Army Regulation 27–10

Legal Services

Military Justice

Headquarters
Department of the Army
Washington, DC
20 August 1999

UNCLASSIFIED

SUMMARY of CHANGE

AR 27–10
Military Justice

This change 1--

- Provides for tenure for military trial(para 8-1g)and appellate judges(para 13-12).

- This provision was not included at the time of publication.

- **This revision--**

- Provides procedures for administering Article 15 punishment in multiservice units (paras 3-6, 3-7, 3-8, and 3-30).

- Clarification of the statute of limitations in Article 15 cases (para 3-12).

- Provides guidance for posting of Article 15 punishment forms in units (para 3-22).

- Allows a superior commander to mitigate a reduction of more than one grade to an intermediate grade (para 3-26).

- Clarifies Article 15 appellate rights (para 3-30).

- Exception concerning the removal of locally filed Article 15 forms when the only purpose for a soldier’s transfer is for medical treatment (para 3-37).

- Establishes additional requirements for requesting SA designation of commanders as courts-martial convening authorities (para 5-2).

- Establishes professional responsibility standards for military judges, trial and defense counsel, and clerical support personnel (para 5-8).

- Provides changes in the rules regarding detail of verbatim court reporters to non-BCD special courts-martial (para 5-25).

- Requires all credit against a sentence adjudged to confinement, or as approved by the convening authority, to be set out in the initial action (paras 5-27 and 5-28).

- States policy concerning fee requests for expert services in capital cases (para 6-5).

- Implements DODD 1030.1 and DODI 1030.2, and establishes guidance concerning the Army Victim/Witness Assistance Program and prescribes the use of six new DOD victim/witness forms (DD Forms 2701 through 2706)(chap 18).

Headquarters
Department of the Army
Washington, DC
20 August 1999

*Army Regulation 27–10

Effective 20 September 1999

Legal Services

Military Justice

Louis Caldera
Secretary of the Army

History. This publication was originally printed on 24 June 1996. It was authenticated by Togo D. West, Jr., Secretary of the Army. This electronic edition publishes the basic 1996 edition and incorporates Change 1. Change 1 to this regulation was printed on 20 August 1999. Change 1 was authenticated by Louis Caldera, Secretary of the Army.

Summary. This regulation implements, in part, the Department of Defense Reorganization Act, changes to the Manual for Courts-Martial, 1984, 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, and the Army National Guard and the U.S. Army Reserve when either is on active duty or inactive duty training and in a duty status under title 10, United States Code. This regulation is applicable during full mobilization.

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General. The Judge Advocate General has the authority to approve exceptions to this regulation which are consistent with controlling law and regulation. The Judge Advocate General may delegate this authority in writing to a division chief within the proponent agency in the grade of colonel or the civilian equivalent.

Army management control process. This regulation contains management control provisions but does not identify key management controls that must be evaluated.

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from HQDA, Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Interim changes. Interim changes are not official unless authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA, Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Distribution. Distribution of this publication is made in accordance with the requirements on DA Form 12–09–E, block number 2038, intended for command levels C and D for Active Army, Army National Guard, and U.S. Army Reserve.

Contents (Listed by paragraph and page number)

Chapter 1
Introduction, *page 1*
Purpose • 1–1, *page 1*
References • 1–2, *page 1*
Explanation of abbreviations and terms • 1–3, *page 1*
Responsibilities • 1–4, *page 1*

Chapter 2
Investigation and Prosecution of Crimes over which the Department of Justice and the Department of Defense have Concurrent Jurisdiction, *page 1*
General • 2–1, *page 1*
Local application • 2–2, *page 1*
Action by convening authority • 2–3, *page 1*
Grants of immunity • 2–4, *page 1*
Administrative action • 2–5, *page 2*
Threats against the President • 2–6, *page 2*
Memorandum of Understanding • 2–7, *page 2*

Chapter 3
Nonjudicial Punishment, *page 6*

Section I
Applicable Policies (para 1, Part V, MCM), page 6
General • 3–1, *page 6*
Use of nonjudicial punishment • 3–2, *page 6*
Relationship of nonjudicial punishment to nonpunitive measures (para 1.g., Part V, MCM) • 3–3, *page 7*
Personal exercise of discretion (para 1.d.(2), Part V, MCM) • 3–4, *page 7*
Reference to superior • 3–5, *page 7*
Filing determination • 3–6, *page 7*

Section II
Authority (para 2, Part V, MCM), page 7
Who may impose nonjudicial punishment • 3–7, *page 7*
Persons on whom nonjudicial punishment may be imposed • 3–8, *page 8*
Minor offenses • 3–9, *page 9*
Double punishment prohibited • 3–10, *page 9*
Restriction on punishment after exercise of jurisdiction by civilian authorities • 3–11, *page 9*

* This regulation supersedes AR 27-10, dated 8 August 1994, and Interim Change I01, dated 16 December 1994.

UNCLASSIFIED

Statute of limitations • 3–12, *page 9*

Section III
Procedure (para 4, Part V, MCM), page 9
General • 3–13, *page 9*
Preliminary inquiry • 3–14, *page 9*
Commander's guide for notification and imposition • 3–15, *page 9*
Summarized proceedings • 3–16, *page 9*
Formal proceedings (para 4, Part V, MCM) • 3–17, *page 10*
Notification and explanation of rights • 3–18, *page 10*

Section IV
Punishment (para 5, Part V, MCM), page 11
Rules and limitations • 3–19, *page 11*
Effect on appointable status • 3–20, *page 12*
Effective date and execution of punishments • 3–21, *page 12*
Announcement of punishment • 3–22, *page 12*

Section V
Suspension, Vacation, Mitigation, Remission, and Setting Aside (para 6, Part V, MCM), page 13
Clemency • 3–23, *page 13*
Suspension • 3–24, *page 13*
Vacation • 3–25, *page 13*
Mitigation • 3–26, *page 13*
Remission • 3–27, *page 14*
Setting aside and restoration • 3–28, *page 14*

Section VI
Appeals (para 7, Part V, MCM), page 14
General • 3–29, *page 14*
Who may act on an appeal • 3–30, *page 14*
Procedure for submitting an appeal • 3–31, *page 15*
Action by the imposing commander or the successor-in-command • 3–32, *page 15*
Action by the superior authority • 3–33, *page 15*
Action by a judge advocate • 3–34, *page 15*
Action by superior authority regardless of appeal • 3–35, *page 15*

Section VII
Records of Punishment, DA Form 2627 (para 8, Part V, MCM), page 15
Records of punishment • 3–36, *page 15*
Distribution and filing of DA Form 2627 and allied documents • 3–37, *page 15*
Supplementary action • 3–38, *page 16*
Reconciliation Log • 3–39, *page 17*
Time for distribution of initial DA Form 2627 • 3–40, *page 17*
Filing of records of punishment imposed prior to 1 November 1982 • 3–41, *page 17*
Transfer of Article 15s wholly set aside or in cases of change of status • 3–42, *page 17*
Transfer or removal of records of nonjudicial punishment • 3–43, *page 17*
Use of records • 3–44, *page 18*

Chapter 4
Disciplinary Proceedings Subsequent to Exercise of Jurisdiction by Civilian Authorities, *page 24*
General • 4–1, *page 24*
Policy • 4–2, *page 24*
Procedure • 4–3, *page 24*

Chapter 5
Procedures for Courts-Martial, *page 24*

Section I
General, page 24
Scope • 5–1, *page 24*
Courts-martial jurisdiction • 5–2, *page 24*

Section II
Court-Martial Personnel, page 24
Detail of military judges and trial counsel • 5–3, *page 24*
Certification and use of lawyers • 5–4, *page 25*
Qualified counsel at courts-martial • 5–5, *page 25*
Qualified individual civilian counsel at courts-martial • 5–6, *page 25*
Individual military counsel • 5–7, *page 25*
Professional standards • 5–8, *page 26*
Rating of court members, counsel, and military judges • 5–9, *page 26*
Preparation by court-martial personnel • 5–10, *page 26*
Reporters • 5–11, *page 26*
Authorization for payment of transportation expenses and allowances to civilian witnesses appearing before Article 32, UCMJ, investigations • 5–12, *page 26*

Section III
Pretrial, page 27
Pretrial confinement • 5–13, *page 27*
Preparation of charge sheet • 5–14, *page 27*
Forwarding of charges • 5–15, *page 27*
Referral of charges • 5–16, *page 27*
Accused's copy of charge sheet • 5–17, *page 27*
Preliminary procedures • 5–18, *page 27*
Preparation of DD Form 493 (Extract of Military Records of Previous Convictions • 5–19, *page 28*
Witness attendance • 5–20, *page 28*

Section IV
Trial, page 28
Procedure for summary courts-martial • 5–21, *page 28*
Arraignment and pleas • 5–22, *page 28*
Disclosure of Pretrial Restraint • 5–23, *page 28*
Entry of findings of guilty pursuant to a plea • 5–24, *page 28*
Special courts-martial involving bad-conduct discharges (BCD) • 5–25, *page 29*
Personal data and character of prior service of the accused • 5–26, *page 29*

Section V
Post-trial, page 29
Report of result of trial • 5–27, *page 29*
Convening authority action • 5–28, *page 29*
Transfer of convening authority action • 5–29, *page 30*
Rehearing in cases in which the accused is absent without leave • 5–30, *page 30*
Suspension of sentence • 5–31, *page 30*
Vacation of suspended sentences • 5–32, *page 30*
Disposition of SJA recommendations and JA reviews of records of GCM and of SPCM in which a bad-conduct discharge has been approved • 5–33, *page 30*
Stay of execution of death sentence • 5–34, *page 30*
Clemency under Article 74 • 5–35, *page 30*
Petition for new trial under Article 73 • 5–36, *page 30*

Section VI
Records of Trial, page 31
Preparation • 5–37, *page 31*
Readability of records of trial • 5–38, *page 31*
Retention of trial notes or recordings • 5–39, *page 31*
Authentication of records of trial • 5–40, *page 31*
Service of record of trial on the accused • 5–41, *page 32*
Forwarding of records of trial after initial action • 5–42, *page 32*
Disposition of records of trial • 5–43, *page 32*

Mailing records of trial • 5–44, *page 32*

Chapter 6
United States Army Trial Defense Service, *page 32*
General • 6–1, *page 32*
Mission • 6–2, *page 32*
Organization • 6–3, *page 32*
Administrative and logistical support • 6–4, *page 33*
Funding responsibilities • 6–5, *page 33*
Training • 6–6, *page 33*
Installations without a servicing USATDS office • 6–7, *page 33*
Mutual support responsibilities • 6–8, *page 33*
Detail of defense counsel • 6–9, *page 34*
Requests for individual military counsel • 6–10, *page 34*
Professional standards • 6–11, *page 34*

Chapter 7
Court Membership and Other Related Military Justice Duties by Non-JAGC Personnel, *page 34*
General • 7–1, *page 34*
Chaplains • 7–2, *page 35*
Medical, dental, and veterinary officers • 7–3, *page 35*
Army nurses • 7–4, *page 35*
Medical specialist corps • 7–5, *page 35*
Inspectors general (IG) • 7–6, *page 35*
Warrant officers • 7–7, *page 35*

Chapter 8
United States Army Trial Judiciary—Military Judge Program, *page 35*
General • 8–1, *page 35*
Qualifications of military judges • 8–2, *page 35*
Judicial circuits • 8–3, *page 36*
Functions and duties of military judges • 8–4, *page 36*
Responsibilities of the chief circuit military judge • 8–5, *page 36*
Detailing of military judges • 8–6, *page 36*
Administrative and logistical support • 8–7, *page 37*
Rules of court • 8–8, *page 37*

Chapter 9
Military Magistrate Program, *page 37*

Section I
General, page 37
Scope • 9–1, *page 38*
Appointment of military magistrates • 9–2, *page 38*
Powers of military magistrates • 9–3, *page 38*
Supervision of military magistrates • 9–4, *page 38*

Section II
Pretrial Confinement, page 38
Review by military magistrate • 9–5, *page 38*
Administrative and logistical support • 9–6, *page 39*

Section III
Search, Seizure, and Apprehension Authorizations, page 39
Authority of military judges and magistrates to issue authorizations • 9–7, *page 39*
Issuance • 9–8, *page 39*
Oaths • 9–9, *page 39*
Execution and disposition of authorizations and other related papers • 9–10, *page 39*
Recovery and disposition of property • 9–11, *page 40*
Reapplication • 9–12, *page 40*
Legality of searches and seizures • 9–13, *page 40*

Chapter 10
Courts of Inquiry, *page 43*
General • 10–1, *page 43*
Jurisdiction • 10–2, *page 43*
Composition • 10–3, *page 43*
Convening order • 10–4, *page 43*
Designation of parties • 10–5, *page 43*
Rights of parties • 10–6, *page 44*
Witnesses • 10–7, *page 44*
Procedure • 10–8, *page 44*
Report • 10–9, *page 45*
Preparation and submission of record • 10–10, *page 45*
Action of convening authority • 10–11, *page 45*
Disposition of record • 10–12, *page 45*

Chapter 11
Oaths, *page 45*
General • 11–1, *page 45*
Persons required to be sworn • 11–2, *page 46*
Oath administration procedure—military judges • 11–3, *page 46*
Oath administration—counsel • 11–4, *page 46*
Oath administration procedure—court members • 11–5, *page 46*
Oath administration procedure—reporters • 11–6, *page 46*
Oath administration procedure—interpreters • 11–7, *page 46*
Forms of oaths for court-martial personnel • 11–8, *page 46*
Oath administration procedure—persons providing sworn information in support of requests for authorizations to search and seize and authorizations to apprehend • 11–9, *page 47*
Form of oaths for probable cause searches and seizures and apprehensions • 11–10, *page 47*
Form of oath for the accused following a plea of guilty • 11–11, *page 47*

Chapter 12
Court-Martial Orders, *page 47*
Types of court-martial orders • 12–1, *page 47*
Convening orders • 12–2, *page 47*
Promulgating orders • 12–3, *page 48*
Format for SCM Court-Martial Orders (CMOs) • 12–4, *page 48*
Format for CMOs • 12–5, *page 48*
Modification of findings or sentence • 12–6, *page 48*
Distribution of CMOs • 12–7, *page 49*

Chapter 13
Appellate Review Matters, *page 56*
Scope • 13–1, *page 56*
Petitions for extraordinary relief • 13–2, *page 56*
Appeals under Article 62 • 13–3, *page 56*
Appellate advice after trial • 13–4, *page 56*
Waiver or withdrawal of appellate review • 13–5, *page 56*
Identifying companion and other cases • 13–6, *page 57*
Rules of appellate procedure • 13–7, *page 57*
Clerk of Court, U.S. Army Judiciary • 13–8, *page 57*
Serving USACCA decisions on the accused • 13–9, *page 57*
Cases remanded by the USACCA or USCAAF • 13–10, *page 58*
Leave or transfer pending appellate review • 13–11, *page 58*
Tenure for military appellate judges • 13–12, *page 58*

Chapter 14
Application for Relief under Article 69, UCMJ, *page 58*
General • 14–1, *page 58*
Procedures for making application • 14–2, *page 58*
Submission of application • 14–3, *page 58*
Timeliness • 14–4, *page 59*

Chapter 15
Report of Judicial and Disciplinary Activity in the Army, Requirements Control Symbol JAG-2 (R12), *page 59*
Preparation • 15–1, *page 59*

Frequency and content • 15–2, *page 59*
Routing and due date • 15–3, *page 59*
Negative reports • 15–4, *page 59*
Instructions for completing DA Form 3169-R • 15–5, *page 59*

Chapter 16
Allegations of Misconduct and Suspension of Counsel and Military Judges, *page 60*

Section I
General, page 60
Scope • 16–1, *page 60*
Withdrawal of certification by TJAG • 16–2, *page 60*

Section II
Suspension of Counsel, page 60
General • 16–3, *page 60*
Grounds for suspension • 16–4, *page 60*
Action to suspend military counsel • 16–5, *page 61*
Action to suspend civilian counsel • 16–6, *page 61*
Modification or revocation of suspension or decertification • 16–7, *page 61*
Removal of counsel or reassignment of duties • 16–8, *page 61*

Section III
Suspension of Military Judges, page 61
General • 16–9, *page 61*
Grounds • 16–10, *page 61*
Removal of a military judge • 16–11, *page 61*
Procedure • 16–12, *page 61*
Modification or revocation of suspension or decertification • 16–13, *page 61*

Chapter 17
Custody Policies Overseas, *page 61*
General • 17–1, *page 61*
Custody policies • 17–2, *page 61*
Exercise of custody provisions granted under international agreements • 17–3, *page 62*
Implementation by major commands • 17–4, *page 62*

Chapter 18
Victim/Witness Assistance, *page 62*

Section I
General, page 62
Purpose • 18–1, *page 62*
Policy • 18–2, *page 62*
Application • 18–3, *page 63*
Objectives • 18–4, *page 63*
Definitions • 18–5, *page 63*

Section II
Victim/Witness Assistance Program, page 63
General • 18–6, *page 63*
Victim/Witness Liaison • 18–7, *page 64*
Identification of victims and witnesses • 18–8, *page 64*
Initiation of liaison service • 18–9, *page 64*
Rights of Crime Victims • 18–10, *page 64*
Training and Publicity • 18–11, *page 64*

Section III
Victim Services, page 64
Medical, financial, legal, and social services • 18–12, *page 64*
Stages and role in military criminal justice process • 18–13, *page 65*
Notification and description of services provided victims of crime • 18–14, *page 65*
Consultation with victims • 18–15, *page 65*
Property return and restitution • 18–16, *page 65*

Section IV
Witness Services, page 66
Notification and description of services provided witnesses • 18–17, *page 66*
Limitations • 18–18, *page 66*

Section V
Victim and Witness Services, page 66
Protection of victims and witnesses • 18–19, *page 66*
Notification to employers and creditors • 18–20, *page 67*
Witness fees and costs • 18–21, *page 67*
Civilian witness travel to proceedings overseas • 18–22, *page 67*
Local services • 18–23, *page 67*
Requests for investigative reports or other documents • 18–24, *page 67*

Section VI
Confinement Facilities and Central Repository, page 67
Confinement Facilities • 18–25, *page 67*
Reporting Requirements and Responsibilities • 18–26, *page 67*

Chapter 19
Military Justice Training, *page 68*
General • 19–1, *page 68*
Training organization • 19–2, *page 68*
Curriculum courses • 19–3, *page 68*
Required military justice for enlisted soldiers • 19–4, *page 68*
Required military justice training for commissioned officers and officer candidates and cadets • 19–5, *page 68*
Optional military justice training • 19–6, *page 69*
Course development and instruction • 19–7, *page 69*

Chapter 20
Complaints Under Article 138, UCMJ, *page 69*

Section I
General, page 69
Purpose • 20–1, *page 69*
Applicability • 20–2, *page 69*
Policy • 20–3, *page 69*
Explanation of terms • 20–4, *page 69*
Inappropriate subject matter for Article 138 complaints • 20–5, *page 70*

Section II
Making a Complaint, page 70
Request for redress • 20–6, *page 70*
Complaint • 20–7, *page 70*
Legal advice • 20–8, *page 71*

Section III
Action on the Complaint, page 71
Action by the person receiving the complaint • 20–9, *page 71*
Determination not required by officer exercising GCM jurisdiction • 20–10, *page 71*
Determination required by officer exercising GCM jurisdiction • 20–11, *page 71*
Action by Headquarters, Department of the Army (HQDA) • 20–12, *page 72*

Chapter 21
Military Justice Within the Reserve Components, *page 76*

Section I
General, page 76
Purpose • 21–1, *page 76*

Contents—Continued

Policy • 21–2, *page 76*

Section II
Involuntary Active Duty and Extension on Active Duty, page 76
Involuntary active duty • 21–3, *page 76*
Extending RC soldiers on AD • 21–4, *page 76*
Preservation of jurisdiction and punishment • 21–5, *page 76*

Section III
Nonjudicial Punishment (Article 15) and Courts-Martial, page 77
Nonjudicial Punishment (Article 15) • 21–6, *page 77*
Summary courts-martial • 21–7, *page 77*
Special and general courts-martial • 21–8, *page 77*
Forfeitures • 21–9, *page 77*
Reporting requirements and court-martial orders • 21–10, *page 77*

Section IV
Support Personnel and Responsibilities, page 77
Support personnel • 21–11, *page 77*
Support responsibilities AC GCMCAs • 21–12, *page 78*

Chapter 22
United States Army Trial Counsel Assistance Program, *page 78*
General • 22–1, *page 78*
Mission • 22–2, *page 78*
Organization • 22–3, *page 78*
Training • 22–4, *page 78*
Technical assistance • 22–5, *page 78*

Chapter 23
Prosecution of Criminal Offenses in Federal Courts, *page 78*
Scope • 23–1, *page 78*
Authority • 23–2, *page 78*
Felony prosecution programs • 23–3, *page 79*
Appointment of attorneys as Special Assistant U.S. Attorneys • 23–4, *page 79*
Misdemeanors • 23–5, *page 79*
Reports • 23–6, *page 79*
Witness expenses • 23–7, *page 79*

Appendixes

A. References, *page 82*

B. Suggested Guide for Conduct of Nonjudicial Punishment Proceedings, *page 85*

C. Attorney-Client Guidelines, *page 87*

D. Victim/Witness Checklist, *page 88*

Glossary

Index

Reproducible Forms

RESERVED

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, 1984, hereafter referred to as the MCM and the Rules for Courts-Martial (R.C.M.) contained in the MCM.

1–2. References
Required and related publications and prescribed and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms
Abbreviations and special terms used in this regulation are explained in the glossary. See also R.C.M. 103 for definitions of terms used in the MCM.

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 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 over which the Department of Justice and the Department of Defense have Concurrent Jurisdiction

2–1. General
a. This chapter implements a Memorandum of Understanding (MOU) (August 1984) 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 text of the memorandum is quoted in paragraph 2–7 of this regulation.

b. The MOU applies only within the United States and its possessions and only to those offenses that are triable in the U.S. district courts.

c. Notwithstanding any other provisions of this chapter, paragraph 2–4 *d* of this regulation shall apply within and outside the United States and its possessions.

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 (para D.1. of the MOU). If an agreement is not reached at the local level, the local commander will (if he or she does not exercise general court-martial (GCM) jurisdiction) promptly advise the commander exercising GCM jurisdiction over his or her command. If the commander exercising GCM jurisdiction (acting through his or her staff judge advocate (SJA)) is unable to effect an agreement, the matter will be reported to Headquarters, Department of the Army, Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, 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. Grants of immunity may be made under the Uniform Code of Military Justice (UCMJ), R.C.M. 704, and directives issued by the Secretary of the Army (SA), subject to the guidance set forth in this paragraph.

b. Persons subject to the UCMJ. 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.

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

(1) Draft a proposed order to testify for the signature of the GCM convening authority (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 the Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200 for coordination with DOD and DOJ, and approval by the 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 (FBI) number or local police number, if any.

(f) Whether any State or Federal charges are pending against the prospective witness and the nature of the charges.

(g) Whether the witness is currently incarcerated 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 him or her.

(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 Attorney General has authorized a grant of immunity, furnish the following information through Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200, to the Witness Record 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 U.S. national security. A proposed

grant of immunity will be forwarded to HQDA (DAJA-CL), Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200. After coordination with the Office of the Assistant Chief of Staff for Intelligence, 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

Administrative action according to paragraph F.1. of the MOU will be conducted in such a manner so as not to interfere with or otherwise prejudice the investigation by the responsible DOJ investigative agency.

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. Memorandum of Understanding

The provisions of the MOU between the DOJ and DOD and the DOD Supplemental Guidance relating to the investigation and prosecution of certain crimes are at figure 2–1.

A. Purpose, Scope and Authority

This Memorandum of Understanding (MOU) establishes policy for the Department of Justice and the Department of Defense with regard to the investigation and prosecution of criminal matters over which the two Departments have jurisdiction. This memorandum is not intended to confer any rights, benefits, privileges or form of due process procedure upon individuals, associations, corporations or other persons or entities.

This Memorandum applies to all components and personnel of the Department of Justice and the Department of Defense. The statutory bases for the Department of Defense and the Department of Justice investigation and prosecution responsibilities include, but are not limited to:

1. Department of Justice: Titles 18, 21 and 28 of the United States Code; and

2. Department of Defense: The Uniform Code of Military Justice, Title 10, United States Code, Sections 801-940; the Inspector General Act of 1978, Title 5 United States Code, Appendix I; and Title 5 United States Code, Section 301.

B. Policy

The Department of Justice has primary responsibility for enforcement of federal laws in the United States District Courts. The Department of Defense has responsibility for the integrity of its programs, operations and installations and for the discipline of the Armed Forces. Prompt administrative actions and completion of investigations within the five (5) year statute of limitations under the Uniform Code of Military Justice require the Department of Defense to assume an important role in federal criminal investigations. To encourage joint and coordinated investigative efforts, in appropriate cases where the Department of Justice assumes investigative responsibility for a matter relating to the Department of Defense, it should share information and conduct the inquiry jointly with the interested Department of Defense investigative agency.

It is neither feasible nor desirable to establish inflexible rules regarding the responsibilities of the Department of Defense and the Department of Justice as to each matter over which they may have concurrent interest. Informal arrangements and agreements within the spirit of this MOU are permissible with respect to specific crimes or investigations.

C. Investigative and Prosecutive Jurisdiction

1. Crimes arising from the Department of Defense Operations.

a. Corruption Involving the Department of Defense Personnel. The Department of Defense investigative agencies will refer to the FBI on receipt of all significant allegations of bribery and conflict of interest involving military or civilian personnel of the Department of Defense. In all corruption matters the subject of a referral to the FBI, the Department of Defense shall obtain the concurrence of the Department of Justice prosecutor or the FBI before initiating any independent investigation preliminary to any action under the Uniform Code of Military Justice. If the Department of Defense is not satisfied with the initial determination, the matter will be reviewed by the Criminal Division of the Department of Justice. The FBI will notify the referring agency promptly regarding whether they accept the referred matters for investigation. The FBI will attempt to make a decision in one (1) working day of receipt in such matters.

Figure 2-1. Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes—Continued

DOD Supplemental Guidance

A. Certain bribery and conflict of interest allegations (also referred to as " corruption" offenses in the MOU) are to be referred immediately to the FBI.

B. For the purposes of this section, bribery and conflict of interest allegations are those which would, if proven, violate 18 U.S.C., Sections 201, 203, 205, 208, 209, or 219 (reference (c)).

C. Under paragraph C.1.a., DoD criminal investigative organizations shall refer to the FBI those "significant" allegations of bribery and conflict of interest that implicate directly military or civilian personnel of the Department of Defense, including allegations of bribery of conflict of interest that arise during the course of an ongoing investigation.

1. All bribery and conflict of interest allegations against present, retired, or former General or Flag officers and civilians in grades GS-16 and above, the Senior Executive Service and the Executive Level will be considered "significant" for purposes of referral to the FBI.

2. In cases not covered by subsection C.1., above, the determination of whether the matter is "significant" for purposes of referral to the FBI should be made in light of the following factors: sensitivity of the DOD program involved, amount of money in the alleged bribe, number of DOD personnel implicated, impact of the affected DOD program, and with respect to military personnel, whether the matter normally would be handled under the Uniform Code of Military Justice (reference (d)). Bribery and conflicts of interest allegations warranting consideration of Federal prosecution, which were not referred to the FBI based on the application of these guidelines and not otherwise disposed of under reference (d), will be developed and brought to the attention of the Department of Justice through the "conference" mechanism described in paragraph C.1.b. of the MOU (reference (b)).

D. Bribery and conflict of interest allegations when military or DoD civilian personnel are not subjects of the investigation are not covered by the referral requirement of paragraph C.1.a. of reference (b). Matters in which the suspects are solely DoD contractors and their subcontractors, such as commercial bribery between a DOD subcontractor and DOD prime contractor, do not require referral upon receipt to the FBI. The "conference" procedure described in paragraph C.1.b. of reference (b) shall be used in these types of cases.

E. Bribery and conflict of interest allegations that arise from events occurring outside the United States, its territories, and possessions, and requiring investigation outside the United States, its territories, and possessions need not be referred to the FBI.

b. Frauds against the Department of Defense and Theft and Embezzlement of Government Property. The Department of Justice and Department of Defense have investigative responsibility for frauds against the Department of Defense and theft and embezzlement of Government property from the Department of Defense. The Department of Defense will investigate frauds against the Department of Defense and theft of government property from the Department of Defense. Whenever a Department of Defense investigative agency identifies a matter which, if developed by investigation, would warrant federal prosecution, it will confer with the United States Attorney or the Criminal Division, the Department of Justice, and the FBI field office. At the time of this initial conference, criminal investigative responsibility will be determined by the Department of Justice in consultation with the Department of Defense.

DOD Supplemental Guidance

A. Unlike paragraph C.1.a. of the MOU (reference (b)), paragraph C.1.b. does not have an automatic referral requirement. Under paragraph C.1.b., DOD criminal investigative organizations shall confer with the appropriate federal prosecutor and the FBI on matters which, if developed by investigation, would warrant Federal prosecution. This "conference" serves to define the respective roles of DOD criminal investigative organizations and the FBI on a case-by-case basis. Generally, when a conference is warranted, the DOD criminal investigative organization shall arrange to meet with the prosecutor and shall provide notice to the FBI that such a meeting is being held. Separate conferences with both the prosecutor and the FBI normally are not necessary.

B. When investigations are brought to the attention of the Defense Procurement Fraud Unit (DPFU), such contact will satisfy the "conference" requirements of paragraph C.1.b. (reference (b)) as to both the prosecutor and the FBI.

C. Mere receipt by DOD criminal investigative organizations of raw allegations of fraud or theft does not require conferences with the DoJ and the FBI. Sufficient evidence should be developed before the conference to allow the prosecutor to make an informed judgment as to the merits of a case dependent upon further investigation. However, DOD criminal investigative organizations should avoid delay in scheduling such conferences, particularly in complex fraud cases, because an early judgment by a prosecutor can be of assistance in focusing the investigation on those matters that most likely will result in criminal prosecution.

2. Crimes Committed on Military Installations.

a. Subject(s) can be Tried by Court-Martial or are Unknown Crimes (other than those covered by paragraph C.1) committed on a military installation will be investigated by the Department of Defense investigative agency concerned and, when committed by a person subject to the Uniform Code of Military Justice, prosecuted by the Military Department concerned. The Department of Defense will provide immediate notice to the Department of Justice of significant cases in which an individual subject/victim is other than a military member or dependent thereof.

b. One or more subjects cannot be tried by Court-Martial. When a crime (other than those covered by paragraph C.1.) has occurred on a military installation and there is reasonable basis to believe that it has been committed by a person or persons, some or all of whom are not subject to the Uniform Code of Military Justice, the Department of Defense investigative agency will provide immediate notice of the matter to the appropriate Department of Justice

Figure 2-1. Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes—Continued

investigative agency unless the Department of Justice has relieved the Department of Defense of the reporting requirement for that type or class of crime.

DOD Supplemental Guidance

A. Subsection C.2. of the MOU (reference (b)) addresses crimes committed on a military installation other than those listed in paragraphs C.1.a. (bribery and conflict of interest) and C.1.b. (fraud, theft, and embezzlement against the Government).

B. Unlike paragraph C.1.a. of reference (b), which requires " referral" to the FBI of certain cases, and paragraph C.1.b., which requires " conferences" with respect to certain cases, subsection C.2. requires only that " notice" be given to DOJ of certain cases. Relief from the reporting requirement of subsection C.2. may be granted by the local U.S. attorney as to types or classes of cases.

C. For purposes of paragraph C.2.a. (when the subjects can be tried by court-martial or are unknown) an allegation is "significant" for purposes of required notice to the DOJ only if the offense falls within the prosecutorial guidelines of the local U.S. attorney. Notice should be given in other cases when the DOD Component believes that Federal prosecution is warranted or otherwise determines that the case may attract significant public attention.

3. Crimes Committed Outside Military Installations By Persons who can be tried by Court-Martial.

a. Offense is Normally Tried by Court-Martial. Crimes (other than those covered by paragraph C.1) committed outside a military installation by persons subject to the Uniform Code of Military Justice which, normally, are tried by court-martial will be investigated and prosecuted by the Department of Defense. The Department of Defense will provide immediate notice of significant cases to the appropriate Department of Justice investigative agency. The Department of Defense will provide immediate notice in all cases where one or more subjects are not under military jurisdiction unless the Department of Justice has relieved the Department of Defense of the reporting requirement for that type or class of crime.

DOD Supplemental Guidance

For purposes of this paragraph, an allegation is " significant" for purposes of required notice to the DOJ only if the offense falls within prosecutorial guidelines of the local U.S. Attorney. Notice should be given in other cases when the DOD Component believes that Federal prosecution is warranted, or otherwise determines that the case may attract significant public attention.

b. Crimes Related to Scheduled Military Activities. Crimes related to scheduled military activities outside of a military installation, such as organized maneuvers in which persons subject to the Uniform Code of Military Justice are suspects, shall be treated as if committed on a military installation for purposes of this Memorandum. The FBI or other Department of Justice investigative agency may assume jurisdiction with the concurrence of the United States Attorney or the Criminal Division, Department of Justice.

c. Offense is not normally tried by Court-Martial. When there are reasonable grounds to believe that a Federal crime (other than those covered by paragraph C.1.) normally not tried by court-martial, has been committed outside a military installation by a person subject to the Uniform Code of Military Justice, the Department of Defense investigative agency will immediately refer the case to the appropriate Department of Justice investigative agency unless the Department of Justice has relieved the Department of Defense of the reporting requirement for that type or class of crime.

D. Referrals and Investigative Assistance

1. Referrals. Referrals, notices, reports, requests and the general transfer of information under this MOU normally should be between the FBI or other Department of Justice investigative agency and the appropriate Department of Defense investigative agency at the field level.

If a Department of Justice investigative agency does not accept a referred matter and the referring Department of Defense investigative agency then, or subsequently, believes that evidence exists supporting prosecution before civilian courts, the Department of Defense agency may present the case to the United States Attorney or the Criminal Division Department of Justice, for review.

2. Investigative Assistance. In cases where a Department of Defense or Department of Justice investigative agency has primary responsibility and it requires limited assistance to pursue outstanding leads, the investigative agency requiring assistance will promptly advise the appropriate investigative agency in the other Department and, to the extent authorized by law and regulations, the requested assistance should be provided without assuming responsibility for the investigation.

E. Prosecution of Cases

1. With the concurrence of the Department of Defense, the Department of Justice will designate such Department of Defense attorneys as it deems desirable to be Special Assistant United States Attorneys for use where the effective prosecution of cases may be facilitated by the Department of Defense attorneys.

Figure 2-1. Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes—Continued

2. The Department of Justice will institute civil actions expeditiously in United States District Courts whenever appropriate to recover monies lost as a result of crimes against the Department of Defense. The Department of Defense will provide appropriate assistance to facilitate such actions.

3. The Department of Justice prosecutors will solicit the views of the Department of Defense prior to initiating action against an individual subject to the Uniform Code of Military Justice.

4. The Department of Justice will solicit the views of the Department of Defense with regard to its Department of Defense-related cases and investigations in order to effectively coordinate the use of civil, criminal and administrative remedies.

DOD Supplemental Guidance

Prosecution of Cases and Grants of Immunity

A. The authority of court-martial convening authorities to refer cases to trial, approve pretrial agreements, and issue grants of immunity under the UCMJ (reference (d)) extends only to trials by court-martial. If appropriate action by Federal civilian authorities in cases likely to be prosecuted in the U.S. district courts, court-martial convening authorities shall ensure that appropriate consultation as required by this enclosure has taken place before trial by court-martial, approval of a pretrial agreement, or issuance of a grant of immunity in cases when such consultation is required.

B. Only a general court-martial convening authority may grant immunity under the UCMJ (reference (d)), and may do so only in accordance with R.C.M. 704 (reference (e)).

1. Under reference (d), there are two types of immunity in the military justice system:

a. A person may be granted transactional immunity from trial by court-martial for one or more offenses under reference (d).

b. A person may be granted testimonial immunity, which is immunity from the use of testimony, statements, and any information directly or indirectly derived from such testimony or statements by that person in a later court-martial.

