authorities in the expeditious handling of court-martial cases, while taking care to avoid any act that may be a usurpation of the powers, duties, or prerogatives of a convening authority or the convening authority's staff.

(4) Seeking necessary assistance through the judicial administrative channels specified in paragraph 7–6*c* in conflict cases, in other situations when another military judge may be required, or whenever he or she determines that additional military judge support is required for disposing of courts-martial cases referred to trial in his or her jurisdiction. In such cases, the military judge with primary responsibility for a GCM jurisdiction will obtain additional judicial support by conferring with the Chief Circuit Judge as provided in paragraph 7–6*c*, below.

e. Other courts martial. Military judges will be detailed to all GCMs and SPCMs convened for the trial of person's protected by the Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949.

7–5. Responsibilities of the Chief Circuit Judge

The Chief Circuit Judge is the senior military judge in a judicial circuit or other judge designated by the Chief Trial Judge and is responsible for—

a. General administration of the Military Judge Program within the judicial circuit.

b. Recommendations to the Chief Trial Judge relating to the operation of the program within the circuit.

c. In coordination with the Chief Trial Judge, determining which military judge within the circuit will be primarily responsible for each GCM jurisdiction within the circuit.

d. In coordination with the Chief Trial Judge, determining the rater, intermediate rater, and senior rater as required for officer evaluation reports (OERs) concerning military judges and, where appropriate, for magistrates within the circuit.

e. Designating supervising military judges for part-time military magistrates (see chap 8).

f. Ensuring that USAR military judges receive adequate assistance in performing training.

7–6. Detailing of military judges

a. Authority to detail military judges. The Chief Trial Judge is authorized to detail military judges for courts-martial (see RCM 503(b)). This authority may be delegated to individual military judges.

b. Capital Courts-martial. Absent conflicts, trial judges for capital courts-martial shall be detailed by the Chief Trial Judge. In conflict cases, the next most senior trial judge shall act as detailing authority.

c. Detail of military judges within general court-martial jurisdictions.

(1) The military judge who is designated as primarily responsible for a GCM jurisdiction (see para 7–5*c*, above) will—

(a) Normally detail himself or herself to preside over the courts-martial convened in that jurisdiction.

(b) Notify the Chief Circuit Judge when he or she requires a replacement judge to be detailed to preside over a particular court-martial for any reason or determines that additional military judge support is required for disposing of courts-martial cases referred to trial in his or her jurisdiction.

(2) When a military judge requests the detailing of a replacement judge or requests additional military judge support, the Chief Circuit Judge will, if practicable, detail a replacement from the military judges within the circuit or will request a replacement judge or additional military judge support from the Chief Trial Judge.

d. Processing requests for replacement judges. Requests and responses to requests for replacement judges or additional military judge support will be expeditiously processed through judicial administrative channels.

e. Docketing. At installations with two or more military judges, one will be designated as the primary docketing judge to oversee docketing and calendar management within that installation. At all other installations, the GCM military judge designated as primarily responsible for a GCM jurisdiction pursuant to paragraph 7–5*c*, above, will oversee docketing and calendar management within that jurisdiction.

f. Cross-servicing.

(1) Nothing in this regulation precludes the detail of a military judge from another armed service who has been made available for detail to either a GCM or SPCM, provided that such military judge has been certified by the Judge Advocate General of the military judge's armed service. For administrative control, the concurrence of the Chief Trial Judge will be obtained before the judge is detailed.

(2) Army military judges may preside at courts-martial of other Services, under RCM 503(b)(3). For administrative control, the concurrence of the Chief Trial Judge should be obtained before the judge is detailed.

7–7. Administrative and logistical support

a. Duty station. Military Judges are assigned to U.S. Army Trial Judiciary with duty at a specified location. Judges will not be further attached or assigned to any other unit without the written permission of the Commander, USALSA. The installation trial judiciary office is a tenant unit on the installation and thus entitled to all support required by AR 5–9. This support includes, but is not limited to—

(1) Permanent or temporary quarters for each military judge and the judge's Family members to the same degree as are provided regularly assigned officers of like grade and similar responsibility. Military judges will not share quarters.

(2) Assistance and maintenance of military personnel records, officer qualification records, and all other personnel requirements.

(3) Private office space appropriate for the grade and position.

(4) Office furniture to include an appropriate desk, chairs, carpeting, equipment, and supplies.

(5) Access to legal research publications and facilities and commercial automated legal research capability wherever possible.

(6) Private long-distance telephone line, facsimile machine, digital scanner, wireless e-mail service, and e-mail accessibility.

(7) A Soldier or civilian employee who will provide stenographic, clerical, and administrative assistance as required for the expeditious performance of duties to the military judge(s) assigned for duty at that installation.

(8) Modern computer hardware (to include a high quality desktop computer, laptop computer, and laser printer), software, networking, and telecommunications equipment (to include a high quality smartphone, and a computer wireless internet aircard) that meets standards established for the Judge Advocate General's Corps Network (JAGCNet), Legal Automation Army-Wide System, and connection with a local area network that will permit access to e-mail and the World Wide Web.

(9) Army transportation facilities, including aircraft, as far as is practicable.

b. Sites of trials. At locations where military judges preside over court-martial proceedings, the command will provide administrative and logistical support to include—

(1) A suitable and functional courtroom facility.

(2) Private office space and appropriate furnishings, to include automation and networking capability, adjacent to the courtroom for the exclusive use of the military judge while court is in session or when the judge is engaged in other judicial business.

(3) Class A telephone service in the military judge's office.

(4) Convenient access to legal research publications, online legal research (JAGCNet), and facilities.

(5) Stenographic, clerical, and administrative assistance as required for the performance of judicial duties.

(6) Army transportation.

(7) On-post billeting facilities appropriate for the judge's grade and position. Except under deployment conditions, military judges should not ordinarily be billeted in facilities also used to billet witnesses, court members, or other trial participants.

c. Courtrooms. The courtroom is the most visible symbol of military justice on an installation. A distinctive facility that provides for the proper atmosphere and decorum is essential to emphasize the Army's commitment to a fair and impartial application of military law. It is thus vital that the courtroom convey a sense of dignity and respect for the people who interact with it. Therefore, courtrooms will be designed, constructed, funded and maintained by the installation in accordance with applicable Army Courtroom Facilities Guidelines. Exceptions to these guidelines will be requested through the Chief, Criminal Law Division, OTJAG, and can only be granted by the Army Facilities Standards Committee. Priority of use of these facilities will be for courts-martial, and other uses will not interfere with courts-martial proceedings.

d. Courtroom security.

(1) When circumstances warrant, the local SJA will coordinate with the provost marshal for the detailing of an armed MP to provide security at a court-martial. The MP will take general direction from the military judge and trial counsel and will not act as bailiff or escort or be an expected witness in the case.

(2) Staff Judge Advocates, in coordination with the GCM military judge primarily responsible for that GCM jurisdiction, and installation provost marshals will periodically inspect court-martial facilities to assess security vulnerabilities and make such improvements as deemed necessary to provide a safe and secure facility.

e. Leaves and passes.

(1) Request for leaves and passes by military judges assigned to the U.S. Army Trial Judiciary will be forwarded within judicial administrative channels as follows:

(a) By military judges within a circuit to the Chief Circuit Judge, or the Chief Circuit Judge's designee.

(b) By Chief Circuit Judges to U.S. Army Trial Judiciary, JALS–TJ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

(2) In emergency situations, clearance may be obtained by electronically transmitted message or telephone. It will be assumed, unless affirmatively noted, that a requested absence will not interfere with the timely administration of military justice.

7–8. Rules of court

The Judge Advocate General authorizes the Chief Trial Judge under RCM 108 to promulgate local or general rules of court. This authority may be delegated by the Chief Trial Judge to Chief Circuit Judges, and a copy of any local rules of court will be forwarded to the Chief Trial Judge.

7–9. Requests for military judges as individual military counsel

Requests for military judges to serve as individual military counsel will be processed in accordance with paragraph 5–7*f*(1). The Chief Trial Judge will make an administrative determination whether the requested judge is reasonably available. This determination is a matter within the sole discretion of the Chief Trial Judge. An adverse determination may be reviewed upon the request of the accused to the Chief Judge, U.S. Army Court of Criminal Appeals, but no further review is authorized.

Chapter 8
Military Magistrate Program

Section I
General

8–1. Scope

a. This chapter establishes the Army Military Magistrate Program. It authorizes and specifies procedures for the appointment and assignment of military magistrates and for their use to review pretrial confinement (RCM 305(i)). It implements MRE 315; MRE 316; part III, MCM, 2012; and RCM 302(e)(2), by authorizing military judges and magistrates to issue necessary search, seizure, and apprehension authorizations on probable cause.

b. There is no relationship between the Military Magistrate Program and DA's implementation of the Federal Magistrate System to dispose judicially of uniform violation notices and minor offenses committed on military installations (see AR 190–45).

c. The Military Magistrate Program is an Army-wide program for review of pretrial confinement and the issuance of search, seizure, and apprehension authorizations, on probable cause, by neutral and detached magistrates.

d. A military magistrate is a JA empowered to direct the release of persons from pretrial confinement, or to recommend release from confinement pending final disposition of foreign criminal charges, on a determination that

continued confinement does not meet legal requirements, and to issue search, seizure, and apprehension authorizations on probable cause.

e. An assigned military magistrate is a JA appointed by TJAG or TJAG's designee and assigned to USALSA, or a military judge (active or reserve component) assigned to the U.S. Army Trial Judiciary under the professional supervision of the U.S. Army Trial Judiciary.

f. A part-time military magistrate is a JA AA Soldier or reserve component JA not assigned to USALSA, appointed by TJAG or TJAG's designee, who is authorized to perform the duties of a magistrate.

g. The supervising military judge is a military judge, assigned to the U.S. Army Trial Judiciary or under the professional supervision of the U.S. Army Trial Judiciary, designated to supervise the activities of military magistrates within the supervising military judge's jurisdiction.

8–2. Appointment of military magistrates

a. Assigned military magistrates. Assigned military magistrates will be appointed by TJAG or TJAG's designee upon recommendation by the Chief Trial Judge, U.S. Army Trial Judiciary.

b. Part-time military magistrates. Part-time military magistrates will be appointed by TJAG or, if the authority to appoint such magistrates is delegated by TJAG, by the Commander, USALSA, the Chief Trial Judge, chief circuit judges, and supervising military judges, as follows:

(1) Staff Judge Advocates may nominate one or more JAs for appointment as part-time military magistrates.

(2) Nominees will not be engaged in criminal investigation or the prosecuting function and will possess the requisite training, experience, and maturity to perform the duties of a magistrate.

(3) Nominations will be forwarded to the appropriate designee of TJAG. The designee will forward the names of appointed part-time military magistrates to the Chief Trial Judge, U.S. Army Trial Judiciary, JALS–TJ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

8–3. Powers of military magistrates

a. Review of confinement.

(1) Assigned military magistrates will be given responsibility for reviewing pretrial confinement in any confinement facility as TJAG or TJAG's designees will direct. No military magistrate is authorized to review the detention of an enemy belligerent under the law of armed conflict (LOAC).

(2) Part-time military magistrates will be given responsibility for reviewing pretrial confinement as determined by the supervising military judge.

b. Issuance of search, seizure, and apprehension authorizations. Any military magistrate, whether assigned or part-time, is authorized to issue search and seizure and search and apprehension authorizations on probable cause under section III of this chapter.

c. Review of confinement pending outcome of foreign criminal charges. Military magistrates, whether assigned or part time, are authorized to review confinement of Soldiers, in U.S. facilities, pending final disposition, including appeals, of foreign criminal charges (see chap 16, below). (Final disposition of foreign criminal charges incorporates all stages of the host country's criminal proceedings, including appeals, up to commencement of any sentence to confinement resulting from conviction on the foreign criminal charges.)

8–4. Supervision of military magistrates

a. The Chief Trial Judge, U.S. Army Trial Judiciary. The Chief Trial Judge, U.S. Army Trial Judiciary, under the supervision of the Commander, USALSA, is responsible for the general administration of the Military Magistrate Program. These responsibilities include—

(1) Making recommendations to TJAG on the appointment of military magistrates and other aspects of the program.

(2) Establishing programs for training assigned and part-time military magistrates.

(3) Recommending duty stations at which assigned military magistrates will be located.

(4) Assignment of responsibility for servicing particular confinement facilities.

(5) Designating supervising military judges.

(6) Monitoring rating schemes for military magistrates.

(7) Designating raters and senior raters of OERs for assigned military magistrates.

b. Supervising military judge. The supervising military judge will be responsible for the direct supervision of military magistrates, assigned or part time, in the performance of magisterial duties.

Section II
Pretrial Confinement

8–5. Review by military magistrate

a. General.

(1) All military magistrates, whether assigned or part time, are empowered to order the release from pretrial confinement of any confinee in any U.S. Army confinement facility on determination (following review of the case) that continued pretrial confinement does not satisfy legal requirements. The military magistrate will consider all relevant facts and circumstances surrounding each case of pretrial confinement in arriving at this decision. Military magistrates will review each case of pretrial confinement according to the procedures and criteria contained in RCM 305(i) and this paragraph.

(2) Part-time military magistrates will be appointed to review pretrial confinement in all cases at confinement facilities not normally served by assigned military magistrates. Whomever initially authorizes pretrial confinement in a facility not administered by the Army will immediately notify the officer exercising GCM jurisdiction over the person confined. This officer will immediately cause the responsible military magistrate to be notified of the case.

(3) Unless an Army magistrate has conducted a pretrial confinement review pursuant to subparagraph *b*, below, the review of pretrial confinement of a Soldier of the U.S. Army will be governed by the military magistrate regulations of the military Service that has jurisdiction over the place of confinement. Soldiers ordered into pretrial confinement will be confined in Army confinement facilities whenever practicable.

(4) Service members of other Services ordered into pretrial confinement in Army confinement facilities will be subject to the provisions of this section, unless specific exceptions to these provisions, consistent with RCM 305, are requested in writing by an officer of the other Service.

b. Procedures.

(1) The military magistrate will review pretrial confinement in accordance with RCM 305(i). The magistrate's decision to approve pretrial confinement is subject to a request for reconsideration (see RCM 305(i)(2) pertaining to reconsideration of a decision to approve confinement) under the provisions of this paragraph. Once charges for which the accused has been confined are referred, the accused may seek review of the propriety of pretrial confinement in accordance with RCM 305(j). During any review of pretrial confinement, the military magistrate must ensure that the victims' rights and concerns are addressed through his or her SVC or, if none, directly from the victim. Nothing in this paragraph will preclude an accused from seeking extraordinary relief. A copy of the magistrate's memorandum to approve or disapprove pretrial confinement, required by RCM 305(i)(2)(D), will be served on the SJA or the SJA's designee and, upon request, to the accused or the accused's defense counsel. Upon order of the magistrate, an accused will be released immediately from pretrial confinement.

(2) The commander of the person confined, on ordering confinement or receiving notification of confinement, will provide the military magistrate with a completed DA Form 5112 no later than 36 hours after imposition of confinement. The commander will include (in the appropriate area of the pretrial confinement block) or attach to the DA Form 5112 a statement of the basis for the decision to confine (RCM 305(h)(2)(c)). Except in extraordinary cases, charges against the person confined should be preferred within seven (7) days of confinement. The 7–day timeline does not create a right on behalf of the accused.

(3) The unit commander concerned may impose any authorized pretrial restraint deemed necessary on a person who has been released from confinement by a magistrate. However, the unit commander may not order the return of that person to pretrial confinement except under the provisions of RCM 305(l). The military magistrate will be immediately notified of any additional confinement and the reasons therefore.

(4) Circumstances of Soldiers who, after release by a military magistrate, are confined again, will be reviewed by the military magistrate. The determination of whether continued pretrial confinement is warranted will be made on the same legal basis as the review and determination for initial pretrial confinement.

(5) The military magistrate will communicate the decision in each case to the Soldier confined or the Soldier's defense counsel. This may be accomplished by means of a copy of the written record of decision. In addition, a record of the magistrate's decision(s) will be filed in that Soldier's correctional treatment file (see AR 190–47).

(6) Copies of the DA Form 5112 as completed by the commander and the magistrate's memorandum approving or disapproving pretrial confinement will be included in the record of trial.

8–6. Administrative and logistical support

The provisions of paragraph 7–7, above, pertaining to members of the U.S. Army Trial Judiciary are also applicable to assigned military magistrates.

Section III
Search, Seizure, and Apprehension Authorizations

8–7. Authority of military judges and magistrates to issue authorizations

The following individuals are authorized to issue search and seizure and search and apprehension authorizations on probable cause (see MRE 315(d)(2)) with respect to persons and property specified in MRE 315(c):

a. Military judges assigned or attached to, or USAR military judges assigned to or under technical supervision of the U.S. Army Trial Judiciary.

b. Military magistrates assigned to USALSA.

c. Part-time military magistrates appointed under paragraph 8–2*b*, above.

8–8. Issuance

a. The procedures for issuing of search and seizure and search and apprehension authorizations are contained in MREs 315 and 316. Authorizations to search and seize or search and apprehend may be issued on the basis of a written or oral statement, electronic message, or other appropriate means of communication. Information provided in support of the request for authorization may be sworn or unsworn. The fact that sworn information is generally more credible and often entitled to greater weight than information not given under oath should be considered.

b. The DA Form 3744, Affidavit Supporting Request for Authorization to Search and Seize or Apprehend, may be used if the supporting information is to be sworn. A sample completed affidavit may be found at the JAGCnet document library. Authorizations to search and seize or search and apprehend may be issued orally or in writing. The DA Form 3745 (Search and Seizure Authorization) or DA Form 3745–1 (Apprehension Authorization), may be used if an authorization is issued in writing.

8–9. Oaths

See chapter 10, below, for the authority, procedures, and forms for administering oaths to persons providing information to commanders and other military personnel empowered to issue authorizations to search and seize.

8–10. Execution and disposition of authorizations and other related papers

a. Execution. The execution of authorizations to search and seize is governed by MRE 315(h). In addition to those requirements, the authorization should be executed within 10 days after the date of issue. An inventory of the property seized will be made at the time of the seizure or as soon as practicable. A copy of the inventory will be delivered to the person from whose possession or premises the property was taken. The DA Form 4137 (Evidence/Property Custody Document) may be used.

b. Disposition of authorization and other papers. After the authorization has been executed, the authorization and a copy of the inventory will be returned to the issuing authority. Thereafter, all documents and papers relative to the search or seizure will be transmitted to the appropriate law enforcement office. They will be filed for use in any future litigation or proceeding on the results of such a search.

8–11. Recovery and disposition of property

a. Evidence retained for courts-martial. Evidence retained for courts-martial will be disposed of according to applicable regulations. Staff Judge Advocates will make every effort to return property, when appropriate, as expediently as possible by substituting photographic or written descriptions when such measures will not jeopardize pending prosecutions.

b. Property seized by the U.S. Army Criminal Investigation Command. The provisions of AR 195–5 govern the recovery and disposition of property seized pursuant to an authorization to search and seize conducted by U.S. Army criminal investigators.

c. Property seized by other authorized persons. The provisions of AR 190–30, chapter 4, govern the recovery and disposition of property seized pursuant to a search or seizure by other authorized persons.

8–12. Reapplication

Any person requesting authorization to search and seize must disclose to the issuing authority any knowledge that person has of denial of any previous request for a search and seizure authorization involving the same individual and the same property.

8–13. Legality of searches and seizures

The requirements set forth in this chapter are administrative only and the failure to comply does not, in and of itself, render the search or seizure unlawful within the meaning of MRE 311. The “privatization” of on-post housing and other facilities in no way diminishes the authority of military judges and military magistrates, garrison commanders or installation commanders to authorize searches of on-post housing or facilities whether “privatized” or not.

Chapter 9
Courts of Inquiry

9–1. General

This chapter applies only to courts of inquiry.

9–2. Jurisdiction

a. Statutory provisions. Courts of inquiry to investigate any matter may be convened by any person authorized to

convene a general court-martial (GCM). They may also be convened by any other person designated by the SECARMY for that purpose, whether or not the persons involved have requested such an inquiry.

b. Policy. A court of inquiry is a formal, fact-finding tribunal. The policy of DA is that a court of inquiry will not be convened to investigate a particular matter to ascertain the facts if there are other satisfactory means (prescribed by law or regulation or authorized by the customs of the Service). Under this policy, it is proper to convene a court of inquiry only when—

(1) The matter to be investigated is one of grave importance to the military Service or to an individual.

(2) The testimony is expected to be so diverse, complicated, conflicting, or difficult to obtain that a court of inquiry can best—

(a) Procure the pertinent evidence.

(b) Ascertain the facts.

(c) Assist the convening or superior authority in determining what action should be taken.

c. Persons whose conduct may be subject to inquiry. As a court of inquiry may be convened to investigate any matter (under UCMJ, Art. 135(a)), it may also lawfully investigate the conduct of any person. As a matter of policy, a court of inquiry will not, without prior approval of the SECARMY, be convened to investigate the conduct of a person who is not a member of the Army unless the convening authority exercises GCM jurisdiction over that person.

d. Effect of application for court of inquiry. Any person, subject to the UCMJ, who believes the person has been wronged by any accusation or imputation against the person and cannot secure adequate redress by any other means (prescribed by law, regulation, or authorized by the customs of the Service) may submit an application. The application will be sent through the person's immediate commander to the officer exercising GCM jurisdiction over the command for convening a court of inquiry to investigate and report the alleged accusation or imputation. The officer exercising GCM jurisdiction may, according to the policy in *b*, above, convene a court of inquiry to investigate the matter or may take other appropriate action. The applicant will be advised if the GCM authority refuses to convene such a court, and will have the right to appeal to superior authority.

9–3. Composition

a. Number of members. A court of inquiry will consist of three or more members. The senior member will be the President.

b. Qualifications of members.

(1) Any commissioned officer on active duty will be eligible to serve on a court of inquiry. No member will be junior in grade to, nor lower on the promotion list than, any officer who is initially designated as a party to the inquiry, unless exigencies of the Service do not permit. The decision by the convening authority, in this regard, as indicated by the order appointing the court, is final.

(2) The convening authority will appoint as members of a court of inquiry persons who are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. One or more members having experience or training in the subject of the inquiry, should, when possible, be appointed if that special experience or training will benefit the inquiry. When a female officer or enlisted Soldier is initially designated a party to the inquiry, a female officer or enlisted Soldier, as appropriate, senior to and of the same branch as that party, will, if possible, be appointed as a member of the court. Neither a party to the inquiry, nor his or her counsel, nor a witness against that party will be eligible to serve as a member of the court.

c. Counsel. For each court of inquiry the convening authority will appoint by letter of appointment a commissioned officer as counsel for the court and assistant counsel as the convening authority deems appropriate. If practicable, the counsel appointed for the court will be an officer who is certified by TJAG to be qualified as counsel of a GCM under the provisions of UCMJ, Art. 27(b). Neither a party to the inquiry, nor such a person's counsel, nor a witness against that party will be eligible to serve as counsel for the court.

d. Reporters and interpreters. For each court of inquiry the convening authority will provide a qualified court reporter, who will record the proceedings and testimony taken before that court. When necessary, the convening authority will provide an interpreter who will interpret for the court.

9–4. Convening order

a. Format. The format of the order convening a court of inquiry will be similar to that for a court-martial (see app 6, MCM, 2012).

b. Content. In addition to naming the members and setting the time and place of assembly of the court, the initial convening order will clearly specify the matter to be investigated and the scope of the findings required. The order will also prescribe the number of copies of the record to be prepared. If it is desired that the court express opinions or make recommendations, the order must specifically so state. When appropriate, the convening order will designate the parties whose conduct is subject to inquiry.

9–5. Designation of parties

a. Person "whose conduct is subject to inquiry." Any person subject to the UCMJ whose conduct is subject to

inquiry will be designated as a party. The conduct of a person is "subject to inquiry" when the court of inquiry is directed in the convening order to inquire into any past transactions or any accusation or imputation against that person.

b. Person who has "a direct interest in the subject of inquiry."

(1) Any person subject to the UCMJ or employed by DOD who has a direct interest in the inquiry will have the right to be named as a party on request to the court.

(2) A person has a direct interest in the subject of inquiry when the findings, opinions, or recommendations of the court may, in view of the person's relation to the incident or circumstances being inquired into—

(a) Reflect questionable or unsatisfactory conduct, efficiency, fitness, or performance of duty, or

(b) Affect the person's pecuniary responsibility.

(3) The question of whether a person has a direct interest in the subject of the inquiry rests in the discretion of the court. Any doubts should be resolved in favor of the person claiming such an interest.

c. Designation of parties by court. When it appears to the court during the course of an inquiry that a person subject to the UCMJ or employed by DOD has a "direct interest in the subject of inquiry" (as that term is defined in *b*, above) the court, before completing its inquiry, will inform the person concerned, orally or in writing, of—

(1) The precise nature of the person's interest in the case.

(2) The right to be designated as a party to the inquiry. The fact that the person was notified and the person's desires with respect to being designated as a party will be made a part of the record.

d. Procedure on designation of party by court.

(1) When the court designates a person as a party, it will take appropriate action to ensure that the person—

(a) Understands the person's rights as such.

(b) Is fully informed of the evidence pertaining to the person that was received by the court.

(2) Any reasonable request by the party for recall of previous witnesses for the purpose of cross-examination will be granted by the court if practicable. If the witness cannot be recalled, cross-examination may be accomplished by written interrogatories. Any testimony already given by such a party remains in the record but, after the party's designation as a party, these rights as a witness are governed by paragraph 9–7*b*, below.

9–6. Rights of parties

A party to the inquiry, whether designated initially or during the course of the inquiry, has the following rights:

a. To be given due notice of such designation.

b. After a party's designation, to be present and to have counsel present during all proceedings in open court.

c. To be represented by civilian counsel if provided by the party at no expense to the Government, by appointed military counsel, or by military counsel of the party's own selection, if reasonably available.

d. To challenge members, but only for cause stated to the court.

e. To cross-examine witnesses.

f. To introduce evidence and to examine and object to the introduction of evidence.

g. To testify as a witness under the rules set forth in paragraph 10–7*b*, below.

h. To make a voluntary statement in any form, personally or through counsel.

i. To make an argument at the conclusion of presentation of the evidence.

j. To submit a written brief at the conclusion of the inquiry, after examination of the record of proceedings.

9–7. Witnesses

a. General. Witnesses may be subpoenaed to appear, testify, and be examined before courts of inquiry. A court of inquiry and counsel for such court have the same powers with respect to obtaining the attendance of witnesses as a court-martial and the trial counsel of a court-martial (see RCM 703).

b. Party to the inquiry. In all proceedings in courts of inquiry the person charged will, at the person's own request, be a competent witness. The party's failure to make such a request will not create a presumption against the party (18 USC 3481). Any party to the inquiry who is charged with or suspected of an offense that is then the subject of inquiry by the court is deemed to be "charged" within the meaning of the above act and is, on request, a competent witness. A party to the inquiry who is not charged with or suspected of an offense may be called as a witness and required to testify under oath on any matter on which the party might be a material witness, subject to the limitations imposed by UCMJ, Art. 31.

c. Examination.

(1) The examination of a witness may be conducted, at the discretion of the court, by members and counsel for the court.

(2) Any person designated as a party to the inquiry and the person's counsel will have the right to examine and cross-examine witnesses.

(3) The MREs 301, 305, 502, and 503, pertaining to the right against self-incrimination and to privileged communications, are applicable to the examination of witnesses before a court of inquiry.

9–8. Procedure

a. General. Except as otherwise provided by this regulation, the procedure before courts of inquiry will be governed by the provisions of AR 15–6 for formal boards of officers.

b. Duties of counsel for court. The counsel for a court of inquiry will perform substantially the same duties as are prescribed by AR 15–6 for the recorder of a board of officers. Counsel will be present during all proceedings in open court and may be present when the court is closed. An assistant counsel for the court is competent to perform any duty of counsel for the court. The counsel will perform such duties in connection with the inquiry as counsel for the court may designate.

c. Quorum. Three members of the court will constitute a quorum and must be present at all its sessions. An exception is that a member who was previously absent from, or newly appointed to a court may participate in the proceedings if the substance of all proceedings and the evidence introduced previously have been made known to the member.

d. Challenges. Members of a court of inquiry may be challenged by a party, but only for cause stated to the court. The procedure for presenting and determining challenges will be substantially the same as that provided for presenting and determining challenges for cause in SPCMs without a military judge (RCM 912(h)).

e. Oaths.

(1) Before a court commences the inquiry directed by the convening order, the counsel for the court will administer to the members the following oath or affirmation:

Do you, (names), swear (or affirm) that you will faithfully perform all the duties incumbent upon you as members of this court of inquiry and that you will examine and inquire, according to the evidence, into the matter now before you without partiality. So help you God?

(2) When the oath or affirmation has been administered to the members of the court, the president of the court will administer to the counsel (and assistant counsel, if any) the following oath or affirmation:

Do you, (name), swear (or affirm) that you will faithfully perform the duties of counsel for this court? So help you God?

(3) Every reporter and interpreter will, before performing duties, make oath or affirmation, administered by the counsel for the court, in the following form:

Do you, (name), swear (or affirm) that you will faithfully perform the duties of reporter (interpreter) to this court? So help you God?

(4) All persons who testify before a court of inquiry will be examined on oath or affirmation, administered by the counsel for the court, in the following form:

Do you, (name), swear (or affirm) that the evidence you will give in the case now in hearing will be the truth, the whole truth, and nothing but the truth? So help you God?

(5) The counsel for the court will administer the following oath to a challenged member who is to be examined under oath as to his or her competency:

Do you, (name), swear (or affirm) that you will answer truthfully to the questions touching your competency as a member of the court in this case? So help you God?

f. Presence of party. Although a party to the inquiry has the right to be present during all proceedings in open court, his or her presence is not essential and the absence does not affect the authority of the court to proceed with the inquiry. An absent party may be represented by counsel. If a party is absent because of sickness or other good reason and was not represented by counsel during the absence, the court will, if practicable, adjourn the inquiry until the party or counsel can be present. Otherwise the court will, upon request of the absent party—

(1) Make known to the party the evidence pertaining to the party that was received during the party's absence.

(2) Give the party a reasonable opportunity to cross-examine available witnesses and to present evidence in the party's own behalf.

g. Rules of evidence.

(1) Although not generally bound by the rules of evidence contained in the MCM (but see para 9–7*c*(3), above), courts of inquiry will, as far as practicable, observe those rules to ensure an orderly procedure and a full, fair, and

impartial investigation. Thus a court may consider certificates of officers or affidavits of enlisted personnel or civilians if it is impossible or impracticable to secure their personal testimony or depositions.

(2) Similarly, if it is impracticable to produce a witness to authenticate a document, the court may dispense with formal proof of its authenticity. However, the court must be satisfied that the document is what it purports to be. When a deposition is taken under the provisions of UCMJ, Art. 49 and RCM 702, all known parties to the inquiry will be given notice and permitted to submit cross-interrogatories. In determining the materiality of evidence, the court should consider that the scope of the inquiry is limited by the directions contained in the convening order or in subsequent communications of the convening authority.

9–9. Report

a. General. After all the evidence has been presented and briefs, if any, submitted, the court will close to consider the evidence and formulate its findings and, if any are required, its opinions and recommendations. Only the members and counsel for the court may be present during its closed sessions. The findings, opinions, and recommendations of the court will not be divulged to anyone other than the convening authority; nor will the vote or opinion of any member be disclosed unless disclosure is required by these regulations or by a court of justice in due course of law.

b. Findings. After careful consideration of the evidence of record and the instructions contained in the convening order, the court will record its findings. A finding is a clear and concise statement of a fact or a conclusion of the court that may reasonably be inferred from the evidence. On request of the court, the counsel for the court will assist the court in putting the findings in proper form. Each finding must be supported by evidence of record. In arriving at its findings with respect to disputed facts, the members of the court should use their professional knowledge, best judgment, and common sense in weighing the evidence. They will consider the probability or improbability of the disputed facts and should regard as established facts those that are supported by evidence deemed most worthy of belief.

c. Opinions. If the convening order directs the submission of opinions, the court will set forth the opinions that it believes may reasonably be inferred from the facts. The opinions consist of a concise summary of the results of the inquiry consequent from the evidence supported by the facts. They may consider matters in extenuation or mitigation. The court's opinions may include conclusions of law; for example, whether the facts found establish the commission of an offense that is punishable under the UCMJ.

d. Recommendations. If the convening order requires that recommendations be submitted, the court will make such recommendations as are specifically directed and any others that, in its opinion, are appropriate and advisable in view of the nature of the inquiry and the facts found. Recommendations must be appropriate and warranted by the findings and opinions. In general, they should cover the punitive, pecuniary, and corrective phases of the matter under investigation. If any member of the court recommends trial by court-martial, a charge sheet, signed and sworn to by that member, will be prepared and submitted to the convening authority with the record of proceedings. These charges may be signed and sworn to before the counsel for the court.

e. Minority report. The report of the court will be based on the opinion of the majority of the members sitting at the inquiry. If a member does not concur with the findings, opinions, or recommendations of the majority of the court, the member will prepare a minority report. It will contain an explicit statement of the parts of the majority report with which the member disagrees and the reasons therefore.

9–10. Preparation and submission of record

a. Contents. The record of proceedings of a court of inquiry will include—

(1) The convening order.

(2) Any other communication from the convening authority.

(3) An accurate transcript of the proceedings, including a verbatim report of the testimony.

(4) The findings of fact.

(5) The opinions and recommendations, if any were required.

(6) The exhibits that were received in evidence.

b. Form. The provisions of Appendix 14, MCM, 2012 so far as they are applicable, will serve as a general guide for the preparation of the record of the proceedings of a court of inquiry.

c. Copies. The convening authority ordinarily will provide in the convening order for preparation of sufficient copies of the record to permit distribution to agencies directly concerned with the subject of the inquiry. If the convening order fails to prescribe the number of copies, the record will be prepared in duplicate.

d. Authenticating and forwarding. All copies of the record will be authenticated below the findings, opinions, and recommendations of the court, including any minority report, by the signature of the president and counsel for the court. In case the record cannot be authenticated by the president, it will be authenticated by a member in lieu of the president. In case the record cannot be authenticated by the counsel for the court, it will be authenticated by a member instead of counsel. After the record is authenticated, all copies will be forwarded to the convening authority or, in the case of a court convened by the President or the SECARMY, to TJAG.

9–11. Action of convening authority

a. Revision. If not satisfied with the investigation, facts, opinions, or recommendations, the convening authority may return the record to the court with explicit instructions to—

(1) Have the investigation pursued further, or the facts, opinions, or recommendations stated in greater detail, or in more definite and unequivocal terms.

(2) Correct some other error or defect or supply some omission.

b. Review and formal action. The convening authority will review the record of proceedings of a court of inquiry and consider the findings, opinions, and recommendations. The convening authority will state at the end of the record over the convening authority's own signature, approval or disapproval in whole or in part, of the findings, opinions, and recommendations. In taking this action, the convening authority is not bound by the findings, opinions, or recommendations of the court.

9–12. Disposition of record

Immediately after taking action on a record of the proceedings of a court of inquiry, the convening authority will forward the original copy of the record, by letter of transmittal, through normal command channels, to TJAG. The letter of transmittal will contain a statement as to what action the convening authority has taken or proposes to take on the matter investigated by the board. Superior commanders may take such action as they deem appropriate on the subject of the inquiry and the action of subordinate commanders thereon. A notation of any action taken by such a superior commander will be included in an endorsement forwarding the record. The original copy of each record of a Court of Inquiry will be permanently filed by the Clerk of Court, U.S. Army Trial Judiciary, in the same manner as records of trial by GCM (see para 5–47*b*, above).

Chapter 10
Oaths

10–1. General

This chapter implements UCMJ, Arts. 42(a) and 136(a)(6), and various rules of the MCM. It authorizes commanders to administer oaths related to military justice. It also authorizes other military personnel who are empowered to authorize searches and seizures (under MRE 315(d)) to administer oaths for such searches and seizures and for apprehensions. This chapter prescribes the form and procedures of oaths to be administered to—

a. Personnel of courts-martial.

b. Persons providing sworn information supporting requests for authorizations to search and seize and authorizations to apprehend (see chap 8 for issuance of search and seizure authorizations).

10–2. Persons required to be sworn

a. All court-martial personnel including the following, will take an oath to perform their duties faithfully, under UCMJ, Art. 42(a):

(1) The military judge.

(2) Members of GCMs and SPCMs.

(3) Trial counsel.

(4) Assistant trial counsel.

(5) Defense counsel.

(6) Assistant defense counsel.

(7) Reporters.

(8) Interpreters.

b. Additionally, an individual defense counsel, military or civilian, will take a similar oath, under RCM 807(b)(1); 901(d)(5).

c. Oaths to court-martial personnel need not be administered in the presence of the accused.

d. Commanders are authorized to administer oaths for all military justice purposes. All other military personnel who are empowered to authorize searches and seizures (under MRE 315(d)) are authorized to administer oaths for such searches, seizures, and apprehensions.

10–3. Oath administration procedure for military judges

a. A military judge will take a written oath before an officer qualified to administer oaths by UCMJ, Art. 136(a), to faithfully and impartially perform his or her duties in all cases to which the military judge is detailed (under UCMJ, Art. 26(b) and RCM 807(b)(1)(A)). An oath need not be taken again when the military judge is detailed to a court-martial. A military judge of another armed force who has taken an oath to perform his or her duties properly in all

cases to which he or she is detailed need not take an oath when detailed as a military judge at courts-martial convened in the Army.

b. It is unlikely that a military judge, not previously sworn, will be detailed in a particular case. In such event, however, the military judge will follow the procedure in subparagraph *c*, below, ordinarily prior to trial. In any case the procedure will be followed not later than the first UCMJ, Art. 39(a), session.

c. After a military judge is certified, the order announcing the certification will be forwarded to him or her. The military judge will take the prescribed oath before an officer empowered to administer oaths under UCMJ, Art. 136(a), and execute DA Form 3496 (Military Judge's Oath) in triplicate. One copy of the completed form will be retained by the military judge. The remaining copies will be forwarded to the Personnel, Plans and Training Office (DAJA–PT), 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.

d. The first person oath is the only oath that may be administered for cases to which a military judge is detailed.

10–4. Oath administration procedure for counsel

a. A counsel certified under UCMJ, Art. 27(b), who is a member of the JAGC will take the oath on DA Form 3497 (Counsel's Oath) before an officer qualified to administer oaths under UCMJ, Art. 136(a). The DA Form 3497 will be filed in the interactive Personnel Electronic Records Management System (iPERMS), in the Soldier's Service Folder.

b. Once executed on DA Form 3497, an oath need not be taken again when previously sworn counsel are individually requested or detailed to that duty. Counsel who are members of other armed services (who have taken oaths to perform their duties faithfully in any case to which they are individually requested or detailed as counsel) need not take an oath when they participate as counsel at courts-martial convened in the Army. All other counsel will be administered the appropriate counsel's oath (see para 10–8*b*, below) for any case referred to the court to which they have been detailed, or in any case in which they enter an appearance on the record.

c. Generally, the oath for faithful performance of duty in all cases, DA Form 3497, will be administered to members of the JAGC as part of their certification under UCMJ, Art. 27(b)(2). It may also be administered at any time by an officer qualified to administer oaths under UCMJ, Art. 136(a). At the time the oath is administered, DA Form 3497 will be completed. One copy of the form will be retained by the JA who took the oath and two copies will be forwarded to the Personnel, Plans and Training Office (DAJA–PT), 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.

