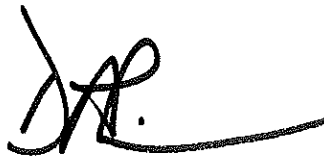


Effective 1 January 2022

Legal Services

Military Justice



DOUGLAS A. SIMS II
Major General, USA
Commanding

History. This is a major revision that replaces FRKS Supplement to AR 27-10 dated 29 October 2019. All previous supplements are rescinded.

Summary. This publication sets forth and implements policies and procedures pertaining to the administration of military justice and other select legal topics applicable to the 1st Infantry Division and Fort Riley, Kansas (1ID&FRKS). It supplements Army

Regulation 27-10 Military Justice, dated 20 November 2020, and clarifies local command policies meant to preserve good order and discipline.

Applicability. This supplement applies to all Active Army, Army National Guard (ARNG), and United States Army Reserve (USAR) personnel on active duty or inactive duty training and in a duty status under Title 10, United States Code, who are assigned or attached to Fort Riley. This includes all tenant units, organizations, and activities under the general court-martial authority of the Commander of 1st Infantry Division and Fort Riley. This supplement also applies to any individual not subject to the Uniform

Code of Military Justice (UCMJ), but whose duties or residence include the 1st Infantry Division or Fort Riley.

Proponent. The proponent is the 1st Infantry Division and Fort Riley, Kansas Staff Judge Advocate (SJA). In accordance with AR 27-10, this supplement was approved by the Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200.

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SUMMARY of CHANGE

1st Infantry Division and Fort Riley Supplement to AR 27-10, Military Justice

This administrative revision, dated 1 January 2022 –

- o Incorporates Army Regulation 27-10, dated 20 November 2020 throughout.
- o Provides delegation of signature authority to individuals holding specified positions within the Office of the Staff Judge Advocate (para 1-4.1).
- o Removes AR 15-6 investigation approval authority withholding to the Senior Commander 1ID&FRKS for all allegations of senior leader misconduct. The approval authority for administrative investigations will be IAW AR 15-6 or other regulations and policies e.g. AR 600-20, AR 735-5 etc. (formerly paragraph 5).
- o Reserves the authority for disposition of drug offenses to no lower than the SCMCA (para 3-7).
- o Clarifies the personal withholding of disposition for senior leader misconduct (para 3-13.1).
- o Removes mandatory initiation of separation against intoxicated drivers for the first offense (formerly paragraph 4).
- o Delegates the authority to approve pre-referral investigative subpoenas to the Staff Judge Advocate (para 5-16).
- o Adds clarifying instructions for pretrial confinement procedures (para 5-21).
- o Provides guidance to subordinate commanders on pretrial confinement (para 5-21).
- o Clarifies UCMJ, Art. 32 Preliminary Hearing processing (para 5-24.1).
- o Delegates approval authority for the authorization for payment of transportation expenses and allowances to civilian witness appearing before Article 32 preliminary hearings to the 1ID&FRKS SJA (para 5-25).
- o Authorizes specific members of the OSJA to authenticate the convening authority's personal determination to refer charges to trial by court-martial and the level of court-martial to which the charges will be referred (para 5-29).
- o Adds procedures for summary court martials (para 5-34).
- o Requires consultation with the OSJA prior to implementation of hard labor without confinement (para 5-4).

Army Regulation 27-10 Military Justice, dated 20 November 2020, is supplemented as follows:

Chapter 1- Introduction

Page 1. **1-1. Purpose.** Add the following:

The policies and limitations herein are not intended to impose jurisdictional requirements or procedural prerequisites on court-martial or non-judicial punishment proceedings, and are not intended to confer rights upon any accused. Each Commander must exercise their own independent judgement in disposing of allegations of misconduct as he or she deems appropriate.

Page 1. **1-4. Responsibilities.** Add subparagraphs e. through f.

e. Service of legal documents.

(1) The SJA, 1ID&FRKS, may accept service of process of legal documents on behalf of the Senior Commander, 1ID&FRKS.

(2) The Chief and/or Non-Commissioned Officer in Charge (NCOIC), Military Justice, may accept service of process of all criminal law documents.

f. Legal personnel management. The SJA has primary responsibility for the assignment, technical supervision, MOS-related training, management, education, professional development, and proper utilization of all legal personnel assigned to the 1ID&FRKS and its subordinate commands. This applies to all judge advocates (27A), legal administrators (270A), paralegal specialists/NCOs (27D), and court-reporters (27DC5), regardless of unit of assignment.