2. Before a grant of immunity under reference (d), the general court-martial convening authority shall ensure that there has been appropriate consultation with the DOJ with respect to offenses in which consultation is required by this enclosure.

3. A proposed grant of immunity in a case involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States shall be forwarded to the General Counsel who shall obtain the views of other appropriate elements of the Department of Defense in furtherance of such consultation.

C. The authority of court-martial convening authorities extends only to grants of immunity from action under reference (d). Only the Attorney General or other authority designated under 18 U.S.C. sections 6001-6005 (reference (c)) may authorize action to obtain a grant of immunity with respect to trials in the U.S. district courts.

F. Miscellaneous Matters

1. The Department of Defense Administrative Actions. Nothing in this memorandum limits the Department of Defense investigations conducted in support of administrative actions to be taken by the Department of Defense. However, the Department of Defense investigative agencies will coordinate all such investigations with the appropriate Department of Justice prosecutive agency and obtain the concurrence of the Department of Justice prosecutor or the Department of Justice investigative agency prior to conducting any administrative investigation during the pendency of the criminal investigation or prosecution.

2. Special Uniform Code of Military Justice Factors. In situations where an individual subject to the Uniform Code of Military Justice is a suspect in any crime for which a Department of Justice investigative agency has assumed jurisdiction, if a Department of Defense investigative agency believes that the crime involves special factors relating to the administration and discipline of the Armed Forces that would justify its investigation, the Department of Defense investigative agency will advise the appropriate Department of Justice investigative agency or the Department of Justice prosecuting authorities of these factors. Investigation of such a crime may be undertaken by the appropriate Department of Defense investigative agency with the concurrence of the Department of Justice.

3. Organized Crime. The Department of Defense investigative agencies will provide to the FBI all information collected during the normal course of agency operations pertaining to the element generally known as " organized crime" including both traditional (La Cosa Nostra) and nontraditional organizations whether or not the matter is considered prosecutable. The FBI should be notified of any investigation involving any element of organized crime and may assume jurisdiction of the same.

4. Department of Justice Notifications to Department of Defense Investigative Agencies.

a. The Department of Justice investigative agencies will promptly notify the appropriate Department of Defense investigative agency of the initiation of the Department of Defense related investigations which are predicated on other than a Department of Defense referral except in those rare instances where notification might endanger agents or adversely affect the investigation. The Department of Justice investigative agencies will also notify the Department of Defense of all allegations of the Department of Defense related crimes where investigation is not initiated by the Department of Justice.

b. Upon request, the Department of Justice investigative agencies will provide timely status reports on all

Figure 2-1. Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes—Continued

investigations relating to the Department of Defense unless the circumstances indicate such reporting would be inappropriate.

c. The Department of Justice investigative agencies will promptly furnish investigative results at the conclusion of an investigation and advise as to the nature of judicial action, if any, taken or contemplated.

d. If judicial or administrative action is being considered by the Department of Defense, the Department of Justice will, upon written request, provide existing detailed investigative data and documents (less any federal grand jury material, disclosure of which would be prohibited by Rule 6(e), Federal Rules of Criminal Procedure), as well as agent testimony for use in judicial or administrative proceedings, consistent with Department of Justice and other federal regulations. The ultimate use of the information shall be subject to the concurrence of the federal prosecutor during the pendency of any related investigation or prosecution.

5. Technical Assistance

a. The Department of Justice will provide to the Department of Defense all technical services normally available to federal investigative agencies.

b. The Department of Defense will provide assistance to the Department of Justice in matters not relating to the Department of Defense as permitted by law and implementing regulations.

6. Joint Investigations.

a. To the extent authorized by law, the Department of Justice investigative agencies and the Department of Defense investigative agencies may agree to enter into joint investigative endeavors, including undercover operations, in appropriate circumstances. However, all such investigations will be subject to Department of Justice guidelines.

b. The Department of Defense, in the conduct of any investigation that might lead to prosecution in Federal District Court, will conduct the investigation consistent with any Department of Justice guidelines. The Department of Justice shall provide copies of all relevant guidelines and their revisions.

DOD Supplemental Guidance

When DOD procedures concerning apprehension, search and seizure, interrogation, eyewitnesses, or identification differ from those of DOJ, DOD procedures will be used, unless the DOJ prosecutor has directed that DOJ procedures be used instead. DOD criminal investigators should bring to the attention of the DOJ prosecutor, as appropriate, situations when use of DOJ procedures might impede or preclude prosecution under the UCMJ (reference(d)).

7. Apprehension of suspects.

To the extent authorized by law, the Department of Justice and the Department of Defense will each promptly deliver or make available to the other suspects, accused individuals and witnesses where authority to investigate the crimes involved is lodged in the other Department. This MOU neither expands nor limits the authority of either Department to perform apprehensions, searches, seizures, or custodial interrogations.

G. Exception

This MOU shall not affect the investigative authority now fixed by the 1979 " Agreement Governing the Conduct of the Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation" and the 1983 Memorandum of Understanding between the Department of Defense, the Department of Justice and the FBI concerning " Use of Federal Military Force in Domestic Terrorist Incidents."

Figure 2-1. Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes

Chapter 3
Nonjudicial Punishment

Section I
Applicable Policies (para 1, Part V, MCM)

3–1. General

This chapter implements and amplifies Article 15, UCMJ, and Part V, MCM. No action should be taken under the authority of Article 15, UCMJ, 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 (para 1.d.(1), Part V, MCM). 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 who the imposing commander determines cannot benefit from less stringent measures.

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

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

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

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 (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 Article 15. These two separate and distinct kinds of authority should not be confused (AR 600–200).

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 Article 15, the procedure set forth in paragraph 4, Part V, MCM, 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 Article 15 (AR 600–37). Admonitions and reprimands imposed as punishment under Article 15, whether administered orally or in writing (para 5.c.(1), Part V, MCM), 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 (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.

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

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

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

(2) Determining whether the soldier committed the offense(s) where Article 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 Article 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 Article 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 Article 15 authority over a particular case or over certain categories of offenders or offenses (para 3–7 *d*).

3–5. Reference to superior

a. See R.C.M. 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 Article 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 Article 15 powers has been withheld or limited (paras 3–4 and 3–7 *d*). 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–R (Request to Superior to Exercise Article 15, UCMJ, Jurisdiction). DA Form 5109–R will be locally reproduced on 8 1/2– by 11–inch paper. A copy for reproduction is located at the back of this regulation.

3–6. Filing determination

a. A commander's decision whether to file a record of nonjudicial punishment on the performance fiche of a soldier's Official Military Personnel File (OMPF) is as important as the decision relating to the imposition of nonjudicial punishment itself. In making a filing determination, 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 the fact that the filing decision is final, except for those cases where the soldier has more than one record of nonjudicial punishment directed for filing in the restricted fiche (see *b* 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, or evidence of serious character deficiency or substantial breach of military discipline. In such cases, the record should be filed in the performance fiche.

b. If a record of nonjudicial punishment has been designated for filing in a soldier's restricted fiche, the soldier's OMPF will be reviewed to determine if the restricted fiche contains a previous record of nonjudicial punishment. In those cases where a previous DA Form 2627 (Record of Proceedings under Article 15, UCMJ), which has not been wholly set aside, has been filed in the restricted fiche, and the soldier, prior to that punishment, was in the grade of SGT or higher, the present DA Form 2627 will be filed in the performance fiche. 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 fiche. The copy of the DA Form 2627 that was placed in the unit files will be moved to the soldier's Military Personnel Records Jacket (MPRJ).

c. 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 (JAGMAN) 0112 for Navy and Marine Corps personnel; paragraphs 2.2 and 2.2.1, Air Force Instruction (AFI) 51–202, for Air Force personnel; and U.S. Coast Guard Military Justice Manual (MJM) Article 1–A–3(c) for Coast Guard personnel).

Section II
Authority (para 2, Part V, MCM)

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 *d* below), any commander is authorized to exercise the disciplinary powers conferred by Article 15.

(1) The term " commander," as used in this chapter, means a commissioned or warrant 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 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 (R.C.M. 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 or warrant 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. Multiservice Commanders and Officers in charge. A multiservice commander or officer in charge, to whose command members of the Army are assigned or attached, may impose nonjudicial punishment upon such soldiers. A multiservice commander or officer in charge, alternatively, may designate one or more Army units, and shall for each such Army unit designate an Army commissioned or warrant officer as commanding officer for the administration of discipline under Article 15, UCMJ. A copy of such designation shall be furnished to Criminal Law Division, The Judge Advocate General 2200 Army Pentagon, Washington, DC 20310–2200. A multiservice commander or officer in charge, when imposing nonjudicial punishment upon a military member of their command, shall apply the provisions of this regulation.

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

(1) Any commander authorized to exercise GCM jurisdiction or any commanding general may delegate that commander's or commanding general's powers under Article 15 to one commissioned officer actually exercising the function of deputy or assistant commander. A commander may, in stead of delegating powers under Article 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.

(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 Article 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 Article 15 authority shall 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 Article 15 powers in any case in which the delegating officer desires to act. Although an appeal from punishment imposed under a delegation of Article 15 powers will be acted on by the authority next superior to the delegating officer (para 3–30), the latter may take the action described in paragraph 3–32. (See paras 6 and 7, Part V, MCM, and para 3–38 of this regulation.)

d. Limitation of exercise of disciplinary authority by subordinates. Any commander having authority under Article 15, UCMJ, may limit or withhold the exercise of such authority by subordinate commanders. For example, the powers of subordinate commanders to exercise Article 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 Article 15 on commissioned officers, warrant officers, and other military personnel of a commander's command, except cadets of the U.S. Military Academy (USMA).

(1) For the purpose of Article 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 Article 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 Article 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 Article 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 0106 d. for Navy and Marine Corps personnel; paragraphs 2 and 2.2.1, AFI 51–202, for Air Force personnel; and MJM, Article 1–A–3 (c), for Coast Guard personnel.)

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 1 *e*, Part V, MCM). This is not a hard and fast rule; the circumstances of the offense might indicate that action under Article 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.

3–10. Double punishment prohibited

Several minor offenses arising out of substantially the same transaction or misconduct will not be made the basis of separate actions under Article 15, UCMJ. When punishment has been imposed under Articles 13 or 15, or the proceedings are terminated tantamount to a finding of not guilty, punishment may not be imposed for the same misconduct under Article 15. This does not restrict the right to prefer court-martial charges for a non-minor offense previously punished under the provisions of Article 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 two years before the date of imposition. Computation of this two year limitation is in accordance with Articles 43(c) and (d), UCMJ. 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)

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 also para 1d, Part V, MCM.)

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 (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) DA Form 2627–1 (Summarized Record of Proceedings Under Article 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. The rules and limitations concerning punishments in section IV and provisions regarding clemency in section V are applicable.

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

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

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

(3) The right to remain silent.

(4) Offenses that the soldier allegedly has committed and the Article(s) of the UCMJ violated.

(5) The right to demand trial (see para 4a(5), Part V, MCM).

(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 Article 15.

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

d. Hearing. Unless the soldier demands trial by court-martial within the decision period, the imposing commander may proceed with the hearing (see para 3–18 *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.

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

(6) Explanation of right to appeal.

e. Appeal. The appeal and the decision on appeal will be recorded in block 5, DA Form 2627–1. This will be done according to the procedures set forth in paragraph 3–32. The soldier will be given a reasonable time (normally no more than 5 calendar days) within which to submit an appeal (see para 3–29). The soldier may, pending submission and decision on the appeal, be required to undergo

the punishment imposed, but once submitted, such appeal will be promptly decided. If the appeal is not decided within 3 calendar days, excluding the day of submission, and if the soldier so requests, further performance of any punishments involving deprivation of liberty will be delayed pending the decision on the appeal (see sec IV).

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 27–10 *f*). 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)

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 (Record of Proceedings under Article 15, UCMJ). An illustrated example of a completed DA Form 2627 is shown at figure 3–2.

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 Article 15, UCMJ. The soldier will also be notified of the maximum punishment which the commander could impose under Article 15, UCMJ. 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, warrant officer, or NCO (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. In such cases, the notifier should follow 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 Article 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 judge advocate (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 in stead 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, 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 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 (para 3–18 *g*).

(2) Call witnesses. (See para 4 *c*(1)(F), Part V, MCM).

(3) Present evidence.

(4) Request that the soldier be accompanied by a spokesperson (para 3–18 *h*).

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

(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 Article 15 and has been provided a copy of DA Form 2627 with items 1 and 2 completed (see para 3–18 *a*). 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 Article 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 shall again be given a reasonable decision period in which to consult with counsel. In either case, item 11, 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 Article 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, 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 shall be entitled to appear before the officer designated to conduct the hearing. (See para 4 *c*(1), Part V, MCM.)

(2) *Open hearing.* Article 15 proceedings are not adversary in nature. Ordinarily, hearings are open. 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 4 *c*(1)(G), Part V, MCM.) 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.

h. Spokesperson. The person who may accompany the soldier to the Article 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 adversary 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 shall 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 (see para 2–29.1, DA Pam 27–9) 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, which are available to the soldier, will be explained.

Section IV
Punishment (para 5, Part V, MCM)

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 with 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 as set forth in paragraph 5a, Part V, MCM, the following additional rules and limitations concerning the kinds and amounts of punishment authorized under Article 15, UCM apply (see also table 3–1):

(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. The responsibilities, policies, and procedures concerning the operation of correctional custody facilities are contained in AR 190–34. Soldiers in the rank of SPC or CPL or above may not be placed in correctional custody. However, if an unsuspended reduction to the rank of PFC or below is imposed under an Article 15, correctional custody may also be imposed. Time spent in correctional custody does not constitute lost time (10 USC 972). Before imposing correctional custody the commander will ensure that adequate facilities, as described in AR 190–34, exist to carry out the punishment.

(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 or warrant 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 or warrant 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 (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 Article 15(b) if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade (AR 600–200).

(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 Article 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 600–200.)

(7) *Forfeiture of pay.*

(a) Limitations. 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 (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 Article 15, is one-half of the soldier's pay per month. Article 15 forfeitures shall 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 Military Pay and Allowances Entitlements Manual.)

(b) Retired soldiers. Forfeitures imposed under Article 15 may be applied against a soldier's retirement pay.

(8) *Combination and apportionment.* With the following exception, punishment authorized under Article 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. Two or more punishments involving deprivation of liberty may not be combined, in the same nonjudicial punishment proceeding, to run either consecutively or concurrently, except that restriction and extra duty may be combined in any manner to run for a period not in excess of the maximum duration imposable 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* 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 4, DA Form 2627. When more than one punishment is imposed during any single Article 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). Example: " Reduction to Specialist (E4)."

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

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.

1. Example 1. " Extra duty for _____ days, restriction for _____ days."

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

(d) Admonition and Reprimand. Admonitions or reprimands imposed on commissioned or warrant officers must be in writing (para 5(c)(1), Part V MCM). 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 Article 15, UCMJ, will be in memorandum format, per AR 25–50, and will be listed as an attachment in item 11, DA Form 2627. Oral admonitions and reprimands will be identified as such in either item 4, DA Form 2627, or item 2, DA Form 2627–1.

3–20. Effect on appointable status

See AR 600–200 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 items 4 through 6, DA Form 2627, or items 1 through 3, 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 or on brief period of TDY or a brief field problem) the execution of the punishment should begin immediately thereafter. Except as provided in paragraph 3–21 *c*, the delay in execution of punishment should not exceed 30 days. 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), 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.

c. Additional punishment. If a soldier to be punished is currently undergoing punishment or deprivation of liberty under a prior Article 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*(6)(b) for determination of date of rank.)

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

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 shall be considered unexecuted.

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

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

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

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

c. Recording of action. Any action of suspension, mitigation, remission, or setting aside (para 3–28) taken by an authority will be recorded according to notes 11 and 12, DA Form 2627, notes 9 and 10, DA Form 2627–1, or DA Form 2627–2 (Record of Supplementary Action Under Article 15, UCMJ) (para 3–38 *b*). An illustrated example of a completed DA Form 2627–2 is shown at figure 3–3.

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. Further misconduct by the soldier, within the period of the suspension, may be grounds for vacation of the suspended portion of the punishment (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, (para 6a(4), Part V, MCM), 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 Article 15.

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 Articles 15 *e*(1) through (7), UCMJ, 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 Article 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 AWOL 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 according to notes 11 and 12, DA Form 2627, notes 9 and 10, DA Form 2627–1, or DA Form 2627–2 (para 3–38 *b*):

(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 Articles 15(e)(1) through (7), UCMJ, 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 correctional custody to 14 days restriction would not be permitted because the quantity has been 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*(7)(b)). 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 3–28 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) or set aside (see para 3–28). The death, discharge, or separation from the service of the soldier punished remits any unexecuted punishment. A soldier punished under Article 15 will not be held beyond expiration of the soldier's 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 Article 15. The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. " Clear injustice" means that there exists an unwaived legal or factual error which 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 according to notes 11 and 12, DA Form 2627; notes 9 and 10, DA Form 2627–1, or DA Form 2627–2 (para 3–38 *b*). When a commander sets aside any portion of the punishment after 4 months from the date punishment has been executed, a detailed addendum of the unusual circumstances found to exist will be attached to the form containing the set aside action.

Section VI
Appeals (para 7, Part V, MCM)

3–29. General

a. Only one appeal is permissible under Article 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 a suspended punishment.

3–30. Who may act on an appeal

a. The next superior authority to the commanding officer who imposed the Article 15 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 has 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 soldier's present commanding officer (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 Article 15. 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 Article 15(e), UCMJ, to a commissioned officer of the superior authority's command subject to the limitations in paragraph 3–7 *b*. 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 HQDA (DAJA-CL), Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

c. When forwarding an Article 15 to TJAG for action on appeal, the imposing commander will review the appeal to determine if action is appropriate based on the matters raised. If the imposing commander determines that no additional action is appropriate, the record of punishment will be forwarded directly. Included with the Article 15 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" shall be the authority prescribed by the member's parent service. (See JAGMAN 0117 for Navy and Marine Corps personnel, paragraph 7.1.4, AFI 51–202 for Air Force personnel, and MJM, Article 1–E–11(d) 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 " next superior" need not be an Army officer or warrant 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 of this regulation.

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 (para 6, Part V, MCM, and para 3–33 of this regulation). If the imposing commander or a successor-in-command suspends, mitigates, remits, or sets aside any part of the punishment, this action will be recorded according to notes 11 and 12, DA Form 2627, or notes 9 and 10, 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 9, DA Form 2627, or item 5, 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 with respect to the punishment imposed as may be exercised by the imposing commander or the imposing commander's successor-in-command. However, the superior authority cannot change a filing determination. 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 8, 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, except those of filing determinations (para 3–37), 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 (para 7f(1), Part V, MCM). " 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)

3–36. Records of punishment

All Article 15 actions, 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 (sec III and fig 3–1), 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 (M.R.E.) 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. DA Form 2627 will be prepared in an original and five copies. All written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal will be transmitted with the original (see g below). Copies of DA Form 2627 will be transmitted through the Military Personnel Division (MPD) or the Personnel Service Company (PSC) maintaining the MPRJ to the Finance and Accounting Office (FAO) maintaining the soldier's pay account according to DA Pam 600–8, chapter 8. DA Form 268 (Report for Suspension of Favorable Personnel Actions) will be submitted per AR 600–8–2. Standard instructions for distribution and filing of forms for commissioned officers, warrant officers, and enlisted soldiers serving on active duty are set out below.

b. Original of DA Form 2627.

(1) *Place of filing.* For soldiers SPC or CPL and below (prior to punishment) the original will be filed locally in unit nonjudicial punishment files (file number 27–10 *f*). Such 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 5 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, the Article 15 form will accompany the soldier to the new GCM. The two year rule will apply in this situation.

(a) For all other soldiers, the original will be sent to the appropriate custodian listed in (2) below for filing in the OMPF. The decision to file the original DA Form 2627 on the performance fiche or the restricted fiche in the OMPF will be determined by the imposing commander at the time punishment is imposed. The filing decision of the imposing commander is final, subject only to review when a previous DA Form 2627 that has not been wholly set aside is filed in the restricted fiche. (See para 3–6 *b*.) The imposing commander's filing decision will be indicated in item 5, DA Form 2627. A superior authority will not limit a subordinate commander's filing determination authority. (See para 3–7 *c* regarding the withholding authority of a superior authority in general.) When the imposing commander makes a decision regarding the filing, the imposing commander should consider the following:

1. The performance fiche 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.

2. The restricted fiche 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 SA's written instructions to the selection board.

(b) Records directed for filing in the restricted fiche will be redirected to the performance fiche in accordance with paragraph 3–6 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 recorded in the restricted fiche. (See para 3–6).

(2) *Mailing addresses.* The original DA Form 2627 will be transmitted by the MPD/PSC to one of the following appropriate addresses—

(a) For active Army commissioned and warrant officers: HQDA (DAPC-MSP) (TAPC-MSP), Alexandria, VA 22332–0400/0444.

(b) For U.S. Army Reserve (USAR) commissioned and warrant officers: U.S. Army Reserve Personnel Center, ATTN: DARP-PRD, 9700 Page Boulevard, St. Louis, MO 63132–5200.

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

(d) For active Army enlisted soldiers: U.S. Army Enlisted Records & Evaluation Center, ATTN: PCRE-FS, Fort Benjamin Harrison, IN 46249–5301.

(e) For USAR enlisted soldiers: U.S. Army Reserve Personnel Center, ATTN: DARP-PRD, 9700 Page Boulevard, St. Louis, MO 63132–5200.

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

c. Copy one of DA Form 2627.

(1) For those Article 15s directed for filing on the performance fiche of the OMPF, forward to the MPD/PSC for filing in the MPRJ. Copy one will be filed in the permanent section of the MPRJ unless the original Article 15 is transferred from the performance to the restricted fiche of the OMPF. In this case, copy one will be withdrawn from the MPRJ and destroyed.

(2) For those Article 15s directed for filing on the restricted fiche of the OMPF, this copy will be filed in the unit personnel files and destroyed at the expiration of 2 years from the date of punishment or on the soldier's transfer, whichever occurs first. (See also DA Pam 600–8, chap 9, for use and preparation of DA Form 4187 (Personnel Action)).

(3) For soldiers in grades of SPC or CPL and below, copy one will be destroyed. (See DA Pam 600–8, chap 9, for use and preparation of DA Form 4187.)

d. Copies two and three of DA Form 2627.

(1) Copies two and three for use as substantiating documents will be forwarded to the MPD/PSC that services the MPRJ if the punishment includes an unsuspended reduction and/or forfeiture of pay. If the punishment includes an unsuspended forfeiture of pay, the MPD/PSC will forward copy three to the FAO maintaining the soldier's pay account.

(2) If all punishments affecting pay are suspended by the imposing commander, copies two and three will be retained by the unit where the punishment was imposed and destroyed on expiration of the period of suspension, unless forwarded according to paragraph 3–38 below. If the punishment, suspended or unsuspended, does not include reduction or forfeiture of pay, these copies will be destroyed.

(3) If a punishment affecting pay is suspended by a superior authority acting on an appeal, copy two will be retained by the unit where the punishment was imposed. It will be destroyed when the period of suspension expires unless forwarded according to paragraph 3–38 below. If the punishment includes only a reduction, copy three will be forwarded to the MPD/PSC maintaining the MPRJ. If the punishment includes a reduction and a forfeiture or only a forfeiture, copy three will be forwarded through the MPD/PSC maintaining the MPRJ to the FAO maintaining the soldier's pay account for use as a substantiating document according to AR 37–104–4.

e. Copy four of DA Form 2627.

(1) *General.* Immediately after imposition of punishment, copy four will be annotated in the left-hand corner of the title block (fig 3–2), sequentially in the order the Article 15 was given during the calendar year; that is, 84–1, 84–2. If the unit maintains a Reconciliation Log (para 3–39), the appropriate information will be entered in it. Thereafter, copy four will be used according to (2) and (3) below.

(2) *Cases involving an appeal.*

(a) On the date punishment is imposed, if item 7 is not completed or blocks b and c are initialed, and item 7 is signed by the soldier and the punishment includes an unsuspended reduction or unsuspended forfeiture of pay, copy four of DA Form 2627 will be marked " APPEAL PENDING" in the right-hand margin.

(b) Copy four will be sent through the MPD/PSC maintaining the MPRJ to the FAO maintaining the soldier's pay account. On receipt, the local MPD/PSC and the FAO maintaining the soldier's pay account will check that proper action has been taken on unsuspended reductions and forfeitures of pay. If the punishment includes a reduction, the MPD/PSC will see that the left-hand margin is annotated with the words, " ENTRY POSTED," the date of posting, and the initials of the posting clerk. If the punishment includes a forfeiture, finance will see that the left-hand margin is annotated with the words, " ENTRY POSTED," the date of posting, and the initials of the posting clerk.

(c) On receipt of the copies of DA Form 2627 forwarded by the unit (para 3–37 *d*), copy four will be returned directly to the imposing commander to verify that the entry has been posted by finance (para 3–39). Copy four will be destroyed after all periods of suspension of punishment affecting pay have expired.

(d) If punishments affecting pay are suspended, copy four will not be transmitted to the MPD/PSC and finance. It will be destroyed after all periods of suspended punishments affecting pay have expired.

(e) If there are no punishments affecting pay, copy four will not be transmitted to the MPD/PSC and finance and will be destroyed after the entry is made in the Reconciliation Log.

(3) *Cases not involving an appeal.*

(a) Where there is no appeal and the punishment imposed includes an unsuspended reduction or unsuspended forfeiture of pay, copy four will not be marked " APPEAL PENDING." If the punishment imposed includes only an unsuspended reduction, copy four will be forwarded with copies two and three to the MPD/PSC that will see that the left-hand margin is annotated with the words " ENTRY POSTED," the date of posting, and the initials of the posting clerk. If the punishment imposed includes an unsuspended reduction and unsuspended forfeiture or only an unsuspended forfeiture, copy four will be forwarded with copy three to the FAO maintaining the soldier's pay account that will see that the left-hand margin is annotated with the words " ENTRY POSTED," the date of posting, and the initials of the posting clerk. Copy four will be returned directly to the imposing commander to verify the entry has been posted by the MPD/PSC and/or finance (para 3–39) and destroyed after all periods of suspension of punishment affecting pay have expired.

(b) If punishments affecting pay are suspended, copy four will not be transmitted to the MPD/PSC and/or finance and will be destroyed after all periods of suspended punishments affecting pay have expired.

(c) If there are no punishments affecting pay, copy four will not be transmitted to the MPD/PSC and/or finance and will be destroyed after the entry is made in the Reconciliation Log.

f. Copy five of DA Form 2627. Give to soldier punished.

g. Allied documents. Allied documents will be transmitted for administrative convenience with the original DA Form 2627 for filing on the restricted fiche of the OMPF (para 3–44).

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) after action has been taken on an appeal or DA Form 2627 has been distributed according to paragraph 3–37 above.

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

c. Distribution and filing.

(1) *Original.* The original will be forwarded to the appropriate custodian of the OMPF (para 3–37 *b*(2)). This copy will be filed in the same OMPF fiche 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 (fig 3–3).

(2) *Copy One.* Copy one will be forwarded to the MPD/PSC to be filed in the soldier's MPRJ when the imposing commander directs filing on the performance fiche of the OMPF. This copy will be destroyed along with copy one of the initial DA Form 2627 if the original DA Form is transferred from the performance to the restricted fiche. In cases of filing on the restricted fiche of the OMPF, copy one will be filed in the unit personnel files per paragraph 3–37 *c*(2).

(3) *Copies two and three.* If the action affects a reduction, copy two (and copy two of the initial DA Form 2627, if maintained by the unit (para 3–37 *d*)) will be forwarded to the MILPO MPD/PSC. If the action affects a forfeiture copy three will be forwarded to the FAO maintaining the soldier's pay account.

(4) *Copy four.* Copy four will be annotated with the same sequence number as the initial copy four (para 3–37 *e*(2)). If the action affects a reduction, it will be forwarded to the MPD/PSC maintaining the MPRJ which will annotate it as indicated below. If the action affects a forfeiture, it will be forwarded to the FAO maintaining the soldier's pay account which will annotate as indicated below. Either the MPD/PSC, finance, or both will see that the following is annotated in the left-hand margin and returned to the unit to verify the entry of subsequent actions in the Reconciliation Log:

(a) The words " ENTRY POSTED."

(b) The date of posting.

(c) The initials of the posting clerk.

(5) *Copy five.* Give to soldier punished.

3–39. Reconciliation Log

Imposing commanders will ensure that punishments imposed under the provisions of Article 15 are executed. Punishments of reduction and forfeiture of pay may be monitored by the optional use of the Reconciliation Log, DA Form 5110–R (Article 15 Reconciliation Log), showing the punishment and date imposed. DA Form 5110–R will be locally reproduced on 81/2– by 11–inch paper. A copy for reproduction is located at the back of this regulation. To properly use DA Form 5110–R, copy four of all DA Forms 2627 must be sequentially numbered and the required data entered in the DA Form 5110–R. These entries are to be compared with copy four of the DA Form 2627 that was returned to the unit by the MPD/PSC and/or Finance and Accounting Office maintaining the soldier's pay account. Sequential numbers on the DA Form 5110–R, will correspond to the number noted on copy four. After information is verified on the DA Form 5110–R from copy four, this copy will be retained until the expiration of any period of suspension of punishments affecting pay.

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

Distribution will be made according to paragraph 3–37 after the recipient indicates in item 7 that the recipient does not appeal. If the recipient appeals, the DA Form 2627, minus copy four (if it has been forwarded as an " APPEAL PENDING" copy (para 3–37 *e*(2)), will be forwarded to the superior authority and distributed after completion of item 10. Completion of this item shows that the recipient acknowledges notification of action on the recipient's appeal. If item 10 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 10 completed will be placed in item 11 before distribution is made. When the recipient appeals the punishment, an " APPEAL PENDING" copy will be distributed according to paragraph 3–37 *e*(2). If the recipient fails to complete or sign item 7, an explanation of the failure will be provided by the imposing commander in item 11 and distribution will be made according to 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

a. OMPF. Records of nonjudicial punishment presently filed in either the performance or restricted fiche 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 fiche.

b. MPRJ.

(1) Records of nonjudicial punishment imposed prior to 1 November 1982 and filed under AR 600–8–104 in the MPRJ will remain so filed.

(2) Copies of records of nonjudicial punishment imposed prior to 1 November 1982 where the original was filed in the OMPF will remain filed in the MPRJ unless the original Article 15 is transferred to the restricted fiche. In this case, the copy will be withdrawn from the MPRJ and destroyed.

3–42. Transfer of Article 15s wholly set aside or in cases of change of status

a. Change in status on or after 1 September 1979. On approval of a change in status from enlisted to commissioned or warrant 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 fiche of the OMPF. Copies of such records in the Career Management Individual File (CMIF) and the MPRJ will be destroyed.

b. Wholly set aside since 1 September 1979. All DA Forms 2627 of commissioned officers, warrant officers, and enlisted soldiers filed in the OMPF reflecting that punishments have been wholly set aside (para 3–28) since 1 September 1979, will routinely be transferred to the restricted fiche. The DA Form 2627 reflecting the original imposition of punishment, if filed in the MPRJ or CMIF, will be destroyed.

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

(1) On request of the individual soldier, the following will be transferred to the restricted fiche 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 and the MPRJ 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 MPRJ (usually at the local MPD/PSC) and to the following custodian of the OMPF:

(a) For active Army commissioned and warrant officers, send requests to HQDA (TAPC-MSR-S), Alexandria, VA 22332–0444.

(b) For active Army enlisted personnel, send requests to U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE-FS, Fort Benjamin Harrison, IN 46249.

(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 and warrant 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.)

b. Policies.

(1) Enlisted soldiers (SGT and above), commissioned and warrant officers may request the transfer of a record of nonjudicial punishment from the performance fiche of their OMPF to the restricted fiche under the provisions of this regulation. To support the request, the person must submit substantive evidence that the intended purpose of Article 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), DA Form 2A (Personnel Qualification Record, Part I—Enlisted Peacetime), and DA Form 2–1 (Personnel Qualification Record—Part II), certified by the custodian of the MPRJ. 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 and warrant officers) may provide a statement to the soldier in support of a request for transfer of the record from the performance to the restricted fiche. 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 for Personnel (DCSPER) or the DCSPER's delegate. Requesters will be notified in writing of the determination. Letters of denial will be placed upon the performance fiche of the soldier concerned. Other related documentation and evidence will be placed upon the restricted fiche.

(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 DCSPER, or the DCSPER'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 President, DA Suitability Evaluation Board, HQDA (DAPE-MPC-E), Washington, DC 20315–0300.

(2) *Reserve component (RC) personnel.*

(a) Requests submitted by USAR officer and enlisted soldiers not on active duty are normally processed through the Commander, U.S. Army Reserve Personnel Center (ARPERCEN), ATTN: ARPC-ZJA, 9700 Page Boulevard, 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 DCSPER (ATTN: 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 an Access and Amendment Refusal Authority under AR 340–21.

e. Correction of military records. 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 SA. 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. Absent compelling evidence to the contrary, a properly completed, facially valid DA Form 2627 will not be removed from a soldier's record by the ABCMR.

3–44. Use of records

a. Records of proceedings and supplementary action under Article 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, shall 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 M.R.E. 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.

Table 3–1
Maximum Punishment

A. Maximum Punishment for Enlisted Members

Note. The maximum punishment imposable by any commander under summarized procedures will not exceed extra duty for 14 days, restriction for 14 days, oral reprimand, or any combination thereof.

Punishment	Imposed by Company Grade Officers	Imposed by Field Grade Officers	Imposed by Field Grade and General Officers	Imposed by General Officers or GCMCAs
Admonition/Reprimand	Yes		Yes	
AND				
Extra Duties	14 days		45 days	
AND [1]				
Restriction	14 days		60 days	
or				
Correction Custody [2]				
or				
(E1 through E3)	7 days		30 days	
or				
Restricted Diet				
Confinement				
(E1 through E3 attached or embarked on vessel)			4 days	
AND	3 days			
Reduction (E1 through E4)			One or more grades	
(E5 through E6)	One grade		One grade in peacetime [4]	
AND				
Forfeiture [3]			1/2 of 1 month pay for 2 months	
	7 days pay			

B. Maximum Punishment for Commissioned and Warrant Officers

Admonition/Reprimand [7]	Yes	Yes	Yes
AND			
Arrest	No	No	30 days
or			
Restriction	30 days	30 days	60 days
AND			
Forfeiture	No	No	1/2 of 1 month pay for 2 months

C. Computing Monthly Authorized Forfeitures of Pay Under Article 15, UCMJ

1. Upon enlisted persons
   a. (Monthly Basic Pay [3,5]) + (Foreign Pay [3,6]) ÷ 2 = Maximum forfeiture per month if imposed by major or above.
   b. (Monthly Basic Pay [3,5]) + (Foreign Pay [3,6]) X 7 ÷ 30 = Maximum forfeiture per month if imposed by captain or below.

2. Upon Commissioned and warrant officers when imposed by an officer with general Court-martial jurisditction or by a general officer in command. (Monthly Basic Pay [5]) ÷ 2 = Maximum authorized forfeiture per month.

Notes:

[1] 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 190-34. If punishment includes reduction to E3 or below, reduction must be unsuspended.

[3] Amount of forfeiture is computed at the reduced grade, even is suspended, if reduction is part of the punishment imposed. For Reserve Component (RC) soldiers, use monthly basic pay for the grade and time in service of an Active Component (AC) soldier. (See para 21-9.)

[4] Only if imposed by a field grade commander of a unit authorized a commander in the grade of O5 or higher. In the RC, reduction is only authorized from grade E5. RC soldiers of grade E6 and higher may not be reduced by Article 15 punishment.

[5] At the time punishment is imposed.

[6] If applicable.

[7] In the case of Commissioned officers and warrant officers, admonitions and reprimands given as nonjudicial punishment must be administered in writing (para 5c(1), Part V, MCM 1984).