10–5. Oath administration procedure for court members

The trial counsel will normally administer the oath to court members in open session. As a matter of policy, such oaths should be administered at every court-martial to impress on the participants the solemnity of the proceedings. At the discretion of the officer who convened the court, however, the court members may take a written oath to perform their duties faithfully in all cases referred to that court. The convening authority authorizing the administration of this type of oath will maintain a copy of the oath so that it may readily be determined that court members have been previously sworn. When court members are not sworn because they have been administered such an oath previously, this fact will be noted in the record of trial.

10–6. Oath administration procedure for reporters

a. The trial counsel will administer the oath to the reporter at the court-martial. At the discretion of the SJA of the command to which the reporter is assigned (or employed), reporters may execute a written oath to perform their duties faithfully in all cases to which they are detailed (or employed), before an officer qualified to administer oaths (see UCMJ, Art. 136(a)).

b. When a reporter who has been so sworn is used by, reassigned to, or employed by a different GCMCA, a copy of the oath will be given to the SJA of the new convening authority. The SJA authorizing the administration of a written oath will maintain a copy of such oath so that it may readily be determined that the reporter has been previously sworn. When reporters are not sworn because they have been administered such an oath previously, this fact will be noted in the transcript or record of trial.

10–7. Oath administration procedure for interpreters

a. The trial counsel or SCM officer will administer the oath to interpreters at the court-martial. At the discretion of the SJA of the command to which an interpreter is assigned (or employed), interpreters may take a written oath to interpret truly in all cases to which they are detailed or employed. The SJA will maintain records of the written oath so that it may be readily determined that an interpreter has been previously sworn.

b. When an interpreter so sworn is used by, reassigned to, or employed by a different GCMCA, a copy of the oath will be given to the SJA of the new convening authority. When interpreters are not sworn because they have previously been administered a written oath, this fact will be noted in the transcript or record of trial.

10–8. Forms of oaths for court for martial personnel

a. Oath for military judge. The following oath will be administered if the military judge has not been previously sworn according to paragraph 10–3, above (see RCM 807(b)(2), Discussion (A)):

Do you, (name of military judge), 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 a military judge? So help you God?

b. Oath for counsel. The following oath, as appropriate, will be administered to trial counsel, assistant trial counsel, defense counsel (individually requested, detailed, or civilian), and each assistant defense counsel (if they are not members of the JAGC or other Services who have been previously sworn according to paragraph 10–4, above (under RCM 807(b)(2), Discussion (C)):

Do you (name(s) of counsel) swear (or affirm) that you will faithfully perform the duties of (individual) (detailed) counsel in the case now in hearing? So help you God?

c. Oath for court members. The following oath, as appropriate, will be administered to court-martial members according to paragraph 10–5, above (see RCM 807(b)(2), Discussion (B)):

Do you (name(s) of member(s) (each of you)) swear (or affirm) that you will answer truthfully the questions concerning whether you should serve as a member of this court-martial; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws applicable to trials by court-martial, the case of the accused now before this court; and that you will not disclose or discover the vote or opinion of any particular member of the court (upon a challenge or) upon the findings or sentence unless required to do so in due course of law? So help you God?

d. Oath for reporters. The following oath, as appropriate, will be administered to court reporters (RCM 807(b)(2), Discussion (D)):

Do you (name) swear (or affirm) that you will faithfully perform the duties of reporter (to this court) (to any court to which you will be detailed)? So help you God?

e. Oath for interpreters. The following oath, as appropriate, will be administered to every interpreter in the trial of any case before a court-martial before he or she enters upon his or her duties (under RCM 807(b)(2), Discussion (E)):

Do you (name) swear (or affirm) that (in the case now in hearing) (in any case to which you are detailed) you will interpret truly the testimony? So help you God?

10–9. Oath administration procedure for persons providing sworn information in support of requests for authorizations to search and seize and authorizations to apprehend

a. General. Oaths are not required to be given to persons providing information in support of requests for authorizations to search and seize. However, if the authorization is to be based on sworn information, the procedures set forth in *b*, below should be followed. Nothing in this regulation is intended to prohibit the issuance of authorizations to search, seize, or apprehend on the basis of unsworn written or oral statements. Sworn or affirmed information, however, is generally more credible and often entitled to greater weight than information not given under oath (see para 8–9).

b. Procedure.

(1) Commanders and other military personnel empowered to authorize searches and seizures, on probable cause, may administer oaths to persons presenting information in support of requests for such authorizations. The information presented may be oral or in writing. Where written information is provided by message or written statement, other persons authorized to administer oaths may do so. The authorizing official may accept representations by the person providing the information that this has been done. The representations should include the name and authority of the person administering the oath and the date and place of administration.

(2) If the information presented to the authorizing official consists solely of previously sworn affidavits, the individual requesting the authorization need not be sworn. If the requestor or any other individual also provides any additional information based on his or her personal knowledge to the authorizing official for use in the probable cause determination, that individual must do so under oath or affirmation. Sworn or affirmed information, however, is generally more credible and often entitled to greater weight than information not given under oath (see para 8–9, above).

(3) Information also may be presented by telephone, radio, or similar device to those empowered to authorize searches, seizures, and apprehensions. The authorizing official may administer the oath over such devices.

(4) In addition to sworn or affirmed information presented to the authorizing official pursuant to a request for

authorization to search and seize or apprehend, the authorizing official may consider any information he or she has, provided such information would not preclude him or her from acting in an impartial manner.

10–10. Form of oaths for probable cause searches, seizures and apprehensions

No specific form of oath or affirmation is required as long as it imposes upon the requester a moral or legal responsibility for the correctness of the information. The following oath or affirmation, as appropriate, may be administered to persons providing information supporting requests for authorizations to search and seize or to apprehend:

Do you (name) swear (or affirm) that the information you are providing is, to the best of your knowledge, information, and belief, the truth? So help you God?

10–11. Form of oath for the accused following a plea of guilty

The following oath will be administered to the accused prior to the military judge questioning the accused concerning the accuracy of his or her plea (see RCM 910(e)):

Do you (swear)(affirm) that the statements you are about to make will be the truth, the whole truth, and nothing but the truth? So help you God?

Chapter 11
Court-Martial Orders

11–1. Types of court-martial orders

a. Convening orders. A convening order is used to announce the detail of an SCM or of the members of an SPCM or GCM (see RCM 504(d)).

b. Promulgating orders. An initial promulgating order is used to promulgate the results of trial by a GCM or SPCM and the initial action of the convening authority thereon. A supplementary promulgating order is used to promulgate any subsequent action taken by the convening or higher authority on findings or sentence of a GCM, SPCM, or SCM (see RCM 1114).

11–2. Convening orders

The convening authority will issue convening orders for each GCM or SPCM as soon as practicable after he or she personally determines the members of a court-martial. The convening authority may issue a convening order for each SCM at the time of referral by annotating the charge sheet (RCM 1302(c)). Oral convening orders will be confirmed by written orders as soon as practicable. Convening orders may be amended. Summary court-martial convening orders may be amended by an attachment to the charge sheet (see app 4, MCM, 2012).

11–3. Promulgating orders

a. The convening authority will issue an order promulgating the results of trial for all GCMs and SPCMs (see app 17, MCM, 2012). An initial SCM promulgating order need not be issued (see RCM 1114(a)(3)). A copy of the initial promulgating order, or a copy of the record in SCM cases, will be immediately forwarded to the commander of the proper confinement facility and the finance and accounting officer providing finance service to that facility (see also, para 5–32*b*, above, requiring 24-hour notification of convening authority's action).

b. Action taken on the findings or sentence of a GCM, SPCM, or SCM subsequent to the initial action by the convening authority will be promulgated, as appropriate, by—

(1) The convening authority who took the initial action in the case.

(2) The commanding officer of the accused who is authorized to take the action being promulgated.

(3) An officer exercising GCM jurisdiction over the accused at the time of the action, or

(4) The Secretary of the Army.

c. An order promulgating a self-executing dishonorable or bad conduct discharge need not be issued.

d. Initial or supplementary promulgating orders in GCMs, SPCMs, and SCMs are designated "general court-martial order," "special court-martial order," or "summary court-martial order," respectively.

e. All promulgating orders will identify victims and witnesses by initials only, for example "...cause Ms. A.B. to engage in a sexual act..." and "...make to SA B.C., an official statement...." No promulgating order will publish personal information concerning victims or witnesses including, but not limited to, a home address or bank account number.

11–4. Format for a summary court-martial's court-martial orders

a. Summary court-martial convening order. An SCM may be convened at the time of referral by annotating section

V of the charge sheet (see app 4, MCM, 2012) after the words "convened by" as follows: this detail of (insert grade and name) as a summary court-martial on (date). If the convening authority has been empowered under UCMJ, Art. 24(a)(4), the charge sheet will reference the order granting SCM authority (see RCM 504(d)). Amendments to SCM convening orders will be made by attachments to the charge sheet. The SCM convening orders need not be numbered (see para 11–5*a*(2), below).

b. Summary court-martial promulgating order. Initial SCM promulgating orders are not required. Supplemental promulgating orders will be issued using the format in paragraph 11–5, below, and Appendix 17, MCM, 2012.

11–5. Format for court-martial orders

a. Heading.

(1) The heading of court-martial orders (CMOs) is the same as that used for other orders, except that the words "court-martial convening order," "general court-martial order," "special court-martial order," or "summary court-martial order," are substituted for the word "Orders" (see AR 600–8–105).

(2) Courts-martial orders shall be numbered so that convening authorities and other interested parties are able to track the creation and amendment of both convening and promulgating orders by calendar year.

(a) Courts-martial convening orders may be grouped into separate categories, such as general and special courts-martial, with each category having its own numbering sequence and beginning anew each calendar year. Alternatively, a convening authority may wish to group all general and special court-martial convening orders together in one series, with each succeeding convening order numbered sequentially and the whole series beginning anew each calendar year. This latter option may be preferable when a convening authority picks the same panel members to serve as a standing panel for both general and special courts-martial.

(b) Promulgating orders should always be grouped into separate categories of general and special court-martial orders, with each series beginning a new each calendar year.

(c) For all courts-martial orders, the first numbered order in each series issued in any calendar year will bear a notation above the heading of the first page showing the number of the last order issued for that series during the preceding year. For example, "Court-Martial Convening Order Number 37 was the last of the series for 2011." (See Post-Trial Handbook).

(3) The type of order will be written in capital letters beginning at the left margin immediately opposite the date. The word "NUMBER" in capital letters will be placed immediately below the type of order. An Arabic numeral indicating the serial number of the order will be placed so that the last number is immediately below the last letter of the word "ORDER." Dates will be indicated as follows:

(a) A court-martial convening order will bear the date of its publication.

(b) An initial promulgating order will bear the date of the action of the convening authority on the record of trial.

(c) An initial order promulgating an acquittal or termination, or a supplementary order will bear the date of its publication.

(4) If the initial promulgating order for a general or special court-martial contains findings of guilty as to any qualifying military offense, the Staff Judge Advocate will ensure that the top of the first page of the order is annotated in bold-face type with "DNA processing required. 10 USC 1565." A "qualifying military offense" is an offense determined by the Secretary of Defense to be a qualifying military offense for the purposes of 10 USC 1565 (see DODI 5505.14).

b. Body.

(1) Detailed instructions on CMOs are contained in Appendixes 6 and 17, MCM, 2012.

(2) Court-martial convening orders (see RCM 504(d) and app 6, MCM, 2012). Great care should be used to verify that the members actually detailed by the convening authority are present. At a minimum, each member should be asked to verify their name, rank, and unit. After verification, no document that includes the social security numbers of court members should be attached to the record of trial (see app 8, MCM, 2012, and RCM 813).

(3) Initial GCM and SPCM promulgating orders. The body of the order will contain the elements outlined in RCM 1114 in the format of appendix 17, MCM, 2012. If the order promulgates the proceedings of a rehearing, it will recite that fact together with the number and date of the court-martial order publishing the former proceedings.

(4) Supplementary GCM, SPCM, and SCM promulgating orders. The order will be in the format contained in Appendix 17, MCM, 2012, and the order will include, if applicable, the following:

(a) The date the sentence was adjudged if the supplementary action in any manner affects a sentence of confinement.

(b) The courts-martial case number (ARMY0000000) inserted in parentheses at the end of the distribution list.

c. Authentication. Court-martial orders are authenticated in the same manner as other orders discussed in AR 600–8–105 with the exception of the authority line. The authority line in convening orders indicates that the commander has personally acted with respect to the selection of the personnel named in the order. In court-martial orders, the authority line reads—

(1) "By command of (grade and last name)" when the commander is a general officer.

(2) "By order of (grade and last name)" when the commander is below the grade of brigadier general.

d. Distribution designation.

(1) The word "distribution" is placed beginning at the left margin opposite the signature block. A list of the individuals, organizations, and installations to which copies of the order will be sent and the number of copies to be furnished will be indicated under "distribution." Distribution includes one copy for the reference set, when needed, and the record set of military publications.

(2) Standard distribution of orders within a command and to agencies requiring full distribution may be designated by letters, for example, distribution A, B, or combinations thereof, to indicate all or part of the distribution made. Agencies included in each letter designation are shown in a distribution list prepared and published by the headquarters or agency concerned (see AR 600–8–105).

e. Corrections. Court-martial orders are corrected in the same manner as other orders discussed in AR 600–8–105, with the following exceptions:

(1) Changed material will be underscored.

(2) Further corrections will be made by additional corrected copies, as necessary, with the figure "2d," "3d," and so forth, inserted before the words "corrected copy." Extreme care should be used in preparing court-martial orders to avoid the need for corrections.

11–6. Modification of findings or sentence

a. Orders modifying the findings or all or any part of the sentence of a GCM, SPCM, or SCM issued subsequent to the order promulgating the result of a trial are published in appropriate supplementary CMOs.

b. Self-executing punishments.

(1) Where the convening authority initially approves an adjudged dishonorable or bad conduct discharge, that punishment is self-executing in cases where the accused—

(a) received no sentence to confinement; or

(b) has completed a sentence to confinement; and

(c) is on excess or appellate leave; and

(d) the Clerk of Court, USACCA, certifies that the case is final.

(2) The Clerk of Court, USACCA, will forward the initial promulgating order and certification that the case is final to the accused's personnel office for preparation of a discharge order and certificate.

(3) No supplementary CMO is necessary.

(4) In cases where an accused was tried by separate courts-martial and received different punitive discharges, those punishments remain self-executing to the extent the criteria in paragraph 11–6*b*(1) are satisfied.

c. Supplemental orders for UCMJ, Art. 66 cases in which a petition to the USCAAF has not been filed.

(1) No supplementary CMO is necessary if the accused waives or withdraws appellate review under RCM 1110 (and no modification of the action in the initial promulgating order is necessary after review, under RCM 1112) or if the USACCA affirms the findings and sentence without modification, and

(a) No dismissal or discharge was adjudged or approved; or

(b) A suspended dismissal or discharge has not been vacated pursuant to UCMJ, Art. 72; and

(c) No action has been taken by TJAG or the SECARMY modifying the findings or the sentence.

(2) A supplemental CMO is necessary for a case involving a sentence to dismissal or discharge not described in (1), above—

(a) In a case involving a sentence to a punitive discharge in which the accused has waived or withdrawn appellate review under RCM 1110, the supplementary CMO will be promulgated on completion of review under RCM 1112 or subsequently, after final review by TJAG pursuant to RCM 1201(b)(2), if review by TJAG is required under RCM 1112(g)(1).

(b) In a case involving a sentence to dismissal in which the accused has waived or withdrawn appellate review under RCM 1110, the supplementary CMO will be promulgated after the record has been forwarded to TJAG under RCM 1112(g)(2) for action under RCM 1206.

(3) In a case reviewed by the USACCA, and if required (see para 11–6*b*, above), the supplementary CMO will be promulgated after the expiration of 75 days from the date the USACCA decision is served on or mailed to the accused under paragraph 12–9, below, whichever is earlier, unless the accused requests final action sooner or petitions the USCAAF for a grant of review.

(4) A supplemental CMO is necessary in all other cases in which competent authority modifies the findings or sentence.

(5) When the accused is enlisted, or is an officer not under an approved or affirmed sentence to dismissal, the supplemental CMO will be promulgated by the officer (or successor) exercising GCM authority over the accused at the time the court-martial was held if the case receives final review under RCM 1112, or otherwise by the officer presently exercising GCM authority over the accused or by HQDA. If the accused is under an approved sentence to dismissal, the supplementary CMO will be promulgated by HQDA.

d. Supplementary or final orders for UCMJ, Art. 66 cases in which a petition to USCAAF or the Supreme Court has been filed, or review is final under UCMJ, Art. 76. Supplemental or final CMOs, as required, will be promulgated either by the officer exercising GCM authority over the accused—according to a letter of instruction from the Clerk of Court, JALS–CCZ, by HQDA—or by the Clerk of Court, JALS–CCZ, who is delegated discretionary authority to issue such CMOs.

11–7. Distribution of court-martial orders

Official copies of CMOs and amending orders, if any, issued from the various headquarters will be thus dispersed—

a. Convening orders. Convening orders will be distributed as follows:

(1) One copy to each individual named in the order.

(2) One copy to the officer exercising GCM jurisdiction (inferior courts only).

(3) One copy each for original and copies of the record of trial.

b. Initial court-martial promulgating orders. Regardless of the sentence approved, the initial court-martial promulgating order will be distributed as follows:

(1) One copy to each individual tried (included in the record of trial provided to the accused).

(2) One copy each to the military judge, trial counsel, and defense counsel of the court-martial at which the case was tried.

(3) One copy each to the immediate and next higher commander of the individual tried.

(4) Two copies for each individual tried to the GCM authority (the SJA).

(5) One copy each to the commanding officer of the installation and the commander of the corrections facility where the individual tried is confined.

(6) One copy to the MPD or PSC maintaining the personnel records of the individual tried, addressed to the Records Section, in compliance with AR 600–8–104. The MPD or PSC will ensure the order is transmitted to the Finance and Accounting Office maintaining the pay account of the individual tried for filing and for use as a substantiating document, according to AR 37–104–4.

(7) One copy for each officer tried, to the U.S. Army Human Resources Command (PDR–R), 1600 Spearhead Division Ave., DEPT. 420, Fort Knox, KY 40122–5420. Packets less than 100 pages may be uploaded via the web in lieu of mailing; include the words "adverse action" in the comment field. For active guard reserve (AGR) officers, send to the U.S. Army Human Resources Command (AHRC–CIS–P), 1 Reserve Way, St. Louis, MO 63132–5200.

(8) Two copies in GCM cases of officers only to the Professor of Law, United States Military Academy, West Point, NY 10996.

(9) One copy for each enlisted Soldier tried, to the Commander, U.S. Army Enlisted Records and Evaluation Center, PCRE–FS, Fort Benjamin Harrison, IN 46249.

(10) One copy for each member of the Army Reserve tried to the U.S. Army Human Resources Command (AHRC–CIS–P), 1 Reserve Way, St. Louis, MO 63132–5200.

(11) In all SPCM cases, three copies forwarded to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

(12) One copy to the local investigating office of the USACIDC or the Provost Marshal's Office, as applicable.

(13) One copy to the HQ, USACIDC, CIOP–ZC, 27130 Telegraph Road, Quantico, VA 22134.

(14) One copy to the Army Corrections Command (DAPM–ACC), 150 Army Pentagon, Washington, DC 20310–0150.

(15) One copy, for each member of the Army Reserve tried, to Commander, USARC, Office of the Staff Judge Advocate, Chief Military Law Division, 1401 Deshler Street SW, Fort McPherson, GA 30330.

(16) One copy to the U.S. Army Criminal Investigation Laboratory, 4930 North 31st Street, Forest Park, GA 30297–5205.

(17) One copy to the Special Actions Branch of the Fort Sill Defense Military Payment Office, Fort Sill DPMO, 4700 Mow Way Rd., Suite 190, Fort Sill, OK 73503.

c. Initial general court-martial and special court-martial orders promulgating acquittals, terminations, or approved sentences not involving death, dismissal, punitive discharge, or confinement for 1 year or more. In addition to the distribution shown in subparagraphs *b*(1) through (17), above, initial GCM and SPCM CMOs promulgating acquittals, terminations, or approved sentences not involving death, dismissal, punitive discharge, or confinement for 1 year or more, will be distributed as follows:

(1) In GCM cases, 10 copies for each accused to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

(2) Two copies to the records of each accused tried for delivery (normally, by the guard), at the same time the accused is delivered, to the Commandant of the USDB, corrections facility, or the Federal Bureau of Prisons institution in which the accused is to be confined under sentence.

(3) One copy to the Special Actions Branch of the Fort Sill Defense Military Payment Office, Fort Sill DPMO, 4700 Mow Way Rd., Suite 190, Fort Sill, OK 73503.

d. Initial court-martial promulgating orders with an approved sentence that involves death, dismissal, punitive discharge, or confinement for 1 year or more, whether or not suspended. In addition to the distribution shown in subparagraphs *b*(1) through (12), above, initial court-martial promulgating orders with an approved sentence that involves death, dismissal, punitive discharge, or confinement for 1 year or more, whether or not suspended, will be distributed as follows:

(1) Ten copies for each person accused to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546. (Place eight copies in the original record of trial and one in each of the two remaining copies of the record of trial that are forwarded.)

(2) Two copies of GCM and SPCM promulgating orders to the Department of Veterans Affairs, Regional Office and Insurance Center, 5000 Wissahickon Ave., Philadelphia, PA 19101, announcing approved findings of, guilty of—

(a) Mutiny.

(b) Treasonable acts in violation of UCMJ, Arts. 99, 104, or 134.

(c) Spying or espionage.

(d) Desertion.

(e) Refusal to perform service in the Army of the United States or refusal to wear the uniform of the Army of the United States.

(3) Twelve copies provided to the records of each accused for delivery (normally, by the guard) to the Commandant of the USDB, corrections facility, or the Federal Bureau of Prisons institution in which the accused is to be confined under sentence.

e. Summary court-martial record of trial.

(1) On completion of the convening authority's action, the SCM record of trial (DD Form 2329) will be distributed as follows:

(a) One copy to the accused.

(b) One copy will be retained by the SCM authority.

(c) If the accused is confined, one copy to the commander of the confinement facility in which the accused is or will be confined.

(d) Additional copies will be distributed as provided in subparagraphs *b*(3), (4), (6), (7), (10), (13), (14), and (15), above.

(2) On completion of review under RCM 1112 or RCM 1201(b)(2), the original and copies of the SCM record of trial reflecting the completed review (see para 5–32*d*, above) will be distributed as follows:

(a) One copy to the accused.

(b) One copy will be retained by the SCM authority.

(c) Additional copies will be distributed as provided in *b*(3), (4), (6), (7), and (10), above.

(d) The original will be retained by the commander exercising GCM authority over the SCM convening authority, to the attention of the SJA.

f. Supplementary court-martial orders.

(1) A supplementary order promulgating a self-executing dishonorable or bad conduct discharge need not be issued.

(2) General court-martial and special court-martial supplementary orders will be distributed in the same manner as provided for initial CMOs shown in *b*, *c*, and *d*, above, except that copies are not required to be forwarded to the military judge and trial or defense counsel of the court-martial at which the case was tried.

(3) Summary court-martial supplementary orders will be distributed as follows:

(a) One copy will be provided to each accused.

(b) One copy forwarded to the commander exercising GCM authority, to the attention of the SJA, over the SCM authority (for attachment to the original record of trial).

(c) One copy to the MPD or PSC maintaining the personnel records of the accused, to the Records Section, in compliance with AR 600–8–104. The MPD will ensure the order is transmitted to the Finance and Accounting Office maintaining the accused's pay account for filing and for use as a substantiating document, according to AR 37–104–4.

(d) One copy to the Commander, U.S. Army Enlisted Records and Evaluation Center, PCRE–FS, Fort Benjamin Harrison, IN 46249. For AGR enlisted Soldiers, send to the Commander, U.S. Army Reserve Personnel Center, DARP–ARE, 9700 Page Boulevard, St. Louis, MO 63132–5200.

(e) One copy to the commanding officer of the confinement facility of the installation at which the accused is confined, if appropriate.

(4) If the authority issuing the supplementary order is other than the authority initially acting on the case, the latter will be forwarded two copies of the supplementary order. These copies will be made available for information and annotation of military police and criminal investigation reports.

(5) A copy of all supplementary orders will also be provided to the Director, U.S. Army Crime Records Center, Building 1465, 6010 6th Street, Fort Belvoir, VA 22060–5585.

Chapter 12
Appellate Review Matters

12–1. Scope

This chapter discusses appellate review matters pertaining to—

a. Appeals under the UCMJ, Arts. 62 and 66.

b. The waiver or withdrawal of an appeal under UCMJ, Art. 61.

c. Petitions for habeas corpus representation in death penalty cases.

d. Petitions for extraordinary relief filed by the United States.

12–2. Petitions for extraordinary relief

Prior to filing a petition for extraordinary relief with the USACCA or the USCAAF on behalf of the United States or Government officials, in their capacity as Government officials, trial counsel, SJAs, or their representatives will coordinate with the Chief, Government Appellate Division (GAD).

12–3. Appeals under Article 62

a. A trial counsel will not file a notice of appeal with the Chief, GAD, under RCM 908 unless authorized to do so by the GCMCA or the SJA. Appeals forwarded under RCM 908(b)(6) will be sent to the Chief, Government Appellate Division, JALS–GA, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546. The Chief, GAD, will, after coordination with the Assistant Judge Advocate General for Military Law and Operations, decide whether to file the appeal with USACCA and will notify the trial counsel of this decision by expeditious means.

b. The trial counsel will serve a certificate of notice of appeal under RCM 908(b)(3) on the military judge. The certificate will reflect the date and time of the military judge's ruling or order from which the appeal is taken, and the time and date of service on the military judge.

c. The matters forwarded under RCM 908(b)(6), including an original and three copies of the verbatim record of trial (only those portions of the record that relate to the issue to be appealed), together with the certificate of notice of appeal, will be forwarded to the Chief, GAD, within 20 days from the date written notice of appeal is filed with the trial court. If the decision is made not to file the appeal with the USACCA, the Chief, GAD, will return all copies of the record to the trial counsel.

d. Following a decision of the USACCA, the Clerk of Court will notify the military judge and the convening authority, who will ensure the accused is notified promptly as required by RCM 908(c)(3). Whether the accused is notified orally on the record or by other means, the trial counsel's certificate as to the fact, date, and method of notification will be sent immediately to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

12–4. Appellate advice after trial

a. Apart from the advice an accused has received pursuant to RCM 1010, the trial defense counsel will explain to the accused the rights to appellate review that apply to the case. The trial defense counsel will submit for attachment to the record of trial a record of advice given to the accused concerning appellate review and appellate counsel and the accused's election concerning representation by military or civilian counsel before the USACCA.

b. The Chief, USATDS will prescribe policies and procedures to ensure compliance with this paragraph.

c. With regard to appellate advice after a decision by the USACCA, see paragraph 12–9, below, and DA Form 4917 (Advice as to Appellate Rights), DA Form 4918 (Petition for Grant of Review in the United States Court of Appeals for the Armed Forces), and DA Form 4919 (Request for Final Action).

12–5. Waiver or withdrawal of appellate review

a. A waiver of appellate review or withdrawal of an appeal pursuant to UCMJ, Art. 61 and RCM 1110 will be made on DD Form 2330 (Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review) or DD Form 2331 (Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of The Judge Advocate General). (See apps 19–20, MCM, 2012; DD Form 2330; and DD Form 2331.) In GCM cases, and in SPCM cases in which a BCD or confinement for 1 year has been approved, a review pursuant to RCM 1112 will be completed before the record of trial is forwarded, pursuant to paragraph 5–46, above. The withdrawal of an appeal must be filed with, or immediately forwarded to, the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

b. The Clerk of Court will refer the withdrawal to the court before which the appeal is pending or to the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-

2200 and thereafter will return all copies of the record for review pursuant to RCM 1112 under the rules or instructions of the cognizant court or division.

c. An accused may not revoke a waiver or withdrawal of appellate review made in substantial compliance with RCM 1110. When, however, review under RCM 1112 or RCM 1201(b)(2) results in a rehearing, the accused is entitled to any applicable appellate rights, unless he or she again waives or withdraws further appellate review.

12–6. Identifying companion and other cases

a. The trial counsel will annotate the cover of each original record of trial forwarded for review under the UCMJ, Art. 66 to identify each person (grade, name, social security number) tried or expected to be tried separately in a case potentially subject to appellate review pursuant to UCMJ, Art. 66 for involvement in an offense that is the same as or related to one tried in the case being forwarded. These co-accused, co-actors, or co-conspirators, as the case may be, will be identified under the heading "Companion Cases." The purpose of this is to ease case assignments among the panels of USACCA and to avoid conflicts of interest in assigning appellate defense counsel. If there are no companion cases, the words "no companion cases" will be entered under the above heading.

b. In addition, the trial counsel will annotate the cover of each original record of trial forwarded for review under the UCMJ, Art. 66 to identify any prosecution witness or victim known to have been tried for any offense by court-martial subject to review pursuant to UCMJ, Art. 66 so that potential conflicts of interest in the assignment of appellate defense counsel can be avoided.

12–7. Rules of appellate procedure

See the United States Army Court of Criminal Appeals Internal Rules of Practice and Procedure, together with the Joint Rules of Practice and Procedure of the Courts of Criminal Appeals.

12–8. Clerk of Court, U.S. Army Judiciary

a. The Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546, receives records of trial, petitions for extraordinary relief, petitions for a new trial in pending cases, withdrawals of appeals, and other appellate matters forwarded to TJAG and acts in a ministerial capacity for TJAG in referring such matters to the USACCA or USCAAF and in designating appellate counsel for the parties.

b. In cases remanded to TJAG, the Clerk of Court acts for TJAG under the order of remand and refers records of trial to the USACCA or a convening authority, with necessary instructions, for compliance with the mandate.

c. The Clerk of Court keeps the Chief, U.S. Army Judiciary, and TJAG informed of the state of the military appellate process and of the need for any statutory, regulatory, or rule changes.

12–9. Serving U.S. Army Court of Criminal Appeals decisions on the accused

a. To protect the rights of the Government and the accused, a copy of each USACCA decision (opinion or order disposing of an appeal or petition) must be served as expeditiously as possible on each accused and counsel for the accused and a record maintained of the date and manner of service.

b. The Clerk of Court is responsible for serving decisions on counsel for the accused and has discretionary authority to serve the accused. In cases where all of the accused's appellate counsel are Defense Appellate Division counsel, service of the decision on Defense Appellate Division, JALS–DA U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546 will constitute service on the accused's appellate counsel of record.

c. The decision copy to be served on the accused, as well as a copy to be placed in the accused's CMIF, will be sent to the GCM authority currently exercising jurisdiction over the accused. If the GCM authority who receives the correspondence is not currently exercising GCM authority over the accused, he or she will cause the correspondence to be sent by endorsement to the new GCM authority over the accused, to the attention of the SJA (this correspondence will not be sent to commanders of stockades, correctional holding detachments, personal control facilities, or similar organizations, who do not exercise GCM authority over the accused). The GCM authority will also send a copy of the endorsement to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

d. Information copies of decisions will be sent to the confinement facility in which the accused is confined and to the GCM authority exercising jurisdiction over the accused at the time of trial and the GCM authority who took initial action on the record of trial if one or both of them are different from the GCM authority indicated in *c*, above.

e. The USACCA decision will be served on the accused in person whenever possible. In addition to the decision, unless the decision sets aside all findings of guilty and the sentence and dismisses the charges or involves a case referred to the USACCA under UCMJ, Art. 69, the accused will be given a completed copy of DA Form 4917, five copies of DA Form 4918 on which the accused's name, grade, service number, and USACCA docket number will be entered, and a postage paid envelope addressed to USCAAF. The person who served the decision personally on the accused will complete the certificate in section A of DA Form 4916, Certificate of Service/Attempted Service, and ensure that the original and two copies are sent to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

f. If personal service cannot be made because the accused is absent from his or her unit without proper authority,

section B of DA Form 4916 will be used to certify the circumstances. The original and two copies with any available documentary evidence of the absence (for example, DA Form 4187, Personnel Action, will be sent to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546).

g. If there is any other reason, such as illness of an accused who is present in the command, that appears to preclude personal service, the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546 should be contacted for advice.

h. When personal service cannot be made because of the authorized absence of an accused (such as excess leave), the decision copy will be served by first class certified mail, return receipt requested. The use of special postal service is authorized as an exception to AR 25–51. The decision will be sent to the address provided by the accused at the inception of the absence or subsequently. If the accused provided no address, the packet will be sent to the most recent home address reflected in the accused's official military personnel records. Except when the decision sets aside all approved findings of guilty and the sentence and orders the charges dismissed, the documents described in *e*, above, will be prepared and sent with the decision.

i. As soon as the decision is mailed, the person mailing it must complete item 1 of section C on DA Form 4916. The form is then held for return of service to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546 when the earliest of the following happens:

(1) The signed certified mail receipt, PS Form 3811 (Domestic Return Receipt), is received (complete item 2a, section C, DA Form 4916).

(2) The packet is returned undeliverable (complete item 2b, section C, DA Form 4916).

(3) Sixty-five days have passed since the decision was mailed and nothing has been returned or received (complete item 2c, section C, DA Form 4916).

j. When section C of DA Form 4916 is used, the return of service to the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546 will include the original and two copies of the completed DA Form 4916, and any material returned by the USPS, such as the signed return receipt (PS Form 3811), the receipt for certified mail, PS Form 3800, Certified Mail Receipt, or the unopened envelope with its contents.

k. If a petition for grant of review by the USCAAF is received by the GCM authority, the date of receipt will be noted and the petition will be forwarded to USCAAF immediately.

12–10. Cases remanded by the U.S. Army Court of Criminal Appeals or the U.S. Court of Appeals for the Armed Forces

a. When a decision of the USACCA or USCAAF directs or authorizes further proceedings, such as a rehearing, a limited hearing, or a new action by the convening authority, the accused must be located and furnished a copy of the decision. Further proceedings in USACCA cases need not be delayed, however, solely to permit an accused to petition USCAAF for a grant of review or otherwise appeal the matter.

b. Any special instructions deemed necessary to carry out the mandate of the court will be transmitted by the Clerk of Court with the record of trial that was remanded.

(1) The original and any copies of a record of trial that was remanded for further proceedings must remain intact except for documents needed for reintroduction in the further proceedings, such as the original charge sheet and exhibits to be readmitted into evidence. Documents and copies of documents withdrawn should be replaced if not used, or, if used, replaced by a trial counsel memorandum explaining their disposition. In particular, the original copies of a decision of a court, action of a convening authority, post-trial review or recommendation, pretrial advice, and UCMJ, Art. 32 preliminary hearing must not be withdrawn. All copies of the record remanded should be returned with the record of further proceedings except that, if action on the sentence is such that no further review pursuant to UCMJ, Arts. 66 or 67 is required, only the original record need be returned to the Clerk of Court. All copies of the record remanded should be returned with the record of further proceedings.

(2) In addition to any new document in the nature of a pretrial advice and referral to a court-martial, the authenticated record of further proceedings must be accompanied by the original of any new action by a convening authority and the same number of copies of an order promulgating the action as required when a record is initially forwarded for review pursuant to UCMJ, Arts. 66 or 69, as the case may be.

(3) In the absence of specific advice to the contrary, the GCM authority should consider that an accused's right to speedy disposition of criminal charges, right to address matters to a convening authority, and right of counsel to comment on a SJA's recommendation to the convening authority apply to the further proceedings.

12–11. Leave or transfer pending appellate review

a. An accused who is under sentence to a dismissal or punitive discharge, approved by the convening authority and unsuspended, and who is not serving a sentence to confinement, may, under AR 600–8–10, voluntarily or involuntarily be authorized by the officer exercising GCM jurisdiction to take leave, including excess leave, until there is a final judgment in the case. The accused who is on excess leave should be transferred to the nearest GCMCA with a regional confinement facility immediately after action is taken by the convening authority.

b. The GCM authority will ensure that the Clerk of Court, JALS–CCZ, U.S. Army Legal Services Agency, HQDA, 9275 Gunston Road, Fort Belvoir, VA 22060–5546 is expeditiously furnished copies of all transfer orders and excess leave orders, or a copy of DA Form 31, when an accused has been transferred from his or her jurisdiction or is placed on excess leave.

12–12. Habeas corpus representation

Military prisoners sentenced to death by a court-martial, who seek to file in Federal civilian courts post-conviction habeas corpus petitions, will, upon request to The Judge Advocate General, be detailed military counsel by The Judge Advocate General to assist counsel appointed by the District Court or individually retained for representation in such proceedings and any appeals therefrom (see UCMJ, Art. 70(e)). This right exists irrespective of any decision by the accused Soldier to hire civilian counsel at his own expense for such representation.

12–13. Tenure for military appellate judges

Judge advocates are certified as military judges by TJAG and assigned to the USACCA for a minimum of 3 years, except under any of the following circumstances:

a. The military judge voluntarily requests to be reassigned to others duties, and TJAG approves such assignment;

b. The military judge retires or otherwise separates from military service;

c. The military judge is reassigned to other duties by TJAG based on the needs of the Service in a time of war or national emergency;

d. The officer's certification as a military judge is withdrawn by TJAG for good cause (see chap 15, section III, below).

Chapter 13
Application for Relief under Article 69, Uniform Code of Military Justice

13–1. General

a. This chapter implements RCM 1201(b)(3) and UCMJ, Art. 69(b). It prescribes the procedures for applying to TJAG for relief from the findings or sentence in an SPCM or SCM court-martial case that has been finally reviewed, but has not been reviewed by the USACCA.

(1) The Judge Advocate General may vacate or modify the findings or sentence in whole or in part and may grant relief on grounds of—

(2) Newly discovered evidence.

(3) Fraud on the court.

(4) Lack of jurisdiction over the accused or the offense.

(5) Error prejudicial to the substantial rights of the accused.

(6) Appropriateness of the sentence (except that the quality of the behavior or duty performance of the accused after trial, or any evidence of personal hardship not admitted at trial, is normally not a basis on which relief on grounds of sentence appropriateness may be considered).

b. No provision exists for a hearing or personal appearance before TJAG.

c. Relief under UCMJ, Art. 69(b); the RCM; and this chapter is authorized only when the court-martial is final within the meaning of RCM 1209(a)(2), and when at least one of the grounds set forth in *b,* above, has been established to the satisfaction of TJAG. If TJAG sets aside the sentence, TJAG may, except when the setting aside is based on lack of sufficient evidence to support the findings, order a rehearing. A new trial may be granted only under UCMJ, Art. 73. The denial of relief by TJAG under the provisions of this chapter does not preclude application on clemency grounds under UCMJ, Art. 74 (see AR 190–47 or AR 15–185).

13–2. Procedures for making application

a. Apply for relief on DA Form 3499 (Application for Relief from Court-Martial Findings and/or Sentence under the Provisions of Title 10, United States Code, Section 869), which may be obtained through normal publications supply channels or at http://www.apd.army.mil/.

b. The DA Form 3499 will be prepared and submitted according to the requirements set forth in the instructions contained on the form. The DA Form 3499 must be filed in the OTJAG by the accused, or by a person with authority to act for the accused, on or before the last day of the 2-year period beginning on the date the sentence was approved by the convening authority.

c. Failure to file within the prescribed time may be excused by TJAG for good cause established by the accused.