(1) Unless approved by the SJA, judge advocates, paralegals, and court reporters will not be assigned non-legal duties that would interfere with their primary assigned legal duties or create a potential conflict of interest. Such duties generally include Equal Opportunity Representative, Unit Victim Advocates, Charge of Quarters (CQ), Staff Duty Officer/NCO, Emergency Response Cell, and Courtesy Patrol.

Page 1. Add **1-4.1. Delegation of signature authority**

a. Personnel serving in the following positions within the Office of the Staff Judge Advocate (OSJA), 1ID&FRKS, are delegated authority in accordance with the provisions of AR 27-10, paragraph 5-29; AR 25-50, chapter 6; Rule for Courts-Martial 601(e); Manual for Courts-Martial; and AR 600-8-10, chapter 5, to sign and authenticate court-martial orders, referrals to trial by court-martial, administrative elimination actions, post-trial actions, referrals to trial by court-martial, excess leave and any other military justice matters within the general court-martial jurisdiction of the Senior Commander, 1ID&FRKS, which are not prohibited by Army regulation or Federal statute.

- (1) SJA
- (2) Deputy SJA
- (3) Chief, Military Justice
- (4) OSJA Command Paralegal

(5) NCOIC, Military Justice section

b. In accordance with AR 25-50, I, or my successors, retain the authority to cancel or withdraw this delegation of authority at any time.

c. The delegation authority herein will be automatically canceled upon the retirement, change of duty, or permanent change of station of the individual holding the positional signature authority.

Chapter 2 – Investigation and Prosecution of Crimes with Concurrent Jurisdiction

Page 3. **2-5. Administrative action.** Add subparagraph a.

a. Mandatory appearances in U.S. District or Magistrate Court take precedence over normal military duties. Commanders will excuse Soldiers, as necessary, to make their mandatory appearances in U.S. District or Magistrate Court. Any exceptions will be coordinated with the unit's servicing legal office and forwarded through the OSJA, 1ID&FRKS, Military Justice Section to the Special Assistant U.S. Attorney.

Chapter 3 – Nonjudicial Punishment

Section I – Applicable Policies

Page 4. *3-3b. Reprimands and admonitions.* Add subparagraph (4) and (5).

(4) Requests for a general officer memorandum of reprimand (GOMOR), other than those involving driving under the influence, will be forwarded in writing from the Special Court-Martial Convening Authority (SPCMCA) or Brigade Judge Advocate after consultation with the SPCMCA through the SJA, 1ID (ATTN: Chief, Military Justice) to the GCMCA for action. Requests will include a table of contents, all evidence relating to the offense(s), the results of any informal inquiry or investigation - tabbed to highlight key information, FLAG, and a copy of the Officer or Enlisted Record Brief. Legal offices will upload the information into Military Justice Online (MJO).

(5) Generally, recommendations should be submitted within 7 days of receipt of the Soldier's matters. If recommendations are not received within 14 days of receipt of the Soldier's matters, the GOMOR may be processed without chain of command recommendations.

Section II – Authority

Page 6. **3-7. Who may impose nonjudicial punishment.** Add subparagraphs e. through i.

e. *Withholding of authority for senior leader misconduct.* Initial disposition authority of any and all senior leader misconduct (misconduct involving commissioned officers, warrant officers, and noncommissioned officers in the grade of E-8 or above (or E-7's when frocked to 1SG) is withheld to the GCMCA. This withholding includes the authority to approve the permanent relief for cause of affected persons.

(1) Nothing in this provision prevents subordinate commanders from temporarily suspending officers or NCOs in accordance with other regulation or policy.

(2) This withholding does not prohibit subordinate commanders from preferring and forwarding court-martial charges as provided for in the UCMJ and Manual for Courts-Martial. The authority to refer said charges to a court-martial, however, is subject to this withholding.

f. Reservation of authority for Noncommissioned Officers in the grade of E-7. Authority to convene a summary court-martial, impose non-judicial punishment, or take administrative action in all cases involving allegations of misconduct committed by NCOs in the grade of E-7 is reserved to the SPCMCA in that Soldier's chain of command. This authority may be re-delegated to the Summary Court-Martial Convening Authority (SCMCA) on a case by case basis at the discretion of the SPCMCA. Any such re-delegation shall be in writing.

g. Reservation of authority for drug-related offenses. Authority to impose non-judicial punishment for drug-related offenses for Soldiers in the grades of E-1 through E-6 is reserved to no lower than the SCMCA.

h. Reservation of authority for certain sex related offenses. Authority to convene a summary court-martial, impose non-judicial punishment, or take administrative action in all cases involving the following allegations or all other offenses arising from or related to incident(s) of such offenses, whether committed by the alleged perpetrator or the alleged victim of such offense, is reserved to the Soldier's SPCMCA in the grade of O-6 or higher. If the Soldier's SPCMCA is not in the grade of O-6 or higher, initial disposition authority to take the above actions will be assigned to another O-6 level commander within 1ID&FRKS, as directed by the Senior Commander, 1ID&FRKS.