[8] Forfeitures imposed by a company grade commander may not be applied for more than (1) month against the pay of an Active Army soldier.

Table 3–2
Removal of Records of Nonjudicial Punishment from Military Personnel Files

Rule	If	On the basis	Then the record of nonjudicial punishment (DA Form 2627) file in		Providing that
			The performance portion of the OMPF	The restricted portion of the OMPF	
1	Commander who imposed the punishment, successor in command, or next superior authority sets aside the punishment	Evidence exists which demonstrates that the punishment resulted in a 'clear justice' (para 3-28)	Will be transferred to the restricted portion of the OMPF and the copy in the MPRJ removed	Will remain so filed	
2	Member in the grade of E6 or above applies to the DA Suitability Evaluation Board (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	Will, on appoval of the member's appliction, be transferred to the restricted portion of the OMPF and the copy in the MPRJ removed		
3	Member in the grade of E5 or below applies to Army Board for Correction of Military Records (ABCMR for transfer of records of nonjudicial punishment from the performance portion of the OMPF	Evidance exists which demonstrates error or injustice to a degree justifying removal			
4	Member in the grade of E6 or above applies to the ABCMR for transfer of the record of nonjudicial punishment from the performance portion of OMPF	Evidence exits which demonstrate error or injustice to a degree justifying removal			If the member applies on the basis of eror or injustice on the grounds that the record of punishment has served its purpose and that removal is in the best interest of the Army, the member has already applied to DASEB and the request was denied

SUMMARIZED RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

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

See Notes on Reverse Before Completing Form

This form will be used only in cases involving enlisted personnel and then *ONLY* when no punishment *OTHER THAN* oral admonition or reprimand, restriction for 14 days or less, extra duties for 14 days or less, or a combination thereof has been imposed.[1]

NAME	GRADE	SSN	UNIT
HABE, ALFRED H.	E-3	111-11-1111	A Btry 9/10 FA, 13 INF Div Fort Blank, VA

1. On 15 June 1985, the above service member was advised that I was considering imposition of nonjudicial punishment under the provisions of Article 15, UCMJ, Summarized Proceedings, for the following misconduct:[2]

On or about 0900 hours, 13 June 1985, you were absent without authority from A Btry, 9/10 FA, 13th Inf Div, located at Ft Blank, VA, and remained so absent until on or about 0800 hours, 14 June 1985, 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[3], 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:[4]

Oral reprimand and restriction for 14 days.

3. The member was advised of the right to appeal to the CdC 9/10 FA, 13 Inf Div within 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 above. The member:

[AHH] Elected immediately not to appeal [ ] Requested time to decide whether to appeal and the decision is indicated in item 4, below.[5][6]

DATE	NAME, GRADE, AND ORGANIZATION OF IMPOSING COMMANDER	SIGNATURE
15 June 1985	Richard J. Mead, CPT, A Btry, 9/10 FA	Richard J Mead

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

a. [AHH] I do not appeal b. [ ] I appeal and do not submit matters for consideration[7] c. [ ] I appeal and submit additional matters[7]

DATE	NAME AND GRADE OF SERVICE MEMBER	SIGNATURE
15 June 1985	Alfred H. HABE, E-3	Alfred H Habe

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

[ ] Denied [ ] Granted as follows:[8]

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE

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

7. ALLIED DOCUMENTS AND/OR COMMENTS[9][10][11]

DA FORM 2627-1 AUG 84 EDITION OF NOV 82 IS OBSOLETE

Figure 3-1. Illustrated Sample DA form 2627–1

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

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

See Notes on Reverse Before Completing Form

NAME	GRADE	SSN	UNIT	PAY (Basic & Sea/Foreign)
AGER, Robert L.	E4	000-00-0000	Co D, 1/5 Inf Ft Blank, VA 00000-0000	$830.40

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: 1/ At Ft Blank, VA, on or about 0600 hours, 4 Sep 97, you did, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: Formation, Co D, 1/5 Inf, in front of Building 13. 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. 2/ 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. 3/ In deciding what you want to do you have the right to consult with legal counsel located at Room 7, Building 10, Fort Blank, VA. You now have 48 hours to decide what you want to do. 4/

DATE / TIME	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE
5 Sep 97 0800 hours	JAMES A. SMITH, CPT, Co D, 1/5 Inf	James A. Smith

3. Having been afforded the opportunity to consult with counsel, my decisions are as follows: *(Initial appropriate blocks, date, and sign)*

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

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

(1) I request the hearing be [X] Open [ ] Closed. *(2)* A person to speak in my behalf [ ] Is [X] Is not requested.
(3) Matters in defense, mitigation, and/or extenuation: [ ] Are not presented [X] Will be presented in person [ ] Are attached.

DATE	NAME AND GRADE OF SERVICE MEMBER	SIGNATURE
6 Sep 97	ROBERT L. AGER, SP4	Robert L. Ager

4. In a(n) [X] Open [ ] Closed hearing 5/ all matters presented in defense, mitigation, and/or extentuation, having been considered, the following punishment is imposed: 5/6/ Reduction to Private First Class (E3), suspended, to be automatically remitted if not vacated before 5 Nov 97; and forfeiture of $100.00.

[NOTE: REFER TO PARA 3-37b(1) PRIOR TO COMPLETING ITEM 5.]

5. ~~I direct the original VA Form 2627 be filed in the [ ] Performance Jacket of the OMPF [ ] Restricted Jacket of the OMPF~~ / N/A

6. You are advised of your right to appeal to the _____ within 5 calendar days. An appeal made after that time may be rejected as untimely. Punishment is effective immediately unless otherwise stated above.

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE
6 Sep 97	JAMES A. SMITH, CPT, Co D, 1/5 Inf	James A. Smith

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

a. [ ] I do not appeal b. [X] I appeal and do not submit additional matters 8/9/ c. [ ] I appeal and submit additional matters 8/9/

DATE	NAME AND GRADE OF SERVICE MEMBER	SIGNATURE
6 Sep 97	ROBERT L. AGER, SP4	Robert L. Ager

8. I have considered the appeal and it is my opinion that: The proceedings were conducted in accordance with law and regulation and the punishments imposed were not unjust nor disproportionate to the offense committed.

DATE	NAME AND GRADE OF JUDGE ADVOCATE	SIGNATURE
7 Sep 97	LEWIS H. RANE, MAJ	Lewis H. Rane

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

[X] Denied [ ] Granted as follows: 10/

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE
8 Sep 97	LYMAN Z. LIPE, LTC, 1/5 Inf	Lyman Z. Lipe

10. I have seen the action taken on my appeal.	DATE	SIGNATURE OF SERVICE MEMBER
	8 Sep 97	Robert L. Ager

11. ALLIED DOCUMENTS AND/OR COMMENTS 11/12/13/

Statement by SFC Jones, dated 4 Sep 97

[NOTE: SEE CHAPTER 15]

DA FORM 2627 AUG 84 — EDITION OF NOV 82 IS OBSOLETE — ORIGINAL

Figure 3-2. Illustrated Sample DA form 2627

RECORD OF SUPPLEMENTARY ACTION UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is The Judge Advocate General.

NAME AND GRADE	SSN	UNIT
AGER, Robert L., E4	000-00-0000	Co D, 1/5 Inf, Ft Blank, VA 00000-0000

TYPE OF SUPPLEMENTARY ACTION *(OTHER THAN BY 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)* [XX] VACATION OF SUSPENSION *(Complete item 5 below)*

1. SUSPENSION

The punishment(s) of _____

imposed on the above service member on _____ *(date of punishment)* (is) (are) suspended and will automatically be remitted if not vacated before _____ *(date)*.

2. MITIGATION

The punishment(s) of _____

imposed on the above service member on _____ *(date of punishment)* (is) (are) mitigated to _____.

3. REMISSION

The punishment(s) of _____

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

4. SETTING ASIDE

The punishment(s) of _____

imposed on the above service member on _____ *(date of punishment)* (is) (are) set aside on the basis that _____.

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

5. VACATION OF SUSPENSION

a. The suspension of the punishment~~(s)~~ of reduction to Private First Class (E3)

imposed on the above service member on 7 Sep 97 *(date of punishment)* (is) ~~(are)~~ hereby vacated. The unexecuted portion~~(s)~~ of the punishment~~(s)~~ will be duly executed.

b. Vacation is based on the following offense~~(s)~~: At Fort Blank, VA, on or about 0600 hours, 15 Sep 97, SP4 Robert L. Ager, did, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: Formation, Co D, 1/5 Inf, in front of Building 13. This is in violation of Article 86, UCMJ.

c. The member *(was)* ~~*(was not)*~~ given an opportunity to rebut *(para 3-25, AR 27-10)*.

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

ORIGINAL DA FORM 2627 *(Check appropriate box)* N/A

~~DIRECTED FUND ON THE [ ] REDEMANDED [ ] RESTRICTED FROM OF THE CMPF~~

AUTHENTICATION *(Check appropriate boxes)*

[XX] BY MY ORDER: [XX] THE OFFICER WHO IMPOSED THE PUNISHMENT

[ ] THE SUCCESSOR IN COMMAND TO THE IMPOSING COMMANDER [ ] AS SUPERIOR AUTHORITY

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE
16 Sep 97	JAMES A. SMITH, CPT, Co D, 1/5 Inf	James A. Smith

DA FORM FEB 83 2627-2 EDITION OF NOV 82 WILL BE USED UNTIL EXHAUSTED.

Figure 3-1. Illustrated Sample DA form 2627–2

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 Article 44, UCMJ, 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 Article 15, UCMJ, 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 Article 15, UCMJ, 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 Article 15, UCMJ.

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 indorsement, 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 R.C.M.; the MCM, Chapter 47, 10 USC, as amended; and 28 USC 2101, which require implementation by the SA, 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 authority is desired to convene courts-martial pursuant to Articles 22(a)(8), 23(a)(7), and 24(a)(4), UCMJ, a request will be forwarded, through the SJA of the MACOM, to HQDA (DAJA-CL), Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200. In deciding whether to grant a request, the following factors will be considered: 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. When a new convening authority designation is required due to redesignation or reorganization of an existing GCM jurisdiction, the request should be forwarded as soon as the effective date of the redesignation/reorganization is known. Before any redesignation or reorganization, coordination with DAJA-CL is encouraged to determine whether a new designation is necessary. 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. 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 TOE or TDA, as appropriate, that has been approved by the Office of the Deputy Chief of Staff for Plans and Operations (DAMO). The convening authority will send a copy of the redesignation directive or orders to the Clerk of Court, U.S. Army Judiciary, ATTN: JALS-CC, Nassif Building, Falls Church, VA 22041–5013.

(2) *Contingency commands.* Commanders exercising GCM authority may establish deployment contingency plans which, when ordered into execution, designate provisional units under AR 220–5, whose commanders are determined by the GCM authority to be empowered under Article 23(a)(6) to convene SPCM.

b. 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.

(2) *Members of reserve components.* Members of reserve components must be on active duty, in a Title 10, U.S. Code duty status prior to arraignment. See chapter 21 of this regulation for procedures to involuntarily activate reserve component (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 UCMJ. (See Art. 2(a)(4), UCMJ.) They may be tried by courts-martial for offenses committed while in a retired status. DA 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 HQDA (DAJA-CL). 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, Office of The Judge Advocate General, 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 military judges and trial counsel
a. Procedures for obtaining a military judge are prescribed in chapter 8. Whenever possible, military judges will be detailed to SPCMs that are not to be recorded verbatim (see para 8–1 *c* (1)). First priority for detail will be to cases involving complex issues of law or fact. Detail of military judges is a ministerial function to be exercised by the Chief Trial Judge, U.S. Army Judiciary, or that officer's delegate. Detail of trial counsel is a ministerial function to be exercised by the SJA or that officer's delegate.

b. The order detailing a military judge or trial counsel will be in writing, included in the record of trial, or will be announced orally on the record during the court-martial, and will indicate by whom the military judge or trial counsel was detailed.

c. Military judges should be detailed to all SPCMs convened for the trial of persons protected by the Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949 (GPW).

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 of Article 27(b)(1), UCMJ, 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. The Chief, USATDS, or that officer's delegate will detail USATDS officers as defense counsel or assistant or associate defense counsel (para 6–9).

b. SJAs of GCM jurisdictions will submit the following to HQDA (DAJA-PT), Personnel, Plans and Training Office, The Judge Advocate General 2200 Army Pentagon, 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 (UCMJ, Art. 27(b)) and experience.

5–5. Qualified counsel at courts-martial

a. In all SPCM's and GCM's the accused must be afforded the opportunity to be represented by counsel qualified under Article 27(b), UCMJ.

b. SJAs 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 MACOM SJAs to the CDR, 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 an investigation under Article 32, UCMJ, by—

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

(2) Military counsel detailed under Article 27, UCMJ, or

(3) Military counsel of the accused's own selection, if reasonably available (R.C.M. 405(d)(2); 506(b)).

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

c. Persons not reasonably available.

(1) R.C.M. 506(b)(1) provides in part: 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) JAs 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 R.C.M. 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 Article 38, UCMJ, and R.C.M. 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) JAs assigned outside the USATDS region in which the trial or Article 32, UCMJ, investigation will be held, unless the requested counsel is stationed within 100 miles of the situs of the trial or investigation.

(c) JAs whose duty stations are in Panama, Hawaii, or Alaska, for a trial or Article 32, UCMJ, investigation held outside Panama, Hawaii, or Alaska, respectively.

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

(e) 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 5–7 *c*, above, the responsible authority under R.C.M. 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 situs, 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 Article 32, UCMJ, investigation 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.

f. Procedure.

(1) R.C.M. 506(b)(2) provides in part: 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 this rule or under regulations of the Secretary concerned, the convening authority shall 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 investigation for which requested, be among those so listed as not reasonably available. If the accused's request makes such a claim, or if the person is not among those so listed as not reasonably available, the convening authority shall forward the request to the commander or head of the organization, activity or agency which the

requested person is assigned. That authority shall make an administrative determination 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 that 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 which requires action at the departmental or higher level.

(2) Requests for personnel to act as individual military counsel will be processed under R.C.M. 506(b)(2), and this regulation. They will be sent through the trial counsel to the convening authority. Requests will, as a minimum, contain 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) UCMJ Article(s) violated and a summary of the offense(s).

(d) Date charges preferred and status of case; for example, referred for investigation under Article 32, UCMJ, referred for trial by GCM, bad-conduct discharge (BCD) SPCM, or regular 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.

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

(3) On appointment as individual military counsel, non-USATDS counsel will notify the Regional Defense Counsel 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 (App B, AR 27–26) are applicable to judges and lawyers involved in court-martial proceedings in the Army.

b. To the extent that it does not conflict with the UCMJ, the MCM, directives, regulations, or rules governing provision of legal services in the Army, the 1972 ABA Code of Judicial Conduct applies to all JAs and civilian attorneys performing judicial functions, including all trial and appellate military judges and military magistrates, as set forth in AR 27–1.

c. Judges, counsel, and court-martial clerical support personnel will comply with the American Bar Association Standards for Criminal Justice (current edition) to the extent they are not inconsistent with the UCMJ, MCM, directives, regulations, or rules governing provision of legal services in the Army.

d. 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 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 Article 37(b), UCMJ, 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. Article 37(b), UCMJ, 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 before a court-martial (see Article 37(a), UCMJ, and R.C.M. 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.

(1) Article 26(c), UCMJ, 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 shall 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.

(2) Military judges of SPCM who are assigned to the U.S. Army Judiciary will be rated as provided by the U.S. Army Judiciary.

(3) Military judges who are not assigned to the U.S. Army Judiciary will not be rated nor their reports indorsed or reviewed as to conduct as military judges by the convening authority or any member of their staff. AR 623–105 provides that the performance of duty as a military judge not assigned to the U.S. Army Judiciary will be evaluated by a military judge designated by the U.S. Army Judiciary.

5–10. Preparation by court-martial personnel

a. To be properly prepared for duty as president or counsel of a SPCM or as a SCM officer, persons so detailed must read and understand publications about their duties ((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.

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

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

b. DA Pam 27–15 should be used by the SPCM president during trial, both in open and closed sessions, when a military judge is not detailed to the court. DA Pam 27–7 should be used by the SCM officer during trial (see also App 9, MCM). In special courts-martial without a military judge, the procedural guide in Appendix 8, MCM, should be used by the SPCM president both in open and closed session. DA Pam 27–7 should be used by the SCM officer during trial (see also App 9, MCM).

c. The general instructional or informational courses in military justice excluded from the general prohibitions contained in Article 37(a), UCMJ and R.C.M. 104, are those authorized in chapter 19 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 not be detailed for a SPCM unless the SPCM is to be authorized to adjudge a bad-conduct discharge.

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, UCMJ, investigations

a. A civilian witness, determined to be reasonably available under R.C.M. 405(g) and requested to testify before an Article 32, UCMJ, investigation, is authorized transportation expenses and allowances under AR 37–106.

b. Civilian witnesses will not be requested to appear before an Article 32, UCMJ, investigation 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 investigating officer or the GCMCA's SJA. An approved request to appear will inform the witness of the pertinent entitlements.

Section III
Pretrial

5–13. 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. 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 9–5 *b*(2) of this regulation to the military magistrate. (See R.C.M. 305(h)(2)(C).)

c. Review by military magistrate. See chapter 9 of this regulation for requirements concerning review of pretrial confinement by military magistrates.

5–14. Preparation of charge sheet

R.C.M. 307 and DD Form 458 (Charge Sheet) provide instructions in the preparation of charges and specifications. (DD Form 458 is approved for electronic generation; see app A of this regulation for specific instructions.) Available data as to service, social security account number, and similar items required to complete the first page of the charge sheet will be included. An original and four copies of the charge sheet will be forwarded (para 5–15) and all copies will be signed. If several accused are charged on one charge sheet with the commission of a joint offense (R.C.M. 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.

5–15. Forwarding of charges

a. When trial by a SPCM or GCM is appropriate and the officer exercising SCM jurisdiction is not empowered to convene such a court (R.C.M. 504(b)), the officer exercising SCM jurisdiction will personally decide whether to forward the charges and allied papers. (See R.C.M. 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 R.C.M. 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, and 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 an Article 32 investigating officer. This delegation should be made in writing. After referral, all requests for pretrial delay will be submitted to the military judge for resolution.

5–16. Referral of charges

a. The convening authority will personally determine whether to refer the charges for trial and the kind of court 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). He or she must have prior signature authority under AR 25–50. Use of the command line verifies that the commander has personally acted (R.C.M. 601(e)).

b. The convening authority or the convening authority's designee will notify HQDA (DAJA-CL) of the following information on referral of a case capital (this information is exempt under AR 335–15 from management information control):

(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 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.

5–17. 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 (R.C.M. 602, Discussion).

5–18. Preliminary procedures

a. Docketing and calendar management.

(1) Immediately on 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 and trial judge detailed to the court-martial.

(2) If the accused has been or is under pretrial restraint, 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 set the case for trial at an early date. The date should be within 20 days of the service of charges on the accused for a GCM and within 10 days for a SPCM.

(3) Docketing procedures may include—

(a) Requesting mutually recommended dates from counsel within time limits set by the judge.

(b) Conferences under R.C.M. 802.

(c) Article 39(a), UCMJ, sessions.

(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.

(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. Article 39(a), UCMJ, sessions.

(1) Article 39(a), UCMJ, sessions 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 Article 39(a), UCMJ, session, counsel should give opposing counsel adequate opportunity to prepare. Before the day of the session, counsel will serve on the opposing counsel, and provide the trial judge, written notice of all motions and other matters for disposition. 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 are encouraged to submit briefs to the military judge and opposing counsel before Article 39(a), UCMJ, sessions, outlining and citing authority for their position. Counsel will be prepared to dispose of all motions (other than those based on evidence on the merits) and all other interlocutory issues at the Article 39(a), UCMJ, session. This will be the first session held in a case other than for docketing. The foregoing does not preclude matters from being raised and disposed of at the Article 39(a), UCMJ, 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 piecemeal presentations will be precluded. (See R.C.M. 905 through 907, as to waiver of issues by failure to present timely motions for relief.)

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 R.C.M. 505).

5–19. Preparation of DD Form 493 (Extract of Military Records of Previous Convictions

(Rescinded.)

5–20. 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 (R.C.M. 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). (Approved for electronic generation; see app A of this regulation for specific instructions.) A warrant of attachment may be executed by a United States 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 (R.C.M. 703(e) (2)(g) and Discussion).

c. Arrangements for travel overseas. See paragraph 18–21 of this regulation for arrangements for travel of civilian witnesses to proceedings overseas.

d. Expert witness payment. Within the United States payments to expert witnesses will be pursuant to the DOJ Expert Witness Rate Schedule. For trial outside the United States, the schedule should be considered as a guide.

Section IV
Trial

5–21. Procedure for summary courts-martial

a. DA Pam 27–7 and Appendix 9, MCM, 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. (For disposition of personal effects by summary courts-martial, see AR 638–1.)

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. DA Form 5111–R (Summary Court-Martial Rights Notification/Waiver Statement) will be completed and attached to each copy of the charge sheet. DA Form 5111–R can be locally reproduced on 8 1/2– by 11–inch paper. A copy for reproduction is located at the back of this regulation.

e. Counsel will not represent the government at SCM without prior approval from DAJA-CL.

5–22. Arraignment and pleas

When an Article 39(a), UCMJ, 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.

5–23. 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.

5–24. Entry of findings of guilty pursuant to a plea

a. In a trial by a court-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. Authority to enter into conditional pleas of guilty under R.C.M. 910 may be exercised only by GCM convening authorities.

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, and the instructions contained in R.C.M. 918.

5–25. Special courts-martial involving bad-conduct discharges (BCD)

a. A BCD may not be adjudged by a SPCM unless—

(1) A military judge was detailed to the trial, except in the case where a military judge could not be detailed because of physical conditions or military exigencies.

(2) Counsel qualified under Article 27(b), UCMJ, was detailed to represent the accused.

(3) A verbatim record of the proceedings and testimony was made (R.C.M. 1103(c)(1)).

b. A GCMCA may authorize an assigned or attached SPCM convening authority to convene a SPCM empowered to adjudge a BCD if the command of the SPCM convening authority is substantially located within an area in which hostile fire or imminent danger pay is authorized. If practicable, the authorization should be coordinated with Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200. Such authorization may be for a specified or indefinite period. Such authorization will be written, and the authorization will be included in the record of each BCD SPCM convened under this provision. Termination of hostile fire pay status will terminate authority to convene SPCM empowered to adjudge a BCD under this provision. However, once convened under this provision, no court will lose the power to impose a BCD, nor will any SPCM convening authority lose the power to approve any sentence including a BCD because of the termination of authority under this provision occasioned by the loss of hostile fire pay authorization. The statutory authority that permits imposing a BCD when a military judge could not be detailed because of " physical conditions or military exigencies" will not be used in this circumstance. All courts convened under this provision shall be processed in accordance with the provisions of paragraph 5–42 *a* after the designated BCD SPCM convening authority has taken initial action.

c. A reporter will not be detailed to a SPCM to take a verbatim record unless the SPCM is convened by—

(1) An GCMCA, or

(2) A SPCM convening authority granted the authority described in subparagraph 5–25 *b* above.

d. There is no requirement for a written pretrial advice before referring a case to a SPCM in which a BCD may be adjudged.

5–26. Personal data and character of prior service of the accused

a. For purposes of R.C.M. 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) DA Form 2 (Personnel Qualification Record—Part I), DA Form 2A (Personnel Qualification Record—Part I—Enlisted Peacetime), and DA Form 2–1 (Personnel Qualification Record—Part II).

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

(3) Award orders and other citations and commendations.

(4) Except for summarized records of proceedings under Article 15 (DA Form 2627–1), records of punishment under Article 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 MPRJ or OMPF 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) DA Form 3180–R (Personnel Screening and Evaluation Record).

b. These records may include personnel records contained in the OMPF or located elsewhere, unless prohibited by law or other regulation. Such records may not, however, include DA Form 2627–1 (Summarized Record of Proceedings under Article 15, UCMJ).

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

d. Documents in the OMPF may be obtained for court-martial purposes under chapter 2, AR 600–8–104. Urgent requests may be telephonically submitted and followed up by a message to CDR USAEREC//PCRE-RF-I//FT BEN HARRISON IN.

Section V
Post-trial

5–27. Report of result of trial

a. Under R.C.M. 1101(a) or 1304(b)(2)(F)(v), the trial counsel or SCM will prepare a report of the result of trial at the end of the court-martial proceedings. It will be prepared on DA Form 4430–R (Report of Result of Trial). DA Form 4430–R will be locally reproduced on 8 1/2– by 11–inch paper. A copy for reproduction is located at the back of this regulation. Post-trial prisoners who are transferred to the U.S. Disciplinary Barracks or other military corrections system facilities must carry a copy of the DA Form 4430–R. DA Form 4430–R will include all credits 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 R.C.M. 304, R.C.M. 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. The completed DA Form 4430–R will be typewritten, if practicable, or legibly handwritten.

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

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

(2) Date sentence was adjudged.

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

c. The GCM authority will ensure that the Clerk of Court (JALS-CC) 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.

5–28. 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)), R.C.M. 304, R.C.M. 305, or for any other reason specified by the judge.

b. See AR 190–47, paragraph 6–19, concerning approval of forfeitures of two-thirds pay per month for more than nine months.

c. 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 finance and accounting office (FAO) providing finance 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, telefax, and the JUMPS Tele-Processing System (JTELS). If JTELS is used, the SJA will coordinate with FAO for use of JTELS, 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 as 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.

d. Message addresses are in DA Pam 25–11 (in United States Military Communications-Electronics Board PUB–6, Joint Department of Defense Plain Language Address Directory (Message Address Directory). The JTELS address for the Commandant USDB is Commandant USDB, Site ID 6340.

e. Copies of orders promulgating convening authority action will be forwarded under paragraph 12–3 of this regulation.

5–29. 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 which 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.

5–30. 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 MPRJ. 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 Clerk of Court, JALS-CC, Nassif Building, Falls Church, VA 22041–5013.

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.

5–31. Suspension of sentence

a. Authority to suspend the execution of a sentence is set forth in R.C.M. 1108(b). No sentence may be suspended beyond a reasonable period (R.C.M. 1108(d)). A reasonable period of suspension shall be calculated from the date of the order announcing the suspension and shall not extend beyond—

(1) Three months for an SCM.

(2) Nine months for an SPCM in which no BCD was adjudged.

(3) One year for an SPCM in which a BCD was adjudged.

(4) 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 R.C.M. 1109(b)(4).

5–32. Vacation of suspended sentences

a. Sentences adjudged by GCM or by SPCM including a bad-conduct discharge.

(1) See R.C.M. 1109(d). DD Form 455 (Report of Proceedings to Vacate Suspension of a Court-Martial or of Special Court-Martial Sentence, including a Bad-Conduct Discharge) (see App 18, MCM) 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. (DD Form 455 is approved for electronic generation; see app A, sec IV of this regulation, for specific instructions.) The original and two copies of any proceedings vacating a suspension will be sent to the office of the Clerk of Court (JALS-CC), Nassif Building, Falls Church, VA 22041–5013.

(2) In a case of a suspended dismissal, the officer exercising GCM jurisdiction over the accused, following a vacation hearing under R.C.M. 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-CC), Nassif Building, Falls Church, VA 22041–5013.

b. Sentences adjudged by SPCM not including a bad-conduct discharge or by SCM. (See R.C.M. 1109(e).)

5–33. Disposition of SJA recommendations and JA reviews of records of GCM and of SPCM in which a bad-conduct discharge has been 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.)

5–34. Stay of execution of death sentence

a. A convening authority shall stay the execution of a death sentence as set out in R.C.M. 1113(c)(3).

b. The transcript of the hearing conducted pursuant to R.C.M. 1113(c)(3) shall be verbatim and shall accompany the findings of fact.

5–35. Clemency under Article 74

a. The Secretary of the Army (SA), or the Secretary's designee, is empowered by Article 74 *a*, UCMJ, to remit or suspend any part or amount of a court-martial sentence, other than a sentence approved by the President; and by Article 74 *b* UCMJ, 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.

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

c. Prior to completion of appellate review, TJAG, as designee of the SA, may mitigate, remit, or suspend, in whole or in part, any unexecuted portion of a court-martial sentence, other than sentences extending to death or dismissal or affecting a general officer. 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. Petitions to the SA for clemency under Article 74, UCMJ, should be addressed to Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200, 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 shall be forwarded through the confinement facility. The confinement facility shall forward the petition along with copies of relevant records reflecting on the soldier's record in confinement. Petitioners not in confinement shall forward the petition directly.

e. For guidance on the power of the Army Clemency and Parole Board to review cases for clemency and parole, see AR 151–30, in particular paragraph 3–1 *b*(10), and 10 U.S.C. 952–3.

5–36. Petition for new trial under Article 73

a. R.C.M. 1210 and Article 73, UCMJ, 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 shall be filed with the Clerk of Court (JALS-CC), Nassif Building, Falls Church, VA 22041–5013. For all other cases, the petition shall be filed with the Chief, Examination and New Trials Division (JALS-ED), Nassif Building, Falls Church, VA 22041–5013. 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

5–37. Preparation

a. Records of trial will be prepared as prescribed in R.C.M. 1103 and R.C.M. 1305. Also, see paragraph 13–6 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 5–42 of this regulation. The cover of this additional copy will be marked prominently with the phrase " Clemency Copy," and upon receipt thereof the appropriate confinement facility (USDB or Army RCF) shall cause a summary of the record of trial to be made and sent to the Army Clemency and Pardon Board.

b. Preparation of DD Form 490 (Record of Trial) and DD Form 491 (Summarized Record of Trial) (Chronology Sheets). (DA Forms 490 and 491 are approved for electronic generation; see app A, sec IV for specific instructions.) The computation of elapsed days on the chronology sheets must be uniformly calculated. 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 entitled, " 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 R.C.M.s 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 R.C.M. 1105 and R.C.M. 1106, and immediately after the final total in the " cumulative elapsed days" column for delays pursuant to R.C.M. 1110. This should be accompanied by an entry in the remarks section. For example: Defense delay, R.C.M. 1105(c): 6 days (31 Mar–5 Apr 89). 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, PCF, 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 13–11 *b* for other requirements.)

d. In GCM and SPCM cases in which a summarized record of trial is authorized (see R.C.M. 1103(b)(2)), DD Form 491 (Summarized Record of Trial) will be used to prepare the summarized report. (See App 13, MCM.) 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 R.C.M. 1103(b)(2)(B) and 1103(c)(1) and as indicated in Appendix 14, MCM.

e. If the proceedings have resulted in an acquittal of all charges and specifications or in termination before findings, the record of trial will be prepared under R.C.M. 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. 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) (approved for electronic generation; see app A for specific instructions) (see App 15, MCM) will include additionally 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.

(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 R.C.M. 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 Article 64(a), UCMJ, and R.C.M. 1112 and is legally sufficient."

(3) In those cases where review is completed under R.C.M. 1112 (f) or R.C.M. 1201(b)(2), item 8 or item 13, as noted in (2) above, will be annotated with the result of the completed review.

(4) 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 5–42 *b* of this regulation before disposition under paragraph 5–43 *a* of this regulation.

5–38. Readability of records of trial

The original and all copies of records of trial forwarded for appellate review, including examination under Article 69, UCMJ, 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 ten characters per inch, and it must clearly distinguish each character from all others, such as " I" from " l."

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.

5–39. 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.

5–40. Authentication of records of trial

a. Records of trial will be authenticated under R.C.M. 1104(a).

b. The record of trial of an SPCM in which no BCD was adjudged will be authenticated in the same manner as that of a GCM or SPCM in which a BCD has been adjudged.

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

5–41. Service of record of trial on the accused

Records of trial will be served under R.C.M. 1104(b) and R.C.M. 1305(e).

5–42. Forwarding of records of trial after initial action

a. In GCM cases (including proceedings ending in acquittal or termination (see R.C.M. 1103(e)), and in SPCM cases in which a BCD has been approved, where the accused has not waived appellate review under R.C.M. 1110, the record of trial will be forwarded to the Clerk of Court, (JALS-CC), Nassif Building, Falls Church, VA 22041–5013. (See para 13–6 for identification of companion cases.) In cases in which an additional record of trial is prepared for the Army Clemency and Parole Board under paragraph 5–37, that record will be forwarded to the U.S. Disciplinary Barracks, (Commandant, U.S. Disciplinary Barracks, ATTN: ATZL-DB-CL, Fort Leavenworth, KS 66027), or the appropriate Army RCF where the accused is confined. If the accused is not confined or is confined in any facility other than on the USDB or an Army RCF, the record will be sent directly to the Army Clemency and Parole Board, 1941 Jefferson Davis Highway, Second Floor, Arlington, VA 22202–4508.

b. In cases under R.C.M. 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 R.C.M. 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. Following JA review, those records of trial which are required to be forwarded under R.C.M. 1112(g) (1) or (2) will be transmitted to the Clerk of Court, (JALS-CC), Nassif Building, Falls Church, VA 22041–5013. Records of trial not required to be forwarded under R.C.M. 1112(g)(1) or (2) will be filed under paragraph 5–43 below.

5–43. 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, will be filed under AR 25–400–2 (file numbers 27–10a and 27–10c respectively).

b. On completion of any required review and supplemental action, original records of trial of GCMs, SPCMs with approved BCDs, suspended or unsuspended, and SPCMs bearing a U.S. Army Judiciary docket number, will be sent for filing to the Office of the Clerk of Court, (JALS-CC), Nassif Building, Falls Church, VA 22041–5013. The distribution of the record of trial in SCM proceedings is discussed in subparagraph 12–7 *e* of this regulation.

5–44. Mailing records of trial

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.

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.

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. 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

USATDS is an activity of the USALSA, a field operating agency of TJAG. Operational control and supervision of USATDS is exercised by the Assistant Judge Advocate General for Civil Law and Litigation. Command functions other than operational control are provided by the Commander, USALSA. All USATDS counsel are assigned to USALSA, with duty stations at specified installations.

a. Chief, USATDS. The Chief, USATDS, is a JA, designated by TJAG, who exercises supervision, control, and direction of defense counsel services in the Army.

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, Article 32 investigations, and in other judicial and administrative proceedings requiring such detail. This authority may be delegated.

c. Regional defense counsel.

(1) A regional defense counsel is a JA designated by TJAG and certified under Article 27(b), UCMJ, 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 regional defense counsel—

(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 (para 6–9).

(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 as 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 Article 27(b), UCMJ, 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 (para 6–9).

(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 as prescribed by the Chief, USATDS.

g. Trial defense counsel. A trial defense counsel is a JA, certified under Article 27(b), UCMJ, 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 perform other defense-related duties as prescribed by the Chief, USATDS.

6–4. Administrative and logistical support

Commanders of installations selected as duty stations for USATDS counsel will provide administrative and logistical support for USATDS personnel including, but 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. Maintenance of financial records, preparation of pay vouchers, and payment of all USATDS personnel.

c. Maintenance of military personnel records, officer qualification records, leave records, Standard Installation/Division Personnel System (SIDPERS) responsibilities, and similar personnel requirements.

d. Completion of personnel officer entries and forwarding of officer evaluation reports (OERs) to the appropriate USATDS rating official.

e. Issuance of such temporary duty (TDY) orders, at the request of the USATDS counsel concerned, as may be necessary in the exercise of their duties. Appropriate budgetary data, including funding citations, will be provided by USASTDS at the time orders are requested. All TDY orders will contain the descriptive phrase: " U.S. Army Trial Defense Service with duty station . . ." One copy of each order will be mailed to HQDA (JALS-TD), Nassif Building, Falls Church, VA 22041– 5013.

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.

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.)

h. Stenographic, clerical, administrative, and logistical assistance as required and to the same degree provided to the supported JA office. (See AR 27–1 and DA PAM 570–551.) (The adequacy of support provided by host installations will be a subject of special interest to TJAG in making his or her statutory visits under Article 6, UCMJ.)