13–3. Submission of application

a. When an applicant seeks relief from the findings or sentence, or both, of a SPCM or SCM and is a member of the

command that convened the court-martial (or of a unit within the same GCM jurisdiction), the application will be sent through the office of the SJA of that GCM jurisdiction. That office will forward the application to the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200.

(1) The original record of trial.

(2) Copies of all court-martial orders in the case.

(3) Any matter related to the allegations of the applicant.

(4) Responsive comments on the merits of the applicant's allegations, signed by the SJA of the GCM jurisdiction.

(5) Original post-action review of the case in accordance with RCM 1112(a).

b. All other applications will be submitted directly to the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200. A copy of the application will be referred to the SJA of the command that convened the court-martial (or of a unit within the same GCM jurisdiction) for processing in accordance with subparagraph *a,* above.

13–4. Timeliness

a. Timely submission of an application for relief is necessary (see para 13–2, above). As time passes, it may become difficult, if not impossible, for the applicant to establish the facts upon which relief could have been granted.

b. Applicants on active duty are encouraged to consult a member of the JAGC, when available, before preparing an application for relief.

Chapter 14
The Army Military Justice Report

14–1. Preparation

The SJA of each command having GCM jurisdiction is responsible for the preparation, approval, and submission of the monthly Military Justice Report through the Military Justice Online (MJO) application. The monthly report must be prepared by every jurisdiction servicing a GCMCA.

14–2. Frequency and content

a. The report must be prepared monthly and will include—

(1) Total number of courts-martial that have completed sentencing.

(2) Total nonjudicial punishments (formal and summarized) during the month.

(3) Total number of enlisted administrative separations as specified by the report.

(4) Total number of officer administrative separations as specified by the report.

(5) Total number of administrative reprimands as specified by the report.

(6) Additional information regarding the types of offenses and demographic data, as required by Military Justice Report format.

b. If a GCM jurisdiction is dissolved, unless the records are transferred to the office of the SJA of another GCM jurisdiction, the report will include data up to the date of dissolution.

14–3. Certification, routing and due date

The SJA or the Deputy SJA will certify the report by the 5th duty day of each month. The authority to certify the report may not be delegated. The SJAs will ensure submission of the Military Justice Report through the MJO application by the 5th day of each month.

14–4. Negative reports

Negative reports are required and may be submitted using the Military Justice Report on JAGCnet.

14–5. Use of the Military Justice Report

Technical questions regarding the use of JAGCnet or MJO should be addressed to OTJAG–ITD at itdservicedesk@ja-gc-smtp.army.mil. Substantive criminal law questions regarding the use of the Military Justice Report should be addressed to OTJAG–CLD at usarmy.pentagon.hqda-otjag.mbx.criminal-law-division@mail.mil.

Chapter 15
Allegations of Misconduct and Suspension of Counsel and Military Judges

Section I
General

15–1. Scope

This chapter implements and amplifies RCM 109. It sets forth standards and procedures for handling complaints by and against counsel, including civilian counsel, and military judges. Counsel before courts-martial, appellate counsel, and military judges play a vital role in the preservation of military justice and discipline. A consequent obligation of this role is the maintenance of the highest standards of ethical conduct. Fundamental ethical principles are available as guides in maintaining this integrity (see para 5–8).

15–2. Withdrawal of certification by The Judge Advocate General

Nothing contained in this regulation is to be construed as a limitation on the power of TJAG to issue or withdraw—

a. Any certification of qualification to act as military judge made pursuant to UCMJ, Art. 26, or

b. Any certification of competency to act as counsel made pursuant to UCMJ, Art. 27(b).

Section II
Suspension of Counsel

15–3. General

a. Action may be initiated to suspend counsel (under RCM 109) when a person acting or about to act or likely to act, as counsel before proceedings governed by the UCMJ or the MCM—

(1) Is, or has been guilty of, professional or personal misconduct of such a serious nature as to show that he or she is lacking in integrity or good demeanor, or

(2) Is otherwise unfit or unqualified to perform the duties of counsel.

b. Action to suspend under this chapter may be taken against a person who—

(1) Is certified as qualified to perform the duties of counsel of GCM under UCMJ, Art. 27(b), or

(2) Has been selected or obtained as counsel by the accused under UCMJ, Art. 38(b).

(3) Has appeared as counsel for the accused in proceedings governed by the UCMJ or the MCM, or is likely to represent the accused at such proceedings in the future.

15–4. Grounds for suspension

a. Grounds for suspension include, but are not limited to—

(1) Demonstrated incompetence while acting as counsel during pretrial, post-trial, or appellate stages of the proceedings.

(2) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics.

(3) Fabricating or attempting to fabricate papers, testimony, or evidence.

(4) Tampering or attempting to tamper with a witness.

(5) Abusive conduct toward the members of the court, the military judge, or other counsel.

(6) Conviction of a felony or any offense involving moral turpitude.

(7) Conviction, receipt of nonjudicial punishment, or nonpunitive disciplinary action for a violation of UCMJ, Art. 98.

(8) Attempting to act as counsel in a case involving a security matter by one who is a security risk.

(9) Disbarment or suspension by a Federal, State, or foreign court.

(10) Suspension from practice as counsel before courts-martial by the JAG of another armed force or by the USCAAF.

(11) Flagrant or continued violations of any specific rules of conduct prescribed for counsel in paragraph 5–8, above, or other applicable standards.

(12) Violation of the Army "Rules of Professional Conduct for Lawyers" (under AR 27–26) or other applicable ethical standards, whether such misconduct occurs before a military court or other tribunal, or in a military or civilian status in the course of the lawyer's activities as a lawyer or otherwise, whether committed within or outside the scope of professional duties that involve the U.S. Army, whether on or off-duty.

b. Action to suspend should not be initiated because of—

(1) Personal prejudices or hostility toward counsel, because he or she has presented an aggressive, zealous, or novel defense, or

(2) When the apparent misconduct as counsel stems solely from inexperience or lack of instruction in the performance of legal duties.

15–5. Action to suspend military counsel

a. General. Action to suspend a person from acting as counsel before courts-martial or as appellate counsel may be initiated when other available remedial measures, including punitive action—

(1) Are inappropriate.

(2) Have failed to induce proper behavior.

b. Remedial measures. While not required as a prerequisite to the suspension of counsel, full consideration will be given to the appropriateness and effectiveness of such other available remedial measures, including but not limited to—

(1) Admonition.

(2) Instruction.

(3) Temporary suspension.

(4) Proceedings in contempt.

(5) Nonjudicial punishment under UCMJ, Art. 15.

(6) Relief of the person from duties as appointed counsel, assistant counsel, or appellate counsel.

c. By a court-martial. The trial judge or court-martial without a trial judge may determine initially and on his or her or its own motion whether a person is qualified to act as counsel before the court-martial in a particular case. If a counsel is guilty of misconduct, the trial judge or a court-martial without a trial judge may admonish him or her. If the misconduct is contemptuous, the trial judge or court-martial may punish him or her (UCMJ, Art. 48; RCM 109). If admonition or punishment is inappropriate or fails to achieve the desired standard of behavior, the court should recess and report the fact to the supervising staff or command judge advocate or regional defense counsel for processing according to AR 27–1.

d. By an appellate court. Action to suspend a person acting as appellate counsel will be referred to the supervising JA for processing according to AR 27–1.

e. Suspension of counsel will be in accordance with the procedures set forth in AR 27–1.

15–6. Action to suspend civilian counsel subject to TJAG's professional responsibility authority under the provisions of RCM 109

The procedures and actions set forth above for suspending military counsel or civilian counsel within the Judge Advocate Legal Service will also apply, insofar as practicable, against civilian counsel who represent the accused, or are likely to represent the accused, at courts-martial or other proceedings governed by the UCMJ or the MCM and thus are subject to TJAG's professional responsibility authority under the provisions of RCM 109, MCM.

15–7. Modification or revocation of suspension or decertification

The Judge Advocate General may (on his or her own initiative or on petition of a person who has been suspended or decertified as counsel (under UCMJ, Art. 27(b) or RCM 109), and on good cause shown) modify or revoke a prior order to suspend or decertify. TJAG's designee may modify or revoke a temporary suspension.

15–8. Removal of counsel or reassignment of duties

Nothing in this chapter will prevent The Judge Advocate General, The Deputy Judge Advocate General, the military judge or other appropriate official from removing a counsel from acting in a particular court-martial, nor prevent the permanent reassignment or assignment temporarily to different duties prior to, during, or subsequent to proceedings conducted under the provisions of this chapter.

Section III
Suspension of Military Judges

15–9. General

Action may be initiated to suspend or revoke the certification to act as military judge (UCMJ, Art. 26; RCM 109) when a person acting or about to act as trial or appellate judge—

a. Is, or has been found guilty of professional, personal, or judicial misconduct or of unfitness of such a serious nature as to show that the individual is lacking in integrity or judicial demeanor, or

b. Is otherwise unfit or unqualified to perform the duties of a military judge.

15–10. Grounds

A military judge may be censured, suspended from acting as military judge, or removed from the judicial role by revocation of his or her certification (UCMJ, Art. 26) for actions that—

a. Constitute misconduct, or constitute judicial misconduct or unfitness, or

b. Violate the "Code of Judicial Conduct for Army Trial and Appellate Judges," the Army "Rules of Professional Conduct for Lawyers" (see AR 27–26), or other applicable standards.

15–11. Removal of a military judge

a. Action to suspend a person from acting as military judge, or to revoke his or her certification as military judge, may be initiated when other available remedial measures are inappropriate or have failed to induce proper behavior. Accordingly, consideration will be given to other measures such as—

(1) Relief from duties as military judge.

(2) Censure.

(3) Admonition.

(4) Instruction.

(5) Other sanctions, including punitive ones, as may be warranted.

b. In appropriate cases, the Chief Judge, U.S. Army Judiciary, may temporarily suspend military judges from participation in the trial of cases until completion of the inquiry. In appropriate cases, TJAG may temporarily suspend military judges from participating in the trial of cases or appellate judges from participating in the appellate review of cases, until completion of the inquiry.

15–12. Procedure

Information on alleged judicial misconduct or unfitness will be reported to the Chief Trial Judge in the case of trial judges or the Chief Judge, U.S. Army Court of Criminal Appeals, in the case of appellate judges, for processing according to AR 27–1.

15–13. Modification or revocation of suspension or decertification

The Judge Advocate General may (on his or her own initiative or on petition of a person who has been suspended or decertified as a military judge (UCMJ, Art. 26), and on good cause shown) modify or revoke a prior order to suspend or decertify, on the advice of the Chief Judge, USACCA. The Judge Advocate General may (on his or her own initiative or on petition of a person who has been suspended or decertified as a military judge (UCMJ, Art. 26), and on good cause shown) modify or revoke a prior order to suspend or decertify on the advice of the Chief Judge, U.S. Army Judiciary.

Chapter 16
Custody Policies Overseas

16–1. General

This chapter establishes the authority and procedures for exercise of custody over U.S. military personnel subject to the criminal jurisdiction of foreign courts. The authority to exercise appropriate forms of custody over such military members pending the outcome of foreign criminal proceedings (pursuant to provisions of status of forces agreements (SOFAs)) does not abrogate, in any manner, the authority of the commander granted under the UCMJ.

16–2. Custody policies

a. It is U.S. policy to seek the release from foreign custody of Soldiers pending final disposition of their criminal charges under foreign law. (Final disposition of foreign criminal charges incorporates all stages of the host country's criminal proceedings, including appeals, up to commencement of any sentence to confinement resulting from conviction on the foreign criminal charges.) Release from foreign custody will be sought through—

(1) The exercise of U.S. custody rights under applicable international agreements.

(2) The posting of bail.

(3) The exercise of other rights under local law.

b. U.S. Army personnel charged with offenses in foreign courts will not be transferred or removed from the jurisdiction of such courts without approval of the commanding officer or country representative until final disposition of the charges. In cases of serious offenses (for example, felonies), TJAG's approval is required if transfer or removal, including authorized leave, involves the return of the accused to the United States. Requests for such approval will be sent to the International and Operational Law Division (DAJA–IO), 2200 Army Pentagon, Room 3D548, Washington, DC 20310–2200. The procedures set forth in AR 600–8–2 will be used as required in that regulation.

c. While U.S. Army personnel under charges in foreign courts are personally responsible for attending scheduled hearings, commanders will ensure that appropriate assistance is rendered to such personnel. When U.S. Army authorities have pretrial custody or custody pending appeal, the individual will be made available for all court hearings in his or her case at which his or her presence is required (under SOFA or other international agreements).

d. Any U.S. Army personnel stationed in foreign countries who are involved in incidents subject to the jurisdiction of foreign courts will not be curtailed, reassigned, or transferred to avoid jurisdiction by host-country authorities.

16–3. Exercise of custody provisions granted under international agreements

a. The degree of custody required to meet any custodial obligations under pertinent SOFAs is at the discretion of the commander of the Soldier under foreign criminal charges. Such custody may include restriction to certain prescribed limits or confinement in a U.S. installation confinement facility. Confinement in a U.S. installation confinement facility will only be authorized when it is necessary to ensure the presence of the accused at trial or other foreign criminal proceeding, or to avoid foreseeable future serious criminal misconduct by the accused. The seriousness of the offense charged and circumstances surrounding it are factors that may be used to determine whether the accused need be confined to ensure the accused's presence or whether future serious criminal misconduct is foreseeable.

b. Immediate steps will be taken to inform the individual confined of—

(1) The specific offense of which the individual is accused.

(2) The proposed action to be taken against the individual by foreign authorities.

c. Confinement under these provisions pending the final disposition of foreign criminal charges may be authorized by a GCM convening authority responsible for exercising U.S. custody over the Soldier.

d. Minimum due process standards (to be included in procedures drawn to implement these provisions as set forth in para 16–4, below) will include review of foreign criminal charges by the local SJA to determine whether—

(1) Probable cause exists to believe that confinement is necessary to ensure the accused's presence at trial or other foreign criminal proceeding, or to avoid foreseeable future serious criminal misconduct by the accused within the host country.

(2) Provision of a military legal advisor is necessary under the terms of AR 27–50, paragraph 1–6, for individuals placed in pretrial confinement under this chapter.

e. In addition, SOFA confinement will be reviewed as follows—

(1) A military magistrate or comparable legal officer (an officer other than the officer who ordered the Soldier into confinement) will review the issue of whether probable cause exists to believe that confinement is necessary. The review will be made in light of the SOFA and other international agreements between the United States and the host country. Consistent with the provisions of applicable international agreements and the policy of seeking release of Soldiers from foreign custody, the magistrate or comparable legal officer may also consider any pertinent factors, including specific requests by the host country to confine or by the Soldier to be confined in the U.S. in lieu of foreign custody. Unless otherwise provided for under SOFA obligations, the military magistrate or comparable legal officer will not inquire into the issue of whether probable cause exists to believe that the accused has committed the offenses charged under foreign law. The military magistrate or comparable legal officer may recommend release from confinement if the military magistrate determines that it is not necessary to ensure the accused's presence and that it is not foreseeable that the accused will engage in future serious criminal misconduct.

(2) The provisions of RCM 305 do not apply to review of SOFA confinement (see para 16–4, below). If the military magistrate or comparable legal officer recommends that confinement is not necessary to ensure the accused's presence at trial or other foreign criminal proceeding, and that it is not foreseeable that the accused will engage in future serious criminal misconduct within the host country, that recommendation will be communicated to the designated commanding officer (DCO). The DCO (see AR 27–50) may, in the DCO's discretion, direct release from confinement or order such other disposition deemed appropriate. Coordination with host country authorities is also within the discretion of the DCO as specified in AR 27–50. If the DCO was also the GCM authority who ordered the Soldier into confinement and does not direct release based on the recommendation of the military magistrate or comparable legal officer, the DCO will forward the recommendation, together with comments, to the International and Operational Law Division (DAJA–IO), 2200 Army Pentagon, Room 3D548, Washington, DC 20310–2200. Under such circumstances, TJAG is delegated authority to direct release from U.S. confinement or order such other disposition deemed appropriate.

16–4. Implementation by major commands

Each Army overseas commander may, after prior approval by the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200, supplement this chapter and require—

a. A publication for each country in which the Army overseas commander's subordinate commands or assigned units and activities are located.

b. Procedures for the implementation of Army policy regarding custodial rights and responsibilities by Army commands in that country.

Chapter 17
Victim and Witness Assistance

Section I
General Description

17–1. Purpose

This chapter implements DODD 1030.01, DODI 1030.2, and DODI 6400.07. It also establishes policy, designates responsibility, and provides guidance for the assistance and treatment of those persons who are victims of crime and those persons who may be witnesses in criminal justice proceedings.

17–2. Policy

a. The military justice system is designed to ensure good order and discipline within the Army and also to protect the lives and property of members of the military community and the general public consistent with the fundamental rights of the accused. Without the cooperation of victims and witnesses, the system would cease to function effectively. Accordingly, all persons working within and in support of the system—that is, commanders, JAs, law enforcement and investigative agencies, corrections officials, and other personnel of Army multidisciplinary agencies—must ensure that victims and witnesses of crime are treated courteously and with respect for their privacy. Interference with personal privacy and property rights will be kept to an absolute minimum.

b. In those cases in which a victim has been subjected to attempted or actual violence, every reasonable effort will be made to minimize further traumatization. Victims will be treated with care and compassion, particularly in circumstances involving children, domestic violence, or sexual misconduct.

c. Effective victim and witness programs are multidisciplinary and utilize all related military and civilian agencies. Each victim/witness liaison (VWL) must be familiar with all such agencies and programs to ensure that necessary services are provided. Multidisciplinary participants include, but are not limited to, investigative and law enforcement personnel, chaplains, health care personnel, Family advocacy/services personnel, JAs and other legal personnel, unit commanding officers and noncommissioned officers, and corrections/confinement facility personnel. In most instances, installations are expected to provide required services without referral to outside agencies. In death cases, the VWL will coordinate with the installation/community casualty working group (see AR 638–8) and the U.S. Army Criminal Investigation Command. The USACIDC points of contact are listed at http://www.cid.army.mil/unitdirectory.html.

d. A person's status as a victim or witness does not preclude and should not discourage a DA official's appropriate recognition of conduct of the victim or witness during or following the perpetration or attempted perpetration of a crime, that clearly demonstrates personal courage under dangerous circumstances. Examples of such conduct include saving of human life under hazardous conditions or extraordinary sacrifice that aids or supports military law, order, or discipline, and that would otherwise merit official recognition (see AR 672–20 and AR 600–8–22). Such recognition normally should be delayed until after local disposition of the incident.

e. The provisions of this chapter are intended to provide internal DA guidance for the protection and assistance of victims and witnesses, and for the enhancement of their roles in the military criminal justice process, without infringing on the constitutional and statutory rights of the accused. These provisions are not intended to and do not create any entitlements, causes of actions, or defenses, substantive or procedural, enforceable at law, by any victim, witness, or other person in any matter, civilian or criminal, arising out of the failure to accord a victim or witness the services enumerated in this chapter. No limitations are hereby placed on the lawful prerogatives of DA or its officials.

17–3. Application

a. This chapter applies to those DA components engaged in the detection, investigation, or prosecution of crimes under the UCMJ or Federal statutes, and in the detention and incarceration of military accused. This chapter is intended to apply to all victims and witnesses in UCMJ or Federal court proceedings or investigations. All duties and responsibilities of victim-witness liaisons (VWLs) provided herein are equally applicable to all special victim prosecutor witness liaisons (SVPWLs). While special attention will be paid to victims of serious or violent crime, all victims and witnesses of crime will receive the assistance and protection to which they are entitled.

b. Provisions of this chapter may also apply to victims or witnesses of crimes under the jurisdiction of State, other Federal, or foreign authorities during any portion of the criminal investigation or military justice proceedings conducted primarily by the Army or other DOD components.

17–4. Objectives

The objectives of the policies and procedures set forth in this chapter are—

a. To mitigate, within the means of available resources and under applicable law, the physical, psychological, and financial hardships suffered by victims and witnesses of offenses investigated by DA authorities.

b. To foster the full cooperation of victims and witnesses within the military criminal justice system.

c. To ensure that victims of crime and witnesses are advised of and accorded the rights described in this chapter, and UCMJ, Article 6b, subject to available resources, operational commitments, and military exigencies.

17–5. Definitions

For purposes of this chapter, the following definitions apply:

a. Victim. A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ, or in violation of the law of another jurisdiction if any portion of the investigation is conducted primarily by the DOD components. Such individuals will include, but are not limited to, the following:

(1) Military members and their Family members.

(2) When stationed outside the continental United States, DOD civilian employees and contractors and their family members. This applies to services not available to DOD civilian employees and contractors, and their family members, in stateside locations, such as medical care in military medical facilities.

(3) When a victim is under 18 years of age, incompetent, incapacitated or deceased, the term includes one of the following (in order of preference): a spouse; legal guardian; parent; child; sibling; another family member; or another person designated by a court or the component responsible official, or designee.

(4) For a victim that is an institutional entity, an authorized representative of the entity. Federal Departments and State and local agencies, as entities, are not eligible for services available to individual victims.

b. Witness. A person who has information or evidence about a crime and provides that knowledge to a DOD component concerning an offense within the component's investigative jurisdiction. When the witness is a minor, this term includes a family member or legal guardian. The term "witness" does not include a defense witness or any individual involved in the crime as a perpetrator or accomplice.

Section II
Victim/Witness Assistance Program

17–6. General

a. The Victim/Witness Assistance Program is designed to accomplish the objectives set forth in paragraph 17–4, above, through—

(1) Encouraging the development and strengthening of victim and witness services.

(2) Consolidating information pertaining to victim and witness services.

(3) Coordinating multidisciplinary victim/witness services by and through victim and witness liaisons.

b. The Judge Advocate General is the component-responsible official in the DA for victim and witness assistance. As such, TJAG exercises oversight of the program to ensure integrated support is provided to victims and witnesses.

c. Staff Judge Advocates are the local responsible officials for victim and witness assistance within their GCM jurisdictions. Accordingly, they will—

(1) Establish and provide overall supervision for the Victim/Witness Assistance Program within their GCM jurisdictions.

(2) Ensure coordination, as required, with other GCM jurisdictions, or State or Federal victim and witness assistance programs.

(3) Establish a Victim and Witness Assistance Council, to the extent practicable, at each significant military installation to ensure interdisciplinary cooperation among victim and witness service providers. Existing installation councils, such as The Family Advocacy Case Management Team, may be used as appropriate.

(4) Ensure development of appropriate local management controls to ensure compliance with this chapter.

d. Department of the Army and installation inspectors general will provide additional oversight and review of the management of the Victim/Witness Assistance Program during staff assistance visits and inspections.

17–7. Victim/witness liaison

a. Designation. Staff Judge Advocates will designate, in writing, one or more VWLs they have certified as qualified to administer the Victim/Witness Assistance Program for their jurisdictions. This requirement continues in the event of deployment such that at least one officer or, if not practicable, an E–6 or above, accompanying a GCMCA is appointed as a VWL. Staff Judge Advocates will provide a copy of such designation to OTJAG, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200 including the name, duty address, duty phone number (including DSN prefix), facsimile number, and duty e-mail address of the new VWL.

b. Criteria and certification. The designated VWL should, when practicable, be a commissioned officer, or civilian in the grade of GS–11 or above. When necessary, an enlisted person in the grade of E–6 or above, or civilian in the grade of GS–6 or above, may be designated as a VWL if a commissioned officer is not reasonably available. A VWL is certified to perform VWL duties upon completion of the Judge Advocate General's Officer Basic Course, or Graduate Course; or attendance at a DOD or HQDA-sponsored VWL regional training event; or after completing training designated by HQDA or the certifying SJA. When for geographic or operational reasons, it is necessary to

designate more than one VWL within a GCM jurisdiction, the SJA will ensure that the responsibilities for cases or areas of each VWL are clearly defined. The VWL responsibilities should be outside the military justice section to the extent permitted by resources. To be most effective, VWLs must be perceived as impartial actors in the prosecution process. To the extent permitted by resources, SJAs should refrain from appointing attorneys as VWLs. Attorneys assigned as VWLs must ensure that victims and witnesses understand the attorney's role as a VWL. The attorney must clearly explain that no attorney-client relationship is formed as a result of VWL services provided by the attorney.

c. Role. The role of the VWL is one of facilitator and coordinator. The VWL will act as a primary point of contact through which victims and witnesses may obtain information and assistance in securing available victim/witness services. The VWL will act in conjunction with the unit victim advocate who is responsible for providing crisis intervention, referral, and ongoing nonclinical support to a sexual assault victim (see AR 600–20, chap 8).

17–8. Identification of victims and witnesses

At the earliest opportunity after the detection of a crime, and where it may be done without interfering with an investigation, the law enforcement official or commander responsible for the investigation or other individual with victim/witness assistance responsibilities under this chapter will—

a. Identify the victims or witnesses of the crime in accordance with the definitions in paragraph 17–5.

b. Inform the victims and witnesses of their right to receive the services described in this regulation, and the name, title, official address, and telephone number of the VWL and how to request assistance from the VWL in obtaining the services described in this regulation. The DD Form 2701 (Initial Information for Victims and Witnesses of Crime) will be used for this purpose. This notification is required in all cases, regardless of maximum punishment under the UCMJ or other statutory authority, or intended disposition of the offense. In cases where the victim is no longer located at the military installation where the alleged crime occurred, the victim should be referred to the nearest available VWL, who may not necessarily be the VWL where the alleged crime occurred. To determine where the nearest VWL is located, consult appendix E, below, or consult OTJAG (DAJA–CL).

c. Report victim and witness notification in accordance with DODI 1030.2 and this regulation.

d. Ensure that victims receive assistance under the guidelines set forth in this chapter for victims identified as a result of investigations of potential UCMJ violations conducted in accordance with AR 15–6.

17–9. Initiation of liaison service

a. Staff Judge Advocates or their designees will coordinate with military law enforcement, criminal investigative, and other military and civilian multidisciplinary agencies to ensure that victims and witnesses of crime are provided the name, location, and telephone number of a VWL. Procedures should be established to ensure timely notification, however, notification by law enforcement and criminal investigative personnel should not interfere with ongoing investigations. Staff judge advocates are encouraged to establish memoranda of agreement to ensure a cooperative relationship with local civilian agencies to identify, report, investigate, and provide services and treatment to victims.

b. At the earliest opportunity, but no later than appointment of a UCMJ, Art. 32 preliminary hearing officer or referral of charges to court-martial, the VWL, trial counsel, or other Government representative will ensure that victims are informed of the services described in this chapter (sections III and V) and are provided a Victim/Witness Information Packet. They also will ensure that witnesses are informed of the services described in this chapter (sections IV and V) and provided a Victim/Witness Information Packet. The DD Form 2701 will be used for this purpose, if available. The victim/witness checklist, in appendix D, below, should be used by the VWL to ensure that victims and witnesses are notified of the services described in this chapter.

17–10. Rights of crime victims

a. As provided for in 42 USC 10601, 10 USC 806b, 10 USC 860, 10 USC 846, and the sections that follow, and in DODI 1030.2, a crime victim has the following rights:

(1) The right to be treated with fairness and respect for the dignity and privacy of the victim of an offense under the UCMJ.

(2) The right to be reasonably protected from the accused offender.

(3) The right to reasonable, accurate, and timely notice of any of the following:

(a) A public hearing (39a session) concerning the continuation of confinement prior to trial of the accused.

(b) An Article 32 preliminary hearing related to the offense.

(c) A court-martial relating to the offense.

(d) A public proceeding of the service clemency and parole board relating to the offense.

(e) The release or escape work release, furlough, or any other form of release from custody of the accused, unless such notice may endanger the safety of any person, including notice of the death of the offender, if the offender dies in custody.

(4) The right not to be excluded from any public hearing or proceeding described in subparagraph (3) unless the military judge or hearing officer, as applicable, after receiving clear and convincing evidence, determines that

testimony by the victim of an offense would be materially altered if the victim heard other testimony at that hearing or proceeding.

(5) The right to be reasonably heard, which includes, but is not limited to, the right to be heard through counsel, at any of the following:

(a) A public hearing (39a session) concerning the continuation of confinement prior to trial of the accused.

(b) A sentencing hearing relating to the offense.

(c) A public proceeding of the service clemency and parole board relating to the offense.

(6) The reasonable right to confer with the counsel representing the Government at any proceeding described in subparagraph (3), above.

(a) Crime victims who are entitled to legal assistance may consult with a legal assistance attorney.

(b) Crime victims may also elect to seek the advice of a private attorney, at their own expense.

(7) The right to receive restitution, as provided in law.

(8) The right to proceedings free from unreasonable delay.

(9) The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.

(10) The right to submit matters for consideration by the convening authority during the clemency phase of the court-martial process. (See RCM 1105A).

(11) Victims of a sex-related offense, as defined in paragraph 3-6 above, who are entitled to legal assistance in accordance with 10 USC section 1044, may consult with an SVC.

(a) Victims of these covered offenses shall be informed by a sexual assault response coordinator (SARC), victim advocate, victim witness liaison, military criminal investigator, Government counsel, or other local responsible official that they have the right to consult with an SVC on initial contact with the victim and prior to requesting the victim to give a statement or be interviewed.

(b) Victims of these covered offenses also have the right to have defense requested interviews conducted in the presence of trial counsel, a victim advocate or when applicable, the victim's SVC.

(c) Victims of these covered offenses, committed in the United States, shall be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

1. The trial counsel, VWL, other Government representative, or when applicable, the victim's SVC will obtain the victim's jurisdictional preference.

2. The convening authority shall consider the victim's preference for jurisdiction, if available, prior to making an initial disposition decision. The victim's views are not binding on that convening authority.

3. The convening authority should continue to consider the views of the victim as to jurisdiction until final disposition of the case.

4. If the victim of an alleged sex-related offense expresses a preference for prosecution of the offense in a civilian court, the convening authority shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution.

5. The convening authority shall ensure the victim is notified should the convening authority learn of any decision by the civilian authority to prosecute or not prosecute the offense in civilian court.

6. For purposes of the section, convening authority means commanders in the grade of O-6 or higher who possess Special Court Martial Convening Authority, commanders who possess General Court-Martial Convening Authority, or any other appropriate commander taking action on the case.

(d) Any questions concerning victim eligibility for SVC representation should be directed to the SVC Program Manager who has authority to determine eligibility and grant exceptions.

b. Staff Judge Advocates will ensure that local policies and procedures are established to give crime victims the rights described above.

17–11. Training and publicity

a. Staff Judge Advocates will ensure that annual Victim/Witness Assistance Program training is provided to representatives of all agencies performing victim/witness assistance functions (JAs and legal, investigative and law enforcement personnel; chaplains; health care personnel; Family advocacy/services personnel; unit commanding officers and noncommissioned officers; and corrections/confinement facility personnel) within their GCM jurisdictions. At a minimum, training will cover victims' rights; available compensation through Federal, State, and local agencies; providers' responsibilities under the Victim/Witness Assistance Program; and requirements and procedures established by this chapter.

b. Staff Judge Advocates also will ensure that the provisions of this chapter are publicized to all military and civilian agencies providing victim/witness services and to commands within their jurisdictions. Staff judge advocates will ensure that the DOD Victim and Witness Bill of Rights is displayed in the offices of commanders and Army multidisciplinary agencies that provide victim/witness assistance and that victim/witness brochures and pamphlets are

available at appropriate locations throughout their jurisdictions. Installation public affairs resources should be used to obtain maximum publicity within the military community. Use of command policy letters endorsing the Victim/Witness Assistance Program is encouraged.

Section III
Victim Services

17–12. Medical, financial, legal, and social services

a. Investigative or law enforcement personnel, the VWL, trial counsel, or other individuals with victim/witness assistance responsibilities under this chapter will inform the victim of a crime of the place where the victim may receive emergency medical care and social service support. When necessary, these personnel will provide appropriate assistance in securing such care. Victims suffering from or indicating injury or trauma will be referred to the nearest available medical facility for emergency treatment. When required for completion of criminal investigations, examination and treatment of civilian victims of assaults committed on Army installations may be provided without charge at the discretion of medical treatment facility (MTF) commanders (see AR 40–400). The MTF commanders will construe liberally their authority to waive charges unless inappropriate in view of the unique circumstances. Abused dependents of Soldiers who receive a dishonorable or bad conduct discharge or dismissal or forfeiture of all pay and allowances (to include UCMJ mandated forfeiture of all pay and allowances), for an offense involving abuse of the dependent, may receive medical and dental care in uniformed services facilities for injuries resulting from that abuse (see 10 USC 1076(e)).

b. The VWL or other Government representative will assist victims of crime in obtaining appropriate financial, legal, and other social service support by informing them of public and private programs that are available to provide counseling, treatment, and other support to the victim, including available compensation through Federal, State, and local agencies. The VWL will assist the victim in contacting agencies or individuals responsible for providing necessary services and relief. Examples of assistance and services that may be available to victims, in addition to those available through MTFs, include the following:

(1) Army Community Services Program (under AR 608–1).

(2) Army Emergency Relief (under AR 930–4).

(3) Legal Assistance and Special Victim Counsel representation (under AR 27–3).

(4) The American Red Cross (under AR 930–5).

(5) Chaplain Services (under AR 165–1).

(6) Civilian community-based victim treatment, assistance, and compensation programs.

(7) For dependents of Soldiers who are victims of abuse by a military spouse or parent, payment of a portion of the disposable retired pay of the Soldier under 10 USC 1408 or payment of transitional compensation benefits under 10 USC 1059.

(8) For families of Soldiers, transportation and shipment of household goods may be available even if the Soldier receives a punitive or other than honorable discharge, under Joint Travel Regulations, Chapter 5, section 5148.

(9) To ensure proper coordination of services and referral for services, VWLs will become familiar with the services, duties and responsibilities of all supporting agencies and personnel including, but not limited to, the above listed services, law enforcement, Special Victim Prosecutor, local Trial Counsel, Special Victims' Counsel, Sexual Assault Response Coordinator, Sexual Assault Victim Advocate, Family Advocacy Program, Domestic Violence Victim Advocates, Army behavioral health services and similar off installation services.

c. Judge advocates will serve on the Sexual Assault Review Board (see AR 600–20).

d. When victims are not eligible for military services, or in those cases in which military services are not available, the VWL will provide liaison assistance in seeking any available nonmilitary services within the civilian community.

17–13. Stages and role in military criminal justice process

Victims should be advised of stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case. This information will be set forth in a Victim Information Packet (DD Form 2701 and DD Form 2702 (Court-Martial Information for Victims and Witnesses of Crime)), and should be further amplified, as required, by the VWL or trial counsel. For example, some offenses may be tried in U.S. Magistrate or U.S. District Court.

17–14. Notification and description of services provided to victims of crime

a. During the investigation and prosecution of a crime, the VWL, trial counsel, or other Government representative will provide a victim, or when applicable, the victim's SVC, the earliest possible notice of significant events in the case, to include—

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The decision on whether to prefer (or file in a civilian court) or dismiss the charges against a suspected offender.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at a preliminary hearing under UCMJ, Art. 32.

(5) The scheduling (date, time, and place) of each court proceeding that the victim is either required or entitled to attend and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The opportunity to consult with trial counsel about providing evidence in aggravation concerning financial, social, psychological, and physical harm done to, or loss suffered by, the victim.

(9) The result of trial or other disposition.

(10) If the sentence includes confinement, the probable date by regulation on which the offender will be eligible for parole.

(11) General information regarding the corrections process, including information about work release, furlough, probation, parole and other forms of release from custody, and the offender's eligibility for each.

(12) The right to request, through the VWL, trial counsel, or designee of the commander of the corrections facility to which the offender is assigned, notice of the matters set forth in subparagraph *b*, below.

(13) How to submit a victim impact statement to the Army Clemency and Parole Board for inclusion in parole and clemency considerations (under AR 15–130).

b. Upon a sentence to confinement, the trial counsel or a representative for the Government will—

(1) Formally inform the victim, or when applicable, the victim's SVC, regarding post-trial procedures, to include the victim's eligibility to submit matters for consideration by the convening authority during the clemency phase of the court-martial process under the provisions of RCM 1105A, and the right to be notified if the offender's confinement or parole status changes, and when the offender will be considered for parole or clemency by providing the victim with DD Form 2703 (Post-Trial Information for Victims and Witnesses of Crime).

(2) Ensure the victim's election regarding notification is recorded on DD Form 2704 (Victim/Witness Certification and Election Concerning Inmate Status), in every case, regardless of election. One copy of DD Form 2704 will be given to the victim. One copy of the form will be forwarded to the commander of the gaining confinement facility. One copy of the form will be forwarded to the Army Corrections Command (DAPM–ACC), 150 Army Pentagon, Washington, DC 20310-0150.

(3) Ensure that a copy of DD Form 2704 is not attached to any portion of a record to which the offender has access.

17–15. Consultation with victims

a. The trial counsel, VWL, or other Government representative will consult with victims of crime, or when applicable, the victim's SVC, concerning—

(1) Decisions not to prefer charges.

(2) Decisions concerning pretrial restraint of the alleged offender or his or her release.

(3) Pretrial dismissal of charges.

(4) Negotiations of pretrial agreements and their potential terms.

b. Consultation may be limited when justified by the circumstances, such as to avoid endangering the safety of a victim or a witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. Although the victim's views should be considered, nothing in this regulation limits the responsibility and authority of appropriate officials to take such action as they deem appropriate in the interest of good order and discipline and to prevent service-discrediting conduct.

17–16. Property return and restitution

a. In coordination with criminal investigative agents and Government Appellate Division, SJAs or their designees will ensure that all noncontraband property that has been seized or acquired as evidence for use in the prosecution of an offense is safeguarded and returned to the appropriate person, organization, or entity as expeditiously as possible per AR 195–5, or AR 190–30, as applicable. The VWL or other Government representative will ensure that victims are informed of applicable procedures for requesting return of their property. Status of forces agreements or other international agreements may apply overseas. Staff Judge Advocates should review provisions of applicable agreements.

b. Victims who suffer personal injury or property loss or damage as a result of an offense should be informed of the various means available to seek restitution. The provisions of UCMJ, Art. 139 may provide some relief if the property loss or damage is the result of a wrongful taking or willful damage by a member of the Armed Forces (care must be taken to ensure that UCMJ, Art. 139 investigations are conducted in a manner that does not interfere with any ongoing criminal investigations or courts-martial proceedings). Victims should also be informed of the possibility of pursuing other remedies, such as claims, private lawsuits, or any crime victim compensation available from Federal (for example, the Transitional Compensation Program for abused family members under 10 USC 1059) or civilian sources,

and of appropriate and authorized points of contact to assist them. Examples include a local claims office, legal assistance or lawyer referral services, and State victim assistance or compensation programs.

c. Court-martial convening authorities will consider the appropriateness of requiring restitution as a term and condition in pretrial agreements, and will consider whether the offender has made restitution to the victim when taking action under RCM 1107. The Army Clemency and Parole Board will also consider the appropriateness of restitution in clemency and parole actions.

Section IV
Witness Services

17–17. Notification and description of services provided to witnesses

a. The trial counsel, VWL, or other Government representative will make reasonable efforts to notify witnesses and representatives of witnesses who are minors (to include legal guardians, foster parents, or other persons in lawful custody of minors or incompetent individuals), when applicable, and at the earliest opportunity, of significant events in the case, to include—

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The preferral (or the filing in a civilian court) or dismissal of charges against a suspected offender.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at a UCMJ, Art. 32 preliminary hearing.