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

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

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

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

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

(6) Article 134: Child Pornography. This includes possessing, receiving, viewing, distributing, or producing.

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

Any disposition decision must be made after review of all investigative materials and consultation with the SPCMCA's servicing BJA/MJA. Subordinate commanders may make recommendations as to disposition to the O-6 SPCMCA.

i. Reservation of authority for victims of certain sex related offenses. Authority to impose punishment or take any disciplinary action in cases of alleged misconduct committed by victims of sexual misconduct offenses (including Article 120, Article 120a, Article 120b, Article 120c, or Article 125 (prior to 1 January 2019) offenses, or any attempts of any of these offenses) who have filed an unrestricted report is reserved to the SPCMCA in the grade of O-6 or higher. This reservation applies only when the victim's alleged misconduct is rationally related to the alleged sexual assault (e.g., underage drinking, violation of barracks visitation policies, fraternization, etc.).

Section III – Procedure

Page 8. Add **3-13.1. Procedures for senior leader misconduct**

3-13.1. Procedures for senior leader misconduct

a. Notification of senior leader misconduct. Commanders will, within 24 hours of initial notice, report allegations of senior leader misconduct through command channels to the Senior Commander, 1ID&FRKS, and include their servicing judge advocate as well as the SJA. Notification shall include the Soldier's full name, rank, a brief description of the allegation, the measures being taken by the immediate commander, and, if possible, the estimated date of completion of any investigation or inquiry. This reporting requirement is in addition to and SIR/CCIR reporting required through command channels. It is not intended to replace any command channel reporting requirements. Notification shall be in email format. Qualifying misconduct is any misconduct which is punishable by 1 year or more under the UCMJ or felony level criminal activity in a civilian jurisdiction.

(1) Founded allegations of senior leader misconduct, upon completion of inquiry or investigation, will be forwarded by the SPCMCA, through the OSJA, to the Senior Commander, 1ID&FRKS the following:

- (a) The complete investigative file or information concerning the alleged misconduct;
- (b) A record of previous disciplinary action, if any; and
- (c) Chain of command recommendations as to disposition; and, if applicable, a request for release of jurisdiction to dispose of the misconduct. This process does not preclude the SPCMCA requesting jurisdiction through command channels as long as a formal request is made as soon as practicable.

(2) The Senior Commander, 1ID&FRKS will be informed of unfounded allegations of senior leader misconduct, upon completion of inquiry or investigation, using the same notification procedure used in paragraph 3-13.1a.

Section IV – Punishment

Page 14. 3-19b.(1). *Correctional custody.* Add subparagraph (a)

- (a) The authority to impose correctional custody is withheld to the GCMCA.

Chapter 5 – Procedures for Courts-Martial

Section I – General

Page 26. **5-2. Secretarial designation of convening authorities.** Add subparagraphs e. through g.

e. In accordance with Secretary of the Army General Order 30 (11 July 1956), the Commander, 1st Infantry Division and Fort Riley, is designated as a general courts-martial convening authority pursuant to Article 22(a)(4). The Commander, 1st Infantry Division and Fort Riley will exercise GCMCA and original and appellate jurisdiction under Article 15, UCMJ; will be responsible for the administration of justice; and will take those administrative actions requiring an action by an officer exercising GCMCA for the

Army units, activities, and personnel assigned, attached or otherwise placed under the administrative control of 1ID&FRKS. Under the provisions of Articles 22(a)(4), 22(a)(5) and 22(a)(8), Uniform Code of Military Justice (UCMJ), the Commander, 1st Infantry Division and Fort Riley, Kansas, has authority to convene general courts-martial and ordinarily serves as the GCMCA for all units assigned or attached to 1st ID or Fort Riley for the administration of military justice, unless unit attachment or assignment orders specify otherwise.

f. Special Court-Martial Convening Authority (SPCMCA). SPCMCA will have concurrent UCMJ jurisdiction over all organic, assigned and attached units and personnel under their command. The following is a non-exclusive list of 1ID subordinate commanders authorized to exercise SPCMCA and may be supplemented by properly published orders. These commanders exercise special courts-martial convening authority pursuant to UCMJ Arts. 23(2), 23(3), and 23(6) for the exercise of administrative and punitive actions not otherwise withheld by the Senior Commander.