6–5. Funding responsibilities

a. The Commander, USALSA, directs the funding of USATDS counsel travel and per diem associated with professional and continuing legal education training and for travel ordered by the Chief, USATDS, that involves leaving an assigned field office to provide representation at GCM, SPCM, or Article 32, UCMJ, hearings at another installation.

b. Convening authorities will continue to fund all other authorized costs related to judicial and administrative proceedings including, but not limited to, those involved in—

(1) USATDS counsel travel caused by a permanent change of location for the accused or the proceedings for the convenience of the government. (For example, the accused establishes an attorney-client relationship with USATDS counsel at Fort Bragg, and is subsequently transferred back to USAREUR to face charges arising out of conduct that occurred in Europe prior to permanent change of station (PCS) to Fort Bragg.)

(2) USATDS counsel travel caused by the temporary movement of the accused from the accused's duty station for the convenience of the government. (For example, an accused, stationed at Fort Huachuca, is placed in pretrial confinement at Fort Sill.)

(3) The attendance of lay and expert witnesses.

(4) The interviewing of witnesses, the taking of depositions and the employment of expert witnesses.

(5) The appearance of individual military counsel not assigned to USATDS.

(6) Other investigative expenses properly authorized by a 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.

d. Regarding fee requests for expert services and related purposes in capital cases, TJAG will not approve, nor consider on the merits, requests for funds to obtain expert services or for related purposes. Moreover, TJAG 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 miliary judge; after authentication the USACCA or USCAAF as appropriate).

6–6. Training

As required by paragraph 6–2, the Chief, USATDS, develops programs and policies designed to enhance the professional qualifications of defense counsel. This will be accomplished primarily through the use of internally developed programs of instruction and attendance by USATDS counsel at continuing legal education courses offered by The Judge Advocate General's School (TJAGSA). 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 servicing USATDS office

a. When a USATDS office is not located at an installation, the post or activity JA will provide for all defense services. The JA will not provide for representation at GCMs and SPCMs and Article 32, UCMJ, investigations; as such, representation remains a USATDS responsibility. 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.

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. SJAs 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. 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. Exceptions to this policy will be authorized by the regional defense counsel. Normally, such exceptions will be granted only when the particular requirement conflicts with the basic mission of USATDS. For example, USATDS 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. USATDS counsel will wear shoulder patches or other distinctive insignia as determined by TJAG. In all other cases, the regional defense counsel will coordinate proposed exceptions with the Office of 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. 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 USATDS. 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 perform defense duties under the supervision of the senior defense counsel. Normally, such duties will not involve representation at courts-martial or Article 32, UCMJ, investigations.

e. Nondefense duties. Except as outlined in paragraphs 6–8 *a*, *b* , and *c* above, only the Chief, USATDS, may direct the performance of non-defense duties by USATDS counsel. 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 senior defense counsel will designate one or more USATDS counsel, by name, for deployment. Senior defense counsel will develop and maintain plans for USATDS support of units with deployment missions. When time and security provisions permit, deployment of USATDS counsel will be coordinated with the Chief, USATDS. SJAs will—

(1) Review such plans.

(2) Monitor the state of readiness of designated USATDS counsel.

(3) 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 regional defense counsel will be advised of the circumstances. USATDS counsel will thereafter be designated or detailed to represent the accused or suspect at further proceedings.

6–9. Detail of defense counsel

The Chief, USATDS, details trial defense counsel for GCMs and SPCMs. This authority may be delegated down to senior defense counsel. Detail of counsel shall be reduced to writing and included in the record of trial or announced orally on the record at court-martial. The writing or announcement shall indicate by whom the counsel was detailed. 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. 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 Article 27(b), UCMJ, to perform defense counsel duties, when such are properly assigned.

6–10. Requests for individual military counsel

a. General. The Chief, USATDS, determines the availability of USATDS counsel when requested as individual military counsel under the provisions of R.C.M. 506(b) and this regulation. The Commander, USALSA, acts on appeals from adverse determinations made by the Chief, USATDS. (See para 5–7 *g* for control and support of non-USATDS individual military counsel).

b. Limitations on availability. Pursuant to Article 38, UCMJ, R.C.M. 506(b)(1), and paragraph 5–7 *c* of this regulation the following USATDS counsel are unavailable to serve as individual military counsel:

(1) USATDS counsel assigned to and with duty station at the office of the Chief, USATDS.

(2) USATDS counsel assigned outside the USATDS region in which the trial or Article 32, UCMJ, investigation will be held, unless the requested counsel is stationed within 100 miles of the situs of the trial or investigation.

(3) USATDS counsel whose duty stations are in Panama, Hawaii, or Alaska, for Article 32, UCMJ, investigations or trials held outside Panama, Hawaii, or Alaska, respectively.

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* or 5–7 *d*, or *b*(1)-(4) above, the convening authority will notify the accused that the requested counsel is unavailable. All other requests will be transmitted directly to the Chief, USATDS. If electronic message is used, the address is: CDRUSALSA FALLS CHURCH VA//JALS-TD//. 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 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) 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. Complaints involving the professional conduct or performance of USATDS counsel should be forwarded to the Chief, USATDS, for action according to Chapter 16.

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–R (Defense Counsel Card), for the purpose of identification when assigned to represent an individual. DA Form 4441–R will be reproduced locally on 3 1/2– by 2 1/2–inch cards. A copy of DA Form 4441–R is located at the back of this regulation.

Chapter 7
Court Membership and Other Related Military Justice Duties by Non-JAGC Personnel

7–1. General

This chapter is an informational reference to various restrictions on Army personnel, other than JAGC officers, as to membership of courts-martial and other related military justice duties. This chapter

is not regulatory in nature and is subject to change as the cited regulatory sources change.

7–2. Chaplains

Chaplains will not be detailed as trial or defense counsel, investigating officers, or as members of courts-martial (AR 165–20, para 3–6).

7–3. Medical, dental, and veterinary officers

a. Except when regulations specifically stipulate to the contrary, medical, dental, and veterinary officers will not be—

(1) Detailed as members of courts-martial, nonprofessional boards, or committees.

(2) Assigned to other duties in which medical training is not essential.

b. Similarly, every effort consistent with due process of law will be made to use reports, depositions, or affidavits submitted by medical officers for use at courts-martial, boards, or committees (in preference to requiring the appearance of medical officers as witnesses to present testimony in person). (AR 40–1, paras 2–3 *b*, 2–8, and 2–13.)

7–4. Army nurses

The applicable portions of paragraph 7–3 above govern the use of Army Nurse Corps officers. However, when Army Nurse Corps officers or other nursing service personnel are involved in the proceedings (AR 40–1, para 2–20) they may be detailed as members of courts-martial, nonprofessional boards, or committees.

7–5. Medical specialist corps

The applicable portions of paragraph 7–3 above govern the use of Army Medical Specialist Corps officers. However, when Army Medical Specialist Corps officers or other food service, physical, or occupational therapy personnel are involved in the proceedings (AR 40–1, para 2–23), they may be detailed as members of courts-martial, nonprofessional boards, or committees.

7–6. Inspectors general (IG)

a. Officers assigned as IGs will not be appointed as investigating officers under Articles 32 or 138, UCMJ, AR 15–6, or any other regulation or directive providing for the appointment of investigating officers and members of courts-martial; nor will they be given similar duties that may later disqualify them from making impartial investigations or inquiries into any activity of the HQDA staff agency or command to which they are assigned. (See AR 20–1, para 1–7 *j*.)

b. NCO assistants to IGs should not be given other duties that would disqualify them from performing their IG duties (AR 20–1, para 1–7 *j*).

7–7. Warrant officers

Warrant officers are expressly prohibited from performing additional duties as—

a. A member of any court-martial at the trial of any officer senior in grade or date of rank.

b. Trial counsel or defense counsel, or assistant trial counsel, or assistant defense counsel of a SPCM or GCM.

c. Individual military counsel before a GCM unless legally qualified in the sense of Article 27(b), UCMJ.

d. Investigating officer appointed under the provisions of Article 32, UCMJ, and R.C.M. 405(d)(1).

e. A member of a formally convened military board whose duties include investigation of the conduct, status, liability, or rights of an officer senior in grade or date of rank.

Chapter 8
United States Army Trial Judiciary—Military Judge Program

8–1. 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 Article 26, UCMJ, which provides for an independent judiciary within the U.S. Army.

b. Organization. The Trial Judiciary is an element of the U.S. Army Trial Judiciary, which is in turn an element of the USALSA, a field operating agency of TJAG.

c. Military judge of a court-martial.

(1) A military judge will be detailed to all GCMs. A military judge will be detailed to each SPCM, unless a military judge can not be obtained because of physical conditions or military exigencies. If a military judge is not detailed to an SPCM, the convening authority 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.

(2) A military judge will be a commissioned officer of the U.S. Army on active duty who is—

(a) A member of the bar of a Federal court or a member of the bar of the highest court of a State.

(b) Certified to be qualified for duty as a military judge by TJAG.

d. Chief Trial Judge. A military trial judge who is designated by TJAG (para 1–4 *b*) as the chief of military judges of GCMs and SPCMs.

e. GCM military judge. A military judge who is assigned to the US Army Trial Judiciary, with the primary duty of presiding over GCMs and SPCMs to which he or she is detailed.

f. SPCM military judge. A military judge who is a reservist assigned or attached to the U.S. Army Trial Judiciary whose primary duty is to preside over SPCMs to which he or she is detailed.

g. Tenure for military trial judges. Judge Advocates are certified as military judges by TJAG and assigned to the Trial Judiciary for a minimum of three years, except under any of the following circumstances:

(1) The military judge is assigned to the Sixth Judicial Circuit (Republic of Korea), or such other area where officers are normally assigned for a short tour of one or two years; in such cases the military judge will be appointed for a one or two 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 16, Suspension of Military Judges.

8–2. 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.

b. A military judge of a SPCM must be certified as qualified for duty by TJAG. Military judges who are certified for detail to GCMs will also be certified for detail to SPCMs. TJAG will issue certification orders.

c. Appropriate records will be maintained by TJAG as follows:

(1) Current lists of military judges assigned or attached to the U.S. Army Trial Judiciary.

(2) A separate list of other military judges who may be detailed to SPCMs not empowered to adjudge a BCD.

(3) A list of supporting documents showing that the qualifications of each military judge have been met.

8–3. 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 his or her designee. Judicial circuits will be established, but may be altered and dissolved by TJAG, or TJAG's designee, as required, at which time all convening authorities concerned will be notified. TJAG, or TJAG's designee, will also 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.

8–4. 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 the MCM.

(2) The military judge's judicial duties 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 (Art. 39(a), UCMJ).

(c) Entering findings of guilty based upon providently entered pleas of guilty immediately without a vote.

(d) Ruling on requests for continuances.

(e) Conducting post-trial sessions under R.C.M. 1102.

(3) The purpose of an Article 39(a), UCMJ, 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 may—

(a) Perform magisterial duties according to chapter 9 of this regulation.

(b) Issue authorizations on probable cause under chapter 9 of this regulation.

(c) 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.

(d) 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.

(e) Conduct training sessions for trial and defense counsel.

(f) Serve as fact finders in debarment and suspension proceedings involving Government contracts.

(g) Conduct investigations, hearings, or similar proceedings as may be directed by TJAG.

b. Summary courts-martial. A military judge may be detailed 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 (R.C.M. 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 the guilt or innocence of the accused in the form of general findings (and will make special findings when required or otherwise appropriate (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, including the prompt, accurate, and complete submission of the Military Judge Case Report (JAG–72) to the Clerk of Court (ATTN: JALS-CC), Nassif Building, Falls Church, VA 22041–5013.

(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 8–6 *b* in case of conflict in trial dates or in any other situation when another military judge may be required. In addition, the military judge with primary responsibility for a GCM jurisdiction will detail a judge within such a military judge's area of responsibility to preside over cases referred for trial in each subordinate SPCM jurisdiction. The military judge with primary responsibility for a GCM jurisdiction will, when necessary, obtain the detail of military judges by conferring with the chief circuit military judge as provided in paragraph 8–6 *b* below.

8–5. Responsibilities of the chief circuit military judge

The chief circuit military 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. Determining which GCM jurisdictions will be the primary responsibility of the GCM military judges within the circuit.

d. Obtaining and detailing a replacement military judge assigned to the U.S. Army Trial Judiciary and located within the circuit. If none is available, making an immediate request for a replacement to the Chief Trial Judge when the military judge assigned to the U.S. Army Trial Judiciary primarily responsible for a court-martial jurisdiction is temporarily unavailable.

e. Determining the rater, intermediate rater, and senior rater as required for OERs concerning military judges and, where appropriate, for magistrates within the circuit.

f. Designating supervising military judges for part-time military magistrates (chap 9) and SPCM military judges.

g. Ensuring that individual mobilization augmentee military judges receive adequate assistance in performing annual training.

8–6. Detailing of military judges

a. Authority to detail military judges (R.C.M. 503(b)). The Chief Trial Judge is authorized to detail military judges for courts-martial.

This authority may be delegated to GCM military judges (see para 5–3).

b. Detail of military judges within GCM jurisdictions.

(1) The GCM military judge who is designated as primarily responsible for a GCM jurisdiction (para 8–5 *c*) will—

(a) Normally be detailed to preside over the GCM convened in that jurisdiction.

(b) Be responsible for arranging for a replacement or additional judge support if he or she is unavailable or determines that a need exists for assistance in disposing of court-martial cases referred to trial.

(2) When the GCM military judge is unavailable as a point of contact, the convening authority or the convening authority's delegate will request the chief circuit military judge to provide and detail a replacement. If the chief circuit military judge is unable to satisfy the request from the military judges within the circuit, the chief circuit military judge will request a replacement from the Chief Trial Judge. The judge who details the replacement judge will cause the convening authority to be informed immediately, normally through the SJA, of the name of the replacement judge and the date of availability.

(3) For cases of SPCM—

(a) The GCM military judge designated as primarily responsible for a GCM jurisdiction (para 8–5 *c*) will designate himself or herself or another military judge (assigned to the U.S. Army Trial Judiciary within that GCM military judge's area of responsibility) as primarily responsible for each SPCM jurisdiction included in the GCM jurisdiction. The military judge so designated will normally be detailed to preside over the SPCMs convened in the jurisdiction.

(b) When the designated military judge is not available, the GCM judge who designated the unavailable military judge will select and detail a replacement from the military judges assigned to the U.S. Army Trial Judiciary within the GCM judge's area of responsibility. If no such replacement judge is available within the area, the GCM judge will request that the chief circuit military judge provide a replacement. If the chief circuit military judge is unable to find and detail an available judge among the military judges assigned to the U.S. Army Trial Judiciary within the chief circuit military judge's circuit, the circuit judge will request a replacement from the Chief Trial Judge. The Chief Trial Judge will endeavor to find and detail a replacement from judges assigned to the U.S. Army Trial Judiciary.

c. Processing requests for replacement judges. Requests and responses to requests will be transmitted by the quickest available means, normally by telephone.

d. Docketing. The GCM military judge designated as primarily responsible for a GCM jurisdiction pursuant to paragraph 8–5 *c* above will oversee docketing and calendar management within that jurisdiction. As part of the docketing responsibility, the GCM military judge will record anticipated leaves and other foreseeable absences of military judges so as to permit requests for replacements as soon as possible.

e. 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 R.C.M. 201(e)(4). For administrative control, the concurrence of the Chief Trial Judge should be obtained before the judge is detailed.

8–7. Administrative and logistical support

a. Duty station. Commands selected as duty stations will provide administrative and logistical support for military judges to include—

(1) Permanent 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.

(2) Preparation of pay vouchers and payment of military judges.

(3) Assistance and maintenance of military personnel records, officer qualification records, and all other personnel requirements.

b. Duty and other stations. Commands selected as duty stations and commands at or near a location where a military judge is to preside over a trial will provide such administrative and logistical support for military judges as may be necessary in the performance of the judge's duties, including—

(1) Private office space.

(2) Office furniture, equipment, and supplies.

(3) Access to legal research publications and facilities.

(4) Class A telephone service.

(5) Stenographic, clerical, and administrative assistance as required for the expeditious performance of duties (chief circuit judges will be provided a clerk from the U.S. Army Trial Judiciary).

(6) Army transportation facilities, including aircraft, as far as is practicable.

(7) Issuance of such TDY orders, at the request of the military judge concerned, as may be necessary in the exercise of the judge's duties, as follows:

(a) Authority for commanders to issue TDY orders for travel of military judges within Continental United States (CONUS) and to issue TDY orders involving travel of military judges from locations within CONUS to destinations outside CONUS is governed by AR 600–8–105.

(b) Where AR 600–8–105 does not delegate authority to commanders to issue TDY orders for military judges assigned to the U.S. Army Trial Judiciary for travel from locations within CONUS to areas outside CONUS, orders will be issued by HQDA when travel to destinations outside CONUS is necessary.

(c) Orders for travel outside CONUS will direct use of military aircraft when available and authorize use of other modes in case a military aircraft is not available. When a court-martial case has been scheduled for trial on a certain date, the military judge who has been detailed to preside at the trial must arrange travel so as to arrive in sufficient time before commencement of the trial. Military aircraft generally will be considered not available whenever such aircraft cannot arrive at the place of the trial within a reasonable time before the date of the trial, usually 1 day preceding such date. The military judge concerned should be authorized commercial air transportation under such circumstances.

(d) Orders will state that authority is granted to make such changes in itinerary and to proceed to such additional places as may be necessary to accomplish the assigned mission.

(e) Travel costs and per diem for all military judges assigned to the U.S. Army Trial Judiciary will be budgeted and funded by USALSA.

c. 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 military judge or the chief circuit judge's designee.

(b) By chief circuit military judges to HQDA (JALS-TJ), Nassif Building, Falls Church, VA 22041–5013.

(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.

8–8. Rules of court

TJAG authorizes the Chief Trial Judge under R.C.M. 108 to promulgate local or general rules of court. This authority may be delegated by the Chief Trial Judge to chief circuit judges.

Chapter 9
Military Magistrate Program

Section I
General

9–1. Scope

a. This chapter establishes the Army-wide Military Magistrate Program. It authorizes and specifies procedures for the appointment and assignment of military magistrates and for their use to review pretrial confinement (R.C.M. 305(c)). It implements the Military Rules of Evidence (MRE), Rules 315 and 316, Part III, MCM and R.C.M. 302(e)(2), by authorizing military judges and magistrates to issue necessary search and seizure 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 (AR 190–29).

c. The Military Magistrate Program is an Army-wide program for review of pretrial confinement and the issuance of search and seizure 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 and seizure authorizations on probable cause.

e. An assigned military magistrate is a JA appointed by TJAG or TJAG's designee and assigned to USALSA, a military judge assigned to the U.S. Army Trial Judiciary, or an individual mobilization augmentee ordered to annual training with duty as a military judge.

f. A part-time military magistrate is a 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 designated to supervise the activities of military magistrates within the supervising military judge's jurisdiction.

9–2. 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 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) SJAs 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 shall forward the names of appointed part-time military magistrates to the Chief Trial Judge, (JALS-TJ), Nassif Building, Falls Church, VA 22041–5013.

9–3. 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 shall direct.

(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 17). (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.)

9–4. Supervision of military magistrates

a. The Chief Trial Judge, US 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.

(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

9–5. 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 R.C.M. 305(c) 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. Whoever initially authorizes pretrial confinement in a facility not administered by the Army will immediately notify the officer exercising GCM jurisdiction over the person confined. This officer will immediately cause the responsible military magistrate to be notified of the case.

(3) The procedures set forth in paragraph 9–5 *b* of this regulation are not applicable to the review of cases of Army soldiers confined in Navy, Marine Corps, Air Force, or Coast Guard confinement facilities. The review of pretrial confinement of a soldier of the U.S. Army shall be governed by the military magistrate regulations of the Armed Force that has jurisdiction over the place of confinement. Soldiers ordered into pretrial confinement shall be confined in Army confinement facilities whenever practicable.

(4) Service members of other Armed Forces ordered into pretrial confinement in Army confinement facilities shall be subject to the provisions of this section, unless specific exceptions to these provisions, consistent with R.C.M. 305 are requested in writing by an officer of the other Armed Force.

b. Procedures.

(1) The military magistrate will review pretrial confinement in accordance with R.C.M. 305(i). The magistrate's decision to approve or disapprove pretrial confinement is subject to a request for

reconsideration (see R.C.M. 305(i)(2) pertaining to reconsideration of a decision to approve confinement) or a request for review by the government, 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 R.C.M. 305(j). Nothing in this paragraph shall preclude an accused from seeking extraordinary relief.

(a) A copy of the magistrate's memorandum to approve or disapprove pretrial confinement, required by R.C.M. 305(i)(6), shall be served on the SJA or his/her designee and the accused. Upon order of the magistrate, an accused will be released immediately from pretrial confinement in accordance with R.C.M. 305(i)(5). Upon request of the government, the supervising military judge (or a military judge designated by the supervising military judge) may review the magistrate's decision to disapprove pretrial confinement. This review is intended to be used only in extraordinary circumstances, and will not be used when the military magistrate is also a military judge.

(b) The reviewing military judge may set aside the magistrate's decision to disapprove pretrial confinement only if the decision is determined to be an abuse of discretion. To find an abuse of discretion requires a finding that the magistrate's decision was arbitrary, fanciful, clearly unreasonable, or clearly erroneous. The reviewing military judge may conduct a review by any reasonable means, to include the use of telecommunications. The reviewing military judge may require the magistrate to submit a written record of decision which includes the factual findings upon which the magistrate's decision to release the accused is based. A de novo hearing conducted in the presence of the accused is not required. If the magistrate's release decision is set aside, the reviewing military judge will make a record of the decision with supporting findings.

(c) The decision to request review by the government must be approved by the SJA for the GCMCA. The government must give prompt notice of its intent to request review of the magistrate's decision to release the accused. This notice shall be filed with the magistrate, who will immediately notify the supervising military judge of the request for review.

(d) The government must file a written request for review, with supporting documentation, with the supervising military judge or his/her designee within 2 workdays of the magistrate's decision to release the accused. This time limit may be extended by the supervising judge or designated military judge for good cause. The review will be conducted by the supervising military judge or his/her designee within 7 calendar days of the magistrate's original decision.

(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–R (Checklist for Pretrial Confinement). The commander will include (in the appropriate area of the pretrial confinement block) or attach to the DA Form 5112–R a statement of the basis for the decision to confine (see R.C.M. 305(h)(2)(c). DA Form 5112–R will be locally reproduced on 8 1/2– by 11–inch paper. A copy for reproduction is located at the back of this regulation.

(3) Military magistrates may not impose conditions on release from confinement, but may recommend appropriate conditions to the unit commander.

(4) The unit commander concerned may impose any authorized pretrial restraint deemed necessary on a person released from confinement by a magistrate. However, the unit commander may not order the return of that person to pretrial confinement except when an additional offense is committed or on receipt of newly discovered information (see R.C.M. 305(1). The military magistrate will be immediately notified of any reconfinement and the reasons therefore.

(5) Circumstances of soldiers who, after release by a military magistrate, are reconfined 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.

(6) The military magistrate will communicate the decision in each case to the soldier confined. 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).

9–6. Administrative and logistical support

The provisions of paragraph 8–7 of this regulation pertaining to members of the U.S. Army Trial Judiciary are also applicable to assigned military magistrates.

Section III
Search, Seizure, and Apprehension Authorizations

9–7. Authority of military judges and magistrates to issue authorizations

The following are authorized to issue search and seizure and search and apprehension authorizations on probable cause (MRE 315(d)(2)) with respect to persons and property specified in MRE 315(c):

a. Military judges assigned or attached to the US Army Trial Judiciary.

b. Military magistrates assigned to USALSA.

c. Part-time military magistrates appointed under paragraph 9–2 *b* of this regulation.

9–8. Issuance

a. The procedures for issuing of search and seizure and search and apprehension authorizations are contained in the MRE. 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. DA Form 3744–R (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 is shown at figure 9–1 of this regulation. Authorizations to search and seize or search and apprehend may be issued orally or in writing. DA Form 3745–R (Search and Seizure Authorization) or DA Form 3745–1–R (Apprehension Authorization) may be used if an authorization is issued in writing. DA Forms 3744–R, 3745–R, and 3745–1–R will be reproduced locally on 8 1/2– by 11–inch paper. Copies of these forms are located at the back of this regulation.

9–9. Oaths

See chapter 11 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.

9–10. Execution and disposition of authorizations and other related papers

a. Execution. MRE 315(h) governs the execution of authorizations to search and seize. 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. 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.

9–11. Recovery and disposition of property

a. Evidence retained for courts-martial. Evidence retained for courts-martial will be disposed of according to applicable regulations. SJAs 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 (USACIDC). 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 190–22, chapter 3, govern the recovery and disposition of property seized pursuant to a search or seizure by other authorized persons.

9–12. 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.

9–13. 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.

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AFFIDAVIT SUPPORTING REQUEST FOR AUTHORIZATION TO SEARCH AND SEIZE OR APPREHEND

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

BEFORE COMPLETING THIS FORM, SEE INSTRUCTIONS ON PAGE 2

1. I, CWO James E. Snow (Name), 3d MPD (CI), Fort Gordon, Georgia (Organization or Address)

having been duly sworn, on oath depose and state that: on 6 December 1984, PFC John Doe, Headquarters and Headquarters Company, 3d Advanced Individual Training Brigade (Signal), US Army Signal Center and Fort Gordon, Fort Gordon, Georgia, reported to me that one blue and white portable "Smooth Tone" high-fidelity phonograph with gold script initials "JD" engraved on the cover, the property of Doe, was stolen from his living quarters by a person or persons unknown. The property was of a value of $200.00.

2. **The affiant further states that:** PFC Joseph R. Jones, Special Processing Detachment, Fort Gordon, Georgia, who lives next door to Doe, stated that at about 1700 hours on 6 December 1984 he was entering his driveway in his automobile when he noticed PFC Tom Smutt, Headquarters and Headquarters Company, 3d Advanced Individual Training Brigade (Signal), US Army Signal Center and Fort Gordon, Fort Gordon, Georgia, leaving Doe's house with a blue and white phonograph. Smutt put the phonograph in his automobile and drove away. PFC Larry Matthews, Headquarters and Headquarters Company, 3d Advanced Individual Training Brigade (Signal), US Army Signal Center and Fort Gordon, Fort Gordon, Georgia, who lives directly across the street from Smutt, stated that at about 1750 hours on 6 December 1984 he was cutting his grass when Smutt arrived home in his automobile and removed a blue and white phonograph from his car. When Matthews called to ask Smutt if he had bought a new stereo, Smutt replied that he had and took the phonograph into his house. Smutt resides at 624 Red Clay Lane, Fort Gordon, Georgia. Both Jones and Matthews related the above information to me during an official Military Police investigation relating to the matter, after Doe had reported the incident, and Doe, Jones, and Matthews appear to be trustworthy and to have had no reason to tell an untruth on this case. Matthews has also provided valid information to the affiant on another matter on one previous occasion, which information proved to be accurate.

DA FORM 3744-R, Mar 85 EDITION OF AUG 84 IS OBSOLETE.

Figure 9-1. Illustrated Sample DA form 3744–R

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3. In view of the foregoing, the affiant requests that an authorization be issued for a search of the living quarters
(the person) (and)

known as 624 Red Clay Lane, Fort Gordon, Georgia, presently occupied by
(the quarters or billets) (and)

PFC Tom Smutt and (seizure) (apprehension) of one blue and white portable
(the automobile) ( ) (items/persons searched for)

"Smooth Tone" high-fidelity phonograph with gold script initials "JD" engraved on the outside cover and of PFC Tom SMutt, HHC, 3d AIT Bde (Signal).

TYPED NAME AND ORGANIZATION OF AFFIANT
CWO James E. Snow, 3d MPC (CI)
3d MPD (CI), Fort Gordon, Georgia

SIGNATURE OF AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME THIS 6th DAY OF December 19 84 , AT Fort Gordon Georgia

TYPED NAME, ORGANIZATION AND OFFICIAL CAPACITY OF AUTHORITY ADMINISTERING THE OATH
CPT JOE FRIDAY, 3d MPD (CI)
Commander

SIGNATURE OF AUTHORITY ADMINISTERING THE OATH

INSTRUCTIONS FOR

AFFIDAVIT SUPPORTING REQUEST FOR AUTHORIZATION TO SEARCH AND SEIZE OR APPREHEND

1. In paragraph 1, set forth a concise, factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional page if necessary.

2. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that the property to be seized or the person(s) to be apprehended are presently located on the person, premises, or place to be searched. Before a person may conclude that probable cause to search exists, he or she must first have a reasonable belief that the person, property or evidence sought is located in the place or on the person to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the affidavit or on hearsay information which he/she has plus the underlying circumstances from which he/she has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the affidavit should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the affidavit has concluded that the informant (whose identity need not be disclosed) or his/her information was trustworthy. Use additional pages if necessary.

3. In paragraph 3, the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended should be described with particularity and in detail. Authorization for a search may issue with respect to a search for fruits or products of an offense, the instrumentality or means of committing the offense, contraband or other property the possession of which is an offense, the person who committed the offense, and under certain circumstances for evidentiary matters.

Page 2, DA Form 3744-R, Mar 85

Figure 3-1. Continued Sample DA form 3744–R

Chapter 10
Courts of Inquiry

10–1. General

This chapter applies only to courts of inquiry.

10–2. Jurisdiction

a. Statutory provisions. Courts of inquiry to investigate any matter may be convened by any person authorized to convene a GCM. They may also be convened by any other person designated by the SA 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 (Art. 135(a), UCMJ), 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 SA, 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.

10–3. 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 Article 27(b), UCMJ. 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. (See AR 37–106 for provisions as to pay of reporters and interpreters.)

10–4. Convening order

a. Format. The format of the order convening a court of inquiry will be similar to that for a court-martial (app 6, MCM).

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.

10–5. 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 10–7 *b* below.

10–6. 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.

10–7. 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 (R.C.M. 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, which 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 Article 31, UCMJ.

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) MRE 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.

d. Fees. See AR 37–106 for provisions with respect to the payment of witness fees.

10–8. 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 (R.C.M. 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), do 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 shall give in the case now in hearing shall 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 10–7 *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 Article 49, UCMJ, and R.C.M. 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.

10–9. 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 which 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 by 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.

10–10. 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, 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 SA, to TJAG.

10–11. 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.

10–12. 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 the an endorsement forwarding the record. The original copy of each record of a Court of Inquiry shall 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 5–36 *b*).

Chapter 11
Oaths

11–1. General

This chapter implements Articles 42(a) and 136(a)(6), UCMJ, 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 (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 9 for issuance of search and seizure authorizations.)

11–2. Persons required to be sworn

a. All court-martial personnel, which include the following, will take an oath to perform their duties faithfully (Art. 42(a), UCMJ):

(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 (R.C.M. 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 (MRE 315(d)), are authorized to administer oaths for such searches, seizures, and apprehensions.

11–3. Oath administration procedure—military judges

a. A military judge will take a written oath before an officer qualified to administer oaths by Article 136(a), UCMJ, to faithfully and impartially perform his or her duties in all cases to which the military judge is detailed (Art. 26(b), UCMJ, and R.C.M. 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 paragraph 11–3 *c* below, ordinarily prior to trial. In any case the procedure will be followed not later than the first Article 39 *a*, UCMJ, 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 Article 136(a), UCMJ, and execute DA Form 3496–R (Military Judge's Oath) in triplicate. DA Form 3496–R will be locally reproduced on 8 1/2– by 11–inch paper. A copy for reproduction is located at the back of this regulation. One copy of the completed form will be retained by the military judge. The remaining copies will be forwarded to HQDA, Personnel, Plans and Training Office, The Judge Advocate General, 2200 Army Pentagon, 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.

11–4. Oath administration—counsel

a. A counsel certified under Article 27(b), UCMJ, who is a member of the JAGC will take the oath on DA Form 3497–R (Counsel's Oath) before an officer qualified to administer oaths under Article 136(a), UCMJ. DA Form 3497–R will be locally reproduced on 8 1/2– by 11–inch paper. A copy for reproduction is located at the back of this regulation.

b. Once executed on DA Form 3497–R, 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 (para 11–8 *b*) 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–R, will be administered to members of the JAGC as part of their certification under Article 27(b)(2), UCMJ. It may also be administered at any time by an officer qualified to administer oaths under Article 136(a), UCMJ. At the time the oath is administered, DA Form 3497–R 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 HQDA (DAJA-PT), Personnel, Plans and Training Office, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

11–5. Oath administration procedure—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.

11–6. Oath administration procedure—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 (Art. 136(a), UCMJ).

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.

11–7. Oath administration procedure—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.

11–8. Forms of oaths for court-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 11–3 of this regulation. (See R.C.M. 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 11–4 of this regulation. (See R.C.M. 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 11–5 of this regulation. (See R.C.M. 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 (R.C.M. 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 shall 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 (R.C.M. 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?)

11–9. Oath administration procedure—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 9–8).

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 9–8).

(3) Information may also 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.

11–10. Form of oaths for probable cause searches and seizures and apprehensions

No specific form of oath or affirmation is required as long as it imposes upon the requestor 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?)

11–11. 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 R.C.M. 910(e)):

Do you (swear)(affirm) that the statements you are about to make shall be the truth, the whole truth, and nothing but the truth (so help you God)?

Chapter 12
Court-Martial Orders

12–1. Types of court-martial orders

a. Convening orders. A convening order is used to announce the detail of a SCM or of the members of a SPCM or GCM (see R.C.M. 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 R.C.M. 1114).

12–2. 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 (R.C.M. 1302(c)). Oral convening orders will be confirmed by written orders as soon as practicable. Convening orders may be amended. SCM convening orders may be amended by an attachment to the charge sheet (App 4, MCM).

12–3. Promulgating orders

a. Initial promulgating orders (see fig 12–1). The convening authority will issue an order promulgating the results of trial for all GCMs and SPCMs. An initial SCM promulgating order need not be issued (R.C.M. 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 5–28, requiring 24 hour notification of convening authority's action).

b. Supplementary promulgating orders (see figs 12–2 through 12–7). 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. Designation. 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.

12–4. Format for SCM Court-Martial Orders (CMOs)

a. SCM convening order. A SCM may be convened at the time of referral by annotating Section V of the charge sheet (App 4, MCM) 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 Article 24(a)(4), UCMJ, the charge sheet will reference the order granting SCM authority (see R.C.M. 504(d)). Amendments to SCM convening orders will be made by attachments to the charge sheet. SCM convening orders need not be numbered (see para 12–5 *a*(2)).

b. SCM promulgating order. Initial SCM promulgating orders are not required. Supplemental promulgating orders will be issued using the format in paragraph 12–5 below and Appendix 17, MCM.

12–5. Format for CMOs

a. Heading.

(1) The heading of 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" (AR 600–8–105, para 1–27).

(2) Courts-martial orders within each category (convening (except SCM convening orders), summary, special, or general courts-martial) are numbered consecutively beginning anew with the start of each calendar year. 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 1997."

(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.

b. Body.

(1) Detailed instructions on CMOs are contained in Appendices 6 and 17, MCM.

(2) Court-martial convening orders (see R.C.M. 504(d) and App 6, MCM).

(3) Initial GCM and SPCM promulgating orders (see fig 12–1). The body of the order will contain the elements outlined in R.C.M. 1114 in the format of Appendix 17, MCM. 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 (see figs 12–2 through 12–7). In addition to the information contained in Appendix 17, MCM, 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, paragraph 2–18, 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 (AR 600–8–105, para 2–19).

e. Corrections. Court-martial orders are corrected in the same manner as other orders discussed in AR 600–8–105, paragraph 2–22, 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.

12–6. 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. Supplemental orders for Article 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 R.C.M. 1110 (and no modification of the action in the initial promulgating order is necessary after review under R.C.M. 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 Article 72, UCMJ; and

(c) No action has been taken by TJAG or the SA 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 R.C.M. 1110, the supplementary CMO will be promulgated on completion of review under R.C.M. 1112 or subsequently, after final review by TJAG pursuant to R.C.M. 1201(b)(2) if review by TJAG is required under R.C.M. 1112(g)(1).

(b) In a case involving a sentence to dismissal in which the accused has waived or withdrawn appellate review under R.C.M. 1110, the supplementary CMO will be promulgated after the record has been forwarded to TJAG under R.C.M. 1112(g)(2) for action under R.C.M. 1206.