(5) The scheduling (date, time, and place) of each court proceeding that the witness is either required or entitled to attend and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The result of trial or other disposition.

(9) If the sentence includes confinement, the probable date by regulation on which the offender will be eligible for parole.

(10) General information regarding the corrections process, including information about work release, furlough, probation, the offender's eligibility for each, and the witnesses' right to be informed of changes in custody status.

b. Witnesses should be advised of the stages in the military criminal justice system, the role that they can be expected to play in the process, and how to obtain additional information concerning the process and the case. This information will be set forth in a Victim and Witness Information Packet (DD Forms 2701, 2702, and 2703) and should be further amplified, as required, by the trial counsel, VWL, or designee.

c. Upon a sentence to confinement, the trial counsel or other representative of the Government will—

(1) Formally inform those witnesses adversely affected by the offender regarding post-trial procedures and the right to be notified if the offender's confinement or parole status changes, and when the offender will be considered for parole or clemency by providing DD Form 2703. Appropriate cases include, but are not limited to, cases where the life, well-being, or safety of the witness has been, is, or in the future reasonably may be, jeopardized by participation in the criminal investigative or prosecution process.

(2) Ensure the witness' election regarding notification is recorded on DD Form 2704 in every case, regardless of election. One copy of DD Form 2704 will be given to the witness. One copy of the form will be forwarded to the commander of the gaining confinement facility. One copy of the form will be forwarded to the Army Corrections Command (DAPM–ACC), 150 Army Pentagon, Washington, DC 20310-0150. One copy of the form will be forwarded to the Office of the Clerk of Court, Victim Witness Liaison/Coordinator (VWL/C), 9275 Gunston Road, Fort Belvoir, VA 22060–5546. The DD Form 2704 should normally be typed. Email addresses may be added to the DD Form 2704 on a voluntary basis. Include the POC and address of the Military Service Central Repository in Section V.

(3) Ensure that a copy of DD Form 2704 is not attached to any copy of the record of trial to include the accused's copy of the record of trial.

d. The appellate court VWL/C will notify victims of:

(1) Docketing and decisions of the US Army Court of Criminal Appeals;

(2) Docketing and decisions of the US Court of Appeals for the Armed Forces; and

(3) Opportunities to attend oral arguments.

17–18. Limitations

The trial counsel, VWL, or other Government representative will determine, on a case-by-case basis, the extent to which witnesses are provided the services set forth in sections IV and V of this chapter. For example, it may be unnecessary to provide some or all of these services to active duty military witnesses or to expert or character witnesses. Trial counsel or designee will apprise a witness' chain of command of the necessity for the witness'

testimony (and the inevitable interference with and absence from duty). Ordinarily, however, doubt about whether to provide the foregoing information or services should be resolved in favor of providing them, especially when services have been requested by the witness.

Section V
Victim and Witness Services

17–19. Protection of victims and witnesses

a. Victim/witness intimidation. The SJA will ensure that victims and witnesses are advised that their interests are protected by administrative and criminal sanctions. In the criminal context, for example, 18 USC 1512 and 1513 make tampering with or retaliation against a victim or witness punishable under Federal law; intimidation and threats to victims or witnesses are punishable under UCMJ, Art. 134. Obstruction or attempted obstruction of justice and subornation of perjury are also offenses under the UCMJ. Victims and witnesses should be further advised that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities (for example, a commander, a SJA, the CID, a program manager, a trial counsel or a VWL), that their complaints will be promptly investigated, and that appropriate action will be taken. In the administrative context, the commander may provide victim protection by issuing a written order to the suspect not to contact the victim except when supervised by a member of the chain of command, or by revoking the suspect's pass privileges. Commanders should normally use DD Form 2873, Military Protective Order, when issuing a written no-contact order. Commanders should consult with their servicing judge advocate before taking administrative measures to protect a victim.

b. Victim/witness protection. In cases where the life, well-being, or safety of a victim or witness is jeopardized by his or her participation in the criminal investigation or prosecution process, the SJA will ensure that appropriate law enforcement agencies are immediately notified. Commanders, in conjunction with the law enforcement agency concerned, will promptly take, in appropriate circumstances, those measures necessary to provide reasonable protection for the victim or witness. These measures may include temporary attachment or assignment, or permanent reassignment, of military personnel, or in some cases the provision of State, other Federal, or foreign protective assistance. The trial counsel, VWL, or other Government representative will immediately notify the SJA whenever a victim or witness expresses genuine concern for his or her safety. The SJA should contact USACIDC for all victim and witness requests to be in the Federal Witness Protection program, and for fear of life transfers.

c. Separate waiting area. At courts-martial and preliminary hearing proceedings, victims and Government witnesses should, to the greatest extent possible, be afforded the opportunity to wait in an area separate from the accused or defense witnesses to avoid embarrassment, coercion, or similar emotional distress. In a deployed environment, victims and Government witnesses should be afforded a separate waiting area to the greatest extent practicable.

d. Arranging witness interviews. Within the guidelines of RCM 701(e) and at the request of the victim or other witness, a VWL or designee may act as an intermediary between a witness and representatives of the Government and the defense for the purpose of arranging witness interviews in preparation for trial. The VWL's role in arranging witness interviews is to ensure that witnesses are treated with courtesy and respect and that interference with their lives and privacy is kept to a minimum. This paragraph is not intended to prevent the defense or the Government from contacting potential witnesses not previously identified or who have not requested a VWL to act as an intermediary.

17–20. Notification to employers and creditors

On request of a victim or witness, the trial counsel, VWL, or other Government representative will inform an employer that the victim's or witness' innocent involvement in a crime or in the subsequent prosecution may cause or require his or her absence from work. In addition, if a victim or witness, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, suffers serious financial hardship, a Government representative will assist the victim or witness in explaining to creditors the reason for such hardship, as well as ensuring that legal assistance is available to Soldiers, retirees, and their Family members for this purpose.

17–21. Witness fees and costs

Witnesses requested or ordered to appear at preliminary hearings under UCMJ, Art. 32 or courts-martial may be entitled to reimbursement for their expenses under UCMJ, Arts. 46 and 47; RCM 405(g); and chapter 5, above. The VWL must be familiar with the provisions of these directives and appropriately advise and assist witnesses. Victims and witnesses should be provided assistance in obtaining timely payment of witnesses fees and related costs. In this regard, coordination should be made with local finance officers for establishing procedures for payment after normal duty hours if necessary.

17–22. Civilian witness travel to proceedings overseas

a. When a civilian witness, other than a DOD employee, is located in the continental United States (CONUS) and is scheduled to testify in courts-martial or other legal proceedings overseas, a representative of the convening authority may request that the Clerk of Court, U.S. Army Judiciary issue invitational travel orders and arrange for transportation.

The witness request should be faxed as follows: Overseas Witness Liaison, Office of the Clerk of Court, U.S. Army Judiciary, (facsimile (703) 806–0124; DSN 223–0124).

b. Requests should be timely submitted to ensure receipt by the Clerk of Court at least 10 days before the desired arrival date, particularly if passports must be obtained for the witness. Otherwise, the request must be accompanied by a brief explanation of the delay. Each request will include the following information numbered according to the subparagraphs below—

(1) Name and date of birth of the witness.

(2) Name of the case or other proceedings (include grade and complete name of the accused).

(3) Type of court, preliminary hearing, or board, including general nature of the charges.

(4) Date proceedings are to begin.

(5) Desired arrival date of witness, destination or city, and estimated duration of stay.

(6) Address of witness, including name of occupant if different from that of witness.

(7) Witness' day and evening telephone numbers, if known.

(8) Whether witness already has been contacted concerning attendance, by whom, and with what result.

(9) Whether witness is known to possess a current U.S. passport.

(10) Relationship of the witness to the proceedings (for example, victim, prosecution witness other than victim, relative of the accused, defense witness not related to the accused).

(11) If the witness is a minor or disabled, the information required by subparagraphs (6) through (9), above, as to the witness' parent, guardian, or other escort.

(12) Name, title, and telephone number of counsel requesting the witness and name, location, and telephone number of the VWL.

(13) Fund citation to be used in invitational travel orders and any limitation as to the amount available. (Early citation of funds is essential to issuing invitational travel orders, so that prepaid tickets can be placed at the departure air terminal.)

(14) Lodging information should include the name, address, and telephone number of the facility where the command has made reservations for the witness.

c. When the Office of the Clerk of Court is arranging a witness' travel, any proposed change by local authorities in the travel arrangements or itinerary must be coordinated first with that office.

d. If the requirement is cancelled after the witness has been contacted and agreed to proceed overseas, an explanation to be given the witness will be provided to the Clerk of Court.

17–23. Local services

The trial counsel, VWL, or designee will ensure that victims and witnesses are informed of, and provided appropriate assistance to obtain, available services such as transportation, parking, child care, lodging, and court-martial translators or interpreters.

17–24. Transitional compensation

The Transitional Compensation Program provides financial support, dependent upon the Soldier's ETS, for Family members of Soldiers who are discharged or sentenced to total forfeitures by court-martial or administrative separation proceedings for charges that include dependant abuse offenses. Victim/witness liaisons and all judge advocates will be familiar with transitional compensation procedures and benefits for victims as described in AR 608–1, DODI 1342.24, and 10 USC 1059. The VWLs and judge advocates will inform victims of their potential eligibility for this program and refer them to Army Community Services when appropriate. Judge advocates will advise transitional compensation approving officials on the standards for certifying transitional compensation applications (block 22 of DD Form 2698 (Application for Transitional Compensation)). Judge advocates will not conduct an independent legal review of the underlying basis for the transitional compensation.

17–25. Requests for investigative reports or other documents

The SJA will ensure that victims' and witnesses' requests for investigative reports or other documents are processed under applicable Freedom of Information Act or Privacy Act procedures. Eligible victims will be provided a copy of a record of trial in accordance with RCM 1103 at no cost. In other cases, the SJA may authorize release of a record of trial to a victim when necessary to ameliorate the physical, psychological, or financial hardships suffered as a result of the criminal act.

Section VI
Confinement Facilities and Central Repository

17–26. Confinement facilities

a. On entry of an offender into confinement, the commander of the confinement facility to which the offender is assigned will ensure receipt of DD Form 2704 and determine whether the victim and/or witness requested notification

of changes in confinement status in the offender's case. If the DD Form 2704 is not available, the commander will make inquiry of the trial counsel or central repository to obtain the form.

b. If the victim and/or witness requested notification on DD Form 2704, the commander of the confinement facility will—

(1) Advise the victim and/or witness of the offender's place of confinement and the offender's projected minimum release date.

(2) Provide the victim and/or witness with the earliest possible notice of the following:

(a) The escape, work release, furlough, emergency or special temporary home parole, or any other form of release from custody of the offender;

(b) The transfer of the offender from one facility to another—this includes temporary custody by State or Federal officials for the purpose of answering additional criminal charges;

(c) The scheduling of a clemency or parole hearing for the offender;

(d) The release of the offender from supervised parole;

(e) The death of the offender, if the offender dies while in confinement.

(3) In cases involving escape of a confinee, emergency leave, or temporary home release, confinement facilities will make immediate efforts to notify victims and witnesses. The following will constitute reasonable effort:

(a) Attempted telephonic notification;

(b) Faxed notification, if possible;

(c) Written notification by overnight mail.

c. Methods used and attempts made will be recorded (including date, time and person notified). The DD Form 2705 (Victim/Witness Notification of Inmate Status) may be used for this purpose.

d. On transfer of the offender, the commander of the confinement facility will notify the gaining confinement facility of the victim's and/or witness' request by forwarding the completed DD Form 2704 with an information copy to the central repository.

e. Annually, no later than 31 January, the commander of the confinement facility will report to the DA central repository the number of victims and witnesses who were notified of changes in confinement status during the reporting period, and the total number of confinees on whom notification is required.

17–27. Reporting requirements and responsibilities

a. The Army Corrections Command (DAPM–ACC), Victim/Witness Central Repository Manager, 150 Army Pentagon, Washington, DC 20310-0150 is the Army's central repository for tracking notice of the status of offenders confined in Army confinement facilities and for tracking the following information:

(1) Number of victims and witnesses who received DD Form 2701 or DD Form 2702 from law enforcement or criminal investigative personnel;

(2) The number of victims and witnesses who were informed (as recorded on DD Form 2704 or otherwise) of their right to be notified of changes in confinee status;

(3) The number of victims and witnesses who were notified by confinement victim and witness assistance officials, using DD Form 2705, of changes in confinee status;

(4) The number of confinees, by Service, in Army confinement facilities as of 31 December of each year, about whom victim and witness notifications must be made.

b. Annually, no later than 15 February, the central repository will report to the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200, cumulative figures for the previous calendar year on the notification and reporting requirements in subparagraph *a*, above. The DD Form 2706 (Annual Report on Victim and Witness Assistance) will be used for this purpose.

c. Annually, not later than 15 February, the SJA of each command having GCM jurisdiction will report, through major Army command channels, to the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200, cumulative information on the following:

(1) The number of victims and witnesses who received DD Form 2701 or 2702 from trial counsel, VWL or designee;

(2) The number of victims and witnesses who received DD Form 2703 from trial counsel, VWL or designee.

d. Staff Judge Advocates will obtain data for their reports from subordinate commands attached or assigned to their GCM jurisdiction for military justice purposes, including supported RC units. Negative reports are required. The DD Form 2706 will be used for this purpose. The Criminal Law Division, OTJAG, will prepare a consolidated report on DD Form 2706 for submission to the Department of Defense (Under Secretary for Personnel and Readiness, Legal Policy Office).

17–28. Evaluation of Victim/Witness Liaison Program services

a. Staff Judge Advocates will ensure that each victim and witness in an incident that is prosecuted at a GCM or

SPCM, or investigated pursuant to UCMJ, Art. 32, in those cases not disposed of by GCM or SPCM, receives a victim/witness evaluation form. These forms may also be provided to other victims and witnesses.

b. Staff Judge Advocates will use DA Form 7568 (Army Victim/Witness Liaison Program Evaluation).

c. Evaluation forms will be reviewed locally by the SJA and copies forwarded quarterly to the Victim/Witness Coordinator, Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200, by postal mail or electronically.

d. The evaluation form may be provided to victims and witnesses by hand, by mail or otherwise, but must be returned in an anonymous manner, for example, by providing a drop box away from the military justice section, or by providing a pre-addressed envelope or other anonymous means of return. The recipients of the evaluation form must be advised that the form will be returned in an anonymous manner and cannot be accepted in any other manner. The evaluation form will be accompanied by a cover letter under the signature of the SJA. The cover letter will thank the victim/witness for assisting in the prosecution, and emphasize the need for a response and the anonymous nature of the response.

Chapter 18
Military Justice Training

18–1. General

This chapter describes organization-structuring for required and optional military justice training. It also sets forth general instructions and information about military justice courses for active duty commissioned officers, officer candidates, enlisted personnel in the U.S. Army, cadets of the USMA, and the Senior Reserve Officers' Training Corps (SROTC).

18–2. Training organization

a. The Judge Advocate General is responsible for technical supervision of training in military justice.

b. The commanding general, U.S. Army Training and Doctrine Command (TRADOC) is responsible for instruction of required and optional military justice training during initial entry training and institutional and SROTC training.

c. The Superintendent, USMA is responsible for instruction of required and optional military justice training for cadets at USMA.

d. The Commander and Commandant, TJAGLCS is responsible for military justice courses in the curriculum of TJAGLCS. The Commander and Commandant, TJAGLCS—one person—is also responsible for developing military justice training materials for the Army service school system.

e. The Commandant, Academy of Health Sciences is responsible for instruction of required and optional military justice training in the curriculum of Academy of Health Sciences.

f. Unit commanders are responsible for refresher and optional individual training in military justice. All such training will be coordinated in advance with the servicing JA (see para 18–7*b*, below).

18–3. Curriculum courses

In addition to the military justice instruction taught in Army service schools, training centers, and SROTC programs, military justice courses may be presented in the curricula of Warrant Officer Training System schools, Noncommissioned Officer Education System schools, USAR and ARNG schools and extension courses, and in other Reserve and National Guard training. Military justice training under this paragraph will be coordinated in advance with the servicing JA (see para 18–7*b*, below).

18–4. Required military justice for enlisted Soldiers

a. Enlisted Soldiers will receive training in military justice in accordance with UCMJ, Art. 137—

(1) On or within 6 days of the Soldier's initial entrance on active duty or initial entrance into a duty status with an RC; and

(2) After the Soldier has completed 6 months of active duty or, in the case of an RC Soldier, after completing basic or recruit training; and

(3) At the time of each enlistment. See Appendix 2, MCM, 2012.

b. The HQDA may prescribe additional courses in military justice subjects of special significance to enlisted personnel.

18–5. Required military justice training for commissioned officers, officer candidates, and cadets

Commissioned officers, officer candidates, and cadets will receive military justice training through—

a. Officer basic courses. These courses will contain the following learning objectives:

(1) How to conduct a preliminary inquiry and determine or recommend disposition of offenses. The officer will learn—

(a) How to evaluate evidence of suspected offenses.

(b) The concept of and authority for military jurisdiction.

(c) How to determine when the military has jurisdiction over the person of the accused and the offense.

(d) The basis for, and how to advise a suspect of, the UCMJ, Art. 31b rights, and the right to counsel before questioning.

(e) The characteristics, effects, and requirements of nonpunitive disciplinary measures (including administrative discharges) as well as those of available punitive measures.

(f) How to determine or recommend disposition of offenses.

(2) How to order restraint, if warranted, before disposition of an offense. The officer will learn—

(a) When pretrial confinement is appropriate.

(b) The steps necessary to place an accused in pretrial confinement.

(c) How to apprehend, and when and how to place a Soldier under restriction or arrest.

(3) How to authorize searches, inspections, and inventories. The officer will learn—

(a) To be familiar with the Fourth Amendment of the U.S. Constitution, its application to military actions, and its enforcement in court.

(b) To understand the commander's authority to search, how to determine probable cause, and how to authorize and conduct a search based upon probable cause.

(c) What a consent search is and the necessity for voluntariness in consent searches.

(d) The scope and limits of a search incident to apprehension.

(e) The scope and limits of searches based on exigent circumstances.

(f) The rules governing the purposes, limits, and procedures for inspections and inventories.

(4) How to initiate and process court-martial charges. The officer will learn—

(a) To draft and review court-martial charges and specifications, and to review DD Form 458.

(b) To prefer court-martial charges and formally notify the accused of court-martial charges.

(c) To initiate and process actions and reports when required by SOFA or regulations.

(d) To understand speedy trial requirements.

(5) How to administer nonjudicial punishment. The officer will learn—

(a) The purpose of nonjudicial punishment, the policies governing its use, and its relationship to punitive and other nonpunitive measures.

(b) Who may impose nonjudicial punishment and on whom it may be imposed.

(c) The rights of the Soldier and the imposition and appeal procedures for nonjudicial punishment.

(6) How to avoid unlawful command influence.

b. Officer advanced courses. These courses will teach the same material outlined in paragraphs *a*(1) through (6), above, but will reflect the wider military experience of officer advanced students. The courses will also stress the purpose, structure, and development of the military justice system.

c. Precommissioning courses. These courses will teach the same material outlined in paragraphs *a*(1) through (6), above. In addition, the courses will provide an overview of the purpose, structure, and development of the American military justice system.

18–6. Optional military justice training

The commanding general, TRADOC; the Superintendent, USMA; the Commandant, Academy of Health Sciences; and other commanders may prescribe additional military justice training for officers, cadets, and enlisted Soldiers in their respective commands on an as-needed basis. Commanders will coordinate with a JA before presenting optional military justice training (see para 18–7*b*, below). The Commander and Commandant, TJAGLCS, may prescribe military justice training courses to be taught in the curriculum of TJAGLCS.

18–7. Course development and instruction

a. Military qualifications standards for military justice training will conform with this regulation.

b. Staff and command judge advocates will provide technical assistance and supervision in the development of military justice course POIs not otherwise prescribed by higher authority.

c. Judge advocates certified by TJAG as qualified to conduct military justice training will conduct all required military justice training for officers and officer candidates. Requests for certification will be forwarded to the Personnel, Plans and Training Office (DAJA–PT), 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.

Judge advocates will provide technical assistance as needed in all other military justice instruction under paragraphs 18–4, 18–5*c*, and 18–6, above.

Chapter 19
Complaints under Article 138

Section I
General

19–1. Purpose

This chapter establishes procedures for the preparation, submission, and disposition of complaints made pursuant to UCMJ, Art. 138 by a member of the Armed Forces against a commanding officer. The UCMJ, Art. 138 states: "Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall foreword the complaint to the office exercising court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings thereon."

19–2. Applicability

This chapter applies to members of all U.S. Army components. Complaints from members of the Army National Guard and U.S. Army Reserve are limited to matters concerning their Federal service (Title 10 duty status).

19–3. Policy

a. Article 138 complaints generally. Department of the Army policy is to resolve complaints at the lowest level of command and provide adequate administrative procedures for such resolution. UCMJ, Art. 138 provides one of several methods available. Article 138 complaints should be infrequent and made only when no other method of administrative remedy is available to the Soldier. A complaint is generally not appropriate under this chapter if other procedures exist that provide the Soldier notice of an action, a right to rebut or a hearing, and a review by an authority superior to the officer originating the action.

(1) In this chapter, the Soldier making the complaint is the complainant and the commanding officer against whom the Soldier is complaining is the respondent.

(2) A Soldier has a statutory right to submit a complaint under UCMJ, Art. 138. Commanders will not restrict the submission of such complaints or retaliate against a Soldier for submitting a complaint.

(3) A Soldier who submits an Article 138 complaint does not have a right to participate in any ensuing procedures under this regulation. However, the complainant may be asked to testify, provide additional information, or otherwise assist in resolving the complaint.

(4) If the available evidence does not establish the validity of a complaint, despite vigorous good faith efforts to obtain the relevant facts, a respondent is presumed to have acted properly.

(5) The principal responsibility for acting on an Article 138 complaint lies with the GCMCA of the respondent at the time of the alleged wrong. The GCMCA may exercise jurisdiction over the respondent as a result of an attachment, area jurisdiction, or a similar basis. If there is no such officer below HQDA, the complaint will be referred to the CG, FORSCOM to serve as the GCMCA responsible for acting on the complaint. When the CG, FORSCOM is prohibited from taking action on the complaint, the complaint will be forwarded to the CG, TRADOC to serve as the responsible GCMCA. The responsibility for acting on the complaint is not personal to the officer exercising GCM jurisdiction; the GCMCA with jurisdiction over the respondent at the time of the alleged wrong may act on the complaint even when he or she was not the officer personally serving as the GCMCA at the time of the alleged wrong. If the respondent is no longer assigned under the jurisdiction of the GCMCA, then the GCMCA may forward the complaint to a convening authority with jurisdiction over the respondent, provided the new convening authority consents and the transfer will facilitate compliance with this regulation.

(6) The action of the GCMCA is reviewed by TJAG (or that officer's designee) on behalf of the SECARMY. The Judge Advocate General, or TJAG's designee, may, in that officer's discretion, return the file for additional information or investigation or for other action. The file will be forwarded to the OTJAG, Administrative Law Division (DAJA-AL). Unless the GCMCA is otherwise notified by DAJA-AL within 90 days of forwarding the file to DAJA-AL, the GCMCA's action on the Article 138 complaint is considered final.

(7) The GCMCA will notify the complainant and the respondent of final action.

b. Process in general.

(1) The Soldier first makes an Initial Request for Redress, in writing, to the commanding officer the Soldier believes committed the wrong, identifying the requested redress.

(2) Next, the commanding officer responds to the Soldier granting the redress, granting the redress in part, or denying the requested redress. A failure to make a timely response constitutes a denial of redress.

(3) The Soldier then makes a timely written Article 138 complaint to the GCMCA of the respondent.

(4) The GCMCA determines whether the complaint is sufficient or deficient under this regulation.

(a) For deficient complaints, the GCMCA must either return the complaint to the Soldier with an explanation of the deficiency, or, when appropriate and authorized under this regulation, waive the deficiency and treat the complaint as sufficient.

(b) For sufficient complaints, the GCMCA must examine into the complaint.

(5) After completion of the examination into the complaint, the GCMCA will take action and notify the complainant of the action taken. The GCMCA will then forward the complete file to HQDA. Even when the GCMCA determines that the complaint is inappropriate for relief under Article 138, the GCMCA will take action and forward the complete file to HQDA. The GCMCA is responsible for notifying the complainant of the final action.

(6) Upon receipt, DAJA-AL will review the file. Unless the GCMCA is otherwise notified by DAJA-AL within 90 days of forwarding the file to DAJA-AL, the GCMCA's action on the Article 138 complaint is considered final.

Section II
Making a Complaint

19–4. Initial Request for Redress

The first attempt to resolve a perceived wrong must be between the Soldier and the commanding officer whom the Soldier believes committed the wrong. This first attempt is the Soldier's Initial Request for Redress. The Initial Request for Redress in not an Article 138 complaint. Before submitting an Article 138 complaint, the Initial Request for Redress must—

a. Be in writing and signed by the Soldier complaining of the wrong. An electronic message will satisfy this requirement.

b. Clearly identify the commanding officer whom the Soldier believes committed the wrong. The commanding officer must have been an officer in the complainant's chain of command, up to and including the first officer exercising GCM over the complainant, authorized to impose nonjudicial punishment on the complainant (whether or not the authority to impose nonjudicial punishment or to exercise GCM jurisdiction has been limited or withheld by a superior commander).

c. Clearly identify the date and nature of the alleged wrong. A wrong is a discretionary act or omission by a commanding officer, under color of Federal military authority, that adversely affects the complainant personally and that is:

(1) In violation of law or regulation;

(2) Beyond the legitimate authority of that commanding officer;

(3) Arbitrary, capricious, or an abuse of discretion; or

(4) Materially unfair.

d. Clearly identify the specific redress desired. Redress is an authorized action by an officer in the complainant's chain-of-command to effect the revocation of a previous official action or otherwise to restore the complainant any rights, privileges, property, or status lost as a result of a wrong.

e. Be submitted through command channels to the commanding officer whom the Soldier believes committed the wrong.

19–5. Response by the commanding officer to Initial Request for Redress

a. A commanding officer receiving an Initial Request for Redress submitted under this regulation will respond, in writing, in a timely manner so that the complainant will receive the response within 15 days. An electronic message will satisfy this requirement. If a final response within 15 days is not possible, an interim response will be provided that indicates the estimated date of a final response.

b. Reserve component commanders who are not on active duty must respond to an Initial Request for Redress, in writing, in a timely manner so that the complainant will receive the response within 60 days from receipt of the Initial Request for Redress. This will allow sufficient time (two drill periods) for RC commanders who are not on active duty to respond to requests for redress.

c. Any final response must address what redress the commander is granting, and when appropriate, specifically state when redress is denied.

d. A Soldier who, through no fault of the Soldier's own, has not received a final response within 15 days (or 60 days from an RC commander), or an interim response containing the date of a final response that does not unreasonably delay the final response, may elect to treat that as a refusal of redress.

19–6. Article 138 complaint requirements

a. General. If the attempt to resolve a perceived wrong through an Initial Request for Redress is unsuccessful, the Soldier may submit an Article 138 complaint. The principal responsibility for acting on an Article 138 complaint lies with the GCMCA exercising GCM jurisdiction over the respondent at the time of the alleged wrong.

b. Form of the complaint. The following list identifies the required form of an Article 138 complaint. Except for requirements (5) and (9) below, the listed requirements are waivable by the GCMCA for good cause only. Requirements (5) and (9) are not waivable by the GCMCA. An Article 138 complaint must :

(1) Be in writing and signed by the complainant. An electronic message will satisfy this requirement.

(2) Be addressed to the GCMCA exercising GCM jurisdiction over the respondent at the time of the alleged wrong.

(3) Clearly identify the complainant's current military organization and address.

(4) Clearly identify the complainant's military organization at the time of the wrong.

(5) Clearly identify the commanding officer whom the Soldier believes committed the wrong. This requirement is not waivable by the GCMCA.

(6) Indicate the date a written Initial Request for Redress was submitted to that commanding officer, and the date of the commanding officer's response or lack thereof.

(7) Specifically state that it is a complaint submitted under the provisions of Art. 138, UCMJ and this regulation.

(8) Clearly and concisely describe the specific wrong complained of. When not readily apparent, state the reason the complainant considers it a wrong.

(9) State the specific redress the complainant seeks. Unless it is readily apparent, state the reason the complainant considers the redress appropriate. This requirement is not waivable by the GCMCA.

(10) Have attached to it –

(a) The complainant's Initial Request for Redress and the commanding officer's response, if any.

(b) Any supporting information or documents the complainant desires to be considered.

c. Status of the complainant. Complaints may only be made by a member of the Armed Forces.

d. Nature of respondent. The person identified as having committed the wrong must have been the commanding officer of the complainant at the time of the perceived wrong. The commanding officer must have been an officer in the complainant's chain of command, up to and including the first officer exercising GCM over the complainant, authorized to impose nonjudicial punishment on the complainant (whether or not the authority to impose nonjudicial punishment or to exercise GCM jurisdiction has been limited or withheld by a superior commander). This requirement is not waivable by the GCMCA.

e. Nature of the wrong. The wrong identified must be a discretionary act or omission by the respondent, under color of Federal military authority, that adversely affects the complainant personally and is—

(1) In violation of law or regulation;

(2) Beyond the legitimate authority of that commanding officer;

(3) Arbitrary, capricious, or an abuse of discretion; or

(4) Materially unfair.

This requirement is not waivable by the GCMCA.

f. Due application to respondent. Prior to submission of an Article 138 complaint, the complainant must have made an Initial Request for Redress to the respondent and have been denied redress in whole or in part. This requirement is waivable by the GCMCA for good cause only.

g. Timeliness. Soldiers who elect to make an Article 138 complaint must deliver the complaint to the complainant's immediate superior commissioned officer within 90 days of the date of complainant's discovery of the wrong, excluding any period during which the Initial Request for Redress was with the respondent. If the GCMCA returns the complaint as deficient to the complainant, the days the complaint was in military channels between submission by and return to the complainant will be excluded in computing the 90-day period. When the complainant mails the complaint, the complaint will be considered to have been submitted on the date the complaint is received by the first superior commissioned officer. This requirement is waivable by the GCMCA for good cause only.

h. Withdrawal. The complainant may withdraw the complaint at any time before final action. If a complaint is withdrawn, it must be a completely voluntary act on the part of the complainant. Withdrawal must be in writing.

Section III
Action on the Complaint

19–7. Action by the person receiving the complaint

A member of the chain of command who receives an Article 138 complaint will promptly forward it to the appropriate GCMCA, as described in paragraph 19-3a(5) above. Any other person receiving a complaint (except the appropriate GCMCA) will forward it to the complainant's immediate superior commissioned officer or to the appropriate GCMCA.

The person receiving the complaint, or through whom it is forwarded, may add pertinent material to the file or grant any redress within that person's authority. If either action is taken, it will be noted in the transmittal documents.

19–8. Procedures required by the GCMCA

a. Determination of Sufficiency. Once the appropriate GCMCA receives an Article 138 complaint, the GCMCA will determine whether the complaint is sufficient. Unless specifically waived, a GCMCA may not examine into or take action on a deficient complaint.

(1) The GCMCA may have the GCMCA's legal advisor conduct a review of the Article 138 complaint to identify any deficiencies in the complaint, whether the identified deficiencies may be waived by the GCMCA, and whether a determination as to the merits of the complaint is required.

(2) If a complaint does not meet the requirements in paragraph 19-6 above, then no determination as to the merits of the complaint is required. Unless the deficiency is waived, such a complaint will be returned to the complainant with a written explanation of the deficiency and, if correctable, how it may be corrected. Paragraph 19-6 above identifies the requirements and notes whether the GCMCA may waive them. Neither the deficient complaint, nor the GCMCA's response regarding the complaint is forwarded to HQDA.

(3) A complaint that is merely inappropriate for resolution under Article 138, as provided in paragraph 19-10 below, is not deficient. A complaint is deficient only if it fails to meet any of the requirements of paragraph 19-6, above.

b. Examination into the complaint. The GCMCA will examine into the complaint. Except as provided below, the nature and method of the examination is discretionary with the GCMCA. The examination may be delegated but not to a person subordinate to the respondent in the chain of command nor, except for good cause, explained in the correspondence forwarding the complaint, to a person junior in grade to the respondent. Examinations so delegated will include a specific recommendation regarding the appropriateness of the redress requested and of any other corrective action.

(1) Inappropriate subject matter for Article 138 complaints. As part of the examination into the complaint, the GCMCA will determine whether the complaint is an inappropriate subject for resolution under Article 138, as provided in paragraph 19-10 below. When the GCMCA determines the complaint is inappropriate, the examination will be limited to determining whether the other channels or procedures are, in fact, adequate and available for resolving the alleged wrong. If the GCMCA determines the other channels or procedures are inadequate or unavailable, then the GCMCA should conduct a full examination as provided in subparagraph (2) below, and otherwise treat the complaint as appropriate subject matter for resolution under Article 138.

(2) Appropriate subject matter for Article 138 complaints. The final report of the examination into the complaint will include specific findings and will describe the factual basis and reasoning for each finding. The specific findings must address whether the act or omission complained of was—

(a) In violation of law or regulation.

(b) Beyond the legitimate authority of the respondent.

(c) Arbitrary, capricious, or an abuse of discretion.

(d) Materially unfair.

c. Action on the complaint. The GCMCA must act personally on the Article 138 complaint. This authority may not be delegated. After examination into the complaint is completed, the GCMCA will take the first of the following actions that applies to the particular complaint. Before taking action on the complaint, the legal advisor to the GCMCA will conduct a legal review of the proposed action.

(1) If the GCMCA determines the complaint is an inappropriate subject for resolution under Article 138, and determines that other channels or procedures are adequate and available for resolving the alleged wrong, then the GCMCA will advise the complainant that—

(a) The alleged wrong is already being considered in other official channels, if that is the case; or

(b) A more appropriate official channel is available to redress the alleged wrong. The officer will specify that channel, any applicable regulation under which the complaint may proceed, and any Army assistance available to the complaint in using that channel.

(2) If the GCMCA determines the complaint is an appropriate subject for resolution under Article 138, or determines that the other channels or procedures are inadequate or unavailable for resolving the alleged wrong, then the GCMCA will determine the merits of the complaint and of the redress requested.

(a) If no redress is appropriate, the GCMCA will deny the redress.

(b) The GCMCA will grant whatever redress is appropriate and is within such officer's authority to provide.

(c) If the GCMCA determines that appropriate redress is beyond such officer's authority to provide, but that another Army commander or agency could provide appropriate redress, such officer will forward the following to the commander or agency with the necessary authority:

1. The documents described in subparagraphs *e*(1) through (3), below.

2. An explanation of why the GCMCA considers redress appropriate.

3. The GCMCA's specific recommendations as to what redress should be granted.

4. A request that, upon completion of the action, the file be forwarded to HQDA in accordance with subparagraph d, below.

d. Notice to the complainant. The GCMCA will notify the complainant in writing of the action taken on the complainant. A decision that the complaint is an inappropriate subject for resolution under Article 138, and to leave the matter to be processed in alternate channels must be conveyed to the complainant, and such notice constitutes "proper measures for redressing the wrong complained of" within the meaning of UCMJ, Art. 138. The GCMCA is also responsible for notifying the complainant of any final action.

e. Forwarding complaint to Headquarters, Department of the Army. Upon completion of action on the complaint, the GCMCA will forward the complaint packet to the Office of The Judge Advocate General (DAJA-AL), HQDA, 2200 Army Pentagon, Washington, DC 20310-2200. All actions taken pursuant to subparagraph c above, including determinations that a complaint is inappropriate subject for resolution under Article 138, must be forwarded to DAJA-AL. The complaint packet will include:

(1) The complaint, the Initial Request for Redress, the response of the commanding officer, and any supporting materials submitted by the complainant.

(2) The results of the examination into the complaint, together with any supporting documentation.

(3) A copy of the notice to the complainant.

(4) A legal review of the GCMCA's action.

(5) An endorsement or memorandum of transmittal—

(a) Indicating that the GCMCA personally acted on the complaint.

(b) Describing the GCMCA's action, and the reasons therefore.

(c) Explaining any waiver of deficiencies in the complaint or inadequacy or unavailability of established channels.

f. Final action. Unless the GCMCA is otherwise notified by DAJA-AL within 90 days of forwarding the file to DAJA-AL, the GCMCA's action on the Article 138 complaint is considered final.

19–9. Legal advice

a. Complainant. A member who desires to submit an Article 138 complaint may—

(1) Consult a military lawyer for advice and assistance in drafting the complaint. Such advice will include whether, under the circumstances, an Article 138 complaint is authorized and appropriate. The member should also be advised of any other laws or regulations under which the member may seek redress. In connection with Article 138 complaints, a military lawyer will be provided only for such consultation and advice, but not to represent the member in any ensuing Article 138 proceedings.

(2) Consult or retain other legal counsel at no expense to the Government. Such counsel may attend any proceedings under this regulation open to members of the public, but may not participate in such proceedings.

b. Respondent. A commanding officer who receives a request for redress, or against whom an Article 138complaint is submitted, should obtain legal advice from the commanding officer's servicing legal advisor.

c. General Court-Martial Convening Authority. Before taking action on the complaint, the GCMCA's servicing legal advisor will conduct a legal review of the proposed action.

19–10. Inappropriate subject matter for Article 138 complaints

a. General. The procedures prescribed in this chapter are intended to ensure an adequate official channel for redress is available to all Soldiers who believe they have been wronged by their commanding officer and for which there does not exist another method for addressing the wrong. For most adverse actions, however, there are other, more specific, channels and procedures to ensure a Soldier has an adequate opportunity to be heard. These more specific procedures are more effective and efficient for resolving such matters, and procedures directed under Article 138 should neither substitute for, nor duplicate, such procedures. Thus, a complaint is not appropriate under this chapter if other procedures exist providing a Soldier notice of an action, a right to rebut or a hearing, and a review by an authority superior to the officer originating the action. Generally, an action is an inappropriate subject for resolution under Article 138 procedures when—

(1) Review is provided specifically by the UCMJ, or the action is otherwise reviewable by a court authorized by the UCMJ or by a military judge or military magistrate.

(2) It is taken pursuant to the recommendation of a board authorized by Army regulation at which the complainant was afforded substantially the rights of a respondent (see AR 15–6).

(3) Army regulations specifically authorize an administrative appeal.

(4) It is a commander's recommendation or initiation of an action included in subparagraphs (1), (2), or (3) above. The fact the wrong complained of could be redressed by the ABCMR (see AR 15–185) or Army Discharge Review Board (AR 15–180) does not make UCMJ, Art. 138 procedures inappropriate.

b. Examples. Some examples of actions for which a review under UCMJ, Art. 138 is inappropriate include—

(1) Matters relating to courts-martial, nonjudicial punishment, confinement, and similar actions taken pursuant to the UCMJ, the MCM, or military criminal law regulations. However, a complaint concerning a vacation of suspended

nonjudicial punishment is reviewable under UCMJ, Art. 138, procedures, because there is no review by an authority superior to the officer vacating the punishment.

(2) Officer or enlisted elimination actions (see AR 600–8–24 and AR 635–200).