- (1) 1st Armored Brigade Combat Team, 1st Infantry Division;
- (2) 2d Armored Brigade Combat Team, 1st Infantry Division;
- (3) 1st Infantry Division Sustainment Brigade;
- (4) 1st Infantry Division Artillery;
- (5) 1st Combat Aviation Brigade;
- (6) US Army Garrison Fort Riley; and
- (7) US Army Medical Department Activity, Fort Riley.

g. Rear Provisional Units.

(1) Unless a rear provisional unit is properly established in accordance with AR 220-5, a unit's rear detachment will not have authority to administer actions pursuant to the UCMJ. Units deploying outside the continental United States will contact the Military Justice Division, OSJA, 1ID&FRKS for coordination regarding the establishment of rear provisional units no later than 90 days prior to that unit's deployment.

(2) Unless otherwise designated, upon establishment of a rear provisional unit, all rear detachment personnel will fall under their respective Headquarters Company/Troop/Battery, within their Rear Provisional Brigade for the purposes of UCMJ and adverse administrative actions.

Section III Reports, Investigations, and Subpoenas

Page 32. **5-16. Investigative subpoenas.** Add subparagraph c.(1)

c.(1) The SJA for 1ID&FRKS is delegated the authority to approve subpoenas pursuant to UCMJ, Art. 46(d)(1)(C), UCMJ, Art. 46(d)(2) and this rule.

Section IV Pretrial

Page 34. **5-21. Pretrial confinement.** Add subparagraphs a.(1) and e.

a.(1) Absent exigent circumstances, no person subject to the general court-martial jurisdiction of the Commander, 1ID&FRKS may be placed into pretrial confinement without the concurrence of the SJA, 1ID&FRKS. In no cases will pretrial confinement be

approved where the commander intends to dispose of the misconduct through proceedings less than a special court-martial.

e. Contact with Soldiers in pretrial confinement. Commanders will maintain contact with Soldiers in pretrial confinement (military and civilian) to ensure their safety and welfare.

(1) Company level commanders with Soldiers in local, civilian pretrial confinement (Riley, Geary, Dickinson, Morris, Wabaunsee counties) must visit the Soldier at least once during the first thirty (30) days of confinement. Thereafter, a member of the chain of command (Commanders, First Sergeants, Executive Officers, or other members of the chain of command or supervision) must telephonically contact the Soldier at least once per month.

(2) Company level commanders with Soldiers in non-local civilian pretrial confinement should telephonically contact the Soldier at least once during the first thirty (30) days of confinement. Thereafter, a member of the chain of command (Commanders, First Sergeants, Executive Officers, or other members of the chain of command or supervision) must telephonically contact the Soldier at least once per month.

Page 35. Add 5-24.1.

5-24.1. Procedures for preliminary hearings pursuant to Article 32, UCMJ

a. General. If a General Court-Martial (GCM) is considered appropriate, the SPCMCA will request a preliminary hearing officer, through the Military Justice Advisor/Trial Counsel. Whenever practicable, the convening authority directing a preliminary hearing under this rule shall appoint an impartial judge advocate as a preliminary hearing officer. An impartial judge advocate will be appointed as the preliminary hearing officer in all cases arising under Articles 120, 120a, 120b, 120c, and 125 (prior to 1 January 2019), UCMJ or attempts to commit such offenses. The Chief, Military Justice will select the judge advocate to serve as the preliminary hearing officer and provide the name of the selected officer to be appointed in writing to the SPCMCA. Commanders will support the use of their assigned judge advocates in this manner consistent with paragraph 5-24.1b, below.

b. Preliminary Hearing Officer's (PHO) duties.

(1) Duty as a PHO takes priority over all other duties. These officers are prohibited from taking leave, pass, training holidays, or TDY without personal approval from the appointing authority. PHOs will not be assigned other duties that interfere with the prompt disposition of their assigned cases.

(2) Preliminary Hearing Officer's report. A summarized, non-verbatim record of the proceedings will be prepared by the unit's paralegal specialist/NCO. Preparation of this record will take precedence over all non-legal duties. The PHO will complete DD Form 457, preliminary hearing officer's report, and submit it with the summarized record, a detailed chronology, any and all evidence, the allied documents, and any written requests for delay and the action thereon to the appropriate convening authority. This report shall be completed by the PHO within seven (7) calendar days of the hearing.