(c) In a case reviewed by the USACCA, 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 13–9 of this regulation, whichever is earlier, unless the accused requests final action sooner or petitions the USCAAF for a grant of review.

(3) A supplemental CMO is necessary in all other cases in which competent authority modifies the findings or sentence.

(4) 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 R.C.M. 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.

c. Supplementary orders for Article 66, UCMJ, cases in which a petition to the USCAAF or the Supreme Court has been filed. Supplemental CMOs, as required, will be promulgated either by the officer presently exercising GCM authority over the accused according to a letter of instructions from the Clerk of Court (JALS-CC), or by HQDA.

12–7. Distribution of CMOs

Official copies of CMOs and amending orders, if any, issued from the various headquarters are distributed as follows:

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 (ATTN: 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/PSC which maintains the MPRJ of the individual tried. The MPD/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 37–104–3.

(7) One copy to the MPD/PSC maintaining the MPRJ of the individual tried, ATTN: Records Section, for compliance with AR 600–8–104, chapter 6.

(8) One copy for each officer tried to U.S. Total Army Personnel Command (TAPC-MSP), 200 Stovall Street, Alexandria, VA 22332–0400. For AGR officers, send to Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-ARO, 9700 Page Boulevard, St. Louis, MO 63132–5200.

(9) Two copies in GCM cases of officers only to Professor of Law, United States Military Academy, West Point, NY 10996.

(10) One copy for each enlisted soldier tried to the Commander, U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE-FS, Fort Benjamin Harrison, IN 46249.

(11) One copy for each member of the Army Reserve tried to Commander, United States Army Reserve Personnel Center, ATTN: DARP-PRD-MP, 9700 Page Boulevard, St. Louis, MO 63132–5200.

(12) In all SPCM cases, one copy forwarded to the Clerk of Court (JALS-CC), Nassif Building, Falls Church, VA 22041–5013.

c. Initial GCM and SPCM CMOs 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 12–7 *b*(1) through (12) 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, ten copies for each accused to the Clerk of Court (JALS-CC), Nassif Building, Falls Church, VA 22041–5013.

(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.

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 12–7b(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-CC), Nassif Building, Falls Church, VA 22041–5013. (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., P.O. Box 8079, Philadelphia, PA 19101, announcing approved findings of guilty of:

(a) Mutiny.

(b) Treasonable acts in violation of Articles 99, 104, or 134, UCMJ.

(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 because of conscientious objections.

(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. SCM 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), and (10) above.

(2) On completion of review under R.C.M. 1112 or R.C.M. 1201(b)(2), the original and copies of the SCM record of trial

reflecting the completed review (see subparagraph 5–31 *d*) 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, ATTN: SJA.

f. Supplementary CMOs—

(1) GCM and SPCM 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.

(2) SCM 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, ATTN: SJA, over the SCM authority (for attachment to the original record of trial).

(c) One copy to the MPD/PSC maintaining the MPRJ of the accused. 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 37–104–3.

(d) One copy to the MPD/PSC maintaining the MPRJ of the accused, ATTN: Records Section, for compliance with AR 600–8–104, chapter 6.

(e) One copy to the Commander, U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE-FS, Fort Benjamin Harrison, IN 46249. For AGR enlisted soldiers, send to Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-ARE, 9700 Page Boulevard, St. Louis, MO 63132–5200.

(f) One copy to the commanding officer of the confinement facility of the installation at which the accused is confined, if appropriate.

(3) 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.

(4) 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.

DEPARTMENT OF THE ARMY
HEADQUARTERS, 20TH INFANTRY DIVISION
FORT BLANK, MISSOURI 63889

GENERAL COURT-MARTIAL ORDER NUMBER 3 — 2 September 1995

Private (E2) John Doe, 102–23–3446, US Army, Company A, 1st Battalion, 66th Infantry, Fort Blank, Missouri 63889, was arraigned at Fort Blank, Missouri, on the following offenses at a general court-martial convened by Commander, 20th Infantry Division.

Charge I. Article 86. Plea: Guilty. Finding: Guilty.

Specification 1: Unauthorized absence from unit from 1 April 1995 to 31 May 1995. Plea: Guilty. Finding: Guilty.

Specification 2: Failure to repair on 18 March 1995. Plea: None entered. Dismissed on motion of defense for failure to state an offense.

Charge II. Article 91. Plea: Not Guilty. Finding: Not Guilty.

Specification: Disrespect to superior noncommissioned officer on 30 March 1986 by saying to him "Stick it in your ear." Plea: Not Guilty. Finding: Not Guilty.

Charge III. Article 112a. Plea: Guilty. Finding: Guilty.

Specification 1: Wrongful possession of 150 grams of marijuana on 24 March 1995. Plea: Guilty. Findings: Guilty.

Specification 2: Wrongful use of marijuana while on duty as a sentinel on 24 March 1995. Plea: Guilty. Findings: Guilty.

Specification 3: Wrongful possession of heroin with intent to distribute on 24 March 1995. Plea: Guilty. Findings: Guilty.

Charge IV. Article 121. Plea: Guilty. Finding: Guilty.

Specification 1: Larceny of property of a value of $150.00 on 26 March 1995. Plea: Guilty. Finding: Guilty.

Specification 2: Larceny of property of a value of $125.00 on 27 March 1995. Plea: Not Guilty. Finding: Guilty except the word "steal," substituting "wrongfully appropriate."

Charge V. Article 134. Plea: Not Guilty. Finding: Not Guilty, but Guilty of a violation of Article 128.

Specification: Assault on 25 March 1995 with intent to commit robbery. Plea: Not Guilty. Finding: Guilty, except for assault with intent to commit robbery, substituting assault and battery.

GCMO No. 3, DA, HQ, 20th IN DIV, Fort Blank, MO, dtd 2 Sep 95 (continued)

Additional Charge. Article 121. Plea: Guilty. Finding: Guilty.

Specification 1: (Redesignated the Specification). Larceny of property of a value of $150.00 on 1 June 1995. Plea: Guilty. Finding: By consolidation with Specification 2, Guilty of larceny of property of a value of $350.00 on 1 June 1995.

Specification 2: Larceny of property of a value of $200.00 on 1 June 1995. Plea: Not Guilty. Dismissed upon consolidation with Specification 1 by the military judge.

SENTENCE

Sentence was adjudged on 2 August 1995. Dishonorable discharge, forfeiture of all pay and allowances, confinement for 2 years, and reduction to the lowest enlisted grade.

ACTION

Figure 12-1. Sample initial general court-martial promulgating order (See App 17, MCM)—Continued

The sentence is approved and, except for the part of the sentence extending to dishonorable discharge, will be executed. The service of the sentence to confinement was deferred 2 August 1995 and the deferment is rescinded this date.

BY COMMAND OF MAJOR GENERAL BLUNT:

(signature)
JAMES S. SLADE
CW2, USA
Legal Administrator

DISTRIBUTION:
(See para 12–7)

Figure 12-1. Sample initial general court-martial promulgating order (See App 17, MCM)

DEPARTMENT OF THE ARMY
HEADQUARTERS, 20TH INFANTRY DIVISION
FORT BLANK, MISSOURI 63889

GENERAL COURT-MARTIAL ORDER 15 September 1995
NUMBER 6

In the case of Private (E2) John Doe, 102–23–3446, US Army, Company A, 1st Battalion, 66th Infantry, Fort Blank, Missouri, the proceedings of which were promulgated in General Court-Martial Order Number 3, this headquarters, dated 2 September 1995, the following is the action taken pursuant to Article 64(c), Uniform Code of Military Justice:

DEPARTMENT OF THE ARMY
HEADQUARTERS, 20TH INFANTRY DIVISION
FORT BLANK, MISSOURI 63889

15 September 1995

ACTION

In the case of Private (E2) John Doe, 102-23-3446, US Army, Company A, 1st Battalion, 66th Infantry, Fort Blank, Missouri, the sentence is approved. The dishonorable discharge will be executed.

/s/John T. Blunt
/t/JOHN T. BLUNT
Major General, USA
Commanding

BY COMMAND OF MAJOR GENERAL BLUNT:

(signature)
JAMES S. SLADE
CW2, USA
Legal Administrator

DISTRIBUTION:
(See para 12–7)

Figure 12-2. Sample Action and Supplementary Court-Martial Order when accused waives or withdraws appellate review (See App 17, MCM)

DEPARTMENT OF THE ARMY
HEADQUARTERS, 20TH INFANTRY DIVISION
FORT BLANK, MISSOURI 63889

GENERAL COURT-MARTIAL ORDER 27 September 1995
NUMBER 56

The unexecuted portion of the sentence to confinement in the case of Private (E2) John Doe, 102–23–3446, US Army, Company A, 1st Battalion, 66th Infantry, Fort Blank, Missouri, adjudged on 29 August 1995, and promulgated in General Court-Martial Order Number 3, Headquarters, 20th Infantry Division, Fort Blank, Missouri, dated 2 September 1995 is remitted. (Appellate review pending)

BY COMMAND OF MAJOR GENERAL SMITH:

(signature)
HARRY T. JONES
CW3, USA
Legal Administrator

DISTRIBUTION:
(See para 12–7)

Figure 12-3. Sample supplementary general court-martial order remitting confinement prior to completion of appellate review (App 17, MCM).

DEPARTMENT OF THE ARMY
UNITED STATES DISCIPLINARY BARRACKS
US ARMY COMBINED ARMS CENTER AND FORT LEAVENWORTH
FORT LEAVENWORTH, KANSAS 66027

GENERAL COURT-MARTIAL ORDER 29 November 1995
NUMBER 99

In the general court-martial case of Private (E2) John Doe, 102–23–3446, US Army, Company A, 1st Battalion, 66th Infantry, Fort Blank, Missouri, the sentence to dishonorable discharge, forfeiture of all pay and allowances, confinement for 2 years, and reduction to the lowest enlisted grade, adjudged 29 August 1995, as promulgated in General Court-Martial Order Number 56, this headquarters, dated 27 September 1995, the unexecuted portion of the sentence to confinement was remitted. Article 71(c) having been complied with, the dishonorable discharge will be executed.

BY COMMAND OF MAJOR GENERAL BLUNT:

(signature)
HARRY T. JONES
CW3, USA
Legal Administrator

DISTRIBUTION:
(See para 12–7e)
(Army999999)

Figure 12-4. Sample final supplementary general court-martial order after appeal process has been completed (App 17, MCM).

DEPARTMENT OF THE ARMY
HEADQUARTERS, 20TH INFANTRY DIVISION
FORT BLANK, MISSOURI 63889

GENERAL COURT-MARTIAL ORDER 29 August 1995
NUMBER 7

So much of the order published in General Court-Martial Order Number 88, Headquarters, 20th Infantry Division, Fort Blank, Missouri, dated 19 March 1995, as suspends execution of the sentence to bad conduct discharge in the case of Private (E2) Jack Potts, 103–33–5556, US Army, Company A, 1st Battalion, 66th Infantry, Fort Blank, Missouri, is vacated pursuant to Article 72. (Appellate review pending).

BY COMMAND OF MAJOR GENERAL BLUNT:

(signature)
JAMES S. SLATE
CW2, USA
Legal Administrator

DISTRIBUTION:
(See para 12–7)

Figure 12-5. Sample vacating order when suspended BCD vacated by CA and case still pending appeal

DEPARTMENT OF THE ARMY
HEADQUARTERS, 20TH INFANTRY DIVISION
FORT BLANK, MISSOURI 63889

GENERAL COURT-MARTIAL ORDER 3 October 1995
NUMBER 16

So much of the order published in General Court-Martial Order Number 88, Headquarters, 20th Infantry Division, Fort Blank, Missouri, dated 19 March 1995, as suspends execution of the sentence to bad conduct discharge in the case of Private (E2) Jack Potts, 103–33–5556, US Army, Company A, 1st Battalion, 66th Infantry, Fort Blank, Missouri, was vacated pursuant to Article 72 by General Court-Martial Order Number 7, this headquarters, dated 29 August 1995. Article 71(c) having been complied with, the bad conduct discharge will be executed.

BY COMMAND OF MAJOR GENERAL BLUNT:

(signature)
JAMES S. SLATE
CW2, USA
Legal Administrator

DISTRIBUTION:
(See para 12-7)

Figure 12-6. After appeal process complete, sample order executing BCD

DEPARTMENT OF THE ARMY
HEADQUARTERS, 20TH INFANTRY DIVISION
FORT BLANK, MISSOURI 63889

GENERAL COURT-MARTIAL ORDER NUMBER 21 — 12 October 1995

The deferment of that portion of the sentence that provides for confinement for one year published in General Court-Martial Order Number 8, this headquarters, 11 September 1995, in the case of Private (E2) Winston LeMay, 322–22–2223, US Army, Company A, 22d Infantry, Fort Blank, Missouri, adjudged on 1 September 1995, is rescinded. The portion of the sentence to confinement will be executed.

BY COMMAND OF MAJOR GENERAL BLUNT:

(signature)
JAMES S. SLATE
CW2, USA
Legal Administrator

DISTRIBUTION:
(See para 12–7)

Figure 12-7. Sample general court-martial promulgating order rescinding deferment previously granted after the convening authority has taken action in the case (App 17, MCM)

Chapter 13
Appellate Review Matters

13–1. Scope

This chapter discusses appellate review matters pertaining to—

a. Appeals under Articles 62 and 66, UCMJ.

b. The waiver or withdrawal of an appeal under Article 61, UCMJ.

c. Petitions for extraordinary relief filed by the United States.

13–2. 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). However, counsel from GAD will not represent the Government until appointed to do so by TJAG under Article 70, UCMJ.

13–3. Appeals under Article 62

a. A trial counsel shall not file a notice of appeal under R.C.M. 908 unless authorized to do so by the GCM authority or the SJA. Appeals forwarded under R.C.M. 908(b)(6) will be sent to the Chief, Government Appellate Division, USALSA, Nassif Building, Falls Church, VA 22041–5013 (CDR, USALSA, FALLS CHURCH, VA// JALS-GA//). 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 shall serve a certificate of notice of appeal under R.C.M. 908(b)(3) on the military judge. The certificate shall 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 R.C.M. 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 not made 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 R.C.M. 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-CC), Nassif Building, Falls Church, VA 22041–5013.

13–4. Appellate advice after trial

a. Apart from the advice an accused has received pursuant to R.C.M. 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 13–9 of this regulation and DA Form 4917–R (Advice as to Appellate Rights), DA Form 4918–R (Petition for Grant of Review in the United States Court of Military Appeals), and DA Form 4919–R (Request for Final Action). (DA Forms 4917–R, 4918–R, and 4919–R will be locally reproduced on 8 1/2–by 11–inch paper. Copies of these forms are located at the back of this regulation.)

13–5. Waiver or withdrawal of appellate review

a. A waiver of appellate review or withdrawal of an appeal pursuant to Article 61 and R.C.M. 1110 shall 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). (Both DD Forms 2330 and 2331 are approved for electronic generation. See app A, sec IV for specific instructions.) (See App 18, MCM.) In GCM cases and in SPCM

cases in which a BCD has been approved, review pursuant to R.C.M. 1112 will be completed before the record of trial is forwarded pursuant to paragraph 5–42 of this regulation. The withdrawal of an appeal must be filed with, or immediately forwarded to, the Clerk of Court, U.S. Army Judiciary (JALS-CC). The Clerk of Court will refer the withdrawal to the Court before which the appeal is pending or to the Examination and New Trials Division and thereafter will return all copies of the record for review pursuant to R.C.M. 1112 under the rules or instructions of the cognizant Court or division.

b. An accused may not revoke a waiver or withdrawal of appellate review made in substantial compliance with R.C.M. 1110. When, however, review under R.C.M. 1112 or R.C.M. 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.

13–6. Identifying companion and other cases

a. The trial counsel will annotate the cover of each original record of trial forwarded for review under Article 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 Article 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 a heading " Companion Cases." The purpose of this is to facilitate assignment of cases among the panels of USACCA and to avoid conflicts of interest in the assignment of 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 Article 66 to identify any prosecution witness or victim known to have been tried for any offense by court-martial subject to review pursuant to Article 66 so that potential conflicts of interest in the assignment of appellate defense counsel can be avoided.

13–7. Rules of appellate procedure

See AR 27–13, for the rules of appellate procedure.

13–8. Clerk of Court, U.S. Army Judiciary

a. The Clerk of Court, U.S. Army Judiciary (JALS-CC), Nassif Building, Falls Church, VA 22041–5013, 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.

13–9. Serving USACCA 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. In cases where all of the accused's appellate counsel are Defense Appellate Division (DAD) counsel, service of the decision on the Defense Appellate Division (JALS-DA) shall 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 MPRJ, 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, ATTN: 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-CC), Nassif Building, Falls Church, VA 22041–5013.

d. Information copies of decisions shall 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 Article 69, UCMJ, the accused will be given a completed copy of DA Form 4917–R, five copies of DA Form 4918–R 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–R (Certificate of Service/Attempted Service) and ensure that the original and two copies are sent to the Clerk of Court, (JALS-CC). DA Form 4916–R will be locally reproduced on 8 1/2– by 11–inch paper. A copy for reproduction is located at the back of this regulation. 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–R 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) will be sent to the Clerk of Court. 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 should be contacted for advice.

f. 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 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.

g. As soon as the decision is mailed, the person mailing it must complete item 1 of the Section C, DA Form 4916–R. The form is then held for return of service to the Clerk of Court (JALS-CC) when the earliest of the following happens:

(1) The signed certified mail receipt (PS Form 3811) is received (complete item 2a, Section C, DA Form 4916–R).

(2) The packet is returned undeliverable (complete item 2b, Section C, DA Form 4916–R).

(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–R).

h. When Section C of DA Form 4916–R is used, the return of service to the Clerk of Court will include the original and two copies of the completed DA Form 4916–R, and any material returned by the USPS, such as the signed return receipt (PS Form 3811), the receipt for certified mail (PS Form 3800), or the unopened envelope with its contents.

i. If a petition for grant of review by the USCMA is received by the GCM authority, the date of receipt will be noted and the petition will be forwarded to USCMA immediately.

13–10. Cases remanded by the USACCA or USCAAF

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 Article 32 investigation 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 Article 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 Article 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.

13–11. 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 630–5, 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.

b. The GCM authority will ensure that the Clerk of Court (JALS-CC) 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.

13–12. Tenure for military appellate judges

Judge Advocates are certified as military judges by TJAG and assigned to the United States Army Court of Criminal Appeals for a minimum of three years, except under any of the following circumstances:

a. The military judge voluntarily requests to be reassigned to others duties, and TJAG approved 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 Section III, Chapter 16, Suspension of Military Judges.

Chapter 14
Application for Relief under Article 69, UCMJ

14–1. General

a. This chapter implements R.C.M. 1201(b)(3) and Article 69(b), UCMJ. It prescribes the procedures for applying to TJAG for relief from the findings or sentence in SPCM or SCM court-martial case that has been finally reviewed, but has not been reviewed by the USACCA.

b. TJAG may vacate or modify the findings or sentence in whole or in part and may grant relief on grounds of--

(1) Newly discovered evidence.

(2) Fraud on the court.

(3) Lack of jurisdiction over the accused or the offense.

(4) Error prejudicial to the substantial rights of the accused.

(5) 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).

c. A request for relief according to this chapter is not a part of the appellate process in a court-martial case. No provision exists for a hearing or personal appearance before TJAG.

d. Relief under Article 69(b), UCMJ, the R.C.M., and this chapter is authorized only when the court-martial is final within the meaning of R.C.M. 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, he 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 Article 73, UCMJ. The denial of relief by TJAG under the provisions of this chapter does not preclude application on clemency grounds under Article 74, UCMJ (see AR 190-47 or AR 15-185).

14–2. Procedures for making application

a. Application for relief should be made 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.

b. DA Form 3499 will be prepared and submitted according to the requirements set forth in the instructions contained on the form. DA Form 3499 must be filed in the Office of The Judge Advocate General by the accused, or by a person with authority to act for the accused, on or before the last day of the two-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.

14–3. 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 HQDA (JALS-ED), Examination and New Trial Division, Nassif Building, Falls Church, VA 22041-5013 with—

(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) Appropriate comment on these allegations.

b. When an applicant seeks relief from the findings or sentence, or both, of a GCM (amenable to review under Article 69, UCMJ, and this regulation) and is a member of the command that convened the court-martial, the application will be submitted through the office of the SJA of that command. That office will forward the application, with appropriate comment, to HQDA (JALS-ED).

c. All other applications will be submitted directly to HQDA (JALS-ED).

14–4. Timeliness

a. Timely submission of an application for relief is necessary. 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 15
Report of Judicial and Disciplinary Activity in the Army, Requirements Control Symbol JAG-2 (R12)

15–1. Preparation

a. The SJA of each command having GCM jurisdiction will prepare the DA Form 3169-R (Report of Judicial and Disciplinary Activity in the Army, Requirement Control Symbol JAG-2(R12)). DA Form 3169-R will be locally reproduced on 8 1/2- by ll-inch paper. A copy for reproduction is located at the back of this regulation. The SJA will fill in all information required in the heading of the DA Form 3169-R, including the Report Control Number assigned to the jurisdiction submitting the report.

b. The SJA will obtain data for the report from the commands attached or assigned to the GCM jurisdiction. For RC units located within the CONUS, Major U.S. Army Reserve Command (MUSARC) SJAs will collect and forward disciplinary statistics to the supporting AC GCMCA (see chap 21). Such statistics will be included in the report by the AC SJA in the month when received regardless of the date of imposition of the punishment or the date of the convening authority action.

15–2. Frequency and content

a. The report will be prepared monthly and will include--

(1) Total nonjudicial punishments (formal and summarized) during the month.

(2) Total SCMs reviewed under Article 64, UCMJ, during the month.

(3) Processing time for SCMs and SPCMs (non-BCD).

(4) Civilian felony convictions.

(5) Total number of Chapter 10s approved in all court-martial cases.

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.

15–3. Routing and due date

a. The report will be sent by the SJA (with a copy to the MACOM SJA) to HQDA (JALS-CC), Clerk of Court, Nassif Building, Falls Church, VA 22041-5013, not later than 5 working days after the last day of the month, or if the GCM jurisdiction is dissolved, as soon as possible after the dissolution.

b. For RC units located within the CONUS, MUSARC SJAs will collect and forward disciplinary statistics to the supporting AC GCMCA (see chap 21). Such statistics will be included in the report by the AC SJA in the month when received regardless of the date of imposition of the punishment or the date of the convening authority action.

15–4. Negative reports

Negative reports are required and may be submitted by memorandum or message, phone, or fax to the Clerk of Court (JALS-CC).

15–5. Instructions for completing DA Form 3169-R

a. Section A--Nonjudicial Punishment.

(1) *Item 1a.* Total soldiers punished. In the "summarized" column, enter the number of soldiers who received nonjudicial punishment through summarized procedure during the report period. In the "formal" column, enter the number who received punishment though formal procedures. Add the two entries and enter the total in item 5a.

(2) *Item 1b.* Total imposed for drug offenses. Enter in the respective columns the number of soldiers shown in item 1a on whom punishment was imposed for a drug offense (whether or not a nondrug offense was also involved). For this report, do not report alcohol as a drug.

(3) *Item 2.* Total number of appeals from punishment. Enter the number of appeals received in the report period, according to whether the punishment appealed from was imposed by summarized or formal procedures. Report an appeal even though the punishment might have been imposed during an earlier report period and regardless of whether the appeal has been finally acted on. The unit in which the appeal is acted on (not the unit in which the punishment was imposed, if the two are different) will report the appeal from punishment.

(4) *Item 3.* Number of appeals granted. Enter the number of appeals granted during the report period in whole or in part according to the type of procedure (summarized or formal) used in the punishment appealed from. The unit in which the appeal is acted on (not the unit in which the punishment was imposed, if the two are different) will report the appeal granted.

(5) *Item 4.* Number of soldiers who were offered but refused to accept Article 15. Enter the number of soldiers offered nonjudicial punishment who, during the report period, demanded trial by court-martial in lieu of the type of nonjudicial punishment (summarized or formal) offered.

(6) *Item 5a.* Combined total. This is the total of the two entries in Item 1a.

(7) *Item 5b.* Profile of soldiers punished by Article 15. When entering information here, assure that the column totals are correct and, when added together, agree with the information shown in item 1a or 1b. For example, the number of enlisted males and enlisted females shown here as receiving summarized punishment must agree with the number entered in the item 1a "summarized" column. The number shown as receiving punishment for drug offenses must agree with the number shown in the item 1b "summarized" column. Similarly, the number of male and female officers and enlisted soldiers shown as receiving "formal" punishment must agree with those shown in the respective formal columns of items 1a (total for all offenses) and 1b (total for drug offenses).

b. Section B--Summary Courts-Martial.

(1) *Item 6a.* Total number of SCM. For the first four blocks of item 6a, enter the number of SCM during the report period--

(a) Terminated prior to findings.

(b) Resulting in acquittal.

(c) Resulting in disapproval of all findings of guilty by the convening authority.

(d) Reviewed by a JA.

(2) *Item 6a.* Total number of SCM drug specifications. Enter in the last three blocks of item 6a the total number of charged drug specifications for all tried SCM, by categories of--

(a) Use or possession. Wrongful introduction of a controlled substance and wrongful importation or exportation of a controlled substance will be reported as "use or possession" in this block.

(b) Distribution.

(c) Manufacture. Note that, because of potentially multiple drug specifications in any SCM case, the numbers of drug specifications in any or all of the last three blocks of item 6a may total more than the numbers of drug-related SCM cases in the third or forth block of item 6a.

(3) *Item 6b.* Tried by military judge. Enter the number of cases shown in 6a in which a military judge was the SCM.

(4) *Items 7a, 7b, 8.* Self-explanatory.

(5) *Item 9.* Profile of soldiers tried and profile of soldiers convicted by SCM. Enter in each of the four columns in items 9a and 9b the number of soldiers in each ethnic category listed. The total for each column must equal the sum of the numbers in the ethnic categories in the same column.

c. Section C--Processing Time.

(1) *Item 10.* In the "Summary court-martial" column, enter the

number of SCMs completed during the report period (same as "total tried" in item 6a). In the "special court-martial" column, enter the number of SPCMs during the report period--

(a) Terminated prior to findings.

(b) Resulting in acquittal.

(c) Resulting in disapproval of all findings of guilty by the convening authority.

(d) Reviewed by a JA and not including approved sentences to a BCD.

(2) *Items 11, 12, and 13.* Compute the averages by examination of the records of trial and allied papers reflected in item 10. Round fractions of one-half or more to the next higher whole number.

d. Section D--Chapter 10s.

(1) *Item 14.* Total chapter 10s. In the first column enter the numbers, for each category, of all approved discharges (including those based on drug charges) under AR 635-200, chapter 10. Enter the total number of chapter 10s at the bottom of the first column.

(2) *Item 14.* Total drug-related chapter 10s. In the second column enter the numbers, for each category, of all approved discharges under AR 635-200, chapter 10, based wholly or in part on drug charges. Enter the total number of drug-related chapter 10s at the bottom of the second column.

(3) *Item 14.* Total drug-related specifications. Enter in the last three columns of item 14, for each category, the total number of charged drug specifications of--

(a) Use or possession. Wrongful introduction of a controlled substance and wrongful importation or exportation of a controlled substance will be reported as "use or possession" in this column.

(b) Distribution. C.

(c) Manufacture. Note that, because of potentially multiple drug specifications in any court-martial case, the numbers of drug specifications in any or all of the last three columns of item 14 may total more than the numbers of drug-related chapter 10 cases.

e. Section E--Civilian Felony Convictions. Item 15. Enter the number of persons (including those on leave, TDY, or AWOL) assigned or attached to units of the reporting jurisdiction reported during the reporting period as having been convicted in any U.S. Federal or State jurisdiction of an offense amounting to a felony under the laws of that jurisdiction.

f. Special Requirements to Report Disciplinary action resulting from expanded RC jurisdiction. AC SJAs will report those disciplinary actions that result solely from expanded RC jurisdiction as a separate category on DA Form 3169-R. This will be accomplished by adding a parenthetical number to the numbers already entered in blocks 1a (Summarized and Formal columns), 5a, 6a (Total Tried and Total Convicted columns only), and 14 (Total Chap 10s column only) of the DA Form 3169-R. The parenthetical number will reflect the total number of actions that result from expanded jurisdiction over RC soldiers under the Military Justice Amendments of 1987 for each category reported. For example, block 5a would contain two numbers: the number for the combined total of soldiers punished and the parenthetical number representing the portion of the total that resulted from expanded jurisdiction under the Military Justice Amendments of 1987, for example, 236 (17). A negative report is not required. (Do not include in the parenthetical disciplinary actions taken against Active/Guard Reserve soldiers or other RC soldiers whose disciplinary actions were not dependent on expanded jurisdiction under the Military Justice Amendments of 1987.) For RC units located within the CONUS, MUSARC SJAs will collect and forward disciplinary statistics to the supporting AC GCMCA's SJA. (See chap 21.)

Chapter 16
Allegations of Misconduct and Suspension of Counsel and Military Judges

Section I
General

16–1. Scope

This chapter implements and amplifies R.C.M. 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 (para 5–8).

16–2. Withdrawal of certification by TJAG

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 Article 26, UCMJ, or

b. Any certification of competency to act as counsel before GCM made pursuant to Article 27(b), UCMJ.

Section II
Suspension of Counsel

16–3. General

a. Action may be initiated to suspend counsel (R.C.M. 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 unworthy 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 Article 27(b), UCMJ, or

(2) Has been selected or obtained as counsel by the accused under Article 38(b), UCMJ.

(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.

16–4. 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 Article 98, UCMJ.

(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 of this regulation, or other applicable standards.

(12) Violation of the Army Rules of Professional Conduct for Lawyers (DA Pam 27–26) or other applicable ethical standards, whether such misconduct occurs before a military court or other tribunal.

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.

16–5. 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. Full consideration will be given to the appropriateness and effectiveness of such measures as—

(1) Admonition.

(2) Instruction.

(3) Temporary suspension.

(4) Proceedings in contempt.

(5) Nonjudicial punishment under Article 15, UCMJ.

(6) Trial by court-martial.

(7) 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 (Art. 48, UCMJ; R.C.M. 109). If admonition or punishment is inappropriate or fails to achieve the desired standard of behavior, the court should adjourn 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.

16–6. Action to suspend civilian counsel

The procedures and actions set forth above for suspending military counsel or civilian counsel within the Judge Advocate Legal Service (JALS) will also apply insofar as practicable against civilian counsel who represent the accused or are likely to represent the accused at courts-martial or other proceedings governed by the UCMJ or the MCM.

16–7. Modification or revocation of suspension or decertification

TJAG may (on petition of a person who has been suspended or decertified as counsel (Art. 27(b), UCMJ), and on good cause shown) modify or revoke a prior order to suspend or decertify.

16–8. Removal of counsel or reassignment of duties

Nothing in this chapter will prevent 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

16–9. General

Action may be initiated to suspend or revoke the certification to act as military judge (Art. 26, UCMJ; R.C.M. 109) when a person acting or about to act as trial or appellate judge—

a. Is or has been guilty of professional, personal, or judicial misconduct of or unfitness of such a serious nature as to show that the individual is lacking in integrity or judicial demeanor, or

b. Is otherwise unworthy or unqualified to perform the duties of a military judge.

16–10. 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 (Art. 26, UCMJ) for actions that—

a. Constitute misconduct, or constitute judicial misconduct or unfitness, or

b. Violate the Code of Judicial Conduct, the Army Rules of Professional Conduct for Lawyers, or other applicable standards.

16–11. 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, TJAG or 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.

16–12. 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 Judiciary, in the case of appellate judges, for processing according to AR 27–1.

16–13. Modification or revocation of suspension or decertification

TJAG may (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. TJAG may (on petition of a person who has been suspended or decertified as a military judge (Art. 26, UCMJ) 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 17
Custody Policies Overseas

17–1. 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.

17–2. 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 HQDA (DAJA-IO), International and Operational Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200. The procedures set forth in AR 600–8–2 will be effected 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 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. 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.

17–3. 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, and circumstances surrounding, the offense charged 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 17–4) will include review of foreign criminal charges by the local SJA to determine whether—

(1) Probable cause exists to believe that confinement is necessary to ensure the accused's presence at trial or other foreign criminal proceeding, or to avoid foreseeable future serious criminal misconduct by the accused within the host country.

(2) Provision of a military legal advisor is necessary under the terms of AR 27–50, paragraph 1–6, to 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 also may consider any pertinent factors including specific requests by the host country to confine or by the soldier to be confined in the U.S. rather than 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 R.C.M. 305 do not apply to review of SOFA confinement (see para 17–4). 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, app C) 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, paragraph 1–7. 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 DAJA-IO, International and Operational Law Division, The Judge Advocate General, 2200 Army Pentagon, 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.

17–4. Implementation by major commands

Each Army overseas commander (AR 10–5, paras 1–2 and 3–10) may, after prior approval by HQDA (DAJA-CL), 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 18
Victim/Witness Assistance

Section I
General

18–1. Purpose

This chapter implements P.L. 97–291 (Victim and Witness Protection Act of 1982), P.L. 98–473 (Victims of Crime Act of 1984), P.L. 101–647 (Victims' Rights and Restitution Act of 1990), P.L. 102–484 (National Defense Authorization Act for Fiscal Year 1993), P.L. 103–160 (National Defense Authorization Act for Fiscal Year 1994), and DODD 1030.1. 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.

18–2. 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/witness programs are multidisciplinary and utilize all related military and civilian agencies. Victim/ witness liaison (VWL) officers 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 officer will coordinate with the installation/community casualty working group (AR 600–8–1, chap 16) and the USA Criminal Investigation Command Survivor Point of Contact (CID Reg 195–1, para 5–21l).

d. A person's status as a victim or witness does not preclude and should not discourage appropriate recognition by DA officials 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, such as the saving of human life under hazardous conditions or the extraordinary sacrifice, which aids or supports military law, order, or discipline, and which would otherwise merit official recognition (see ARs 672–20 and 672–5–1). 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.

18–3. 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. While special attention shall be paid to victims of serious, violent crime, all victims and witnesses of crime shall 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.

18–4. 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, subject to available resources, operational commitments, and military exigencies.

18–5. 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 shall 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 about 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

18–6. General

a. The Victim/Witness Assistance Program is designed to accomplish the objectives set forth in paragraph 18–4, through—

(1) Encouraging the development and strengthening of victim/ witness services.

(2) Consolidating information pertaining to victim/witness services.

(3) Coordinating multidisciplinary victim/witness services by and through victim/witness liaisons.

b. TJAG is the component responsible official in the DA for victim/witness assistance. As such, TJAG exercises oversight of the program to ensure integrated support is provided to victims and witnesses.

c. SJAs are the local responsible officials for victim and witness assistance within their GCM jurisdictions. Accordingly, they will:

(1) Establish and provide overall supervision for the 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 utilized as appropriate.

(4) Ensure development of appropriate local management controls to ensure compliance with this chapter.

d. DA and installation inspector generals will provide additional

oversight and review of the management of the victim/witness assistance program during staff assistance visits and inspections.

18–7. Victim/Witness Liaison

a. Designation and Role. SJAs will designate, in writing, one or more VWLs to administer the Victim/Witness Assistance Program for their jurisdictions. The role of the VWL is one of facilitator and coordinator. The VWL will act as the primary point of contact through which victims and witnesses may obtain information concerning and assistance in securing available victim/witness services. Generally, it will not be the responsibility of the VWL to personally provide specific victim/witness services unless the VWL is qualified to provide the service in question, and no other organization or service agency exists with primary responsibility for rendering that service.

b. Criteria. The designated VWL should, when practicable, be a commissioned or warrant 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, GS-6 or above may be designated as a VWL if a commissioned or warrant officer is not reasonably available. A VWL should be generally familiar with the military justice system and have the ability to maintain courteous and effective relations with the military community, service organizations, and the general public. 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.