(3) Whistleblower reprisal allegations reported under 10 USC 1034.

(4) Withdrawals of flying status (see AR 600–105).

(5) Appeals from findings of pecuniary liability (see AR 37–104–4 and AR 735–5 for examples).

(6) Appeals from administrative reductions in enlisted grades (see AR 600–8–19).

(7) Appeals from OERs or enlisted evaluation reports (see AR 623–3).

(8) Filing of adverse information (for example, administrative reprimand) in official personnel records (see AR 600–37).

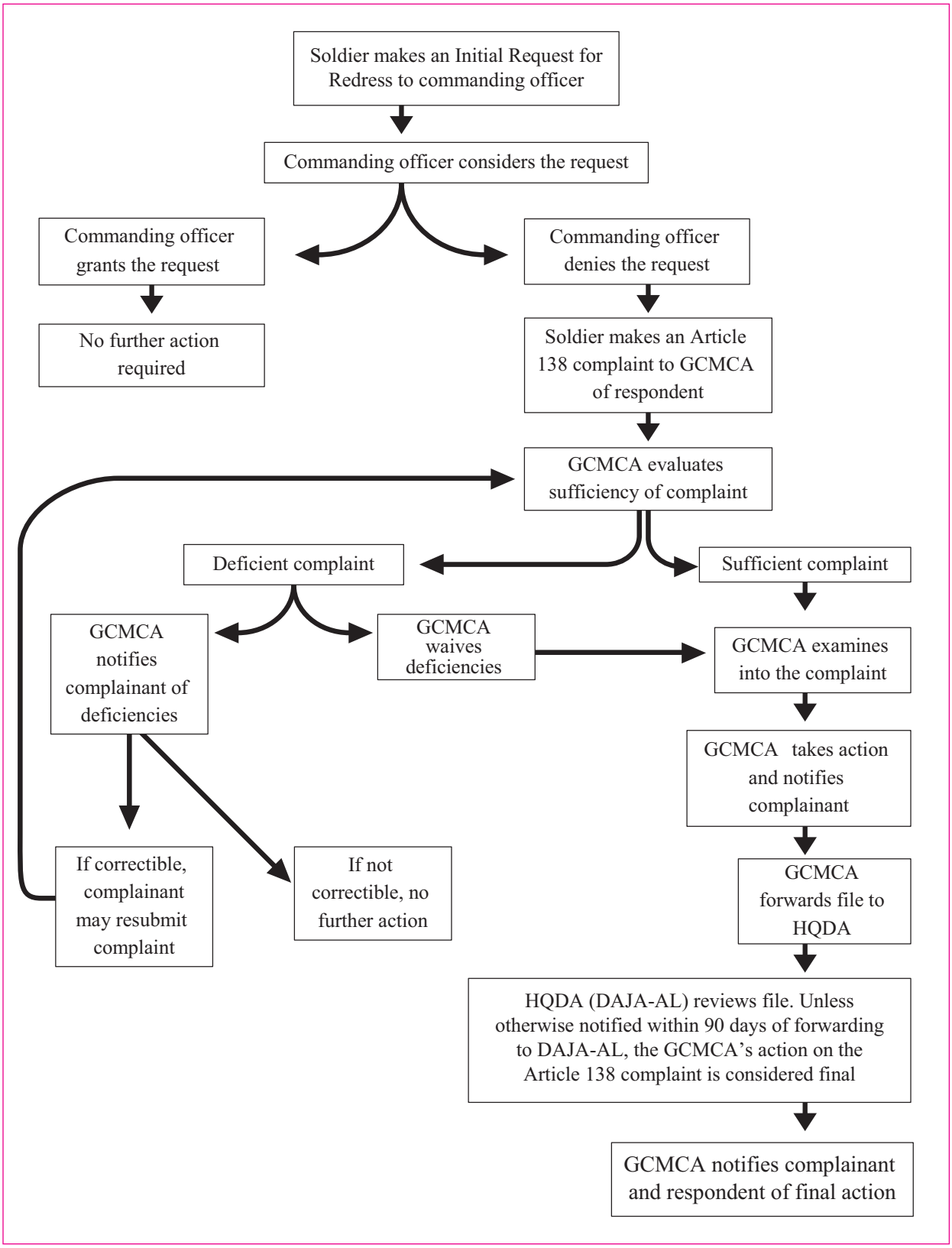

Figure 19–1. Article 138 Complaint Process

Chapter 20
Military Justice in the Reserve Components

Section I
General

20–1. Purpose

a. This chapter prescribes policies and procedures for implementing 10 USC 802. It also prescribes policies and procedures for implementing RCM 202(a), which addresses persons subject to the code; RCM 204, which details jurisdiction over certain RC personnel; RCMs 707(a)(3) and (c)(8), on speedy trials; and RCM 1003(c), on punishments in the RC.

b. The provisions of this chapter supplement the policies and procedures pertaining to the administration of military justice set out in other parts of this regulation, including the training requirements of paragraph 18–4, above.

20–2. Policy

a. United States Army Reserve Soldiers will be subject to the UCMJ whenever they are in a 10 USC (Title 10) duty status. Examples of such duty status are active duty (AD); active duty for training (ADT); annual training (AT); active guard reserve (AGR) duty; inactive duty training (IDT). Inactive duty training normally consists of weekend drills by troop program units, but may also include any training authorized by appropriate authority. All USAR Soldiers are subject to the provisions of the UCMJ from the date scheduled to report to AD, ADT, or AT, until the date the Soldier is released from that Status. For examples of IDT, see AR 140–1.

b. All ARNG Soldiers will be subject to the UCMJ when in Federal service as Army National Guard of the United States (ARNGUS) under 10 USC, and when otherwise called into Federal service. The ARNG Soldiers are not subject to the UCMJ while in State service under 32 USC (Title 32).

c. Reserve component commanders must be in a Title 10 duty status (see subpara *a*, above) whenever they take action such as offering or imposing nonjudicial punishment, preferral or referral of court-martial charges, conducting open hearings under UCMJ, Art. 15, or vacating suspended sentences under UCMJ, Art. 15. However, RC commanders may forward charges (under RCM 401c(2)(A)), initiate, or forward requests for involuntary active duty (under RCM 707c(8)), or act on UCMJ, Art. 15 appeals (under chap 3, section VI) anytime, even when not in a Title 10 duty status.

d. Costs associated with disciplining USAR Soldiers will normally be paid from Reserve Personnel, Army, appropriations. However, costs associated with disciplining USAR Soldiers, when involuntarily ordered to active duty or involuntarily extended on AD by an active Army commander, will be paid from military personnel, Army appropriations.

Section II
Involuntary Active Duty and Extension on Active Duty

20–3. Involuntary active duty

a. Any RC Soldiers, including those in a retired status, who are not serving on AD are subject to UCMJ jurisdiction under UCMJ, Arts. 15 and 30, for offenses allegedly committed while serving in a Title 10 duty status (see paras 20–2*a* and *b*, above), and involuntary orders may be issued for the purpose of—

(1) Preliminary hearing pursuant to UCMJ, Art. 32.

(2) Trial by court-martial.

(3) Proceedings under UCMJ, Art. 15.

b. An involuntary order to AD for the reasons in subparagraphs *a*(1) through (3), above, above may be issued only by an AA GCMCA (see AR 135–210). No other authority is required to approve the order to AD. However, no Soldier ordered to active duty by an AA GCMCA may be confined or deprived of liberty (to include pretrial confinement or restriction) without prior approval of the involuntary order to AD by the SECARMY or SECARMY's designee.

c. Under subparagraph *b*, above, not all involuntary orders to AD require the SECARMY or SECARMY's designee approval. An AA GCMCA may issue an involuntary order to AD and process a Soldier for any purpose in subparagraphs *a*(1) through (3), above, without the SECARMY or SECARMY's designee approval, provided no confinement or deprivation of liberty occurs. For example, a Soldier may be ordered involuntarily to AD, charged with an offense under the UCMJ, and then granted a resignation in lieu of court-martial under chapter 10, AR 635–200 for enlisted personnel or a resignation in lieu of court-martial under chapter 3, AR 600–8–24 for officers without the SECARMY or SECARMY's designee approval. For those cases where pretrial confinement arrest or restriction in lieu of arrest are contemplated, or where sentences to confinement or deprivation of liberty are anticipated, the request for

SECARMY or SECARMY's designee approval should be made sufficiently in advance of the deprivation of liberty or confinement. This is to prevent a delay in the execution of the confinement.

d. The RC unit commanders who become aware of misconduct committed by RC members while serving on AD who consider it appropriate to request an involuntary recall to AD will forward a request through command channels. These channels include the appropriate State Adjutant General, the unit directly reporting to the USARC with one or more full-time judge advocate officers assigned, or any other USARC subordinate unit designated in writing by the USARC Commander, or USARC Commander's designee, or Human Resources Command–St. Louis (HRC–STL) to an appropriate AA (as defined in AR 135–210) GCMCA. Any active Army commanders who become aware of misconduct by RC members who are no longer on AD will forward requests for involuntary recall to AD to an appropriate AA GCMCA.

e. Ordinarily, the appropriate AA (as defined in AR 135–210) GCMCA authorized to involuntarily order a reserve member to active duty is either of the following:

(1) The AA GCMCA specified in appendix E, below, with area of support or responsibility; or

(2) The AA GCMCA for the AA component unit where the member performed duty when the offense occurred.

f. Not all misconduct committed by RC personnel before departure from AD requires involuntary recall. Commanders should consider the gravity of the alleged misconduct, the ability to prosecute the case, the effect on good order and discipline of an involuntary recall, and other factors listed in the discussion to RCM 306. Before a request for involuntary recall is made, commanders will consult with servicing AA and RC SJA personnel. Normally, commanders should not request an involuntary recall to AD solely for the purpose of administering nonjudicial punishment under UCMJ, Art. 15. In such cases, commanders should normally administer nonjudicial punishment during the member's next period of inactive training or AD. However, there may be cases where an involuntary recall solely to administer nonjudicial punishment is appropriate, and that determination is left to the discretion of the commander with the advice from the servicing SJA.

g. Preferral of charges is not necessary before an involuntary order of a reserve Soldier to AD is issued. However, preferral must be contemplated. A Soldier may not be involuntarily recalled to AD under this provision solely for the purpose of investigating an offense. In those cases where charges are preferred prior to the order to AD, great care should be exercised to avoid triggering the speedy trial provisions of RCM 707.

h. Requests for an order to active duty under this paragraph should include the following:

(1) Complete identity of the accused including grade, full name, social security number, current military status of the accused to include component to which assigned, unit to which assigned and its location, and home address of the accused at the time of the request;

(2) Detailed summary of the contemplated charges and specifications or a copy of a preferred charge sheet;

(3) Prior convictions and nonjudicial punishment if known;

(4) Summary of the evidence of the case and a copy of the report of investigation, if available;

(5) Analysis of the evidence demonstrating the need for and likelihood of successful prosecution at trial by courts-martial or the need for imposition of nonjudicial punishment through involuntary order to AD; and

(6) Indication of where the accused should be ordered to AD and why the order is advisable.

i. Any AA GCMCAs who involuntarily order a Soldier to active duty will immediately inform the ASCC and commanders of the U.S. Army Forces Command, the State Adjutant General, and the Chief, National Guard Bureau, as appropriate, of the initiation of UCMJ action against the RC Soldier.

j. Requests for the SECARMY or SECARMY's designee approval of an involuntary recall to AD necessary to confine or deprive the liberty of a Soldier involuntarily ordered, will be forwarded to the Office of The Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200. The request should include the initial request for the order to AD including the information specified at subparagraph *h*, above, and the order to AD issued by the AA GCMCA (see subpara *b*, above.) Headquarters, Department of the Army (DAJA–CL) will notify the forwarding AA GCMCA of the SECARMY or SECARMY's designee action on the request.

20–4. Extending reserve component Soldiers on active duty

a. The requirements for AA GCMCA activation and/or Secretarial approval in paragraph 20–3, above, do not apply to RC Soldiers on AD. Any RC Soldiers serving on AD, ADT, or AT in a Title 10 duty status may be extended on AD involuntarily, so long as action with a view toward prosecution is taken before the expiration of the AD, ADT, or AT period (see AR 635–200, chap 1). Any such extensions must be completed pursuant to the provisions of AR 135–200, chapter 7. The AA GCMCAs will make every attempt to complete administrative measures to be taken against a Soldier prior to release from AD.

b. A reserve component Soldier who is suspected of or accused of an additional offense after being ordered to AD for any of the purposes in paragraph 20–3*a*, above, may be retained on AD pursuant to RCM 202(c)(1).

20–5. Preservation of jurisdiction and punishment

a. All RC Soldiers remain subject to UCMJ jurisdiction for offenses committed while serving in a Title 10 duty

status (see para 20–2, above) notwithstanding termination of a period of such duty, provided they have not been discharged from all further military service (under RCM 204(d)). Retired RC Soldiers are subject to recall to AD for the investigation of UCMJ offenses they are alleged to have committed while in a Title 10 duty status, for trial by court-martial, or for proceedings under UCMJ, Art. 15, so long as the recall is in accordance with the procedures set out in paragraph 20–3, above.

b. All lawful punishments remaining unserved when RC Soldiers are released from AD, ADT, AT, or IDT, including any uncollected forfeitures of pay, are carried over to subsequent periods of AD, ADT, AT or IDT. However, an RC Soldier may not be held beyond the end of a normal period of IDT for trial, or service of any punishment, nor may IDT be scheduled solely for the purpose of UCMJ action (RCM 204(b)(2)). Involuntary activation pursuant to paragraph 20–3*a*, above, is authorized only in accordance with the procedures set out in paragraph 20–3*c*, above.

Section III
Nonjudicial Punishment under Article 15 and Courts-Martial

20–6. Nonjudicial punishment (Article 15)

a. The provisions of chapter 3, above, that are not otherwise inconsistent with this chapter are applicable to the administration of nonjudicial punishment in the RC. In particular, commanders are reminded of the policy in paragraph 3–2, above, that nonpunitive or administrative remedies should be exhausted before resorting to nonjudicial punishment.

b. All RC Soldiers may receive nonjudicial punishment pursuant to UCMJ, Art. 15, while serving in a Title 10 status on AD, ADT, AT, or IDT. The RC Soldiers may be punished pursuant to UCMJ, Art. 15 while serving on IDT, provided that the proceedings are conducted and any punishment administered is served during normal IDT periods (see Discussion, RCM 204(b)(2)). Prior to taking such actions, RC commanders should consult with their supporting RC or AA staff or command judge advocate.

c. Either RC or AA commanders may punish RC enlisted Soldiers of their commands (see para 3–8, above).

d. Unless further restricted by higher authority (see para 3–7*c*, above), punishment for RC officers is reserved to the AA or RC GCMCA to whose command the RC officer is assigned or attached for disciplinary purposes or to commanding generals in the RC officer's chain of command.

20–7. Summary courts-martial

a. Reserve component Soldiers may be tried by SCM while serving in a Title 10 status (AD, ADT, AT, or IDT). The RC Soldiers may be tried by SCM while serving on IDT, provided that the trial is conducted and punishment is served during normal IDT periods (see Discussion, RCM 204(b)(2)).

b. Either RC or AA SCM convening authorities may refer charges against RC Soldiers to trial by SCM. An RC SCM convening authority may refer charges to SCM while on IDT. However, UCMJ, Art. 25 requires that the summary court officer must be on AD at the time of trial.

c. Commanders of major subordinate commands should attach all Soldiers without an intermediate commander, authorized to exercise nonjudicial punishment or SCM authority under UCMJ, Arts. 15 and 24, to an appropriate subordinate commander for such purposes.

20–8. Special and general courts-martial

a. Reserve component Soldiers may be tried by SPCM or GCM only while serving on AD. Orders to involuntary AD must be approved by the SECARMY or the SECARMY's designee before an RC Soldier may be sentenced to confinement or otherwise deprived of liberty.

b. Ordinarily, only an active duty convening authority may refer charges against a RC Soldier to an SPCM or GCM. Such courts-martial will normally be conducted at the installation of the supporting active duty GCMCA, as designated in appendix E, below, or based upon an agreement of the active duty GCMCA with the general officer in command of the RC unit. As a matter of policy, authority to convene GCM or SPCM is withdrawn, except as provided below, for USARC officers qualified as a GCMCA or special court-martial convening authority (SPCMCA) under UCMJ, Arts. 22(a)(5), 23(a)(3), and 23(a)(6), but not those specifically designated under UCMJ, Arts. 22(a)(8), 23(a)(7) (Secretarial designation), or those designated in an exception to policy by TJAG or TJAG's designee.

c. Authority to convene special courts-martial rests with the Commander, USARC. The USARC commander or designee has the discretion to delegate special court-martial convening authority on a case-by-case basis or as otherwise appropriate, so long as such delegation extends only to units with one or more full-time JA officers assigned. All such delegations, if any, should be in writing, signed by the USARC commander or designee.

20–9. Forfeitures

a. Consistent with DOD 7000.14–R, forfeitures imposed on RC Soldiers pursuant to UCMJ, Art. 15 or court-martial will be calculated in whole dollar amounts. Forfeitures are calculated by converting the stated amount of forfeiture to a percentage using the base pay for an AA Soldier of the same grade and time in service on the date the forfeiture

sentence is approved. Apply the resulting percentage to the Soldier's pay for every period of duty the Soldier actually performs during the stated time period of the forfeiture. For example—

(1) A Soldier (SPC or CPL) over 2 years of service (for pay purposes) receives a sentence (either nonjudicial punishment or court-martial sentence) that includes a forfeiture of $200 a month for 2 months, for a total of $400.

(2) Next, determine the Soldier's monthly rate of base pay. In this example, it is $912.60.

(3) Then, convert the original forfeiture to a percentage: 200/912.60 = 21.92 percent.

(4) So for each period of duty performed during the stated period of the sentence, collect 21.92 percent of the Soldier's pay from the Soldier's AD and IDT pay.

b. The forfeiture sentence is satisfied by collecting from the pay the Soldier receives for periods of duty the Soldier performs during the stated period of forfeiture. If a Soldier performs duty without forfeiture collections, the amount of forfeitures not collected becomes an amount due the U.S. Government.

c. The forfeiture sentence is satisfied by collection from pay for duty performed only during the stated period of forfeiture (for example, forfeitures are imposed for 2 months, then collections may only be made for 2 months, with the 2-month period beginning on the date the forfeitures are imposed). If a Soldier performs no duty, or the Soldier's pay is insufficient to satisfy the forfeiture in full during the stated period of the forfeiture, no further collection action is authorized.

d. This paragraph applies only when the RC Soldier receives forfeitures from a court-martial or from nonjudicial punishment and the forfeitures are carried over to subsequent periods of IDT or ADT. If the RC Soldier receives forfeitures from a court-martial or from nonjudicial punishment in an AD status and does not revert to an inactive duty status during the execution of the punishment, then forfeitures are to be based upon the base pay for an AA Soldier of the same grade and time in service.

Section IV
Support Personnel and Responsibilities

20–10. Support personnel

a. The SJA of the AA command designated to support a USAR command will supervise prosecutions of USAR Soldiers, including coordinating requirements for advice and personnel support, when the AA commander convenes a court-martial against a USAR Soldier. United States Army Reserve JAs may be used when feasible. Active Army JAs may also be used. When a supporting AA SJA decides to use a USAR JA, the SJA will inform the USAR JA's immediate commander of that decision. If a question arises as to the feasibility of using a particular USAR JA assigned within CONUS, the continental United States Armies (CONUSA) commander will decide whether use of the USAR JA is feasible. If a question arises as to the feasibility of using a particular USAR JA assigned outside the continental United States (OCONUS), the commander of the United States Army Pacific, United States Army South, United States Army Japan, or Eighth United States Army—as appropriate—will decide whether support from the USAR JA is feasible.

b. The USATDS office servicing the AA command will detail either AA or RC defense counsel in accordance with guidelines established by the Chief, USATDS.

c. The senior military judge designated to support the AA GCM jurisdiction supporting the RC command will detail AA or RC military judges in accordance with guidelines established by the Chief, U.S. Army Trial Judiciary.

20–11. Support responsibilities for active Army general court-martial convening authorities

The active Army (as defined in AR 135–210) GCMCAs designated in accordance with appendix E, below, to support RC commands will—

a. Order RC Soldiers to AD for the purposes set out in paragraph 20–3, above, except when approval of the SECARMY or the SECARMY's designee is required. The orders will cite 10 USC 802(d) for authority.

b. Forward requests for involuntary AD orders requiring approval of the SECARMY pursuant to paragraph 20–3*j*, above, to HQDA (DAJA–CL) for processing.

c. Coordinate the allocation of personnel, funds, and other resources to support the administration of military justice in the supported RC command.

d. Inform the MSC or State Adjutant General, CONUSA commanders and the Commander, U.S. Army Forces Command as appropriate, of USAR actions under the provisions of the UCMJ involving USAR Soldiers assigned to USAR units located in CONUS.

e. Inform the Commander, United States Army Pacific, United States Army South, United States Army Japan, European Command, or Eighth United States Army—as appropriate—of RC actions under the UCMJ involving RC Soldiers assigned to RC units located OCONUS.

f. When appropriate, order pretrial confinement for RC Soldiers in accordance with RCM 305 following involuntary AD approved by the SECARMY or the SECARMY's designee.

g. Make appropriate disposition of charges against RC Soldiers including referral to court-martial, imposition of

punishment under UCMJ, Art. 15, or administrative measures. Every attempt to complete administrative measures (to include separation or grade reduction actions) will be taken prior to that RC Soldier's release from AD.

h. Arrange for orders placing RC Soldiers on AD status for duty as witnesses, counsel, military judges, court members, or other personnel of the court-martial.

20–12. Multiple component units

a. Commensurate with their positions and subject to restrictions found elsewhere in this regulation, AA and USAR officers will exercise UCMJ authority (that is, nonjudicial punishment and courts-martial) over AA and USAR Soldiers assigned to their multiple component units (MCUs).

b. Authority and responsibility for military discipline over ARNG Soldiers not in Federal status rests with each State. Every ARNG element will have a designated State chain of command for purposes of military justice. Non-ARNGUS MCU commanders will forward recommendations for disciplinary action pertaining to ARNG Soldiers to the designated ARNG commander from the State of the respective ARNG element. The ARNGUS MCU commanders whose MCU includes ARNG elements from outside their own State, will forward recommendations for disciplinary action pertaining to such ARNG Soldiers to the designated ARNG commander from the State of that element.

c. For AA and USAR Soldiers assigned to an MCU with an ARNGUS commander, the AA and USAR will attach these Soldiers on orders for purposes of UCMJ provisions to the nearest appropriate AA or USAR command. The ARNGUS unit commander will forward recommendations for disciplinary action pertaining to USAR or AA Soldiers to the designated USAR or AA commander.

Chapter 21
United States Army Trial Counsel Assistance Program

21–1. General

This chapter governs the operations of the Trial Counsel Assistance Program (TCAP). It sets forth information, policies, and procedures applicable to the support of trial counsel throughout the Army.

21–2. Mission

The SJA and the chief of military justice are responsible for the daily supervision and training of trial counsel. The TCAP's mission is to provide assistance, resources, and support for the prosecution function throughout the Army and to serve as a source of resolution of problems encountered by trial counsel. The TCAP provides publications and references for chiefs of military justice and trial counsel and conducts periodic advocacy training. The TCAP can also assist an SJA office in the prosecution of specific cases. The program serves as the liaison between chiefs of military justice and the GAD concerning potential Government appeals pursuant to UCMJ, Art. 62.

21–3. Organization

The TCAP functions as a part of GAD and is an activity of USALSA, a field operating agency of TJAG. Operational control and supervision of TCAP is exercised by the Chief, GAD, for the Assistant Judge Advocate General for Military Law and Operations. Command functions other than operational control are provided by the Commander, USALSA. The office is composed of a chief and training and litigation officers, as necessary.

21–4. Training

a. The TCAP conducts regional advocacy courses for chiefs of military justice and trial counsel as determined by the Chief, TCAP. The Chief, TCAP is responsible for the content of these training courses, and structures training to meet specific needs after a review of questions raised by counsel within the region, recent court decisions, and the input of SJAs, chiefs of justice, and military judges. The TCAP staff will conduct on-site training when requested, and resources allow, and coordinate training offered by other agencies.

b. In order to properly perform their duties, chiefs of military justice should attend every TCAP seminar offered within their region. Similarly, trial counsel should attend at least one TCAP seminar each year.

c. The TCAP provides training through monthly updates for chiefs of military justice and trial counsel. These updates inform counsel of time-sensitive decisions of appellate military courts and also address specific problem areas of interest to trial counsel.

21–5. Technical assistance

a. Chiefs of military justice may request technical assistance or guidance from the Trial Counsel Assistance Program (TCAP) and the Government Appellate Division (GAD). Trial counsel may initiate such requests after coordination with the chief of justice, the Deputy SJA, or the SJA. Such requests may be telephonic, by electronic means, or in writing.

b. TCAP counsel and GAD counsel are available for on-site assistance in unique or difficult cases. Staff Judge

Advocates may request such assistance through the Chief, TCAP; the Chief, GAD; and the Assistant Judge Advocate General for Military Law and Operations. The request should specify the name of the case, the unique factors requiring TCAP or GAD assistance, the period of time involved, and the extent of assistance desired. The Assistant Judge Advocate General for Military Law and Operations determines whether TCAP assistance will be provided and the extent of such assistance. The Chief, TCAP, and the requesting SJA will coordinate such assistance including the specific involvement of TCAP or GAD counsel. Staff judge advocates requesting TCAP or GAD technical assistance will fund all TCAP travel connected with the request. Exceptions to these funding rules may be made by the Assistant Judge Advocate General for Military Law and Operations.

Chapter 22
United States Army Defense Counsel Assistance Program

22–1. General
This chapter governs the operations of the Defense Counsel Assistance Program (DCAP). It sets forth information, policies, and procedures applicable to the support of defense counsel throughout the Army.

22–2. Mission
The RDCs and senior defense counsels (SDCs) are responsible for the daily supervision and training of defense counsel. The DCAP provides training, resources, and assistance for Army defense counsel worldwide. The program assists the Chief of the Trial Defense Service (TDS) on the development of TDS policy and strategic initiatives. The DCAP also serves as the liaison between trial defense counsel and Defense Appellate Division concerning extraordinary writs.

22–3. Organization
The Defense Counsel Assistance Program functions as part of TDS Headquarters and is an activity of USALSA, a field operating agency of TJAG. Operational control and supervision of DCAP is exercised by the Chief, USATDS. Command functions other than operational control are provided by the Commander, USALSA. The office is composed of a chief and training officers, as necessary.

22–4. Training
a. As required by paragraph 6–6, above, the Chief, USATDS, is responsible for developing programs and policies to enhance the professional qualifications of defense counsel. The DCAP is an internally developed program that was developed to aid in this process.

b. The DCAP provides training events for each region, which are normally held twice per calendar year for each region. The DCAP, in conjunction with the RDCs, is responsible for the content of these training events. The DCAP also plans a Leadership Conference once a year that includes at a minimum all RDCs and all SDCs from CONUS and OCONUS regions. In addition, DCAP will facilitate defense counsel attending training courses not affiliated with DOD.

c. In order to properly perform their duties, RDCs and SDCs, along with the support of the respective SJA, commands, and the Army Judiciary, should make every effort for defense counsel to attend TDS training opportunities.

d. The DCAP provides training through resources like “DCAP Sends” (a newsletter to defense counsel worldwide on current legal topics), deskbooks (reference books for defense counsel), and the DCAP Web site (an online library of motions, information papers, expert pages, and new developments in the law that are pertinent to the practice of a defense counsel).

22–5. Technical assistance
a. Defense counsel may request technical assistance or guidance from DCAP. Such requests may be telephonic, by electronic means, or in writing.

b. The Chief, USATDS is the approval authority for a defense counsel assigned to DCAP to be detailed as a defense counsel for any matter. The program’s primary role is assistance to defense counsel with legal issues that may arise in their cases. This can be given by researching case law, answering specific questions, giving examples of motions, expert requests, and other trial documents that might be necessary.

22–6. Policy and strategic initiatives
The Chief, USATDS, with the assistance of DCAP, ensures that TDS policies stay current and that all areas of training are conducted efficiently, which might require changes in how funding is sourced, and so forth. The DCAP helps

update legislation, executive orders, Army regulations, Army pamphlets, and policy and procedures that deal with TDS, including but not limited to the UCMJ, the MCM, AR 27–10, and the TDS standard operating procedures.

Chapter 23
Prosecution of Criminal Offenses in Federal Courts

23–1. Scope

a. This chapter contains policies and procedures for prosecutions in U.S. District Court before either a district judge or a magistrate judge for violations of Federal law committed on Army installations or violations that involve Army interests or property. This chapter does not apply to military courts-martial.

b. An individual (whether civilian or military) who violates Federal law can be prosecuted in U.S. District Court or the Magistrate Division. These prosecutions can include, but are not limited to, the following situations: The violation of Federal law on a military installation by a civilian not subject to the UCMJ; or the commission of a serious offense by a Soldier where the DOJ seeks a Federal indictment and prosecution despite existing UCMJ jurisdiction. Routine traffic violations, whether the offender is military or civilian, are referred to the local U.S. Magistrate Division.

23–2. Authority

The following authorities apply to this chapter:

a. 18 USC Ch. 219, which covers trials by U.S. magistrate judges.

b. 28 USC 515, which details authority for legal proceedings; commission, oath, and salary for special attorneys.

c. 28 USC 543, on the appointment of special attorneys by The Attorney General.

d. Rule 58, Federal Rules of Criminal Procedure, which covers procedures for petty offenses and other misdemeanors.

e. The AR 190–45, which prescribes policy on misdemeanors and uniform notices referred to the U.S. Magistrate or district courts.

23–3. Felony prosecution programs

a. General. The DOJ is responsible for prosecuting Federal offenses in U.S. District Court, whether before a district or a magistrate judge. It is often beneficial to both the Army and DOJ, however, to prosecute offenses in which the Army has an interest through a felony prosecution program, whereby one or more Army attorneys are appointed Special Assistant U.S. Attorneys (SAUSAs). A felony prosecution program can promote rapid and efficient prosecution of offenses in which the Army has an interest.

b. Authorization. If an installation SJA or legal advisor believes a felony prosecution program would be in the Army's best interest, the SJA or legal advisor will seek the views of the appropriate U.S. Attorney. If the U.S. Attorney agrees, the installation SJA or legal advisor will draft a mutually agreeable MOU. The SJA will forward the MOU and a request to begin the program to the Criminal Law Division, OTJAG.

23–4. Appointment of attorneys as Special Assistant U.S. Attorneys

a. General. Prosecutions in Federal court are a DOJ responsibility. Staff Judge Advocates or legal advisors often find it beneficial, however, to have one or more JA or DA civilian attorneys appointed as SAUSA under 28 USC 543 to prosecute crimes in which the Army has an interest.

b. Procedure. The appropriate U.S. Attorney must agree to the appointment of an Army attorney as a SAUSA. The U.S. Attorney may find such an appointment to be in his/her best interest, as the U.S. Attorney gains an additional prosecutor at no additional expense to DOJ. If the U.S. Attorney agrees, he/she will forward the request for appointment to the U.S. Attorney General for approval (28 USC 543).

c. Supervision. Army attorneys acting as SAUSAs will be supervised in that role primarily by the U.S. Attorney's office. The SAUSAs will perform their duties consistent with the MOU between the U.S. Attorney and the SJA or legal advisor. Staff Judge Advocates and legal advisors will monitor prosecutions conducted by SAUSAs and will, if necessary, provide additional supervision.

d. Civil litigation. Any SAUSAs appointed to prosecute criminal cases will not undertake representation of the United States in civil litigation unless authorized by the Chief, Litigation Division.

23–5. Misdemeanors

a. General. Any individual, whether military or civilian, who commits a misdemeanor or infraction on a military installation or on Federal property can be prosecuted before a magistrate judge. The magistrate system is particularly well-adapted to dispose of traffic cases. Army attorneys appointed as SAUSAs can represent the United States before a magistrate judge.

b. Petition to U.S. District Court. If no magistrate judge has been designated to try misdemeanors committed on an

installation, the SJA or legal advisor should request that the U.S. Attorney petition the U.S. District Court to designate a magistrate judge for that purpose. The Criminal Law Division, OTJAG should be notified of any unsuccessful attempts to have a magistrate judge designated.

c. Complaints, warrants, and citations. A magistrate judge has authority to issue arrest warrants based upon complaints filed with the court. Assistant U.S. attorneys and SAUSAs prepare complaints and warrants in accordance with local court rules and procedures. See figure 23–1, below, for a sample of a completed AO Form 91, Criminal Complaint. As a rule, petty offenses committed in the presence of a police officer may be prosecuted on a citation or violation notice, but SAUSAs should consult local State law for exceptions.

d. Consent to be tried. A person charged with a misdemeanor may elect to be tried before a district judge rather than before a magistrate judge (see 18 USC 3401). The defendant must be informed of this right (see fig 23–2, below, for a sample of a completed AO Form 86A (Consent to Proceed Before a Magistrate Judge in Misdemeanor Case). If permitted by MOU, an Army SAUSA may prosecute misdemeanors before a district judge when a defendant declines to consent to be tried by the magistrate judge.

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

United States of America	)	
v.	)	
	)	Case No.
	)	
	)	
_____	)	
Defendant(s)		

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of _____ in the county of _____ in the _____ District of _____ , the defendant(s) violated:

Code Section	*Offense Description*

This criminal complaint is based on these facts:

❒ Continued on the attached sheet.

_____
Complainant's signature

_____
Printed name and title

Sworn to before me and signed in my presence.

Date: _____

_____
Judge's signature

City and state: _____

_____
Printed name and title

SAMPLE

Figure 23–1. Sample AO Form 91 (Rev. 5–85) Criminal Complaint

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
_____ DIVISION

UNITED STATES OF AMERICA	CONSENT TO PROCEED BEFORE UNITED STATES MAGISTRATE JUDGE IN A MISDEMEANOR CASE
v.	
_____	CASE NUMBER:

The United States magistrate judge has informed me of the nature of the offense(s) with which I am charged and the maximum possible penalties which might be imposed if I am found guilty. The magistrate judge has informed me of my right to the assistance of legal counsel. The magistrate judge has informed me of my right to trial, judgment, and sentencing before a United States district judge.

I hereby waive (give up) my right to trial, judgment, and sentencing before a United States district judge, and consent to trial, judgment and sentencing before a United States magistrate judge.

_____ Date

X_____ Defendant

WAIVER OF RIGHT TO TRIAL BY JURY

The magistrate judge has informed me of my right to trial by jury.

I hereby waive (give up) my right to trial by jury. **X**_____ Defendant

Consented to by the United States:_____ Signature of Ass't. U.S. Attorney

Approved By: _____ U.S. Magistrate Judge

WAIVER OF RIGHT TO COUNSEL

The magistrate judge has informed me of my right to the assignment of counsel if I am unable to obtain counsel.

I hereby waive (give up) my right to counsel and choose to proceed without a lawyer.

X_____ Defendant

WAIVER OF RIGHT TO HAVE THIRTY DAYS TO PREPARE FOR TRIAL

The magistrate judge has informed me of my right to have at least thirty days to prepare for trial before the magistrate judge.

I hereby waive (give up) my right to have at least thirty days to prepare for trial.

X_____ Defendant

SAMPLE

Figure 23–2. Sample AO Form 86A (Consent to Proceed Before a Magistrate Judge in Misdemeanor Case)

e. Procedure. Attorneys designated to prosecute cases before a magistrate judge must familiarize themselves with the local rules of court and Rule 58, Federal Rules of Criminal Procedure.

f. Memorandum of understanding and request for authorization. The SJA or legal advisor should execute an MOU with the U.S. Attorney covering responsibilities and procedures for trials in Magistrate Court. Installations with a felony prosecution program should also include specific procedures for District Court in the MOU governing that program. If the installation only has a Magistrate Court program, then an MOU should be prepared and forwarded to Criminal Law Division, OTJAG, for approval of the program.

23–6. Witness expenses

The SAUSAs will follow the procedures outlined in the U.S. Attorneys Manual (available at http://www.usdoj.gov/index.html) for obtaining witnesses and funding for their travel. In misdemeanor prosecutions, however, witness expenses that would be funded from the DA witness travel account if the case were a felony prosecution are the responsibility of the installation prosecuting the case.

Chapter 24
Registration of Military Sexual Offenders

24–1. General

This chapter implements 42 USC 16901, the sections that follow, and DODI 1325.07, which requires military officials to notify State officials upon release of Soldiers or transfer of unconfined Soldiers who are convicted at special or general courts-martial of sexual offenses and offenses against minor victims. Soldiers convicted of either covered offenses as set forth in Appendix 4 to Enclosure 2 of DODI 1325.07 or of a civilian offense that requires sex offender registration are designated as "military sexual offenders" in this chapter. This chapter also requires military sexual offenders to register with the Provost Marshal. Military sexual offenders who fail to register with the installation Provost Marshal as described in this chapter may be punished for violating the UCMJ, Art. 92. A military sexual offender whose conviction of covered sexual offenses is reversed on appeal will be removed from military sexual offender registrations and not required to register at new duty locations even if retrial is pending.

24–2. Covered offenses and sexually violent offenses

a. All of the offenses listed in DODI 1325.07 and 42 USC 16901 *et seq.* are both "covered offenses" and "sexually violent offenses" for purposes of this regulation and other Army Regulations, including but not limited to: AR 600–8–24, AR 601–100, AR 614–100, AR 601–210, AR 614–200, and AR 635–200.

b. Those convicted of any of UCMJ-covered offenses listed in DODI 1325.07 or 42 USC 16901 *et seq.* must register within 3 days of release from confinement, or within 3 days of conviction if not confined, with the appropriate state, district, or territorial authorities of the jurisdiction in which they will reside, work, or attend school and with the Provost Marshal Office (PMO) at every installation which the Soldier is assigned or present for duty for more than 30 days until the Soldier's discharge or retirement.

c. Nonreportable offenses—

(1) An offense involving consensual sexual conduct between adults is not a reportable offense unless the adult victim was under the custodial care of the offender at the time of the offense.

(2) An offense involving consensual sexual conduct is not a reportable offense if the victim was at the time of the conduct at least 13 years old and the offender was not more than four years older than the victim as determined by date of birth.

24–3. Trial counsel and provost marshal responsibilities

a. Corrections officials will ensure the registration requirements of DODI 1325.07, paragraph 23*e*, are met for military sexual offenders in Army confinement facilities.

b. When a special or general court-martial finds an accused guilty of a covered offense but the sentence does not include confinement, the trial counsel, in the presence of the defense counsel, will immediately provide notice that the military sexual offender is subject to a registration requirement as a sex offender by requiring the military sexual offender to complete the acknowledgment, DD Form 2791 (Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements).

(1) Failure of the trial counsel to notify offenders required to register will not relieve those offenders of their duty to register.

(2) The trial counsel will immediately notify the convicted Soldier's immediate commander of the Soldier's

registration requirements, and will furnish both the immediate commander and the garrison commander with copies of the DD Form 2791.