Any delay in the PHO completing this report within seven (7) calendar days of the hearing must be approved by the appointing authority.

(3) Only the SJA, 1ID&FRKS, can approve a request for a verbatim transcript.

Page 35. **5-25. Authorization for payment of transportation expenses and allowances to civilian witnesses appearing before UCMJ, Article 32 preliminary hearings.** Add subparagraph *b.*(1).

b.(1) The authority to approve payment of transportation expenses and allowances for civilian witnesses to testify at Article 32 preliminary hearings is delegated to the SJA, 1ID&FRKS.

Page 38. **5-29. Referral of charges.** Add subparagraph *a.*(1)

a.(1). Personnel serving in the following positions within the Office of the Staff Judge Advocate, Headquarters, 1st Infantry Division and Fort Riley, Fort Riley, Kansas, are delegated authority in accordance with the provisions of AR 27-10, paragraph 5-29; AR 25-50, chapter 6; Rule for Courts-Martial 601(e); Manual for Courts-Martial; and AR 600-8-10, chapter 5, to authenticate with the convening authority's command line a personal determination by the convening authority to refer charges to trial by court-martial and the level of court-martial to which the charges will be referred.

- (1) SJA
- (2) Deputy SJA
- (3) Chief, Military Justice
- (4) Command Paralegal
- (5) NCOIC, Military Justice Section

Section IV Trial

Page 41. **5-34. Procedure for summary courts-martial.** Add subparagraphs *f.* through *h.*

f. Advice to summary court-martial (SCM) officer. Officers appointed to conduct Summary Courts-Martial shall contact their servicing legal office for advice concerning their duties within 24 hours of appointment. Early contact with the legal office is necessary to ensure comprehensive advice and expeditious processing of these cases. Convening authorities will provide SCM officers with all necessary and relevant case materials.

g. Priority of duty. Duty as a SCM officer takes priority over all other duties. These officers are prohibited from taking leave, pass, training holidays, or TDY without personal approval from the convening authority. SCM officers will not be assigned other duties that interfere with the prompt disposition of their assigned cases.

h. Legal advisor responsibilities. The legal advisor will ensure the SCM officer understands the rules and procedures necessary to serve as a SCM officer, to include the applicability of the rules of evidence. The SCM officer will ensure the accused has completed DA Form 5111-R and include that form (or some other proof that the

accused had the opportunity to consult with counsel) in the SCM packet. The SCM officer may not proceed with the trial until he or she completes the legal advisement appointment and confirms that the accused has had the opportunity to consult with counsel.

Page 43. **5-40. Hard labor without confinement.** Add subparagraph 5-40a.(7) and 5-40a.(8)

(7). Due to potential health and safety issues associated with execution of a sentence to hard labor without confinement, and the potential for gross disparity in how these sentences are executed, commanders will draft a plan for the implementation of such sentences and submit the plan to the Chief, Military Justice, 1ID&FRKS for review prior to execution of the sentence.

(a) Hard labor plans will include the duration, purpose, activities, uniform, schedule, intensity, supervisory plan, medical support, and length and location of meal times for the hard labor contemplated. Additionally, plans will include a command risk assessment, inspection and supervision requirements by the chain of command, whether the Soldier will participate in PT and perform MOS related work during the duty day, and who will supervise the hard labor.

(b) The unit will submit the hard labor plan through the chain of command to the SPCMCA who will then forward it to the Chief, Military Justice, 1ID&FRKS.

(8) Cruelty toward, maltreatment of, or oppression of, any Soldier is prohibited and is punishable under the UCMJ. Soldiers executing hard labor will not be subjected to ridicule, humiliation, hazing, or other forms of degrading treatment.

Chapter 11 Form and Distribution of Court-Martial Orders

Page 74. **11-2. Convening orders for special and general courts-martial.** Add subparagraph *d*.

d. Once the convening authority has personally selected the court members or the summary court officer, the authority to sign the necessary documents (Vice Order) detailing the members or the officer, as chosen, and the convening order is delegated to the OSJA, 1ID&FRKS, personnel listed below. This includes situations where an enlisted Soldier elects to be tried by one-third enlisted members. In such cases, the primary officer members designated for replacement are replaced by the designated enlisted members in the order designated by the convening authority, and the authority to sign all documents reflecting the same is delegated to the following officers:

- (1) SJA
- (2) Deputy SJA
- (3) Chief, Military Justice
- (4) NCOIC, Military Justice Section
- (5) OSJA Legal Administrator