18–8. 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 shall:

a. Identify the victims or witnesses of the crime in accordance with the definitions in paragraph 18–5.

b. Inform the victims and witnesses of their right to receive the services described in this regulation, and the name, title, official address, and telephone number of the VWL and how to request assistance from the VWL in obtaining the services described in this regulation. DD Form 2701 (Initial Information for Victims and Witnesses of Crime) will be used for this purpose. This notification is required in all cases, regardless of maximum punishment under the UCMJ or other statutory authority, or intended disposition of the offense.

c. Report victim and witness notification in accordance with DoDI 1030.2 and this regulation.

18–9. Initiation of liaison service

a. SJAs or their designees will coordinate with military law enforcement, criminal investigative, and other military and civilian multidisciplinary agencies to ensure that 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. SJAs 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 an Article 32 investigative 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. DD Form 2701 shall be used for this purpose, if available. The Victim/Witness Checklist (Appendix D) should be used by the VWL to ensure that victims and witnesses are notified of the services described in this chapter.

18–10. Rights of Crime Victims

a. As provided for in 42 U.S.C. 10601 *et seq*, and DoDI 1030.2, a crime victim has the following rights:

(1) The right to be treated with fairness, dignity, and a respect for privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial, or for other good cause.

(5) The right to confer with the attorney for the Government in the case.

(6) The right to restitution, if appropriate.

(7) The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.

b. SJAs will ensure establishment of local policies and procedures to accord crime victims the rights described above.

18–11. Training and Publicity

a. SJAs will ensure 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. Training shall cover, at a minimum, 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. SJAs also will ensure that the provisions of this chapter are publicized to all military and civilian agencies providing victim/witness services and to commands within their jurisdictions. SJAs will ensure that the DoD Victim and Witness Bill of Rights is displayed in the offices of commanders and Army multidisciplinary agencies which 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 commander policy letters endorsing the victim/witness assistance program is encouraged.

Section III
Victim Services

18–12. 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 (AR 40–3, para 4–67). 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 a dismissal for an offense involving abuse of the dependent may receive medical and dental care in uniformed services facilities for injuries resulting from that abuse (10 U.S.C. 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 also will maintain, use, and update the DoJ Federal Resource Guide on Victim and Witness Assistance to advise and assist victims. 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 (AR 608–1).

(2) Army Emergency Relief (AR 930–4).

(3) Legal Assistance (AR 27–3).

(4) The American Red Cross (AR 930–5).

(5) Chaplain Services (AR 165–20).

(6) Civilian community-based victim treatment, assistance, and compensation programs.

(7) For dependents of soldiers who are victims of abuse by the military spouse or parent, payment of a portion of the disposable retired pay of the soldier under 10 U.S.C. 1408 or payment of transitional compensation benefits under 10 U.S.C. 1059.

(8) For families of soldiers, transportation and shipment of household goods may be available even if the soldier receives a punitive or other than honorable discharge (see Joint Travel Regulations for specifics).

c. When victims are not eligible for military services, or in those cases in which military services are not available, the VWL will provide liaison assistance in seeking any available non-military services within the civilian community.

18–13. 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 US Magistrate or US District Court).

18–14. Notification and description of services provided victims of crime

a. During the investigation and prosecution of a crime, the VWL, trial counsel or other government representative will provide a victim 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 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 an Article 32, UCMJ, investigation.

(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 of financial, social, psychological, and physical harm done to or loss suffered by the victim.

(9) The result of trial.

(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 to 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. (See AR 15–130, chap 3.)

b. Upon a sentence to confinement, the trial counsel or a representative for the government will:

(1) Formally inform the victim 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 the victim DD Form 2703.

(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's central repository, Headquarters, Department of the Army, Deputy Chief of Staff for Operations and Plans, U.S. Army Military Police Operations Agency (ATTN: DAMO-ODL), 4401 Ford Avenue, Suite 225, Alexandria, VA 22302–1432.

(3) Ensure that a copy of DD Form 2704 is not attached to any portion of a record to which the offender has access.

18–15. Consultation with victims

a. When appropriate, trial counsel, VWL or other government representative shall consult with victims of crime 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.

18–16. Property return and restitution

a. In coordination with criminal investigative agents, SJAs will ensure that all noncontraband property which 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 paragraph 9–11, AR 195–5 or AR 190–22, as applicable. The VWL or other government representative will ensure that victims are informed of applicable procedures for requesting return of their property. SOFAs or other international agreements may apply overseas. SJA's 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. Article 139, UCMJ, 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 Article 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, Transitional Compensation Program for abused family members under 10 U.S.C. 1059) or civilian sources, and of appropriate and authorized points of contact to assist them; for example, 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 R.C.M. 1107. The ACPB also will consider the appropriateness of restitution in clemency and parole actions.

Section IV
Witness Services

18–17. Notification and description of services provided witnesses

a. 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 an Article 32, UCMJ, investigation.

(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 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 (Post Trial Information for Victims and Witnesses of Crime)) 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 for the government will—

(1) Formally inform those witness 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's central repository, Headquarters, Department of the Army, Deputy Chief of Staff for Operations and Plans, U.S. Army Military Police Operations Agency (ATTN: DAMO-ODL), 4401 Ford Avenue, Suite 225, Alexandria, VA 22302–1432.

(3) Ensure that a copy of DD Form 2704 is not attached to any portion of a record to which the offender has access.

18–18. 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 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

18–19. 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 criminal sanctions. 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 Article 134, UCMJ. 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, commander, SJA, CID, PM, trial counsel or VWL), that their complaints will be promptly investigated, and that appropriate action will be taken.

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.

c. Separate waiting area. At courts-martial and investigative 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 R.C.M. 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.

18–20. Notification to employers and creditors

On request of a victim or witness, trial counsel, VWL or other government representative will inform an employer that the victim's or witness's innocent involvement in a crime or in the subsequent prosecution may cause or require their 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.

18–21. Witness fees and costs

Witnesses requested or ordered to appear at Article 32, UCMJ, investigations or courts-martial may be entitled to reimbursement for their expenses under Articles 46 and 47, UCMJ; R.C.M. 405(g); AR 37–106, and chapter 5 of this regulation. The VWL must be familiar with the provisions of these directives and appropriately advise and assist witnesses. Victims and witnesses should be provided assistance in obtaining timely payment of witnesses fees and related costs. In this regard, coordination should be made with local finance officers for establishing procedures for payment after normal duty hours if necessary.

18–22. Civilian witness travel to proceedings overseas

a. When a civilian witness, other than a DOD employee, is located in the CONUS and is 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 message address to be used is CUSAJUDICIARY FALLS CHURCH VA//JALS-CCS.

b. Requests should be timely submitted to ensure receipt by the Clerk of Court at least 14 days before the desired arrival date. 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 of witness, and age if a minor.

(2) Name of the case or other proceedings (include grade and complete name of the accused).

(3) Type of court, investigation, or board, including general nature of the charges.

(4) Date proceedings are to begin.

(5) Desired arrival date of witness 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 witness to the proceedings (e.g., victim, prosecution witness other than victim, relative of the accused, defense witness not related to the accused).

(11) If the witness is minor or disabled, the information required by (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 victim/witness liaison.

(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 issue of invitational travel orders so that prepaid tickets can be placed at the departure air terminal.)

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, after the witness has been contacted and agreed to proceed overseas, the requirement is cancelled, an explanation to be given the witness will be provided to the Clerk of Court.

18–23. 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/interpreters.

18–24. Requests for investigative reports or other documents

The SJA will ensure that victim's and witness' requests for investigative reports or other documents are processed under applicable Freedom of Information Act or Privacy Act procedures. In appropriate 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

18–25. 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). DD Form 2705 (Victim\Witness Notification of Inmate Status) may be used for this purpose.

c. 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.

d. 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.

18–26. Reporting Requirements and Responsibilities

a. Headquarters, Department of the Army, Deputy of Chief of Staff for Operations and Plans, U.S. Army Military Police Operations Agency (DAMO-ODL), is the Army 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 a received a 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/witness notifications must be made.

b. Annually, no later than 15 February of each year, the central repository will report to Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200, cumulative figures for the previous calendar year on the notification and reporting requirements in paragraph a, above. The initial report covering the period 1 July 1995 to 31 December 1995, is due 15 February 1996. DD Form 2706 (Annual Report on Victim and Witness Assistance) will be used for this purpose.

c. Annually, not later than February 15 of each year, the SJA of each command having GCM jurisdiction will report, through MACOM channels, to The Judge Advocate General, Criminal Law Division (DAJA-CL), 2200 Army Pentagon, Washington, DC 20310–2200, cumulative information on the following:

(1) The number of victims and witnesses who received a DD Form 2701 or 2702 from trial counsel, VWL or designee;

(2) The number of victims and witnesses who received a DD Form 2703 from trial counsel, VWL or designee.

d. Initial SJA reports covering the period 1 July 1995 to 31 December 1995, are due 15 February 1996. SJA's 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. DD Form 2706 will be used for this purpose.

e. 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). The initial reporting period covers 1 July 1995 to 31 December 1995.

Chapter 19
Military Justice Training

19–1. 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 (ROTC).

19–2. Training organization

a. TJAG is responsible for technical supervision of training in military justice.

b. The Commanding General, U.S. Army Training and Doctrine Command (TRADOC), is responsible for instruction of required and optional military justice training during Initial Entry Training and institutional and ROTC training.

c. The Superintendent, USMA, is responsible for instruction of required and optional military justice training for cadets at USMA.

d. The Commandant, TJAGSA, is responsible for military justice courses in the curriculum of TJAGSA. The Commandant, TJAGSA, 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 (para19–7 *b*).

19–3. Curriculum courses

In addition to the military justice instruction taught in Army service schools, training centers, and ROTC programs, military justice courses may be presented in the curricula of Warrant Officer Training System schools, Noncommissioned Officer Education System schools and 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 (para 19–7 *b*).

19–4. Required military justice for enlisted soldiers

a. Enlisted soldiers will receive training in military justice in accordance with Article 137, UCMJ:

(1) On or within six days of the soldier's initial entrance on active duty or initial entrance into a duty status with a RC; and

(2) After the soldier has completed six months of active duty or, in the case of a RC soldier, after completing basic or recruit training; and

(3) At the time of each enlistment. See appendix 2, MCM. Training Circular 27–2 may be used as a guide for both entry training and refresher training under this paragraph.

b. HQDA may prescribe additional courses in military justice subjects of special significance to enlisted personnel.

19–5. Required military justice training for commissioned officers and officer candidates and cadets

Commissioned officers and 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 Article 31b, UCMJ, 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 United States 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 on 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.

19–6. 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 (para 19–7 *b*). The Commandant, TJAGSA, may prescribe military justice training courses to be taught in the curriculum of TJAGSA. Training Circular 27–3 contains a POI for a suggested optional training course in military justice for officers.

19–7. Course development and instruction

a. Military Qualification 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. JAs 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 HQDA (DAJA-PT), Personnel, Plans and Training Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200. JAs will provide technical assistance as needed in all other military justice instruction under paragraphs 4, 5 *c*, and 6 of this chapter.

Chapter 20
Complaints Under Article 138, UCMJ

Section I
General

20–1. Purpose

This chapter establishes procedures for the preparation, submission, and disposition of complaints made pursuant to Article 138, UCMJ (fig 20–1), by a member of the Armed Forces against a commanding officer.

20–2. Applicability

This chapter applies to all members of the Active Army and members of the USAR on inactive duty training. It does not apply to members of the ARNG when not on active duty in Federal service (see para 20–4 *a*).

20–3. Policy

a. Resolution of complaints. The DA policy is to resolve complaints at the lowest level of command and to provide adequate administrative procedures for such resolution. Article 138, UCMJ, is one of several methods available. It provides for consideration at three successive levels.

(1) The first attempt to resolve a perceived wrong must be between the soldier and the commanding officer whom the soldier believes committed the wrong. If conventional measures are unsuccessful, the soldier may submit a request for redress under Article 138 (para 20–6). Every reasonable measure should be taken to resolve complaints at this level.

(2) The principal responsibility for acting on Article 138 complaint lies with the officer exercising GCM jurisdiction over the respondent at the time of the alleged wrong.

(3) The action of the officer exercising GCM jurisdiction is reviewed at HQDA.

b. Right to complain. A member of the Armed Forces has a statutory right to submit an Article 138 complaint. Commanders will not restrict the submission of such complaints or retaliate against a soldier for submitting a complaint.

c. Complaint to be forwarded. Every Article 138 complaint will be expeditiously forwarded to the officer exercising GCM jurisdiction unless voluntarily withdrawn by the complainant.

d. Complainant not a participant. A soldier who submits an Article 138 complaint does not have a right to participate in any ensuing procedures under this regulation. However, the soldier may be asked to testify, provide additional information, or otherwise assist in resolving the complaint.

e. Presumption of regularity. If the available evidence does not establish the validity of a complaint, despite vigorous good faith efforts to do so, a commanding officer is presumed to have acted properly.

f. Processing complaints through command channels. Complaints are processed in the chain-of-command. Area jurisdiction and attachments and assignments for UCMJ or other administrative purposes do not affect the processing of Article 138 complaints. When forwarding a complaint to the GCMCA over the respondent, intermediate commanders may deviate from strict adherence to command channels if such deviation will facilitate action on the complaint. No commander who has a direct interest in the complaint will be bypassed. Commanders with GCM jurisdiction should communicate directly with equivalent or higher commanders or agencies.

20–4. Explanation of terms

For purposes of this chapter, these terms used in Article 138 are defined as follows:

a. Member of the Armed Forces. A member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty or inactive duty training and subject to the UCMJ. A member of the Armed Forces who has submitted an Article 138 complaint is referred to in this regulation as the complainant.

b. Commanding officer. An officer in the complainant's chain-of-command, up to and including the first officer exercising GCM jurisdiction over the complainant, authorized to impose nonjudicial punishment (Article 15, UCMJ) 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). A commanding officer against whom an Article 138 complaint has been made is referred to in this regulation as the respondent. (This should not be confused with the respondent designated in connection with formal proceedings under AR 15–6.)

c. Superior commissioned officer. A commissioned officer in the complainant's current chain-of-command who is senior to the complainant in grade or position.

d. Officer exercising GCM jurisdiction. The first officer (or that officer's successor) in the respondent's chain-of-command who had

GCM jurisdiction over the respondent at the time of the alleged wrong. That officer's authority to act on Article 138 complaints will not be affected by limitations on his or her authority to convene courts, such as those occurring as a result of area jurisdiction or the attachment or assignment of individuals for UCMJ purposes. If there is no such officer below HQDA, this term refers to the officer (or that officer's successor) who actually exercised GCM jurisdiction over the respondent at the time of the alleged wrong.

e. Wrong. 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.

f. Redress. Authorized action by any officer in the complainant's chain-of-command to effect the revocation of a previous official action or otherwise to restore to the complainant any rights, privileges, property, or status lost as a result of a wrong.

20–5. Inappropriate subject matter for Article 138 complaints

a. General. The procedures prescribed in this chapter are intended to ensure that an adequate official channel for redress is available to every soldier who believes the soldier's commanding officer wronged the soldier. For many adverse actions, however, there are other, more specific channels and procedures to ensure the soldier has an adequate opportunity to be heard. Those specific procedures usually are more effective and efficient for resolving such matters, and Article 138 procedures should neither substitute for nor duplicate them. Thus, 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. 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 chap 5, 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 (1), (2), or (3) above. The fact that the wrong complained of could be redressed by the ABCMR (AR 15–185) or the Army Discharge Review Board (AR 15–180) does not make Article 138 inappropriate.

b. Examples. Examples of actions for which Article 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 Article 138, UCMJ, procedures because there is no review by an authority superior to the officer vacating the punishment.

(2) Officer or enlisted elimination actions (AR 635–100; AR 635–200).

(3) MOS reclassification board actions (AR 600–200).

(4) Withdrawals of flying status (AR 600–105).

(5) Appeals from findings of pecuniary liability. (See AR 37–10 and AR 735–5 for examples).

(6) Appeals from administrative reductions in enlisted grades (AR 600–200).

(7) Appeals from OERs (AR 623–105) or enlisted evaluation reports (AR 600–205).

(8) Filing of adverse information (for example, administrative reprimand) in official personnel records (AR 600–37).

c. Referral to alternate channels. When the officer exercising GCM jurisdiction receives an Article 138 complaint apparently involving an adverse action for which more specific channels and procedures are available, the officer will act on it as prescribed in paragraph 20–11. A decision to leave the matter to be processed in those alternate channels and to so advise the complainant (para 20–11 *b* (1)) constitutes "proper measures for redressing the wrong complained of" within the meaning of Article 138.

Section II
Making a Complaint

20–6. Request for redress

a. Request by the member. Before submitting a complaint under Article 138, a member of the Armed Forces must make a written request for redress of the wrong to the commanding officer the member believes has wronged the member. The request for redress—

(1) Generally should be prepared in the format shown in Figure 20-2 of this regulation.

(2) Must clearly identify the commanding officer against whom it is made, the date and nature of the alleged wrong, and, if possible, the specific redress desired.

(3) Will be submitted through command channels to the commanding officer who is alleged to have committed the wrong. (For exception to this procedure, see para 1–3 *f*.)

b. Response by the commanding officer. A commanding officer receiving a request for redress submitted under this regulation will respond, in writing, within 15 days. (Paras 20–10 *a* and 20–11 *b* may be used as a guide in determining action on the request.) 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.

20–7. Complaint

A member of the Armed Forces may submit an Article 138 complaint for any act or omission by the member's commanding officer that the member believes to be a wrong (para 20–4 *e*) and for which the member has requested redress and been refused. A member who, through no fault of the member's own, has not received a final response within 15 days may elect to treat that as a refusal of redress.

a. Form. Figures 20–3 and 20–4 contain sample formats for Article 138 complaints. The complaint should—

(1) Be in writing and signed by the complainant.

(2) Identify the complainant as a member of the Armed Forces on active duty or inactive duty training and subject to the UCMJ.

(3) Identify the complainant's current military organization and address.

(4) Identify the complainant's military organization at the time of the wrong.

(5) Identify the commanding officer whose act or omission is complained of.

(6) Indicate the date a written request for redress was submitted to that commanding officer and either that—

(a) The request was refused, in whole or in part, and the date thereof; or

(b) A final response was not received within 15 days.

(7) Include a statement that it is a complaint submitted under the provisions of Article 138 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 that redress appropriate.

(10) Have attached to it—

(a) The complainant's request to the complainant's commanding officer for redress and the commanding officer's response, if any.

(b) Any supporting information or documents the complainant desires to be considered.

b. Submitting the complaint.

(1) The complainant will 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 request for redress was in the hands of the respondent.

(2) If the complainant corrects and resubmits the complaint after the officer exercising GCM jurisdiction has returned it as deficient (para 20–10 *a*), the days the complaint was in military channels between submission by and return to the complainant will also be excluded in computing the 90-day period.

c. Withdrawal. The complainant may withdraw the complaint at any time before final action is taken at HQDA. If a complaint is withdrawn, it must be a completely voluntary act on the part of the complainant.

(1) Prior to receipt by the officer exercising GCM jurisdiction, the complaint may be withdrawn by an oral request of the complainant.

(2) After receipt by the officer exercising GCM jurisdiction, the complainant must submit a written request to the officer in possession of the complaint.

20–8. 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 also should be advised of any other laws or regulations under which he may proceed to 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 which are open to other members of the public, but may not participate in them.

b. Respondent. A commanding officer who receives a request for redress or against whom an Article 138 complaint is submitted may obtain necessary legal advice from the commanding officer's servicing JA.

Section III
Action on the Complaint

20–9. Action by the person receiving the complaint

a. Forwarding. A superior commissioned officer who receives an Article 138 complaint will promptly forward it to the officer exercising GCM jurisdiction. Any other person receiving a complaint (except the officer exercising GCM jurisdiction) will forward it to the complainant's immediate superior commissioned officer or to the officer exercising GCM jurisdiction.

b. Other action. 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.

20–10. Determination not required by officer exercising GCM jurisdiction

a. Deficient complaint.

(1) If a complaint does not substantially meet the requirements of Article 138, as implemented by this chapter, no determination as to the merits of the complaint is required. Unless the deficiency is waived (see *b* below), such a complaint will be returned to the complainant with a written explanation of the deficiency and, if correctable, how it may be corrected.

(2) Neither the deficient complaint nor the convening authority's action on the complaint are forwarded to HQDA.

b. Waivers.

(1) Except as provided in (2) and (3) below, the officer exercising GCM jurisdiction may waive deficiencies when that officer considers it necessary in the interest of fairness.

(2) The following deficiencies should be waived only for good cause. The reason waiver is considered appropriate will be explained in the correspondence forwarding the complaint (para 20–11 *d* or 20–11 *b*(2)(c)).

(a) The complaint was not delivered to complainant's superior commissioned officer within 90 days of the date of discovery of the wrong.

(b) Redress has not been requested and refused.

(c) The complaint is repetitive in that it is substantially the same as a previous complaint by the same complainant on which official action has already been taken.

(3) The following deficiencies may not be waived:

(a) The complainant was not a member of the Armed Forces on active duty or inactive duty training and subject to the UCMJ when the complaint was delivered to his superior commissioned officer.

(b) The wrong complained of was not a discretionary act or omission, or it was not by the complainant's commanding officer, or it was not under color of Federal military authority, or it did not adversely affect the complainant personally (para 20–4 *e*).

(c) The complaint does not adequately identify a respondent or the wrong complained of.

c. Transfer of complaint. Jurisdiction to act on an Article 138 complaint lies with the officer exercising GCM jurisdiction described in paragraph 20–4 *d*. If the respondent has been transferred after the alleged wrong, the officer exercising GCM jurisdiction may transfer action on the Article 138 complaint to the first GCMCA in the respondent's current chain-of-command. However, the action may be transferred only if that convening authority consents and if the transfer will facilitate compliance with this regulation. Thereafter, the officer to whom the complaint was transferred is responsible for all actions prescribed by this regulation for the officer exercising GCM jurisdiction.

d. Withdrawal of complaint. Once a voluntary request for withdrawal has been received, no further action will be taken under this chapter. This does not preclude other appropriate action to resolve any matters raised by the complaint.

20–11. Determination required by officer exercising GCM jurisdiction

Except when that officer's determination is not required on the Article 138 complaint (para 20–10), the officer exercising GCM jurisdiction will take the following actions:

a. Examination into the complaint. The officer exercising GCM jurisdiction will examine into the complaint. Except as provided below, the nature and method of the examination is discretionary with this officer. 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 (*b*(2)(c) or *d* below), to a person junior in grade to the respondent. Examinations so delegated will be conducted in accordance with AR 15–6 and will include a specific recommendation regarding the appropriateness of the redress requested and of any other corrective action.

(1) Cases of the type described in paragraph 20–5 of this regulation. Unless the officer exercising GCM jurisdiction believes that established channels for redressing the alleged wrong would be inadequate in the particular case, the examination will be limited to determining whether the other channels are, in fact, available for resolving the alleged wrong.

(2) All other cases. Specific findings will be made as to 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.

b. Action on the complaint. The officer exercising GCM jurisdiction must act personally on the Article 138 complaint. This authority

may not be delegated. After examination into the complaint is completed, such officer will take the first of the following actions which applies to the particular complaint:

(1) If the alleged wrong is of the type described in paragraph 20–5, unless the officer exercising GCM jurisdiction believes that established channels for redressing the alleged wrong would be inadequate in the particular case, such commanding officer will advise the complainant that—

(a) The alleged wrong already is 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 complainant may proceed, and any Army assistance available to the complainant in using that channel.

(2) Determine the merits of the complaint and of the redress requested.

(a) If no redress is appropriate, such officer will deny the redress.

(b) Such officer will grant whatever redress is appropriate and is within such officer's authority to provide.

(c) If such officer determines redress is appropriate which is beyond such officer's authority to provide but which another Army commander or agency could provide, such officer will forward the following to the commander or agency with the necessary authority:

1. The documents described in *d*(1) through (3) below.

2. An explanation of why such officer considers redress appropriate.

3. Such officer's specific recommendations as to what redress should be granted.

4. A request that, upon completion of the action, the file be forwarded to Headquarters, Department of the Army in accordance with d below.

c. Notice to the complainant. The officer exercising GCM jurisdiction will notify the complainant in writing of the action taken on the complaint.

d. Forwarding complaint to Headquarters, Department of the Army. Upon completion of action on the complaint, the officer exercising GCM jurisdiction (or the commander to whom the complaint was forwarded under *b*(2)(c) above) will forward the following to HQDA (DAJA-ZD), The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200:

(1) The complaint, the original request for redress, the refusal thereof, and any supporting materials submitted by the complainant.

(2) The results of the examination into the complaint, together with any supporting documentation (*a* above).

(3) A copy of the notice to the complainant (*c* above).

(4) An endorsement or memorandum of transmittal—

(a) Indicating that the officer exercising GCM jurisdiction (or the commander to whom the complaint was forwarded) personally acted on the complaint.

(b) Describing such officer's action (*b* above) and the reasons therefore.

(c) When applicable, explaining any waiver of deficiencies in the complaint (para 20–2 *b*) or inadequacy of established channels (*b*(1) above).

20–12. Action by Headquarters, Department of the Army (HQDA)

a. Upon receipt at HQDA, each Article 138 file will be reviewed by TJAG (or that officer's designee) on behalf of the SA. TJAG may, in that officer's discretion, return the file for additional information or investigation or for other action.

b. The complainant, the respondent, and the officer exercising GCM jurisdiction will be informed of the final disposition of the complaint.

"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 forward the complaint to the officer exercising general 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 had thereon."

Figure 20-1. Article 138, Uniform Code of Military Justice

DEPARTMENT OF THE ARMY
TROOP F, 3D SQUADRON, 23D CALVARY
13TH INFANTRY DIVISION (MECHANIZED)
FORT RENO, TEXAS 77777

(Office symbol) ***(Date)***

MEMORANDUM FOR Commander, F Troop, 3d Squadron, 23rd Cavalry 13th Infantry Division (Mechanized), Fort Reno, Texas 77777

SUBJECT: Request for Redress Under Article 138, UCMJ (AR 27-10)

1. On 3 December 1995, at company formation you announced that all members of the unit were encouraged, but not required, to join in a work project on the following Saturday, 10 December 1995. The work project was a domestic action activity which involved trimming a Christmas tree and decorating an auditorium at the nearby Youth Town Orphanage. As I previously had made plans for the day, I elected not to participate. On 12 December 1995, I requested Christmas leave from 24 December 1995 to 30 December 1995 and, even though I have more than enough leave accrued to cover this period, you denied my request.

2. I think your refusal to approve my leave is unreasonable and is in retaliation for my absence from the voluntary domestic action program at the orphanage. I consider this a wrong within the meaning of Article 138, UCMJ, and AR 27-10.

3. As redress, I request approval of my leave request.

MEGAN A. DICKERSON
000-00-0000
SGT, BTRY A, 141 FA
56th FA CMD

Figure 20-2. Sample format request for redress

DEPARTMENT OF THE ARMY
TROOP F, 3D SQUADRON, 23D CALVARY
13TH INFANTRY DIVISION (MECHANIZED)
FORT RENO, TEXAS 77777

XXXX-XX 18 December 1995

MEMORANDUM THRU Commander, Troop F, 3d Squadron, 23d Calvary, 13th Infantry Division (Mechanized), Fort Reno, Texas 77777

FOR Commander, 3d Squadron, 23d Calvary 13th Infantry Division (Mechanized), Fort Reno, Texas 77777

SUBJECT: Complaint of Wrong (Article 138, UCMJ)

1. I, SGT Megan A. Dickerson, 000-00-0000, am a member of the U.S. Army on active duty, subject to the Uniform Code of Military Justice, and currently assigned to Troop F, 3d Squadron, 23d Cavalry, 13th Infantry Division (Mechanized), Fort Reno, Texas. On 12 December 1995 while assigned to my present unit, I was wronged by my commanding officer, CPT Fred G. Robinson, Commander, Troop F, 3d Squadron, 23rd Cavalry, 13th Infantry Division (Mechanized), Fort Reno, Texas. I made a written request for redress to CPT Robinson on 14 December 1995, but on 17 December 1995 he refused to grant it. The request for redress and his response are attached (Encl). I therefore submit this complaint against CPT Robinson under the provisions of Article 138, UCMJ, and Army Regulation 27-10.

2. The wrong which is the subject of this complaint is improper denial of Christmas leave. The circumstances are as follows: On 3 December 1995, CPT Robinson requested volunteers for a domestic action work project the following Saturday at his favorite charitable activity - the Youth Town Orphanage. Because I already had plans for the date of the project, I did not participate. On 12 December 1995, I requested leave for the Christmas holiday season. CPT Robinson denied the leave even though I have more than enough leave accrued to cover the requested period.

3. CPT Robinson’s action in denying my request for leave was improper because it was only done in retaliation for my failure to participate in the volunteer program. It also is contrary to paragraph 2-7e, AR 630-5, which advises commanders to place special emphasis on holiday leave.

4. I hereby ask as redress that you authorize my leave from 24 December 1995 through 30 December 1995.

Encl

MEGAN A. DICKERSON
000-00-0000
SGT, Co C, 3/23 IN

13th IN Div (Mech)

Figure 20-3. Sample format for Article 138 complaint

DEPARTMENT OF THE ARMYM
BATTERY B, 2D BATTALION, 22D ARTILLERY
20TH INFANTRY DIVISION
FORT BLANK, WEST DAKOTA 88888

XXXX-XX 16 September 1995

MEMORANDUM THRU
Commander, Battery B, 2d Battalion, 22d Artillery, 20th Infantry Division, Fort Blank, West Dakota 88888
Commander, 2d Battalion, 22d Artillery, 20th Infantry Division, Fort Blank, West Dakota 88888
Commander, 22d Artillery, 20th Infantry Division, Fort Blank, West Dakota 88888
FOR Commander, 20th Infantry Division, Fort Blank, West Dakota 88888

SUBJECT: Complaint of Wrong (Article 138, UCMJ)

1. I, SGT Charles T. Phillips, 000-00-0000, am a member of the U.S. Army on active duty, subject to the Uniform Code of Military Justice, and currently assigned to Battery B, 2d Battalion, 22d Artillery, 20th Infantry Division, Fort Blank, West Dakota. On 26 May 1995 while assigned to Headquarters and Headquarters Company, 222d Maintenance Battalion, 20th Infantry Division, Fort Blank, West Dakota, I was wronged by LTC Marie R. Brennan, then commander, 222d Maintenance Battalion, but currently assigned to Division Support Command, 13th Infantry Division (Mechanized), Fort Reno, Texas. I made a written request to LTC Brennan on 5 September 1995 but she failed to provide a final response to my request within 10 normal duty days. The request for redress is attached (Encl). I therefore submit this complaint against LTC Brennan under the provisions of Article 138, UCMJ, and Army Regulation 27-10.

2. The wrong which is the subject of this complaint is improper suspension of my military driver's license. The circumstances are as follows: As battalion commander, LTC Brennan directed that members of the battalion convicted of driving more than 10 miles per hour over any posted speed limit would have their military driver's license suspended for 1 year. On 14 January 1995, while home on leave, I was issued a speeding ticket for driving my POV 38 military per hour in a 25 mile per hour speed zone. I really did not think I was going that fast but, rather than having to take the time off to contest the ticket, I paid the fine through the mail. I happened to mention the ticket to my first sergeant while discussing other matters, and he initiated the suspension of my military driver's license in accordance with LTC Brennan's policy. LTC Brennan suspended my license on 26 May 1995. I now need a military driver's license in my duties, but my new commander says he will honor LTC Brennan's 1-year suspension even though I have been transferred. Not having a military driver's license affects my performance of duty and adversely affects my career.

3. LTC Brennan's action was improper in that her policy was absolutely inflexible; it provided no consideration of the merits of any particular case or of mitigating circumstances. In my case, the suspension was based on a purely civilian offense while I was hundreds of miles away on leave. That has no relevance to the Army as a standard for a military license. I believe LTC Brennan's policy was so arbitrary and extreme as to be an abuse of a commander's authority under AR 600-35.

4. I hereby ask as redress that you restore my military driving privileges.

5. This complaint was not submitted within 90 days of the date of the wrong because I thought that when I was reassigned, the year's suspension would be terminated. I did not find out until 4 September 1995 that my new commander would honor the suspension period. I request a waiver of the 90-day time limit for filing a complaint under Article 138, UCMJ.

Encl

CHARLES T. PHILLIPS
000-00-0000
SGT, Btry B, 2/22 Arty
20th IN Div

Figure 20-4. Sample format for Article 138 complaint with complicating factors

Chapter 21
Military Justice Within the Reserve Components

Section I
General

21–1. Purpose

a. This chapter prescribes policies and procedures for implementing title VIII, National Defense Authorization Act for Fiscal Year 1987 (Military Justice Amendments of 1987) and R.C.M. 202(a) (Persons Subject to the Code), 204 (Jurisdiction over Certain Reserve Component Personnel), 707(a)(3) and (c)(8) (Speedy Trial), and 1003(c) (Punishments), in the RC.

b. The above referenced amendments to the UCMJ and the MCM apply to offenses committed on or after 12 March 1987. AC commanders may exercise this jurisdiction accordingly. As a matter of policy, RC commanders could not impose punishment under Article 15 or convene SCM until 1 July 1988.

c. 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.

21–2. Policy

a. USAR soldiers will be subject to the UCMJ whenever they are in a title 10, United States Code, 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). IDT normally consists of weekend drills by troop program units, but may also include any training authorized by appropriate authority. For examples of IDT, see AR 140–1, paragraphs 3–4, 3–11, 3–12, 3–14, 3–14.1, and 3–30. Jurisdiction continues during periods such as "lunch breaks" between unit training assemblies or drills on the same day and may continue overnight in situations such as an overnight bivouac.

b. ARNG soldiers will be subject to the UCMJ when in Federal service as Army National Guard of the United States (ARNGUS) under title 10, USC, and when otherwise called into Federal service. ARNG soldiers are not subject to the UCMJ while in state service under title 32, USC.

c. RC commanders must be in a title 10 duty status (*b* above) whenever they take action such as offering or imposing nonjudicial punishment, preferral or referral of court-martial charges, conducting open hearings under Article 15, or vacating suspended sentences under Article 15. However, RC commanders may forward charges (R.C.M. 401c(2)(A)), initiate or forward requests for involuntary active duty (R.C.M. 707c(8)), or act on Article 15 appeals (chap 3, sec VI) anytime, even when not in a title 10 duty status.

d. Costs associated with disciplining RC soldiers will be paid out of RC funds. Costs associated with disciplining RC soldiers in accordance with paragraph 21–3, below, will be borne by the component initiating the UCMJ action. An order to involuntary active duty will cite Reserve Personnel Army funds or National Guard Personnel, Army, funds when the activation is initiated by an RC commander. Military Personnel, Army (MPA appropriations will be cited when the action is initiated by an AC commander).

Section II
Involuntary Active Duty and Extension on Active Duty

21–3. Involuntary active duty

a. RC soldiers who are not serving on AD, and who are made the subject of proceedings under Articles 15 and 30, UCMJ, for offenses allegedly committed while serving in a title 10 duty status (para 21–2 *a* and *b*) may be ordered to AD involuntarily by an AC GCMCA for purposes of—

(1) Investigation pursuant to Article 32, UCMJ.

(2) Trial by court-martial.

(3) Article 15, UCMJ, proceedings.

b. Involuntary AD is authorized for any of the purposes set out in *a*(1) through (3) above, but is not authorized for the sole purpose of placing an RC soldier in pretrial confinement. After involuntary activation approved by the SA or the Secretary's designated representative, an RC soldier may be ordered into pretrial confinement under R.C.M. 305 and pursuant to the procedures in chapter 5, section III and *c* below.

c. Only AC GCMCAs are authorized to order involuntary AD of RC soldiers for the purposes in a above. The SA or the Secretary's designated representative must approve any involuntary AD order before a RC soldier may be confined or deprived of liberty (to include pretrial confinement or restriction) during an other than normal IDT or AD period. (See Discussion, R.C.M. 204(b)2).)