(3) The trial counsel will ensure that copies of the acknowledgment are filed in the allied papers of the record of trial, provided to the installation Provost Marshal where the military sexual offender is assigned or will be assigned, filed in the military sexual offender's Performance Folder of the Soldier's OMPF and unit file, and forwarded to OTJAG, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200. The Criminal Law Division, OTJAG will forward all acknowledgements (DD Forms 2791) to HRC. In order to facilitate the accurate tracking of registered sex offenders, trial counsel will also ensure that copies of the DD Form 2791 and DD Form 2707–1 are provided via first class registered mail to the U.S. Marshal's Service at U.S. Marshal's Service, SOIB, NSOTC, 11th Floor (Military Liaison), Washington DC 20530–1000 or via email at NSOTC2@usms.joj.gov.

c. Installation provost marshals will ensure that a copy of the acknowledgment is filed in the United States Army Crime Record Center along with any report of investigation related to the military sexual offender. Installation provost marshals in the United States will provide written notice of the conviction, transfer, or release to the U.S. Marshal's Service, National Sex Offender Targeting Center; the chief law enforcement officer of the State, tribe, territory, or local jurisdiction in which the accused will reside; and to the State or local agency reponsible for the receipt or maintenance of a sex offender registration in the State tribe, territory, or local jurisdiction in which the person will reside; and officials of foreign countries upon request. The provost marshal notifications to Federal, State and local officials are described in DODI 1325.07, paragraph 23*f*.

24–4. Sexual offenders

a. Military sexual offenders are required by this chapter to register with the installation provost marshal and with State and local officials. Violations by military sexual offenders of the registration requirement are punishable under UCMJ, Art. 92. Military sexual offenders, only while they are subject to registration requirements as a sex offender in any State or U.S. territory in which they reside, are employed, carry on a vocation, or are a student, are also required to register with the provost marshal at the Army installation where assigned, where they are present for duty for more than 30 days, or when they reside on a military installation, or are employed on a military installation, whether or not they are on active duty.

b. Military sexual offenders will provide the installation provost marshal, the State sexual offender registration official, and the chief local law enforcement officer of the jurisdiction in which the sexual offender will reside, written notice of the date of their arrival in their jurisdictions, the sexual offense(s) of which convicted, and their requirement to register as a sex offender. Military sexual offenders must report every address change in the manner provided by State law and to the installation provost marshal at least 5 calendar days or sooner if required by state law before reporting to a new duty assignment and after being discharged from the service. Military sexual offenders must report any change in address to the responsible agency in the State they are leaving, and comply with registration requirements in the new State of residence. Military sexual offenders who fail to register or change or update such registration as required under a State sex offender registration program may be subject to criminal prosecution under State law and under UCMJ, Art. 92 for failure to obey this regulation. Civilian employees who fail to comply with these requirements may be subject to adverse personnel action and/or criminal prosecution.

c. This section also applies to Soldiers who are convicted by foreign governments (such as Korea or Germany) of an equivalent or closely analogous covered offense. See 42 USC 16911(5)(B) and U.S. Department of Justice, Office of the Attorney General, The National Guidelines for Sex Offender Registration and Notification, Final Guidelines, 73 Fed. Reg. 38030, 38050–1 (2 Jul 2008). The servicing OSJA, within 5 duty days of notice of a Soldier being convicted of an equivalent of a covered offense, is responsible for notifying the Soldier of the registration requirements.

(1) The servicing OTJAG will ensure that a copy of the acknowledgement is provided to the installation provost marshal where the military sexual offender is assigned or will be assigned, and filed in the military sexual offender's official military personnel file—in the performance section—and in the unit file.

(2) Installation provost marshals will ensure that a copy of the acknowledgement is filed in the United States Army Crime Record Center along with any report of investigation related to the military sexual offender.

Chapter 25
United States Army Court Reporter Program

25–1. General

This chapter governs the training, detailing, performance standards, technology to be used, and certification of military and DOD civilian court reporters (CRs) throughout the Army.

25–2. Training court reporters

a. The training of military CRs and court reporter doctrine is the responsibility of The Judge Advocate General's

Legal Center and School. Training is accomplished during various court reporter courses, speech recognition redictation courses, and at field locations as directed by the commanding general, TJAGLCS. This institution is also responsible for testing and evaluating technologies, policies, and procedures employed in the JAGC's court reporting business area, and training judge advocates, warrant officers, court reporters, and paralegal noncommissioned officers in courtroom and court-reporting methods and technology.

b. As a JAG Corps standard, digital audio recording devices are required for Army courtrooms.

c. Staff Judge Advocates are encouraged to send CRs to the annual Senior Court Reporting course, as well as any refresher or update courses offered at TJAGLCS. Funding is the responsibility of individual commands.

d. Awarding the additional skill identifier (ASI) of C5 to Soldiers in MOS 27D is dependent upon successful completion of a TJAGLCS court reporter training course in accordance with AR 611–1, AR 614–200, and DA Pam 611–21.

25–3. Detailing of court reporters and oath requirements

a. See paragraph 5–11, above, for additional guidance concerning the detailing of CRs.

b. See chapter 10, above, for administering oaths to CRs.

25–4. Definitions

a. Redictation method— The method of speech recognition designated by the JAGC's senior leadership for rapid transcript production. The redictation method is explained as follows:

(1) A court reporter digitally records the court-martial proceeding, hearing, and so forth, while performing all courtroom management responsibilities such as exhibit marking, note taking, and closed-mask and open microphone recording. Redictation occurs when the court-martial has adjourned and the record of trial production phase begins. The reporter listens to the audio recordings and repeats it back into a speech recognition engine (software). The software uses a specific Army court-martial language model.

(2) The redictation method is accomplished using an integrated headset and microphone. The reporter's voice is acoustically enhanced, thereby increasing the accuracy rate, in that the computer more accurately converts the reporter's speech into text. This is called the rapid text entry phase.

(3) The rapid text entry phase is done in 20-minute increments. The reason for 20-minute increments is that the speech recognition software is not word processing software, and the reporter risks losing text data if more than 20 minutes of dictation is inputted. The reporter saves each 20-minute file chronologically into Microsoft Word documents.

b. Scoping— The process of proofreading transcripts via listening to recorded audio and following along the written transcript, correcting mistakes and inaccuracies, and updating speech recognition software. The scoping phase of transcript production using the redictation method can be accomplished in different ways.

(1) Redictate for 20 minutes, immediately go back, proofread and edit that portion of the transcript, save it into Microsoft Word, and continue, repeating this method for each 20 minutes of audio.

(2) Redictate in the 20-minute increments, save the files into Microsoft Word documents, and then proof and edit the entire transcript at one time.

(3) Reporters may identify and use other scoping methods to increase their individual productivity.

c. Digital Recording— Digital recording equipment, a computer or other special purpose equipment, is the standard for court reporting in all Army courtrooms. Digital recording produces computer files that can be shared among court reporters globally via the Court Reporter Training Department Knowledge Center are in Army Knowledge Online (AKO), at https://www.us.army.mil/suite/kc/5011165.

25–5. Court reporter performance standards metric

a. Court reporters using the redictation method will produce, at minimum, the following averages:

(1) Newly trained court reporter—

(a) Within 6 months of graduation from the Court Reporter Course—5 scoped verbatim pages of transcript per hour;

(b) Within 12 months of graduation from the Court Reporter Course—8 scoped verbatim pages per hour;

(c) Within 18 months of graduating from the Court Reporter Course—10 scoped verbatim pages per hour.

(2) Experienced reporters (at least 2 years actively working as a court reporter) newly trained in the redictation method will produce an average of 10 scoped verbatim pages of transcript per hour within 36 months of graduating from the Redictation Course.

b. Court reporters, untrained in the redictation method, using the manual transcription method will produce, at minimum, an average of 7 proofed verbatim pages of transcript per hour.

c. Subparagraphs *a* and *b*, above, are minimum standards. They may be used to substantiate performance awards, evaluations, and NCOER comments as well as for counseling for substandard performance which may lead to ASI removal and/or other administrative action. As court reporters gain experience, it is reasonable for supervisors to expect increased productivity and establish individual productivity goals accordingly.

d. Staff judge advocates will establish local standards regarding errata commensurate with a court reporter's experience level.

25–6. Reports

a. The commanding general, TJAGLCS, is responsible for evaluating the effectiveness of policies and the efficiency of procedures related to the Army court reporting business area and with collecting and maintaining data that facilitates the eradication of transcription backlogs in the JAGC enterprise.

b. Staff Judge Advocates will ensure the transmission of the Court Reporting Productivity Report, in electronic form on MJO not later than the 5th business day of each month. The report will cover the previous calendar month.

c. A daily individual work log should be maintained by each court reporter to aid them and supervisors in monitoring individual productivity, minimizing distractions from production, and facilitating the reporting requirement in subparagraph *b*, above. A work log format may be downloaded from the Court Reporter Training Department Knowledge Center on AKO.

25–7. Management of court reporters

a. Availability for a 2-year utility tour upon completion of the Court Reporter Course is prerequisite to attending the course.

b. Staff judge advocates are highly encouraged to—

(1) Ensure that court reporters use the redictation method to produce transcripts. They are also highly encouraged to ensure that all assigned court reporters who are not trained in the redictation method receive formal redictation training as soon as practicable;

(2) Review and, if necessary, revise civilian court reporter position descriptions (series 00319) to ensure that the redictation method of transcript production is a stated performance expectation/critical element, and that appropriate productivity standards are addressed; and

(3) Where feasible, and to the maximum extent practicable, allow their court reporters to assist other jurisdictions in transcribing backlogged cases.

c. The Chief, Court Reporter Training Department at TJAGLCS, will collaborate with HRC on all court reporter assignments. For mentoring and professional development, newly trained court reporters will be stationed with an experienced court reporter. Assigning new court reporters to jurisdictions where only one reporter is authorized should be avoided.

d. Civilian court reporter position descriptions that are classified under a job series other than 00319 will be converted to job series 00319 as soon as practicable.

e. Staff Judge Advocates should seek approval from the proper authority to excuse military CRs from performing some or all additional duties, if the production of records of trial is adversely impacted by such duties.

25–8. Reserve component court reporters

a. Reserve component Soldiers in MOS 27D who satisfy the prerequisites are encouraged to attend the TJAGLCS Court Reporter Course. Funding is the responsibility of the individual's command.

b. The RC CRs are encouraged to partner with an AA OSJA for the purpose of transcribing records of trial during unit drill periods. Staff Judge Advocates in the active Army and reserve components may award retirement points in the form of 2 points for each 50 pages of the transcript typed (one 8-hour day) during non-drill periods. Such retirement points will be recorded on DA Form 1380 (Record of Individual Performance of Reserve Duty Training).

25–9. Removing the C5 designation

All recommendations requesting removal of ASI C5 from military CRs will be forwarded by the SJA to the Chief, Court Reporter Training Department, 600 Massie Road, Charlottesville, VA 22903. The authority to remove the C5 designation rests with the commanding general, TJAGLCS.

25–10. Court reporting equipment

a. This paragraph recommends materiel solutions for digital recording and transcript production.

b. Equipment—

(1) Each Army courtroom should have a static set of digital recording equipment and a backup recording device.

(2) Court Reporters assigned to MTOE organizations should be equipped with a notebook computer that has at least a 3-gigahertz processor, 2 gigabytes of random access memory (RAM), a 160-gigabyte hard drive, and a CD/DVD writer and other hardware specifications and software capable of supporting four discrete channel digital audio recording, foot-pedal-controlled audio playback for the aforementioned audio recordings, and speech to text (speech recognition) software. Peripheral equipment should include a combination headset/high gain microphone, a 4-port USB hub; and a USB flash drive of at least 4 gigabytes of storage capacity. Staff Judge Advocates of MTOE organizations that are authorized court reporters must make other peripheral equipment available to court reporters for reporting courts-martial and producing records of trial in remote or austere environments. These resources include but are not

limited to printers, sound mixers, high gain microphones, microphone stands, network and Internet access for file sharing and archiving, and so forth.

(3) Court reporters assigned to TDA organizations do not have a doctrinal requirement to report courts-martial in remote or austere environments. Table of distribution and allowance-assigned court reporters should be equipped with a notebook or desktop computer that has at least a 3-gigahertz processor, 2 gigabytes of RAM, a 160-gigabyte hard drive, and a CD/DVD writer and other hardware specifications and software capable of supporting foot-pedal-controlled audio playback that is compatible with the static courtroom recording system, and speech to text (speech recognition) software. Peripheral equipment should include a combination headset/high gain microphone, a 4-port USB hub, and a USB flash drive of at least 2 gigabytes of storage capacity.

(4) Staff Judge Advocates will ensure that the equipment used by court reporters is updated and replaced to remain current with developments in hardware and software as much as is feasible under the circumstances.

Chapter 26
Prosecution of Criminal Offenses under the Military Extraterritorial Jurisdiction Act of 2000

26–1. Applicability and purpose

a. The Military Extraterritorial Jurisdiction Act (MEJA) establishes Federal criminal jurisdiction over whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year (that is, a felony offense) for civilians employed by or accompanying the Armed Forces of the United States, certain members of the Armed Forces subject to the UCMJ, and former members of the Armed Forces.

b. No action should be taken under the authority of the MEJA without referring to the appropriate provisions of the act, to DODI 5525.11, and to Part 153, Title 32, Code of Federal Regulations. Judge advocates should also reference directives established by their combatant commanders (COCOMs) and designated commanding officers (DCO) for procedures in handling cases under the MEJA. This chapter outlines procedures for qualified military counsel under the MEJA.

26–2. Qualified military counsel and responsibilities of the U.S. Army Trial Defense Service

a. Ordinarily, the Trial Defense Service (TDS) will provide qualified military counsel from amongst the defense counsel assigned within the TDS region supporting the combatant command or DCO where the MEJA case arises. However, when the RDC determines that the workload within that region temporarily exceeds the capability of the defense counsel in that Region to perform the regular TDS mission, the RDC will state in writing the inability of TDS to provide such counsel and the rationale behind that decision. In such instances, SJAs have the ultimate responsibility for providing qualified military counsel.

(1) The RDC may seek assistance from other RDCs in order to provide qualified military counsel. Whenever the RDC fails to provide qualified military counsel, either from within that region or from another region, the SJA may seek the opinion of the Chief, USATDS. Whenever the Chief, USATDS, determines that the TDS workload does not allow for TDS to provide qualified military counsel, the SJA will provide qualified military counsel from amongst SJA counsel assets.

(2) Whenever TDS counsel must incur TDY costs in order to serve as qualified military counsel, such expenses will be funded by the SJA.

b. Any judge advocate assigned to USATDS and certified under UCMJ, Art. 27(b), may be considered qualified military counsel under DODI 5525.11. Those qualified military counsel within the region supporting the combatant command or DCO's command may be considered reasonably available for any initial proceedings within their AOR. The Federal Magistrate will appoint qualified military counsel, as necessary, to represent an individual for initial proceedings under the MEJA.

c. The USATDS will establish procedures to assist combatant command SJAs and DCO SJAs in preparing, updating as necessary, and making available to Federal Magistrate Judges upon request, a list of qualified military counsel who are determined to be reasonably available for the purpose of providing limited representation at initial proceedings required by the MEJA.

d. The RDCs will ensure that each field and branch office under their supervision maintains or has readily available a current copy of the MEJA and DODI 5525.11 and its implementing 32 CFR 153. The RDC will assist combatant command SJAs and DCO SJAs by ensuring that in all cases in which a qualified military counsel is provided for initial proceedings required by the MEJA, the person arrested or charged under the MEJA is informed that any qualified military counsel will be made available only for the limited objective of representing that person in any initial proceedings required by the MEJA. Such individuals will also be informed that such representation does not extend to further legal proceedings. Qualified military counsel will use an "Acknowledgement of Limited Representation" form to complete this notice (see enclosure 4 to DODI 5525.11).

e. The RDC will ensure that a copy of the "Acknowledgement of Limited Representation" form is provided to the person arrested or charged under the MEJA, as well as to the qualified military counsel. The RDC will also ensure the

original acknowledgement form is forwarded to the office of the DCO SJA for filing in accordance with DODI 5525. 11.

Chapter 27
Procedures Related to Civilians Subject to Uniform Code of Military Justice Jurisdiction under Article 2(a)(10)

Section I
General

27–1. Scope

The following provisions implement Section 552, Act of 17 October 2006, Public Law 109–364; Secretary of Defense Memorandum (SECDEF Memo) dated March 10, 2008; and Directive-Type Memorandum 09–015 dated February 16, 2010. This chapter addresses UCMJ disciplinary procedure, to include court-martial procedures for civilians serving with or accompanying an armed force in the field in time of declared war or a contingency operation (personnel covered under UCMJ, Art. 2(a)(10)). These procedures supplement the court-martial procedures set forth in chapter 5, above. Where a conflict exists between these procedures and those set forth in chapter 5, the provisions of this chapter shall govern covered under UCMJ, Art. 2(a)(10).

27–2. Applicability and purpose

a. The UCMJ, Art. 2(a)(10), extends criminal jurisdiction to civilians serving with or accompanying the Armed Forces in the field, during time of declared war or contingency operation. Any civilian who engages in conduct that would constitute an offense punishable under the UCMJ, while serving with or accompanying the Armed Forces of the United States in the field, is subject to jurisdiction under UCMJ, Art. 2(a)(10).

b. No action should be taken under the authority of UCMJ, Art. 2(a)(10) without referring to the appropriate provisions of the UCMJ, RCMs, MRE, as well as DOD guidance, guidance from the Department of the Army, and this regulation. Judge advocates must also review any directives established by their COCOMs and other commanding officers for local procedures related to UCMJ, Art. 2(a)(10) jurisdiction.

c. The exercise of jurisdiction over civilians under UCMJ, Art. 2(a)(10) is generally warranted where there otherwise would be no U.S. Federal criminal jurisdiction, Federal authorities decline or are unable to exercise jurisdiction, the host nation has no local criminal jurisdiction or declines such jurisdiction or is unable to exercise jurisdiction, or when the conduct in question is adverse to a significant military interest of the United States.

d. Jurisdiction under this chapter applies to third country nationals serving with or accompanying the force in the field. Before proceeding with a UCMJ action against a foreign national, commanders must coordinate through their SJAs with OTJAG, International and Operational Law Division to determine whether notification of the foreign national's government is necessary.

e. Commanders will not initiate or proceed with courts-martial actions pursuant to UCMJ authority against civilians for matters in which DOJ has asserted jurisdiction under the MEJA, 18 USC 3261, or other extraterritorial application of Federal law. This does not preclude military authorities in deployed environments from responding to an incident, restoring safety and order, investigating offenses, apprehending offenders, or otherwise addressing the immediate needs of a situation.

27–3. Courts-martial jurisdiction

a. Chapter 5 of this regulation is applicable to civilians serving with or accompanying an armed force in the field in time of declared war or a contingency operation (personnel covered under the provisions of UCMJ, Art. 2(a)(10)).

b. Definitions.

(1) "Serving with"— This term applies to those civilians serving with the Armed Forces outside the United States. This group is comprised of civilian employees of DOD (including a nonappropriated fund instrumentality of DOD) and DOD contractors (including a subcontractor at any tier), employees of DOD contractors (including a subcontractor at any tier), and others working in conjunction with U.S. Forces, if they work alongside or are supervised by military personnel, or if the manner in which they perform their work and conduct their personal activities have a direct bearing on the efficiency, discipline, and reputation of the forces in the area in which they are operating. (See *United States v. Burney,* 21 CMR 98 (1956).)

(2) "Accompanying an armed force"— This term applies to those civilians accompanying an armed force outside the United States. Their presence must be connected with or dependent upon the activities of the armed forces or its personnel; a presence within a military installation may constitute "accompanying" if it is more than merely incidental. One can be "accompanying" a force even though the person's service or Government contract has ended, because of continued presence with the force under circumstances that require the force to secure, house, feed, or exercise other

pervasive military control over the civilian person. (See *Perlstein v. United States et al.,* 151 F. 2d. 167 (3rd Cir. 1945).)

(a) It excludes from its reach those civilians employed by or accompanying the Armed Forces who are nationals of the host nation or ordinarily resident in the host nation.

(b) Non-DOD Federal employees may be subject to 2(a)(10) jurisdiction if the manner in which they perform their work and conduct their personal activities fits within the definitions given in 3(b)(1) and 3(b)(2), above.

(c) Third country nationals may be subject to 2(a)(10) jurisdiction if they are DOD employees, DOD contractors or subcontractors, or employees of the same, or if the manner in which they perform their work and conduct their personal activities fit within the definitions given in *3*(b)(1) and *3*(b)(2), above.

(3) An "armed force" is the Army, Navy, Air Force, Marines, and Coast Guard (see 10 USC 101(4)).

(4) "In the field" implies military operations with a view toward the enemy—not to be determined by locality in which the armed force is found, but rather by the activity in which it is engaged. (See *Hines v. Mikell,* 259 F. 28 (4th Cir. 1919) and *McCune v. Kilpatrick,* 53 F. Supp. 80 (E.D. Virginia 1943).)

(5) "Declared war" is a congressionally declared war.

(6) A "contingency operation" means a military operation as designated by the SECDEF or by operation of law (see 10 USC 101(a)(13)).

(a) A SECDEF-designated contingency operation is an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.

(b) Contingency operations by operation of law are military operations that result in the call or order to, or retention on, active duty of members of the uniformed services under 10 USC 331–335, 688, 12301(a), 12302, 12304, 12305, or 12406.

c. Authority to exercise court-martial convening authority and impose nonjudicial punishment against personnel covered under UCMJ, Art. 2(a)(10) is withheld in all cases to commanders of geographic combatant commands, and those commanders assigned or attached to the combatant command who possess the authority to convene a general court-martial. Certain civilian personnel may be assigned to a GCMCA upon arrival into the overseas area or theater of operation. If not already assigned, a civilian subject to UCMJ, Art. 2(a)(10) jurisdiction may be attached to a GCMCA and military chain of command once the alleged misconduct is discovered.

(1) Personnel covered under UCMJ, Art. 2(a)(10) are considered to be "of the command" of a commander if they are—

(a) Assigned to an organization commanded by that commander; or

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

(c) Attached to the command. Upon discovery of allegations of misconduct by civilian personnel subject to jurisdiction under UCMJ, Art. 2(a)(10), action should be taken to ensure that the person is attached to a command closest to the area where they are assigned or performed the majority of their duties. This is normally accomplished through written orders or command directives.

(2) A commander may be assigned territorial command responsibility for UCMJ, Art. 2(a)(10) personnel so that all or certain civilian personnel in the geographic area shall be considered to be of the command for the purpose of establishing an appropriate GCMCA authority.

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

(a) The wording used in the orders.

(b) Where the civilian slept, ate, was paid, and performed duty, as well as the duration of the status, and other similar factors.

(4) If orders or directives include such terms as "attached for administration of military justice," or simply "attached for administration," the individual so attached shall be considered to be of the command.

(5) If not already assigned to a GCMCA upon arrival into the overseas area or theater of operation, a civilian subject to UCMJ, Art. 2(a)(10) jurisdiction may be attached to a GCMCA once the alleged misconduct is discovered. When existing circumstances do not provide for a clear chain of military command over a civilian suspected of committing a UCMJ offense, commanders may issue orders and directives attaching a civilian to a chain of command to establish the authority of that chain of command to process UCMJ actions. This attachment should be directed or ratified at the GCMCA level to avoid confusion about the appropriate chain of command for civilian suspects.

d. To determine whether an individual is subject to Art. 2(a)(10) jurisdiction, command and control relationships must be reviewed to determine their assignment, duty and/or position. Command and control relationships often change

to meet the needs of particular deployments. Therefore, what may be appropriate command and control structure during peacetime or at a person's normal place of work may be different in the field.

(1) While overseas or in the theater of operations, personnel covered under UCMJ, Art. 2(a)(10) may be within the geographic area of a military chain of command.

(a) The on-site supervisory chain of command will perform the normal supervisory personnel functions for U.S. government personnel; for example, those related to performance evaluations, task assignments and instructions, and initiating and effecting recognition and disciplinary actions (see DA Pam 690–47). Contract supervisory personnel will perform the same supervisory personnel functions for persons for whom they are responsible.

(b) Contracts specify the terms and conditions under which they are to be performed. Contracting personnel give contractors guidance and direction on routine matters of contract performance. A contractor's failure to perform the terms of the contract and any modifications made by contracting personnel would not normally be the basis for UCMJ action, but may provide a basis for contractual remedies available to the government. The ranking military commander, however, may give contractors and their employees orders, whether or not within the scope of the contract, that are enforceable under the UCMJ if reasonably necessary to protect the armed force and accomplish a military mission. Further, contractors and their employees must comply with all general orders applicable to DOD civilian personnel in the area of operations.

(2) Personnel covered under UCMJ, Art. 2(a)(10) who are DOD civilian employees remain subject to the normal administrative disciplinary procedures within the civilian personnel system and are subject to disciplinary actions taken in accordance with the UCMJ by their supervisory chain of command (see AR 690–700, chapter 751).

e. The UCMJ, Art. 2(a)(10) jurisdiction over civilians suspected of a UCMJ violation does not terminate when the civilian leaves the overseas area. However, the SECDEF has withheld authority to exercise court-martial convening authority and impose nonjudicial punishment over persons subject to UCMJ, Art. 2(a)(10) jurisdiction with respect to the following:

(1) Offenses committed within the "United States, which includes the several states of the United States, the District of Columbia, and the commonwealths, territories and possessions of the United States";

(2) Civilians who were not at all times during the alleged misconduct located outside the United States;

(3) Civilians who at the time court-martial charges are preferred or notice of UCMJ, Art. 15 proceedings is given are located within the "United States" (see app E).

f. When appropriate, personnel covered under UCMJ, Art. 2(a)(10) may be attached to a unit, installation, or activity for courts-martial jurisdiction and the general administration of military justice. This includes related civilian personnel actions.

g. Civilians serving with or accompanying the Armed Forces outside the United States, who are not nationals of the United States, will be informed of the jurisdiction of the UCMJ, Art. 2(a)(10) when they are hired for overseas employment or on sponsorship into the overseas command, assigned to a GCMCA upon their arrival into the overseas area or theater of operation, or after being attached to a GCMCA upon the discovery of alleged misconduct, whichever event is first applicable.

(1) Such notice shall also be provided during employee training and any briefings provided to these civilians when they first arrive in the foreign country in which they shall be assigned, employed by or accompanying the Armed Forces. Knowledge of UCMJ, Art. 2(a)(10) jurisdiction and its potential consequences serves as a deterrent in helping preserve good order and discipline in military communities outside the United States.

(2) Failure to provide the notice, briefings, or information about the jurisdiction under UCMJ, Art. 2(a)(10) pursuant to subparagraph *c*(1), above, shall not create any rights or privileges in the persons referenced, and shall not operate to defeat the jurisdiction of a court-martial or any other court of the United States or provide a defense or other remedy in any proceeding arising under the UCMJ.

(3) Each GCMCA shall ensure that training is provided to civilian personnel who are designated and authorized under the UCMJ and other policies of the DOD to make arrests outside the United States of civilians who allegedly have committed violations implicating UCMJ, Art. 2(a)(10). The training, at a minimum, should include the rights of individuals subject to arrest.

27–4. Panels

A civilian accused, subject to jurisdiction under UCMJ, Art. 2(a)(10), whose case has been referred to trial at a general or special court-martial, may request trial by a court-martial consisting either of a panel of officers or by military judge alone. The GCMCA can refer a civilian accused to a court-martial with an existing (standing) panel, or appoint a panel specifically to hear the case of a particular civilian accused. For civilian accused being tried under UCMJ, Art. 2(a)(10), convening authorities and military judges should, if possible, exclude panel members who are junior in grade to the accused, and consider the equivalency of civilian grades to military ranks when selecting or excusing panel members (see table 27–1, below). When there is no method of determining equivalency of the civilian accused's status or position, the convening authority should prepare a written statement to this effect for the record at the time of referral.

Table 27–1 Civilian and military grade equivalents
Accused civilian GS grade: Senior executive service **Military grade equivalent:** General officer
Accused civilian GS grade: GS–15 **Military grade equivalent:** COL (O–6)
Accused civilian GS grade: GS–13, GS–14 **Military grade equivalent:** LTC (O–5)
Accused civilian GS grade: GS–12 **Military grade equivalent:** MAJ (O–4)
Accused civilian GS grade: GS–10, GS–11 **Military grade equivalent:** CPT (O–3)
Accused civilian GS grade: GS–8, GS–9 **Military grade equivalent:** 1LT (O–2)
Accused civilian GS grade: GS–7 **Military grade equivalent:** 2LT (O–1)

Section II
Processing the action

See figure 27–1, and table 27–2, both below, for steps and a graphic timeline of processing reports of civilian misconduct.

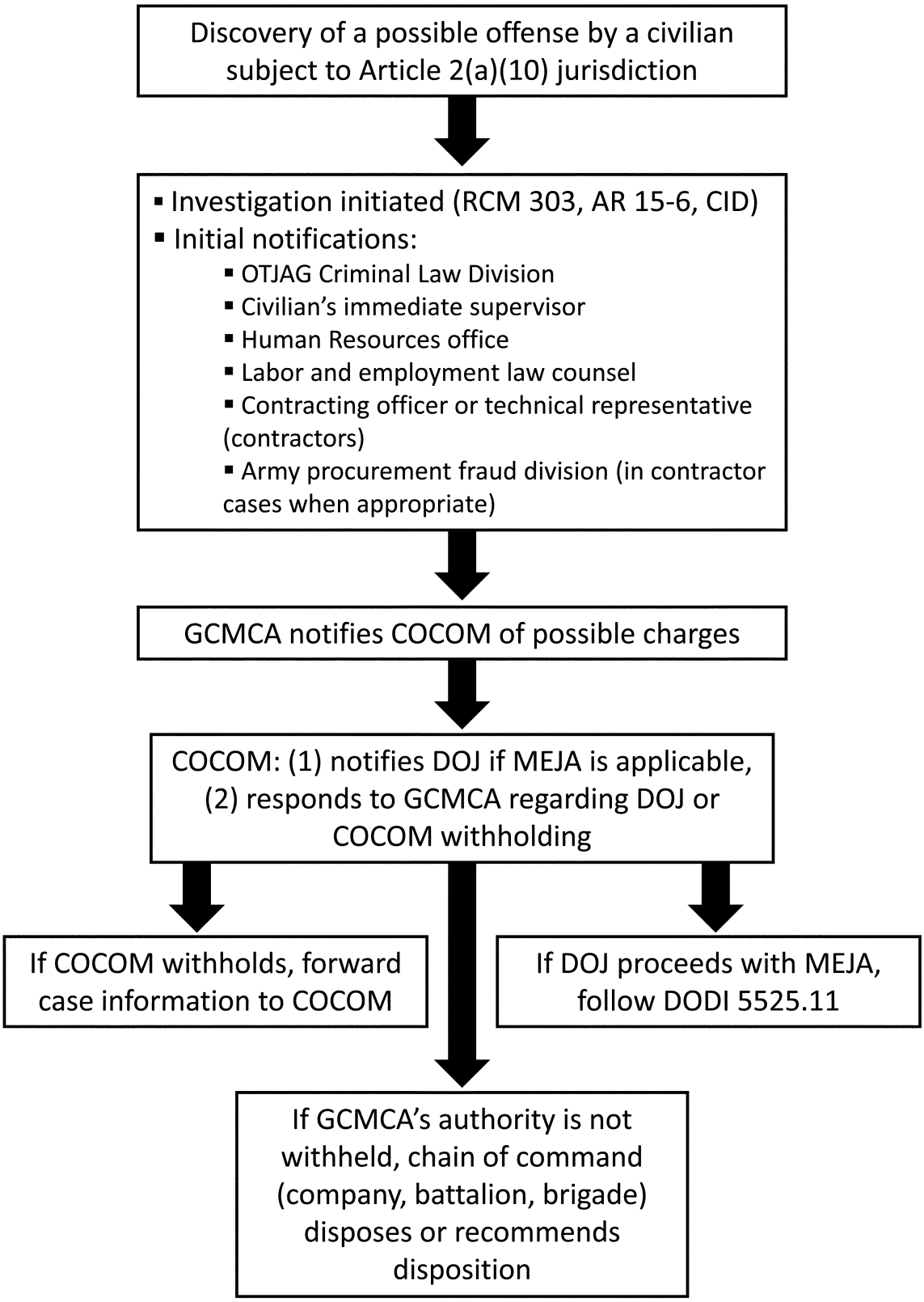

Figure 27–1. Flow chart for processing reports of civilian misconduct

Table 27–2
Steps in processing reports of civilian misconduct

Step	Action	Actor	Notes
1	Receive report of civilian misconduct	chain of command	
2	Determine if civilian is subject to UCMJ jurisdiction under UCMJ, Art. 2(a)(10)	GCMCA	In coordination with SJA
3	Initiate investigation	CID, MPI, or IO	May be conducted by law enforcement agency or by an investigating officer appointed in accordance with AR 15-6 or RCM 303
4	Notify OTJAG Criminal Law Division	SJA	In accordance with paragraphs 27–5*b* and *e*, below.
5a	Notify civilian employee's immediate supervisor, human resources office, and the labor and employment counsel	SJA	Only for Federal civilian employees
5b	Notify contracting officer (or contracting officer technical representative) and the Army Procurement Fraud Division	SJA	Only for contractor personnel
6	Evaluate facts after investigation, and determine if UCMJ action is appropriate	GCMCA, in coordination with SJA	Apply criteria in the Discussion, RCM 306(b)
7	Notify COCOM if UCMJ action is being considered	GCMCA and SJA	If there is Federal civilian jurisdiction, so advise COCOM
8	Notify DOJ via the DOD Office of General Counsel to determine if DOJ will exercise jurisdiction	COCOM and SJA	
9	Receive response from DOJ	COCOM	Via DOD Office of General Counsel
10	Receive response from COCOM	GCMCA	Indicates if DOJ will take jurisdiction and if COCOM will withhold authority
11	Return case to company- or battalion-level command for recommendations	GCMCA	If not already assigned or attached to a chain of command, attach civilian to a unit prior to preferral of any charge
12	Decide whether to prefer charges	company or battalion commander	If charges are preferred, the chain of command also recommends disposition (level of court-martial) in accordance with paragraph 27-8*d,* below
13	Notify OTJAG Criminal Law Division	SJA	In accordance with paragraph 27-8*d,* below
14a	Appoint UCMJ, Art. 32 preliminary hearing officer	SPCMCA, in coordination with TC	When considering a general court-martial recommendation
14b	Forward to GCMCA	SPCMCA, in coordination with TC	After UCMJ, Art. 32 hearing, or when special court-martial is recommended
15	Decide whether to refer charges	GCMCA, in coordination with SJA	General or special court-martial, nonjudicial punishment, administrative measures, or returning the case to the accused's supervisor to be handled as a civilian personnel matter

27–5. Notification

a. Commanders below the GCMCA level will expeditiously forward all allegations of misconduct that may be subject to UCMJ, Art. 2(a)(10) jurisdiction to the first GCMCA in the suspect's chain of command.

b. Any military authority, including a military law enforcement agency, that receives a report of an offense committed by a civilian person potentially subject to UCMJ, Art. 2(a)(10) shall, at the initiation of the investigation, and during all critical stages thereof, notify the SJA office for the command possessing GCMCA authority over the civilian person, the area in which the offense occurred, and/or where the person is located.

c. Upon the discovery or report of allegations of UCMJ offenses by civilians potentially subject to UCMJ, Art. 2(a)(10), jurisdiction, the SJA shall immediately notify the Office of The Judge Advocate General, Criminal Law

Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200 and provide an unclassified executive summary that includes—

(1) Name, grade, SSN, last known U.S. residence and unit or agency of employment or contractor (including subcontractor and prime contractor) that employs the accused.

(2) Offense(s) of which the accused is suspected.

(3) Date(s) of the suspected incident(s) or offense(s).

(4) Conditions of restraint, if any.

d. The GCMCA concerned, through the SJA, shall notify in writing (e-mail or facsimile) the respective COCOM of any intended disposition by courts-martial or nonjudicial punishment. The GCMCA shall not allow preferral of charges or imposition of nonjudicial punishment against UCMJ, Art. 2(a)(10) personnel prior to notifying and receiving a response from the SJA of the COCOM. This function may not be delegated. The COCOM must notify the GCMCA regarding whether the COCOM will withhold authority over the case.

e. For all cases in which disposition under UCMJ, Art. 2(a)(10) is contemplated, the COCOM must provide notice in writing to the Department of Justice, Domestic Security Section, Criminal Division, at 950 Pennsylvania Ave., Washington, DC 20530–0001, or by e-mail at: criminal.division@usdoj.gov. No further UCMJ action shall be taken until such time as the DOJ or COCOM decision is received by the GCMCA. Normally, the COCOM will be notified by DOJ (within 14 business days) as to whether the DOJ will assert Federal jurisdiction in the case and the COCOM will in turn notify the GCMCA regarding whether either entity will exercise authority over the case.

f. While awaiting the notice, action under RCM 306–308, and 401–406 is prohibited (see also para 27–6, above).

g. After initial notification under subparagraph 27–5*c*, above, updates to the Criminal Law Division (DAJA–CL), OTJAG, HQDA, are required until completion of any UCMJ action. Notification within legal technical channels is designed to improve communications within DOD while at the same time protecting the accused's right to a fair trial, free from unlawful command influence (see para 5–13, above).

h. The GCMCA, through the SJA, should notify the entity listed in subparagraph *i*, below, when a civilian is—

(1) Apprehended under circumstances likely to result in confinement or trial by court-martial,

(2) Ordered into arrest or confinement,

(3) Held for trial with or without restraint, or

(4) When court-martial charges against the accused are preferred and referred for trial.

i. Employment or contracting agency to be notified.

(1) Where an offense was committed by a DOD employee (noncontractor personnel), the SJA shall notify, and coordinate with, the employee's immediate supervisor as well as the applicable human resources office and/or labor and employment counsel.

(2) Where an offense was committed by a non-DOD Federal agency civilian who is otherwise subject to UCMJ, Art. 2(a)(10), the SJA shall notify the applicable Federal agency or parent agency of the individual suspected of misconduct.

(3) Where an offense was committed by a non-Federal civilian (that is, an employee, contractor, subcontractor at any tier, or employee thereof) who is otherwise subject to UCMJ, Art. 2(a)(10), the SJA shall notify the applicable contracting officer and/or contracting officer technical representative and Army Procurement Fraud Division, 9275 Gunston Road, Fort Belvoir, VA 22060–5546.

(4) Where an offense was committed by a third-country national who is otherwise subject to UCMJ, Art. 2(a)(10), the SJA shall notify the applicable Federal agency or parent agency of the individual suspected of misconduct.

27–6. Commander's authority

Commanders have authority to disarm, apprehend, and detain civilians subject to UCMJ, Art. 2(a)(10) jurisdiction suspected of committing an offense in violation of the UCMJ. Pursuant to an investigation of misconduct by personnel covered under UCMJ, Art. 2(a)(10), a commander may authorize a search in accordance with MRE 315.

27–7. Criminal investigations, commander's inquires, and investigations under Army Regulation 15–6

Criminal investigations, commander's inquiries, or investigations in accordance with AR 15–6 into allegations of suspected misconduct may be initiated or may continue while awaiting a response from the DOJ or the COCOM as to whether Federal jurisdiction will be asserted or whether UCMJ jurisdiction will be withheld.