(1) Requests for involuntary AD will be forwarded through command channels including the appropriate State adjutant general or MUSARC commander or Commander, U.S. Army Reserve Personnel Center. For units located outside of the OCONUS, requests will be forwarded through command channels including Commander, WESTCOM, USARSO, USARJ, EUSA, or USAREUR, as appropriate. Requests should include a copy of the charge sheet and a summary of the evidence supporting the charges. Prior to preferral of charges in such cases, commanders will consult with supporting RC and AC SJA personnel.

(2) The State adjutant general or commanders designated in *c*(1) above will forward requests for involuntary AD to the appropriate AC GCMCA designated per AR 5–9.

(3) AC GCMCAs will forward requests for SA approval of involuntary AD to HQDA (DAJA-CL), Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200 for processing to obtain approval from the SA or the Secretary's designee. The AC GCMCA will also immediately inform the MUSARC and Continental U.S. Army (CONUSA) commanders and the U.S. Forces Command commander, or the State adjutant general and Chief, National Guard Bureau, of the initiation of UCMJ actions against RC soldiers. HQDA (DAJA-CL) will notify the forwarding AC GCMCA of SA or Secretary designee action on the request.

d. RC soldiers must be on AD prior to arraignment at a general or SPCM (R.C.M. 204(b)(1)) or prior to being placed in pretrial confinement (R.C.M. 305).

21–4. Extending RC soldiers on AD

a. The requirements for AC GCMCA activation and/or Secretarial approval in paragraph 21–3 above do not apply to RC soldiers on AD. 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 (AR 635–200, para 1–24). Any such extensions must be completed pursuant to the provisions of AR 135–200, chapter 8.

b. An RC soldier who is suspected of or accused of an additional offense after being ordered to AD for any of the purposes in paragraph 21–3 *a* above may be retained on AD pursuant to R.C.M. 202(c)(1).

21–5. Preservation of jurisdiction and punishment

a. RC soldiers remain subject to UCMJ jurisdiction for offenses committed while serving in a title 10 duty status (para 21–2) notwithstanding termination of a period of such duty, provided they have not been discharged from all further military service (R.C.M. 204(d)).

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 (R.C.M. 204(b)(2)). Involuntary activation pursuant to

paragraph 21–3 *a* above is authorized only in accordance with the procedures set out in paragraph 21–3 *c* above.

Section III
Nonjudicial Punishment (Article 15) and Courts-Martial

21–6. Nonjudicial Punishment (Article 15)

a. The provisions of chapter 3 of this regulation 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 of this regulation that nonpunitive or administrative remedies should be exhausted before resorting to nonjudicial punishment.

b. RC soldiers may receive nonjudicial punishment pursuant to Article 15, UCMJ, while serving in a title 10 status on AD, ADT, AT, or IDT. RC soldiers may be punished pursuant to Article 15 while serving on IDT provided that the proceedings are conducted and any punishment administered is served during normal IDT periods (see Discussion, R.C.M. 204(b)(2)). Prior to taking such actions, RC commanders should consult with their supporting RC or AC staff or command judge advocate.

c. Either RC or AC commanders may punish RC enlisted soldiers of their commands (para 3–8).

d. Unless further restricted by higher authority (para 3–7 *c*), punishment for RC officers is reserved to the AC 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.

21–7. Summary courts-martial

a. RC soldiers may be tried by SCM while serving in a title 10 status on AD, ADT, AT, or IDT. RC soldiers may be tried by SCM while serving on IDT provided that the trial is conducted and punishment is served during normal IDT periods (see Discussion, R.C.M. 204(b)(2)).

b. Either RC or AC 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, Article 25, UCMJ requires that the summary court officer must be on AD at the time of trial.

c. MUSARC commanders should attach all soldiers without an intermediate commander authorized nonjudicial punishment or SCM authority under Articles 15 and 24, UCMJ, to an appropriate subordinate commander for such purposes.

21–8. Special and general courts-martial

a. RC soldiers may be tried by SPCM or GCM only while serving on AD. Orders to involuntary AD must be approved by the SA or the Secretary's designee before an RC soldier may be sentenced to confinement or otherwise deprived of liberty.

b. Only an AC convening authority may refer charges against an RC soldier to a SPCM or GCM. Such courts-martial will normally be conducted at the installation of the supporting AC GCMCA as designated per AR 5–9. A MUSARC commander qualifies as GCMCA under Article 22(*a*)(5), UCMJ. However, as a matter of policy the authority to convene GCM or SPCM is withdrawn. Similarly, RC commanders who qualify as SPCM convening authorities under Article 23(*a*), UCMJ, will not convene SPCM.

21–9. Forfeitures

a. Consistent with paragraphs 70507i and 70512, DOD Military Pay and Allowances Entitlements Manual, forfeitures imposed on RC soldiers pursuant to Article 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 Active Army 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. 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) which includes a forfeiture of $200 a month for 2 months ($400).

(2) Determine the soldier's monthly rate of base pay. In this example, it is $912.60.

(3) Convert the original forfeiture to a percentage: 200/912.60 = 21.92 percent.

(4) 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 active duty and inactive duty training 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.

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 Active Army soldier of the same grade and time in service.

21–10. Reporting requirements and court-martial orders

a. AC SJAs will report those disciplinary actions that result solely from expanded RC jurisdiction as a separate category on DA Form 3169-R. This will be accomplished by adding a parenthetical number to the numbers already entered in blocks 1a (Summarized and Formal columns), 5a, 6a (Total Tried and Total Convicted columns only), and 14 (Total Chap 10s column only) of the DA Form 3169-R. The parenthetical number will reflect the total number of actions that result from expanded jurisdiction over RC soldiers under the Military Justice Amendments of 1987 for each category reported. For example, block 5a would contain two numbers: the number for the combined total of soldiers punished; and the parenthetical number representing that portion of the total that resulted from expanded jurisdiction under the Military Justice Amendments of 1987, for example, 236 (17). (Do not include in the parenthetical disciplinary actions taken against Active/Guard Reserve soldiers or other RC soldiers whose disciplinary actions were not dependent on expanded jurisdiction under the Military Justice Amendments of 1987.)

b. For RC units located within the CONUS, MUSARC SJAs will collect and forward disciplinary statistics to their respective CONUSA SJAs and to the supporting AC GCMCA's SJA.

c. In addition to the distribution required by paragraph 12–7 of this regulation, copies of all special and general court-martial promulgating orders will be forwarded to the accused's unit of assignment, appropriate MUSARC and CONUSA commanders, and commander USARPAC, USARSO, USARJ, EUSA, or USAREUR, as appropriate.

Section IV
Support Personnel and Responsibilities

21–11. Support personnel

a. The SJA of the AC command designated to support an RC command will supervise prosecutions of RC soldiers, including coordinating requirements for advice and personnel support. RC JAs may be used when feasible. AC JAs may also be used. When a supporting AC SJA decides to use an RC JA, the SJA will inform

the RC JA's immediate commander of that decision. If a question arises as to the feasibility of using a particular RC JA assigned within CONUS, the CONUSA commander will decide whether use of the RC JA is feasible. If a question arises as to the feasibility of using a particular RC JA assigned OCONUS, Commander USARPAC, USARSO, USARJ, EUSA, or USAREUR, as appropriate, will decide whether use of the RC JA is feasible.

b. The USATDS office servicing the AC command will detail either AC or RC defense counsel in accordance with guidelines established by the Chief, USATDS.

c. The senior military judge designated to support the AC GCM jurisdiction supporting the RC command will detail AC or RC military judges in accordance with guidelines established by the Chief, U.S. Army Trial Judiciary.

21–12. Support responsibilities AC GCMCAs

AC GCMCAs designated in accordance with AR 5–9 to support RC commands will—

a. Order RC soldiers to AD for the purposes set out in paragraph 21–3 of this regulation except when approval of the SA or the Secretary's designee is required. The orders will cite 10 USC 802(*d*) for authority.

b. Forward requests for involuntary active duty orders requiring approval of the SA pursuant to paragraph 21–3 *c*(2) of this regulation 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 MUSARC or adjutant general and CONUSA commanders, as appropriate, of RC UCMJ actions involving RC soldiers assigned to RC units located in CONUS.

e. Inform Commander, USARPAC, USARSO, USARJ, EUSA or USAREUR, as appropriate, of RC UCMJ actions involving RC soldiers assigned to RC units located OCONUS.

f. When appropriate, order pretrial confinement for RC soldiers in accordance with R.C.M. 305 following involuntary active duty approved by the SA or the Secretary's designee.

g. Make appropriate disposition of charges against RC soldiers including referral to court-martial, imposition of punishment under Article 15, or administrative measures.

h. Arrange for orders placing RC soldiers on AD for duty as witnesses, counsel, military judges, court members, or other personnel of the court-martial.

Chapter 22
United States Army Trial Counsel Assistance Program

22–1. 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 counsels throughout the Army.

22–2. Mission

The SJA and the chief of military justice are responsible for the daily supervision and training of trial counsel. TCAP's mission is to provide assistance, resources, and support for the prosecution function throughout the Army and to serve as a source of resolution of problems encountered by counsel. TCAP provides publications and references for chiefs of military justice and trial counsel and conducts periodic advocacy training. TCAP can also assist an SJA office in the prosecution of specific cases. TCAP serves as the liaison between chiefs of military justice and the GAD concerning potential Government appeals pursuant to Article 62, UCMJ.

22–3. Organization

TCAP functions as a part of GAD and is an activity of USALSA, a field operating agency of TJAG. Operational control and supervision of TCAP is exercised by the Chief, GAD, for the Assistant Judge Advocate General for Military Law and Operations. Command functions other than operational control are provided by the Commander, USALSA. The office is composed of a chief, a Publications officer, and training officers as necessary.

22–4. Training

a. 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.

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. 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.

22–5. Technical assistance

a. Chiefs of military justice may request technical assistance or guidance from TCAP. Trial counsel may initiate such requests after coordination with the chief of justice or the SJA. Such requests may be telephonic, by electronic means, or in writing.

b. TCAP counsel are available for on-site assistance in unique or difficult cases. SJAs may request such assistance through the Chief, TCAP, Chief, GAD, or the Assistant Judge Advocate General for Military Law and Operations. The request should specify the name of the case, unique factors requiring TCAP 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 can be provided and the extent of such assistance. The Chief, TCAP, and the requesting SJA will coordinate such assistance to include the specific involvement of TCAP counsel. SJAs requesting TCAP 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 with the concurrence of the Commander, USALSA.

Chapter 23
Prosecution of Criminal Offenses in Federal Courts

23–1. Scope

a. This chapter contains policies and procedures for prosecutions in the United States District Courts before either a District Judge or a Magistrate Judge for violations of federal law committed on Army installations or which 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 within the territorial limits of the United States can be prosecuted in U.S. District Court or 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; and 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, chap. 219 (Trial By United States Magistrate Judges).

b. 28 USC 515 (Authority For Legal Proceedings; Commission, Oath, And Salary For Special Attorneys).

c. 28 USC 543 (Appointment of Special Attorneys by The Attorney General).

d. Rule 58, Federal Rules of Criminal Procedure (Procedures for Misdemeanors and Other Petty Offenses).

e. AR 190–29 (Misdemeanors and Uniform Notices Referred to U.S. Magistrate or District Courts).

23–3. Felony prosecution programs

a. General. 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 prosecutions 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. SJAs 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 United States 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, because 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 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. SAUSAs will perform their duties consistent with the MOU between the U.S. Attorney and the SJA or legal advisor. SJAs and legal advisors will monitor prosecutions conducted by SAUSAs and will, if necessary, provide additional supervision.

d. Civil litigation. 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 District Court. If no Magistrate Judge has been designated to try misdemeanors committed on an installation, the SJA or legal adviser should request that the U.S. Attorney petition the U.S. District Court to designate a Magistrate Judge for that purpose. Criminal Law Division, OTJAG should be notified or 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 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; however, 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 (18 USC 3401). The defendant must be informed of this right. (See fig 23–2 of this regulation for a sample of a completed AO Form 86A (Consent to Proceed -- Misdemeanor).) If permitted by MOU, an Army SAUSA may prosecute misdemeanors before a District Judge when a defendant declines to consent to be tried by the Magistrate Judge.

e. Procedure. Attorneys designated to prosecute cases before a Magistrate Judge must familiarize themselves with the local rules of court and Rule 58, Federal Rules of Criminal Procedure. (See also Moore's Federal Practice Rules Pamphlet, Magistrate Court Rules.)

f. Memorandum of Understanding and request for authorization. The SJA or legal adviser should execute a MOU with the U.S. Attorney covering responsibilities and procedures for trials in Magistrate Court. Installations with a felony prosecution program should include specific procedures for Magistrate Court in the MOU governing that program. (See fig 23–3.) If the installation only has a Magistrate Court program, then a MOU should be prepared and forwarded to Criminal Law Division, OTJAG, for approval of the program.

23–6. Reports

a. Installation SJAs or legal advisers will send a quarterly report to their MACOM SJA concerning prosecutions in federal magistrate court and felony prosecutions. The MACOM SJA will review these reports and send a consolidated report to Criminal Law Division, OTJAG, within 30 days after the end of each quarter. This report will provide the following information:

(1) The number of indictments filed;

(2) The number of misdemeanors tried by Army attorneys serving as SAUSAs;

(3) Results of any felony prosecutions tried by Army attorneys, to include a copy of any judgment, conviction, and sentence; and

(4) Results of felony prosecutions tried by the U.S. Attorney's office, in which the Army has an interest. A copy of any judgment, conviction, and sentence will be included.

b. In addition, all installations that have felony prosecution programs will report the following events as they occur to DAJA-CL, either by telephone or telefax:

(1) *Indictment.* Insofar as permitted by the Federal Rules of Criminal Procedure, as soon as an indictment is returned, provide the facts of the case as then known to the government.

(2) *Trial.* As soon as practicable after trial, provide a report of the result of trial, including pleas, dismissal of any counts, verdict of the court as to the counts that were tried, and any other relevant information concerning the trial of the case.

(3) *Sentence.* As soon as practicable, provide the sentence imposed.

c. SJAs are responsible to personally ensure the accuracy of the information provided.

23–7. Witness expenses

SAUSAs will follow the procedures outlined in the U.S. Attorneys' Manual for Obtaining witnesses and funding for their travel. In misdemeanor prosecutions, however, witness expenses that would be funded from the DA witness travel account if the case were a felony prosecution are the responsibility of the installation prosecuting the case.

AO 91 (Rev. 5/85) Criminal Complaint

United States District Court

MIDDLE DISTRICT OF ALABAMA

UNITED STATES OF AMERICA
V.

GEORGE C. COX
100 Main Street
Dothan, Alabama 36367

(Name and Address of Defendant)

CRIMINAL COMPLAINT

CASE NUMBER: 96-056-OS

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about August 10, 1996 in Dale county, in the Middle District of Alabama defendant(s) did, (Track Statutory Language of Offense)

at or near building #405, Fort Rucker, Alabama, violate the provisions of an order not to re-enter Fort Rucker, by re-entering and unlawfully remaining on the Fort Rucker installation.

in violation of Title 18 United States Code, Section(s) 1382.

I further state that I am a(n) Special Ass't U.S. Attorney (Official Title) and that this complaint is based on the following facts: Information provided by the military police who investigated the incident.

Continued on the attached sheet and made a part hereof: [X] Yes [ ] No MPR #22344-96

D Vaughn
Signature of Complainant

Sworn to before me and subscribed in my presence,

August 22, 1996 — Date

at Fort Rucker, Alabama — City and State

R. Bean, U.S.Magistrate — Name & Title of Judicial Officer

R Bean
Signature of Judicial Officer

Figure 23-1. Sample A0 form 91 (Rev. 5-85) Criminal Complaint

AO 86A (Rev. 4/91) Consent to Proceed—Misdemeanor

United States District Court

Middle DISTRICT OF Alabama

UNITED STATES OF AMERICA
V.
GEORGE C. COX
100 Main Street
Dothan, Alabama 36368

CONSENT TO PROCEED BEFORE UNITED STATES MAGISTRATE JUDGE IN A MISDEMEANOR CASE

CASE NUMBER: 96-056-OS

The United States magistrate judge has explained to me 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 or a United States magistrate judge.

I HEREBY: Waive (give up) my right to trial, judgment, and sentencing before a United States district judge, and I consent to trial, judgment and sentencing before a United States magistrate judge.

x George C Cox
Defendant

WAIVER OF RIGHT TO TRIAL BY JURY

The magistrate judge has advised me of my right to trial by jury.

I HEREBY: Waive (give up) my right to trial by jury. George C Cox
Defendant

Consented to by United States G. Van Owen
Signature

G. Van Owen, Special Ass't U.S. Attorney
Name and Title

WAIVER OF RIGHT TO HAVE THIRTY DAYS TO PREPARE FOR TRIAL

The magistrate judge has also advised 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 George C Cox
Defendant

Douglas Wambaugh
Defendant's Attorney (if any)

Approved By: R Bu
U.S. Magistrate Judge

September 21, 1996
Date

Figure 23-2. Sample AO form 86A (Rev. 4-:) Consent to Proced–Misdemeanor

Appendix A
References

Section I
Required Publications

AR 10–5
Organization and Functions, Headquarters Department of the Army. (Cited in para 17-4.)

AR 15–6
Procedures for Investigating Officers and Boards of Officers. (Cited in paras 7-6a, 10-8a, 10-8b, 20-4b, and 20-11a.)

AR 15–185
Army Board for Correction of Military Records. (Cited in paras 3-43e, 14-1d, and 20-5a(4).)

AR 20–1
Inspector General Activities and Procedures. (Cited in para 7-6.)

AR 25–50
Preparing and Managing Correspondence. (Cited in para 3-19b(9)(d), and 5-16a.)

AR 25–51
Official Mail and Distribution Management. (Cited in para 13-9f.)

AR 25–400–2
The Modern Army Record Keeping System (MARKS). (Cited in para 5-43a.)

AR 27–1
Judge Advocate Legal Service. (Cited in paras 5-8b, 6-4g, 6-4h, 16-5c, 16-5d, and 16-12.)

AR 27–3
The Army Legal Assistance Program. (Cited in para 18-12b(3)).

AR 27–13
Courts of Military Review—Rules of Practice and Procedure. (Cited in para 13-7.)

AR 27–26
Legal Services: Rules of Professional Conduct for Lawyers. (Cited in para 5-8a.)

AR 27–40
Litigation. (Cited in paragraphs app C-2c and app C-3b.)

AR 27–50
Status of Forces Policies, Procedures, and Information. (Cited in paras 17-3d(2) and 17-3e(2).)

AR 27–52
Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice. (Cited in para 5-1.)

AR 37–10
Waiver of U.S. Claims for Erroneous Payments of Pay and Allowances. (Cited in para 20-5b(5).)

AR 37–104–4
Military Pay and Allowances Policy and Procedures - Active Duty. (Cited 3-37d(3).)

37–106
Finance and Accounting for Installations: Travel and Transportation Allowances. (Cited in paras 5-12a, 10-3d, 10-7d, and 18-21.)

AR 40–1
Composition, Mission, and Functions of the Army Medical Department. (Cited in paras 7-3b, 7-4, and 7-5.)

AR 40–3
Medical, Dental, and Veterinary Care. (Cited in para 18-12a.)

AR 135–200
Active Duty for Training, Annual Training and Active Duty Special Work of Individual Soldiers. (Cited in para 21-41a.)

AR 140–1
Mission, Organization and Training. (Cited in para 21-2b.)

AR 165–20
Duties of Chaplains and Commanders' Responsibilities. (Cited in paras 7-2 and 18-12b(5).)

AR 190–22
Search, Seizures, and Disposition of Property. (Cited in para 9-11c and 18-16a.)

AR 190–29
Misdemeanors and Uniform Violation Notices Referred to U.S. Magistrate or District Courts. (Cited in para 9-1b, and 23-2e.)

AR 190–34
Correctional Custody. (Cited in para 3-19b.)

AR 190–47
The U.S. Army Corrections System. (Cited in paras 5-28a, 5-28b, 5-33, 8-4a(4)(d), 9-5b(6), and 14-1d.)

AR 190–53
Interception of Wire and Oral Communications for Law Enforcement Purposes. (Cited in para 8-4a(4)(c).)

AR 195–5
Evidence Procedures. (Cited in paras 9-11b and 18-16a.)

AR 220–5
Designation, Classification, and Change of Status of Units. (Cited in para 3-7a(4).)

AR 335–15
Management Information Control System. (Cited in paras 5-16b and 5-27b.)

AR 600–8–1
Army Casualty Operations/Assistance/Insurance. (Cited in para 18-2c.)

AR600–8–2
Suspension of Favorable Personnel Actions (FLAGS). (Cited in paras 3-20, and 3-37a.)

AR 600–8–104
Military Personnel Information Management/Records. (Cited in paras 3-37b(1)(c), 3-41b(1), and 12-7b(7))

AR 600–8–105
Military Orders. (Cited in paras 8-7b(7)(a), 8-7b(7)(b), 12-5a(1),12-5c, 12-5d(2), and 12-5e.

AR 600–20
Army Command Policy. (Cited in paras 3-3a, 3-3c and 3-19b(5)(e).)

AR 600–37
Unfavorable Information. (Cited in para 3-3b(2) and 20-5b(8).)

AR 600–105
Aviation Service of Rated Army Officers. (Cited in para 20-5b(4).)

AR 600–200
Enlisted Personnel Management System. (Cited in paras 3-3a, 3-19b(6)(a), 3-19b(6)(e), 3-20, 20-5b(3), and 20-5b(6).)

AR 608–1
Army Community Service Program. (Cited in para 18-12b(1).)

AR 614–100
Officers Assignment Policies, Details and Transfers. (Cited in para 5-16a.)

AR 623–105
Officer Evaluation Reporting System. (Cited in para 5-9b(3) and 20-5b(7).)

AR 630–5
Leave and Passes. (Cited in para 13-11a.)

AR 635–200
Enlisted Personnel. (Cited in para 15-5d(1), 15-5d(2), 20-5b(2), and 21-4a.)

AR 638–1
Disposition of Personal Effects of Deceased and Missing Persons. (Cited in para 5-21a.)

AR 640–10
Individual Military Personnel Records. (Cited in paras 3-37b(1)(c), 3-41b and 5-26d.)

AR 672–5–1
Military Awards. (Cited in para 18-2d.)

AR 672–20
Incentive Awards. (Cited in para 18-2d.)

AR 735–5
Policies and Procedures for Property Accountability. (Cited in para 5-20b(5).)

AR 930–4
Army Emergency Relief. (Cited in para 18-12b(2).)

AR 930–5
American National Red Cross Service Program and Army Utilization. (Cited in para 18-12b(4).)

DA Pam 25–11
Authorized Addresses for Electrically Transmitted Messages. (Cited in para 5-28d.)

DA Pam 27–7
Military Justice Handbook--Guide for Summary Court-Martial Trial Procedure. (Cited in paras 5-10a(3), 5-10b, and 5-21a.)

DA Pam 27–9
Military Judges' Benchbook. (Cited in para 5-21a.)

DA Pam 27–15
Military Justice Handbook: Trial Guide. (Cited in para 5-10b.)

DA Pam 27–26
Rules of Professional Conduct for Lawyers. (Cited in para 16-4a(12).)

DA Pam 570–551
Staffing Guide for U.S. Garrisons. (Cited in para 6-4h.)

DA Pam 600–8
Management and Administrative Procedures. (Cited in paras 3-37a and 3-37c(3).)

TC 27–2
Military Justice (Enlisted Personnel Training). (Cited in para 19-4a.)

TC 27–3
Military Justice (Officer Personnel Training). (Cited in para 19-6.)

AFI 51–202
Military Justice, Nonjudicial Punishment. (Cited in paras 3-6c, 3-8c and 3-30d.)

DODD 1030.1
Victim and Witness Assistance. (Cited in chap 18.)

DODI 1030.2
Victim and Witness Assistance Procedures. (Cited in chap 18.)

JAGMAN
Manual of The Judge Advocate General, Navy. (Cited in paras 3-6c, 3-8c and 3-30d.)

MJM
U.S. Coast Guard Military Justice Manual. (Cited in paras 3-6c, 3-8c and 3-30d.)

Section II
Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 1–20
Legislative Liaison

AR 1–32
Disciplinary Control of US Army Personnel

AR 1–211
Attendance of Military and Civilian Personnel at Private Organization Meetings

AR 15–130
Army Clemency and Parole Board

AR 15–180
Army Discharge Review Board

AR 25–55
The Department of the Army Freedom of Information Act Program

AR 27–20
Claims

AR 27–51
Jurisdiction of Service Courts of Friendly Foreign Forces in the United States

AR 190–9
Absentee, Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies

AR 190–40
Serious Incident Report

AR 195–6
Department of the Army Polygraph Activities

AR 340–21
The Army Privacy Program

AR 350–1
Army Training

AR 351–1
Individual Military Education and Training

AR 600–40
Apprehension, Restraint, and Release to Civil Authorities

AR 600–43
Conscientious Objection

AR 600–85
Alcohol and Drug Abuse Prevention and Control 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 635–100
Officer Personnel

DA Pam 27–17
Procedural Guide for Article 32b Investigating Officer

DA Pam 27–50–series
The Army Lawyer

DA Pam 27–100
Military Law Review

DA Pam 27–173
Trial Procedure

Section III
Prescribed Forms

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 3-16a(2).)

DA Form 2627–2
Record of Supplementary Action Under Article 15, UCMJ. (Prescribed in para 3-23c.)

DA Form 3169–R
Report of Judicial and Disciplinary Activity in the Army. (Prescribed in para 15-1a.)

DA Form 34396–R
Military Judge's Oath. (Prescribed in para 11-3c.)

DA Form 3497–R
Counsel's Oath. (Prescribed in para 11-4a.)

DA Form 3499
Application for Relief from Court-Martial Findings and/or Sentence Under the Provisions of Title 10, United States Code, Section 869. (Prescribed in para 14-2a.)

DA Form 3744–R
Affidavit Supporting Request for Authorization to Search and Seize. (Prescribed in para 9-8b.)

DA Form 3745–R
Search and Seizure Authorization. (Prescribed in paragraph 9-8b.)

DA Form 3745–1–R
Apprehension Authorization. (Prescribed in para 9-8b.)

DA Form 4430–R
Report of Result of Trial. (Prescribed in para 5-27a.)

DA Form 4441–R
Defense Counsel Card. (Prescribed in para 6-11c.)

DA Form 4916–R
Certificate of Service/Attempted Service. (Prescribed in para 13-9e.)

DA Form 4917–R
Advice as to Appellate Rights. (Prescribed in para 13-4c.)

DA Form 4918–R
Petition for Grant of Review in the United States Court of Military Appeals. (Prescribed in para 13-4c.)

DA Form 4919–R
Request for Final Action. (Prescribed in para 13-4c.)

DA Form 5109–R
Request for to Superior to Exercise Article 15, UCMJ, Jurisdiction. (Prescribed in para 3-5b.)

DA Form 5110–R
Article 15—Reconciliation Log. (Prescribed in para 3-39.)

DA Form 5111–R
Summary Courts-Martial Rights Notification/Waiver Statement. (Prescribed in para 5-21d.)

DA Form 5112–R
Checklist for Pretrial Confinement. (Prescribed in para 9-5b(2).)

DD Form 2701
Initial Information for Victims and Witnesses of Crime. (Prescribed in para 18-8b.)

DD Form 2702
Court-Martial Information for Victims and Witnesses of Crime. (Prescribed in para 18-13.)

DD Form 2703
Post-Trial Information for Victims and Witnesses of Crime. (Prescribed in para 18-14b(1).)

DD Form 2704
Victim/Witness Certification and Election Concerning Inmate Status. (Prescribed in para 18-14b(2).)

DD Form 2705
Victim/Witness Notification of Inmate Status. (Prescribed in para 18-25b(3)(c).)

DD Form 2706
Annual Report on Victim and Witness Assistance. (Prescribed in para 18-26e.)

Section IV
Referenced Forms

Forms that have been designated "approved for electronic generation (EG)" must replicate exactly the content (wording), format (layout), and sequence (arrangement) of the official form.

DA Form 2
Personnel Qualification Record—Part 1

DA Form 2A
Personnel Qualification Record--Part I--Enlisted Peacetime

DA Form 2–1
Personnel Qualification Record--Part II

DA Form 31
Request and Authority for Leave

DA Form 268
Report for Suspension of Favorable Actions

DA Form 3180–R
Personnel Screening and Evaluation Board

DA Form 4137
Evidence/Property Custodian Document

DA Form 4187
Personnel Action

DD Form 454 (Approved for EG.)
Warrant of Attachment

DD Form 455 (Approved for EG.)
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 R.C.M. 1109

DD Form 458 (Approved for EG.)
Charge Sheet

DD Form 490 (Approved for EG.)
Record of Trial

DD Form 491 (Approved for EG.)
Summarized Record of Trial

DD Form 2329 (Approved for EG.)
Record of Trial by Summary Court-Martial

DD Form 2330 (Approved for EG.)
Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Military Review

DD Form 2331 (Approved for EG.)
Waiver/Withdrawal of Appellate Rights in General Court-Martial Subject to Examination in the Office of the Judge Advocate General

AO Form 86A
Consent to Proceed--Misdemeanor (Obtained from Special Assistant US Attorney's Office)

AO Form 91
Criminal Complaint (Obtained from Special Assistant US Attorney's Office)

Appendix B
Suggested Guide for Conduct of Nonjudicial Punishment Proceedings

B–1. General
This guide is designed to ensure that the proceedings comply with all legal requirements. It contemplates a three-step process conducted in the presence of the soldier, consisting of: (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. Statements of CO.

(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 copy five 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 CO. 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: Article 15, UCMJ, Part V of the Manual for Courts-Martial (MCM); or contact your JA office.

e. Statement of CO. 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 in your behalf.

(a) Evidence in defense are 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 are circumstances surrounding the offense, showing that the offense was not very serious.

(c) Evidence in mitigation are 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. Statements of CO.

(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 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 lists for each punitive article the punishments a court-martial may impose for violations of the various Articles of the UCMJ. The CO—

</paratext>

(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 6 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 CO.

(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 CO.

(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 CO. Do you wish to be accompanied by a spokesperson?

n. Response of Soldier. Yes/No.

o. Statement of CO. 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 CO. 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—

a. 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.

b. If the answer regarding witnesses and evidence is yes, and the soldier is prepared to present his or her evidence immediately, proceed as follows. Consider the evidence presented. If the evidence persuades you that you should not punish the soldier, terminate the proceedings, inform the soldier, and destroy all copies of DA Form 2627. If you are convinced that the soldier committed the offense(s) beyond a reasonable doubt and deserves to be punished, proceed to impose punishment.

c. 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.

d. 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. Insure 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 CO.

I have considered all the evidence. I am convinced that you committed the offense(s). I impose the following punishments: (Announce Punishment.) I have considered all the evidence and impose the following punishment(s) (Announce punishment(s).)

note. After you have imposed punishment, complete items 4, 5 and 6 of DA Form 2627, and sign the blank below item 6.

B–4. Appellate Advice

*note.*The CO will hand the DA Form 2627 to the soldier.

a. Statement of CO. 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 CO. Do you desire to appeal?

d. Response of Soldier. Yes/No.

Note. If the answer is yes, go to note at e(2). If the answer is no, continue with next statement.

e. Statements of CO.

(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). If the answer is no, continue with next statement.)

g. Statements of CO.

(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

*note.*These guidelines have been approved by 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 and the Code of Judicial Conduct of the ABA 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. If it appears that he or she will not be available for the trial, 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. Since no authority exists to hire a civilian attorney at Government expense to represent a soldier in a court-martial, 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.

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 App C, para C-2 *c*). 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.

C–2. Problems associated with trials

a. Steps to ensure that conflicts of attorney's interest do not arise because of multiple clients.

(1) Barring unusual circumstances, a military attorney will not undertake or be detailed to represent more than one client where there are multiple accused. Prior to the time that defense counsel are detailed, the Chief, USATDS, or his or her delegate (see para 6–9), will ensure that co-accused are initially contacted by separate defense counsel. Once detailed to represent one of two or more co-accused, a military attorney will not represent another co-accused in the absence of a request for individual counsel processed under Article 38(*b*), UCMJ, R.C.M. 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), ABA Standards; and Rule 1.7, Army Rules of Professional Conduct for Lawyers.

(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.

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 indorsement 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 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 an Article 39(a), UCMJ, 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 Article 70, UCMJ. 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.* Article 70 mandates appellate counsel to represent the accused before the military appellate courts and to "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 (App C, para C-2 *c*).

(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 (App C, para C-2 *b*(3)). 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 installation/community casualty working group and the USA Criminal Investigation Command Survivor Point of Contact in death cases (para 18–2c).

b. Ensure that victims are provided the name, location, and telephone number of the VWL (para 18–8b).

c. Inform the victim of the right to receive the services described in Chapter 18 (Secs III and V) and provide a Victim and Witness Information Packet (para 18–9b).

d. Inform the victim of the following rights (para 18–10):

(1) The right to be treated with fairness, dignity, and a respect for privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial, or for other good cause.

(5) The right to confer with the attorney for the Government in the case.

(6) The right to restitution, if appropriate.

(7) The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.

e. Inform the victim of the availability of emergency medical and social care and, when necessary, provide appropriate assistance in securing such care (para 18–12a).

f. Inform abused dependent victims of the availability of medical care for injuries resulting from abuse if the sponsor received a dishonorable or bad conduct discharge or dismissal for an offense involving abuse of the dependent victims.

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 (para 18–12 *b*).

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 U.S.C. 1408 or payment of transitional compensation benefits under 10 U.S.C. 1059 (para 18–12 *b*(7)).

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 18–12 *b*(8)).

j. Inform the victim of the various means available to seek restitution (Article 139, UCMJ; other remedies, such as claims, private lawsuits, or any state compensation programs) and of appropriate and authorized points of contact (para 18–16 *b*).

k. Inform a victim concerning the stages in the military criminal justice system, the role that they can be expected to play in the process, and how they can obtain additional information concerning the process and the case (para 18–13).

l. Inform a victim that the victim may receive notice of the following significant events in the case (para 18–14 *a*):

(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 an Article 32, UCMJ, investigation.

(5) The scheduling 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.

(8) The opportunity to provide evidence in aggravation of financial, social, psychological, and physical harm.

(9) The result of trial.

(10) If the sentence includes confinement, the probable parole date.

(11) General information regarding the corrections process, including information about forms of release from custody, and the offender's eligibility for each.

(12) The right to request notice of the offender's confinement or parole status.

(13) The opportunity to submit a victim impact statement to the Army Clemency and Parole Board.

m. Advise a victim that ordinarily the victim may consult with a government representative concerning the following decisions (para 18–15):

(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 which 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 18–16 *a*).

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 (para 18–19).

p. Inform the victim that, within the guidelines of R.C.M. 701(e) and upon request, the VWL 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 (para 18–19 *d*).

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). (Para 18–18).

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 (para 18–20).

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 (para 18–20).

t. Inform the victim of the availability of a separate waiting area (para 18–19 *c*).

u. Inform the victim of, and provide appropriate assistance to obtain, available services such as transportation, parking, child care, lodging, and court-martial translators/interpreters (para 18–23).

v. Inform the victim that witnesses requested or ordered to appear at Article 32 investigations or courts-martial may be entitled to reimbursement for their expenses under Articles 46 and 47, UCMJ; R.C.M. 405(g); AR 37–106, and chapter 5 of this regulation (para 18–21).

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 18–21).

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 (para 18–14 *b*).

(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, Headquarters, Department of the Army, Office of the Deputy Chief of Staff for Operations and Plans, U.S. Army Military Police Operations Agency (ATTN: DAMO-ODL), 4401 Ford Avenue, Suite 225, Alexandria, VA 22302–1432 (Para 18–14 *b*).

(3) Do not attach DD Form 2704 to any portion of a record to which the offender has access (para 18–14 *b*).

y. Process the victim's requests for investigative reports or other documents under applicable Freedom of Information or Privacy Act procedures. However, in appropriate cases, the SJA may otherwise 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. (See para 18–24).