27–8. Qualified military counsel and responsibilities of the U.S. Army Trial Defense Service

a. An accused under UCMJ, Art. 2(a)(10) is entitled to military defense counsel in the same manner and under the same provisions as apply to Soldiers (see chap 6, above).

b. An accused may seek to be represented by civilian defense counsel. Civilian defense counsel representation shall not be at the expense of DOD or the military departments.

c. To the extent practicable, military authorities shall establish procedures by which civilians arrested or charged

under UCMJ, Art. 2(a)(10) may seek the assistance of civilian defense counsel by telephone. Consultation with such civilian counsel shall be private and protected by the attorney-client privilege.

d. Civilian defense counsel practicing in host nations do not gain DOD sponsorship, or any diplomatic status, as a result of their role as defense counsel. To the extent practicable, notice to this effect shall be provided to the civilian defense counsel when the civilian defense counsel's identity is made known to appropriate military authorities.

27–9. Pretrial restraint or confinement

a. A GCMCA, or designee (brigade commander in the grade of O–6), may order the arrest, temporary restraint, or pretrial confinement of UCMJ, Art. (2)(a)(10) personnel, within the GCMCA's area of responsibility outside the United States, who is suspected of violating the UCMJ. The GCMCA, or designee, may determine that the personnel covered under UCMJ, Art. (2)(a)(10) need not be held in restraint or confinement pending the receipt of notification from the COCOM required by paragraph 27–5, above. All pretrial restraint or confinements must comply with the provisions of RCMs 304 and 305.

b. Personnel covered under UCMJ, Art. (2)(a)(10) who are arrested for suspected UCMJ violations may be placed in pretrial confinement in military detention facilities for a reasonable period, in accordance with RCMs 304 and 305 and the regulations of the military departments responsible for the confinement facility.

c. Absent emergency or exigent circumstances, personnel covered under UCMJ, Art. 2(a)(10) will not be placed in pretrial confinement prior to notification of the SJA of the commander exercising GCMCA authority, who must ensure that the civilian is assigned or attached to the command prior to imposition of pretrial confinement and that the pretrial confinement is warranted and in accordance with RCM 305. The accused is entitled to representation by TDS counsel at all pretrial confinement hearings.

27–10. Action by convening authority after a response is received

a. If the DOJ elects to exercise Federal criminal jurisdiction over the case, neither the COCOM nor a lower level convening authority is authorized to take action to dispose of the charges by court-martial or nonjudicial punishment proceedings. If DOJ asserts jurisdiction under MEJA, the procedures contained in the statute and DOD directive concerning MEJA (chap 26, above) shall be followed. In cases where DOJ asserts jurisdiction under Federal law with extraterritorial application, MEJA procedures can be used as a guide for supporting DOJ actions.

b. If the DOJ determines that the exercise of Federal criminal jurisdiction is not applicable or is not warranted, the COCOM will so notify the respective GCMCA of that determination and also advise the GCMCA whether the COCOM will withhold UCMJ authority in a particular case.

c. If neither the DOJ nor COCOM decides to exercise or withhold jurisdiction over the case, the GCMCA may determine the appropriate disposition of the case. However, once authority is returned to the GCMCA, the GCMCA is not required to initiate further action to dispose of the case. If it is appropriate to consider resolving the matter under the UCMJ, including preferring court-martial charges or nonjudicial punishment, the accused who is subject to UCMJ, Art. 2(a)(10) jurisdiction will be, if not already, attached to a chain of command to include a company, battalion and brigade commander, to the extent it is practicable. The company or battalion commander will receive the case and determine whether it is appropriate to prefer charges, impose nonjudicial punishment or take any other appropriate action. If charges are preferred with recommendation for a special or general court-martial, the charges will be processed in accordance with the RCM, permitting each commander to make his own judgment as to the proper disposition of charges under the circumstances. If the special court-martial convening authority (SPCMA) considers a recommendation for general court-martial potential under the circumstances, the commander will appoint a preliminary hearing officer and direct a a preliminary hearing under UCMJ, Art. 32(b). If upon receipt and review of the report of preliminary hearing the SPCMA considers referral appropriate, he will forward the matter with recommendation for disposition to the GCMCA. The authority to refer such charges to either a special or general court-martial is withheld to the GCMCA (see chap 5, above, and app H, below).

d. The convening authority's SJA shall notify the Criminal Law Division (DAJA–CL), OTJAG, HQDA, of the following information upon preferral of any cases under UCMJ, Art. 2(a)(10):

(1) Name, grade, SSN, date of birth, race, and unit of the accused.

(2) The offenses with which the accused is charged.

(3) The names, sex, ages, and military or civilian statuses of the victims.

(4) The date of preferral and referral.

(5) Whether the accused is in pretrial confinement and the date confinement began.

(6) The names of the military judge, trial counsel, and defense counsel in the case.

e. A copy of the notice shall be incorporated as part of the allied papers of the court-martial record of trial, if any.

27–11. Sentencing

a. With respect to personnel covered under UCMJ, Art. 2(a)(10), trial and defense counsel may, at their discretion, present to the military judge copies of any available personnel records that reflect the past conduct and performance of

the accused (see para 5–29, above). Examples of personnel records that may be presented include any of those delineated in paragraph 5–29 that are appropriate.

b. The following punishments authorized under RCM 1003(b) are applicable in cases where jurisdiction over the accused is based on UCMJ, Art. 2(a)(10). No other punishments listed in RCM 1003(b) are authorized.

(1) A fine may be imposed in all cases as a monetary penalty on personnel covered under UCMJ, Art. 2(a)(10), including in any case where the accused was unjustly enriched as a result of the offense to which the accused was convicted.

(2) Restriction to specified limits.

(3) Confinement.

c. Nonjudicial punishment is also authorized and shall be imposed only in accordance with UCMJ, Art. 15; Part V, MCM, 2012; the guidance of the Secretary of Defense provided by memorandum dated 10 March 2008; and chapter 3, above.

27–12. Post-trial procedure and review of courts-martial

The provisions of UCMJ, Arts. 59 through 76, are applicable to court-martial proceedings involving personnel covered under UCMJ, Art. 2(a)(10).

Chapter 28
Capital Litigation

28–1. Applicability and Purpose

This chapter sets forth the policies and procedures for all Army cases in which an accused is charged, or could be charged, with an offense that may subject the accused to the death penalty, and for which there is probable cause that an aggravating factor exists as set forth in RCM 1004(c). The provisions of this chapter apply regardless of whether the GCMCA intends to charge the accused with an offense which may subject the accused to the death penalty.

28–2. Reports

Reports and updates will be provided in accordance with paragraph 5-13*b* of this regulation.

28–3. Referral

At least 7 days prior to referral of a potential capital case, or other serious offense as defined in paragraph 5-13 of this regulation, the SJA must consult with the Chief, OTJAG-CLD. After an offense is referred as a capital offense, a copy of the capital referral notice must be sent to the Chief, USATDS and the affected RDC (see para 5-13).

28–4. Court-martial personnel

a. Qualifications. The following subparagraphs are suggested minimum requirements to serve as guidelines to assist the Chief, USATDS, or that officer's delegate, in determining the appropriate personnel to assign to capital cases. These guidelines shall not be construed as mandatory requirements, and they shall not be construed as a right to a particular counsel or as a standard for determining the effectiveness of counsel under the U.S. Constitution. All military personnel assigned to a capital case must be qualified and certified under UCMJ, Art. 27(b).

(1) *Lead defense counsel.* United States Army Trial Defense Service counsel representing an accused who is charged with a capital offense should possess the following attributes to the maximum extent practicable: prior experience as lead defense counsel in GCM panel cases tried to findings; substantial knowledge and understanding of the procedural and substantive law governing capital cases; skill in the management and conduct of complex negotiations and litigation; skill in legal research, analysis, and the drafting of litigation documents; skill in oral advocacy; skill in the use of expert witnesses and familiarity with common areas of forensic investigation; skill in the investigation, preparation, and presentation of evidence bearing upon mental status; skill in the investigation, preparation, and presentation of mitigating evidence; skill in the elements of trial advocacy, such as panel selection, cross-examination of witnesses, and opening and closing statements; familiarization with capital litigation training; and the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(2) *Assistant defense counsel.* United States Army Trial Defense Service counsel representing an accused who is charged with a capital offense as an assistant defense counsel should possess the following attributes to the maximum extent practicable: prior experience as lead counsel in GCM panel cases tried to finding; skill in the use of expert witnesses and familiarity with common areas of forensic investigation; familiarization with capital litigation training; and the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(3) *Additional defense counsel.* United States Army Trial Defense Service counsel representing an accused who is charged with a capital offense as an additional defense counsel should possess the following attributes to the maximum extent practicable: prior experience as lead or assistant counsel in panel cases tried to findings and the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(4) *Alternative qualifications.* The Chief, USATDS, may appoint counsel even if he or she does not meet all of the qualifications stated above. If appointed under this section, TDS counsel must state on the record his or her qualifications. The appointed counsel must be qualified under UCMJ, Art. 27(b), and should possess the following attributes to the maximum extent practicable: extensive criminal or civil trial experience; skill in the use of expert witnesses and familiarity with common areas of forensic investigation; familiarization with capital litigation training; and the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

b. Defense counsel appointment and training. United States Army Trial Defense Service capital-qualified counsel should be appointed as soon as there is reason to believe a case may be referred capital. All capital-qualified counsel assigned to a capital case should be detailed no later than seven days after referral of the capital case. In capital-referred cases, the Chief, USATDS, or his designee, should detail at least two qualified defense counsel. The Chief, USATDS will develop programs and policies consistent with paragraph 6-6 to ensure regular capital defense training opportunities for USATDS counsel. Capital training opportunities should be made available as part of routine professional development and not based on specific assignment to a capital case.

c. Detailing.

(1) *Defense counsel.* Defense counsel for capital cases shall be detailed by the Chief, USATDS, or if the Chief, USATDS is conflicted, his or her designee.

(2) *Trial counsel.* Trial counsel shall be detailed in accordance with paragraph 5-3.

(3) *Military judge.* The Military Judge shall be detailed by the Chief Trial Judge, or if the Chief Trial Judge is conflicted, his or her designee.

28–5. Administrative and logistical support

a. Prosecution support. The SJA shall use internal resources to the maximum extent practicable. For additional personnel support, the SJA may coordinate with PPTO and TCAP.

b. Defense counsel support. In any case after preferral in which an offense punishable by death under the UCMJ is charged, the defense may submit a request in writing to the servicing SJA for support greater than that required by paragraph 6-4, including but not limited to: paralegals (with criminal law experience), legal administrator, investigative support, office administrative resource support (as defined by the defense team), security managers, interpreters, translators, and other specialized expertise as required.

(1) Office administrative resource support may include support such as private, lockable office space, SIPRnet capability, computers authorized to handle classified information and documents, separate defense witness waiting room under the control of the defense team, desktop computers with double monitors, copiers, printers, case management software, projectors, routine office supplies, textbooks and reference materials, and full access to installation network and internet. This list is not to be interpreted as exhaustive, but rather illustrative.

(2) The SJA must make reasonable efforts to provide the additional support within 30 days of the request or deny the request by stating the reasons in writing within the same period.

(3) The requesting counsel will forward all denied requests through the defense technical chain to Chief, USATDS. The Chief, USATDS will make reasonable efforts to fill the request internally. The Chief, USATDS will forward all unfilled requests for personnel to PPTO within 15 days of receipt stating the reasons that USATDS is unable to support the request. Assets provided by USATDS will be funded in accordance with paragraph 6-5.

(4) Nothing in this section should be interpreted to create a substantial right or remedy to the accused, but rather this section provides a system of accountability to ensure proper resources and support are provided.

28–6. Suggested capital litigation teams

a. General guidance. The suggested capital litigation team serves as a guideline to the SJA, the detailing authority for the defense counsel, PPTO, and HRC; however, every case must be analyzed and resourced individually, based on its specific circumstances. Nothing in this paragraph is to be construed as a right to a particular counsel or staff, or as a standard for determining the effectiveness of counsel under the U.S. Constitution. The members of each team should be relieved of other duties (for example, CQ, motor pool, non-paralegal sergeants time, other case assignments, and so forth), to the maximum extent practicable, and PPTO, HRC, or other personnel assignment agencies should not reassign the members during the investigation, pretrial, trial, and clemency stages, unless requested by the SJA or RDC, or as approved or directed by TJAG. This includes reassignment for professional courses (JAGC Graduate Course, ILE, and so forth) or other reasons.

b. The prosecution team. The prosecution team should consist of members whose duties substantially are dedicated to the capital case and may include: at least two experienced, qualified trial counsel, detailed by the SJA in the affected jurisdiction; a legal administrator in the grade of CW2 or higher, or an office manager in the grade of E-7 or higher; two paralegals, at least one of which should be an NCO; a criminal investigator; a victim witness liaison; and a public affairs representative.

c. The defense team. The defense team should consist of members whose duties are substantially dedicated to the capital case and shall include at least two experienced, qualified defense counsel, detailed by the Chief, USATDS or by his or her designee, and one paralegal (GS-9 or E-6), in addition to the supervisory chain including, but not limited to

the Deputy and Chief, DAD and the Chief, Capital Litigation. Other personnel may include, but shall not be limited to, a warrant officer, criminal investigator, mitigation specialist, and/or mental health professionals, as deemed appropriate. Because appellate review in capital cases normally takes a number of years, significant effort shall be made to ensure continuity of counsel. Counsel representing capital defendants on appeal shall undergo specialized training as determined by the Chief, DAD. Such training should seek to fulfill, to the extent practicable, the training requirements of the American Bar Association Guidelines for the Appointment and Performance of Death Penalty Counsel in Death Penalty Cases Guideline 8.1.

d. Experts. The type and number of experts, whether for consultation or use at trial, will vary depending on the facts and circumstances of the case. Defense may typically request experts or specialists in the area of mitigation, psychology and/or psychiatry, science (for example, DNA, crime scene analysis and reconstruction, firearms, and so forth), jury consulting, and sentencing.

e. Reserve personnel. The SJA or RDC must notify PPTO if the use of Reserve Component personnel will be requested.

Appendix A
References

Section I
Required Publications

AFI 51–201
Air Force Instruction, Administration of Military Justice (Cited in para 3–8*c*.)

AR 15–6
Procedures for Investigating Officers and Boards of Officers (Cited in para 9–8.)

AR 15–185
Army Board for Correction of Military Records (Cited in para 3–43*e*.)

AR 25–50
Preparing and Managing Correspondence (Cited in para 3–19*b*(9)(d).)

AR 25–51
Official Mail and Distribution Management (Cited in para 12–9*h*.)

AR 25–400–2
The Army Records Information Management System (ARIMS) (Cited in para 5–47*a*.)

AR 27–1
Legal Services, Judge Advocate Legal Services (Cited in para 6–3.)

AR 27–3
The Army Legal Assistance Program (Cited in para 17–12b(3).)

AR 27–26
Rules of Professional Conduct for Lawyers (Cited in para 3–18*g*(1).)

AR 27–40
Litigation (Cited in para C–2*c*.)

AR 27–50
Status of Forces Policies, Procedures, and Information (Cited in para 16–3*d*(2).)

AR 27–52
Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice (Cited in para 5–1.)

AR 37–104–4
Military Pay and Allowances Policy (Cited in para 11–7*b*(6).)

AR 40–400
Patient Administration (Cited in para 17–12*a*.)

AR 135–200
Active Duty for Missions, Projects, and Training for Reserve Component Soldiers (Cited in para 20–4*a*.)

AR 135–210
Order to Active Duty as Individuals for other than a Presidential Selected Reserve Call-up, Partial or Full Mobilization (Cited in para 20–3.)

AR 140–1
Mission, Organization, and Training (Cited in para 20–2*a*.)

AR 165–1
Army Chaplain Corps Activities (Cited in para 17–12b(5).)

AR 190–30
Military Police Investigations (Cited in para 8–11*c*.)

AR 190–45
Law Enforcement Reporting (Cited in para 8–1*b*.)

AR 190–47
The Army Corrections System (Cited in para 3–19b.)

AR 190–53
Interception of Wire and Oral Communications for Law Enforcement Purposes (Cited in para 7–4*a*(4)(c).)

AR 195–5
Evidence Procedures (Cited in para 8–11*b*.)

AR 220–5
Designation, Classification, and Change in Status of Units (Cited in para 3–7*a*(4).)

AR 335–15
Management Information Control System (Cited in para 5–19*b*.)

AR 340–21
The Army Privacy Program (Cited in para 3–43*d*.)

AR 570–4
Manpower Management (Cited in para 6–4*h*.)

AR 600–8–2
Suspension of Favorable Personnel Actions (FLAGS) (Cited in para 3–20.)

AR 600–8–10
Leaves and Passes (Cited in para 12–11*a*.)

AR 600–8–19
Enlisted Promotions and Reductions (Cited in para 3–19*b*(6).)

AR 600–8–22
Military Awards (Cited in para 17–2*d*.)

AR 600–8–24
Officer Transfers and Discharges (Cited in para 5–18.)

AR 600–8–29
Officer Promotions (Cited in para 3–7*c*(1).)

AR 600–8–104
Army Military Human Resources Records Management (Cited in para 3–37*b*(1)(a)3.)

AR 600–8–105
Military Orders (Cited in para 11–5*a*(1).)

AR 600–20
Army Command Policy (Cited in para 3–3*a*.)

AR 600–37
Unfavorable Information (Cited in para 3–3*b*(2).)

AR 600–62
United States Army Personnel Control Facilities and Procedures for Administering Assigned and Attached Personnel (Cited in para 5–31.)

AR 600–105
Aviation Service of Rated Army Officers (Cited in para 19–10*b*(4).)

AR 608–1
Army Community Service (Cited in para 17–12*b*(1).)

AR 614–100
Officers Assignment Policies, Details, and Transfers (Cited in para 5–19*a*.)

AR 614–200
Enlisted Assignments and Utilization Management (Cited in para 25–2*d*.)

AR 623–3
Evaluation Reporting System (Cited in para 19–10*b*(7).)

AR 635–200
Active Duty Enlisted Administrative Separations (Cited in para 19–10*b*(2).)

AR 638–8
Army Casualty Program (Cited in para 17–2*c*.)

AR 672–20
Incentive Awards (Cited in para 17–2*d*.)

AR 690–700
Personnel Relations and Services (General) (Cited in para 27–3*d*.)

AR 930–4
Army Emergency Relief (Cited in para 17–12*b*(2).)

AR 930–5
American National Red Cross Service Program and Army Utilization (Cited in para 17–12*b*(4).)

COMDINST M5810.1D
U.S. Coast Guard Military Justice Manual (Cited in para 3–8*c*.)

DA Pam 27–7
Guide for Summary Court-Martial Trial Procedure (Cited in para 5–10.)

DA Pam 27–9
Military Judges' Benchbook (Cited in para 5–23*a*.)

DOD 7000.14–R
Department of Defense Financial Management Regulation (DOD FMR) (Cited in para 3–19*b*(7)(a).)

DODD 1030.01
Victim and Witness Assistance (Cited in para 17–1.)

DODI 1030.2
Victim and Witness Assistance Procedures (Cited in para 17–1.)

DODI 1325.07
Administration of Military Correctional Facilities and Clemency and Parole Authority (Cited in para 24–1.)

DODI 5505.14
Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations (Cited in para 11–5a(4).)

DODI 5525.11
Criminal Jurisdiction Over Civilians Employed by or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members (Cited in para 26–1*b*.)

JAGMAN 0101
Manual of The Judge Advocate General, Navy (Cited in para 3–8*c*.)

JFTR
Joint Federal Travel Regulations (Cited in para 17–11*b*.)

Section II
Related Publications

A related publication is additional information. The user does not have to read it to understand the publication.

AR 11–2
Managers' Internal Control Program

AR 15–130
Army Clemency and Parole Board

AR 15–180
Army Discharge Review Board

AR 25–30
Army Publishing Program

AR 25–55
The Department of the Army Freedom of Information Act Program

AR 27–20
Claims

AR 190–9
Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies

AR 195–6
Department of the Army Polygraph Activities

AR 350–1
Army Training and Leader Development

AR 600–43
Conscientious Objection

AR 600–85
The Army Substance Abuse Program

AR 608–18
The Army Family Advocacy Program

AR 630–10
Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings

AR 633–30
Military Sentences to Confinement

AR 735–5
Property Accountability Policies

DA Pam 27–17
Procedural Guide for Article 32 Preliminary Hearing Officer

DA Pam 27–50
The Army Lawyer

DFAS–IN Regulation 37–1
Finance and Accounting

DODI 1342.24
Transitional Compensation for Abused Dependents

DODI 5525.07
Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DOJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes

MCM United States (2012 Edition)
Manual for Courts-Martial

RCM
Rules for Courts-Martial

UCMJ
Uniform Code of Military Justice

UCMJ, Art. 139
Redress of inquiries to property

USAM
U.S. Attorney's Manual

10 USC 802
Art. 2. Persons subject to this chapter

10 USC 806b
Art. 6b. Rights of the victim of an offense under this chapter

10 USC 860
Art. 60. Action by the convening authority

10 USC 972
Members: effect of time lost

10 USC 1034
Protected communications; prohibition of retaliatory personnel actions

10 USC 1059
Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits

10 USC 1076a
Medical and dental care for dependents: general rule

10 USC 3013
Secretary of the Army

10 USC 1408
Payment of retired or retainer pay in compliance with court orders

10 USC 1565
DNA identification information: collection from certain offenders; use

18 USC 219
Officers and employees acting as agents of foreign principals

18 USC 871
Threats against President and successors to the Presidency

18 USC 1512
Tampering with a witness, victim, or an informant

18 USC 1513
Retaliating against a witness, victim, or an informant

18 USC Ch. 219
Trial by United States magistrate judges

18 USC 3481
Competency of accused

28 USC 515
Authority for legal proceedings; commission, oath, and salary for special attorneys

28 USC 543
Special attorneys

28 USC 2101
Supreme Court; time for appeal or certiorari; docketing; stay

28 USC 2242
Application (writ of habeas corpus)

42 USC 10601
Crime victims fund

42 USC 10607
Services to victims

42 USC 16901
Declaration of Purpose

Section III
Prescribed Forms

Except where otherwise indicated below, the following forms are available on the APD Web site (www.apd.army.mil); DD Forms are available from the OSD Web site (http://www.dtic.mil/whs/directives/forms/index.htm).

DA Form 2627
Record of Proceedings Under Article 15, UCMJ (Prescribed in para 3–6*b*.)

DA Form 2627–1
Summarized Record of Proceedings Under Article 15, UCMJ (Prescribed in para 3–16*a*(2).)

DA Form 2627–2
Record of Supplementary Action Under Article 15, UCMJ (Prescribed in para 3–23*c*.)

DA Form 3496
Military Judge's Oath (Prescribed in para 10–3*c*.)

DA Form 3497
Counsel's Oath (Prescribed in para 10–4*a*.)

DA Form 3499
Application for Relief from Court-Martial Findings and/or Sentence Under the Provisions of Title 10, United States Code, Section 869 (Prescribed in para 13–2*a*.)

DA Form 3744
Affidavit Supporting Request for Authorization to Search and Seize or Apprehend

DA Form 3745
Search and Seizure Authorization

DA Form 3745–1
Apprehension Authorization (Prescribed in para 8–8*b*.)

DA Form 4441
United States Army Trial Defense Service (Prescribed in para 6–11*c*.)

DA Form 4916
Certificate of Service/Attempted Service (Prescribed in para 12–9*e*.)

DA Form 4917
Advice as to Appellate Rights (Prescribed in para 12–4*c*.)

DA Form 4918
Petition for Grant of Review in the United States Court of Appeals for the Armed Forces (Prescribed in para 12–4*c*.)

DA Form 4919
Request for Final Action (Prescribed in para 12–4*c*.)

DA Form 5109
Request to Superior to Exercise Article 15, UCMJ, Jurisdiction (Prescribed in para 3–5*b*.)

DA Form 5110
Article 15–Reconciliation Log (Prescribed in para 3–39.)

DA Form 5111
Summary Courts-Martial Rights Notification/Waiver Statement (Prescribed in para 5–23*d*.)

DA Form 5112
Checklist for Pretrial Confinement (Prescribed in para 8–5*b*.)

DA Form 7568
Army Victim/Witness Liaison Program Evaluation (Prescribed in para 17–28.)

Section IV
Referenced Forms

Except where otherwise indicated below, the following forms are available as follows: DA Forms are available on the APD Web site (http://www.apd.army.mil); DD Forms are available from the OSD Web site (http://www.dtic.mil/whs/directives/forms/index.htm).

AO Form 86A
Consent to Proceed Before a Magistrate Judge in Misdemeanor Case (Available at http://www.uscourts.gov/services-forms/forms.)

AO Form 91
Criminal Complaint (Available at http://www.uscourts.gov/services-forms/forms.)

DA Form 2–1
Personnel Qualification Record

DA Form 31
Request and Authority for Leave

DA Form 268
Report to Suspend Favorable Personnel Actions (FLAG)

DA Form 1380
Record of Individual Performance of Reserve Duty Training

DA Form 2028
Recommended Changes to Publications and Blank Forms

DA Form 3180
Personnel Screening and Evaluation Record

DA Form 4137
Evidence/Property Custody Document

DA Form 4187
Personnel Action

DD Form 454
Warrant of Attachment

DD Form 455
Report of Proceedings to Vacate Suspension of a General Court-Martial Sentence or of Special Court-Martial Sentence Including a Bad-Conduct Discharge Under Article 72, UCMJ, and RCM 1109

DD Form 458
Charge Sheet

DD Form 490
Record of Trial

DD Form 491
Summarized Record of Trial

DD Form 2329
Record of Trial by Summary Court-Martial

DD Form 2330
Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review

DD Form 2331
Waiver/Withdrawal of Appellate Rights in General Courts-Martial Subject to Examination in the Office of the Judge Advocate General

DD Form 2698
Application for Transitional Compensation

DD Form 2701
Initial Information for Victims and Witnesses of Crime

DD Form 2702
Court-Martial Information for Victims and Witnesses of Crime

DD Form 2703
Post-Trial Information for Victims and Witnesses of Crime

DD Form 2704
Victim/Witness Certification and Election Concerning Prisoner Status

DD Form 2705
Victim/Witness Notification of Prisoner Status

DD Form 2706
Annual Report on Victim and Witness Assistance

DD Form 2707
Confinement Order

DD Form 2791
Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements

DD Form 2873
Military Protective Order (MPO)

PS Form 3800
USPS Certified Mail Receipt (Available at https://about.usps.com/forms/all-forms.htm.)

PS Form 3811
USPS Domestic Return Receipt (Available at https://about.usps.com/forms/all-forms.htm.)

Appendix B
Suggested Guide for Conduct of Nonjudicial Punishment Proceedings

B–1. General

This guide is designed to ensure that the proceedings conducted pursuant to UCMJ, Art. 15 comply with all legal requirements. It contemplates a three-step process conducted in the presence of the Soldier, consisting of the following: (1) notification, (2) hearing (that may be omitted if the Soldier admits guilt), and (3) imposition of punishment (if the findings result in determination of guilt). This guide may be tailored for formal and summarized nonjudicial punishment proceedings.

B–2. Notification

If the notification of punishment is to be accomplished by other than the imposing commander, the procedures under this provision should be appropriately modified (see note *q*(4), below).

a. Statement of commanding officer.

(1) As your commander, I have disciplinary powers under Article 15 of the UCMJ. I have received a report that you violated the Uniform Code, and I am considering imposing nonjudicial punishment. This is not a formal trial like a court-martial. As a record of these proceedings I will use DA Form 2627. I now hand you this form. Read items 1 and 2. Item 1 states the offense(s) you are reported to have committed and item 2 lists the rights you have in these proceedings. Under the provisions of Article 31 of the UCMJ, you are not required to make any statement or provide any information concerning the alleged offense(s). If you do, it may be used against you in these proceedings or in a trial by court-martial. You have the right to consult with a lawyer as stated in item 2.

Note. Wait for the Soldier to read items 1 and 2 of DA Form 2627. Allow him or her to retain a photocopy of the form until the proceedings are finished and you have either imposed punishment or decided not to impose it.

(2) Do you understand item 1? Do you understand the offense(s) you are reported to have committed?

b. Response of Soldier. Yes/No. If the Soldier does not understand the offense(s), explain the offense(s) to him/her.

c. Statement of commanding officer. Do you understand item 2? Do you have any questions about your rights in these proceedings?

d. Response of Soldier. Yes/No. Note. If the Soldier does not understand his or her rights, explain them in greater detail. If the member asks a question you cannot answer, recess the proceedings. You probably can find the answer in one of the following sources: UCMJ, Art. 15; Part V, MCM, 2012; or contact the JA office.

e. Statement of commanding officer. There are some decisions you have to make—

(1) You have to decide whether you want to demand trial by court-martial. If you demand a court-martial these proceedings will stop. I then will have to decide whether to initiate court-martial proceedings against you. If you were to be tried by court-martial for the offense(s) alleged against you, you could be tried by summary court-martial, special court-martial, or general court-martial. If you were to be tried by special or general court-martial you would be able to be represented by a military lawyer appointed at no expense to you or by a civilian lawyer of your choosing at no expense to the Government.

(2) If you do not demand trial by court-martial, you must then decide whether you want to present witnesses or submit other evidence in defense, extenuation, and/or mitigation. Your decision not to demand trial by court-martial will not be considered as an admission that you committed the offense(s); you can still submit evidence on your behalf.

(a) Evidence in defense is facts showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in defense, you can still present evidence in extenuation or mitigation.

(b) Evidence in extenuation is circumstances surrounding the offense showing that the offense was not very serious.

(c) Evidence in mitigation is facts about you showing that you are a good Soldier and that you deserve light punishment.

(3) You can make a statement and request to have a spokesperson appear with you and speak on your behalf. I will interview any available witnesses and consider any evidence you think I should examine.

(4) Finally, you must decide whether you wish to request that the proceedings be open to the public. Do you understand the decisions you have to make?

f. Response of Soldier. Yes/No.

g. Statement of commanding officer.

(1) If you do not demand trial by court-martial and after you have presented your evidence, I am convinced that you committed the offense, I could then punish you. The maximum punishment I could impose on you would be (punishment). (See table 3–1, above, for maximum punishments.)

(2) You should compare this punishment with the punishment you could receive in a court-martial. (If the Soldier requests to be informed of the maximum court-martial sentence you may state the following: The maximum sentence you could receive in a court-martial is (sentence) for the offense(s).)

Note. Part IV, MCM, 2012 lists for each punitive Article the punishments a court-martial may impose for violations of the various Articles of the UCMJ.

The CO—

(a) May inform the Soldier that referring the charges to a summary or special court-martial would reduce the maximum sentence. For example, a summary court may not impose more than 1 month of confinement at hard labor. A special court may not impose more than 12 months of confinement.

(b) Should not inform the Soldier of the particular punishment you may consider imposing until all evidence has been considered.

(3) As item 2 points out, you have a right to talk to an attorney before you make your decisions. A military lawyer whom you can talk to free of charge is located at (location). Would you like to talk to an attorney before you make your decisions?

h. Response of Soldier. Yes/No. If the Soldier desires to talk to an attorney, arrange for the Soldier to consult an attorney. The Soldier should be encouraged to consult the attorney promptly. Inform the Soldier that consultation with an attorney may be by telephone. The Soldier should be advised that he or she is to notify you if any difficulty is encountered in consulting an attorney.

i. Statements of commanding officer.

(1) You now have 48 hours to think about what you should do in this case. You may advise me of your decision at any time within the 48-hour period. If you do not make a timely demand for trial or if you refuse to sign that part of DA Form 2627 indicating your decision on these matters, I can continue with these Article 15 proceedings even without your consent. You are dismissed.

Note. At this point, the proceedings should be recessed unless the Soldier affirmatively indicates that he or she has made a decision and does not want additional time or to consult with an attorney. In the event the Soldier does not make a decision within the specified time or refuses to complete or sign item 3 of DA Form 2627, see paragraph 3–18*f*. When you resume the proceedings, begin at item 3, DA Form 2627.

(2) Do you demand trial by court-martial?

j. Response of Soldier. Yes/No. (If the answer is yes, continue with next statement.)

k. Statements of commanding officer.

(1) Initial block a, sign and date item 3. Because you have demanded trial by court-martial, these proceedings will stop. I now must decide whether to initiate court-martial proceedings against you. I will notify you when I have reached a decision. You are dismissed. (If the answer is no, continue with next statement.)

(2) An open hearing means that the proceeding is open to the public. If the hearing is closed, only you, I, designated Soldiers of the chain of command, available witnesses, and a spokesperson, if designated, will be present. Do you request an open hearing?

l. Response of Soldier. Yes/No.

m. Statement of commanding officer. Do you wish to be accompanied by a spokesperson?

n. Response of Soldier. Yes/No.

o. Statement of commanding officer. Initial block 3b(1) and (2) indicating your decision. Do you want to submit any evidence showing that you did not commit the offense(s), or explaining why you committed the offense(s), or any other information about yourself that you would like me to know? Do you wish to have any witnesses testify, including witnesses who would testify about your good past military record or character?

p. Response of Soldier. Yes/No.

q. Statement of commanding officer. Now initial block 3b(3) indicating your decision, and sign and date the form in the space provided under that item.

Note. The CO will—

(1) Wait until the Soldier initials the blocks and signs and dates the form. If the answers to all the questions are no, you may proceed to impose punishment.

(2) If the answer regarding witnesses and evidence is yes and the Soldier is prepared to present his or her evidence immediately, proceed as follows. Consider the evidence presented. If the evidence persuades you that you should not punish the Soldier, terminate the proceedings, inform the Soldier, and destroy all copies of DA Form. If you are convinced that the Soldier committed the offense(s) beyond a reasonable doubt and deserves to be punished, proceed to impose punishment.

(3) If the Soldier needs additional time to gather his or her evidence, give the Soldier a reasonable period of time to gather the evidence. Tell the Soldier when the proceedings will resume and recess the proceedings.

(4) If someone else conducted the notification proceedings, the imposing commander should conduct the remainder of the proceedings. When you resume the proceedings, consider the Soldier's evidence. Ensure that the Soldier has the opportunity he or she deserves to present any evidence. Ask the Soldier, "Do you have any further evidence to present? "If the evidence persuades you that you should not punish the Soldier, terminate the proceedings, inform the Soldier of your decision, and destroy all copies of DA Form 2627. If you are still convinced that the Soldier committed the offense(s) and deserves to be punished, impose punishment.

B–3. Imposition of punishment

Statement of commanding officer: I have considered all the evidence. I am convinced that you committed the offense(s). I impose the following punishments: (announce punishment).

Note. After you have imposed punishment, complete items 4, 5, and 6 of DA Form 2627 and sign the blank below item 6.

B–4. Appellate advice

Main paragraphs are required to have a title followed by either paragraph text or at least two subparagraphs.

Note. The CO will hand the DA Form 2627 to the Soldier.

a. Statement of commanding officer. Read item 4, which lists the punishment I have just imposed on you. Now read item 6, which points out that you have a right to appeal this punishment to (title and organization of next superior authority). You can appeal if you believe that you should not have been punished at all, or that the punishment is too severe. Any appeal should be submitted within 5 calendar days. An appeal submitted after that time may be rejected. Even if you appeal, the punishment is effective today (unless the imposing commander sets another date). Once you submit your appeal, it must be acted upon by (title and organization of next superior) within 5 calendar days, excluding the day of submission. Otherwise, any punishment involving deprivation of liberty (correctional custody, restriction or extra duty), at your request, will be interrupted pending the decision on the appeal. Do you understand your right to appeal?

b. Response of Soldier. Yes/No.

c. Statement of commanding officer. Do you desire to appeal?

d. Response of Soldier. Yes/No.

Note. If the answer is yes, go to note at *e*(2), below. If the answer is no, continue with next statement.

e. Statements of commanding officer.

(1) If you do not want to appeal, initial block "a" in item 7 and sign the blank below item 7.

Note. Now give the Soldier detailed orders as to how you want him or her to carry out the punishments.

(2) You are dismissed. If the answer is yes, continue with next statement.

(3) Do you want to submit any additional matters to be considered in an appeal?

f. Response of Soldier. Yes/No. (If the answer is yes, go to note at *g*(1), below. If the answer is no, continue with next statement.)

g. Statements of commanding officer.

(1) Initial block "b" in item 7 and sign the blank below item 7. I will notify you when I learn what action has been taken on your appeal. You are dismissed.

Note. If the answer is yes, continue with next statement.

(2) If you intend to appeal and do not have the additional matters with you, item 7 will not be completed until after you have obtained all the additional material you wish to have considered on appeal. When you have obtained this material, return with it by (specify a date 5 calendar days from the date punishment is imposed) and complete item 7, by initialing the box and signing the blank below. After you complete item 7, I will send the DA Form 2627 and the additional matters you submit to (title and organization of next superior authority). Remember that the punishment will not be delayed (unless the imposing commander sets another date). You are dismissed.

Appendix C
Attorney-Client Guidelines

These guidelines have been approved by The Judge Advocate General (TJAG). Military personnel who act in courts-martial, including all Army attorneys, will apply these principles insofar as practicable. However, the guidelines do not purport to encompass all matters of concern to defense counsel, either trial or appellate. As more problem areas are identified, TJAG will develop a common position and policies for the guidance of all concerned.

C–1. Problem areas in general

a. Applicability of the attorney-client relationship rules to military practice generally. Military attorneys and counsel are bound by the law and the highest recognized standards of professional conduct. The DA has made the Army "Rules of Professional Conduct for Lawyers" (see AR 27–26), and the "Code of Judicial Conduct for Army Trial and Appellate Judges" applicable to all attorneys who appear in courts-martial. Whenever recognized civilian counterparts of professional conduct can be used as a guide, consistent with military law, the military practice should conform.

b. Attorney-client relationship in the military criminal practice.

(1) *Establishment.* When an officer holds himself or herself out as an attorney or is designated on orders as a detailed defense counsel, he or she is regarded for the purposes of these guidelines as an attorney and is expected to adhere to the same standards of professional conduct. Any authorized contact with a service Soldier seeking his or her services as a defense counsel or as an attorney for himself or herself results in at least a colorable attorney-client relationship, although the relationship may be for a limited time or purpose. When an attorney's assigned or reasonably anticipated military duties indicate that the relationship is for a limited time or purpose, he or she must inform the prospective client of these limitations. There is no service obligation to appoint an attorney as detailed counsel merely because an attorney-client relationship has been established. However, an attorney will not later place himself or herself in the position of acting adversely to the client on the same matter.

(2) *Dissolution.* An attorney should not normally be assigned as a counsel to a case unless he or she can be expected to remain for the trial or adverse administrative proceeding. If it appears that he or she will not be available for the trial or adverse administrative proceeding, the client must be notified at the inception of the relationship. Military requirements or orders to move the attorney (as proper personnel management requires) will be respected. An attorney will not, without his or her own agreement, be retained on duty beyond a service appointment merely to maintain an existing relationship with respect to a particular case or client. As no authority exists to hire a civilian attorney at Government expense to represent a Soldier in a court-martial or adverse administrative proceeding, no former officer should expect to be retained by the Government to represent a Soldier with whom that officer has developed an attorney-client relationship. It is regarded as unethical for an attorney to arrange that only he or she could continue in any particular case.

(3) *Content.* The attorney should represent his or her Soldier client to the fullest extent possible within the limits of the law and other directives. No information obtained in an attorney-client relationship may be used against the interests of the client except in accordance with the Army "Rules of Professional Conduct for Lawyers" (see AR 27–26).

c. Restrictions in exhausting legal and administrative remedies. Military attorneys will normally confine their activities to proceedings provided for in the UCMJ and Army regulations (see para C–2*c*, below). They will be guided by local policies as to the extent that a military defense counsel is allowed to handle other matters; for example, general legal assistance. The activities of USATDS counsel are governed by paragraph 6–8, above.

d. State rules of professional conduct. When an ARNG defense counsel, in Title 32 status, serves in a state in which the attorney is not licensed, such counsel must review and comply with the state's rules of professional conduct before entering into an attorney client relationship. An exception is for adverse administrative actions covered by NGR 27-12. If the subject matter is a covered legal action pursuant to NGR 27-12, the provisions of NGR 27-12, Judge Advocate Cross Jurisdictional Practice of Law for Legal Defense Services, will govern the representation.

C–2. Problems associated with trials

a. Steps to ensure that conflicts of attorney's interest do not arise because of multiple clients.

(1) Barring unusual circumstances, a military attorney will not undertake or be detailed to represent more than one client where there are multiple accused. Prior to the time that defense counsel are detailed, the Chief, USATDS, or his or her delegate (see para 6–9, above), will ensure that co-accused are initially contacted by separate defense counsel. Once detailed to represent one of two or more co-accused, a military attorney will not represent another co-accused in the absence of a request for individual counsel processed under UCMJ, Art. 38(b); RCM 506; and this regulation.

(2) Requests for individual counsel will not be approved unless—

(a) Each co-accused to be represented by the same attorney has signed a statement reflecting informed consent to multiple representation.

(b) It is clearly shown that a conflict of interest is not likely to develop.

(3) In no instance will a military attorney knowingly establish an attorney-client relationship with two or more co-accused prior to gaining approval from the appropriate authority.

(4) If a civilian or military attorney is representing two or more co-accused at the commencement of trial, the defense counsel concerned will bring the matter to the attention of the military judge. The military judge will then determine the issue of adequate representation with respect to each co-accused who is before the court as a defendant at that time. For additional guidance see The Defense Function, section 3.5, and the Function of the Trial Judge, section 3.4(b), Code of Judicial Conduct for Army Trial and Appellate Judges; and Rule 1.7, Army "Rules of Professional Conduct for Lawyers" (under AR 27–26).

(5) If additional defense counsel are required by a command due to the prohibition on multiple representation, the SJA concerned will contact the senior defense counsel supporting his or her jurisdiction who will act expeditiously on such requests according to USATDS procedures. Funding for USATDS counsel will be provided in accordance with chapter 6, above.

b. Relationship between military and civilian defense counsel.

(1) Military counsel will not recommend any specific civilian counsel. The best method is to show the accused a list of local attorneys. This list should be compiled by personnel in the SJA office and representatives of the local bar association. This will ensure that local attorneys who have no interest in such referrals will not appear on the list. The accused must be told that—

(a) This list is not exclusive.

(b) He or she is not limited to the services of a local attorney.

(c) The listing of an attorney is not necessarily an endorsement of the attorney's capability or character. The accused should be reminded that the responsibility for the choice is solely his or hers.

(2) The civilian counsel is expected to treat an associated military attorney as a professional equal. Military and civilian counsel are expected to treat each other with the respect and courtesy due their professional status.

(3) Where the conflict concerns defense tactics, the military counsel must defer to the civilian counsel if the accused has made the civilian counsel chief counsel. If counsel are co-counsel, the client should be consulted as to any conflicts between counsel. If the military counsel determines that the civilian counsel is conducting himself or herself contrary to the Army "Rules of Professional Conduct for Lawyers" (see AR 27–26) or violating the law, the military counsel should first discuss the problem with the civilian counsel. If the matter cannot be resolved, the military counsel has the duty to inform the accused of the civilian counsel's actions. The military counsel should inform the civilian counsel of his or her intention to discuss the matter with the accused. If the accused approves of the civilian counsel's conduct, the military counsel must inform the accused that he or she will—

(a) Inform the convening authority or request a UCMJ, Art. 39(a) session, whichever is appropriate.

(b) Ask to be relieved of his or her responsibilities as counsel.

c. Collateral civil court proceedings.

(1) Extent of military counsel's ability to initiate and prosecute such proceedings. Military defense counsel's ability to act in such matters is regulated by Army policy in AR 27–40.

(2) Responsibility with respect to habeas corpus petition (28 USC 2242). The military defense counsel is not required to prepare a habeas corpus petition pursuant to 28 USC 2242 and is prohibited from doing so unless the provisions of AR 27–40 are followed. However, nothing prohibits the military counsel from explaining a pro se petition to the accused. This would entail the accused's writing to the Federal District Court Judge requesting a writ of habeas corpus or other relief. Also, nothing prohibits the military defense counsel's explaining to the accused the right to retain civilian counsel in the matter.

(3) Extent of participation when civilian counsel has initiated such proceedings. Military counsel would be acting contrary to the spirit of AR 27–40 if he or she acted through civilian counsel to perform a service for the client that military counsel could not perform on his or her own (for example, preparation of pleadings in habeas corpus proceedings) and should not do so.

d. Scope of trial defense counsel's responsibility after appellate defense counsel has been appointed. After appellate defense counsel has been appointed, trial defense counsel should assist the appellate defense counsel where such assistance does not interfere with his or her regularly assigned duties. Trial defense counsel has an obligation to answer pertinent questions posed by appellate defense counsel. Trial defense counsel has no right or obligation to assist in preparation of briefs for anyone other than appellate defense counsel after appellate defense counsel has been appointed.

e. Ability of trial defense counsel to provide otherwise privileged information when his or her conduct at trial has been attacked on appeal. When the issue of trial defense counsel's conduct at trial has been raised on appeal, any privilege has been waived to the extent necessary to meet the challenge when the accused has argued through his or her appellate defense counsel that he or she was inadequately represented at trial. Trial defense counsel must be allowed to protect his or her professional integrity. In protecting his or her professional integrity against such a challenge, he or she may reveal, to the extent necessary, otherwise privileged matters.

C–3. Problems associated with appeals

a. Appellate defense attorney-client relationship.

(1) Creation. The attorney-client relationship exists between the accused and counsel designated to represent the

accused as authorized by UCMJ, Art. 70. Generally, TJAG initially directs the Chief, Defense Appellate Division, to represent an accused. The Chief, Defense Appellate Division, as the chief appellate defense counsel, designates other appellate counsel assigned to the Defense Appellate Division to assist as appellate defense counsel. The duty of representation is established at the time of the appointment for the purpose of the appointment and the relationship remains in effect until—

(a) The accused terminates it.

(b) The counsel is relieved from active duty or duly assigned to other duties, or

(c) The representation ceases upon termination of the appellate processes under the UCMJ.

(2) Termination. There is less objection to the administrative termination of an appellate defense attorney-client relationship than one at the trial level. The client has no right to select specific military appellate defense counsel. When the purpose for which the designation is made has been accomplished, the relationship terminates. The designation may be terminated earlier for administrative purposes.

(3) Relationship generally. There appears to be no necessity for face-to-face interviews in an appellate defense attorney-client relationship. Telephonic facilities are available at no cost to the client for communication between the appellant and his or her counsel. If the chief appellate defense counsel determines that a face-to-face interview is essential between either himself or herself or a military associate and the appellant, necessary travel funds will be provided, if available. General legal assistance is provided at the installation to which the appellant is assigned.

b. Extent of attorney's duties.

(1) *Collateral attacks in civilian courts.* The UCMJ, Art. 70 mandates that appellate counsel will represent the accused before the military appellate courts and will "perform such other functions in connection with the review of court-martial cases as TJAG directs." The proper review of a court-martial is set out in the UCMJ, and full representation of the accused does not include collateral attacks in the Federal Courts except as permitted pursuant to AR 27–40.

(2) *Clemency petitions.* At the request of the accused, appellate defense counsel may submit clemency petitions to the proper Army authority.

(3) *Administrative proceedings in confinement facilities.* Military attorneys, assigned to the installations containing confinement facilities, have the responsibility to provide counsel to the confined accused when he or she is entitled to such counsel.

c. Conflict between appellate attorneys. Divergent views between military appellate defense counsel and retained civilian counsel must be worked out in the same manner as at trial (see paragraph C–2*b*(3), above). Military counsel assisting the chief appellate defense counsel must defer to the experience and professional views of the chief appellate defense counsel as an associate in a civilian law firm would defer to the senior partner. If irreconcilable differences appear, the assisting military counsel should ask to be relieved from the case. The chief appellate defense counsel has the discretion to grant this request.

Appendix D
Victim/Witness Checklist

D–1. Victim checklist

a. Coordinate with the installation/community casualty working group and the U.S. Army Criminal Investigation Command survivor point of contact in death cases (see para 17–2*c*, above).

b. Ensure that victims are provided the name, location, and telephone number of the VWL and when applicable, the SVC (see paras 17–8*b* and 17–10*a*(11)*(a)*, above).

c. Inform the victim of the right to receive the services described in chapter 17 (secs III and V) and provide a Victim and Witness Information Packet (see para 17–9*b*, above).

d. Inform the victim of their rights as provided in para 17–10, above.

e. Inform the victim of the availability of emergency medical and social care and, when necessary, provide appropriate assistance in securing such care (see para 17–12*a*, above).

f. Inform abused dependent victims of the availability of medical care if the sponsor received a dishonorable or bad conduct discharge or dismissal for an offense involving abuse of the dependent victims (see para 17–24, above).

g. Assist the victim in obtaining financial, legal, and other social service support by informing the victim of the military and/or civilian programs that are available to provide counseling, treatment, and other support, to include available compensation through Federal, State, and local agencies (see para 17–12*b*, above).

h. Inform dependents of Soldiers who are victims of abuse by the military spouse or parent of the possibility of payment of a portion of the disposable retired pay of the Soldier under 10 USC 1408 or payment of transitional compensation benefits under 10 USC 1059 (see para 17–12*b*(7), above).

i. Inform a victim that families of Soldiers may be eligible for transportation and shipment of household goods regardless of the character of the Soldier's discharge (para 17–12*b*(8), above).

j. Inform the victim of the various means available to seek restitution (under UCMJ, Art. 139; other remedies, such as claims, private lawsuits; or any State compensation programs) and of appropriate and authorized points of contact (see para 17–16*b*, above).

k. Inform a victim concerning the stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case (see para 17–13, above).

l. Inform a victim that the victim may receive notice of significant events in the case as provided for in para 17–14*a*, above.

m. Advise a victim that ordinarily the victim may consult with a Government representative concerning the following decisions (see para 17–15, above):

(1) Decisions not to prefer charges.

(2) Decisions concerning pretrial restraint.

(3) Pretrial dismissal of charges.

(4) Negotiations of pretrial agreements and their terms.

n. Advise a victim that all noncontraband property that has been seized or acquired as evidence will be safeguarded and returned as expeditiously as possible. Inform a victim of applicable procedures for requesting return of property (see para 17–16*a*, above).

o. Inform the victim that the victim's interests are protected by criminal sanctions; that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities; and that their complaints will be promptly investigated and appropriate action will be taken (see para 17–19, above).

p. Inform the victim that, within the guidelines of RCM 701(e) and upon request, the VWL or when applicable, the victim's SVC may act as an intermediary between the victim and representatives of the Government and the defense for the purpose of arranging witness interviews in preparation for trial (see para 17–19*d*, above).

q. Use best efforts to apprise a victim's chain of command of the necessity for the victim's testimony, and the inevitable interference with and absence from duty (see para 17–18, above).

r. Inform a victim that, upon request, reasonable steps will be taken to inform an employer should the victim's innocent involvement in a crime or in the subsequent military justice process cause or require absence from work (see para 17–20, above).

s. Inform the victim that, upon request, reasonable steps will be taken to explain to a creditor when the victim, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, is subjected to serious financial hardship (see para 17–20, above).

t. Inform the victim of the availability of a separate waiting area (see para 17–19*c*, above).

u. Inform the victim of, and provide appropriate assistance to obtain, available services such as transportation, parking, childcare, lodging, and court-martial translators/interpreters (see para 17–23, above).

v. Inform the victim that witnesses requested or ordered to appear at UCMJ, Art. 32 preliminary hearings or courts-martial may be entitled to reimbursement for their expenses under UCMJ, Arts. 46 and 47; RCM 405(g); DFAS–IN 37–1; and chapter 5 of this regulation (see para 17–21, above).

w. Assist the victim in obtaining timely payment of witnesses' fees and related costs and coordinate with local finance officers for establishing procedures for payment after normal duty hours if necessary (para 17–21, above).

x. For the trial counsel or designated Government representative.

(1) No later than after trial if the offender is sentenced to confinement, advise the victim of the offender's place of confinement and the offender's projected minimum release date and determine whether the victim desires to be notified of the offender's confinement or parole status changes or consideration for parole or clemency by using DD Form 2703 (see para 17–14*b*, above).

(2) In all cases, record the victim's election regarding notification of changes in confinement status using DD Form 2704. Give one copy to the victim; forward one copy of the form to the commander of the gaining confinement facility; forward one copy of the form to the Army's central repository, Army Corrections Command (DAPM–ACC), Victim/Witness Central Repository Manager, 150 Army Pentagon, Washington, DC 20310-0150.

(3) Do not attach DD Form 2704 to any portion of a record to which the offender has access (see para 17–14*b*, above).

y. Process the victim's requests for investigative reports or other documents under applicable Freedom of Information Act or Privacy Act procedures. Victims of sex-related offenses, as defined in paragraph 5–45, above, are entitled to copies of the record of trial per RCM 1103.

z. Ensure that each victim in an incident that is prosecuted at a GCM, SPCM or investigated pursuant to a UCMJ, Art. 32 preliminary hearing in those cases not disposed of by GCM or SPCM, receives a DA Form 7568, Army Victim/Witness Liaison Program Evaluation form. These forms may also be provided to other victims (see para 17–28, above).

D–2. Witness checklist

a. Coordinate with installation/community casualty working group and the U.S. Army Criminal Investigation Command survivor point of contact in death cases (see para 17–2*c*, above).

b. Ensure that witnesses are provided the name, location, and telephone number of the VWL (see para 17–8*b*, above).

c. Inform each witness of the right to request the services described in this chapter (secs IV and V) and provide a Victim/Witness Information Packet (DD Forms 2701 and 2702) when necessary or requested (see para 17–9*b*, above).

d. Inform a witness concerning the stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case (see para 17–17*b*, above).

e. Inform the witness regarding notification of the following significant events in the case (see para 17–17, above):

(1) The status of the investigation of the crime, to the extent that it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The preferral or dismissal of charges.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at a preliminary hearing under the provisions of UCMJ, Art. 32.

(5) The scheduling (date, time, and place) of each court proceeding that the witness is either required or entitled to attend, and of any scheduling changes.

(6) The detention or release from detention of an offender or suspected offender.

(7) The acceptance of a plea of guilty or the rendering of a verdict after trial.

(8) The result of trial.

(9) If the sentence includes confinement, the probable parole date.

(10) General information regarding the corrections process, including information about forms of release from custody, and the offender's eligibility for each.

(11) In appropriate cases, inform the witness of the right to request notice of the offender's confinement or parole status.

(12) Inform the witness that the witness' interests are protected by criminal sanctions, that any attempted intimidation, harassment, or other tampering should be promptly reported to military authorities, and that complaints will be promptly investigated and appropriate action will be taken (para 17–19, above).

(13) Inform the witness that the VWL may act as an intermediary between a witness and representatives of the Government and the defense for the purpose of arranging witness interviews in preparation for trial, within the guidelines of RCM 701(e) and upon request (see para 17–19*d*, above).

(14) Use best efforts to apprise a witness' chain of command of the necessity for the witness' testimony, and the inevitable interference with and absence from duty (see para 17–18, above).

(15) Inform a witness that, upon request, reasonable steps will be taken to inform an employer should the witness' innocent involvement in a crime or in the subsequent military justice process cause or require absence from work (see para 17–20, above).

(16) Inform the witness that, upon request, reasonable steps will be taken to explain to a creditor when the witness, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, is subjected to serious financial hardship (see para 17–20, above).

(17) Inform the witness of the availability of a separate waiting area (see para 17–19*c*, above).

(18) Inform the witness of, and provide appropriate assistance to obtain, available services such as transportation, parking, childcare, lodging, and court-martial translators/interpreters (see para 17–23, above).

(19) Inform the witness that witnesses requested or ordered to appear at UCMJ, Art. 32 preliminary hearings or courts-martial may be entitled to reimbursement for their expenses under UCMJ, Arts. 46 and 47; RCM 405(g); DFAS–IN 37–1; and chapter 5 of this regulation (see para 17–21, above).

(20) Assist the witness in obtaining timely payment of witnesses fees and related costs and coordinate with local finance officers for establishing procedures for payment after normal duty hours if necessary (see para 17–21, above).

f. For the trial counsel or designated Government representative.

(1) No later than after trial if the offender is sentenced to confinement advise the witness of the offender's place of confinement and the offender's projected minimum release date.

(2) In all cases, advise the witness regarding the right to be notified of the offender's confinement or parole status changes or consideration for parole or clemency by using DD Form 2703 (see para 17–17, above).

g. For the VWL or designated Government representative.

(1) In all cases, complete DD Form 2704 regarding the witness' election regarding notification of changes in confinement status and give one copy to the witness; forward one copy of the form to the commander of the gaining confinement facility; and forward one copy of the form to the Army's central repository, Army Corrections Command

(DAPM–ACC), Victim/Witness Central Repository Manager, 150 Army Pentagon, Washington, DC 20310-0150 (see para 17–17, above).

(2) Do not attach DD Form 2704 to any portion of a record to which the offender has access (see para 17–17*b*, above).

h. Process a witness' request for investigative reports or other documents under applicable Freedom of Information or Privacy Act procedures (see para 17–25, above).

i. Ensure that each witness in an incident that is prosecuted at a GCM, SPCM or investigated pursuant to a UCMJ, Art. 32 preliminary hearing, in those cases not disposed of by GCM or SPCM, receives a DA Form 7568, Army Victim/Witness Liaison Program Evaluation form. These forms may also be provided to other witnesses (see para 17–28, above).

Appendix E
Military Justice Area Support Responsibilities

E–1. Coordinating installations

Commanders of coordinating installations exercising general courts-martial (GCM) jurisdiction will exercise those aspects of UCMJ authority, withheld as a matter of policy from reserve component commanders pursuant to chapter 20 of this regulation, to units and activities within the following geographical areas of responsibility. Commanders of coordinating installations exercising GCM jurisdiction will serve as General Courts-Martial Convening Authority for Community Based Warrior Transition Units based on geographical areas of responsibility.

E–2. Geographical areas of responsibility

See figure E–1, below, for support areas.

E–3. Outside continental United States support relationships

U.S. Army Reserve units OCONUS should continue existing support relationships already established within their geographic areas, such as that established by the 8th Theater Support Command for all U.S. Army Reserve units located in Hawaii, and that established by U.S. Army in Europe Regulation 27–10 for the 7th Army Reserve Command. Changes to the current GCMCA support arrangement in CONUS or OCONUS reflected in figure E–1 below, intended to last for more than eighteen months, should be followed by e-mail notification of such changes to OTJAG, Criminal Law Division, for information purposes. Also, OTJAG Criminal Law Division should be provided with an electronic courtesy copy of the U.S. Army in Europe Regulation 27–10 within 90 days following each updated publication.

Table E-1
Installations and areas of support responsibility

Aberdeen Proving Ground (CECOM), MD

New Jersey – All

Joint Base Lewis-McCord (I Corps), WA

a. Oregon – all b. Washington -All

Fort Belvoir, VA

a. Virginia counties

(1) Culpeper	(6) Madison	(11) Rappahannock	(16) Stafford
(2) Fauquier	(7) Northumberland	(12) Richmond	(17) Warren
(3) Greene	(8) Orange	(13) Rockingham	
(4) King George	(9) Page	(14) Shenandoah	
(5) Lancaster	(10) Prince William	(15) Spotsylvania	

b. West Virginia counties

(1) Grant	(2) Hardy	(3) Pendleton

c. Middle District of Washington (MDW): During mobilization planning and execution, Fort Belvoir is responsible for unit. Reserve component support located in Arlington and Fairfax counties.

Fort Benning, GA

a. Alabama counties

(1) Bullock	(4) Montgomery	(7) Lee
(2) Chambers	(5) Coosa	(8) Russell
(3) Macon	(6) Elmore	(9) Tallapoosa

b. Florida counties

(1) Bay	(7) Gadsden	(13) Jefferson	(19) Santa Rosa
(2) Calhoun	(8) Gilchrist	(14) Lafayette	(20) Suwanee
(3) Columbia	(9) Gulf	(15) Leon	(21) Walton
(4) Dixie	(10) Hamilton	(16) Liberty	(22) Wakulla
(5) Escambia	(11) Holmes	(17) Madison	(23) Washington
(6) Franklin	(12) Jackson	(18) Okaloosa	

c. Georgia – All counties except those listed under Fort Gordon and Fort Stewart.

d. Puerto Rico – All

e. Virgin Islands – All

Fort Bliss, TX

a. New Mexico - All

b. Texas counties

(1) Brewster	(4) Hudspeth	(7) Pecos	(10) Terrell
(2) Culberson	(5) Jeff Davis	(8) Presidio	(11) Ward
(3) El Paso	(6) Loving	(9) Reeves	(12) Winkler

Fort Bragg, NC

North Carolina – All

Figure E–1. Installations and areas of support responsibility

Table E-1 Continued

Fort Campbell, KY

a. Kentucky counties

(1) Edmonson
(2) Grayson
(3) Warren
(4) All counties west of Allen

b. Tennessee – All

Fort Carson, CO

a. Colorado - All
b. Idaho – All
c. Montana – All
d. Utah - All
e. Wyoming - All

Fort Drum, NY

a. New York – All counties, except those listed under USMA.
b. Connecticut – All
c. Maine – All
d. Massachusetts – All
e. New Hampshire – All
f. Rhode Island – All
g. Vermont – All

Fort George G. Meade, MD

a. Maryland counties – All, except those listed under MDW.
b. Delaware counties – All
c. Pennsylvania counties
d. Virginia counties

(1) Accomack
(2) Clarke
(3) Frederick
(4) Loudoun
(5) Northampton

e. West Virginia – All counties except Grant, Hardy, and Pendleton

Fort Gordon, GA

a. South Carolina counties

(1) Abbeville
(2) Aiken
(3) Allendale
(4) Anderson
(5) Barnwell
(6) Edgefield
(7) Greenville
(8) Greenwood
(9) Hampton
(10) Laurens
(11) McCormick
(12) Oconee
(13) Pickens
(14) Saluda
(15) Spartanburg

b. Georgia counties

(1) Baldwin
(2) Banks
(3) Burke
(4) Clarke
(5) Columbia
(6) Elbert
(7) Emanuel
(8) Franklin
(9) Glascock
(10) Green
(11) Hancock
(12) Hart
(13) Jackson
(14) Jefferson
(15) Jenkins
(16) Johnson
(17) Laurens
(18) Lincoln
(19) Madison
(20) McDuffie
(21) Morgan
(22) Oconee
(23) Oglethorpe
(24) Putnam
(25) Richmond
(26) Screven
(27) Stephens
(28) Taliaferro
(29) Warren
(30) Washington
(31) Wilkes
(32) Wilkinson

Fort Hood, TX

Texas – All counties, except those listed under Fort Bliss, Fort Sam Houston, and Fort Polk.

Figure E–1. Installations and areas of support responsibility—continued

Table E-1 Continued

Fort Huachuca, AZ

Arizona – All

Fort Irwin, CA

a. California counties

(1) Fresno	(6) Los Angeles	(11) Riverside	(16) Tulare
(2) Imperial	(7) Madera	(12) San Benito	(17) Ventura
(3) Inyo	(8) Mariposa	(13) San Bernardino	
(4) Kern	(9) Mono	(14) San Diego	
(5) Kings	(10) Orange	(15) Santa Barbara	

b. Nevada counties

(1) Clark	(3) Esmeralda	(5) Nye
(2) Mineral	(4) Lincoln	

Fort Jackson, SC

South Carolina – All counties, except those listed under Fort Gordon and Fort Stewart.

Fort Knox, KY

a. Illinois counties

(1) Champaign	(8) Douglas	(15) Jasper	(22) Moultrie
(2) Christian	(9) Edgar	(16) Laurence	(23) Piatt
(3) Clark	(10) Edwards	(17) Logan	(24) Richland
(4) Coles	(11) Effingham	(18) Macon	(25) Shelby
(5) Crawford	(12) Ford	(19) Mason	(26) Tazewell
(6) Cumberland	(13) Fulton	(20) McLean	(27) Vermilion
(7) DeWitt	(14) Iroquois	(21) Menard	(28) Wabas

b. Indiana – All counties, except for those listed under Fort Leavenworth.

c. Kentucky – All counties, except those listed under Fort Campbell.

d. Ohio – All

Fort Leavenworth, KS

a. Iowa - All	b. Michigan – All	c. Minnesota – All	d. Wisconsin – All

e. Illinois counties

(1) Boone	(9) Henry	(17) Lee	(25) Rock Island
(2) Bureau	(10) Jo Daviess	(18) Livingston	(26) Stark
(3) Carroll	(11) Kane	(19) Marshall	(27) Stephenson
(4) Cook	(12) Kankakee	(20) McHenry	(28) Warren
(5) DeKalb	(13) Kendall	(21) Mercer	(29) Whiteside
(6) DuPage	(14) Knox	(22) Ogle	(30) Will
(7) Grundy	(15) Lake	(23) Peoria	(31) Winnebago
(8) Henderson	(16) La Salle	(24) Putnam	(32) Woodford

f. Indiana counties

(1) Elkhart	(3) LA Porte	(5) St. Joseph
(2) Lake	(4) Porter	

Figure E–1. Installations and areas of support responsibility—continued

Table E-1 Continued

Fort Lee, VA

Virginia – All counties, except those listed under Fort Meade, Fort Belvoir, and MDW.

Fort Leonard Wood, MO

a. Illinois – All counties, except those listed under Fort Knox and Fort Leavenworth.
b. Missouri – All

Fort Polk, LA

a. Louisiana - All
b. Texas counties
(1) Chambers (2) Jefferson (3) Orange (Beaumont area)

Fort Riley, KS

a. Kansas - All
b. Nebraska - All
c. North Dakota – All
d. South Dakota - All

Fort Rucker, AL

a. Alabama counties – All counties, except those listed under Fort Benning.
b. Mississippi – All

Fort Sam Houston (U.S. Army North), TX

Texas
a. All counties south of -
(1) Burleson (4) Grimes (7) Mason (10) Sutton
(2) Burnet (5) Kimble (8) Milam (11) Washington
(3) Crockett (6) Llano (9) Montgomery (12) Williamson
b. All counties west of –
(1) Chambers (2) Liberty (3) Boundary on the west consists of the south half of Terrell County and the Mexican boarder.

Fort Sill, OK

a. Arkansas - All
b. Oklahoma – All

Figure E–1. Installations and areas of support responsibility—continued

Table E-1 Continued

Fort Stewart, GA

a. Florida – All counties, except those listed under Fort Benning.

b. Georgia

(1) Appling	(8) Candler	(15) Jeff Davis	(22) Telfair
(2) Atkinson	(9) Charlton	(16) Liberty	(23) Toombs
(3) Bacon	(10) Chatham	(17) Long	(24) Treutlen
(4) Brantley	(11) Coffee	(18) McIntosh	(25) Ware
(5) Bryan	(12) Effingham	(19) Montgomery	(26) Wayne
(6) Bullock	(13) Evans	(20) Pierce	(27) Wheeler
(7) Camden	(14) Glynn	(21) Tattnall	

c. South Carolina

(1) Beaufort (2) Jasper

Military District of Washington (MDW)

a. District of Columbia - All

b. Maryland counties

(1) Montgomery (2) Prince George's

c. Virginia counties

(1) Alexandria (2) Arlington (3) Fairfax (except for Fort Belvoir)

d. Includes all DA and other Government agencies/activities and individuals supported by MDW.

Presidio of Monterey (DLI), VA

a. California – All counties, except those listed under Fort Irwin.

b. Nevada – All counties, except those listed under Fort Irwin.

United States Military Academy (West Point), NY

New York

(1) Bronx	(6) Kings	(11) Queens	(16) Ulster
(2) Columbia	(7) Nassau	(12) Richmond	(17) Westchester
(3) Delaware	(8) New York County	(13) Rockland	
(4) Dutchess	(9) Orange	(14) Suffolk	
(5) Greene	(10) Putnam	(15) Sullivan	

Figure E–1. Installations and areas of support responsibility—continued

Appendix F
Guidance on DNA, civilians, and jurisdiction during war and contingency operations

F–1. DNA samples

The DOD policy for collecting DNA samples from military prisoners has been updated from the previous policy issued May 16, 2001. The new policy is set forth in a memorandum (see DODI 5505.14).

F–2. Civilian employees

The DOD General Counsel sets guidance applicable to DOD and U.S. Coast Guard civilian employees subject to the UCMJ (see DTM 09–15, dated Feb. 16, 2010).

F–3. Jurisdiction over civilians and other during war and contingency operations

Guidance to commanders on the exercise of their UCMJ authority during contingency operations, regarding nonmilitary personnel, is set forth in a SECDEF Memo, dated March 10, 2008.

Appendix G
Internal Control Evaluation

G–1. Function

The function covered by this checklist is compliance with military justice pursuant to AR 27–10, Military Justice, and AR 11–2, Managers' Internal Control Program.

G–2. Purpose

The purpose of this checklist is to assist chiefs of military justice and staff judge advocates in evaluating their key internal controls. It is not intended to cover all controls.

G–3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, and simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

G–4. Test questions

a. Managing the imposition of nonjudicial punishment. If nonjudicial punishment was imposed—

(1) Did the command initiate a flag in accordance with AR 600–8–2?

(2) Was DA Form 2627 completed properly?

(3) Was DA Form 2627 recorded properly in either the Soldier's local file or the OMPF?

(4) Was the reconciliation log (DA Form 5110) completed properly for all nonjudicial punishment within the appropriate jurisdiction?

(5) Was the DA Form 2627 distributed properly?

(6) If applicable, was the DA Form 2627 transferred or removed properly?

b. Managing the court-martial process.

(1) Does each level of command possess the appropriate level of authority to convene a court-martial?

(2) Has a convening order been produced?

(3) Have qualified trial counsel, defense counsel, and members been detailed and selected?

(4) If applicable, has the DA Form 5112 and other appropriate documentation been prepared and retained to justify pretrial confinement?

(5) Did the command initiate a flag in accordance with AR 600–8–2?

(6) Was DD Form 458 completed properly?

(7) Were charges forwarded properly?

(8) If applicable, was the UCMJ, Article 32 preliminary hearing completed and recorded properly?

(9) Do military justice supervisors regularly monitor witness travel expenses, and, where necessary, take corrective action to ensure travel dates are reliably established so that expenses are limited?

(10) Are witness travel payments made only to proper claimants with actual travel expenses?

(11) Were the DD Form 490 and DD Form 491 prepared properly, and was it timely?

(12) Was the record of trial completed accurately, and was it timely?

(13) Were the record of trial and other allied documents distributed properly and timely?

(14) Has a court-martial order been signed by the convening authority and distributed?

(15) Has a promulgating order been appropriately signed and distributed?

c. Detailing magistrates. Have military magistrates been detailed appropriately to provide sufficient coverage for the jurisdiction?

d. Reporting data. Has the Army Military Justice Report data been submitted and distributed?

e. Managing victim and witness assistance.

(1) Has the victim-witness program been trained and implemented in each GCMCA jurisdiction?

(2) Have victim-witness liaisons been appointed and trained?

(3) Have DD Forms 2701, 2702, 2703, and 2704 been completed and distributed properly?

(4) Have victim services been coordinated with medical, financial, legal, and social services?

(5) Have appropriate victim and witness notifications been made before, during, and after a court-martial?

(6) Have witness fees and costs been reimbursed?

(7) Do military justice supervisors oversee and reconcile witness fees and costs with local finance personnel?

(8) If applicable, has transitional compensation been provided to a victim?

(9) Has DA Form 7568 been properly completed and distributed?

f. Paralegals and judge advocates. Have paralegals and JAs been appropriately trained and prepared for processing military justice actions?

g. Complaints under UCMJ, Article 138.

(1) Have complaints been forwarded to the appropriate GCM authority as required?

(2) Have complaints deemed to be inappropriate been answered and referred appropriately?

(3) Have all appropriate complaints been answered?

(4) If applicable, has the complaint been forwarded to Department of the Army?

h. Federal court considerations. Have reports been prepared and submitted concerning prosecution of criminal offenses in federal court?

i. Registration of military sexual offenders.

(1) Was DD Form 2791 prepared properly and provided to the accused?

(2) Was DD Form 2791 included in the record of trial and distributed properly?

(3) Has the Provost Marshal entered appropriate data in the NCIC?

j. Court Reporter Program.

(1) Are court reporters properly trained and detailed?

(2) Are court reporters attaining the performance standard metric?

(3) Is the court reporter productivity report properly and timely completed and distributed?

(4) Are court reporters properly equipped?

k. Jurisdiction and court-martial considerations. Are appropriate procedures in place to implement the military extraterritorial jurisdiction act or to court-martial pursuant to UCMJ, Art. 2(a)(10)?

G–5. Supersession

No previous internal control evaluation exists for this program.

G–6. Comments

Help make this a better tool for evaluating management controls. Submit comments to the Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200.

Glossary

Section I
Abbreviations

AA
Active Army

ABCMR
Army Board for Correction of Military Records

ACOM
Army command

AD
active duty

ADT
active duty for training

AFI
Air Force instruction

AGR
active guard reserve

AKO
Army Knowledge Online

AR
Army regulation

ARNG
Army National Guard

ARNGUS
Army National Guard of the United States

Art.
Article

ASA (M&RA)
Assistant Secretary of the Army for Manpower and Reserve Affairs

ASCC
Army service component command

ASI
additional skill identifier

AT
annual training

BCD
bad-conduct discharge

CD/DVD
compact disc/digital video disc

CID
Criminal Investigation Command

CMA
Court of Military Appeals

CMIF
career management individual file

CMO
court-martial order

COCOM
combatant commander

COMDTINST
Commandant, U.S. Coast Guard instruction

CONUS
continental United States

CONUSA
continental United States Armies

CPL
corporal

CR
court reporter

DA
Department of the Army

DAD
Defense Appellate Division

DASEB
Department of the Army Suitability Evaluation Board

DCAP
Defense Counsel Assistance Program

DCO
designated commanding officer

DCS
Deputy Chief of Staff

DJMS
Defense Joint Military Pay System

DMPO
Defense Military Pay Office

DNA
deoxyribonucleic acid

DOD
Department of Defense

DODD
Department of Defense directive

DODI
Department of Defense instruction

DOJ
Department of Justice

DRU
direct reporting unit

ERB
enlisted record brief

ETS
expiration term of service

FAO
finance and accounting office

GAD
Government Appellate Division

GCM
general court-martial

GCMCA
general court-martial convening authority

HQ
headquarters

HQDA
Headquarters, Department of the Army

HRC
U.S. Army Human Resources Command

HRC–St. Louis
Human Resources Command–St. Louis

IDT
inactive duty training

IMCOM
Installation Management Command

iPERMS
interactive personnel electronic records management system

JA
judge advocate

JAGC
Judge Advocate General's Corps

JAGCNet
Judge Advocate General's Corps Network

JAGMAN
Manual for The Judge Advocate General, Navy

JALS
Judge Advocate Legal Service

MCM
Manual for Courts-Martial

MCU
multiple component units

MDW
Military District of Washington

MEJA
Military Extraterritorial Jurisdiction Act of 2000

MJM
U.S. Coast Guard Military Justice Manual

MOS
military occupational specialty

MOU
Memorandum of Understanding

MP
military police

MPD
military personnel division

MRE
Military Rules of Evidence (found in the MCM)

MSC
major subordinate command

MTF
medical treatment facility

MTOE
modification table of organization and equipment

NCO
noncommissioned officer

NSPS
National Security Personnel System

OCONUS
outside continental United States

OER
officer evaluation report

OMPF
official military personnel file

ORB
officer record brief

OSJA
Office of the Staff Judge Advocate

OTJAG
Office of The Judge Advocate General

PM
program manager

PMO
provost marshal office

PPTO
Personnel, Plans, and Training Office

PSC
personnel service company

RAM
random access memory

RC
Reserve Component

RCF
regional confinement facility

RCM
Rules for Courts-Martial

RDC
regional defense counsel

RFGOS
resignation for the good of the Service

ROT
record of trial

SAUSA
Special Assistant U.S. Attorney

SCM
summary court-martial

SDC
senior defense counsel

SECARMY
Secretary of the Army

SECDEF
Secretary of Defense

SFC
sergeant first class

SGT
sergeant

SIR
serious incident report

SJA
Staff Judge Advocate

SOFA
status of forces agreement

SPC
specialist

SPCM
special court-martial

SPCMCA
special court-martial convening authority

SROTC
Senior Reserve Officers' Training Corps

SSN
social security number

SVC
special victim counsel

SVCP
special victim counsel program

TCAP
Trial Counsel Assistance Program

TDA
table of distribution and allowances

TDS
Trial Defense Service

TDY
temporary duty

TJAG
The Judge Advocate General

TJAGLCS
The Judge Advocate General's Legal Center and School

TRADOC
Training and Doctrine Command

UCMJ
Uniform Code of Military Justice

USACCA
U.S. Army Court of Criminal Appeals

USACIDC
U.S. Army Criminal Investigation Command

USALSA
U.S. Army Legal Services Agency

USAR
U.S. Army Reserve

USARC
U.S. Army Reserve Command

USATDS
U.S. Army Trial Defense Service

USC
United States Code

USCAAF
U.S. Court of Appeals for the Armed Forces

USDB
U.S. Disciplinary Barracks

USMA
United States Military Academy

VA
victim advocate

VWL
victim/witness liaison

Section II
Terms

Active duty
Full-time duty in the active military Service of the United States including full-time training duty, annual training duty, and attendance, while in the active military Service, at a school designated as a Service school by law or by the Secretary of the Army.

Admonition
A warning or reminder given to an offender to deter repetition of a type of misconduct and to advise the offender of the consequences that may flow from a recurrence of that misconduct.

Chief circuit judge
The senior military judge in a judicial circuit, or other judge designated by the chief trial judge.

Chief Judge of the Army Court of Criminal Appeals
An appellate military judge of the U.S. Army Court of Criminal Appeals who is designated as Chief Judge of that court by TJAG.

Inactive duty training
Duty prescribed for Reserves by the Secretary of the Army pursuant to 37 USC 206 or any other provision of law and special additional duties authorized for Reserves by an authority designated by the Secretary of the Army and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Judicial circuit
One or more GCM jurisdictions, or the geographical area wherein the headquarters of such jurisdictions are situated, as designated by TJAG.

Military judge
A JA officer who has been certified by TJAG as qualified to preside over GCMs and/or SPCMs.

Military Judge Program
A system in which military judges are designated and made available for detail as judges of GCMs and SPCMs.

Mitigation
A reduction in either the quantity or quality of a punishment, its general nature remaining the same.

Prefer charges
The act of bringing charges against another party.

Reprimand
An act of formal censure that reproves or rebukes an offender for misconduct.

Reserve component
That part of the United States Army consisting of the Army National Guard of the United States and the United States Army Reserve.

Section III
Special Abbreviations and Terms

ABA
American Bar Association