D–2. Witness checklist

a. Coordinate with installation/community casualty working group and the USA Criminal Investigation Command Survivor Point of Contact in death cases (para 18–2 *c*).

b. Ensure that witnesses are provided the name, location, and telephone number of the VWL (para 18–8 *b*).

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 2701and 2702) when necessary or requested (para 18–9 *b*).

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 (para 18–17 *b*).

e. Inform the witness regarding notification of the following significant events in the case (para 18–17):

(1) The status of the investigation of the crime, to the extent that

it will not interfere with the conduct of the investigation, the rights of the accused, or the rights of other victims or witnesses.

(2) The apprehension of the suspected offender.

(3) The preferral or dismissal of charges.

(4) The initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at an Article 32, UCMJ, investigation.

(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 18–19).

(13) Inform the witness that, within the guidelines of R.C.M. 701(e) and upon request, 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 (para 18–19 *d*).

(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 18–18).

(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 (para 18–20).

(16) Inform the witness that, upon request, reasonable steps will be taken to explain to a creditor when the witness, as a direct result of an offense or of cooperation in the investigation or prosecution of an offense, is subjected to serious financial hardship (para 18–20).

(17) Inform the witness of the availability of a separate waiting area (para 18–19 *c*).

(18) Inform the witness of, and provide appropriate assistance to obtain, available services such as transportation, parking, child care, lodging, and court-martial translators/interpreters (para 18–23).

(19) Inform the witness that witnesses requested or ordered to appear at Articles 32 investigations or courts-martial may be entitled to reimbursement for their expenses under Article 46 and 47, UCMJ; R.C.M. 405(g); AR 37–106, and chapter 5 of this regulation (para 18–21).

(20) Assist the witness in obtaining timely payment of witnesses fees and related costs and coordinate with local finance officers for establishing procedures for payment after normal duty hours if necessary (para 18–21).

f. For the trial counsel or designated government representative.

(1) No later than after trial if the offender is sentenced to confinement advise the witness of the offender's place of confinement and the offender's projected minimum release date.

(2) In all cases, advise the witness regarding the right to be notified of the offender's confinement or parole status changes or consideration for parole or clemency by using DD Form 2703 (para 18-17).

g. For the VWL or designated government representative.

(1) In all cases, complete DD Form 2704 regarding the witness' election regarding notification of changes in confinement status and give one copy to the witness; forward one copy of the form to the commander of the gaining confinement facility; forward one copy of the form will be forwarded to the Army's central repository, Headquarters, Department of the Army, Office of the Deputy Chief of Staff for Operations and Plans, U.S. Army Military Police Operations Agency (ATTN: DAMO-ODL), 4401 Ford Avenue, Suite 225, Alexandria, VA 22302–1432 (Para 18–17).

(2) Do not attach DD Form 2704 to any portion of a record to which the offender has access (para 18–17 *b*).

h. Process a witness' request for investigative reports or other documents under applicable Freedom of Information or Privacy Act procedures (para 18–24).

Glossary

Section I
Abbreviations

ABA
American Bar Association

ABCMR
Army Board for Correction of Military Records

ACPB
Army Clemency and Parole Board

AD
Active Duty

ADT
active duty for training

AFI
Air Force Instruction

AGR
Active/Guard Reserve

ARNG
Army National Guard

ARNGUS
Army National Guard of the United States

ARPERCEN
U.S. Army Reserve Personnel Center

AT
annual training

BCD
bad-conduct discharge

CMIF
career management individual file

CMO
court-martial order

CONUS
continental United States

CONUSA
continental United States Army

DA
Department of the Army

DAD
Defense Appellate Division

DASEB
Department of the Army Suitability Evaluation Board

DCO
designated commanding officer

DCSPER
Deputy Chief of Staff for Personnel

DOD
Department of Defense

DOJ
Department of Justice

ETS
expiration term of service

FAO
finance and accounting office

FBI
Federal Bureau of Investigation

GAD
Government Appellate Division

GCM
general court-martial

GCMCA
general court-martial convening authority

GPW
Geneva Convention Relating to the Treatment of Prisoners of War, 12 August 1949

HQDA
Headquarters, Department of the Army

IDT
inactive duty training

IG
Inspector General

JA
Judge Advocate

JAGC
Judge Advocate General's Corps

JAGMAN
Manual for The Judge Advocate General

JALS
Judge Advocate Legal Service

JTELS
JUMPS Tele-Processing System

MACOM
major Army Command

MCM
Manual for Courts-Martial

MJM
U.S. Coast Guard Military Justice Manual

MOS
military occupational specialty

MOU
memorandum of understanding

MPD
military personnel division

MPRJ
military personnel records jacket

MRE
Military Rules of Evidence

MTF
medical treatment facility

MUSARC
Major United States Army Reserve Command

NCO
noncommissioned officer

OER
officer evaluation report

OMPF
official military personnel file

PCS
permanent change of station

PSC
personnel service company

RC
Reserve Components

RCF
regional confinement facility

R.C.M.
Rules for Courts-Martial

ROTC
Reserve Officers' Training Corps

SA
Secretary of the Army

SAUSA
Special Assistant U.S. Attorney

SCM
summary court-martial

SIDPERS
Standard Installation/Division Personnel System

SJA
staff judge advocate

SOFA
Status of Forces Agreement

SPCM
special court-martial

TDY
temporary duty

TJAG
The Judge Advocate General

TJAGSA
The Judge Advocate General's 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

USAREUR
U.S. Army, Europe

USATDS
U.S. Army Trial Defense Service

USCAAF
U.S. Court of Appeals for the Armed Forces

USDB
U.S. Disciplinary Barracks

USMA
U.S. Military Academy

VWL
Victim/Witness Liaison Section II Terms

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 military 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 section 206 of title 37 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.

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

This section contains no entries.

Index

This index is organized alphabetically by topic and by subtopic within a topic. Topics and subtopics are identified by paragraph number.

Administrative error, not invalidate, 3-28
Admonitions, as nonpunitive measures, 3-3
Air Force counsel, 5-5
Announcing punishment, 3-22
Appeals, Chap 13,
Appellate review, Chap 13
Arraignment, 5-22
Arrest in quarters, 3-19
Article 138 complaints, Chap 20
Article 15 Punishment, Chap 3
Article 15 after punishment by civilians, Chap 4
Article 32, travel expenses, 5-12
Article 39a, 5-18,
Article 62, 13-3
Article 69 appeals, Chap 14
Attachment, 5-2
Authentication, 5-40

Bad Conduct Discharge, 5-25
Bread and water, 3-19
Bulletin board, posting Article 15, 3-22

Certification of lawyers, 5-4
Chaplains, 7-2
Charge Sheet, 5-14
Chief of Mission, 3-7
Civilian conviction, effect on UCMJ action, 4-2
Clear injustice, 3-28
Clemency, 3-23
Clerk of court, USACCA, 13-8
Combination of punishments, 3-19
Commandant, 3-7
Commander defined, 3-7
Commander's guide, 3-15,
Commander, acting on appeal, 3-30
Commander, as successor in command, 3-23
Commander, ordering punishment executed, 3-21
Commander, power to suspend, 3-24
Commander, power to vacate suspension, 3-25
Commands, include, 3-7
Confinement, in overseas civilian jail, Chap 17
Correctional custody, 3-19b
Counsel Oath, 11-4
Counsel of other service, 5-5
Counsel, defense, Chap 6
Counsel, for pretrial confinee, 5-13
Courts-Martial Orders, Chap 12
Court Reporters, 5-11
Courts-Martial jurisdiction, 5-2
Court members, 5-9
Court reporters oath, 11-6
Courts-Martial after Article 15 punish, 3-10
Courts of Inquiry, Chap 10

DD Form 458, 5-14
Date of rank, 3-19
Death Sentence, 5-34
Decision period, 3-18
Defense counsel, Chap 6
Delegation of article 15 authority, 3-7
Delegation of notification, 3-18
Demand for trial when soldier stands mute, 3-18
Demand for trial, any level may be referred, 3-18
Demand for trial, no election made, 3-18
Demand for trial, not bar to nonpunitive measures, 3-18
Demand trial under article 15, 3-18
Dentists, 7-3
Department of Justice, Chap 2
Discipline of counsel, Chap 16
Distribution of Article 15 forms, 3-37
Docketing, 5-18
Doctors, 7-3
Double punishment prohibited, 3-10

Effective dates of punishments, 3-21
Ethical complaints, Chap 16
Ethical standards, Chap 16
Ethics, 5-8,
Evidence, 3-18
Evidence, soldier right to examine, 3-18
Extra duties, 3-19
Extra training, 3-3

Filing of Article 15, 3-6,
Forfeitures, 3-19

Guides for nonjudicial punishment prohibited, 3-4
Guilty plea, 5-24

Hearing, 3-18

Immunity, 2-4
Imposition of punishment, 3-18
Individual Inactive Duty Training IDT, Chap 21
Individual military counsel, 5-7,
Inspectors General, 7-6
Instruction, 3-3
Involuntary Active duty,

Chap 21

JAG-2 Report, Chap 15
Joint commands, 3-8
Judges, Chap 8
Jurisdiction of CM, 5-2

Lawyers, certification of, 5-4
Lawyers, use of, 5-4
Limit on subordinates, 3-7

MPRJ, 3-37
Magistrates, Chap 9
Marine counsel, 5-5
Maximum punishment, soldier informed of possible, 3-18
Medical services, 18-12
Medical specialists, 7-5
Military Judge, rating of, 5-9
Military Judges, Chap 8
Military Judges oath, 11-3
Military judge, obtaining, 5-3
Military magistrate, review of pretrial confinement, 5-13
Minor offense defined, 3-9
Mitigation, 3-26
MOU, Chap 2,
Mute, soldier refuses to elect, 3-18

NCO, notification of article 15 by, 3-18
National Guard, Chap 21
Navy counsel, 5-5
Non-JAG personnel, Chap 7
Nonjudicial Punishment, Chap 3
Nonpunitive measures, 3-3
Not guilty, action when soldier is, 3-18k
Notification of vacation, 3-25
Notification, for formal article 15, 3-18
Notification, for summarized 15, 3-16
Nurses, 7-4

OMPF (Off), filing in, 3-6,
Oaths, Chap 11
Orders, Chap 12
Overseas Witness travel, 18-21

Performance fiche, filing in, 3-6,
Performance fiche, transfer from, 3-42,
Personnel of other services, as counsel, 5-5
Personnel of other services, regarding Article 15, 3-8
Posting Article 15 on board, 3-22
Preliminary inquiry, 3-14
Presence of commander, 3-18
President, Threats against, 2-6
Pretrial Confinement, 5-13
Prior punishment, 3-10
Procedure for Article 15 punishment, Chap 3
Professional Standards, 5-8,
Punishment, Max, table 3-1
Punishment, for summarized Article 15, 3-16
Punishment, rules and limitations, 3-19

RCM 1001(b)(2), 5-26
RCM 1103, 5-37
RCM 1113, 5-34
RCM 307, 5-14
RCM 506, 5-7
Reconciliation log, 3-37,
Records of punishment, 3-36
Records of trial, 5-37
Reduction, 3-19
Rehearings, 5-30
Remit punishment, 3-27
Remission, 3-27
Reprimands, as nonpunitive measure, 3-3
Reserve component, Chap 21
Restricted Fiche, filing in, 3-6,
Restriction, 3-19
Result of trial, 5-27
Right to appeal, 3-18m
Right to appear before vacation, 3-25
Right to remain silent, 3-18
Right to spokesperson, 3-18
Rights of soldier under Article 15, 3-18
Rules of court, 8-8

Search Authorizations, 9-3
Setting aside, 3-28
Spokesperson, right to, 3-18
Subpoenas, 5-20
Successor in command, 3-23
Summarized Article 15 punishment, 3-16
Summary Court, 5-21
Summary courts, 5-17
Superior authority acting regardless; of appeal, 3-35
Superior authority, 3-30
Supplementary action, 3-23,
Suspension, 3-24
Suspension of counsel, 16-3

Suspension of court-martial sentence, 5-31

TDS, Chief Duties, 1-4
TJAG, 1-4
TJAG, as appellate authority, 3-30,
TJAG, suspending counsel, chap 16
Termination of status, 3-8
Threats against the President, 2-6
Training, 3-3
Training of court members, 5-10
Training, in military justice, Chap 19
Training, of defense counsel, 6-6
Transfer of article 15 from performance fiche, 3-42
Travel expenses, for Article 32, 5-12
Trial Counsel assistance program, Chap 22
Trial Judge, Chiefs duties, 1-4
Trial defense service, Chap 6

Use of non-JAG lawyers, 5-4

Vacation of suspended court-martial sentence, 5-32
Vacation of suspended punishment (Article 15), 3-25
Victim Witness liaison officer, 18-18
Victims, 18-5

Warrant Officers, 7-7
Warrant of Attachment, 5-20
Withholding article 15 authority, 3-7
Witness, 5-20,

M TAB TAB TAB TAB TAB TAB TAB TAB

REPORT OF JUDICIAL DISCIPLINARY ACTIVITY IN THE ARMY

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

Requirement Control Symbol JAG-2(R 12)

MONTH ENDING | REPORT DATE | REPORT CONTROL NUMBER

TO:

HQDA (JALS-CC)
Nassif Building
Falls Church, VA 22041-5013

FROM: *(Preparing SJA Office—Include ZIP Code)*

SECTION A—NONJUDICIAL PUNISHMENT

ITEMS	SUMMARIZED	FORMAL
1a. Total soldiers punished		
b. Total imposed for drug offenses		
2. Total number of appeals from punishment		
3. Number of appeals granted		
4. Number of soldiers who were offered but refused to accept Article 15		
5a. Combined total *(Soldiers Punished)*		

b. Profile of soldiers punished by Article 15

ETHNIC BACKGROUND *(Summarized)*	ENLISTED			
	ALL OFFENSES		DRUG OFFENSES	
	MALE	FEMALE	MALE	FEMALE
Black				
White				
Hispanic				
American Indian				
Asian/Pacific Islander				
Foreign Nat'l Serving w/US				
Other				
TOTAL				

ETHNIC BACKGROUND *(Formal)*	ENLISTED				OFFICERS			
	ALL OFFENSES		DRUG OFFENSES		ALL OFFENSES		DRUG OFFENSES	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
Black								
White								
Hispanic								
American Indian								
Asian/Pacific Islander								
Foreign Nat'l Serving w/US								
Other								
TOTAL (See Sec. A, block 1a & 1b)								

SECTION B—SUMMARY COURTS-MARTIAL

ITEMS	NUMBER OF CASES				DRUG SPECIFICATIONS		
	TOTAL TRIED	TOTAL CONVICTED	TRIED DRUG OFFENSES	CONVICTED DRUG OFFENSES	USE/POS-SESSION	DISTRI-BUTION	MANUFAC-TURE
6a. Total number of summary courts-martial							
b. Tried by military Judge							
7a. Number included in item 6a who refused Article 15 *(Summarized)*							
b. Number included in item 6a who refused Article 15 *(Formal)*							
8. Number included in item 6a who pleaded guilty to all charges and specifications							

M TAB TAB TAB TAB TAB TAB TAB

SECTION B—SUMMARY COURTS-MARTIAL *(Continued)*

ITEMS	NUMBER OF CASES				DRUG SPECIFICATIONS		
	TOTAL TRIED	TOTAL CONVICTED	TRIED DRUG OFFENSES	CONVICTED DRUG OFFENSES	USE/POS-SESSION	DISTRI-BUTION	MANUFAC-TURE
9. Profile of soldiers tried, profile of soldiers convicted by summary courts-martial							
a. Males							
Black							
White							
Hispanic							
American Indian							
Asian/Pacific Islander							
Foreign Nat'l Serving w/US							
Other							
b. Females							
Black							
White							
Hispanic							
American Indian							
Asian/Pacific Islander							
Foreign Nat'l Serving w/US							
Other							

SECTION C—PROCESSING TIME

(AVERAGE Processing Time for Non Bad Conduct Discharge (BCD) Special [1] and Summary Court-Martial)

ITEMS	SUMMARY COURT-MARTIAL *(SCM)*	SPECIAL COURT-MARTIAL *(SPCM)*
10. Total number of cases completed this month		
11. Average days from restraint or charges to termination, acquittal, or sentence		
12. Average days from sentence to action by convening authority		
13. Average days from convening authority's action to receipt by SJA		

SECTION D—CHAPTER 10s

	TOTAL CHAP 10s	TOTAL DRUG RELATED	DRUG SPECIFICATIONS		
			USE/POS-SESSION	DISTRI-BUTION	MANUFAC-TURE
14. General court-martial					
BCD special court-martial					
Special court-martial					
Summary court-martial					
Not referred					
TOTAL					

SECTION E—CIVILIAN FELONY CONVICTIONS [2]

15. Number of US Federal and State Court Felony Convictions	

REMARKS

TYPED NAME, GRADE, AND TITLE SIGNATURE

FOOTNOTES: [1] *Only those SPCM's not forwarded for review by a Court of Military Review UP Article 65(b), UCMJ, will be reported here.*
[2] *A conviction is reportable when the offense is a felony under the law of the jurisdiction in which the accused was convicted.*

MILITARY JUDGE'S OATH

For use of this form, see AR 27-10; the proponent agency is The Judge Advocate General.

With The United States Army

At _____

"I, _____ do *(swear) (affirm)* that I will faithfully and impartially perform, according to my conscience and the laws applicable to trials by courts-martial, all the duties incumbent upon me as a military judge of all courts-martial to which I may hereafter be detailed. *(So help me God.)*"

SIGNATURE

I, _____, an officer empowered to administer oaths under Article 136*(a)*, Uniform Code of Military Justice, do hereby certify that on this _____ day of _____ at _____, _____, having been duly certified to be qualified for duty as a military judge by The Judge Advocate General of the Army, personally appeared before me and was administered by me the above *(oath) (affirmation)*.

SIGNATURE	TITLE

DA FORM 3496-R, 1 Sep 80 EDITION OF 1 MAY 69 IS OBSOLETE.

COUNSEL'S OATH

For use of this form, see AR 27-10; the proponent agency is The Judge Advocate General.

With The United States Army

At _____

"I, _____ do *(swear) (affirm)* that I will faithfully perform the duties of counsel in any case in which I am individually requested or detailed to act as the same. *(So help me God)*"

SIGNATURE

I, _____, an officer empowered to administer oaths under Article 136*(a)*, Uniform Code of Military Justice, do hereby certify that on this day of _____ at _____, _____ having been duly certified to be qualified for duty as a counsel before courts-martial by The Judge Advocate General of the Army and being a member of T The Judge Advocate General's Corps of the Army, personally appeared before me and was administered by me the above *(oath) (affirmation)*.

SIGNATURE	TITLE

DA FORM 3497-R, 1 Sep 80 EDITION OF 1 MAY 69 IS OBSOLETE.

M TAB TAB TAB TAB

AFFIDAVIT SUPPORTING REQUEST FOR AUTHORIZATION TO SEARCH AND SEIZE OR APPREHEND

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

BEFORE COMPLETING THIS FORM, SEE INSTRUCTIONS ON PAGE 2

1. I, _____ , _____
(Name) *(Organization or Address)*

_____

having been duly sworn, on oath depose and state that:

2. The affiant further states that:

M TAB TAB TAB TAB TAB

3. In view of the foregoing, the affiant requests that an authorization be issued for a search of _____
(the person) (and)

_____
(the quarters or billets) (and)

_____ and (seizure) (apprehension) of _____
(the automobile) ( ) *(items/persons searched for)*

_____

TYPED NAME AND ORGANIZATION OF AFFIANT SIGNATURE OF AFFIANT

_____

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____ 19 _____, AT _____

_____

TYPED NAME, ORGANIZATION AND OFFICIAL CAPACITY OF AUTHORITY ADMINISTERING THE OATH SIGNATURE OF AUTHORITY ADMINISTERING THE OATH

INSTRUCTIONS FOR

AFFIDAVIT SUPPORTING REQUEST FOR AUTHORIZATION TO SEARCH AND SEIZE OR APPREHEND

1. In paragraph 1, set forth a concise, factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional page if necessary.

2. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that the property to be seized or the person(s) to be apprehended are presently located on the person, premises, or place to be searched. Before a person may conclude that probable cause to search exists, he or she must first have a reasonable belief that the person, property or evidence sought is located in the place or on the person to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the affidavit or on hearsay information which he/she has plus the underlying circumstances from which he/she has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the affidavit should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the affidavit has concluded that the informant (whose identity need not be disclosed) or his/her information was trustworthy. Use additional pages if necessary.

3. In paragraph 3, the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended should be described with particularity and in detail. Authorization for a search may issue with respect to a search for fruits or products of an offense, the instrumentaility or means of committing the offense, contraband or other property the possession of which is an offense, the person who committed the offense, and under certain circumstances for evidentiary matters.

M TAB TAB TAB TAB

APPREHENSION AUTHORIZATION

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

TO: *(Name and Organization of the person to whom authorization is given)*

_____

(An affidavit) (A (sworn) or (unsworn) oral statement) having been made before me by _____

(Name of Affiant)

_____

(Organization or Address of Affiant)

(which affidavit is attached hereto and made a part of this authorization), and as I am satisfied that there is probable cause to believe that the matters mentioned in the affidavit are true and correct, that the offense set forth therein has been committed, and the person to be apprehended committed the offense and is located at the place to be searched, you are hereby ordered to search the place known as

_____

for the person described as _____

_____

_____

bringing this order to the attention of the *(person apprehended) (person in possession, if any person be found at the place or on the premises searched).* The search will be made in the *(daytime) (nighttime),* and if the person described above is found there, you shall apprehend him/her.

Dated this _____ day of _____ 19 ____.

_____

TYPED NAME AND GRADE OF AUTHORIZING OFFICIAL | DUTY POSITION OF AUTHORIZING OFFICIAL

_____

ORGANIZATION OF AUTHORIZING OFFICIAL | SIGNATURE OF AUTHORIZING OFFICIAL

M TAB TAB TAB TAB TAB TAB TAB

DEPARTMENT OF THE ARMY REPORT OF RESULT OF TRIAL

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

TO:

1. Notification under R.C.M. 1101 and AR 27-10, paragraph 5-26 is hereby given in the case of the United States v. _____

2. Trial by _____ court-martial on _____ 19 ____ at _____

convened by: CMCO Number _____ HQ, _____

3. Summary of offenses, pleas, and findings:

CH	ART UCMJ	SPEC	BRIEF DESCRIPTION OF OFFENSE(S)	PLEA	FINDING

4. SENTENCE:

5. Date sentence adjudged:

6. Contents of pretrial agreement concerning sentence, if any:

7. Number of days of presentence confinement, if any:

8. Number of days of judge-ordered administrative credit for illegal presentence confinement or restriction found tantamount to confinement, if any:

9. Total presentence confinement credit toward post-trail confinement:

10. Name(s) and SSN(s) of companion accused or co-accused, if any:

CF:

TYPED NAME SIGNATURE

RANK BRANCH OF SERVICE

UNITED STATES ARMY

TRIAL DEFENSE SERVICE

INSTALLATION _____

COUNSEL _____

Telephone
OFFICE: _____

HOME: _____

DA FORM 4441-R, MAY 81

M TAB TAB TAB TAB TAB TAB TAB TAB TAB TAB

CERTIFICATE OF SERVICE/ATTEMPTED SERVICE

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

UNIT AND INSTALLATION	DATE

COMPLETE APPLICABLE SECTION BELOW

SECTION A – CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 19 _____, I served a copy of the decision of the United States Army Court of Military Review on the accused in the case of the United States v. _____ *(Name)*, _____ *(SSN)*, _____ *(ACMR Docket No.)*. At the time of service the accused was advised of his or her right to petition the USCMA by mailing five *(5)* copies of the Petition for Grant of Review to the United States Court of Military Appeals, 450 E Street, NW, Washington, DC 20442, prior to the lapse of sixty *(60)* days from the date he or she was notified of the decision of the ACMR.

TYPED NAME & GRADE OF SJA REPRESENTATIVE OR DESIGNEE	SIGNATURE

SECTION B – CERTIFICATE OF ATTEMPTED SERVICE *(IN PERSON)*

I hereby certify that on the _____ day of _____, 19 _____, I attempted to serve a copy of the decision of the United States Army Court of Military Review on the accused in the case of the United States v. _____ *(Name)*, _____ *(SSN)*, _____ *(ACMR Docket No.)*, and was unable to do so. The accused

*(absented himself without authority) (escaped from confinement) (*_____*) on the* _____ *day of* _____, *19*_____.

NOTE: A copy of the pertinent DA Form 4187 is attached.

TYPED NAME & GRADE OF SJA REPRESENTATIVE OR DESIGNEE	SIGNATURE

SECTION C – CERTIFICATE OF ATTEMPTED SERVICE *(BY MAIL)*

1. I hereby certify that on the _____ day of _____, 19_____, I placed a copy of the decision of the United States Army Court of Military Review, together with a copy of the attached DA Form 4917-R advising the accused of his or her right to petition the United States Court of Military Appeals in the case of the United States v. _____ *(Name)*, _____ *(SSN)*, _____ *(ACMR Docket No.)*, in an envelope addressed to him or her at _____, said envelope being marked "Certified Mail, Return Receipt Requested", that the envelope was placed in military channels for delivery to the Postal Service to be dispatched "Certified Mail" in accordance with the instructions on the envelope. The above address *(was provided by the accused) (was not provided by the accused and is the most recent address listed in the accused's official military personnel records). [Cross out the phrase which does not apply.]*

2a. (On the _____ *day of* _____, *19* _____, *I received the attached Return Receipt from the Postal Service which shows that delivery was made on the* _____ *day of* _____, *19* _____.*)*

b. (On the _____ *day of* _____, *19* _____, *I received the attached Return Receipt from the Postal Service for the aforementioned communication and the attached envelope and its contents, and the said envelope is marked as undeliverable by the Postal Service.)*

c. (As of the _____ *day of* _____, *19* _____, *65 days having passed since the date of postmark, I have received no communication concerning the delivery of the certified envelope and its contents.)*

TYPED NAME & GRADE OF SJA REPRESENTATIVE OR DESIGNEE	SIGNATURE

M TAB TAB TAB

ADVICE AS TO APPELLATE RIGHTS

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

NOTE: This form may be used to serve the Army Court of Military Review (ACMR) decision by mail or as a guide to inform the accused of his/her rights when serving him/her personally.

TO: *(Name and Address of Accused)* **FROM:** *(Include Unit and Installation)*

1. In the attached decision, dated the _____ day of _____, 19_____, the United States Army Court of Military Review *(ACMR)* in the _____ court-martial case of _____ *(Name of Accused)*

_____ *(SSN)*, _____ *(AMCR Docket No.)*, (affirmed the findings of guilty and only so much of the sentence as provides for_____)

(_____ *(Partial affirmance of the findings of guilty and/or sentence)*).

2. You, _____ *(Name and Rank of Accused)*, are hereby advised as follows:

a. You may petition the United States Court of Military Appeals with respect to any matter of law within sixty *(60)* days from the time you receive the decision of the United States Army Court of Military Review or the envelope containing the decision was postmarked, whichever is earlier.

b. In connection with the preparation of the petition *(the necessary forms are attached for your use)* and representation before the United States Court of Military Appeals, you have the right either to have a civilian lawyer provided at no expense to the United States, a detailed military lawyer, or both a civilian lawyer and detailed military lawyer.

c. If you do not desire to petition the United States Court of Military Appeals, action will be taken to finalize your conviction and the sentence within sixty *(60)* days from the time you receive the decision of the United States Army Court of Military Review or the envelope containing the decision is postmarked, whichever is earlier. Should you wish to finalize the findings of guilty as affirmed by the United States Army Court of Military Review before such time, you may submit a "Request for Final Action," DA Form 4919-R.

d. To assist you in making your determination of whether to petition the United States Court of Military Appeals or whether to submit a "Request for Final Action", you may contact your appellate defense counsel who represented you before the United States Court of Military Review. If you have difficulty contacting your appellate defense counsel, you may get help by calling the Army Defense Appellate Division collect at (202) 756-2277 or by contacting the Army Trial Defense Service office located at:

ADDRESS TELEPHONE NO.

e. In order to protect your rights you should take the following action:

(1) Contact your appellate defense counsel as soon as possible for advice.

(2) If you wish to petition the United States Court of Military Appeals, complete all the forms entitled, "Petition for Grant of Review," DA Form 4918-R. Sign all the forms, and mail or deliver the forms to the United States Court of Military Appeals, 450 E Street, NW, Washington, DC 20442, prior to the lapse of sixty *(60)* days period mentioned above.

(3) You may use the enclosed, properly addressed envelope, which requires no postage, for mailing the "Petition for Grant of Review" forms to the United States Court of Military Appeals.

LIST OF ENCLOSURES *(Enclosures should include: 1) Decision ACMR (one); 2) DA Form 4918-R, Petition for Grant of Review (five); and 3) Envelope (USCMA).)*

TYPED NAME OF SJA REPRESENTATIVE OR DESIGNEE GRADE SIGNATURE

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PETITION FOR GRANT OF REVIEW
IN THE UNITED STATES COURT OF MILITARY APPEALS
For use of this form, see AR 27-10; the proponent agency is TJAG.

ACMR NO.

IN THE UNITED STATES COURT OF MILITARY APPEALS

UNITED STATES, Appellee)	PETITION FOR GRANT OF REVIEW
v.)	CMR Dkt. No. _____
_____) *(Full typed name, rank & service of appellant)*)	USCMA Dkt. No. _____ *[For Court use only]*
Service No. _____) Appellant)	

TO THE JUDGES OF THE UNITED STATES COURT OF MILITARY APPEALS:

1. I hereby petition the Court for review of my conviction.

2. I understand that, unless I specifically request the contrary, a military lawyer will be designated by The Judge Advocate General to represent me free of charge before the US Court of Military Appeals.

SIGNED: _____
(Put your signature here)

DATED: _____
(Put mailing date here)

MAIL TO: US Court of Military Appeals
450 E Street, NW
Washington, DC 20442

REQUEST TO SUPERIOR TO EXERCISE ARTICLE 15, UCMJ, JURISDICTION

For use of this form, see AR 27-10; the proponent agency is The Judge Advocate General.

THRU: *(Include ZIP Code)*	TO: *(Include ZIP Code)*

(Check appropriate block and complete narrative)

1. ☐ It has been reported ☐ The inclosed file indicates that on or about _____ at _____
(Date) *(Place)*

_____

_____

_____

_____

_____

_____

NOTE: Insert the name and organization of the individual concerned and the nature of the alleged misconduct in the form of a clear and concise statement of an offense that constitutes conduct punishable under the UCMJ and the article of the UCMJ violated.

2. I recommend that you exercise your authority under the provisions of Article 15, UCMJ, in the disposition of this case.

3. Inclosures: *(List)*

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE

DA FORM 5109-R, Nov 82

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ARTICLE 15 – RECONCILIATION LOG

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

SEQUENCE NUMBER	DATE IMPOSED	NAME OF MEMBER	PUNISHMENT	DATE POSTED BY FAO*	DATE VERIFIED*

REMARKS:

*Applies only to unsuspended reductions or forfeitures.

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SUMMARY COURT-MARTIAL RIGHTS NOTIFICATION/WAIVER STATEMENT

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

1. STATEMENT CONCERNING REFUSAL TO ACCEPT QUALIFIED COUNSELING, ARTICLE 20, UCMJ AND UNDERSTANDING OF RIGHTS

a. On _____ (Date), I was afforded an opportunity to consult with legal counsel before making my decision to consent to Summary Court-Martial proceedings under Article 20, UCMJ.

b. I have decided not to see counsel in connection with this action.

c. I understand my rights under Article 20, UCMJ, including my right to object to trial by Summary Court-Martial, punishment limitations, potential use of the record of Summary Court-Martial in any subsequent courts-martial, and other consequences of my decision.

d. I voluntarily decide to consent to trial by Summary Court-Martial.

TYPED OR PRINTED NAME AND RANK OF SERVICE MEMBER	SIGNATURE OF SERVICE MEMBER
TYPED OR PRINTED NAME & RANK OF SUMMARY COURT-MARTIAL OFFICER	SIGNATURE OF SUMMARY COURT-MARTIAL OFFICER

2. STATEMENT ACKNOWLEDGING QUALIFIED LEGAL COUNSEL FOR ARTICLE 20, UCMJ, AND STATEMENT OF UNDERSTANDING OF RIGHTS

a. On _____ (Date), I consulted with _____ (Name and Rank of Defense Counsel) who explained my rights to me under the provisions of Article 20, UCMJ, to include my right to object to trial by Summary Court-Martial, punishment limitations, potential use of the record of Summary Court-Martial proceedings in any subsequent courts-martial, and other consequences of my decision.

b. I understand my rights and voluntarily decide to consent to trial by Summary Court-Martial.

TYPED OR PRINTED NAME AND RANK OF SERVICE MEMBER	SIGNATURE OF SERVICE MEMBER

c. I have advised _____ (Name and Rank of Service Member) of his or her statuatory and regulatory rights with regard to this Summary Court-Martial and the possible consequences of his or her consent or objection to trial by Summary Court-Martial.

TYPED OR PRINTED NAME, RANK, & BRANCH OF DEFENSE COUNSEL	SIGNATURE OF DEFENSE COUNSEL

3. REFUSAL TO ACKNOWLEDGE RECEIPT OF ADVICE — ARTICLE 20, UCMJ

After I advised _____ (Name (First, MI, Last)) _____ (Rank) _____ (SSN) of his or her rights to consult with legal counsel before making a decision to consent or object to Summary Court-Martial proceedings under Article 20, UCMJ, he or she refused to complete and sign an acknowledgement of receipt of the advice.

TYPED OR PRINTED NAME & RANK OF SUMMARY COURT-MARTIAL OFFICER	SIGNATURE OF SUMMARY COURT-MARTIAL OFFICER

REMARKS

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CHECKLIST FOR PRETRIAL CONFINEMENT

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

NAME GRADE UNIT

AGE ETS TOTAL SERVICE TO DATE

MARRIED WIFE/HUSBAND IN LOCAL AREA NUMBER OF CHILDREN

___YES ___ NO ___YES ___NO ___1 ___2 ___3 ___ OTHER_____ (Specify)

NUMBER OF ARTICLE 15's:

DATE	OFFENSE	PUNISHMENT

NUMBER OF PREVIOUS CONVICTIONS:

TYPE OF COURT	DATE	ARTICLE	PUNISHMENT

NUMBER OF PRESENT OFFENSES:

ARTICLE	DATE	DESCRIPTION OF OFFENSE (If AWOL, from-to, etc., and whether surrendered or apprehended)

PRETRIAL CONFINEMENT IS APPROPRIATE BECAUSE:

a. There is probable cause to believe an offense has been committed by the accused. *(List specific reasons why it is believed an offense has been committed by the accused.)*

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b. To ensure the accused's presence at trial, pretrial hearing or investigation. *(List specific reasons why it is believed the accused may not be present and summarize the conduct of the accused which warrants pretrial confinement and tends to indicate the accused is not likely to be available for trial, pretrial hearing or investigation.)*

c. To prevent foreseeable serious criminal misconduct including any efforts at obstructing justice. *(List specific reasons why it is believed the accused may commit acts of serious criminal misconduct if not incarcerated, particularly if these acts pose a threat to others, the command or national security, and summarize the conduct of the accused which warrants pretrial confinement and tends to indicate the accused may commit future acts of serious criminal misconduct.)*

d. Lesser forms of restraint are inadequate. *(List the alternatives that have proven inadequate or summarize the reasons why it is believed such alternatives would be inadequate.)*

DATE	TYPED NAME, RANK, AND ORGANIZATION OF COMMANDER	SIGNATURE

DECISION OF MILITARY MAGISTRATE

TO: *(Addressee(s))* DATE

On _____ *(Date)*, I reviewed the circumstances concerning the continued pretrial confinement of

_____ *(Name)*. Based upon this review, I: *(Check appropriate statement)*

_____ Determined that continued pretrial confinement is warranted.

_____ Determined that continued pretrial confinement is not warranted and order his/her release from pretrial confinement.

TYPED NAME, GRADE, AND BRANCH OF MILITARY MAGISTRATE	SIGNATURE

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